

IN THE MATTER OF THE PETITION :
FOR AUTHORIZATION TO CONDUCT :
A REFERENDUM ON THE WITHDRAWAL : COMMISSIONER OF EDUCATION
OF NORTH HALEDON SCHOOL DISTRICT :
FROM THE PASSAIC COUNTY MANCHESTER : DECISION
REGIONAL HIGH SCHOOL DISTRICT. :
_____ :

SYNOPSIS

The parties to this case advocate competing funding formulas for their contributions to the regional high school district – Manchester Regional – of which they are constituents. The matter was submitted to the Office of Administrative Law (OAL) as an uncontested case on March 1, 2006, and a Report and Recommendation to the Commissioner was issued on March 16, 2011. Settlement negotiations ended unsuccessfully, and the within decision ensued.

Manchester Regional (Manchester) educates the high school students of three districts/municipalities in Passaic County: North Haledon, Haledon and Prospect Park. When Manchester was formed, each constituent contributed to its operation on a per pupil basis. Subsequent legislation changed the contribution basis. A 1975 statute changed the basis of each constituent’s contribution to the equalized value of its real property. In 1993 the statute was amended to allow three choices: 1) per pupil contributions, 2) contributions based upon equalized valuation of real property, and 3) a combination of options 1 and 2.

North Haledon determined that its contributions to Manchester were disproportionate to those of the other two constituents, and successfully completed the statutory requirements for withdrawing from the regional district. However, an appeal by the other constituents led to a decision of the Appellate Division of Superior Court barring North Haledon’s withdrawal from Manchester, because of the racial and ethnic imbalance which the withdrawal would exacerbate. The New Jersey Supreme Court affirmed the bar to withdrawal, but ordered the Commissioner to develop an equitable contribution methodology – in consultation with the parties. After unsuccessful attempts to effectuate a compromise among the Manchester constituents, the Commissioner issued an allocation formula based 67% upon equalized property values and 33% upon pupil enrollment. All parties appealed.

The present alignment of the parties consists of North Haledon on the one side and Haledon and Prospect Park on the other. In the OAL each side produced an expert report and the expert who authored same. Further, each constituent produced an official to testify about the demographics, resources and concerns of his municipality. Upon consideration of the OAL’s report and recommendation, to which all parties excepted, the record – including the testimony of the witnesses and the expert reports, and data published by the New Jersey Departments of Treasury and Community Affairs – the Commissioner determined that a formula employing 50% equalized property valuation and 50% enrollment shall be implemented to allocate funding among the constituents of Manchester Regional. The Commissioner emphasized that the formula developed in this decision is based upon unique circumstances. While the principles employed to reach the within result may be useful in analyzing future controversies, the formula per se shall not serve as precedent.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

August 29, 2013

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WITHDRAWAL OF NORTH HALEDON :
SCHOOL DISTRICT FROM THE : DECISION
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Before the Commissioner is a longstanding dispute regarding funding allocation amongst the three constituents of the Manchester Regional High School District (Manchester) in Passaic County. Subsequent to its creation in 1957, changes to the funding formula have been made by the legislature and the Commissioner. Each change has prompted objections from one or more of the constituent districts. A brief history of the controversy follows.

Manchester – which runs a high school for the students of the districts of North Haledon, Haledon and Prospect Park – was formed in 1957 by vote of the residents of the constituent municipalities, who elected to apportion each district’s funding contribution based solely upon pupil enrollment. The legislature unilaterally changed the basis for constituent contributions in 1975, when it mandated that the operating costs of all regional districts be apportioned based solely upon the constituents’ respective equalized property values. This change caused a significant increase in North Haledon’s share of Manchester’s operating expenses.

In 1993, the 1975 legislation was amended to allow multiple funding apportionment methods: 1) pupil enrollment only, 2) equalized property value only, or 3) any

combination of the prior two methods. *N.J.S.A. 18A:13-23*. However, the legislation specified that any changes in the funding apportionment method would require the approval of the voters in each of the constituent districts. *Ibid.*

In 1995, because it was sending less than a third of its students to Manchester but paying over half of the regional district's operating expenses, North Haledon sought a voter referendum proposing a return to Manchester's original method of apportionment, *i.e.*, based solely upon student enrollment. The referendum took place and a majority of the overall voters favored the proposed change. However, a return to the per-pupil apportionment method failed to receive the legislatively-required voter majorities in Haledon and Prospect Park. Thus, equalized property value remained the sole basis for cost apportionment.

Having failed to win any relief from the referendum regarding apportionment methods, North Haledon successfully applied to the Commissioner in 2001 for permission to conduct a referendum on its withdrawal from Manchester. A study commissioned by North Haledon had shown that it would fare better financially by establishing a send-receive relationship with another school district. The statutorily-required Board of Review approved the referendum, recognizing the disparity between North Haledon's financial contributions to Manchester and the contributions of the other constituents. The voters approved the withdrawal and the Commissioner set July 1, 2003 as the withdrawal date.

