STATE OF NEW JERSEY

COMMISSION OF INVESTIGATION
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January 7, 1993

Anne S. Dillman
President
State Board of Education
225 West State Street, CN 500
Trenton, NJ 08625-0500

Re: Lyndhurst School District
Docket no. 65-91

Dear Ms. Dillman:

Enclosed is the Commission's report setting forth the factual record requested by the Board in its September 2, 1992 decision in the above matter.

While creating this record for the Board, the Commission became aware of circumstances which suggest the need for remedial action by the executive and legislative branches. Therefore, by copy of the letter, the Commission makes the following recommendations to the Governor and the Legislature.

1. *The Department of Education, indeed all departments of state government, should establish and adhere to a grants management procedure.*

The controversy which precipitated the Board's request for the Commission's assistance probably could have been avoided if the Commissioner of Education had not abandoned his original plan to have a panel operating under just such a procedure to pass on the applications for QEA discretionary funds. Although he said he did so in order to ensure that only he would "take the heat" for the final decisions, the Commissioner virtually guaranteed that he would be criticized for the results.

2. *The Attorney General should prepare certification language for inclusion on applications for all forms of state funding.*

Officials of the Lyndhurst School District apparently acted with good intentions when, believing the QEA grant application to be a mere formality, they knowingly included plainly misleading information in it. It is hoped that they would have been deterred from doing so if they had been required to certify otherwise. To deter future misrepresentations, and to make sanctions available if any do occur, certifications should be required on applications for any form of funding from any state agency.

3. *The Department of Education should review the adequacy of its mechanisms to eliminate and screen out erroneous education aid data.*

Data entry errors of the type which led to the inflated state aid figures for the Lyndhurst School District are inevitable. In this case, however, the initial mistake was compounded when the Department failed to purge the error from all of its computer programs, even using the incorrect data in making aid payments six months after discovery of the mistake. Obviously, the effort to ensure accuracy is made more difficult by the loss of personnel resulting from state government's fiscal difficulties. Efforts to make sure that sufficient manpower is dedicated to this task should be made as soon as the budget allows.

4. *Future appropriations acts and the Appropriations Handbook should require better documentation of inter-departmental transfers.*

The Commission is satisfied that the inter-departmental transfer which provided the funds for the Department of Community Affairs grant to the Township of Lyndhurst was accomplished openly and in general accordance with applicable procedures. Nevertheless, it was not possible to describe a precise sequence of events in the transaction, or to identify the individuals who made key decisions along the way, because of insufficient documentation. The Commission had to rely primarily on unrecorded recollections which did not include such significant facts as the name of the person who authorized initiation of the transfer. Increased documentation requirements, covering both the policy and bookkeeping aspects of all transactions, will help to ensure a more definitive public record.

5. *The Legislature should review its policies governing requests for waivers of confidentiality or immunity.*

The Commission's efforts to make a full record in this case may have been further frustrated by its inability to obtain all information concerning legislative action on the inter-departmental transfer. During its investigation, the Commission requested that consideration be given to waiving any statutory confidentiality or constitutional privilege standing in the way

of the release of all relevant legislative information. The response received from the Legislative Counsel cited the existence of a policy which apparently effectively prevents a request for waiver from even being presented to the individual legislator authorized to grant it. Recognizing fully the basic legitimacy of confidentiality and privilege, the Commission nevertheless believes that the legislative leadership should explore the feasibility of less rigid application in appropriate cases.

Very truly yours,

JAMES R. ZAZZALI
Chairman

BARRY H. EVENCHICK
Commissioner

KENNETH D. MERIN
Commissioner

WILLIAM T. CAHILL, JR.
Commissioner

IN THE MATTER OF THE RESCINDING :
OF SUPPLEMENTAL STATE AID AWARDED:
TO THE LYNDHURST SCHOOL DISTRICT,:
BERGEN COUNTY, :
STATE BOARD DOCKET #65-91 :

REPORT
of the
STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION

PROCEDURAL HISTORY

In a decision of September 2, 1992, the New Jersey State Board of Education requested that the New Jersey State Commission of Investigation (Commission) conduct an investigation concerning this matter and provide "a factual record relating to the conduct of all entities and parties involved in obtaining the grant of the discretionary funds from the Commissioner, transferring those funds to the Township of Lyndhurst, and arranging for the transfer to the Township of the funds proposed to be used to repay the Department of Education."

On September 9, 1992, the Commission adopted a resolution authorizing an investigation of:

> [t]he conduct of all entities and individuals concerning the Commissioner of Education's grant of discretionary funds to the Lyndhurst School District on July 26, 1991, the transfer of those funds to the Township of Lyndhurst, and the award of other State funds to the Township for repayment of the discretionary grant.

In the course of that investigation the Commission interviewed the following individuals, some of whom also provided records:

Joseph Abate, Jr.
Superintendent and former Business Administrator
Lyndhurst School District

John M. Agnello
Attorney for the Lyndhurst Board of Education

Gabriel M. Ambrosio
Former Senator, 36th District

Howard B. Bookin
Director, Information Resources Management Bureau
Department of Education

Wayne R. Bryant
Assemblyman, 5th District
Former Majority Leader

Angelo J. Castellano
Education Specialist
Bergen County Office of Education

Thomas B. Corcoran
Former Policy Advisor
Governor's Office

Samuel Crane
State Treasurer

Kathleen Crotty
Executive Director
Senate Minority

Edward J. Dauber
Executive Assistant Attorney General
Director, Division of Law

Joseph DiMinno
Administrative Assistant
Bergen County Office of Education

Joseph V. Doria, Jr.
Assemblyman, 31st District
Former Assembly Speaker

Gerald M. Dowgin
Joint Budget Oversight Committee
New Jersey Legislature

John Ellis*
Commissioner of Education

Robert Goertz
Supervisor, Education and Local Government
Office of Management and Budget

Marci Levin Hochman
Assistant Legislative Counsel
Office of Legislative Services

Angelo Izzo
Consultant
Bergen County Office of Education

Nancy Kaplen
Former Deputy Attorney General
Assistant Chief, Education, Labor and Commerce Section
Division of Law

Alan Kooney
Budget and Finance Officer
Office of Legislative Services

Richard F. Keevey
Director
Office of Management and Budget

Maureen R. Keller
Director, Controversies and Disputes
Department of Education

M. Ray Kelly
Former Superintendent
Bergen County Office of Education

John T. Klagholz
Member, State Board of Education

Leo F. Klagholz
Director, Division of Teacher Certification and Preparation
Department of Education

Peter R. Lawrence
Assistant Legislative Budget and Finance Officer
Office of Legislative Services

*Commissioner Ellis announced his resignation on November 20, 1992, effective December 31, 1992

Robert Layton
Administrator
Bergen County Board of Taxation

Dante Leodori
Former Administrator
Bergen County Board of Taxation

Alfred L. Marbaise
Business Administrator and former Acting Superintendent
Bergen County Office of Education

John Mulhern
Former Assistant Commissioner, County and Regional Services
Department of Education

Roslynne G. Novack
Counsel to the State Board of Education

Josephine Oleske
Clerk
Township of Lyndhurst

Cummings A. Piatt
Former Deputy Commissioner
Department of Education

David Earle Powers
Deputy Attorney General
Assistant Chief, Education, Labor and Commerce Section
Division of Law

