#465-05 (OAL Decision http://lawlibrary.rutgers.edu/oal/html/initial/edu08564-04_1.html)

| | | |
|---|---|---|
| HONORABLE DANIEL J. REIMAN, MAYOR OF CARTERET, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, AND BOROUGH OF CARTERET, MIDDLESEX COUNTY, | : | |
| PETITIONERS, | : | COMMISSIONER OF EDUCATION |
| V. | : | DECISION |
| NEW JERSEY STATE DEPARTMENT OF EDUCATION, | : | |
| RESPONDENT. | : | |

SYNOPSIS

Petitioners filed a Verified Petition of Appeal alleging that the children of the Carteret School District have been and continue to be denied their right to a thorough and efficient (T&E) education under N.J. Constitution, Article VIII, § 4, ¶ 1. Additionally, petitioners allege that the Borough cannot increase its local tax levy and, as a result, that the *Comprehensive Educational Improvement and Financing Act of 1996 (CEIFA)* is unconstitutional as applied to the Borough. Respondent contends that: the Borough -- as a municipality -- lacks standing to challenge the District Factor Group (DFG) classification of the Carteret School District, and only the District itself, as the entity subject to the rules of the State Board of Education, may raise the claim at issue; the Borough may not raise the claims of its taxpayers; and the Mayor, as both a taxpayer and Borough official, lacks standing to bring the claims in issue. Respondent filed a motion for summary decision seeking dismissal of the petition.

The ALJ identified standing as the threshold issue in this matter, and found that: Carteret Borough -- and Mayor Reiman in his official capacity -- lack standing to challenge the respondent's *Abbott* classification of its school district; the responsibility for asserting T&E claims lies with the Borough's District Board of Education; and citizen Reiman may not maintain this action as a taxpayer because he has failed to allege actual harm or a substantial likelihood of same based on the respondent's classification of the Carteret School District. The ALJ concluded that the respondent's motion for summary decision should be granted, and the petition dismissed.

Upon a full and independent review of this matter, the Commissioner determined that there was no genuine issue of material fact in dispute, and granted summary decision to the Department. In so deciding, she found, *inter alia*, that: petitioners' claim is derivative to the Board's claim; petitioning Borough is barred from bringing its claim as it is a creature of the State; the T&E clause mandates a system of educational opportunity for children, not equitable tax burdens, and accordingly the mayor as an individual citizen is precluded from maintaining this action based on the T&E constitutional provision. The Commissioner adopted the Initial Decision as the final decision in this matter, and dismisses the petition.



December 27, 2005

OAL DKT. NO. EDU 8564-04
AGENCY DKT. NO. 344-9/04

| | | |
|---|---|---|
| HONORABLE DANIEL J. REIMAN, MAYOR OF CARTERET, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, AND BOROUGH OF CARTERET, MIDDLESEX COUNTY, | : | |
| PETITIONERS, | : | COMMISSIONER OF EDUCATION |
| V. | : | DECISION |
| NEW JERSEY STATE DEPARTMENT OF EDUCATION, | : | |
| RESPONDENT. | : | |

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners' exceptions and the Department's reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4 and were considered by the Commissioner in reaching her decision.

In their exceptions, Petitioners claim that -- although this matter arises in the context of seeking Abbott District status for the Carteret School District (District) -- the relief sought on behalf of the Borough of Carteret (Borough) and its taxpayers in this matter is distinct from that sought in the typical Abbott petition brought by a board of education or parents of school children in the district. (Petitioners' Exceptions at 1) Petitioners submit that the Legislature's enactment of the Comprehensive Education Improvement and Financing Act (CEIFA) of 1996 in response to the Supreme Court mandates in *Abbott v. Burke*, 119 *N.J.* 287 (1990) (*Abbott II*) usurped the control of municipalities and their voting constituents over the portion of the municipal tax levy that must be raised in order to meet pre-calculated and compulsory per-pupil funding levels because, under CEIFA,

the State determines the amount needed to provide the thorough and efficient (T&E) education mandated by the State's constitution and "the Borough has no choice but to exact the obligatory local share from its constituent taxpayers and turn those tax monies over in their entirety to the local school district." (*Ibid.*)