However, Haledon, Prospect Park and Manchester successfully appealed the Board of Review's order allowing the withdrawal referendum. The Appellate Division prohibited the withdrawal on the basis that it would exacerbate Manchester Regional's racial and ethnic imbalance. In 2004, the Supreme Court affirmed and directed the Commissioner to develop – in consultation with Manchester's constituents – a more equitable cost-apportionment scheme. *In re Petition for Authorization to Conduct a Referendum on the Withdrawal of*

N. Haledon Sch. Dist. from the Passaic County Manchester Reg'l High Sch. Dist., 181 N.J. 161, 186 (2004) (*In re Withdrawal of N. Haledon from Manchester Reg. HS*).

Commissioner William Librera held multiple meetings with the constituents, tried unsuccessfully to gain their support for a compromise, and – on January 18, 2005 – issued a cost-allocation scheme based 67% upon equalized property values and 33% upon pupil enrollment (Commissioner's Remand Decision). That formula was executed gradually – by increments – over a four-year period, and reached full implementation in the 2009-2010 school year. In selecting his allotment scheme, Commissioner Librera determined that any fair apportionment would have to employ wealth as a dominant factor – as does the Department of Education's school funding formula. However, the Commissioner was also mindful of the Supreme Court's specification that his blueprint provide equity to North Haledon in consequence of its involuntary membership in Manchester and its sizeable levy relative to the number of students it sent to Manchester. (Commissioner's Remand Decision at 2.)

Subsequent to the Commissioner's Remand Decision, all of the parties appealed the apportionment plan. Consequently, in March of 2006, Commissioner Lucille Davy sent the matter to the Office of Administrative Law (OAL) for the administration of hearings and the development of a record that could serve as the basis either for retaining Commissioner Librera's contribution formula or establishing a different apportionment method.

A significant element of the record developed in the OAL was expert testimony, one expert having been presented by North Haledon and another presented jointly by the other two constituents. Their testimony, reports and exhibits identified factors which the parties felt should be considered in fashioning an appropriate contribution formula. North Haledon's expert was James Kirtland and the joint expert for Haledon and Prospect Park was Melvin Wyns.

In Wyns' November 1, 2009 "Report Concerning an Equitable Cost Apportionment Method for the Passaic County Manchester Regional High School District,"¹ he opined that, as a threshold matter, the Supreme Court had not found 100% property valuation to be a *per se* inequitable apportionment method, but had simply noted the frustration of North Haledon citizens with the disproportional per pupil tax burden. Wyns further posited that the incumbent allocation method was not found by the Supreme Court to be unconstitutional because Manchester High School would get a sufficient amount of funding no matter which apportionment method was utilized, thus satisfying the constitutional mandate regarding the delivery of a thorough and efficient education to all students.

In the main, Wyns' report and recommendations reflected his clients' position that "ability to pay" should be the main determinant for the selection of an allocation formula for Manchester's constituents – as it is in the process for awarding State equalization aid to school districts – and that such a principle is equitable. Wyns submitted that the goal of the above referenced 1975 legislative change in apportionment methodology was to impose a substantially equivalent relative tax burden upon all taxpayers within a regional district, regardless of the municipality in which they resided, by determining the relative resources, *vel non*, of district constituents. According to Wyns, such a substantially equivalent relative tax burden is "not commonly measured based upon . . . per pupil contribution" . . . but rather upon "property tax rate for school purposes" ²

¹ Joint Exhibit J-27.

² Wyns contended in his report that at the time the Supreme Court remanded the instant case to the Commissioner, Commissioner Librera had been well aware that ability to pay was the main determinant for allocating districts' local share, and that Haledon and Prospect Park had less resources than North Haledon. He further speculated that Commissioner Librera had perceived that the existing equalized property valuation method was meeting the objective of the 1975 amendment – with regard to the three municipalities of the [Manchester] regional school district – by allegedly imposing an equivalent relative tax burden for education upon all the Manchester taxpayers.

He noted that the State Division of Taxation annually examines variations in municipal property assessment practices and tax rates, and translates the data into equalized rates and valuations which can truly compare the relative resources of, and tax burdens upon, the residents of different municipalities. The data can be further broken down to examine equalized tax rates for education, *i.e.*, the total amount of taxes levied within a municipality for school purposes divided by the equalized valuation for that municipality. This information, and data about the aggregate wealth of municipalities, is used by the Department of Education to determine the amount of State equalization aid, if any, it will provide.

Wyns offered tables that purported to show the equalized property valuation and aggregate income for each of Manchester's three constituents in prior years.³ (Joint Exhibit J-27 at 6-7) The equalized property valuation figures shown in Wyns' Table 1 were almost the same for Haledon and North Haledon but much lower for Prospect Park. (Joint Exhibit J-27 at 6) The aggregate income figures (from 2006) suggested that North Haledon's aggregate income was almost two and one half times that of Haledon, and almost four times that of Prospect Park.⁴

Demographic considerations were also included in Wyns' report to supplement his contention that his clients' economic circumstances were inferior to North Haledon's. For

Joint Exhibit J-27 at 5-6. However, Commissioner Librera – in Wyns' view – felt compelled to change the formula simply because the Supreme Court so directed.