Melvin R. Primas, Jr.
Former Commissioner of Community Affairs

R. David Rousseau
Director, Budget and Fiscal Analysis
Senate Minority Staff

Joseph C. Salema
Chief of Staff
Governor's Office

George Savino
Attorney for the Township of Lyndhurst

Nathan B. Scovronick
Former Deputy State Treasurer

Gerald D. Silliphant
Former Legislative Budget and Finance Officer
Office of Legislative Services

Barry Skokowski, Sr.
Assistant Commissioner and Director, Local Government Services
Department of Community Affairs

Leon J. Sokol
Former Counsel to the New Jersey Senate
Counsel to Senate Minority

Louis J. Stellato, Jr.
Mayor
Township of Lyndhurst

Robert J. Swissler
Assistant Commissioner, Division of Finance
Department of Education

G. Donald Travisano
Former Superintendent
Lyndhurst School District

Rosemarie Vaccari
Finance Officer and Board Secretary
Lyndhurst School District

Joseph A. Vuono
Former Special Assistant to Deputy Commissioner Piatt
Department of Education

Lawrence S. Weiss
Former Senator, 19th District
Former Chairman, Joint Budget Oversight Committee

Melvin L. Wyns
Director, School Finance
Department of Education

The Commission obtained records from the following entities:

Bergen County Board of Taxation

Bergen County Office of Education

Department of Community Affairs

Department of Education

Lyndhurst School District

Office of Legislative Services

Office of Management and Budget

State Board of Education

Township of Lyndhurst

The following individuals also gave sworn testimony before the Commission in Executive Session:

Joseph Abate, Jr.

Gabriel M. Ambrosio

Joseph DiMinno

John Ellis

Angelo Izzo

Alfred L. Marbaise

John Mulhern

Cummings A. Piatt

G. Donald Travisano

Rosemarie Vaccari

BACKGROUND

The Quality Education Act of 1990 (QEA), N.J.S.A. 18:A:§§7D-1 et seq., established a system of distributing state funds to New Jersey's more than 600 school districts, intending to achieve a fairer distribution of aid and thus to provide a thorough and efficient education to students in all school districts.

In March 1991, an amendment to the QEA (QEA II) provided over $4.2 billion in school aid and $360 million in municipal aid. QEA II also established a one-time $25 million fund to be distributed at the discretion of the Commissioner of Education to give supplemental assistance to school districts which would be adversely affected by QEA. Certain school districts were designated as special needs districts under QEA. These districts were to receive additional state aid.

The types of state aid under QEA include:

1. State foundation aid - This aid is distributed to help support school operating costs including utilities, maintenance, textbooks and supplies, teachers salaries, administrative costs, pensions and social security costs. Foundation aid is to be calculated annually based upon a district's enrollment and a basic amount [foundation amount] of money determined to be sufficient to educate each student.

2. Categorical aid - This aid is provided, in addition to foundation aid, to school districts to pay for educating students whose education needs are more expensive than those in regular programs. Such programs include special education, bilingual education, at-risk students and county vocational schools.

3. Other State aid - School districts may also receive other types of state aid for local costs such as transportation, debt service and pension and social security (for 1991-92 and 1992-93 only).

4. Transition aid - Districts receiving less total state aid under QEA than before are entitled to financial assistance over a four year period to phase in the impact of the new law. By 1995-96 transition aid will be eliminated.

The $25 million QEA discretionary fund was created by the following statutory language:

> **Special Account to Ensure Educational Quality During Transition to New State Aid Program.** L.1991, c.62, § 39, eff. March 14, 1991, provided: There is established within the Department of Education a special account into which the State Treasurer shall deposit $25,000,000. The Commissioner of Education shall utilize the monies in the fund for supplemental State aid to school districts in order to ensure the continuation of educational quality during the period of transition to the new State aid program established pursuant to P.L. 1990, c. 52 (C. 18A:7D-1 et al.). Any supplemental State aid provided to a school district from this account shall not be included in the calculation of the spending limitations established pursuant to section 85 of P.L. 1990, c. 52 (C. 18A:7D-28).

FINDINGS OF THE COMMISSION

THE ERROR

In October 1990, the Department of Education (DOE) began to process the numerical data needed to calculate the 1991-92 state aid figures. The Lyndhurst School District aid form was received at the DOE on October 15, 1990, with line #50 of that form showing 186 students enrolled in special education. The data contained on these forms was read by scanner into the DOE computer system. Computer-generated lists were then sent to county school superintendents for correction of errors on October 26, 1990. The number on line #50 of the Lyndhurst District's form was still 186 on November 14, 1990, when the form was returned to the DOE, and remained so between November 16 and 24, 1990, when editing of the data was done at the DOE. A computer input or data entry error was made in the aid figures for the District on or about December 3, 1990, resulting in a tenfold increase in the number of special education students listed on line #50 of the Lyndhurst form from 186 to 1860. Ordinarily, state aid figures are sent to school districts on December 15 of each year. However, because the QEA was undergoing legislative reconsideration, the figures were not sent out in December 1990.

In January 1991, proposed amendments to the QEA introduced the concept of moving money from the funding of special needs districts to providing property tax relief in suburban districts. During

that month all legislators began receiving printouts or simulations showing projections of state aid under QEA with potential amendments. Simulations were prepared in both the executive and legislative branches on the basis of the raw data provided by the DOE, which included the as yet undetected error in the number of special education pupils in Lyndhurst. The amounts listed for school districts in these simulations were total state aid figures only, and did not show either the raw data on which they were based or any breakdown among aid categories. The total aid amount for the Lyndhurst School District shown in the simulations was over $5 million.

QEA II was passed by the Senate on March 7, 1991, and by the Assembly four days later. On the same day that the bill was signed into law, March 14, 1991, the DOE, by its QEATOTAID (QEA total aid) form, advised the Bergen County Office of Education that the Lyndhurst School District would be receiving $5,052,180 in state aid in the upcoming school year, with $2,971,995 of that for special education aid. The County Office forwarded the 1991-92 state aid figures to the District the next day.

On March 19, 1991, Lyndhurst Finance Officer and Board Secretary Vaccari discovered an apparent error in the special education figure and notified the Bergen County Office of Education. That office, in turn, notified the DOE Division of Finance of the possible error. Two days later, the Division of

Finance confirmed the error and revised state aid figures were telephoned, mailed and faxed to the District. The revised QEATOTAID form reflected that special education aid would be only $912,473. Because this change qualified the District for $343,513 in transition aid, correction of the data entry error resulted in a net decrease of $1,716,009 in total state aid for the 1991-92 school year. However, this was still an increase of nearly $100,000 over the previous year's categorical aid.

Commissioner Ellis testified that an extremely angry Senator Ambrosio called him to express his outrage about the error in the Lyndhurst School District aid, saying that he had voted for the QEA based on the "numbers" in the simulations, that the money should, therefore, come to Lyndhurst, and that Ellis should straighten out his Department. Ellis, knowing nothing then about the data entry error, promised to check into it. Ellis testified he told Ambrosio, "I'll do what I can to help." Ellis said that Ambrosio asked him to call Lyndhurst Schools Superintendent Travisano which he did, telling Travisano he would "check into the error and see what had occurred," and that "if there was a way that we could help him, we would try to do that."

