EDU #5721-94 and #6021-94 (consolidated)
C # 291-96
SB # 51-96
EDU #1431-97
C # 459-97
SB # 80-97

BOARD OF EDUCATION OF THE CITY OF BAYONNE, HUDSON COUNTY,

PETITIONER-APPELLANT,

V.

DR. LEO KLAGHOLZ, COMMISSIONER OF EDUCATION, AND NEW JERSEY STATE BOARD OF EDUCATION,

RESPONDENTS-RESPONDENTS,

AND

BOARD OF EDUCATION OF THE CITY OF HACKENSACK, BERGEN COUNTY,

PETITIONER-APPELLANT,

V.

DR. LEO KLAGHOLZ, COMMISSIONER OF EDUCATION, BRIAN W. CLYMER, NEW JERSEY STATE TREASURER, AND NEW JERSEY STATE BOARD OF EDUCATION,

RESPONDENTS-RESPONDENTS.

STATE BOARD OF EDUCATION

DECISION

Decided by the Acting Commissioner of Education, July 5, 1996

Remanded by the State Board of Education, December 4, 1996

Decision on remand by the Commissioner of Education, September 2, 1997

For the Petitioner-Appellant Board of Education of the City of Bayonne, Apruzzese, McDermott, Mastro & Murphy (James L. Plosia, Jr., Esq., of Counsel)

For the Petitioner-Appellant Board of Education of the City of Hackensack, Sills, Cummis, Zuckerman, Tischman, Epstein & Gross (Cherie L. Maxwell, Esq., of Counsel)

For the Respondents-Respondents, John Worthington, Deputy Attorney General (Peter Verniero, Attorney General of New Jersey)

This matter was initiated by separate petitions, one filed on April 14, 1994 by the Hackensack Board of Education and one filed on May 11, 1994 by the Bayonne Board of Education. The cases were transmitted to the Office of Administrative Law ("OAL") for hearing, where they were consolidated because both involved constitutional challenges to the method by which the Department of Education distributed State aid from the 1993-94 school year to the present.[1]

After the matter had been scheduled for hearing in OAL, the Deputy Attorney General representing the State respondents[2] filed a motion on their behalf seeking dismissal of both petitions. By decision of May 28, 1996, Administrative Law Judge ("ALJ") Ken Springer directed dismissal of some of petitioners' claims, specifically those alleging that the distribution of foundation and categorical aid for the years in question had been in violation of the State constitution's mandate for the provision of a thorough

[1] Specifically, petitioners challenged distribution of State aid under the Public School Reform Act of 1993, L.1993, c.7, and the Appropriations Act for 1994-95, L.1994, c. 67.

[2] Petitioners named the Commissioner as respondent in his capacity as the chief executive officer of the Department of Education and official agent of the State Board. Petition of Hackensack Board of Education, dated April 13, 1994, and Petition of Bayonne Board of Education, dated May 9, 1994. Petitioners also named the State Board as the statutory head of the Department vested with general powers to supervise and control public education in New Jersey. Id. Additionally, Hackensack named State Treasurer Brian W. Clymer because he is "responsible for making [S]tate aid payments to local school districts." Petition of Hackensack Board of Education, dated April 13, 1994. It appears, however,

and efficient system of public schools and Bayonne's claim that State education officials had abused their discretion by their interpretation of the applicable legislation when distributing State aid during the years in question. However, Judge Springer denied that portion of the State respondents' motion to dismiss petitioners' claims related to the equal protection clause of the State and Federal constitutions, finding that petitioners were at least entitled to develop a factual record based on those claims.

The State respondents sought interlocutory review of Judge Springer's determination from the Commissioner of Education. The Commissioner granted such review and, on July 5, 1996, the Acting Commissioner rendered a decision on behalf of the Commissioner. The Acting Commissioner affirmed that part of Judge Springer's determination dismissing petitioners' claims that the State respondents had violated the constitutional mandate for a thorough and efficient education and those claims relating to abuse of discretion by State education officials. However, the Acting Commissioner reversed Judge Springer's determination that petitioners were entitled to litigate their equal protection claims and, instead, dismissed the petitions in their entirety.

