

D.S., on behalf of minor child, A.S;	:	
R.S., on behalf of minor children, H.H.	:	
and H.H.; E.H., on behalf of minor child,	:	
C.H.; G.G., on behalf of minor child, G.S.;	:	
W.M., on behalf of minor child, E.M.;	:	
AND THE BOARD OF EDUCATION	:	COMMISSIONER OF EDUCATION
OF THE CITY OF WILDWOOD,	:	
CAPE MAY COUNTY,	:	
	:	DECISION
PETITIONERS,	:	
	:	
V.	:	
	:	
LEO F. KLAGHOLZ, COMMISSIONER	:	
OF EDUCATION, AND THE NEW JERSEY	:	
STATE DEPARTMENT OF EDUCATION,	:	
	:	
RESPONDENTS.	:	
	:	

SYNOPSIS

Petitioners alleged that respondents failed to implement properly the provisions of the Comprehensive Education Improvement and Financing Act (CEIFA), *N.J.S.A. 18A:7F-1 et seq.*, as they pertained to the district's State aid for the 1997-98 and 1998-99 school years, by applying the statute's stabilization provision at *N.J.S.A. 18A:7F-10(a)*, thereby reducing the amount of State aid otherwise payable under CEIFA formulas.

Respondents filed a motion to dismiss the appeal on the grounds that those counts pertaining to the 1997-98 school year were untimely filed, that the petition failed to plead requisite facts in support of its claims and that respondents had acted lawfully in determining the amount of aid due the Board pursuant to CEIFA since such aid is capped by *N.J.S.A. 18A:7F-10(a)*.

The Commissioner granted respondents' motion and dismissed the appeal, noting that the counts of the petition pertaining to the 1997-98 school year allotment, about which the Board received notice on or about January 28, 1997, were filed well beyond the 90-day limitation period set forth at *N.J.A.C. 6:24-1.2*, the appeal having been filed over one year later on April 9, 1998. The Commissioner rejected petitioners' claim that respondents have deprived the district and its students of a thorough and efficient system of public education by applying the stability provision to petitioners' district, emphasizing that the final aid amount due under CEIFA is derived through cumulative application of the act's several formulas, including core curriculum standards, categorical and stabilization aid formulas; that the core curriculum standards aid formula distributes State aid relative to the wealth of a district, and to its growth or loss in enrollment, compared to that of other districts; and that petitioners failed entirely to plead requisite facts in support of their claim, contending that factual pleadings of inequity were unnecessary in this matter. The Commissioner additionally noted that CEIFA's stabilization provision will work in the 1999-2000 school year and beyond so that the district will receive CEIFA formula aid based on actual pupil enrollment counts.

January 10, 2000

AGENCY DKT. NO. 100-4/98

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For Petitioner, Gorman & Rauh (Bruce M. Gorman, Esq.)
 For Respondent, John J. Farmer, Jr., Attorney General (Howard Z. Myerowitz, DAG)

This matter was opened as a controversy before the Commissioner of Education on April 9, 1998, through the filing of a petition of appeal by the Board of Education of the City of Wildwood.¹ Therein, the Board alleged that respondents failed to implement properly the provisions of the Comprehensive Education Improvement and Financing Act (CEIFA), *N.J.S.A.* 18A:7F-1 *et seq.*, as they pertained to the district's State aid for the 1997-98 and 1998-99 school years. Specifically, the Board alleged that CEIFA established, through an explicit formula, the

¹The instant appeal followed upon an April 6, 1998 Superior Court, Chancery Division ruling wherein the judge denied, on grounds of failure to exhaust administrative remedies, the Board's April 3, 1998 application for an order compelling the same relief, from the same respondents, as is sought herein. That ruling was appealed by the Board, and upheld by the Appellate Division, together with a related ruling involving the same parties and consolidated for opinion purposes, in an unpublished decision dated February 17, 1999 (*Board of Education of the City of Wildwood v. Sandra Loewe et al.* and *Board of Education of the City of Wildwood v. Leo F. Klagholz et al.*, Nos. A-5337-97T1 and A-6811-97T1 (App. Div. February 17, 1999 (*Wildwood v. Loewe*)).

amount of State aid necessary, by definition, for the Board to provide a thorough and efficient system of public education (T&E); and that respondents, by providing less than that amount for the years at issue, by definition, denied the Board's students their constitutional entitlement to T&E. As relief, the Board sought, for each of the years in dispute, payment of the difference between the amount it claimed to be statutorily due, and the amount it was actually paid. The Board further sought a directive that future State aid payments be in accordance with its alleged statutory entitlement.

