

C #93-05L
Sup. Ct. #M-1015/1016 and M-1018
App. Div. #AM-000589-04T5, AM-000591-04T5 and A-002901-04T5
SB # 9-05

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

Decision on motion by the Commissioner of Education, November 10,
2004

Decided by the Commissioner of Education, January 18, 2005

Decision on motion by the Commissioner of Education, March 15, 2005

Decision on motion by the Commissioner of Education, March 17, 2005

Decisions on motions by the New Jersey Supreme Court, April 5, 2005

Decisions on motions by the Appellate Division, June 27, 2005

Remanded by the State Board of Education, February 1, 2006

For the Appellants Borough of North Haledon and Board of Education of
the Borough of North Haledon, Porzio, Bromberg & Newman, P.C.
(Vito A. Gagliardi, Jr., Esq., of Counsel)

For the Appellants Mayor and Borough Council of the Borough of
Haledon, Reussille, Mausner, Carotenuto, Barger, Kenny & Steel,
LLC (Francis J. Campbell, Esq., of Counsel)

For the Cross Appellant Borough of Prospect Park, Schwartz Simon
Edelstein Celso & Kessler, LLC (Allan P. Dzwilewski, Esq., of
Counsel)

For the Respondent Commissioner of Education, Michael C. Walters,
Deputy Attorney General (Anne M. Milgram, Attorney General of
New Jersey)

This matter arose from a petition filed with the Commissioner of Education by the North Haledon School District seeking to withdraw from the Passaic County Manchester Regional High School District (hereinafter “Regional District”), which is comprised of Haledon, North Haledon and Prospect Park. The Commissioner referred the petition to a Board of Review, which granted North Haledon's petition and directed the Superintendent to fix a date and time for a special school election on the question of withdrawal. On June 13, 2003, the Appellate Division reversed the Board of Review's decision to authorize a referendum to determine whether North Haledon should be permitted to withdraw from Regional District, In re North Haledon School Dist., 363 N.J. Super. 130 (App. Div. 2003), a decision affirmed with modification by the New Jersey Supreme Court on August 11, 2004. The Supreme Court remanded the matter to the Commissioner of Education “to develop in consultation with the constituent municipalities, an equitable cost apportionment scheme for the Regional District.” In re Petition for Authorization, 181 N.J. 161, 186 (2004).

In response to the Supreme Court's directive, Commissioner William Librera established a cost allocation plan for the Regional District, which he detailed in a letter to the parties dated January 18, 2005. The Commissioner related that he had consulted with the constituent municipalities and had considered their written submissions as well as the testimony at public meetings held in December 2004. The Commissioner also indicated that he had told the participants that the only fair solution appeared to be apportionment based on a combination of equalized valuation and proportion of student enrollment. The Commissioner found that it was possible only in that manner “to attempt to strike a balance between the constituents' disparate tax burdens in

supporting the regional district and the fact that under the laws of this State the local share a community is required to contribute to the funding of public schools is directly related to its ability to pay.” Commissioner’s letter decision of January 18, 2005, at 2.

With that principle in mind, the Commissioner concluded that “any fair apportionment must retain wealth as the dominant factor, with the appropriate balance being two-thirds wealth to one part pupil enrollment.” Id. As set forth in his letter decision, the Commissioner determined that, ultimately, 67% of the tax apportionment of the Regional District should be derived through the equalized valuation method and 33% based on the proportion of student enrollment. Because the new apportionment of costs would result in increased costs for Haledon and Prospect Park, the Commissioner found that it should be phased in over a four-year period so that the proportion of costs would be allocated 90% equalized valuation and 10% proportion of student enrollment for 2005-06, 80% equalized valuation and 20% proportion of student enrollment for 2006-07 and 2007-08, and, finally, 67% equalized valuation and 33% proportion of student enrollment for 2008-09. The Commissioner further determined that during the transitional period, the per pupil share for each community should be calculated in accordance with dates specified in his decision on the basis of the community’s enrollment in grades 8 through 11 and should remain in place for a two-year cycle for purposes of budget preparation.

Haledon, North Haledon and Prospect Park each filed an appeal to the State Board from the Commissioner’s letter decision allocating costs. In a decision rendered

on February 1, 2006, we remanded the matter to Acting Commissioner Lucille Davy,¹ explaining:

...in reviewing the record before us, we realize that we are not able to properly review the Commissioner's determination because the record does not provide a sufficient explanation of the methodology used to develop the revised allocation that would enable us to judge whether the allocation fulfills the terms of the New Jersey Supreme Court's remand. For example, neither the Commissioner's letter decision of January 18, 2005 nor his response of March 17, 2005 to North Haledon's motion for clarification/reconsideration includes any rationale as to why the revised allocation utilizes enrollment figures for grades 8 through 11 rather than those figures for grades 9 through 12.

Therefore, we remand this matter to the Acting Commissioner¹ with the request that she amplify the record by providing the basis and rationale for the specific determinations set forth in the decision of January 18, 2005. In doing so, we note that the Commissioner, pursuant to Court direction, arrived at that decision after consultation with representatives of the constituent districts, of which no record has been supplied to the State Board. In view of this, in developing the record pursuant to our remand, the Acting Commissioner is not precluded from initiating any further proceedings that she deems necessary in order to develop a complete record, including transmittal to the Office of Administrative Law for hearing.

We retain jurisdiction.

¹ We note that the proceedings pursuant to the Supreme Court's remand were conducted by the previous Commissioner of Education and that the resulting decisions were his. Acting Commissioner Lucille Davy assumed her responsibilities in September 2005, after those decisions were rendered.

State Board of Education's Decision of February 1, 2006, slip op. at 6-7.