Both petitioners appealed to the State Board of Education from the Acting Commissioner's determination to dismiss their equal protection claims.

On December 4, 1996, after carefully reviewing the arguments of the parties and the record that had been developed thus far in the matter, the State Board reversed the Acting Commissioner's determination to dismiss petitioners' equal protection claims. We then remanded this matter to the Commissioner for such proceedings as were necessary to resolve petitioners' remaining claims, including those claims pertaining to

---

that the State Board and the State Treasurer were named only nominally and that neither, therefore, has

the method by which the Department of Education had distributed State aid during the years in question and whether the Department had acted arbitrarily in applying that method to petitioners. See State Board's decision, slip op. at 3, n.2.

The matter was then transmitted once again to the Office of Administrative Law, and plenary hearings were scheduled for October 7, 1997. However, prior to hearing, a Deputy Attorney General made renewed efforts on behalf of the State respondents to obtain dismissal of this matter by filing two separate motions to dismiss. Administrative Law Judge Stephen Weiss denied both of these motions in a letter decision dated August 5, 1997.

Judge Weiss rejected the State respondents' argument that the claims involved had been rendered moot as a result of the enactment of the Comprehensive Educational Improvement and Financing Act ("CEIFA"). In doing so, he found that the issue had been decided when the State Board remanded the matter to be heard so that a full and adequate record could be developed. As expressed by Judge Weiss:

> With regard to the State's argument that the equal protection claim lodged by [petitioners] is moot, I adopt the position...that in fact this very issue was intended by the State Board of Education in its remand to be heard at the OAL so that a full and adequate record could be made. The fact that the Legislature recently enacted a new, permanent funding formula does not negatively impact the need to decide the issues remanded to me even though the funding formulas challenged in the original petitions were interim in nature and no longer obtain. The fact that the challenged funding mechanisms no longer exist does not, in my view, contra-indicate a hearing to determine whether or not their implementation during the school years in question visited legal harm on the [petitioners]. If they did, appropriate relief, even now, would be warranted. The general proposition

---

been involved in the litigation in this matter.

> that relief in school funding litigation generally has been prospective only does not apply with full force and effect to the instant context which, I submit, is more narrowly confined to the specific alleged deficiencies that were visited upon petitioners. The fact that the State now is moving forward with a revised, permanent funding formula (albeit recently found to be deficient in some parts) is not dispositive.

Letter Decision of ALJ Weiss, dated August 5, 1997, slip op. at 1-2.

Judge Weiss also rejected the State respondents' contention that retroactive relief could not be granted because it would require the appropriation of amounts greater than those provided in the new funding formula and could not change the impact of a violation under the interim funding schemes.

He further found that the petitioning school districts did not lack standing, rejecting the State respondents' argument that as "creatures of the Legislature," rather than "persons," district boards of education lacked standing to bring actions such as this against the State. In addition, Judge Weiss stressed that accepting the State respondents' approach would require him to ignore both Judge Springer's decision and the direction provided by the State Board in its remand.

In rejecting the State respondents' arguments, Judge Weiss emphasized that "the essential purpose of an OAL hearing is to establish a factual record for the agency to review, and possibly the courts thereafter," and reiterated that "to grant the State's motion at this point would forever deprive petitioners of an opportunity for a hearing which, I believe, the State Board has required be given to them." Id. at 2.

The State respondents then sought interlocutory review from the Commissioner, who once again granted their request. Characterizing the State Board's decision as an

affirmance of ALJ Springer's decision, the Commissioner found that Judge Springer's decision that the matter was not moot clearly flowed from his concern that petitioners could not be denied the opportunity to address the eventuality that they would not receive their fair share in the foreseeable future. The Commissioner then found that CEIFA fundamentally altered the posture of petitioners' claims in that regard so that the State Board's affirmance of Judge Springer's decision no longer had any validity. Concurring with the State respondents that no retroactive relief could result from the proceedings, and finding that "no purpose would be served by such proceedings," Commissioner's decision, dated September 2, 1997, slip op. at 3, the Commissioner reversed the determination of Judge Weiss and dismissed the petitions. As a result, he found it unnecessary to reach Judge Weiss' conclusions on standing.