Commissioner Ellis said that he placed a second call to Senator Ambrosio in which he acknowledged the Department's data entry error, and expressed deep regret but insisted that the DOE could not give the Lyndhurst School District money to which it was

not entitled because he did not have authority to change the law. Ellis said that Ambrosio argued the point with him, and he told Ambrosio that there were "discretionary dollars for which the district [could] apply that might be able to compensate Lyndhurst for their difficulties," but that he "did not in any form or fashion guarantee that or promise that [discretionary funds would be awarded to Lyndhurst]." Ellis said he merely told Ambrosio "that [discretionary aid] was a reasonable means where perhaps we could redress his problem," but that Ambrosio refused to accept a "perhaps or maybe" and told Ellis "he was going to get [the full amount of state aid originally projected for the District]."

Commissioner Ellis recalled a second conversation with Superintendent Travisano but does not recall whether he initiated it. Ellis testified that he told Travisano "you need to apply for discretionary funds and we will give you every consideration we can." Ellis said that although he expressed sympathy for Lyndhurst he did not promise anyone money, although he could understand how months later someone might conclude that he had, based on all that had been said and his tone. Ellis testified:

> As I reflected on this, there's no question I was sympathetic and apologetic for what the department had done and tried to describe in as comforting a tone as I could that there were discretionary funds available to deal with problems that existed, and [the Lyndhurst District can] apply for those funds, and we'll try to help you if we can.

> They may have -- in retrospect, they may have reflected, why are they saying absolutely and probably as time went on? Particularly the way Senator Ambrosio kept reassuring this is going to happen and there's no question, I can see why they would -- they might draw that conclusion, but I clearly didn't promise them the money. I did not.

Former Senator Ambrosio testified that he called Commissioner Ellis about the state aid error for Lyndhurst after calling Senate staff personnel. Ambrosio said he also complained to Governor's Chief of Staff Salema, which Salema confirmed. Ambrosio explained that he had voted to amend the QEA largely because of the information contained in the printouts he had been given as they related to all school districts in his senate district. Ambrosio said that between March 22 and March 25, 1991, he received two telephone calls from Ellis concerning the state aid error. Ambrosio said that in the first conversation Ellis said he was totally embarrassed and said "this should never have happened and it was [the DOE's] fault and [the DOE's] responsibility. [The DOE] made the error and it's up to them to rectify it." Ellis also said, according to Ambrosio, that "it was his department's fault and they were responsible for coming up with the solution." Ambrosio said he asked Ellis to call Superintendent Travisano and "to convey the assurance that [Ellis] would rectify this error." Ambrosio testified that one or two days later Ellis called him again, saying he had decided that since the incorrect aid figures resulted from the Department's mistake, the money should be given to Lyndhurst, and that he was going to solve the problem and

allocate to the District money from a discretionary fund. Ambrosio says he again asked Ellis to relate this information to Travisano. Ambrosio said he later received a call from Travisano, who thanked him for his efforts, and related that Ellis had assured him that the District would receive the amount of state aid originally projected as the result of the computer error. Ambrosio said he began to report publicly that the full amount of aid would be forthcoming. Ambrosio said he believed that the QEA discretionary fund application was a formality needed in order for Ellis to award the money to the District.

Former Superintendent Travisano testified that shortly after the computer data entry error was discovered in late March he received two telephone calls from Commissioner Ellis. In the first call, according to Travisano, Ellis said, "'I hear we have a problem in Lyndhurst. I want you to know that I'm taking a look into it,'" and promised to get back to Travisano. Travisano said that in the second telephone call, Ellis said, "'I've looked at this question, this problem...Lyndhurst is not at fault; it's our fault, and there should be no reason why Lyndhurst should suffer for this ..., you'll get your money'" or words to that effect. Travisano recalled that School District Business Administrator Abate was standing next to him during one of the calls, probably the second, and overheard part of the conversation. Travisano said he instantly conveyed the good news to Abate as well as others at the District office and elsewhere because it was so significant.

Travisano said that when he called Senator Ambrosio to report what Ellis had told him in the second conversation he learned that Ambrosio had also spoken to the Commissioner.

Business Administrator Abate recalled hearing part of a telephone conversation between Superintendent Travisano and Commissioner Ellis. Abate said Travisano was very happy after the conversation and told Abate that "the Commissioner had assured him that Lyndhurst would, indeed, be getting the money."

School District Finance Officer and Board Secretary Vaccari testified that she discovered the error in the state aid figures for Lyndhurst on March 19, 1991. She telephoned Administrative Assistant DiMinno at the Bergen County Office of Education, who, after initially insisting that the figures were correct, called back that same day to acknowledge the error and say that corrected figures would be sent. The District received revised aid figures on March 21, 1991. Later, Business Administrator Abate told Vaccari that Superintendent Travisano had spoken to Commissioner Ellis, who had given assurances that the amount of aid originally calculated would be coming to the District. Vaccari said that shortly thereafter, but before March 27, 1991, either DiMinno or Business Administrator Marbaise from the County Office called and told her the District could keep the original aid in its budget. Accordingly, Vaccari, who was then preparing the District budget, used the original state aid figures. Vaccari said she also called

DiMinno at the County Office and received confirmation that Lyndhurst could use the original state aid figures in the school budget.

On March 27, 1991, the Lyndhurst School Board filed the first of several school district budgets for 1991-92 with the Bergen County Office of Education. This version included the original but incorrect state aid figures. On the bottom of page 4 of supporting documentation entitled, "Comparison of Aid and Expenditures," attached only to the District's copy of the budget, the following handwritten notation was made: "Computer data entry operator (State Department) error in Speech and Special education. Approved by Commissioner J. Ellis." Business Administrator Abate testified that he told Bergen County Office of Education Consultant Izzo, who reviewed the budget, that he wanted it noted on the budget that the use of the original aid figures had been approved by Commissioner Ellis. This conversation, which occurred on March 27, 1991, was confirmed in testimony by both Izzo and Finance Officer Vaccari, who accompanied Abate to the budget review at the County Office.

Business Administrator Abate also said that high level Bergen County Office of Education personnel expressed their awareness of the aid error issue at the time of the March 27, 1991 budget review and approved the inclusion of the original state aid figure. Abate said that Izzo walked over to County School Business Administrator Marbaise and County School Administrative Assistant DiMinno, and,

although Abate could not hear the entire conversation, he said he did hear Marbaise and DiMinno saying to Izzo, "'Yes, yes, yes, we know all about it, you can certify it.'" Abate said he saw Izzo write the note on page 4 of the supporting documentation, which he understood to mean that Commissioner Ellis had communicated with the County Office and approved the aid. Abate said he left with a copy of the budget, which Marbaise had signed in the name of Bergen County Superintendent Kelly, who was out of the office at a meeting that day.

County Business Administrator Marbaise testified that he was not surprised by Abate's assertions because of "street talk" and newspaper articles that the Lyndhurst School District was getting the money. However, Marbaise said he could not recall any conversations between himself and District representatives other than the initial conversation he had with Lyndhurst Finance Officer Vaccari when the state aid figures came out. Marbaise also said he probably signed the budget based on Abate's representation that Ellis had promised that the District would receive the amount of aid originally calculated, but Marbaise did not specifically recall the circumstances of the budget approval or why he approved the budget with the incorrect aid figure included.

County Administrative Assistant DiMinno testified that he had no knowledge of the position taken by the Lyndhurst School District that it expected to receive the original state aid. DiMinno denied

telling Vaccari that she could use the larger aid figures, and explained that Marbaise may have spoken to Vaccari, but, in the normal course, Marbaise would never take the word of a district superintendent to inflate aid figures. DiMinno further said that he did not remember the events of March 27, 1991.