In lieu of an answer, respondents filed a motion to dismiss the appeal on grounds that those counts pertaining to the 1997-98 school year were untimely filed, that the petition failed to plead requisite facts in support of its claims, and that respondents had acted lawfully in determining the amount of aid due the Board pursuant to CEIFA, such aid being capped by the statute's stabilization provision at N.J.S.A. 18A:7F-10(a). Opposition papers were filed by the Board, as was a reply by respondents.

On June 8, 1998, the Board filed an amended petition, listing actions it was allegedly unable to undertake due to the amount of aid it received from respondents. On July 28, 1998, respondents renewed their motion to dismiss, both on the grounds previously raised and on the additional ground that the Board lacked standing to bring the appeal. Thereafter, on August 18, 1998, a second amended petition was filed, including a number of students and their guardians as petitioners and making additional allegations with respect to the basis for petitioners' claims. On September 9, 1998, respondents again renewed their motion to dismiss; opposition and reply papers were filed in due course.

In the interim, on May 20, 1998, the Board sought an order from the Superior Court, Chancery Division, enjoining the Commissioner from taking any action on the instant

appeal and directing that the matter be heard at the Office of Administrative Law by an Administrative Law Judge whose decision would be final. The Board's application was denied both by the trial court and on appeal, in a decision dated February 17, 1999.²

Following subsequent review of the record and the arguments of the parties, petitioners were advised, on August 16, 1999, that the Commissioner required further submissions in order to render a determination on the motion. Specifically, the Commissioner requested a detailed explication of how the district failed to offer a thorough and efficient system of education during each of the two years at issue in the petition, and of the manner in which such alleged deficiencies were a direct and proximate result of the funding mechanism set forth in CEIFA. A submission was filed in response to this request, as were reply papers, ending with petitioners' filing of October 19, 1999. The record having closed on that date, the matter now proceeds to determination.

Upon careful consideration, for the reasons set forth below, the Commissioner determines to grant respondents' motion and dismiss the petition of appeal.

Initially, the Commissioner fully concurs with respondents that those counts of the petition pertaining to the 1997-98 school year must be dismissed as filed well beyond the 90-day limitation period set forth at *N.J.A.C.* 6:24-1.2(c). Petitioners do not dispute that the Board was notified of its State aid allotment for that year on or about January 28, 1997, yet an appeal was not filed with the Commissioner until over one year later, on April 9, 1998.³ In favor of relaxing the filing rule pursuant to *N.J.A.C.* 6:24-1.15, the Board states only that time limitations on its claim should be tolled in the interest of equity, since CEIFA aid is a statutory right, and that, since respondents' own misconduct and errors have led to the instant appeal, respondents

² See note 1, *supra*.

³ Even the Board's prior appeal to Superior Court was not filed until April 3, 1998.

should not be permitted to rely on a procedural bar to dispose of petitioners' claim. The Commissioner does not find these assertions persuasive, given the need for a reasonable degree of repose in administrative matters and the absence of any explanation whatsoever on the part of petitioners as to why an appeal could not have been filed in a timely manner. Notwithstanding the above, the Commissioner notes that, even assuming, *arguendo*, that petitioners' appeal could be considered on its merits as it pertains to the 1997-98 school year, the analysis below would dictate dismissal for that year as well as for 1998-99.

Turning to those merits, the Commissioner finds that petitioners have failed, on both legal and factual grounds, to present a sufficient cause for determination. Petitioners "crystallize" their own argument as follows:

The CEIFA statute was the Legislature's response to the *Abbott v. Burke* line of cases, which culminated in the determination that the Quality Education Act II was unconstitutional. (citation omitted) The *Abbott v. Burke* line of cases construed the constitutional mandate to provide each child with a thorough and efficient education in terms of money. The litigation concerned how much it would cost to provide a thorough and efficient education, and who should provide that money.