Both Hackensack and Bayonne have once again appealed to the State Board. After closely reviewing the arguments of counsel, as well as the decisions of Judges Springer and Weiss, we once again remand this matter to him for transmittal to OAL for initial determination.

We stress that, as pointed out by Judge Weiss, Judge Springer was specific in addressing the issues presented to him by the State respondents when, in his letter decision of May 28, 1996, he denied their motion to dismiss this matter in its entirety. As set forth in Judge Springer's decision:

> Contrary to respondent's assertion, Abbott III [Abbott v. Burke, 136 N.J. 444 (1994)] is not dispositive of the particular issue raised by petitioners in this litigation....Neither Bayonne nor Hackensack are special needs districts covered by the remedy fashioned by the Supreme Court in Abbott III. Instead they seek to litigate an entirely separate concern, whether the freezing of state aid

> without regard to changes in student enrollment violates the constitutional rights of districts that have experienced increased enrollment. Bayonne highlights this distinction by emphasizing that it is....[complaining] about subsequent amendments [to the QEA] which severed the link between funding and enrollment. Abbott III did not address this question, which was never before the Court.

Letter Decision of ALJ Springer, dated May 28, 1996, slip op. at 4.

Judge Springer also rejected the State respondents' arguments that the award of prospective relief by courts in the ongoing school-funding litigation warranted dismissal, finding that:

> [This argument] is not a persuasive reason for dismissing petitioners' claims at this early stage of the proceedings. For one thing, it is premature to speculate on the nature of a possible remedy before the facts are fully known or any legal rights have been established. In some circumstances, the courts have awarded retroactive relief to those litigants who have incurred the burden and expense of challenging an illegal practice that affects others as well. (Citations omitted.)

Id.

Judge Springer further concluded that:

> Even if retroactive relief were unavailable, petitioners would still be entitled to an authoritative ruling to provide guidance for future aid allotments. Unless the State can offer assurances that the objected-to feature will be eliminated in future funding mechanisms, petitioners are entitled to create a record before the administrative agency so that a court might render a determination of their rights. Petitioners are not asking for an advisory opinion on some abstract or theoretical question. Both Bayonne and Hackensack assert that they were shortchanged in state aid in 1993-94 and 1994-95 and will continue to receive less than their fair share in the foreseeable future. Thus...the continuing controversy over the method of aid distribution is "alive and well."

Id. at 5.

As Judge Weiss concluded, if petitioners establish that the method used by the Department of Education for distributing State aid in 1993-94 and 1994-95 violated any applicable requirements of law or that the Department acted arbitrarily in applying that method, the issue of whether the enactment of CEIFA has in fact corrected such deficiencies may nonetheless remain.

Therefore, for the reasons stated herein, as well as those expressed by Judge Weiss, we once again remand this matter to the Commissioner for transmittal to the Office of Administrative Law for such proceedings as are necessary to develop a record and to resolve petitioners' claims.[3] At the same time, based on advice to us from the Attorney General's Office, we direct that the proceedings before the ALJ clarify the precise nature of the claims being asserted by these two school districts at this point so as to permit the Commissioner, and the State Board in the event of an appeal from that determination, to settle all questions relating to their standing. In this respect, we specifically direct that the proceedings consider and resolve whether, and to what extent, the parties are raising State or federal constitutional claims, including equal protection violations under the New Jersey and United States Constitutions, and to what extent their claims are being pursued on behalf of the districts themselves or the districts' students.

[3] We note that such claims appear to pertain to both the method by which the Department of Education distributed State aid during the years in question and whether the Department acted arbitrarily in applying that method to petitioners. We note also that in the event petitioners prevail on the merits of their claims, the relief to which they ultimately would be entitled would be subject to any limitations imposed by law.

Daniel J. P. Moroney opposed.

March 4, 1998

Date of mailing _____