

State of New Jersey
Council on Local Mandates

In re Complaint Filed by Rockaway Township Board of Education
Regarding 2013 Laws Relating to Students with Dyslexia

COLM-0002-15

Decided: January 3, 2017

Syllabus

(This syllabus was prepared for the convenience of the reader and is not part of the decision of the Council. The syllabus does not purport to summarize all portions of the decision.)

The Rockaway Township Board of Education filed a complaint with the Council seeking a declaration that the requirements set forth in N.J.S.A. 18A:46-55, N.J.S.A. 18A:6-130 to -131, and N.J.S.A. 18A:40-5.1 to -5.4, all regarding the identification and education of students with dyslexia, should be found to be unfunded mandates and in violation of Article VIII, Section II, paragraph 5 of the New Jersey Constitution (the Amendment), as implemented by the Local Mandates Act, N.J.S.A. 52:13H-1 to -22. The Board claims that the statutes impose onerous financial burdens on the Board and all local school districts throughout the state. The Board asserts that because the laws do not authorize resources to offset the additional expenses the Board has incurred, and will in the future incur, to implement the laws, the expenses must be paid by property taxes. Accordingly, the Board argues that the enactments are unfunded mandates and should cease to be mandatory in their effect.

The New Jersey Department of Education (the DOE), raises the following five points, asserting that the laws are not unfunded mandates because 1) they are required to comply with federal law; 2) they do not require the Board to expend additional resources; 3) they implement a provision of the New Jersey constitution; 4) they revise and clarify what was already required by existing state regulations; and 5) N.J.S.A. 18A:40-5.2 to -5.4 do not constitute unfunded mandates because they were enacted after a public hearing held following public notice and for which a fiscal analysis was available. The issue is before the Council on cross-motions for summary decision. The Council agrees with the DOE that the challenged laws are required to comply with federal laws or rules or to meet eligibility standards for federal entitlements, and

consequently are not considered unfunded mandates under the Amendment. Consequently, the Council does not address the DOE's remaining arguments.

Each of the challenged statutes in this case are consistent with the intent and purposes of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400 to – 1482, and are required to enable New Jersey to meet the eligibility standards for federal entitlements.

N.J.S.A. 18A:46-55 requires the State Board of Education to promulgate regulations that incorporate the International Dyslexia Association's definition of dyslexia into the New Jersey Administrative Code. Dyslexia is considered a specific learning disability under the IDEA. 20 U.S.C.A. § 1401(30). In New Jersey, since 2000, dyslexia has been specifically included within the definition of specific learning disability. Although the IDEA does not require a state to use any particular definition of dyslexia, to qualify for federal entitlements, school districts must locate and identify children with dyslexia. The definition will assist the professionals in identifying, locating, and evaluating all children in the district who have dyslexia. See 34 C.F.R. § 300.111(a). The subjects of the challenged dyslexia laws represent essential components of education for students with dyslexia. Because the state is required to locate and provide services to students with dyslexia, defining dyslexia is a necessary step to achieve these goals.

The New Jersey definitional enactment is required by federal law because it addresses a vital element in identifying and educating students with dyslexia as mandated by the IDEA. To be "required under federal law" under the Amendment, the enactment must be construed in the context of the federal law under which it falls. Here, the statutory language must be read in the context of what is necessary to locate and educate students with dyslexia. Defining the disability is a necessary component. A clear objective of the definition is to identify students with dyslexia, so as to provide them with services; thus, fostering the purposes of the IDEA to provide an education to students with dyslexia.

N.J.S.A. 18A:40-5.2 - 5.4 impose on the Board the requirement of identifying students who exhibit one or more of the potential indicators of dyslexia. These laws obligate the Board to ensure that the students are screened no later than after the first semester of second grade, and that the student receives a comprehensive assessment for the disorder; and if the diagnosis of dyslexia is confirmed, the Board shall provide intervention strategies. As with the definition of dyslexia, N.J.S.A. 18A:40-5.2 - 5.4 address essential components of educating students with dyslexia. The statutes are consistent with the IDEA requisite that the state system be able to identify, locate, and evaluate all children in the state who have disabilities and need special education and related services; see 20 U.S.C.A. § 1412 (a)(3); 34 C.F.R. § 300.111(a); and are further consistent with the IDEA mandate to conduct an evaluation of the student's needs,

assessing all areas of suspected disability, before providing those special education and related services. See 20 U.S.C.A. § 1414(b)).

