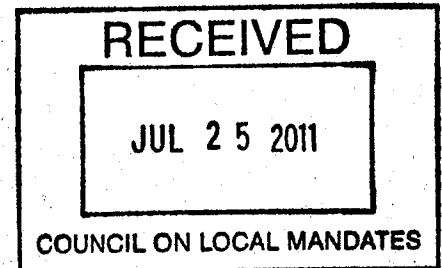


RAQUEL S. LORD  
MEMBER, NJ AND NY BARS  
DIRECT DIAL No.: 973-889-4139  
E-MAIL ADDRESS: RSLORD@PBNLAW.COM

July 19, 2011

**VIA ELECTRONIC AND REGULAR MAIL**

Honorable John A. Sweeney, A.J.S.C. (Ret.), Chairperson  
New Jersey Council on Local Mandates  
P.O. Box 627  
Trenton, New Jersey 08625-0627



Re: *In re the Complaint of the Springfield Board of Education*  
Docket No.: 3-11  
Our File No.: 08083.55978

Dear Judge Sweeney:

We are counsel to the Springfield Board of Education (the "Board") in the above matter and write to briefly address certain points made by respondent Department of Education ("DOE") in its July 14, 2011 response to the Board's opposition to the DOE's Motion to Dismiss. For the reasons set forth below, as well as those presented in the Board's June 21, 2011 opposition brief, the Council on Local Mandates (the "Council") should deny the DOE's Motion to Dismiss and strike down *N.J.S.A.* 18A:39-1 and 18A:39-1(a) as unconstitutional unfunded mandates.

In response to the Board's argument that the lack of State transportation aid for the 2010-2011 and 2011-2012 school years renders the challenged statutory provisions unconstitutional unfunded mandates, the DOE urges that the "allocation of State funds is beyond this Council's jurisdiction." The DOE also argues that although the Board is no longer receiving any State transportation aid to offset or partially offset the cost of providing transportation or aid in lieu of transportation to non-public school students, "no new obligation has been imposed" on the Board. On all counts, the DOE is simply incorrect.

The DOE's contention that the Council does not have jurisdiction to address the "allocation of State funds" ignores settled Council precedent. Though the Council has in the past struck down provisions of State statutes and regulations, it has also not hesitated to strike down provisions of the State budget where such provisions imposed unconstitutional unfunded mandates on local entities. Indeed, in the *Shiloh* case, discussed at length in the Board's opposition brief, the Fiscal Year 2009 Appropriations Act shifted a significant portion of the expense of providing police protection to certain rural towns from the State to the various municipalities. *In re Mayors of Shiloh Borough and the Borough of Rocky Hill et al.* ("Shiloh"), decided October 22, 2008, at 5. The Council found that the

100 SOUTHGATE PARKWAY, P.O. BOX 1997  
MORRISTOWN, NJ 07962-1997  
TELEPHONE (973) 538-4006  
FAX (973) 538-5146  
[www.pbnlaw.com](http://www.pbnlaw.com)

challenged portion of the Appropriations Act amounted to an unconstitutional unfunded mandate because it did not “authorize resources, other than the property tax, to offset the additional direct expenditures required for the implementation of the law or rule or regulation.” *Shiloh* at 6.

In the present case, the practical effect of the Fiscal Year 2011 Appropriations Act and the 2012 State budget<sup>1</sup> was to shift the financial burden of a State mandate previously born by the State onto certain local school districts whose funding for the mandate was revoked. Accordingly, the Council should strike down *N.J.S.A.* 18A:39-1 and 18A:39-1(a) because the State’s failure to provide any transportation aid to the Board for the 2010-2011 and 2011-2012 school years renders the requirements of that statutory provision entirely unfunded. Alternatively, the Council should strike down the portions of the 2012 State budget that impose an unconstitutional unfunded mandate on the Board and other school districts slated to receive no transportation aid. The DOE takes an inappropriately narrow view of the Council’s authority.

The DOE’s assertion that the lack of transportation aid has not imposed any “new obligation” on the Board similarly takes an improperly limited view of the issues and runs contrary to Council case law. As discussed in greater detail in the Board’s opposition brief, the Council has previously rejected the argument that a State mandate that shifts a financial burden from the State to localities does not mandate “anyone . . . [to] do anything.” See *In re Complaints filed by the Counties of Morris, Warren, Monmouth, and Middlesex* (“*Morris*”), decided September 26, 2006, at 9. Indeed, the Council has made clear that it is the practical consequences of a rule or regulation, however informal, with which it is concerned. Here, the practical consequence of the lack of transportation aid is to shift virtually the entire fiscal burden of providing transportation or aid in lieu to non-public school students to the Board. Despite the DOE’s protest, a “new obligation” is undeniably being imposed upon the Board. By way of example only, the Board received \$216,632.00 in transportation aid from the State for the 2009-2010 school year to offset the cost of providing transportation or aid in lieu to non-public school students. For the 2010-2011 school year, however, the Board received no transportation aid from the State. As such, the Board was forced to subsidize the entire cost of providing transportation or aid in lieu to non-public school students, save for a small reimbursement at the end of the school year.