³ Wyns did not specifically explain where the Table 1 data (equalized property valuations) came from, but appeared to imply that it was used by the Department of Education. Wyns attributed the data in his Table 2 to the Division of Taxation in the New Jersey Department of the Treasury.

⁴ Wyns presented a column in Table 1 entitled "Equalized Valuation per Student", and a column in Table 2 entitled "Aggregate Income per Student." The per student equalized property values and per student aggregate income values in North Haledon were higher than in the other two municipalities.

instance, Wyns presented data in his Tables 5 through 7,⁵ purporting to show that from 2000 to 2008 Haledon's and Prospect Park's ratios of students to total populations increased while that ratio in North Haledon stayed the same. The Commissioner assumes that this data was meant to show that the taxpayers in Haledon and Prospect Park bore a greater general increase in educational expenses than did North Haledon's taxpayers over that period of time. While Wyns took his data for 2000 from the United States census, it is unclear where he obtained the figures for 2006 and 2008.

Wyns also referred to Tables 5–7 in discussing home ownership. He asserted that high home ownership in a town is an indication that its residents are better able to make greater contributions to a regional district's operating expenses, and referred to the 2000 census data that showed 90% home ownership in North Haledon *vis-a-vis* about 50% home ownership in the other two Manchester constituents.⁶

As for the Supreme Court's mention of North Haledon's senior citizens with fixed incomes and escalating property taxes, Wyns pointed out that such a demographic also exists in Haledon and Prospect Park.⁷ Notwithstanding the 2000 census data to the contrary, in his tables 5-7 – which show that both Haledon and Prospect Park had less seniors than North Haledon – Wyns speculated that the number of senior citizens in North Haledon was roughly equal to the numbers in Haledon and Prospect Park combined. In addition, Wyns stated that the economic data available to him – but not identified anywhere in his report – showed senior citizens in North Haledon to be better off than those in the other two Manchester constituent towns.⁸

⁵ Joint Exhibit J-27 at 10 through 14.

⁶ Joint Exhibit J-27 at 12.

⁷ Joint Exhibit J-27 at 14-15.

⁸ Joint Exhibit J-27 at 15.

Finally, Wyns asserted – citing no data source – that in most municipalities, low income people below the age of 65 have equal or heavier tax burdens than their senior counterparts.⁹

Part of Wyns' report was devoted to the proposal of a Rutgers professor to use a different factor in measuring relative tax burdens, *i.e.* percentage of personal income consumed by the property taxes of municipal residents. Using that factor, North Haledon had the lowest property tax burden by far. While the concept has logical appeal, the above-referenced data and rankings lack value for purposes of this controversy since they measure the overall taxes levied in New Jersey municipalities – as opposed to the school taxes, which do not constitute the same percentage of overall taxes from town to town. Moreover, the instant controversy more properly relates not to each municipality's entire school budget but to the sub-portion allocated for high school students.

Perhaps for this reason, Wyns offered Table 9 – showing an analysis by the Garden State Coalition of Schools of 2004 equalized school tax rates and an analysis by Wyns of 2008 equalized school tax rates.¹⁰ Both analyses showed North Haledon's equalized school tax rate to be less than Haledon's and Prospect Park's. Wyns concluded from the tax rate data that North Haledon had the lowest tax burden of the three Manchester constituents.

Finally, Wyns presented Table 13, which showed what the constituents would have contributed per pupil to Manchester under the 100% equalized valuation formula.¹¹ North Haledon's per pupil contribution would have been almost \$37,000 as compared with Haledon's per student payout of under \$10,000 and Prospect Park's outlay per student of under

⁹ Joint Exhibit J-27 at 14.

¹⁰ Joint Exhibit J-27 at 15-16.

¹¹ Joint Exhibit J-27 at 19.

\$7,000. Wyns urged that this was not inequitable and provided information about other regional districts whose constituents pay vastly different per pupil contributions.¹²

In summary, Wyns maintained that the Supreme Court did not expressly find the existing apportionment method to be inequitable, and that the Court's mandate to formulate an equitable allocation method was best satisfied in the instant case by utilizing "ability to pay" as the sole basis of constituent contributions to Manchester. Thus, Wyns urged a return to using the 100% equalized valuation option set forth in *N.J.S.A. 18A:13-23(a)*.

In his November 9, 2009 expert report on behalf of North Haledon,¹³ James Kirtland argued that the Supreme Court decision had mandated a reduction in North Haledon's tax levy, and that Commissioner Librera had recognized same when he stated, in his remand decision, that he had been charged with "the development of a cost apportionment method that would lessen the disproportionate tax burden on North Haledon" Commissioner Remand Decision at 2. Kirtland also maintained that the Supreme Court had not specifically directed that ability to pay be a factor in the formulation of such a cost allocation method.

