

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

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

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

Decided by the Commissioner of Education, January 18, 2005

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

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

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

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

For the Appellants Borough of North Haledon and Board of Education of
the Borough of North Haledon, Porzio, Bromberg & Newman, P.C.
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For the Respondent Commissioner of Education, Allison Colsey Eck,
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This matter involves an appeal from a determination by the Commissioner of Education made pursuant to a remand by the New Jersey Supreme Court in a case arising from North Haledon's petition to withdraw from the Manchester Regional High School District (hereinafter "Regional District"). In its decision, the Supreme Court affirmed the Appellate Division's determination reversing the Board of Review's approval of submission to the voters of the question of North Haledon's withdrawal from the Regional District. Like the Appellate Division, the Supreme Court found that the loss of 9% of the Regional District's white population that would result from North Haledon's withdrawal, coupled with demographic data showing a substantial increase in the non-white population of the remaining towns, would have a substantial negative impact on the education provided by the Regional District. The Court stressed that racial imbalance resulting from de facto segregation is inimical to the constitutional guarantee of a thorough and efficient education, In re Petition For Authorization, 181 N.J. 161, 177 (2004), and that students of all races and cultural backgrounds are denied the educational benefits derived from a diverse school environment when the student populations of the schools they attend are homogeneous. Id. at 178.

The Court further found that the constitutional imperative to prevent segregation in New Jersey's public schools applies not only to the Commissioner and the State Board, but also to the Board of Review when it determines whether to grant a petition for withdrawal from a regional school district. Pointing to statements made by the State Board of Education's representative on the Board of Review, the Court found that the Board of Review had understood its obligation to maintain racial balance in the Regional District. Id. at 182. In view of this, the Court found it difficult to comprehend why the

Board of Review had approved North Haledon's petition for withdrawal when to do so would accelerate the demographic trends that already were contributing to a decrease in the number of white students attending high school in the Regional District. Id.

On this basis and given the Board of Review's failure to consider the negative effects of depriving the students attending the Regional District, including those students from North Haledon, of the educational opportunity offered by a diverse student body, id. at 183, the New Jersey Supreme Court concluded that the Board of Review's decision was not sustainable as a matter of law. Id. at 184. The Court therefore affirmed the Appellate Division's decision and remanded the matter to the Commissioner of Education. In doing so, the Court stated that:

...when a constituent municipality is compelled to participate in a Regional District, N.J.S.A.18A:13-23 is not applicable and the Commissioner may determine cost allocations among and between Haledon, Prospect Park, and North Haledon.

Id. at 186

The Court remanded the matter to the Commissioner "to develop in consultation with the constituent municipalities, an equitable cost apportionment scheme for the Regional District." Id.

On January 18, 2005, the Commissioner rendered his decision pursuant to the Court's remand, setting forth his cost allocation plan for the Regional District. North Haledon, Haledon and Prospect Park appealed to the State Board of Education from the Commissioner's allocation of costs for the Regional District, and all of the parties to the matter, including the Commissioner, filed briefs.

In his letter decision of January 18, 2005, the Commissioner stated that he had consulted with the constituent municipalities and had considered their written submissions as well as the testimony at public meetings held on December 3 and 14, 2004. The Commissioner also indicated that he had told the participants from the beginning that the only fair solution appeared to be apportionment based on a combination of equalized valuation and proportion of student enrollment. The Commissioner found that it was possible only in that manner “to attempt to strike a balance between the constituents’ disparate tax burdens in supporting the regional district and the fact that under the laws of this State the local share a community is required to contribute to the funding of public schools is directly related to its ability to pay.” Commissioner’s letter decision of January 18, 2005, at 2.

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

transitional period, the per pupil share for each community should be calculated in accordance with dates specified in his decision on the basis of the community's enrollment in grades 8 through 11 and should remain in place for a two-year cycle for purposes of budget preparation.

On March 15, 2005, the Commissioner granted Prospect Park's motion for a stay of his January 18 directive, in which Haledon had joined, pending hearing of its appeal of that directive by the Appellate Division. North Haledon had opposed the motion for a stay, arguing in part that a stay was premature because the actual impact of the revised apportionment was not fully understood since no response had been received to the motion for clarification/reconsideration it had filed on January 28, 2005.

On March 17, 2005, the Commissioner responded to North Haledon's motion for clarification/reconsideration. In its motion, North Haledon had sought guidance "as to the methodology utilized to determine the apportionment of costs for the 2005-2006 school year" because it could not reproduce the numerical illustration of the apportionment of costs for that school year which were included in the illustration in the Commissioner's January 18 letter decision. It also had sought clarification as to how enrollment in grades 8 through 11 would be used to determine the apportionment of costs during the transition period. North Haledon's January 28, 2005 Motion for Clarification/Reconsideration, Appendix to Brief, Volume II, 519a-525a.

In response to North Haledon's first query, the Commissioner reiterated that the calculations in his January 18 letter were illustrative and, as such, "one should not expect the apportionment for 2005-2006 to exactly match those figures." Commissioner's letter decision of March 17, 2005, at 1. The Commissioner, however,

provided additional data to facilitate an understanding of how the example in his January 18 decision had been calculated. As to North Haledon's second query, the Commissioner responded that "[a]s previously described, each community's enrollment share shall be determined and used in conjunction with the equalized property valuation for the regional district to calculate the final allocation." Id. at 2.

By letter of April 7, 2005, the appeal to the State Board of Education in this matter was placed in abeyance at North Haledon's request pending decisions on motions which had been filed with the Appellate Division and the New Jersey Supreme Court.

On April 5, 2005, the New Jersey Supreme Court denied Prospect Park's motion for direct certification and North Haledon's motion in aid of litigants' rights, except that the Court vacated the stay which the Commissioner had granted on March 15, 2005.

On June 27, 2005, the Appellate Division denied motions by North Haledon and Prospect Park for leave to appeal from the Commissioner's decision and dismissed the matter for failure to exhaust administrative remedies. At that point, the briefing schedule for the appeal pending before the State Board of Education was established and, as stated, all of the parties filed briefs with respect to the merits of the appeal.

However, in reviewing the record before us, we realize that we are not able to properly review the Commissioner's determination because the record does not provide a sufficient explanation of the methodology used to develop the revised allocation that would enable us to judge whether the allocation fulfills the terms of the New Jersey Supreme Court's remand. For example, neither the Commissioner's letter decision of January 18, 2005 nor his response of March 17, 2005 to North Haledon's motion for

clarification/reconsideration includes any rationale as to why the revised allocation utilizes enrollment figures for grades 8 through 11 rather than those figures for grades 9 through 12.

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

We retain jurisdiction.

February 1, 2006

Date of mailing _____

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