So too N.J.S.A. 18A:6-130 and 131. The substance of these statutes obligates the school district to provide certain public school staff members with “at least two hours of professional development instruction on the screening, intervention, accommodation and use of technology for students . . . with dyslexia.” N.J.S.A. 18A:6-131. Congress found that the education of children with disabilities could be made more effective by providing appropriate special education and related services, and aids and supports in the regular classroom; and by supporting high-quality, intensive pre-service preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities. 20 U.S.C.A. §1400 (c) (5) (D) & (E). N.J.S.A. 18A:6-131 fosters this requirement, and, as an essential requirement of educating children with dyslexia, qualifies as being required under federal law.

Further, a state’s receipt of federal funds for educating disabled children is conditioned upon compliance by the state with extensive goals and procedures. The state must certify to the Secretary of Education that the state has policies and procedures in effect that will effectively meet the IDEA’s conditions. 20 U.S.C.A. 1412(a). The challenged legislative enactments constitute policies and procedures that underpin compliance with the federal requirements for entitlement to state funding. As such, the challenged regulations are required under federal law in the context of the Amendment, as implemented by the Local Mandates Act, N.J.S.A. 52:13H-1 to -22.

Accordingly, the Council unanimously grants summary decision to the DOE and dismisses the Board’s complaint.

Council Members Hon. John A. Sweeney, A.J.S.C. (ret.), Council Chairman; Victor R. McDonald, III, Vice Chairman; Leanna Y. Brown, Robert R. Pacicco, Christopher Pianese, John K. Rafferty, Robert R. Salman, Jack Tarditi, and Edward P. Zimmerman all joined in the Council’s decision.

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Council on Local Mandates

In re Complaint Filed by Rockaway Township Board of Education¹

Regarding 2013 Laws Relating to Students with Dyslexia

COLM-0002-15

Decided: January 3, 2017

Nathanya G. Simon argued the cause for the Claimant, Rockaway Township Board of Education (Schwartz Simon Edelstein & Celso LLC, attorneys; Ms. Simon, Marc G. Mucciolo and Kyle J. Trent on the briefs).

Lauren A. Jensen, Deputy Attorney General, argued the cause for the Respondent, New Jersey Department of Education; Ms. Jensen on the briefs.

INTRODUCTION

The Claimant, Rockaway Township Board of Education (the Board), filed a complaint with the Council on Local Mandates (the Council) seeking a declaration by the Council that the requirements set forth in N.J.S.A. 18A:46-55, N.J.S.A. 18A:6-130 to -131, and N.J.S.A. 18A:40-5.1 to -5.4, all regarding the identification and education of students with dyslexia, should be found to be unfunded mandates and in

¹ The Rockaway Township Board of Education has filed two complaints: the instant complaint, COLM-02-15, challenging various statutory and regulatory enactments that affect the education of students with Dyslexia; and a complaint challenging a state regulation affecting programs for gifted and talented students, COLM-01-15. In both complaints, the Board seeks a determination by the Council that the legislative and/or regulatory enactments are unfunded mandates. To accommodate the parties, the Council consolidated the complaints for oral argument, which was held on July 13, 2016. The Council is required, however, to issue separate decisions for each complaint, as consolidation of the complaints is only permitted in regard to the same provision of a statute or regulation that is challenged by more than one government agency. See N.J.S.A. 52:13H-12; see also Council on Local Mandates, Rules of Procedures, Rule 11, Consolidation (Council may consolidate “when complaints are filed by more than one governing body, mayor, county executive, or local board [when complaints] relate to the same provision of a statute or to the same part of a rule or regulation.”).

violation of Article VIII, Section II, paragraph 5 of the New Jersey Constitution (the Amendment), as implemented by the Local Mandates Act, N.J.S.A. 52:13H-1 to -22. The Board claims that the statutes at issue impose onerous financial burdens on the Board and all local school districts throughout the state. Put simply, the Board asserts that because the laws do not authorize resources to offset the additional expenses the Board has incurred, and will in the future incur, to implement the laws, the expenses must be paid by property taxes. Accordingly, the Board argues that the enactments are unfunded mandates and should cease to be mandatory in their effect.

The Respondent, New Jersey Department of Education (the DOE), raises the following five points, asserting that the laws are not unfunded mandates because 1) they are required to comply with federal law; 2) they do not require the Board to expend additional resources; 3) they implement a provision of the New Jersey constitution; 4) they revise and clarify what was already required by existing state regulations; and 5) N.J.S.A. 18A:40-5.2 to -5.4 do not constitute unfunded mandates because they were enacted after a public hearing held following public notice and for which a fiscal analysis was available.

