47-04R (Link to OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu03863-02_1.html)

IN THE MATTER OF THE DISTRIBUTION :
OF LIQUID ASSETS UPON DISSOLUTION :
OF THE UNION COUNTY REGIONAL HIGH :
SCHOOL DISTRICT NO. 1, UNION COUNTY :

COMMISSIONER OF EDUCATION

DECISION ON REMAND

SYNOPSIS

Mountainside sought distribution of the liquid assets of the Union County Regional High School District No. 1 upon its dissolution according to the feasibility report prepared by Dr. Fitts in 1995 rather than in accordance with the statutory plan. Under the Fitts report, the regional district's four school buildings and accompanying real estate would be deeded to the school districts in which they were located while the liquid assets would be shared exclusively by Mountainside and Garwood, which did not have any of the regional district's school buildings within their boundaries. The Commissioner dismissed Mountainside's petition citing the absence of that proposed distribution in the referendum; the State Board affirmed the dismissal with modification; the N.J. Appellate Division affirmed the State Board's decision; and the N.J. Supreme Court reversed the Appellate Division's decision and remanded the matter to the State Board. The Supreme Court stressed that the overriding goal of the statutory scheme is to distribute equitably the regional district's assets and liabilities and ordered that Mountainside and Garwood be awarded that sum of the liquid assets in the Fitts report.

The State Board on remand determined that the amount of liquid assets to be distributed to Mountainside and Garwood pursuant to the N.J. Supreme Court's remand includes the entire amount of those assets, not just the $3.3 million identified in Dr. Lobman's 1997 report as available for distribution at that time. The State Board noted $6.9 million of the $8.6 million already distributed needs to be redistributed and another $2 million is now available for distribution, subject to certain contingencies. The State Board remanded this matter to the Commissioner to establish the amount to be distributed, to effectuate the distribution so that 76% of the total liquid assets are received by Mountainside and 24% by Garwood and to establish a payment schedule within a 5-year period. The Commissioner transmitted the matter to OAL for determination in accordance with the State Board's directives.

The ALJ concluded that since the State Board's directives reflect the law of the case, there was no judicial function to be applied and there was no genuine issue of material fact, the matter could be resolved by summary decision. In light of the financial information proffered by the parties and the fiscal agent, the ALJ set up the amount and schedule of the distribution of assets in conjunction with the State Board's directives.

The Commissioner adopted the Initial Decision in its entirety, concurring with the ALJ's conclusions in determining the amounts of liquid assets to be distributed to Mountainside and Garwood and finding the plan for distribution consistent with the State Board's remand.

February 5, 2004

OAL DKT. NO. EDU 3863-02
AGENCY DKT. NO. 581-12/96

IN THE MATTER OF THE DISTRIBUTION : OF LIQUID ASSETS UPON DISSOLUTION : OF THE UNION COUNTY REGIONAL HIGH : SCHOOL DISTRICT NO. 1, UNION COUNTY. :	COMMISSIONER OF EDUCATION DECISION ON REMAND

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions by the Berkeley Heights, Clark, Kenilworth and Springfield Boards of Education and reply arguments by the Garwood and Mountainside Boards of Education and the Borough of Garwood were submitted in accordance with *N.J.A.C.* 1:1-18.4 and were duly considered by the Commissioner in reaching his determination herein.

In its exceptions, the Berkeley Heights Board (Berkeley Heights) claims that the State Board of Education (State Board) misread the Supreme Court's Order; that the State Board's decision was inappropriate because it significantly altered the Supreme Court's Order; and that the Initial Decision restricted the Board's ability to demonstrate the inequities involved. (Berkeley Heights' Exceptions at 1) Berkeley Heights further claims that the Administrative Law Judge (ALJ) erred "when he refused to hold that Mountainside and Garwood are judicially estopped from asserting that the *res* of this litigation is anything other than $3,267,316" (*Ibid.*), and when he foreclosed Berkeley Heights from proceeding in an evidentiary hearing to establish the inequities that have developed in light of the erroneous interpretation of the Supreme Court's decision by the State Board. (*Id*. at 2) Moreover, Berkeley Heights argues that the ALJ's determination is inequitable because it presumes Berkeley Heights' ability to make a substantial

payment to Mountainside and to Garwood in the current budget year. (*Ibid.*) Finally, Berkeley Heights sets forth its position that no payments should be made until all appeals in this matter have been exhausted.[1] (*Ibid*.)

