

52-01

JOSHUA KEAVENEY, a minor by and through his guardian *ad litem*, SANDRA KEAVENEY; SHAWN RILEY, by and through his guardian *ad litem*, EDIE RILEY; CHRISTOPHER RIDGEWAY, ANTHONY RIDGEWAY, JONATHON GLASS AND DANIELLE GLASS, by and through their guardians *ad litem*, ARNETTA RIDGEWAY AND CHRISTOPHER GLASS; LOUIS GRACIA, TINA GRACIA AND ZACHARY GRACIA, by and through their guardian *ad litem*, DAWN GRACIA; ON BEHALF OF THEMSELVES AND ALL THE CHILDREN IN A CLASS OF "A" AND "B" NON-ABBOTT DISTRICTS LISTED BELOW:
BUENA REGIONAL (ATLANTIC COUNTY), CLAYTON (GLOUCESTER COUNTY), COMMERCIAL TOWNSHIP (CUMBERLAND COUNTY), EGG HARBOR CITY (ATLANTIC COUNTY), FAIRFIELD TOWNSHIP (CUMBERLAND COUNTY), HAMMONTON (ATLANTIC COUNTY), LAKEHURST (OCEAN COUNTY), LAKEWOOD (OCEAN COUNTY), LAWRENCE TOWNSHIP (CUMBERLAND COUNTY), LITTLE EGG HARBOR (OCEAN COUNTY), MAURICE RIVER TOWNSHIP (CUMBERLAND COUNTY), OCEAN TOWNSHIP (OCEAN COUNTY), QUINTON (SALEM COUNTY), SALEM CITY (SALEM COUNTY), UPPER DEERFIELD (CUMBERLAND COUNTY), WALLINGTON (BERGEN COUNTY), AND WOODBINE (CAPE MAY COUNTY) SCHOOL DISTRICTS,

PETITIONERS,

V.

NEW JERSEY STATE DEPARTMENT OF EDUCATION, LEO KLAGHOLZ, COMMISSIONER OF THE NEW JERSEY STATE DEPARTMENT OF EDUCATION; ELIZABETH L. PUGH, NEW JERSEY DIRECTOR OF MANAGEMENT AND BUDGET; JAMES DIELEUTORIO, NEW JERSEY STATE TREASURER; AND CHRISTINE WHITMAN, GOVERNOR,

RESPONDENTS.

COMMISSIONER OF EDUCATION

DECISION

SYNOPSIS

In a proceeding bifurcated by prior order of the Commissioner, petitioners sought to demonstrate that they had fully effectuated the provisions of the Comprehensive Educational Improvement and Financing Act of 1996 (CEIFA), so as to be able to proceed to the next phase of hearing wherein they would attempt to prove that they are unable to provide a thorough and efficient system of public education within the level of funding provided by that Act.

ALJ found that petitioners demonstrated entitlement to proceed, and Commissioner affirmed with clarification as to the scope of the second phase of hearing.

February 9, 2001

OAL DKT. NOS. EDU 2637-00, EDU 2638-00, EDU 2639-00, EDU 2640-00, EDU 2641-00, EDU 2642-00, EDU 2643-00, EDU 2644-00, EDU 2645-00, EDU 2646-00, EDU 2649-00, EDU 2650-00, EDU 2651-00, EDU 2652-00, EDU 2654-00, EDU 2655-00 AND EDU 2656-00
 AGENCY DKT NOS. 53-3/98A, 53-3/98B, 53-3/98C, 53-3/98D, 53-3/98E, 53-3/98F, 53-3/98G, 53-3/98H, 53-3/98I, 53-3/98J, 53-3/98M, 53-3/98N, 53-3/98O, 53-3/98P, 53-3/98R, 53-3/98S AND 53-3/98T

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RESPONDENTS.

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Timely exceptions were filed by respondents, as were replies by petitioners, pursuant to the provisions of *N.J.A.C. 1:1-18.4*. These have been duly considered by the Commissioner in rendering his determination herein.¹

Upon careful consideration, the Commissioner concurs with the ALJ that all petitioners have made a sufficient showing of entitlement to proceed to the second stage of hearing in this matter; that is, to allow the opportunity for each petitioning district to attempt to prove that it is unable to provide a thorough and efficient system of public education (“T&E”) within the level of funding established by CEIFA.

However, the Commissioner must clarify the ALJ’s comments, endorsed by petitioners both at hearing and in reply exceptions, suggesting that the only appropriate standard for determining whether a district has made full use of the monies generated by CEIFA is whether its expenditure of such funds is lawful and consistent with sanctioned budgetary practices and efficiency standards.

While this may have been an appropriate level of inquiry for the first phase of hearing, it cannot be deemed controlling in the second. Where a petitioning district is, as here, seeking additional, extraordinary funding over and above that provided to other districts in the State, the effectiveness of its programmatic and fiscal allocation decisions cannot be presumed, or even inferred, from the fact that its expenditures have been lawful or its proposed budget has been approved for thoroughness and efficiency by the county superintendent of schools pursuant to Section 5 of CEIFA – any more than a district’s status as fully certified precludes a demonstration, as several of the petitioners herein will now seek to make, that the district is, in

¹ It is noted that, due to the commonality of issues addressed by the ALJ, a single Initial Decision was issued for the first phase of the hearing in these matters. However, there has been no order of consolidation in regard to them.

fact, not providing T&E despite such certification. Assessment of a board's compliance with State goals and standards in its exercise of local discretionary authority is a process fundamentally different from the critical examination of programs and expenditures necessary to resolve a claim of Constitutional deficiency. For the latter, each petitioning district must first prove that deficiencies do, in fact, exist, and second, that these cannot be remedied by different programmatic and fiscal choices within the framework of current law and funding levels.²

Accordingly, the recommendation of the ALJ that all petitioners proceed to the next phase of hearing in this matter is affirmed as clarified above.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of decision: February 9, 2001

Date of mailing: February 9, 2001

² Given the difference in scope between the first and second phases of hearing in these matters, nothing herein precludes respondents from renewing, in the second phase of hearing, their motion to admit petitioners' responses to interrogatories into evidence.

³This decision, as a final determination of the Commissioner, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.