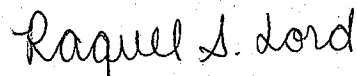
Finally, the DOE argues that the Council lacks jurisdiction to review amendments to *N.J.S.A.* 18A:39-1 and 18A:39-1(a) that predate the creation of the Council. The DOE seeks to dismiss the Board’s complaint on nothing more than a technicality and, in doing so, elevates form over substance. The Council has made clear in more than one opinion that when the State’s funding of a mandate prior to 1996 sets a baseline, “any change of policy away from that ‘State Pay’ baseline after 1996 is a new decision that is subject to the new constitutional rules.” *Morris* at 13. To permit the DOE to flout the notion of “State mandate, State pay” simply because the challenged statutory provisions took effect prior to 1996, although a later discontinuance of State funding now renders the mandates of those provisions unfunded, would nullify the reason for the Council’s existence. Moreover, the DOE does

<sup>1</sup> The State budget for 2012 will become the Fiscal Year 2012 Appropriations Act once passed.

not dispute that the State has increased the cap amount school districts are required to pay for aid in lieu of transportation between 1996 and 2001. Therefore, although the statute itself did not change until 2001, the State nonetheless increased the cap amount -- and, therefore, the financial burden on school districts -- between those years. As precedent has established, the Council's authority to review *N.J.S.A.* 18A:39-1 and 18A:39-1a is clear in view of the recent State policy shift rendering those provisions unconstitutional unfunded mandates.

Thank you for your consideration. Should you have any questions or require any additional information from the Board, please feel free to contact us.

Respectfully,



Raquel S. Lord

cc: Michael Davino, Superintendent of Schools  
Matthew Clarke, Business Administrator/Board Secretary  
Irwin Sablosky, Board President  
Shawn D. Slaughter, Executive Administrator & Coordinator  
Christopher Huber, Deputy Attorney General  
Christopher Cerf, Acting Commissioner of Education

**PORZIO, BROMBERG & NEWMAN, P.C.**

100 Southgate Parkway

Morristown, NJ 07962-1997

(973) 538-4006

Attorneys for Complainant Springfield Board of Education

**RECEIVED**

**JUL 25 2011**

**COUNCIL ON LOCAL MANDATES**

*In re the Complaint of the Springfield Board  
of Education*

BEFORE THE NEW JERSEY  
COUNCIL ON LOCAL MANDATES

DOCKET NO.: 3-11

**CERTIFICATION OF SERVICE**

I, Rodger J. Sisco, of full age, hereby certify and say:

1. I am a paralegal employed at the law firm of Porzio, Bromberg & Newman, P.C., attorneys for Complainant Springfield Board of Education (the "Board").

2. On July 19, 2011, I caused to be served via electronic mail and regular mail a properly addressed and sealed envelope containing a copy of the Board's submission with regard to the Department of Education's motion to dismiss, to the individuals below at their last known addresses:

Honorable John A. Sweeney, A.J.S.C. (Ret.), Chairperson  
New Jersey Council on Local Mandates  
P.O. Box 627  
Trenton, New Jersey 08625-0627  
jsweeneylaw@comcast.net

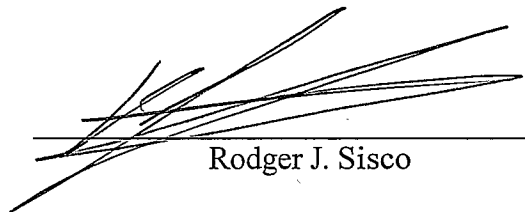
Shawn D. Slaughter, Executive Administrator & Coordinator  
Council on Local Mandates  
135 West Hanover Street, 4th fl.  
P.O. Box 627  
Trenton, New Jersey 08625-0627  
Shawn.Slaughter@treas.state.nj.us

Christopher Huber, Deputy Attorney General  
State of New Jersey Division of Law  
Hughes Justice Complex  
25 Market Street, Floor 1, RM W. Wing  
Trenton, New Jersey 08611-2148  
Christopher.huber@dol.lps.state.nj.us

3. On July 19, 2011, I caused to be served via facsimile and regular mail a properly addressed and sealed envelope containing a copy of the Board's submission in response to respondent Department of Education's motion to dismiss, to the individual below at his last known address:

Christopher Cerf, Acting Commissioner of Education  
New Jersey Department of Education  
100 River View Plaza  
P.O. Box 500  
Trenton, New Jersey 08625-0500  
Fax: 609-777-4099

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Rodger J. Sisco

Dated: July 19, 2011