Like Berkeley Heights, the Clark Board (Clark) maintains that the Supreme Court's decision was based upon the value of liquid assets in the amount of $3,267,216, less prior disbursements, and excepts to the ALJ's consideration of values in excess of those considered by the Supreme Court without affording the parties the opportunity to present testimony. (Clark's Exceptions at 1) Clark also asserts that, in failing to provide the parties an opportunity to present equitable considerations through testimony, the ALJ failed to create an adequate record for appellate review. (*Ibid*.) Moreover, Clark claims, the arbitrary fixing of a five-year payout, slated to begin in the current budget year, jeopardizes its ability to provide a thorough and efficient education. (*Id*. at 2) Finally, Clark argues that the ALJ's failure to approve Clark's proposed 15-year payout, without considering the financial impact on the District and/or an opportunity to present testimony, is in error. (*Ibid*.)

The Kenilworth Board (Kenilworth) filed eight exceptions, summarized as follows:

> 1) Kenilworth argues that the ALJ's conclusion that he "had no independent basis to consider the issues raised by the respondents" (Kenilworth's Exceptions at 1) is incorrect because the State Board's decision entrusted any decision regarding conducting of a hearing to the Commissioner, and that, in the Commissioner's letter transmitting this matter to the ALJ, "was the recognition that the Respondents herein could 'present evidence/testimony to contest the figures presented.'" (Kenilworth's Exceptions at 1-2)

[1] Berkeley Heights states that, in support of its exceptions, it is relying on its Brief in Opposition to the Motions of the Garwood Board of Education and the Mountainside Borough for Summary Decision attached to its exceptions and filed during proceedings before the OAL. (*Ibid.*)

2) Kenilworth excepts to the ALJ's use of replacement costs as a way of measuring the value of the four school buildings, arguing, *inter alia*, that "[t]here is a significant difference between the replacement cost to rebuild the David Brearley High School of $17,749,200 which was reflected in the Fitts Report and the book value of the actual building transferred to the Kenilworth Board of Education in June, 1997." (*Id*. at 3-4) Kenilworth points to evidence presented to the ALJ documenting that the David Brearley High School was built in 1964 at a cost of $3,192,100 and, at the time of appraisal by the American Appraisal Associates, Inc. for the Lobman Report, the high school had an accumulated depreciation of $2,376,341.12 and, therefore, carried a book value of $815,759. (*Id*. at 3) Kenilworth further claims that the ALJ overlooked the Annual Financial Report from the fiscal year ending June 30, 1997, which found that only $21,351,026 in land, buildings, machinery and equipment were transferred as of June 30, 1997 to the constituent districts. (*Id*. at 4) Kenilworth also avers that the Lobman Report and the Annual Financial Report for the fiscal year ending June 30, 1997, which set forth the depreciated book value of the assets transferred, "are the figures which should be [used as the] actual value received by the four (4) constituent districts." (*Id*. at 5)

3) Contrary to the findings of the ALJ, Kenilworth argues, Garwood and Moutainside "were to receive all liquid assets of the regional school district *as calculated for the school year of dissolution*," and the only liquid asset which existed as of June 30, 1998, Kenilworth avers, was the undesignated free balance of $3,770,353, which was distributed to all six districts based on the tax ratable formula in the Lobman Report. (emphasis in text) (*Id.* at 5-6)

4) Kenilworth disputes the ALJ's failure to find that the physical assets in the Lobman Report did not constitute liquid assets, and, therefore, not subject to distribution. (*Id*. at 6) In support of this argument, Kenilworth avers that "[t]he Supreme Court was erroneously led to believe that the *only* 'liquid' assets at issue was the approximate $3.3 million in physical assets described in the Lobman Report." (emphasis in text) (*Id*. at 7) Kenilworth claims that the common understanding of liquid assets means cash and assets which can quickly be turned into cash and that the value of physical assets referred to in the Lobman Report are not readily ascertainable. (*Id.* at 8) As examples, Kenilworth points out that, although it was credited

with receiving athletic supplies in the amount of $42,029.16, the athletic supplies transferred to Kenilworth were determined to be unusable. Kenilworth further claims that $65,340 worth of books transferred to Kenilworth were worthless. (*Ibid*.)