The issue is before the Council on cross-motions for summary decision. Summary decision is warranted when there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. R.4:46-2; Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); N.J.A.C. 1:1-12.5 (b) (substantially same standard in Office of Administrative Law proceedings). Here, no material facts are in dispute and the issue is ripe for summary decision. In sum, because the Council agrees with the DOE that the challenged laws are required to comply with federal laws or rules or to meet eligibility standards for federal entitlements, the Council grants the DOE's motion and dismisses the Board's complaint. Consequently, the Council will not address the DOE's remaining arguments.

LEGISLATIVE ENACTMENTS

The Board challenges the following legislative enactments and concomitant regulations.

N.J.S.A. 18A:46-55 (L. 2013, c. 131) states: “The State Board of Education shall promulgate regulations that incorporate the International Dyslexia Association’s definition of dyslexia into chapter 14 of Title 6A of the New Jersey Administrative Code.” Prior to this enactment, dyslexia was not specifically defined. Implementing the statute, N.J.A.C. 6A:14-1.3, effective February 2, 2015, now reads:

“Dyslexia” means a specific learning disability that is neurological in origin. It can be characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. Difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

[46 N.J.R. 1996(a); 47 N.J.R. 419(a).]

New Jersey’s special education regulation, N.J.A.C. 6A:14-3.5(c), states that a student must be determined eligible and classified “eligible for special education and related services” when a student has one or more of the disabilities defined in the regulation, such as dyslexia, and the disability adversely affects the student’s educational performance and the student is in need of special education and related services. While the Board acknowledges that the state must comply with the requirements of the Individuals with Disabilities Education Act (the IDEA), 20 U.S.C.A. §§ 1400 to – 1482, or lose its eligibility for federal entitlements, it argues

that the new definition is not required by the IDEA; and that the definition expands the scope of eligibility for special education services without providing funding to pay for the additional expenses the law will require for compliance.

The Board also challenges N.J.S.A. 18A:6-130 and 131. (L. 2013, c.105). The substance of these statutes requires school districts to provide certain public school staff members with “at least two hours of professional development instruction on the screening, intervention, accommodation and use of technology for students with reading disabilities, including dyslexia.” N.J.S.A. 18A:6-131. Because the statutes afford no funding for the expenses associated with this instruction, the Board claims they are unfunded mandates.

Finally, the Board asserts that N.J.S.A. 18A:40-5.1 to -5.4, (L. 2013, c. 210), which require screening, identification and education of students who may have dyslexia, are similarly unfunded mandates. The pertinent provisions of those statutes are as follows:

N.J.S.A. 18A:40-5.1 defines the potential indicators of dyslexia to include, but not be limited to:

difficulty acquiring language skills; inability to comprehend oral or written language; difficulty in rhyming words; difficulty in naming letters, recognizing letters, matching letters to sounds, and blending sounds when speaking and reading words; difficulty recognizing and remembering sight words; consistent transposition of number sequences, letter reversals, inversions, and substitutions; and trouble in replication of content.

[N.J.S.A. 18A:40-5.1]

N.J.S.A. 18A:40-5.2 through 5.4 impose the requirement of identifying students who exhibit one or more of the potential indicators of dyslexia. Students are to be screened no later than after the first semester of second grade, and the student is to

receive a comprehensive assessment for the learning disorder; and if the diagnosis of dyslexia is confirmed, the Board shall provide intervention strategies, to include “intense instruction on phonemic awareness, phonics and fluency, vocabulary, and reading comprehension.” N.J.S.A. 18A:40-5.2 to - 5.4

No dispute exists that the obligations arising from the legislative enactments come with a cost. Nonetheless, to qualify as an unfunded mandate requires compliance with the criteria set forth in Article VIII, Section II, paragraph 5 of the New Jersey Constitution, and the Local Mandates Act, supra, N.J.S.A. 52:13H-1 to - 22. The challenged statutes do not meet these criteria.

