

December 18, 1997

Dear :

I have reviewed the papers filed in the matter entitled *In re Petition Concerning the Distribution of Assets and Liabilities upon the Dissolution of Union County Regional High School District No. 1, Union County (III)*, Agency Dkt. No. 303-8/97. Therein, the Kenilworth Board of Education seeks the “equitable distribution of assets and liabilities so that [the] David Brearley High School receives a fair share of assets in furnishings and equipment, textbooks, athletic equipment, resource materials and suitable facilities” in order to operate its school system for the 1997-98 school year. (Petition of Appeal at p. 5) Respondent Union County Superintendent of Schools filed a Motion to Dismiss the Petition of Appeal, asserting petitioner’s claims are barred by the principles of *res judicata* and collateral estoppel, in that the essential issues raised by the petition have been litigated and decided by the Commissioner in *In the Matter of the Distribution of Liquid Assets Upon the Dissolution of Union County Regional High School District No. I, Union County*, decided June 20, 1997, aff’d State Board November 5, 1997 (hereinafter “Union II”).\*

In the within Petition of Appeal (“Union III”), petitioner asserts that the June 30, 1997 report issued by the Union County Superintendent regarding the division of assets and liabilities to the constituent districts upon the dissolution of the Union County Regional High School District No. 1 results in inequitable treatment to the Kenilworth Board of Education and its designated high school, the David Brearley High School (DBHS), in that the report permits:

- the removal without replacement of furnishings and equipment from the DBHS, prior to dissolution, leaving unsuitable furnishings and equipment;
- the removal of textbooks and resource materials from the DBHS prior to dissolution, while permitting the Arthur L. Johnson Regional High School, the Governor Livingston High School and the Jonathan Dayton Regional High School to share in the use of such textbooks;

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\* It is noted that, although this matter was transmitted to the Office of Administrative Law (OAL) for proceedings, by letter dated October 21, 1997, it was brought to the department’s attention that a Motion to Dismiss had been unresolved prior to said transmittal. Accordingly, the file, not yet docketed by the OAL, was returned to the department for determination on the motion.

- the three above-named high schools to enjoy nearly double the value of athletic equipment, while leaving the DBHS with out-dated equipment; and
- an assessment to petitioner of 22.2% of the regional district's liabilities. (Petition of Appeal, at pp. 3,4)

Petitioner further contends that the County Superintendent's report does not define "shared and rotated assets" as including furnishings, equipment and personal property removed from the DBHS by the former regional district since June 1993, and fails to bring the DBHS facilities "up to suitable health and safety standard prior to June 30, 1997 for use as a public high school." (*Id.* at p. 4)

In the Motion to Dismiss filed on behalf of the County Superintendent, it is affirmed that

petitioner is once again asking this forum to reconstitute the David Brearley High School with all furnishings and equipment that [were] removed by the Regional District after Brearley's closing in 1993 - - an issue that the Commissioner fully and fairly rendered a determination upon on June 20, 1997. (Motion to Dismiss at p. 3)

In reply to said motion, petitioner contends that the June 20, 1997 decision

did not address the merits of the appeal. In effect, the Commissioner of Education stated that the Kenilworth Board of Education's appeal was premature because the furnishings and equipment remain the property of the Union County Regional District until the date of dissolution; i.e., June 30, 1997. (Petitioner's Reply at p. 1)

Noting that the instant appeal is based upon the report issued by the Union County Superintendent after the dissolution, petitioner maintains that it challenges said report for failure to comply with the determinations made by the Board of Review and statutory law. (*Id.* at p. 2) It further asserts that there has been no previous adjudication of the issues in this regard, and petitioner, in any event, could no longer be seeking the equitable relief it sought in the previous appeal. Rather, petitioner now seeks relief in the form of liquidated damages as reimbursement for monies spent, or an order allowing it to purchase goods and services thereby allowing it to bring its 9th through 12th grades "up to a suitable level" for the purpose of providing a thorough and efficient education. (*Id.*)

Upon review, I find petitioner's position to be without merit. Notwithstanding petitioner's erroneous characterization of my decision of June 20, 1997 as finding that the Union II appeal "was premature," said decision *was* a decision on the merits. Therein, I found that petitioner was without a cause of action in that the operative statute, *N.J.S.A.* 18A:13-61, did not prevent assets from being altered between the time of the county superintendent's first report and the final dissolution, and further clearly provided for withdrawing districts to take title to and control of the grounds, buildings, furnishings and equipment within the district, other than those which are shared or rotated, *as they are situated on the effective date of the dissolution.* Accordingly, I directed the County Superintendent to distribute assets in accordance with that statute, which did not provide for exceptions or compensation based on change.

Petitioner cannot now return to this forum with a new petition in the guise of appealing the Union County Superintendent's June 30, 1997 report, but seeking fundamentally the same relief as was

previously denied, that is, distribution of assets and liabilities in a manner that will provide petitioner with a fully operational school building, as DBHS was prior to its closing and the subsequent dissolution of the regional district, or recompense for its present condition. As I stated in my decision of June 20, 1997, the distribution of assets and liabilities in this matter must be accomplished pursuant to *N.J.S.A.* 18A:13-61; that statute neither requires the preservation of assets of any constituent district prior to dissolution, nor does it provide recompense for circumstances where the specified manner of distribution results in former constituents taking title to assets of varying worth. As to petitioner's contention that the County Superintendent is obliged to ensure in distributing assets that petitioner is accorded a building that meets prevailing health and safety standards, the Commissioner notes that the statute imposes no such requirement; to the contrary, *N.J.S.A.* 18A:33-1 clearly requires that *each school district* provide "suitable educational facilities" in order to operate.

Accordingly, for the reasons expressed above, I hereby dismiss the instant Petition of Appeal pursuant to the authority granted me by *N.J.A.C.* 6:24-1.9.

Sincerely,

Leo Klagholz  
Commissioner

c: Dr. Frances Lobman, County Superintendent