5. Kenilworth points out that the ALJ did not exclude the interest earned on the funds belonging to the Union County Regional High School District from the date of dissolution to present from the redistribution plan and claims that all six districts should share in the distribution of the interest earned as well as the principal which remained after June 30, 1997 held in reserve for liabilities or contingent liabilities, which is now no longer needed for that purpose. (*Id*. at 9)

6. Kenilworth asserts that all appeals in this matter should be exhausted before any payments are due, claiming that the ALJ did not take into consideration Kenilworth's need to preserve its current expense budget in order to maintain the schools' thorough and efficient education program and its need to enter into debt financing in order to meet its obligations under the five-year repayment plan.[2] (*Ibid*.) Kenilworth submits that "[m]inimally, the first payment needs to be extended into the 2004-2005 school year." (*Id*. at 11)

7. Kenilworth takes issue with the ALJ's finding that $577,211 is available for immediate distribution to Garwood and Mountainside, arguing that the fiscal agent's report, setting aside $1,900,000 for pending litigation predates the latest school audit report by one month and was not reviewed by the school auditor. (*Id.* at 11-12) The financial report (school audit report) for the year ending June 30, 2002, Kenilworth submits, is the only audited report issued by the fiscal agent and there are no free balance funds available for distribution at this time according to the latest audit report. (*Id*. at 12)

8. Kenilworth asserts that the Initial Decision does not achieve equity, repeating its argument that the use of replacement costs for an existing structure does not represent the true value of the structure/building in that no consideration was given to depreciation to determine current market value. (*Ibid*.) Moreover, Kenilworth reasserts, when the matter was before the Supreme Court, petitioners' claim was limited to the cash value of the physical assets set forth in the Lobman Report,

[2] The five-year payment plan submitted by Kenilworth at the ALJ's request provided that no payout schedule be implemented until all appeals were exhausted and the funds needed to satisfy Kenilworth's obligations had been identified and set aside by Kenilworth. (*Ibid*.)

> neither the annual financial reports nor the fiscal agents report were provided to the Court so that the cash funds available for distribution were not addressed, and because the appraisal by American Appraisal, an attachment to the Lobman Report, was not made a part of the record on appeal, the belief that the four constituent high school districts received $110,000,000 worth of land, building, equipment and machinery persuaded the Court to order the distribution of $3.3 million to Garwood and Moutainside only. (*Id*. at 13-14) Moreover, Kenilworth points out, it had the unique circumstance of reopening a high school building that had been closed for four years and, thus, required over $3.0 million for repair and maintenance and over $1.1 million in start-up costs. (*Id*. at 15) Kenilworth concludes by stating that "[t]he manner in which this OAL "hearing" was conducted precluded any ability to address the issues related to an equitable distribution of assets belonging to the Union County Regional High School District." (*Ibid*.)

The Springfield Board (Springfield) argues that the ALJ failed to conduct the required factual determinations, such as factfinding as to the nature of the assets at issue, and the various issues faced by each District which have had an impact on budgets necessitated by the consideration of funds not previously identified as distributable liquid assets, including the value of physical assets. (Springfield's Exceptions at 2) Moreover, Springfield claims, the assets received by Springfield were overvalued, noting that Springfield, as the central location where the vehicles of the regional district were registered and where inventory and computer equipment were listed were attributed as assets of Springfield and were overstated in value.[3] (*Ibid.*) Noting that the Supreme Court directed that Mountainside and Garwood receive the $3.2 million allotted by Dr. Fitts in his report, Springfield asserts that "[t]he ALJ's determination to broaden this decision without the development of an adequate factual record as to the equities affecting each of the constituent districts was inappropriate and outside the scope of the Court's remand." (*Id*.