In opposing Wyns' position that "ability to pay" is the appropriate basis for determining regional district constituent contributions, Kirtland contended that both Wyns and the Commissioner – in his Remand Decision – erred when they stated that ability to pay is a logical factor for determining regional district constituent contributions because it is considered by the Department of Education in figuring school districts' local shares.

In a prelude to proposing that the Manchester allocation formula be 80% pupil enrollment percentage and 20% equalized valuation, Kirtland discussed what the State aid to

¹² Joint Exhibit J-27 at 20.

¹³ Joint Exhibit J-28.

Manchester and to North Haledon would have been had North Haledon been allowed to withdraw from Manchester. According to Kirtland, the Department of Education used data from the year 2000 to calculate that North Haledon's withdrawal would have increased Manchester's State aid by about \$500,000 and North Haledon's aid by about \$100,000. Kirtland maintained that for the 2009-10 school year, under the funding formula instituted in the School Funding Reform Act of 2008, North Haledon's withdrawal would still have resulted in Manchester receiving at least \$500,000 more in equalization aid and North Haledon receiving more aid for itself.

Pointing to the "savings" which the State allegedly enjoys as a result of North Haledon's continuance in Manchester, Kirtland urged that the Commissioner select the 80% enrollment / 20% equalized valuation formula mentioned above and direct the Department of Education to pay equalization aid to Manchester and North Haledon as though North Haledon had withdrawn. In Kirtland's view, such an arrangement was justified because "the State has compelled North Haledon to stay in the Regional District" (Joint Exhibit J-28 at 5)

In the alternative, Kirtland proposed the same 80% / 20% split – without State aid – because that formula is close to what he viewed as the most equitable allocation, namely, the 100% enrollment-based method chosen by the voters when Manchester was formed in 1957. Kirtland further reasoned that the result for North Haledon of the 80/20 formula would "approximate the savings that would have gone to North Haledon if the Supreme Court had not stopped its withdrawal from the Regional District." By way of additional justification, Kirtland argued that under the 80%/20% formula, North Haledon would still be subsidizing the other two constituents. (Joint Exhibit J-28 at 6)

Finally, in a Table on page 7 of his report, Kirtland presented his estimates of the respective contributions that the Manchester constituents would pay under several scenarios: *e.g.*, 100% equalized valuation; the incumbent Librera formula of 67% equalized valuation and 33% enrollment; 20% equalized valuation and 80% enrollment; and 100% enrollment. Under the formula advocated by Kirtland, North Haledon's contribution was estimated to be \$1,630,048 (\$1,106,533 less than under the incumbent formula); Haledon's contribution was estimated to be \$3,910,657 (\$331,012 more than under the incumbent formula); and Prospect Park's estimated contribution was \$3,608,961 (\$775,521 more than under the incumbent formula).

In addition to reviewing the expert reports and testimony, the Administrative Law Judge (ALJ) assigned to this case heard testimony from an administrator from each municipal party. The testimony of Mayor Randy George of North Haledon emphasized the frustration of North Haledon residents with the Manchester levies. George explained that North Haledon voters defeat the school budget every year, and that property tax appeals have sharply risen. He testified that North Haledon has a large senior population residing in housing purchased many years ago and living on pensions which do not keep up with rising prices and taxes. North Haledon's housing stock is not high end, but rather primarily ranches, Cape Cods, and three luxury townhouse developments. And since more North Haledon eighth graders go to parochial schools than in the two other Manchester constituents, North Haledon is paying more taxes to educate fewer students. Finally, Mayor George emphasized that Haledon and Prospect Park get more State aid than does North Haledon.

The testimony of Stephen Sanzari, Chief Financial Officer, tax collector and treasurer of Prospect Park, described a built-up blue collar community with a third of the town's land allocated to a quarry. Most homes are two-family houses, and many residents rent from

absentee landlords. According to Sanzari, Prospect Park has about 5700 residents, only approximately 1200 of whom are taxpayers.

Sanzari testified about stagnant revenues, reductions in force and a 50% increase in delinquent property taxes. He stated that Prospect Park had to apply to the State for extraordinary aid in 2008 and 2009 and received same. To try to lessen the need for extraordinary aid, Prospect Park has been entering into shared services programs with other municipalities – using Haledon’s library and sharing Haledon’s tax assessor and building inspector. In light of the foregoing, the ALJ found it noteworthy that Prospect Park spent \$400,000 to refurbish its tennis courts.

For Haledon, municipal clerk and acting administrator Allan Susen testified. He described Haledon as an almost fully developed town with about 2900 properties, 50% of which are owner occupied and 50% of which are rentals. The town includes an age-restricted community which houses taxpayers but not students. According to Susen, Haledon received extraordinary aid in 2009, and has had to reduce staff to cut costs. Susen testified about increases in Haledon’s contributions to Manchester in the years following the institution of Librera’s formula but, as the ALJ noted, could not specify which portion of the increases were inflation and which were tied to the formula change.