Finance Officer Vaccari testified that she accompanied Business Administrator Abate to the Bergen County Office of Education to file the Lyndhurst budget on March 27, 1991. She recalled that Abate explained the state aid situation to County Office Consultant Izzo and that Izzo then went to talk to County School Business Administrator Marbaise, who was seated about 15 feet away. Vaccari said she saw Marbaise wave after he had spoken to Izzo and she heard Marbaise say, "'It's okay, we know about it,'" referring, she assumed, to the inclusion of the original state aid figure and Commissioner Ellis's approval of the inclusion. Vaccari said that Izzo returned to the table and, with Abate, decided what to write on the budget. According to Vaccari, two photocopies of the page with the notation were made and the original and copies were inserted into the three copies of the school budget (one copy each for DOE, the County Office and the District) which she and Abate had brought with them. They then left with one signed copy of the budget containing the photocopied notation on page 4 of the supporting documentation. The District's copy is the only copy of the March 27, 1991, budget produced in response to the Commission's requests which contains this notation.

Bergen County Consultant Izzo testified that he wrote the footnote on the supporting documentation based on the representation of Business Administrator Abate. Izzo said that he wrote only what was dictated to him by Abate. Izzo said that he had no experience in the budget review process and that, in fact, the Lyndhurst District budget was the first he ever reviewed. Izzo said that he was trained in the review process by Marbaise and DiMinno and that, as part of the training, was instructed to look for all comparative variances of 10 percent or more. Izzo also testified that it was he who questioned the incorrect state aid figure because the variance in the Lyndhurst budget was over 10 percent. Izzo said that when he pointed this out, Abate told him that Commissioner Ellis had promised the Lyndhurst School District the money. After writing the dictated footnote on all three copies of the budget, Izzo said he brought the matter to the attention of County Business Administrator Marbaise and Administrative Assistant DiMinno. Izzo could not recall either individual's reaction or if they reacted at all. Nor could he explain the absence of the notation, either in original or photocopied form, on copies of the March 27, 1991, budget obtained by the Commission from the Bergen County Office of Education and the Department of Education.

DOE School Finance Director Wyns said that on April 11, 1991, he spoke to County Superintendent Kelly who reported that the District was still including the original aid figure in its budget, claiming that there had been assurances that all of the aid would

be received. Wyns said he relayed this information to former Deputy Commissioner Piatt who said he would check on it.

Former County Superintendent Kelly said that within five days of the discovery of the error in the state aid figures on March 19, 1991, he was directed by his superior at the DOE, then-Assistant Commissioner Mulhern, to say nothing about the error and that Commissioner Ellis would "make the call" as to how to handle the Lyndhurst funding. Kelly said that either Administrative Assistant DiMinno or Business Administrator Marbaise of the County Office of Education told him that, after making some inquiries at the DOE, they learned that the District was going to receive the money. Kelly also said that Lyndhurst Business Administrator Abate told him about a call from Ellis advising Lyndhurst officials not to worry because the District was going to get the full amount of aid, but that they had to work out a "rationale." Kelly places these conversations as having occurred after March 21 but before April 11, 1991.

On April 11, 1991, Assistant Commissioner Mulhern received a telephone call from County Superintendent Kelly, who said that the Lyndhurst District was still using the incorrect aid figures. Kelly also told Mulhern that Lyndhurst Superintendent Travisano had said Commissioner Ellis told him in a telephone conversation that the District was going to receive the full amount of aid. Kelly wanted a definitive answer from Mulhern because he believed that

the incorrect aid figure could not be included in the District budget. Kelly stressed to Mulhern that time was of the essence because a public meeting on the school budget was scheduled in a few days. Kelly told Mulhern that Travisano was taking the position that Ellis had promised him the money.

Assistant Commissioner Mulhern and Deputy Commissioner Piatt met with Commissioner Ellis about the matter that same day. Mulhern and Piatt said they insisted to Ellis that the extra aid resulting from the data entry error could not be given to Lyndhurst. Ellis said that he only vaguely recalls the conversation. According to Mulhern, Ellis reported that he had had problems with Senator Ambrosio and with the "people downtown" because of the Lyndhurst error. Mulhern said that when he told Ellis that Lyndhurst Superintendent Travisano was claiming that Ellis had promised the money to Lyndhurst, Ellis responded, "'If the damn superintendent kept his mouth shut...,' [or] something like that." Piatt's recollection of Ellis's reaction is consistent with Mulhern's. Ellis did not recall making that statement but has said that, if he did make it, he may have been referring to his opinion that people should not talk to reporters. Mulhern said that Ellis was "obviously stressed" about the Lyndhurst error by DOE because he felt that it "was an embarrassment to not only the Department, but to a ... legislator," referring to Senator Ambrosio. Ellis testified:

> When you're Commissioner of Education, commissioner in any role like this, you relate to the Governor's staff and the Speaker and the chairmen of the various committees, and they were quite agitated that the department had made a mistake, and they were leaning hard that you have made a mistake, and you've got to find a way to correct this mistake.

At the conclusion of the meeting, Ellis told Piatt and Mulhern to notify the Lyndhurst School District that it could not include the incorrect state aid amount in its budget. This notification was done by a letter of the same date from DOE School Finance Director Wyns, which was sent by fax to County Superintendent Kelly. On the same day, Kelly wrote to Mulhern that Ambrosio had advised Lyndhurst Business Administrator Abate to use the corrected state aid figures and that monies would be available to Lyndhurst from the Commissioner's discretionary fund.

Thereafter, the Lyndhurst School District submitted a revised budget dated April 18, 1991. The revisions did not change the total spending budget, which remained at $17,279,769, but reflected the corrected reduction in state aid figures and a corresponding increase in the local tax levy of $1,716,009.

QEA $25 MILLION DISCRETIONARY FUND

During April 1991, Deputy Commissioner Piatt was asked by Commissioner Ellis to design a selection process to administer awards from the $25 million discretionary fund established by QEA. Piatt developed a plan which included a team of three readers to review and score the applications. The maximum point score available from each reader was to be 50 points: (1) up to 20 points for description of the need for aid, (2) up to 10 points for itemizing a budget with a view toward fulfilling the need, and (3) up to 20 points for a review of the impact of the loss of the award, that is, what would happen if the applicant school district did not receive the funds. Piatt recommended a "cut-score" of 35 points as the figure below which a district would be ineligible for aid. Piatt described the panel of application readers as three highly regarded, experienced, career DOE employees. Piatt was to act as the moderator on the project and his Administrative Assistant Vuono was to handle the logistics.

Deputy Commissioner Piatt established three criteria and a methodology for awarding the discretionary aid. The criteria were:

> 1. To prevent <u>discontinuation</u> (due to the new QEA law and amendments) of demonstrably effective programs, services, or capital improvements whose elimination will have direct adverse affect on student academic achievement and/or will prevent a school district from maintaining a thorough and efficient educational program.

> 2. To implement programs, services, or capital improvements which are part of a plan required by the Commissioner (e.g., Educational Improvement Plan, Corrective Action Plan or Level II or Level III Plan). The district must be able to demonstrate that either CAP restrictions and/or aid limitations prevent implementation.
>
> 3. To implement a previously planned major educational reform program/service which the district is unable to undertake because of changes in the law, aid limitations, or unusually significant increases in program needs that restrict the district's capacity to respond effectively. [emphasis in original]

On April 25, 1991, the DOE notified every school district of the three criteria established for the discretionary aid grants and of the application process. The deadline was initially set for May 15, 1991, but later extended.