[3] Springfield notes that it initiated an appeal of the overstatement of its asset valuation, but that Springfield settled its appeal in reliance upon the statutory formula being utilized for distribution at that time and with the understanding that the only remaining distribution issue was the $3,267,315.95. (*Id*. at 3) Springfield claims that it would not have entered into a resolution of its litigation to its own detriment if it had been aware that Mountainside and Garwood would be seeking to recoup the value of additional assets. (*Ibid.)*

at 3) Springfield also takes issue with the ALJ's use of replacement costs to determine the value of the school buildings in this matter, and asserts that the Annual Financial Report of June 30, 1997, which placed a lower value on the assets at issue and accounted for depreciation, was not given proper consideration. (*Id*. at 4) Additionally, Springfield claims that the expansion of the assets included in the reimbursement formula is contrary to the Supreme Court's directive, averring that the Supreme Court awarded specific sums to Mountainside and Garwood as allocated by Dr. Fitts in his April 1995 report and there was no discussion of additional assets at issue or that the liquid assets were not, in fact, liquid. (*Id*. at 4-5) Finally, noting that repayments are to begin during the existing budget year, Springfield claims that, since repayments are not a currently budgeted item, repayment would seriously and adversely impact Springfield's ability to maintain its current educational program and, thus, suggests that payments should commence in the next budget year. (*Id*. at 5) Since Springfield maintains that debt financing will be needed to fulfill the repayment obligations, it requests that the Commissioner determine that this financing would be outside the cap on current expense budgets. (*Ibid*.)

In reply to the Kenilworth arguments, the Borough of Garwood (Borough) avers that the State Board determined all the issues which Kenilworth now seeks to relitigate, identifying for distribution to Mountainside and Garwood the $3.3 million of liquid assets in the Lobman Reprt of June 1997, concluding that approximately $6.9 million of the $8.6 million in liquid assets already distributed were to be redistributed to Mountainside and Garwood, concluding that an additional approximately $2 million is available for immediate distribution to Mountainside and Garwood and directing the Commissioner to establish the exact amounts of the identified assets and to set a five-year payment schedule. (Borough of Garwood Reply at 1-

2) Thus, the Borough submits, the issues to be decided by the ALJ upon the matter being referred to the OAL by the Commissioner to implement the State Board's decision were very limited. (*Id*. at 2) Moreover, the Borough notes that the amounts previously distributed to the constituent districts by the Fiscal Agent and the amounts currently held were supplied to both the parties and the ALJ and were undisputed. (*Ibid*.)

With respect to Kenilworth's assertion that the ALJ should have rejected replacement costs as a way of measuring the value of the four buildings, the Borough claims that the ALJ did not value the school buildings but, rather, the Supreme Court considered the value of the buildings in reaching its decision regarding the distribution of liquid assets. (*Ibid.*) The Borough further avers that this was a decision made by the Supreme Court, not the ALJ. (*Ibid*.) Moreover, the Borough asserts that Kenilworth's exceptions, which criticize the ALJ for not rejecting the decisions of the Supreme Court and the State Board with respect to the distribution of assets set forth in the Lobman Report, suggests that the ALJ should have, in effect, reversed the Supreme Court, which is absurd. (*Ibid.*) With respect to the distribution of interest earned, the Borough notes that neither the Supreme Court, nor the State Board excluded interest earned subsequent to the year of dissolution and that the State Board directed the determination of funds held by the Fiscal Agent that were available for immediate distribution. (*Ibid.*)

Turning to Kenilworth's argument that the ALJ failed to take into consideration the current expense budget when setting the payment schedule, the Borough points out that Kenilworth has known since the State Board's decision of March 2, 2002 that it was required to complete payments within five years. (*Id*. at 3) The Borough also avers that, when Garwood and Mountainside opposed the initial distribution of assets, the district "claimed that repayment of monies in the future would not be a problem if so ordered." (*Ibid.*) Thus, the Borough

argues, the "respondents'' are equitably estopped from claiming hardship at this time. (*Ibid*.) Moreover, the Borough asserts that Kenilworth's suggestion that the amount to be immediately distributed is not the correct amount should not be considered because the claim is erroneous and, additionally, this issue cannot be raised in its exceptions since Kenilworth did not raise the issue previously. (*Ibid*.)