The Legislature's response was enactment of the CEIFA statute. Following the thinking of the Supreme Court, in enacting the CEIFA statute the Legislature defined "thorough and efficient education" in terms of a monetary formula. That formula computed to the penny precisely how much money was needed to provide a thorough and efficient education, how much money was to be provided by the individual school district, and how much money was to be provided through State aid. The way the formula is structured, if the school district provides its calculated portion of funding, and if the State of New Jersey provides aid in the amount specified by the formula, then the children will receive a thorough and efficient education.

For 1997-98, respondent Commissioner calculated that the Wildwood School District required CEIFA aid in the amount of \$2,445,907.00. For 1998-99, the Commissioner calculated that the Wildwood Board of Education would require CEIFA aid in the amount of \$2,955,107.00 in order to provide a thorough and efficient education.

Petitioners do not dispute these calculations. In fact, petitioners embrace them. Petitioners agree that in order for the children of Wildwood to receive a thorough and efficient education, it was necessary for the State of New Jersey to pay over [to] the Wildwood Board of Education the [above-referenced sums].

The problem is, the State of New Jersey failed to pay over the needed CEIFA aid. Instead, the State of New Jersey paid \$645,848.00 [actually \$645,851.00, as indicated in the petition and its supporting documents] in CEIFA aid in 1997-98, and \$710,439.00 in CEIFA aid for 1998-99.

Since the Wildwood School District did not receive the required amount of CEIFA funding for 1997-98 and 1998-99, then by definition, *the children did not [receive] a thorough and efficient education*. To hold to the contrary would negate the purpose and intention of the CEIFA Act.***The CEIFA Act specifies that, in order for each child in the state of New Jersey to receive a thorough and efficient education, the State of New Jersey must pay a specific, calculable amount of CEIFA aid each year. In [the years in dispute], the State failed to pay to the Wildwood School District the amount which, by its own calculation, it determined to be necessary under the CEIFA formula for the students to receive a thorough and efficient education. Therefore, pursuant to the stated intention of the CEIFA, the children of Wildwood did not receive a thorough and efficient education during 1997-98 and 1998-99.

(Petitioners' Supplemental Brief, at 2-4) (emphasis *sic*).

This summation, which accurately captures the more extensive arguments set forth in petitioners' primary briefs, is the essence of petitioners' claim: Merely by applying the stability clause to petitioners' district, therefore necessarily reducing the amount of State aid otherwise payable under CEIFA formulas, respondents, by definition, have deprived the district and its students of T&E.

On its face, such an argument cannot stand. As noted by the Appellate Division:

[CEIFA] establishes a complex formula to determine the amount of school aid, and then places limitations on receipt of that aid through application of the "Stabilization Aid Growth Limit," defined in *N.J.S.A. 18A:7F-3* as follows: (*quotation omitted*) ***Pursuant to *N.J.S.A. 18A:7F-10(a)*, "the total stabilized aid for each district shall not be increased by more than the district's stabilization aid growth limit." This section limits what a school district will receive. (*Wildwood v. Loewe, supra*, at 2-3)

Petitioners' error lies in attempting to isolate one aspect of that formula and characterize it as a fixed entitlement. Indeed, petitioners misunderstand the fundamental nature of the core curriculum standards aid formula. It is not, as they contend, an absolute formula; rather, it distributes State aid relative to the wealth of a district, and to the enrollment growth or loss of a district, compared to that of other districts. The final aid amount due any district under CEIFA is derived through the *cumulative* application of the act's *several* formulas, including core curriculum standards, categorical and stabilization aid formulas, and *no one* of these formulas is determinative of the final aid calculation. In the instant matter, no allegation is made that respondents refused or failed to provide the aid required by CEIFA following application of all its formulas. The only action taken by respondents was to implement, in addition to all other formulas required, those provisions of the statute which were structured, for the years in question, to create a transition between the prior and new funding systems; so as, in the interest of avoiding disruption and promoting effective use of funds, to prevent both extraordinary increases and extraordinary decreases in the aid provided to any district. In this regard, respondents were doing no more than fulfilling their obligation under the law.⁴

