

EDU # 47-03  
C #219-04  
SB # 30-04

BOARD OF EDUCATION OF THE :  
TOWNSHIP OF EAST BRUNSWICK, :  
MIDDLESEX COUNTY, :  
PETITIONER-APPELLANT, : STATE BOARD OF EDUCATION  
V. : DECISION ON MOTION  
NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, COMMISSIONER :  
OF EDUCATION, :  
RESPONDENTS-RESPONDENTS. :

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Decided by the Commissioner of Education, May 21, 2004

For the Petitioner-Appellant, Martin R. Pachman, P.C., (Robin T. McMahon, Esq., of Counsel)

For the Respondents-Respondents, Kathleen Asher, Deputy Attorney General (Peter C. Harvey, Attorney General of New Jersey)

The Board of Education of the Township of East Brunswick (hereinafter "Board") filed a petition of appeal with the Commissioner of Education challenging the reduction of its State aid for extraordinary special education costs for the 2001-02 school year. On May 21, 2004, the Commissioner rejected the Board's contention that the respondents' action to reduce the district's extraordinary special education aid based on projected surplus in relation to actual surplus was administrative rulemaking in violation of Metromedia Inc. v. Director, Division of Taxation, 97 N.J. 313 (1984). He remanded the matter to the Office of Administrative Law for further proceedings in order to resolve

the Board's claim that the Department's use of a surplus comparison formula was arbitrary and ultra vires.

On June 22, 2004, the Board filed an appeal to the State Board of Education. On June 23, it filed the instant motion to supplement the record on appeal pursuant to N.J.A.C. 6A:4-1.9(b). The Board also requested that the briefing schedule be placed in abeyance pending a determination of its motion. Although the Board labels its submission as a Motion to Supplement Record on Appeal, it actually seeks an order "directing Respondents to adduce additional evidence and thereby supplement the record on appeal." Notice of Motion, at 1. Specifically, the Board requests a directive that the respondents provide "a sworn statement setting forth not only the number of districts applying for, and receiving, aid in the 2001-2002 school year, but also how each recipient was affected by the rule. That is, as to the recipient districts, the Department should provide the State Board with the total amount of aid requested, the total amount of aid awarded and the district's actual and projected surplus." Brief in Support of Motion, at 4. On June 28, 2004, the Board was advised that, pursuant to its request, the matter was being placed in abeyance.

On July 6, 2004, the Deputy Attorney General representing the respondents filed a response indicating that they did not oppose the Board's motion and would provide the information requested.

After reviewing the parties' submissions, we grant the Board's motion. The respondents are directed to provide the Board with a list of districts who received State aid for extraordinary special education costs in the 2001-02 school year and, for each such district, the amount of aid requested, the amount actually awarded, and each

district's actual and projected surplus. We direct that the respondents provide the Board with this information by September 14, 2004. We further direct that the record on appeal be supplemented with the information provided by the respondents.

We also establish the briefing schedule in this matter. The Board's brief in support of its appeal is due 20 days after its receipt of the requested information.

September 1, 2004

Date of mailing \_\_\_\_\_