After considering the parties’ testimony and submissions, the ALJ addressed their arguments. She rejected Wyns’ contention that the Supreme Court decision contained no mandate to bestow equitable relief upon North Haledon, Initial Decision at 22, and rather read the Supreme Court decision as including “an equitable component that implicitly excludes, as to North Haledon, the 100% property valuation method of apportionment”¹⁴ (Report and

¹⁴ The ALJ also asserted that the Supreme Court’s mandate excluded the 100% enrollment allocation option, but the Commissioner can find no such holding.

Recommendation at 22) She referred to the disproportionate tax burden that North Haledon citizens – especially senior citizens on fixed incomes – had borne under that allocation formula,¹⁵ noted that Prospect Park and Haledon had benefited enormously from it (Report and Recommendation at 20), and echoed the Supreme Court’s determination that North Haledon’s involuntary membership in Manchester – and the other Manchester constituents’ ability to veto any allocation formula changes North Haledon might propose – created the need for a fairer cost allocation scheme. (Report and Recommendation at 21-22)

The ALJ also rejected Kirtland’s request that the Commissioner decline to utilize “ability to pay” as a factor in determining an allocation formula for the Manchester constituents. (Report and Recommendation at 24) She believed that in addition to applying equity to North Haledon’s situation, it was necessary to recommend a formula which was also equitable for Haledon and Prospect Park. (Report and Recommendation at 22) To that end, she advised that – in her view – the most important insight that the parties had provided was the recognition that the State uses property wealth, aggregate income and pupil enrollment as factors in calculating the equalization aid it provides to individual school districts. (Report and Recommendation at 14) She determined to consider those factors in making her recommendations for regional district Manchester. (*Ibid.*)

The ALJ observed that North Haledon was “considered to be the ‘wealthier’ constituent,” having an ability to pay that the others did not. But she gave weight to the fact that Haledon and Prospect Park receive more State aid. The ALJ also appeared to be influenced by figures that suggested that the average assessed home value in North Haledon was less than the average values in the other two constituents. (Initial Decision at 23) However, the

¹⁵ The ALJ maintained that it was “well documented throughout the case record that by 1994, North Haledon was responsible for just over half of Manchester Regional’s operating costs, despite sending only about 28 percent of the student body to the school.” (Report and Recommendation at 21)

Commissioner notes that to the extent that those assessed home values were not equalized, they would not have reflected a true comparison of housing value in the three constituent towns.

Another consideration mentioned by the ALJ was the large proportion of residents in Haledon and Prospect Park who are renters. (*Ibid.*) As will be discussed *infra*, the income of renters is used to calculate a district's aggregate wealth, but it is the property owners – many of whom do not reside in those towns – that pay the taxes.

Because all parties took issue with the 67% equalized valuation / 33% enrollment formula, the ALJ chose to exclude it from her consideration. (Report and Recommendation at 22) She asked the parties to submit proposals that were less extreme than their original positions (Report and Recommendation at 24), and ultimately recommended a formula based 33% upon property valuation and 67% upon enrollment – although none of the parties had proposed same.¹⁶ According to the ALJ, this method reflected her above-referenced determination that the allocation formula should use the same principles that guide the State in calculating equalization aid for districts. (*Ibid.*) The formulas preferred by the ALJ also suggest that she may have been concerned that comparisons of the constituents' aggregate incomes, using the income of renters, might have skewed the analysis of the relative wealth of the constituents.

Finally, the ALJ noted that both the parties' experts had agreed that any calculations should be carried to nine decimal places and that enrollment projections should be made annually, based upon 9th-12th grade enrollment totals. She consequently recommended same. (Report and Recommendation at 22-23) She further recommended that her new formula be implemented over a period of two years. (*Ibid.*)

¹⁶ The ALJ advised that she believed that a 20% equalized valuation and 80% pupil enrollment formula was most equitable, but she selected the 33%/67% formula. Report and Recommendation at 24.

Any treatment of this controversy must first establish the framework for evaluating the facts. The ALJ was correct in finding that the Supreme Court mandated the fashioning of a more equitable allocation formula that took into account North Haledon's forced membership in and disproportionate contributions to Manchester, and the other constituents' ability under *N.J.S.A. 18A: 13-23* to veto any formula change that North Haledon might propose. The Court did not, however, order the Commissioner to subsidize North Haledon. Contrary to Kirtland's contention, the North Haledon school district is bound to stay in the regional district not by decree of the Department of Education but by the mandate of constitutional law, as interpreted by the New Jersey Supreme Court. The Department is neither responsible for North Haledon's continued membership in Manchester nor bound to pay North Haledon's contributions to same. The Court's express finding was:

when a constituent municipality is compelled to participate in a Regional District, *N.J.S.A. 18A:13-23* is not applicable and the Commissioner may determine cost allocations among and between Haledon, Prospect Park, and North Haledon.