The methodology for reviewing aid applications was modeled on procedures set forth in the DOE's internal Grants Management Procedures Manual (GMPM) which had been developed during the tenure of Commissioner Ellis's predecessor after the disclosure of improprieties in the administration of discretionary grants. The grants management process, which had remained in effect under Ellis, was designed to "help avert future improprieties in administering grants" and "to enhance the quality of the department's grant programs and the applications submitted for these programs by establishing high standards for all grants." The purpose of the system for administering grants, according to Deputy Commissioner Piatt, was to eliminate subjective decisions about

grants, thus preventing those in management positions from dictating selections. The GMPM calls for authority over the various phases of grant administration to be divided among many people. The GMPM also calls for a panel of no fewer than three readers for each application, individual rating sheets, a point system and the ranking of applications from highest to lowest. The GMPM specifies that "[a]n absolute funding criteria (cut-off score) will be established to qualify for funding" [emphasis in original].

On April 30, 1991, after the revised, lower state aid figures had been incorporated, the Lyndhurst School District budget, totalling $17,279,769 and increasing the tax levy to $13,294,590, was soundly defeated by the voters. Discussions ensued between the Board of Education and the Mayor and Township Commissioners about cutting $3 million from the District budget. The fact that the higher amount of state aid had been initially included, but then excluded from the District budget, had contributed to a loss of credibility by the Board of Education and other elected officials. This resulted not only in the overwhelming budget defeat but also in two Board incumbents' being voted out of office.

On May 14, 1991, validation forms were sent to county superintendents by Deputy Commissioner Piatt. These forms were to be used as part of the discretionary aid application review process and required the county superintendents to pass on the validity of applications before they were forwarded to the DOE.

On May 15, 1991, Lyndhurst Superintendent Travisano had hand-delivered to Commissioner Ellis a QEA discretionary aid application asking for $3 million in aid for Lyndhurst, of which $1,716,009 was clearly noted on the application as making up for the aid not awarded as a result of correction of the computer error. When asked what the QEA discretionary aid application represented, Travisano testified "this application, I felt, was the mechanism that was required by the Commissioner to fulfill his promise." Travisano also said he mentioned the error in the application because he wanted to make sure the application was flagged for Ellis. The application noted "Due to the Department of Education computational error of $1,716,009.00..., and because of a defeated budget potentially indicating a $3,000,000.00 reduction, the Lyndhurst District is herewith making a formal request for $3,000,000.00 award" and attached the original and revised QEATOTAID forms. The validation form attached to the Lyndhurst application was signed by County Superintendent Kelly and dated May 29, 1991. Kelly, however, rejected the $1.7 million of the request related to the state aid computer error as invalid and approved only the remaining $1.3 million. Kelly answered "No" to the question "Are the consequences valid with respect to the severe hardship to the district?" on the validation form commenting, "The 1.7 million was not available in the first place since it was initially a revenue then corrected because of an error. However, the 1.3 million is valid."

Former Gubernatorial Advisor Corcoran said that the $25 million QEA discretionary fund was designed to protect suburban districts which were losing money under the QEA, districts whose core programs were endangered or those districts which had catastrophic needs. Corcoran expressed the opinion that special needs districts, districts whose needs had not been financially affected by QEA or non-special needs districts which received large increases should not have been eligible for discretionary aid funds.

At a joint meeting held on May 20, 1991, the Mayor and Township Commissioners of Lyndhurst advised the Board of Education that $3 million would have to be cut from the school budget. There was considerable discussion about specific proposed cuts as well as potential alternative sources of funding, including the QEA $25 million discretionary fund. A call was placed during a recess to Senator Ambrosio, who told the Mayor and Township Commissioners that Commissioner Ellis had given assurances that additional state aid would be forthcoming. Ambrosio, however, advised that he did not know if the money would come to the Township or to the School District. Ambrosio told the municipal officials that he knew of no restrictions to be placed on the use of the QEA discretionary aid because he understood it was to replace the state aid that would not be received because of the correction of the computer error. Audiotapes made of the meeting confirm these discussions. The audiotapes also reflect that, based upon the assurances that

Commissioner Ellis allegedly had made to Ambrosio and Lyndhurst Superintendent Travisano, the Township agreed to cut only $1.3 million from the school budget and to fund the remaining $1.7 million of the $3 million originally proposed to be cut. This agreement was based on the understanding that the $1.7 million in expected state aid would be turned over to the Township if it were received by the District, rather than the Township directly.

On May 21, 1991, the Mayor and Township Commissioners conducted a public meeting at which the agreement with the Board of Education was ratified. Audiotapes of that meeting reveal that the decision on the school budget was based on Senator Ambrosio's assurances of additional aid and an understanding that, if the additional aid were received by the District, it would be turned over to the Township. The audiotapes also reveal an understanding that tax relief would be a permissible use of QEA discretionary funds. The Township resolution of ratification authorized the Township Assessor to certify the amount of taxes to be raised for school purposes for the 1991-92 school year at $11,944,890, which was $1,349,700 less than the amount proposed in the budget defeated by the voters. The total school budget was reduced to $16,436,815.

In late May 1991, Commissioner Ellis met with Deputy Commissioner Piatt to discuss the process Piatt had designed to award the QEA discretionary money. Although Ellis approved Piatt's general design, he did not approve the use of a "cut-score" as

required by DOE's Grants Management Procedures Manual.

On May 30, 1991, Lyndhurst Superintendent Travisano submitted a revised request for QEA discretionary aid. This application still requested $3 million, noting again that $1,716,009 was for the replacement of the aid lost through correction of the computer error. The same validation form signed by County Superintendent Kelly and dated May 29, 1991, was attached. On June 11, 1991, the Lyndhurst Board of Education endorsed Travisano's request.

Also on June 11, 1991, the Lyndhurst Board of Education completed the second revision of the 1991-92 school budget, based on the action of the Township Commissioners. The total school budget was reduced $842,954 to $16,436,815 by applying a portion of the prior year's free balance against cuts of $1,349,700. Cuts directly related to programs totalled $394,608. The local tax levy was reduced by $1,349,700 to $11,944,890. On the same date Deputy Commissioner Piatt met with and announced the names of the three readers selected to evaluate the QEA discretionary aid applications.

On June 12, 1991, Lyndhurst's Certificate and Report of School Taxes (A4F-Form A) dated June 4, 1991, in the amount of $11,944,890 was received by the Bergen County Board of Taxation. This figure represented the amount of local taxes the Township would be required to assess for school purposes for the 1991-92 school year.

On June 14, 1991, the completed QEA discretionary aid applications were distributed to the three readers Deputy Commissioner Piatt had selected, with instructions to begin the rating process. That process contemplated that each reader would review one-third of the applications in each of three rounds, with all readers ultimately having read every application. The first exchange of applications among the readers was scheduled to take place on June 17, 1991, but was postponed one day. However, Piatt testified that on that day Commissioner Ellis telephoned from his car phone, asking the status of the application review process. Piatt said Ellis claimed that he had just come from a meeting in Chief of Staff Salema's office. Piatt recalled that Ellis also said that he was facing significant pressure to make specific awards to certain school districts. Piatt said Ellis told him, "'If I'm going to take the pressure, then I'm going to make the decision.'" Piatt said he protested that the team had already done a lot of work, that Ellis had approved the plan and that changing the process would create embarrassment. Piatt said Ellis also told him to retrieve the applications and to collect and destroy all the evaluations that had been done. Piatt said Ellis told him to put the applications in his office that same day. Piatt immediately advised Administrative Assistant Vuono of what Ellis had said. Vuono collected the applications from the three readers and Piatt delivered them to Ellis's office.