However, although petitioners' primary claim is, in effect, that *any* application of the stabilization clause is inherently unconstitutional because it will result in an aid amount different from that provided by the core curriculum standards formula, petitioners also contend that respondents erred in their actual calculation. Specifically, petitioners claim that respondents perpetuated the unconstitutionality of the Quality Education Act (QEA) by applying CEIFA's stabilization formula to the aid respondents' district had received in the 1996-97 school year, that is, under the QEA, rather than to the amount otherwise due the district under CEIFA. In so

⁴ Petitioners' claim that such fulfillment was inherently unconstitutional has already been rejected by the Appellate Division, as discussed more fully below.

doing, petitioners claim, respondents may have relied on one sentence contained in N.J.S.A. 18A:7F-10, stating that “For the 1997-98 school year, the pre-budget year total shall include foundation aid, transition aid, categorical aids for special education, bilingual education, and county vocational education, and transportation aid paid for the 1996-97 school year.”

Petitioners contend,

There are two ways to interpret that sentence. Clearly, respondents interpret that sentence to be restrictive. It is necessarily their position that only the items set forth in that sentence can be utilized in determining the CEIFA base. *** Petitioners would contend that such a construction is incorrect. If the Legislature had intended that construction, then it would have stated:

“for the 1997-98 school year, the pre-budget year total shall
consist of foundation aid...”

The clear purpose of that sentence is to insure that schools which had come to rely upon the amount of foundation aid which they had received under QEA II would not now suddenly have inflicted upon them a serious budgetary shortfall. In short, the Legislature was establishing a floor, a minimum below which funding could not fall.

(Petitioners’ Brief in Opposition to Motion to Dismiss Second Amended Petition of Appeal at 9) (emphasis *sic*)

Based upon this reasoning, petitioners conclude that, if the Legislature in enacting CEIFA intended the interpretation taken by respondents, then the act is inherently unconstitutional in its reliance on a discredited funding formula; if it did not, then respondents erred in their calculations. Either way, petitioners contend, they must prevail.

This argument fails on two counts. Initially, as noted by respondents, the QEA was found unconstitutional only as applied to twenty-eight special needs districts because it did not assure substantial equivalence between such districts and District Factor Grouping I & J districts. (Respondents’ Reply to Petitioners’ Brief in Opposition to Motion to Dismiss Second Amended Petition at 2) Therefore, there is no absolute impediment to using aid amounts allocated pursuant to it as the basis for initial calculations under the Legislature’s successor

funding formula, particularly for districts other than the twenty-eight “Abbott” districts. Further, a reading of *N.J.S.A. 18A:7F-10* in its *entirety* clearly indicates that, in that section, the Legislature was seeking to define, for each transitional year between enactment and 1999-2000, the precise base to which the stabilization growth limit was to be applied, and that, for the act’s first year of operation, such base would, of necessity, reach back to amounts which had been awarded under the prior formula so as to effectuate an incremental transition from actual amounts received under the old funding law to actual amounts eventually to be received under the new. In this context, the interpretation espoused by petitioners is not only illogical, but also negates the carefully structured statutory scheme; whereas that taken by respondents is both reasonable and supported by legislative language and intent. *See Stafford v. Stafford Zoning Board*, 154 *N.J.* 62, 71 (1998) (wherein the Court held that legislative intent controls when construing a statute, and that, if the language of the statute clearly reveals its meaning, such language controls).

Having rejected petitioners’ claims with regard to respondents’ determination to apply, and their actual calculations under, CEIFA’s stabilization provisions, the Commissioner turns to the effect of such application on the district’s ability to provide T&E. Here, the Commissioner concurs with respondents that petitioners have entirely failed to plead requisite facts in support of their claims, a deficiency which cannot be overstated in the present context.

