
IN THE MATTER OF THE COMPLAINT
FILED BY THE ALLAMUCHY TOWNSHIP
BOARD OF EDUCATION

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BEFORE THE COUNCIL ON
LOCAL MANDATES

DOCKET NO.: 9-11

MEMORANDUM OF CLAIMANT ALLAMUCHY TOWNSHIP
BOARD OF EDUCATION
IN RESPONSE TO
THE MOTION OF THE STATE OF NEW JERSEY
TO DISMISS THE COMPLAINT

This memorandum is being submitted on behalf the claimant Allamuchy Township Board of Education [hereafter: “Allamuchy”]. Allamuchy submits this memorandum in opposition to the motion of the Respondent, State of New Jersey, to dismiss the complaint on the basis that the controversy is moot. This memorandum will also serve as Allamuchy’s pleading summary of this procedural step. The Respondent’s motion must be denied.

The Respondent fairly states the procedural history of this matter. However, the Respondent’s characterization of the new law, NJ Laws 2012, ch.1, and its effect on this controversy miss the mark.

The new law, *supra*, amends previous legislation in three aspects and contains three new provisions. It does not purport to or act to supersede the Anti-bullying Bill of Rights, NJ Laws 2010, ch. 122. The amendments are narrow in scope and provide as follows:

1. A school district may be required to provide only those services, such as counseling, that are already offered within the district. If services are warranted that the District does not offer, the District may apply to the previously created but unfunded Bullying Prevention Fund established pursuant to section 25 of the Anti-bullying Bill of Rights, NJ Laws 2010, ch.122 (codified at NJSA 18A:37-28). NJ Laws 2012, ch.1, §1.

2. A District will have the opportunity to utilize training and anti-bullying programs made available at no cost to the District through the New Jersey Department of Education, the New Jersey State Bar Association and other entities. In addition, a District may apply to the Bullying Prevention Fund only after it has demonstrated that the costs for which a grant is sought were not avoidable through the use of cost free services. A District may also apply to the Bullying Prevention Fund for personnel expenses incurred in complying with the law. NJ Laws 2012, ch.1, §2 and §3.
3. New law provides for the creation of a Task Force to review and report on the various aspects of the Anti-bullying Bill of Rights, as amended, NJ Laws 2012, ch.1, §4, and for the authority to adopt a regulatory scheme to implement the Anti-bullying Bill of Rights as amended, NJ Laws 2012, ch.1, §5.
4. There is an appropriation of from the General Fund to the Department of Education in the amount of \$1,000,000 to be deposited into the Bullying Prevention Fund. NJ Laws 2012, ch.1, §6.

These amendments do not supersede or otherwise replace the Anti-bullying Bill of Rights.

These amendments do not render the controversy before the Council moot. It is unclear whether the provisions will cure the constitutional deficiency in the statute. Let us examine the effect of the amendments.

Districts will be required to locate and then utilize services for mandatory training that are offered free of charge from the Department of Education, the New Jersey State Bar Association or any other entity. This presumes that the services for mandatory training are and will continue to be available from the Department of Education and the New Jersey State Bar Association. The statute also includes a reference to services that may be available from “any

other entity” without regard to qualification or expertise. While there may (this has not been established as a matter of fact) be services available from the Department of Education and the New Jersey State Bar Association, it is not clear whether the services cover the full scope of mandatory training required under the act. Nor is there an indication that either entity has a sufficient infrastructure so that the services will be effectively available to the more than 600 districts throughout the State. More importantly, the law does not require the Department of Education or the New Jersey State Bar Association to provide such services. These services can be withdrawn at any time for any or no reason.

The law does fund the Bullying Prevention Fund. This appropriation is a singular expenditure of \$1,000,000. The law does not require an annual appropriation. There is no requirement to maintain funding sufficient to meet the direct costs that Districts encounter as a result of the Anti-bullying Bill of Rights. Many such costs recur annually. When the fund is depleted, if there is no new appropriation, such direct costs will still be impermissible unfunded mandates.

Moreover, a district is not assured of reimbursement from the Bullying Prevention fund. A district must apply. As of this date, there are no regulations, procedures, rules or guidelines on the process of applying for such a grant, the criteria for making such a grant and the degree such costs will be reimbursed. Many details in implementing the statute must be developed yet. It is clear that there is an attempt to comply with the constitutional requirement to fund direct costs that the Legislature has mandated on local governmental entities but until the process is actually implemented, it is unclear whether the Legislature has cured the deficiencies in the statute. Hence, the controversy is not moot. Moreover, the issuance of the opinion by the

Council will be able to clearly establish the parameters by which the effectiveness of the new Legislation may be measured.

Lastly, as was established during the proceedings, the Allamuchy Township Board of Education has already expended funds for training and personnel (before the law was amended and in accordance with the law that is before the Council and in furtherance of the directives of the Department of Education) for which the Board has sought reimbursement. This application has not been acted upon as of this date. The apparently now available cost free resources, in particular for training, were not offered or made available when the Department directed all districts to comply with the law by the start of school in September of 2011. Hence, the Allamuchy Township Board of Education continues to have incurred direct costs as a result of the mandates of the Anti-bullying Bill of Rights. These costs have not to date been funded by the Legislature.

For the foregoing reasons, the motion of the Respondent to dismiss the complaint should be dismissed.

Respectfully submitted,

Francis Gavin

Francis Gavin

President
Allamuchy Township Board of Education

April 9, 2012