181 *N.J.* 161, *supra*, at 186.

The Commissioner also concurs with the ALJ's determination that 'ability to pay' should play a role in the establishment of a new allocation formula. Ability to pay is a factor which the Department of Education uses in determining the amount of equalization aid it will provide to each school district. The reason for this has been addressed by the courts in multiple cases. *See, e.g. Stubaus v. Whitman*, 339 *N.J. Super.* 38, 60-61 (App. Div. 2001), *certif. denied* 171 *N.J.* 442 (2002):

It is the Legislature's responsibility to allocate the State's resources. *Barone v. Dep't of Human Services*, 107 *N.J.* 355, 370 (1987). In the case of delivering educational services, the Legislature's purpose was to make it possible for every school district to provide a [thorough and efficient] education for its students. The classification of districts on the basis of property wealth and

aggregate personal income furthers this purpose by allowing the State to deliver greater State aid to the most needy districts.

CEIFA [Comprehensive Education Improvement and Financing Act] utilizes district property values and average income to generate the local share. Districts that are wealthy in property and income are expected to pay a greater local share so that more State aid can be delivered to the property and income poor districts.

....

[I]t seems to us that the district's property values and average income are reasonably related to assessing the citizens' ability to pay the district's local share. The differential treatment that has resulted appears to be an appropriate response to generate greater funds, from a not unlimited resource, for the needier school districts.

We see nothing unconstitutional about requiring greater local support for the educational program from districts that appear able to pay more based upon the district's property values and average income.

The present case deals with a regional district, as opposed to an individual district, but there is no rational basis to refrain from applying the principles articulated in *Stubaus, supra*. Each constituent town can be assigned a levy (contribution to the regional district) in accordance with its means – not unlike a microcosm of statewide school funding. However, in the instant controversy, the issue of relative wealth must be balanced with North Haledon's burden of having been compelled to remain in Manchester.

The role which 'ability to pay' plays in the Department of Education's (Department) school funding determinations may be fairly simply described. The Department annually calculates an adequacy budget for each district, including regional districts. The adequacy budget is the projected amount necessary to educate the students of that district. The Department also calculates a local share for each district – a figure based upon the district's aggregate equalized property value and income (i.e., ability to pay). See, *N.J.S.A. 18A:7F-52* and 53. The balance of the adequacy budget less the local share is the State equalization aid calculated for the district.

Kirtland urged that since, in the case of regional districts, the State applies the foregoing process to the regional district as a whole, this fact somehow precludes the Commissioner from also using ‘ability to pay’ as a factor in arriving at a fair allocation methodology between and amongst regional district constituents. Nothing in logic or fact, however, supports the notion that use of the ability to pay as a guideline in the former scenario is a bar to the application of the same principle in the latter scenario.¹⁷

The ALJ was provided with certain categories of data purporting to measure the Manchester constituents’ relative ability to pay. Unfortunately, as a consequence of the length of time that the instant controversy has lasted, many of the statistics presented to the ALJ are significantly out of date. Consequently, the Commissioner has considered more recent data concerning the relative wealth of the Manchester constituents.

Comparisons of the parties’ relative aggregate property values can be made using compilations of statistics published by the Director of the New Jersey Division of Taxation (Taxation Division). The latest of those tables used data from October 2011. The equalized property values shown for the Manchester Constituents are:

| | |
|---------------|-----------------|
| Haledon | \$ 617,316,105 |
| North Haledon | \$1,386,555,637 |
| Prospect Park | \$ 312,110,315 |

¹⁷ Nor is the parallel that Kirtland drew with send-receive districts helpful to the instant controversy. Send receive relationships and regional district associations are governed by separate statutes. *N.J.S.A.* 18A:38-19 addresses tuition in send-receive arrangements, *i.e.*, pacts wherein one district avails itself of the facilities of another, separate district. Under that statute, the receiving district determines the tuition that will be paid by the sending district, providing that the amount does not exceed the actual cost per pupil. By way of contrast, in the regional district scenario, the constituents are all members of the same entity, with common cost allocation governed by *N.J.S.A.* 18A:13-23.

The foregoing table showing property wealth in North Haledon to be over twice that of Haledon, over four times as much as Prospect Park's, and 60% of the total property value of the three constituents, is worthy of consideration.

The aggregate income of the residents of the respective parties can be ascertained by reference to tax return data compiled by the New Jersey Department of the Treasury (Treasury Department). The Treasury Department's data for 2009 showed the aggregate income of the respective Manchester constituents to be:

| | |
|---------------|----------------|
| Haledon | \$ 148,620,964 |
| North Haledon | \$ 338,284,733 |
| Prospect Park | \$ 93,455,527 |

North Haledon's aggregate income shows as 59% of the total income of the three constituents.

However, as the ALJ noted, the income data presented above is subject to variables. Relevant to any comparison of the relative resources of the Manchester constituents is the fact that Haledon and Prospect Park receive more school equalization aid than North Haledon does. North Haledon urges, not unreasonably, that this be considered in determining an appropriate allocation of burdens in the funding of Manchester.