Commissioner Ellis told the Commission that he probably decided to remove Deputy Commissioner Piatt from the discretionary fund application process after a meeting with Assembly Speaker Doria and Assemblyman Bryant, who, he said, were exerting pressure on him concerning QEA and other issues, and not after any meeting with Chief of Staff Salema. Ellis initially said he could not recall the exact date of those events but his appointment calendar showed that on June 17, 1991, he had meetings with both Doria and Bryant, but makes no reference to a meeting that date with Salema. When this was pointed out to him during his testimony, Ellis conceded that June 17 may have been the day he ordered Piatt to stop the evaluation process. Ellis said he had been receiving a lot of pressure from the Democratic legislative leadership about prior administration holdovers at DOE so he ultimately concluded that even if Piatt (who was such a holdover) did the right thing on the discretionary grants, he would not be able to defend Piatt's decisions. Ellis recalled that he was concerned about whether DOE would act "consistent with how he felt the whole grant process should proceed." Ellis told the Commission that he justified his actions to Piatt by saying that he was getting a lot of pressure rather than saying to Piatt "I don't believe you will handle it properly." Doria, while he did not specifically recall the dates, said that he and Assemblyman Bryant had discussions with Ellis concerning the QEA discretionary aid. Doria said that he told Ellis to take control of the process and not to rely on his staff. Doria said one of his calendars shows he was in Trenton on June 17,

1991, but he did not recall meeting with Ellis and he no longer has his appointment calendar for that day. Bryant could not recall a meeting on that date but said that he had expressed to Ellis his concerns about holdovers' making policy decisions because the prior administration had, in Bryant's opinion, taken policy positions contrary to those on which QEA was based. Chief of Staff Salema was certain that no meeting took place in which he discussed specific awards or in which pressure was put on Ellis with respect to discretionary fund awards. Salema's schedule for June 17, 1991, confirms that he had no meetings with Ellis, Doria or Bryant on that date.

DOE Controversies and Disputes Director Keller was one of the three readers selected to serve on Deputy Commissioner Piatt's panel to review the QEA discretionary aid applications. Keller said that prior to the project's being disbanded by Commissioner Ellis, the team had accomplished one round of application readings in which each reader reviewed one-third of the applications. Keller was the reader who was assigned the Lyndhurst application in that round. She is the only person at DOE, other than Ellis, known to have evaluated the Lyndhurst application. While she no longer had her evaluation form for the Lyndhurst application when interviewed, Keller recalled that she had given it a very low rating and had questioned whether the budget information in it was valid. Keller noted that it did not appear that programs identified in the application were actually in danger of being cut

and that the application was not a well-developed presentation, but merely a listing of programs whose total cost equalled the amount of the grant request. Keller also recalled that the Lyndhurst application "looked like they were asking someone to feel sorry for them" because they had lost the $1.7 million in state aid after correction of the computer data entry error.

On June 20, 1991, County Business Administrator Marbaise reviewed the third Lyndhurst school budget for 1991-92, dated June 11, 1992. This budget totalled $16,436,815 with a tax levy of $11,944,890.

Then-Deputy Commissioner Piatt said he met with Commissioner Ellis in early July 1991, and told Ellis he had heard that certain districts were being discussed as certain to receive QEA discretionary aid grants in specific amounts. Piatt said he later told Ellis that it was rumored in education circles that Camden was to receive $4 million, Bayonne $1 million, and Lyndhurst $1.7 million. Piatt said he warned Commissioner Ellis not to make discretionary aid awards based on politics and that Ellis merely thanked him for the advice.

During the course of its investigation, the Commission discovered an undated typed document entitled "Commitments Discretionary School Aid." The document is a list of 20 school districts with the name of an individual next to each and, in all

but three instances, a corresponding dollar amount. All but one of the names are of Democratic members of the 1991 General Assembly, only one of whom did not run for re-election in November of that year. The other name on the list is that of a Democratic candidate for the Assembly who was defeated in the same election. The discovery of this document confirmed rumors heard by Gubernatorial Advisor Corcoran, Deputy Commissioner Piatt and others concerning the existence of a "list" of school districts targeted by Democrats in the Legislature to receive QEA discretionary grants and that political pressure was being asserted in connection with the QEA discretionary grants. During testimony, Commissioner Ellis identified the list as one that Assembly Speaker Doria had given him, identifying the listed districts as some of those which had been promised discretionary funds during the QEA debate. Ellis said that although he "listened to [Doria] and was aware of these districts," he discarded the list. Doria said that he did not recall giving Ellis any such list or even seeing the list, although he did remember hearing a few of the names and numbers on the list. Doria said it was possible that Assembly staff may have compiled such a list as there was considerable discussion of the subject.

Commissioner Ellis testified that after the discretionary aid applications from 116 districts were turned over to him he spent about six weeks evaluating the applications, chiefly at night and on weekends. Ellis said that he handled the process alone. In addition to reviewing the applications himself, Ellis said he

consulted with the county superintendents, obtained information from the DOE Division of Finance, and sought the advice of a DOE assistant commissioner regarding education improvement plans. Ellis explained that after he sorted and calculated the applications, he ultimately divided them into three piles representing high, middle and low needs.

On July 22, 1991, the Lyndhurst School District was notified by Commissioner Ellis that it had been awarded $1.5 million in discretionary aid and was to submit a spending plan to the Bergen County Superintendent for monitoring.

Senator Ambrosio testified to his belief that Ellis should never have given the $1.5 million in QEA discretionary aid to the Lyndhurst School District for any reason other than to correct the state aid error. Ambrosio said there would have been no other justification for making the award because the District already had the money to fund its budget. Like Superintendent Travisano, Ambrosio viewed the application process as a formality with which the District had to contend in order to get the money to replace the state aid projections on which he had relied when voting on QEA II. Ellis admitted that part of his thinking in deciding to award the grant to Lyndhurst was that DOE had put Lyndhurst in an awkward situation with the incorrect state aid figures. Ellis said he felt a "modest" obligation to try to alleviate the problem. Still, even though he added $200,000 to the $1.3 million validated by County

Superintendent Kelly for the initial discretionary aid grant of $1.5 million to Lyndhurst, Ambrosio and Lyndhurst officials expressed disappointment that the District received less than the $1.7 million they believe they had been promised.

On July 26, 1991, the $1.5 million award to the Lyndhurst School District was reduced to $1,448,757 by Commissioner Ellis, as were awards to all other districts receiving grants in excess of $1 million, to accommodate an award to a district whose application was received after Ellis's initial decisions had been made.

