

29-05

OAL DKT. NO. EDU 8659-98 (http://lawlibrary.rutgers.edu/oal/html/initial/edu08659-98_1.html)
AGENCY DKT. NO. 401-9/98

BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF LACEY,	:	
OCEAN COUNTY,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
NEW JERSEY STATE	:	
DEPARTMENT OF EDUCATION,	:	
	:	
RESPONDENT.	:	
_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Pursuant to *N.J.A.C.* 1:1-18.4, the Lacey Township Board of Education (Board) filed timely exceptions, to which the Department of Education (Department) duly replied.

In its exceptions, the Board contends that the Administrative Law Judge (ALJ) erred in concluding that the Department did not engage in unlawful rulemaking. According to the Board, the ALJ focused on only one of the six criteria enumerated by the Court for determining whether an agency action must be rendered through rulemaking, while ignoring the other five, all of which weigh in the Board’s favor for the reasons expressed in briefing before the ALJ. (Board’s Exceptions at 3-5) The ALJ further erred, the Board avers, in relying on a conclusion that the Department’s determinations were statutorily authorized, which the Board has never contested, without going on to examine the *manner* in which the Department exercised its discretion; such examination, according to the Board, clearly demonstrates that the determinations at issue

should have been promulgated by rule. (*Id.* at 5-7) Finally, the Board argues that the ALJ erred in considering factors irrelevant to an assessment of whether unlawful rulemaking occurred, specifically the lack of factual evidence that the calculations resulting from the Department's determinations were erroneous, and the fact that the Board could raise local property taxes in the event of an insufficient school budget. (*Id.* at 8-10)

In reply, the Department urges adoption of the Initial Decision. Contrary to the Board assertions, the Department states, the ALJ did indeed consider the full holding of, and the six-factor test set forth in, *Metromedia, supra*:

***ALJ Miller noted that this was not a case where an agency acted beyond its legislative authorization. Thus, as ALJ Miller found, the fourth factor of *Metromedia* was inapplicable since Treasury did not prescribe a legal standard or directive that is not otherwise expressly provided by or clearly inferable from the enabling statute. Rather, Treasury acted within the broad authority granted to it under CEIFA. ALJ Miller also held that neither the fifth [n]or sixth factors of *Metromedia* were present, since he concluded that Treasury "did not create policy nor did it deviate from existing policy." Additionally, although ALJ Miller may not have specifically mentioned it, Treasury's methodology in providing municipal income estimates was applicable at the time of the 1998-1999 CEIFA calculation, and thus did not violate the third *Metromedia* factor either, since it was not merely prospective. Therefore, contrary to Lacey's arguments, ALJ Miller properly considered *Metromedia* to reach his conclusion that neither Treasury nor the Department violated the APA.

(Department's Reply at 3-4, citations omitted)

In response to the Board's contention that the ALJ erred by considering irrelevant factors, the Department counters that the ALJ properly encompassed in his decision the entire controversy concerning the Board's claim of entitlement to additional State aid, rather than limiting himself to the Board's legal argument based on *Metromedia*, and further, that the Board misunderstands its full burden in this matter:

In its petition, Lacey claimed that the March 1998 Core Curriculum Content Standards Aid ("CCSA") and Debt Service Aid [DSA] awards were incorrect and that it should be awarded the State aid that was originally calculated in February 1998. However, as ALJ Miller stated, "[t]here is no dispute that an error occurred in the initial calculation of the funding amount." Thus, the evidence clearly established that the original numbers issued in February 1998 were in error, and that Lacey Township was not entitled to the original award. Lacey's assertion that it does not possess the burden to demonstrate that the State aid numbers provided to it in March 1998 were in error is meritless. It was Lacey's burden, as petitioner, to demonstrate that the subsequently corrected award was erroneous. It failed to do that. Contrary to Lacey's assertions, ALJ Miller's finding that "petitioner failed to put forth any evidence of its own that the aid calculations were skewed, unfair or unreasonable," is relevant, since Lacey utterly failed to meet its burden to demonstrate that the CCSA and [DSA] awards provided in March 1998 were in error, or that they were unreasonable. Also, ALJ Miller's consideration of the municipality's ability to raise tax levy is relevant to an inquiry of an improper State aid calculation since it could affect the assessment of harm, if any, to the district, and a determination of an appropriate remedy.

(Department's Reply at 4-5, citation omitted)

Upon review, the Commissioner concurs with the ALJ that, under the undisputed facts of this matter, no rulemaking occurred with respect to the determination of State Aid for the 1998-99 school year in violation of *Metromedia, supra*, or the Administrative Procedure Act. Indeed, under the circumstances here presented, where the responsible State agency devised a facially reasonable method for culling and analyzing the mass of raw data necessary for first-time calculation of State aid under the Legislature's post-1997-98 formula, and such method was found upon application to require adjustment because it clearly resulted in error, the Board cannot reasonably seek to invalidate the revised methodology developed immediately thereafter so as to provide, on a timely basis, more accurate State aid figures to school districts because such methodology was not promulgated by rule in accordance with the

Administrative Procedure Act.¹ Moreover, the Commissioner concurs that, while the factors the Board contends the ALJ should not have considered are not germane to legal analysis strictly based on *Metromedia, supra*, they are directly pertinent to the Board's claims overall and to assessment of the Board's entitlement to relief.

Accordingly, the Initial Decision of the OAL is adopted for the reasons expressed therein and the Petition of Appeal is dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: January 14, 2005

Date of Mailing: January 19, 2005

¹ It is interesting to note that the relief sought by the Board is the difference in aid between the State's first calculation and its second, notwithstanding that the method used for the first calculation was likewise newly developed and not promulgated by rule.

² 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.*