Also relevant to an analysis of the constituents' resources is an issue which has been debated throughout this controversy. More specifically, the 2010 census reveals that almost 87 percent of the residents in North Haledon are homeowners. Thus, the income set forth above for North Haledon is fairly reflective of the income of its property/school tax payers. But the same 2010 census indicates that over half of the residents in Haledon and Prospect Park rent their dwellings. North Haledon argues that the burden of property taxes does not fall upon such resident renters, but is borne by the landlords – many of whom may not even reside in Haledon and Prospect Park. Prospect Park and Haledon contend that the landlords pass the entire

property tax burden on to the resident tenants. In the Commissioner's view, the truth likely lies between these two opposing positions.

On the one hand, it is reasonable to expect that landlords will attempt to ease their tax burdens by passing costs to their tenants. On the other hand, the market will often dictate whether, or by what amount, landlords may increase rents. In other words, the issue is not easily quantifiable. It is possible that, were the incomes of the Haledon and Prospect Park property owners/tax payers used in calculating the wealth of their districts, it would lead to the conclusion that North Haledon's percentage of the total income of the three Manchester constituents is less than 59%.¹⁸ However, for purposes of this decision, the Commissioner will neither assume that tax increases are absorbed by the tenants of Haledon and Prospect Park, nor conclude that they are not.

Finally, an analysis of 2011 data from the Department of Community Affairs indicates that the equalized property tax rate which North Haledon residents pay for the Manchester levy is lower than the rate in the other two Manchester constituents. More specifically, the equalized tax rate which North Haledon property owners pay is 0.21 of their equalized property value, as opposed to the equalized tax rates of 0.69 in Haledon and 0.87 in Prospect Park.

Certain demographics were viewed by one or more of the parties as relevant to a district's "ability to pay" and will be considered in balancing the equities. First, there are senior citizens in North Haledon who own property but live on fixed incomes that bear little relation to

¹⁸ The Commissioner notes that the actual property owners may include their property tax levies as components of the rents they charge, thereby protecting their own resources while shifting the property tax burden – in part – to those whose income is reflected in the above-referenced Treasury Department's data. However, it is not possible for the Commissioner to identify how many landlords do so and what percentage of the tax levy they may impose upon their tenants.

the value of their property.¹⁹ Data from the 2010 census show that senior citizens comprise over 20 percent of North Haledon's total population, as opposed to 10.4 percent in Haledon and 8.2 percent in Prospect Park, and that the percentage of residents collecting Social Security is higher in North Haledon than in the other two Manchester constituents. But the census also reveals that 85 percent of North Haledon households include earners, suggesting that not all of the senior citizens in North Haledon are on fixed incomes.

It is, of course, also true that persons other than senior citizens live on fixed incomes. In each constituent town there are individuals who receive public assistance, disability pensions or other types of fixed income. The 2010 census suggests that this demographic has the largest presence in Prospect Park, where about 16% of the population receives food stamps. The corresponding percentage in Haledon is 4%, and North Haledon's percentage is .2%.

Having discussed various issues relating to the relative means of Manchester's constituent districts, the Commissioner turns to other factors that must be considered in the resolution of this controversy. First, it is undisputed that North Haledon sends far fewer students to Manchester than do Haledon and Prospect Park. In 2008, for example, North Haledon sent 96 students to Manchester as compared with the 355 students sent by Haledon and the 331 sent by Prospect Park.²⁰ Yet it appears that North Haledon's levies for Manchester have still been higher than Haledon's and Prospect Park's.

Second, cost allocation within a regional district implicates a factor not present in local share determinations for individual districts. More specifically, while an individual district may be assigned a higher local share than neighboring districts, the property tax payers of that district are paying only for the costs of educating the students within their district. In the case of

¹⁹ This was a fact expressly mentioned by the Supreme Court in its 2004 decision.

²⁰ These figures were included in supplemental exhibits C-1 and C-2, submitted by Kirtland and Wyns, respectively.

Manchester, the North Haledon property tax payers are subsidizing the education of students from other municipalities. This is a distinction that can only heighten North Haledon's dissatisfaction with its forced membership in Manchester.

Finally, the Commissioner believes that an August 2001 feasibility study may be useful in fashioning a fair resolution to this controversy. In the study, Kirtland and Donald E. Beineman, Ed.D., evaluated a proposal by North Haledon to withdraw from Manchester and form a send-receive relationship with the Midland Park school district. (Joint Exhibit J-8) It was estimated in the study that such a move – when compared with North Haledon's annual contributions to Manchester under the 100% equalized valuation method – could save North Haledon \$240,000 to \$440,000 annually. (Joint Exhibit J-8 at 36-37)

There is no template available to apply to this controversy. Some relevant factors may be easily quantifiable but others may not – such as the burden on a school district, which has successfully completed all of the statutory requirements for withdrawing from a regional district – of being compelled to stay in that regional district at a cost which is far more than other available options would be. In addition, assuming that a ratio could be established expressing the respective net results of the parties' financial resources and burdens, that ratio must still be translated into a formula based solely upon enrollment and property valuation, as per *N.J.S.A.18A:13-23*.