In its reply to Kenilworth's exceptions, the Garwood Board (Garwood) avers that the ALJ correctly concluded that he could not consider arguments outside the Commissioner's directive, that "[a]ny plenary hearing could only deal with 'evidence/testimony to contest the figures presented' by the fiscal agent, not to relitigate issues that should have been or were settled years ago." (Garwood Board's Reply at 1-2) With respect to the use of the replacement costs set forth in the Fitts Report, Garwood submits that the time to have disputed that manner of valuation was in 1995, not after this matter made its way all the way to the Supreme Court and remanded to the Commissioner for a final accounting of the monies due Garwood and Mountainside. (*Id.* at 2) Turning to Kenilworth's allegations that the liquid assets to be distributed are to be limited to the amount calculated for the school year of dissolution, Garwood points out that this contention was rejected by the State Board; that the State Board made it clear that the distribution of assets was not limited to $3,770,353; and that the ALJ correctly did not allow for relitigation of this issue. (*Ibid*.) Likewise, Garwood asserts that the time to contest the value of the physical assets has long past and that the issue of what constitutes liquid assets was settled by the State Board. (*Ibid.*) Garwood further asserts that liquid assets are defined by examining *N.J.S.A.* 18A:13-61, 62 and *N.J.S.A.* 18A:8-24, not the terminology used in the business environment.

Garwood additionally argues that the ALJ correctly included the interest earned in the amounts to be distributed to Garwood and Mountainside, pointing out that the only reason there is interest accrued is because this matter has taken so long to be resolved. (*Ibid*.) With respect to the five-year payment plan, Garwood avers that it was not within the mandate of the ALJ to alter the directive of the State Board to establish a five-year payment plan and that Kenilworth was well-aware that this issue was on appeal in 1998 and 2000 when it received cash distributions, and was also aware of the January 2001 and March 2002 decisions of the Supreme Court and State Board, respectively. (*Id.* at 3) Moreover, Garwood asserts, Kenilworth and the other three districts opposed a stay of the monies which were distributed in 1998 and 2000 proposed by Mountainside, arguing that the money could always be repaid to Garwood and Mountainside should they prevail. (*Ibid.*)

Garwood further asserts that the ALJ correctly determined that $577,211 is immediately available for distribution based on the Fiscal Agent's 2002 Report. (*Ibid.*) Turning to Kenilworth's arguments of inequity in the valuation of assets, Garwood submits that this matter was transferred to the OAL "for the limited purpose of establishing the exact amount of monies due to Garwood and Mountainside, not to permit relitigation of stale issues" and that "[a]ny alleged 'inequities' in valuations should not be at issue more than six years after the dissolution of the Regional District." (*Ibid.*) Finally, responding to the arguments advanced by the Berkeley Heights, Clark and Springfield Boards of Education, Garwood reiterates its arguments set forth above in response to Kenilworth's exceptions and emphasizes that the OAL is not the appropriate place to challenge the State Board's decision, asserting that the Supreme Court and the State Board have already determined that the equities in this matter lie with Garwood and Mountainside. (*Id*. at 4-5)

In its reply, the Mountainside Board (Mountainside) avers that the exceptions filed by the dissatisfied parties in this matter are not truly exceptions to the ALJ's decision but, rather, are continued expressions of dissatisfaction with the State Board's decision of March 8, 2002. (Mountainside Board's Reply at 2) With respect to Kenilworth's exceptions, Mountainside agrees with the Borough and Garwood that the ALJ correctly concluded that he did not have the authority to address the issues raised by Kenilworth and claims that Kenilworth's dispute is not with the figures presented by the fiscal agent and the plenary hearing it sought would have been one on issues far removed from those incontrovertible figures. (*Id.* at 3) Mountainside avers that there was no basis for the ALJ even to entertain any consideration of the value of the school buildings and grounds, noting that the Supreme Court and the State Board were well aware when they made decisions that all liquid assets should be distributed to Mountainside and to Garwood and that the Fitts Report valuation of the buildings, grounds, furnishing and equipment at $110,000,000 was based on replacement costs. (*Ibid*.) Moreover, Mountainside contends, the ALJ properly rejected Kenilworth's position that the liquid assets should be much more limited because the State Board expressly adopted the position of Garwood and Mountainside as to what should be included as liquid assets for the purposes of distributing the value of those assets to Mountainside and Garwood. (*Id.* at 4)