On August 1, 1991, Superintendent Abate, who had by then succeeded Superintendent Travisano in Lyndhurst after the latter's retirement, said he prepared and faxed an unsigned copy of a revised A4F-Form A to Bergen County Tax Administrator Leodori to enable him to make his calculations so as not to hold up the Bergen County tax bills. Abate said the numbers used were in conformance with the agreement reached on May 20, 1991, between the Board of Education and the Mayor and Township Commissioners. Abate said he did not sign that A4F-Form A and he made arrangements for the signed, but undated, original to be sent to the Lyndhurst Township Clerk, to be held in readiness for when the Board of Education and the Mayor and Town Commissioners held their respective meetings later that month. However, according to Abate, the messenger who had been expected to take the document to the Township Clerk left work because of a personal emergency, and the message to hold the

undated form was not relayed. Township Clerk Oleske, who was new to the job, said that she processed the original A4F-Form A, which was undated, and forwarded it to Leodori on August 2, 1991. Leodori received the unsigned A4F-Form A from Abate at 11:03 a.m. on August 2, 1991, followed by the signed but undated A4F-Form A from the Township Clerk at 3:18 p.m. on the same date. Both forms reflected a school tax levy that was $1,448,757 less than that shown on the A4F-Form A which had been filed on June 12, 1991. While the school budget remained at $16,436,815, the QEA discretionary grant, although not the $1.7 million anticipated by the Township Commissioners in the May 20, 1991, agreement with the Board of Education, was applied to reduce the school tax levy.

On August 8, 1991, Lyndhurst Superintendent Abate met with County Business Administrator Marbaise, who was by then also serving as Acting Bergen County Superintendent and with County Office of Education Administrative Assistant DiMinno. Abate said that he asked Marbaise and DiMinno if the QEA discretionary grant could be used for tax relief and was advised to call Commissioner Ellis.

On August 9, 1991, Superintendent Abate spoke to Commissioner Ellis by telephone and was told that the QEA discretionary aid could not be used for tax relief. After speaking to Abate, Ellis directed Acting County Superintendent Marbaise by telephone to review the Lyndhurst District's discretionary aid spending plan

with care.

DOE state aid payment schedules sent to the Lyndhurst School District continued to reflect the original erroneous special education aid figure which DOE claimed to have corrected in March 1991, and which Lyndhurst School District officials claimed that they had brought to DOE's attention each time a new printout had arrived since then. The last schedule containing the original erroneous special education aid figure was dated August 16, 1991.

On August 20, 1991, the Lyndhurst Township Commissioners, consistent with the May 20, 1991 agreement with the Board of Education, confirmed the tax levy in the A4F-Form A of August 2, 1991, reducing the school tax levy by $1,448,757 while the total school budget remained at $16,436,815, the level set on May 21, 1991.

On August 22, 1991, Acting County Superintendent Marbaise approved the Lyndhurst spending plan for the $1,448,757 in discretionary aid. Marbaise told Commissioner Ellis that Lyndhurst Superintendent Abate would file a written narrative about the events from June 6 to August 21, 1991, relating to the school tax reduction, which the County Office had requested from Abate.

On August 23, 1991, Lyndhurst Superintendent Abate notified Acting County Superintendent Marbaise that he would not provide the requested narrative on the advice of counsel. School Board Attorney Agnello said he advised Abate not to provide the narrative because it was his understanding that the narrative was to explain the facts surrounding the filings of the revised school tax levy certifications on August 2, 1991. It was Agnello's position that Abate should not be expected to explain what happened to the forms after they had left his possession. That same day, Marbaise advised Commissioner Ellis that the District had refused to provide the narrative. Ellis responded by directing that the District's budget be examined and that payment of discretionary monies be withheld.

In a letter dated September 3, 1991, Commissioner Ellis advised Chief of Staff Salema that he was still working on the Lyndhurst situation but there was a problem with Lyndhurst because "Lyndhurst, in contrast to their funding request, reduced taxes by the amount of money awarded... wihout [sic] the knowledge of the county superintendent." While the exact reason for the communication could not be recalled, both parties told the Commission that they had discussed the subject on more than one occasion. Ellis said he kept Salema advised of this and other significant matters. Salema said that he recalled checking on the Lyndhurst matter because of its volatility but did not recall this letter or what specifically may have prompted it.

On September 13, 1991, the Lyndhurst School District filed its fourth 1991-92 budget, reflecting a school tax levy reduction of $1,448,757, and a corresponding increase in revenue in the form of QEA discretionary funds.

In late September 1991, at a meeting with Assistant Commissioner Swissler and Director Wyns, Commissioner Ellis expressed concern that the timing of the rescission of the discretionary aid grant to the Lyndhurst District could be viewed as affecting the re-election campaign of Senator Ambrosio which was under way.

In a letter to Chief of Staff Salema on September 26, 1991, Commissioner Ellis reported that he had completed his review of the Lyndhurst discretionary aid matter and that he intended to notify the Board of Education of his decision to rescind the grant, finding that the District did not meet the funding criteria and noting "all the previous publicity" concerning the grant.

On October 3, 1991, Commissioner Ellis and Senator Ambrosio met in Chief of Staff Salema's office and discussed the Lyndhurst QEA discretionary aid. Ambrosio recalled that he was in Trenton that day for a legislative session and, when he stopped in to see Salema, he discovered Ellis there. Ambrosio, who had heard about problems with the QEA discretionary grant, said he told Ellis he should honor his commitment and put an end to the rumors

circulating in Lyndhurst. Ambrosio said he told Ellis that he did not want the matter to drag on until the upcoming election.

Ellis confirms the meeting but denies that it was unplanned. Ellis's diary contains the entry at 1:30 p.m. on that day "Senator Ambrosio re: Lyndhurst/Joe Salema's office." Salema said he also thought the meeting was not planned but it could have been scheduled that very day when Ambrosio called or stopped in his office. After the meeting, Ellis advised Salema of his intention to rescind the QEA discretionary grant and, according to Ellis, Salema merely observed that Ambrosio's arguments "sounded reasonable."

On October 4, 1991, a meeting was held in the State Board of Education conference room. The meeting was attended by Commissioner Ellis, Senator Ambrosio, Lyndhurst Superintendent Abate, Lyndhurst Finance Officer Vaccari, Lyndhurst School Board Attorney Agnello, Lyndhurst Mayor Stellato, Assistant Commissioner Swissler, DOE Finance Director Wyns, Deputy Attorney General Kaplen and possibly others. Ellis said the meeting was the result of Chief of Staff Salema's having requested Ellis to, in the latter's words, give Lyndhurst a "hearing before making a final decision on possible rescission of the discretionary aid." Ambrosio said he called Ellis to request a meeting and he may have made a similar request to Salema. Salema said he asked Ellis if he would hold a hearing to make sure the process was as fair as possible because it

was his opinion that the parties were not communicating on the issues. Salema also said that it was his opinion that if government makes mistakes it should be held accountable and he was concerned about a senator having voted for legislation based on inaccurate figures.

Commissioner Ellis recalled that Mayor Stellato said at the meeting that Lyndhurst had been promised discretionary money on the "education side" or the "municipal side." Ellis said he responded that he never promised anyone the money and that no one at the meeting refuted his statement. Other participants said Commissioner Ellis did not deny the assertion that he had made assurances that the aid would be given to the Lyndhurst School District. Senator Ambrosio said that Commissioner Ellis never denied at the meeting that he had made a commitment but said that the QEA discretionary aid application had been just a suggested course of action. Ambrosio said he became upset when Ellis said the Lyndhurst application was something short of a "fraud."

According to several of the participants at the October 4, 1991 meeting, Assistant Commissioner Swissler tried to tell the Lyndhurst representatives that, regardless of what they thought they had been promised in the beginning, only official DOE state aid figures were valid. According to those present, School Board Attorney Agnello produced a recent state aid printout for Lyndhurst which still included the original $2.9 million in state special

education aid, despite DOE claims that the error had been corrected the previous March. Lyndhurst School officials pointed out that despite calls to DOE each time the state aid printouts were received over the ensuing months the aid figure remained unchanged. The District had even received, in September, two state aid payments based on the incorrect figures.