Perhaps in light of the foregoing, the ALJ requested that the experts provide comparisons – based upon October 2008 enrollment figures – of the costs to each Manchester constituent using: 1) the current formula; 2) a formula splitting property valuation and enrollment equally; 3) the allocation recommended by the ALJ (33% property valuation and 67% enrollment); and 4) a formula using 20% property valuation and 80% enrollment. Kirtland

responded with Supplemental Exhibit C-1, which contained figures similar to an in-house analysis by the Department of Education.²¹ The respective impacts of each formula are:

| DISTRICT | ENROLLMENT | 67/33 | 50/50 | 33/67 | 20/80 |
|---------------|------------|--------------|-----------|-----------|-----------|
| North Haledon | 96 | \$ 2,749,997 | 2,344,120 | 1,938,242 | 1,627,865 |
| Haledon | 355 | \$ 3,761,293 | 3,886,293 | 4,011,293 | 4,106,882 |
| Prospect Park | 331 | \$ 2,859,362 | 3,140,240 | 3,421,118 | 3,635,906 |
| <hr/> | | | | | |
| TOTALS | 782 | \$ 9,370,653 | 9,370,653 | 9,370,653 | 9,370,653 |

From the above table, percentages can be calculated. Thus, the Commissioner notes that for the time period represented above, North Haledon contributed 13% of Manchester’s students. Under the current formula North Haledon pays 30% of the local share. A 50/50 split would require North Haledon to pay 25% of Manchester’s local share, the ALJ’s recommended formula would result in North Haledon paying about 21% of Manchester’s levy, and under the 80/20 split North Haledon would be responsible for 18% of Manchester’s expenses.

In selecting an appropriate allocation method the Commissioner will heed the Supreme Court’s finding that “North Haledon was justifiably concerned about the disproportional tax burden . . . carried by its citizens in relation to the other constituent municipalities.” *In re Withdrawal of N. Haledon from Manchester Reg. HS*, 181 N.J. at 184-85. On the other hand, in light of the fact that North Haledon’s wealth may exceed 50% of the

²¹ Supplemental Exhibit C-1 also displayed figures for 100% property valuation, and for 100% enrollment, which two options the Commissioner deems unhelpful.

aggregate wealth of the Manchester constituents, and its equalized property tax rate is lower than the rates in Haledon and Prospect Park, the Commissioner views the respective impacts upon the parties of the 20/80 and 33/67 formulas listed above as contrary to the principles set forth in *Stubaus v. Whitman, supra*.

Of the formulas discussed in the Report and Recommendation and presented in the record, the Commissioner considers the 50/50 split to be the most balanced. More specifically, it provides North Haledon with annual savings approximately equivalent to the savings cited in the Kirtland/Beineman feasibility study, but at the same time requires North Haledon to pay 25% of Manchester's local share. This may be somewhat less than half of North Haledon's percentage of the constituents' aggregate wealth, but it is twice the percentage of students that North Haledon sends to Manchester.

The 50/50 split still leaves North Haledon with a per pupil cost that is well over twice what the other two constituents pay per student, and this cost is in part a subsidy by North Haledon residents for students who do not live in North Haledon. For this reason, and because North Haledon's membership in Manchester is involuntary, the Commissioner concludes that a split more burdensome to North Haledon would be inappropriate.

Each party to this controversy has legitimate concerns. Regrettably, the facts and applicable law do not allow full satisfaction for any party. In adjudicating this case, the Commissioner has been mindful of the right and responsibility of elected officials to pursue the best interests of their constituents and, equally importantly, the right of all students to the best possible education, important components of which are multiculturalism and racial integration. In the instant case, the balance of these interests is not amenable to mathematical precision, but the relevant standards are clear. Deference must be given to the government interest of

education, and equity must be applied to the party who has been ordered to serve that government interest at some cost to its self-interests.

In summary, a formula employing 50% equalized property valuation and 50% enrollment valuation will be implemented to allocate funding among the constituents of Manchester. The transition from the current formula to the formula ordered herein may be implemented over a period of two years. As agreed upon by the experts, enrollment projections will be made annually based upon ninth to twelfth grade enrollment figures, and any numbers employing decimals will use no more than nine decimal places.

As Commissioner Librera stated in his January 18, 2005 Remand Decision, the allocation formula developed herein for the Manchester constituents is unique to the circumstances of this case. While the principles employed to derive the formula may be useful in analyzing future controversies, the formula *per se* will not serve as precedent.

IT IS SO ORDERED.²²

COMMISSIONER OF EDUCATION

Date of Decision: August 29, 2013

Date of Mailing: August 30, 2013

²² This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).