With respect to the five-year repayment schedule and Kenilworth's claim that the ALJ failed to consider its need to preserve its current expense budget in order to maintain a thorough and efficient educational program, Mountainside points out that Kenilworth received $482,075.32 in 1998 and $200,270.12 in 2000, when it knew that Mountainside and Garwood were asserting that those were monies due to them. (*Id.* at 4-5) Moreover, Mountainside submits, Kenilworth was fully aware of the amounts that were to be redistributed, including the

value of the physical assets it had received and the five-year payment schedule as a result of the March 2002 State Board decision, so that "Kenilworth has had plenty of time to figure out how to pay $80,386.56 to Mountainside and $25,385.23 to Garwood by April 15 of 2004." (*Id*. at 5)

Mountainside further asserts that there is absolutely no basis for taking exception to accepting the fiscal agent's express representation that he now only needs to hold $1,900,000 of the $2,477,211 in reserve for a pending piece of litigation, thus freeing up $577,211 for immediate distribution. (*Id.* at 6) Moreover, Mountainside claims that the ALJ did not err in refusing to accede to Kenilworth's efforts to expand the proceeding far beyond the limited issue transferred to the OAL. (*Ibid*.)

In responding to Springfield's exceptions, Mountainside repeats its assertions that: 1) the directive to the ALJ was not to reexamine the question as to what categories were to be included as liquid assets because the State Board made that determination in its March 2002 decision, in which it expressly adopted Mountainside's position with respect to that issue (*ibid*.); 2) the ALJ properly did not permit Springfield to expand the scope of this matter when he denied Springfield the opportunity to present evidence as to what it asserts was the true value of the physical liquid assets which it retained, and which were valued in the 1997 Lobman Report (*ibid*.); 3) the ALJ was correct in not allowing the four districts to reargue the valuation of the buildings and grounds set forth in Dr. Fitts' 1995 Report (*id.* at 7); 4) with respect to Springfield's assertion that the value of the physical assets should be excluded, Mountainside points out that the State Board's decision specifically directed that the liquid assets to be distributed to Mountainside and Garwood were to include the entire amount of assets, not just the $3.3 million identified in the Lobman Report (*ibid*.); and 5) given the history of the matter, Springfield has had ample time to ensure that it would be in a position to make repayments that it

knew it would be required to make, so that the fault lies with Springfield, not the ALJ, if it failed to do so (*ibid*.).

Finally, in responding to exceptions submitted by Berkeley Heights and Clark, whose arguments parallel those made by Kenilworth and Springfield, *i.e*., that physical assets should not be included in the calculation of liquid assets, that the ALJ used replacement value to place a value on the physical assets rather than conducting a hearing to allow the presentation of testimony and evidence in determining the value of the physical assets, that the five-year payment schedule is unjust and affects the ability to deliver a thorough and efficient education, and so forth, Mountainside reiterates its replies set forth above in response to Kenilworth's and Springfield's exceptions, emphasizing that the issues raised are really an expression of dissatisfaction with the State Board's decision. (*Id*. at 8-9)

Upon a thorough and independent review of the record in this matter, the Initial Decision, the exceptions and the replies thereto, the Commissioner concurs that this matter is one that can be properly resolved by summary decision in that there are no genuine issues of material fact in dispute and the Commissioner is constrained to follow the directive of the State Board's limited purpose remand in this matter. Although Berkeley Heights, Clark, Kenilworth and Springfield object to this conclusion and seek to re-litigate the underlying issues of value, the definition of assets, and the applicability of the statutory scheme in fulfilling the legislative intent, the Commissioner finds that the State Board's remand provides no basis to re-litigate these issues. Notwithstanding the arguments advanced by the four Districts in which the school buildings were located (and retained by these Districts) that the replacement value of the buildings, grounds, furnishings and equipment of approximately $110 million, set forth in the 1995 Fitts Report, does not represent the true value of these assets in that no consideration was

