

**IN THE MATTER OF A COMPLAINT FILED BY
THE BOARD OF EDUCATION FOR THE CITY OF CLIFTON**

I

Procedural History

On March 19, 1998, a Complaint was filed with the Council on Local Mandates on behalf of the Board of Education for the City of Clifton ("Claimant" or "Clifton Board"). The Complaint demanded judgment by the Council that Department of Education regulations issued pursuant to the Charter School Program Act of 1995 ("Charter School Act"), *N.J.S.A.* 18A:36A-1 to -18, be declared unfunded mandates in violation of *N.J.S.A.* 52:13H-1 to -20, the Council's enabling statute. The Complaint also requested injunctive relief, enjoining the Department of Education from requiring the Claimant to include funding for the Classical Academy Charter School of Clifton in its 1998/99 school year budget.

By letter dated March 24, 1998, the Council directed that the Respondent Commissioner of Education, Leo Klagholz, and Respondent Classical Academy Charter School of Clifton ("Classical Academy") each file an Answer to the Complaint by no later than April 1, 1998, and directed that Claimant and Respondents appear at a hearing on the Claimant's Request for Injunctive Relief only. The Classical Academy submitted its answer on March 31, 1998. The Commissioner of Education filed a Response to the Complaint and a Motion to Dismiss on April 1, 1998.

II

Summary of Decision

At a hearing held on April 3, the Council heard oral argument from Anthony V. D'Elia on behalf of the Clifton Board; Michelle Lyn Miller, Deputy Attorney General, on behalf of the Commissioner of Education; and William Sala, Esq., Vincent De Rosa, and John DeVita on behalf of the Classical Academy. After deliberation, the Council informed Claimant that it would have until April 15, 1998, to file a response to Respondent Commissioner of Education's Motion to Dismiss the Complaint. In response to the Council's statement that it seriously doubted that the claims were within the jurisdiction of the Council, Claimant declared that the Clifton Board would not file a response.

The Council (1) denies the requested injunctive relief and (2) dismisses the Complaint for the reasons stated below.

III

Jurisdiction of the Council

The scope of the Council's jurisdiction is defined by an amendment to the New Jersey Constitution, Article VIII, Section II, paragraph 5 ("Amendment"), effective December 7, 1995, and by legislation that was enacted pursuant to that Amendment in May 1996, *N.J.S.A.* 52:13H-1 to -20 ("Council statute").

The Amendment provides in pertinent part that the Council has jurisdiction to determine whether a State action is an unfunded mandate if it is a law or rule or regulation that was enacted, in the case of a law, after January 17, 1996, or issued, in the case of a rule or regulation, pursuant to a law originally adopted after July 1, 1996. Amendment, paragraph 5(a). The Council statute similarly limits the Council's jurisdiction but specifies that any part of a rule or regulation may be an unfunded mandate if it is "originally adopted after July 1, 1996 pursuant to a law regardless of when that law was enacted." *N.J.S.A. 52:13H-2*.

IV Claims of the Clifton Board

The Clifton Board claims that both regulations relating to the funding of charter schools, adopted by the Department of Education on August 4, 1997, and a February 1998 order of the Commissioner of Education create unfunded mandates. Both the regulations and the order were promulgated and issued within the time period that circumscribes the Council's jurisdiction.

The Clifton Board also claims that a State Board of Education regulation, *N.J.A.C. 6A:11-4.1*, also adopted in August 1997, and hence within the time period of the Council's jurisdiction, is an unfunded mandate, because it requires that local school boards provide transportation (or financial aid in lieu thereof) to charter school students without necessary State funding to offset expenditures.

By way of relief, the Clifton Board requests that the Council enjoin the State Department of Education from requiring the Clifton Board to include the amount of \$693,681.00 in its 1998/99 school year budget as aid for the Classical Academy Charter School.