DOE Finance Director Wyns confirmed that the original erroneous state aid figure was still carried on printouts as late as August 16, 1991. Wyns explained that, although there had been a correction made in one of the computer programs, none had been made in the programs used to generate the payments.

In a letter on October 16, 1991, Commissioner Ellis requested the Attorney General's advice regarding a proposed letter to the Lyndhurst School District rescinding the QEA grant. According to Ellis, on or about October 30, 1991, Deputy Attorney General Kaplen responded by advising him orally that tax relief was a permissible use for the discretionary aid, under the law, but that he rejected the advice because a need for tax relief had not been one of his original aid criteria.

Representatives of the Attorney General's Office recalled that they advised Commissioner Ellis that the statutory language creating the QEA discretionary aid fund permitted him to grant the money for tax relief and that the Township could have put the money

to that use. They also said they nevertheless advised that once DOE had established the criteria for the aid, awarding aid outside of those criteria could be a problem since other districts needing tax relief had probably decided not to apply in reliance on the announced criteria. They also said they advised Ellis that if the Lyndhurst District's application for aid contained facts which were inaccurate the grant could be rescinded.

Over the weekend of November 2 and 3, 1991, rumors, press accounts and political literature distributed in Lyndhurst reflected that rescission of the QEA discretionary aid grant to the School District was imminent.

At 4:00 p.m. on Monday, November 4, 1991, the day before the election, Acting County Superintendent Marbaise hand delivered a letter to Lyndhurst Superintendent Abate at the request of Commissioner Ellis. The letter from Ellis, dated November 1, 1991, rescinded the discretionary aid grant to the Lyndhurst District because it had been used for an impermissible purpose.

A copy of an unsigned letter on the subject of the rescission also dated November 1, 1991, addressed to Senator Ambrosio, was found in Commissioner Ellis's files. Ellis said he placed a telephone call to Ambrosio on November 4, 1991, but was unable to reach him. Ambrosio denied receiving any telephone message from Ellis in that time frame and, while he concedes it is possible that

he saw the letter addressed to him, he denies that he has ever seen a copy of the seven-page letter to Abate which was supposed to have been enclosed in Ellis's letter to him.

On December 9, 1991, the Lyndhurst BOE submitted a fourth revision of its 1991-92 school budget, reflecting the rescission of the discretionary aid and the Option B payback of the QEA discretionary aid by withholding $1,448,757 from Lyndhurst's state aid for 1992-93. The budget showed the $1,448,757 being kept by the district as an advance of its 1992-93 QEA state aid.

DCA GRANT

During late December 1991, Senator Ambrosio advised Mayor Stellato that he had made a commitment to Lyndhurst concerning the $1.5 million in state aid that he would honor. Ambrosio said he went to administration officials and legislative leaders in both houses seeking funds for Lyndhurst. He was subsequently told by the legislative leadership that money was available through the Department of Community Affairs (DCA).

Treasury documents reveal that on January 10, 1992, Office of Management and Budget (OMB) Director Keevey prepared a "Request for Transfer of Appropriation" authorizing a $1.5 million transfer to DCA from the Inter-Departmental State Employee Health Benefits Account. On the same day the Joint Budget Oversight Committee

(JBOC) received, for legislative approval, the transfer document which earmarked the money for "Aid to Lyndhurst." Assistant Legislative Budget and Finance Officer Lawrence recalled receiving a call from majority staff member Rousseau alerting Lawrence to expect a $1.5 million transfer. Lawrence noted that this transfer was received in the last days of the lame-duck legislature and, consequently, conventional procedures for processing transfers could not be followed. Rousseau said that on January 8 or 9, 1992, he informed Lawrence of a decision to make the transfer. Rousseau, on the advice of counsel, declined to name the individual or individuals who initiated the transfer, citing legislative privilege.

Then-Deputy Treasurer Scovronick said that policy discussions were normally held to decide the best way to handle large transactions, i.e., whether there should be a special appropriations bill or a JBOC transfer. However, he could recall no such discussions regarding the $1.5 million inter-departmental transfer to DCA for aid to Lyndhurst.

On January 13, 1992, according to Legislative Budget and Finance Officer Silliphant, Senator Weiss, Chairman of JBOC, instructed him to sign the inter-departmental transfer of $1.5 million to DCA, saying that he had obtained the approval of the majority of the committee. Silliphant said that although he would normally write a memo to JBOC members concerning inter-departmental

transfers and enclose a ballot with the memo, he processed the inter-departmental transfer on the basis of Weiss's instructions alone and noted his actions in a memo to JBOC. Senator Weiss said he usually received an advisory from Silliphant concerning such transfers but did not receive one concerning this transaction. Weiss said he took a poll by telephone and obtained the vote of the majority of JBOC. When interviewed by Commission staff, Weiss did not recall the particulars concerning who initiated the transfer to aid Lyndhurst, except that Senator Ambrosio was involved in some way. The justification for the transaction on the transfer document was that Lyndhurst was facing fiscal problems and would have to increase property taxes or reduce services. A special state aid account was created for DCA to receive the $1.5 million destined for Lyndhurst.

On January 15, 1992, an invoice for $1.5 million was prepared by DCA authorizing payment to Lyndhurst Township. On the same date a $1.5 million check was issued to the Township from the General State Fund. Commissioner Ellis said he had no prior knowledge whatsoever about the $1.5 million that was awarded to the Township through DCA. Treasurer Crane recalls being asked to find out if funds were available but he does not recall who made the request or whom he may have contacted in response. He noted, however, that there was nothing unusual about this matter and it occurred at a particularly hectic time. Governor's Chief of Staff Salema said that he recalls the issue being considered at the time but does not

recall who contacted OMB to initiate this particular transfer. He noted, however, that the authority to direct such transfers ordinarily rests with the Governor's office.

On February 27, 1992, the Lyndhurst Board of Education filed the fifth and final revision of its 1991-92 budget. This budget reflected a change in funding sources to show a reduction of $1,448,757 in QEA aid and an increase of an equal amount identified as other municipal aid.

In a two sentence letter of March 11, 1992, Lyndhurst Superintendent Abate requested that Lyndhurst Township provide $1.5 million to the School District "to meet its current operational expenses. Please provide the BOE with this money as soon as possible." On March 16, 1992, a Lyndhurst Township voucher was prepared for the "Transfer [of $1.5 million] to Board of Education for use of local schools."

On April 7, 1992, Lyndhurst Township paid the Lyndhurst School District $1.5 million which was recorded by the District as miscellaneous revenue.

In September 1992, DOE began withholding $1,448,757 from the 1992-93 state aid of the Lyndhurst School District. On September 2, 1992, the State Board of Education directed the Commissioner of Education to withhold the same amount, $1,448,757, from the state

aid to be given to the District next year, 1993-94. The discretionary aid kept by the District in accordance with one of the options for repayment offered by Commissioner Ellis in November 1991, was recorded as deferred revenue and deposited in an interest bearing account where the funds are being drawn upon to cover the 1992-93 state aid shortfall.

CERTIFICATION

The Executive Director of the State of New Jersey Commission of Investigation certifies that the within report was adopted by the Commission on January 6, 1993.

James J. Morley.

JAMES J. MORLEY