THE CONSTITUTIONAL AMENDMENT

Effective December 7, 1995, the New Jersey Constitution was amended to add paragraph 5 to Article VIII, Section II, to address unfunded mandates and create the Council on Local Mandates. With respect to laws or regulations enacted on and after January 17, 1996, “except as otherwise provided” in the Amendment, all such laws and regulations that constitute unfunded mandates upon local governments and boards of education, would, upon such a determination by the Council, “cease to be mandatory in its effect and would expire.” N.J. Const. art. VIII, § 2, ¶ 5(a). The Amendment further established categories of laws and regulations that would not be considered unfunded mandates. N.J. Const. art. VIII, § 2, ¶ 5(c). Among those are laws or regulations “which are required to comply with federal laws or rules or to meet eligibility standards for federal entitlements.” N.J. Const. art. VIII, § 2, ¶ 5(c)(1). The statute establishing the Council tracks the Amendment’s categories of laws and regulations that do not constitute unfunded mandates. N.J.S.A. 52:13H-3. Here, because the challenged state laws are required to meet eligibility standards for the IDEA, supra, 20 U.S.C.A. §§1400 to -1482, the challenged dyslexia laws do not constitute unfunded mandates.

THE FEDERAL LAW

In enacting the IDEA, Congress found that “[i]mproving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.” 20 U.S.C.A. §1400 (c)(1). Congress found that the education of children with disabilities could be made more effective by “providing appropriate special education and related services, and aids and supports in the regular classroom”; by “supporting high-quality, intensive pre-service preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible”; and by providing “early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children.” 20 U.S.C.A. §1400 (c) (5) (D), (E), and (F). Congress further found that it was “in the national interest that the Federal Government have a supporting role in assisting state and local efforts to educate children with disabilities.” 20 U.S.C.A. §1400 (c) (6).

The purposes of the IDEA are consistent with the need to improve education for children with disabilities. The federal law’s purpose is to

(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

[20 U.S.C.A. §1400 (d) (1) – (4).]

To effectuate these goals, the IDEA provides for financial assistance to the states. 20 U.S.C.A. §1412 (a). Each state that receives funds “shall ensure that any State rules, regulations, and policies relating to [the IDEA] conform to the purposes of this chapter.” 20 U.S.C.A. §1407 (a) (1).

Under the IDEA, “school districts must create an ‘individualized education program’ (IEP) for each disabled child.” Schaffer v. Weast, 546 U.S. 49, 51, 126 S. Ct. 528, 531, 163 L. Ed. 2d 387, ____ (2005). The IDEA imposes significant requirements upon the states to be followed in the education of children with disabilities. Id. 546 U.S. at 52, 126 S. Ct. at 531, 163 L. Ed. 2d 387 at ____.

Congress enacted the IDEA pursuant to the spending clause of the U. S. Const., Art. I § 8, cl. 1. Arlington Central School Dist. Bd. of Educ. v. Murphy, 548 U.S. 291, 295, 126 S. Ct. 2455, 2458, 165 L. Ed. 526, ____ (2006). A state’s receipt of federal funds for educating disabled children is conditioned upon compliance by the state with extensive goals and procedures. Ibid. The state must certify to the Secretary of Education that the state has policies and procedures in effect that will effectively meet

the IDEA's conditions. 20 U.S.C.A. § 1412(a); Schaffer, supra, 546 U.S. at 52, 126 S. Ct. at 531-32, 163 L. Ed. 2d at ___ (same).

A school district's individualized instruction program for disabled children "must be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential." Michael v. West Chester Sch. Dist., 585 F.3d 727, 728 (3rd Cir. 2009). To achieve this goal, the school district must conduct an evaluation of the student's needs, assessing all areas of suspected disability, before providing special education and related services. Id. at 728 (citing 20 U.S.C.A. § 1414(b)). The IDEA further requires the state system be able to identify, locate, and evaluate all children in the state who have disabilities and need special education and related services. Ibid.; 20 U.S.C.A. § 1412 (a)(3); 34 C.F.R. § 300.111(a).

DECISION

Each of the challenged statutes in this case is consistent with the intent and purposes of the IDEA as set forth above, and are in fact required to enable New Jersey to meet the eligibility standards for federal entitlements.

N.J.S.A. 18A:46-55 requires the State Board of Education to promulgate regulations that incorporate the International Dyslexia Association's definition of dyslexia into the New Jersey Administrative Code. Consequently, N.J.A.C. 6A:14-1.3 now defines dyslexia:

"Dyslexia" means a specific learning disability that is neurological in origin. It can be characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. Difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

The Board asserts this definition “expands the scope of eligibility for special education services” in this state, and the IDEA does not require the use of this definition. The Council disagrees. Dyslexia is considered a specific learning disability under the IDEA. 20 U.S.C.A. § 1401(30). In New Jersey, since 2000, dyslexia has been specifically included within the definition of specific learning disability. 32 N.J.R. 755(a). Although the IDEA does not require a state to use any particular definition of dyslexia, to qualify for federal entitlements, school districts must locate and identify children with dyslexia. The definition will without doubt assist the professionals in identifying, locating, and evaluating all children in the district who have dyslexia. See 34 C.F.R. § 300.111(a). As was well put by the DOE in its letter brief, the subjects of the challenged dyslexia laws represent essential components of education for students with dyslexia. Put another way, because the state is required to locate and provide services to students with dyslexia, defining dyslexia is a necessary step to achieve these goals.