V No Substantial Likelihood of an Impermissible, Unfunded Mandate

Through its enabling statute, the Council is specifically authorized to issue a preliminary ruling enjoining the enforcement of a statute, rule, or regulation, pending consideration of whether any of the foregoing constitutes an unfunded mandate, whenever a complaint demonstrates to the Council's satisfaction that (1) significant financial hardship to the claimant would result from compliance and (2) there is a substantial likelihood that the statute or the rule or regulation is, in fact, an impermissible, unfunded State mandate. *N.J.S.A. 52:13H-16*.

At the hearing on April 3, the Council heard argument both on the factual issue surrounding the potential for significant financial hardship to the Clifton Board, and on whether the complained of acts by the Commissioner would meet the "substantial likelihood" test of being impermissible, unfunded mandates.

Without expressing an opinion on whether there would be a significant financial hardship to the Clifton Board, the Council denies injunctive relief because the Claimant has failed to show a substantial likelihood that the challenged acts of the Commissioner of Education impose impermissible, unfunded mandates within the Council's jurisdiction.

VI Charter School Funding

The Council rejects the Claimant's argument that the Department of Education regulations relating to Charter School funding, and the Commissioner's February 1998 order to the Clifton Board specifying the amount it must provide as funding to the Classical Academy, constitute impermissible unfunded mandates. The Council concludes that it is the Charter School Act, at *N.J.S.A.* 18A: 36-12, that is the alleged unfunded mandate to fund charter schools, not the implementing regulations or order. That Act was enacted and became effective on January 11, 1996, before the beginning date of this Council's jurisdiction. Hence, the Council is without jurisdiction to resolve the issue presented.

VII Charter School Transportation

The Charter School Act provides as follows:

The students who reside in the school district in which the charter school is located shall be provided transportation to the charter school on the same terms and conditions as transportation is provided to students attending the schools of the district. Non-resident students shall receive transportation services pursuant to regulations established by the State board.

[*N.J.S.A.* 18A:36A-13 (emphasis added).]

The Clifton Board argues that the above-cited provision in the Act does not require that school districts provide the transportation; it claims that a Department of Education regulation, *N.J.A.C.* 6A:11-4.1, adopted on August 4, 1997, places the specific burden of transportation costs on the local districts. That regulation provides, in pertinent part:

A district board of education shall have the following responsibilities for transportation:

1. Transportation or aid in lieu of transportation shall be provided pursuant to *N.J.S.A.* 18A:39-1 et seq. to students in kindergarten through grade eight who live more than two miles and to students in grades nine through 12 who live more than two and one-half miles from the charter school that they attend.
2. The transportation of students to and from a charter school shall be the responsibility of the district board of education of the school district in which each student resides.

[*N.J.A.C.* 6A:11-4.1(a)(1) and (2).]

The Clifton Board does not argue that the specific requirements for transportation found in the above-cited regulation are any different from the "terms and conditions" for transportation referred to in the Charter School Act. The school district's responsibility to pay for student

transportation is a term or condition that the Act mandates. Thus, the Council determines that the requirement to fund transportation to charter school students is the Charter School Act itself, which, as already noted, is beyond the reach of the Council's jurisdiction. The regulation merely provides the details for the directive or mandate found in the Charter School Act, at *N.J.S.A. 36A:18A-13*, that terms and conditions for transportation be the same for both charter school and local district school students.

VIII Conclusion

For all the foregoing reasons Claimant's request for injunctive relief is denied and Respondent Commissioner of Education's motion to dismiss the Complaint is granted. Counsel for Respondent Commissioner of Education is directed to submit an order, consented to as to form, in accordance with the foregoing decision.

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The above decision was unanimously adopted by the Council on Local Mandates and issued on May 13, 1998. Council Members Janet L. Whitman (Chair), Deborah Aguiar-Velez, Robert Clifford, George Farrell, III, Karen A. Jeziorny and Ronald J. Riccio participated in the April 3, 1998, hearing and concur in the result and in the written decision.