given to depreciation to determine current market value, the Commissioner points outs that the State Board's remand has nothing to do with the distribution or redistribution of the buildings and/or building-related assets,[4] nor does the State Board direct that the Commissioner disturb the established *value*[5] of the liquid assets that were set forth in the 1997 Lobman Report. *In the Matter of the Distribution of Liquid Assets Upon Dissolution of the Union County Regional High School District No. 1, Union County,* State Board Decision March 6, 2002, slip op. at 8. Rather, the State Board's remand directs the Commissioner solely to: 1) determine the exact *amounts*[6] of the *liquid assets* that were distributed among the six municipalities which comprised the regional district and need to be redistributed solely to Mountainside and Garwood; 2) establish a payment schedule whereby 76% of that amount is redistributed to Mountainside and 24% to Garwood within a five-year period; and 3) determine the exact amount of additional *liquid assets* which are now available for distribution upon verification by the Fiscal Agent, and order the immediate distribution of these additional liquid assets with 76% of that amount being distributed to Mountainside and 24% to Garwood. *Union County, supra,* at 8-9.

With respect to the arguments put forward by Berkeley Heights, Clark, Kenilworth and Springfield seeking to limit the distribution of liquid assets to the figure of the $3.3 million identified in Dr. Lobman's report of June 1997, the determination by the State

[4] In his Findings of Fact, the ALJ included a listing of all the assets and their previous distribution including the building and building-related assets retained by Berkeley Heights, Clark, Kenilworth and Springfield and the liquid assets that had been previously distributed among the six constituent Districts. (Initial Decision at 15-19)

[5] "Value" is defined as: 1. An amount considered to be a suitable equivalent for something else. 2. Monetary or material worth. (*The American Heritage Dictionary of the English Language, New College Edition*, 1979, p. 1414)

[6] "Amount" is defined as: 1. The total of two or more quantities; aggregate. 2. A number; sum. (*The American Heritage Dictionary of the English Language, New College Edition*, 1979, p. 44)

Board in its decision of March 6, 2002 reflects the law of the case.[7] The State Board specifically found that:

> the amount of the liquid assets to be distributed to Mountainside and Garwood pursuant to the New Jersey Supreme Court's remand *includes the entire amount of those assets and not just the $3.3 million identified in Dr. Lobman's report of June 1997 as available for distribution at that time.* It appears that this amount includes approximately $8.6 million in liquid assets that has been distributed among the six municipalities which comprised the regional district, approximately $6.9 million of which will need to be distributed, and that approximately another $2 million is now available for distribution subject to certain contingencies.*** (emphasis supplied) (State Board's Decision of March 6, 2002, slip opinion at 8)

Moreover, the Commissioner is compelled to comment on the protestations of Berkeley Heights, Clark, Kenilworth and Springfield that the five-year payment schedule set forth in the Initial Decision is unreasonable and will affect their ability to provide a thorough and efficient educational program.[8] Initially, the Commissioner points out that the State Board specifically directed the Commissioner to establish a payment schedule whereby the redistributions to Mountainside and Garwood would be completed within a five-year period. Given the history of this matter where these Districts received significant liquid asset distributions in 1998 and 2000, knowing that Mountainside and Garwood were challenging these distributions, and given that these Districts knew full well by March 2002, as a result of the State Board's decision, that the liquid assets were to be redistributed and that payments for the redistribution to Garwood and Mountainside were to be made in a five-year payment schedule, the Commissioner finds that the Districts have had ample opportunity to plan for the payments

[7] It is noted that the Districts did not file an appeal of the State Board's March 6, 2002 decision.

[8] The ALJ provided an opportunity for the Districts to submit proposals for repayment. The responses included a proposal from Berkeley Heights for a payout over 30 years, proposals from Clark and Springfield for payouts over 15 years, and a proposal from Kenilworth for payouts over five years for the undisputed amounts only.

now due to Garwood and Mountainside. The Commissioner, therefore, finds that the payment plan set forth in the Initial Decision is reasonable and consistent with the State Board's directive.

In a thorough and independent review of the entire matter, therefore, the Commissioner agrees with the ALJ's well-reasoned conclusions in determining the amounts of liquid assets that are to be distributed to Mountainside and Garwood and finds that the plan for the distribution of such assets is consistent with the State Board's remand. Accordingly, the Commissioner has determined to adopt the Initial Decision, in its entirety, for the reasons expressed therein.

IT IS SO ORDERED.[9]

COMMISSIONER OF EDUCATION

Date of Decision: February 5, 2004

Date of Mailing: February 9, 2004

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[9] This decision 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.*