The Board seems to argue that because the federal law does not make the subject definition mandatory, the definition is not “required” under federal law. Under that argument, any action taken by the school district to locate and provide services to dyslexic students would not qualify as being “required” under federal law if the federal law did not specifically mandate that particular action. That view of the language of the amendment is simply too narrow.

In interpreting a statute, the Council is “guided by the legislative objectives sought to be achieved by the statute.” Shelton v. Reastaurant.com, Inc., 214 N.J. 419, 429 (2013). The individual statutory components must be construed in the context of the entire statutory scheme. Waterfront Comm’n of N.Y. Harbor v. Mercedes-Benz of N. Am., Inc., 99 N.J. 402, 414 (1985).

The Board's interpretation of the amendment, as to what state laws or regulations are required to comply with federal laws or rules or to meet eligibility standards for federal entitlements does not foster the legislative objectives of either the IDEA or New Jersey's obligation to properly educate students with dyslexia. The New Jersey definitional enactment is required by federal law because it addresses a vital element in identifying and educating students with dyslexia as mandated by the IDEA. To be "required under federal law" under the language and intent of the Amendment, the enactment must be construed in the context of the federal law under which it falls. Here, the statutory language must be read in the context of what is necessary to locate and educate students with dyslexia. Defining the disability is, without doubt, a necessary component. A clear objective of the definition is to identify students with dyslexia, so as to provide them with services; thus, fostering the purposes of the IDEA to provide an education to students with dyslexia.

The same analysis holds true for the remaining challenged enactments. N.J.S.A. 18A:40-5.2 - 5.4 impose on the Board the requirement of identifying students who exhibit one or more of the potential indicators of dyslexia. These laws obligate the Board to ensure that the students are screened no later than after the first semester of second grade, and that the student receives a comprehensive assessment for the disorder; and if the diagnosis of dyslexia is confirmed, the Board shall provide intervention strategies. As with the definition of dyslexia, N.J.S.A. 18A:40-5.1 - 5.4 address essential components of educating students with dyslexia. The statutes are consistent with the IDEA requisite that the state system be able to identify, locate, and evaluate all children in the state who have disabilities and need special education and related services; see 20 U.S.C.A. § 1412 (a)(3); 34 C.F.R. § 300.111(a); and are further consistent with the IDEA mandate to conduct an evaluation of the student's needs, assessing all areas of suspected disability, before providing those special education and related services. See 20 U.S.C.A. § 1414(b)).

So too N.J.S.A. 18A:6-130 and 131. The substance of these statutes obligates the school district to provide certain public school staff members with “at least two hours of professional development instruction on the screening, intervention, accommodation and use of technology for students . . . with dyslexia.” N.J.S.A. 18A:6-131. To repeat, Congress found that the education of children with disabilities could be made more effective by “providing appropriate special education and related services, and aids and supports in the regular classroom”; by “supporting high-quality, intensive pre-service preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities.” 20 U.S.C.A. §1400 (c) (5) (D) & (E). N.J.S.A. 18A:6-131 undoubtedly fosters this requirement, and, as an essential requirement of educating children with dyslexia, qualifies as being required under federal law.

Without dispute, a state’s receipt of federal funds for educating disabled children is conditioned upon compliance by the state with extensive goals and procedures. Arlington Central Sch. Dist. Bd. of Educ., supra, 548 U.S. at 295, 126 S. Ct. at 2458, 165 L. Ed. at _____. The state must certify to the Secretary of Education that the state has policies and procedures in effect that will effectively meet the IDEA’s conditions. 20 U.S.C.A. 1412(a); Schaffer, supra, 546 U.S. at 52, 126 S. Ct. at 531-32, 163 L. Ed. 2d at _____. The challenged legislative enactments here constitute policies and procedures that underpin compliance with the federal requirements for entitlement to state funding. As such, the challenged regulations are required under federal law in the context of Article VIII, Section II, paragraph 5 of the New Jersey Constitution, as implemented by the Local Mandates Act, N.J.S.A. 52:13H-1 to -22.

Accordingly, the Council grants summary decision to the DOE and dismisses the Board’s complaint.