The Acting Commissioner subsequently transmitted the matter to the Office of Administrative Law ("OAL") for hearing as an uncontested case. In a letter to the

¹ We note that on October 16, 2006, Acting Commissioner Lucille Davy was confirmed as the Commissioner of Education.

Commissioner dated May 3, 2007, the Director and Chief Administrative Law Judge requested clarification “especially as to whether the issue before the judge is limited to a determination of the rationale utilized in the January 18, 2005 letter, and if the record is not so limited, the nature of the report and recommendations you are requesting from the Administrative Law Judge.”

In a letter dated May 11, 2007, the Commissioner responded that:

...with the departure of Commissioner Librera and the other Department personnel instrumental in the development of the January 18 apportionment, I believe it is necessary to shift the focus of OAL proceedings from this apportionment *per se* to development of a record that can serve as the basis for a fair and transparent apportionment method, one whose derivation can be clearly ascertained in relation to the underlying facts and law.

It would, therefore, be most helpful to me in fulfilling my obligation to the Court and the State Board to have the OAL: 1) take such testimony, evidence and argument as the parties wish to offer and fully set it forth on the record; 2) make consequent findings of fact and conclusions of law; and 3) offer a recommendation as to the most appropriate method for apportioning the costs of the regional district under all of the circumstances.

On August 1, 2007, Prospect Park filed a motion with the State Board for “Amplification/Clarification on Scope of Remand Issued by the State Board of Education in its Decision SB #9-05 Dated February 1, 2006.” Prospect Park relates that it “wants to be certain that such a hearing is within the scope of the remand from the State Board of Education to the Commissioner of Education and/or that the Commissioner has the authority to broaden the scope of the hearing in the manner outlined in her May 11, 2007 letter.” Prospect Park’s brief in support of motion, at 2.

The Deputy Attorney General representing the Commissioner filed a brief in opposition to Prospect Park's motion, urging denial of the motion. The Deputy Attorney General contends that the motion is untimely and interlocutory. North Haledon filed a brief joining in Prospect Park's motion, reiterating that "it is not clear that such unilateral expansion is within the Commissioner's authority." North Haledon's letter brief, at 2.

In a letter dated September 19, 2007, the Acting Director of the State Board Appeals Office notified the parties that the Legal Committee of the State Board was affording them the opportunity to submit briefs with argument pertaining to the issue of whether the scope of the remand directed by the State Board in its decision of February 1, 2006 should be modified in accordance with the Commissioner's letter of May 11, 2007.

All three districts and the Deputy Attorney General representing the Commissioner submitted supplemental letter briefs.

Given the circumstances, we find it prudent to consider and determine Prospect Park's motion because, as the head of the agency, only the State Board may alter the terms of the remand in our decision of February 1, 2006. See N.J.S.A. 18A:4-1; N.J.S.A. 18A:6-27. Upon review of the papers submitted on the instant motion, including the supplemental briefs filed by the parties, we reaffirm that directive. We reiterate that the appeals filed with the State Board by Haledon, North Haledon and Prospect Park challenged the cost apportionment scheme developed by the Commissioner in his letter decision of January 18, 2005, a determination which was in response to the Supreme Court's directive of August 11, 2004 that the Commissioner develop an equitable cost apportionment scheme for the Regional District. On February

1, 2006, finding that we did not have a sufficient record for reviewing those appeals, we remanded the matter to Acting Commissioner Davy for development of a record that would permit us to determine the districts' challenges to former Commissioner Librera's cost apportionment plan, including, if necessary, transmittal to the Office of Administrative Law for a hearing.

We find no basis in the papers before us for altering the terms of that remand. We determined in our decision of February 1, 2006 that we were "not able to properly review the Commissioner's determination [of January 18, 2005] because the record does not provide a sufficient explanation of the methodology used to develop the revised allocation that would enable us to judge whether the allocation fulfills the terms of the New Jersey Supreme Court's remand," and we were remanded the matter to the Acting Commissioner "with the request that she amplify the record by providing the basis and rationale for the specific determinations set forth in the [Commissioner's] decision of January 18, 2005." We retained jurisdiction. The Commissioner's letter of May 11, 2007 "shift[ed] the focus of OAL proceedings" from developing a record on the cost apportionment scheme established by former Commissioner Librera to starting anew the process for developing a method for apportioning the costs of the Regional District.

The Commissioner based the shift in focus on the fact that former Commissioner Librera and other unidentified Department of Education employees who assisted him in developing a cost apportionment plan are no longer employed in the Department.² There is nothing before us, however, demonstrating that such individuals are not

² We note that the supplemental brief filed by the Deputy Attorney General on behalf of the Commissioner provides no additional basis for the Commissioner's determination to shift the focus of the proceedings other than that provided by the Commissioner in her letter of May 11, 2007.

available to participate in the development of a record at hearing or that attempts were made to secure their presence at a hearing. Indeed, when this matter was remanded to Acting Commissioner Davy in February 2006, we were aware of the fact that Commissioner Librera had left the Department in September 2005. See State Board of Education's Decision of February 1, 2006, slip op. at 7.

Accordingly, we reaffirm the directive in our decision of February 1, 2006 and direct that the Commissioner "amplify the record by providing the basis and rationale for the specific determinations set forth in the [Commissioner's] decision of January 18, 2005" in accordance with our decision. Ibid. Further, in accordance with our February 1, 2006 decision, "in developing the record pursuant to our remand, the...Commissioner is not precluded from initiating any further proceedings that she deems necessary in order to develop a complete record, including transmittal to the Office of Administrative Law for hearing." Ibid.

We continue to retain jurisdiction.

November 7, 2007

Date of mailing _____