In determining that the within matter should be heard by the Commissioner rather than decided by the trial court as a matter of law, the Appellate Division expressly recognized that it “cannot simply be presumed that application of the stabilization aid growth limit***deprives the school district the ability to fulfill its constitutional mandate,” and that

proceedings in a forum of educational expertise were necessary to determine whether that was, indeed, the case. (*Wildwood v. Loewe, supra*, at 8)

Although petitioners list a half-dozen or so items the district alleges it has been unable to accomplish, such as hiring a curriculum coordinator and department chairpersons, training teaching staff, purchasing certain materials, and providing before-, after- and summer school remedial programs, there is no link whatsoever between the facts pled and petitioners' bald assertions that the district cannot implement the Core Curriculum Content Standards and that such inability is the direct result of insufficient funding due to respondents' application of CEIFA's stabilization provision. Neither are the facts petitioners allege, as noted by respondents, indicative of failures which could in any way be characterized as "clear, severe, extensive and of long duration" so as to rise to the level of constitutional deficiency (Respondents' Letter Brief in Support of Motion to Dismiss Second Amended Petition at 10, citing *Abbott v. Burke*, 119 N.J. 287, 385 (1990)).

In this regard, although petitioners assert that "liberality of pleading has been the byword in New Jersey," and that "[s]pecific fact pleading is not necessary, so long as "the fundament of a cause of action may be gleaned (*citation omitted*)," (Petitioners' Brief in Opposition to Motion to Dismiss Second Amended Petition of Appeal at 13), petitioners' primary contention is, in fact, that educational inequities need not even be pled:

***As set forth in Paragraph 12 of the First Count of petitioners' petition, it is *respondents* who have determined what is necessary for petitioner BOARD to afford the children of Wildwood a thorough and efficient education. Pursuant to CEIFA, *respondent* has calculated the amount of CEIFA aid which petitioner must receive in order to provide a thorough and efficient education. *** Petitioner BOARD would emphasize that those numbers were certified to petitioner BOARD by respondent Commissioner Klagholz pursuant to CEIFA. As such, they constitute admissions against interest, and respondent is necessarily estopped from denying that those amounts of funding are necessary if the children of Wildwood are to receive a thorough and efficient education.

Accordingly, it is unnecessary for petitioners to specifically plead “educational inequities.” Such inequities are implicitly admitted by respondents. (*Id.* at 13-14) (emphasis *sic*)

This contention plainly reveals petitioners’ claim in regard to the effect of respondents’ application of CEIFA to be nothing more than a restatement of their earlier claim, that application of the stabilization provision, in and of itself, warrants a finding of unconstitutionality; such claim, however, has already been expressly rejected, both by the Appellate Division, *supra*, and herein. Moreover, the contention is fatal to any request for a factual hearing on claims regarding the constitutionality of CEIFA as applied, since, by it, petitioners are plainly alleging that the only facts material to such claims have already been admitted by respondents.

In addition, as observed by respondents, inherent in petitioners’ arguments is the suggestion that, if not for respondents’ application of CEIFA’s stabilization aid clause, the district would be able to provide T&E. However, the Commissioner takes notice of the undisputed fact that Wildwood received more aid in 1997-98, even after stabilization, than it had under the prior funding formula. He further notes that the district received approximately \$1.5 million over and above CEIFA aid through special language in the 1997 and 1998 Appropriation Acts. Finally, he observes that, by its own terms and consistent with its dual purpose as a transitioning device and a mechanism for controlling the growth of State aid from year to year, CEIFA’s stabilization provision will work in the 1999-2000 school year and beyond so that the final aid calculation for Wildwood in any given year will include core curriculum standards aid based on the district’s growth in actual enrollment, without the transitional limitation imposed during the first two years of the act’s operation. (Respondents’ Letter Brief in Support of Motion

to Dismiss Second Amended Petition at 10-11) To the extent that petitioners are alleging that the stabilization provision, as it will apply in 1999-2000 and beyond, acts to prevent the district from providing T&E in accordance with the constitutional mandate, such allegation, in addition to being insufficiently pled, is premature until such time as the funding formulas of CEIFA have been fully reflected in the educational programs of the district and afforded an opportunity to work as intended.

Given the dearth of legal and factual sufficiency in the claims advanced by petitioners, the Commissioner finds that no useful purpose would be served by further proceedings in this matter. Accordingly, the Commissioner declines to direct such proceedings, and, for the reasons expressed herein, grants respondents' motion and dismisses the petition of appeal.^{5, 6}

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

January 10, 2000

⁵ In view of the holding herein, the Commissioner does not find it necessary to reach the issue of the Board's standing to continue as a petitioner in the instant appeal.

⁶ This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.

January 10, 2000

Date of Mailing – January 10, 2000