Petitioners assert that the Administrative Law Judge's (ALJ's) determination is fatally flawed and must be rejected because the ALJ mischaracterized the nature of their appeal and the relief sought. (*Id.* at 3) Pointing to the petition at pages 43-58, petitioners aver that their actual claim is that the Department's failure to properly designate the Carteret School District as eligible for *Abbott* status has resulted in an ongoing disparate and burdensome tax levy upon the Borough and its taxpayers; as a result, the strictures of CEIFA are unconstitutional as applied to the Borough and its taxpayers. (*Ibid.*) Petitioners allege that the ALJ "transposed and otherwise contorted the nature of the claims to make it appear that the Petitioners are asserting that it can no longer suffer a tax levy that has been 'placed' by the 'State Department of Education,' and that '[a]s a result, petitioners contend that the *children of the District*' are being denied T&E.'" (emphasis in text) (*Id*. at 5, quoting Initial Decision at 5) Petitioners maintain that they are not merely asserting a T&E claim on behalf of the District and its pupils, but, instead, are bringing their own claim to vindicate their own interests. (*Ibid*.) According to petitioners, when a municipality is overburdened to an extent that it interferes with its ability to fund a T&E education, it is not just the school district that suffers the consequences, because the municipality itself is now prohibited -- under CEIFA -- from failing to raise the requisite T&E funds for the District. (*Ibid.*)

With respect to the nature of the relief sought, petitioners claim that the ALJ again pigeonholed the Borough's claims into the type that only a board of education may bring by miscasting the relief sought as being limited to a change in the District Factor Group (DFG) ranking of the

District. (*Ibid*.) Petitioners note that districts with a DFG ranking of "B" can be designated *Abbott* Districts if they can demonstrate additional substantial economic hardship and that a DFG ranking of "A" does not automatically confer Abbott status. (*Id.* at 6) The relief they are actually seeking, petitioners maintain, is the relief set forth in the "Wherefore" clause of the petition -- that the District be afforded *Abbott* District status. (*Ibid*.)

Moreover, petitioners argue, in granting the Department's motion to dismiss, the ALJ failed to grant all legitimate inferences in favor of petitioners as set forth by the Supreme Court in *Brill v. Guardian Life Insurance Company of America et al*., 142 *N.J.* 520 (1995). (*Id*. at 6-7) In this regard, petitioners contend that, instead of inferring that petitioners have a claim of entitlement to the relief sought, the ALJ "approached his analysis from the inappropriate perspective that the Petitioners had failed to state a claim that 'should be granted,' (decision at p.6), rather than observing the requisite standard of failure to state a claim *upon which* relief *can* be granted." (emphasis in text, *Id*. at 7) Petitioners further contend that the discovery necessary to resolve disputed material facts -- "such as the percent differential between the municipality's equalized tax rate and the State tax rate and the use of Free and Reduced Lunch Figures" -- has not even begun, and that the Department based its motion on the premise (disputed by petitioners) that certain indicators are dispositive and insufficient to demonstrate conditions of severe poverty. (*Id*. at 8)

Pointing to *Schierstead v. City of Brigantine*, 29 *N.J.* 220 (1959) (wherein the Appellate Division reversed the Law Division's ruling, stating that the matter should not have been decided on such a barren record by the trial judge) and *Muniz v. United Hospitals Medical Ctr. Presbyterian Hosp*., 153 *N.J. Super* 79 (App. Div. 1977) (wherein the dismissal was reversed as premature because plaintiffs were not given the opportunity to amend their complaint and to conduct discovery), petitioners maintain that there is no justification for dismissing this matter outright in that

the record in this matter is similarly barren of findings on the key issues. (*Id.* at 7-8) Additionally, petitioners assert that it may be reasonably inferred from their pleadings that they are entitled to the relief sought in that "it is clear that such relief is within the authority and ability of the Department to grant," and the process outlined in the Commissioner's April, 2003 "Designation of Abbott Districts, Criteria and Process" document permits relief to be granted on a sliding scale. (*Id.* at 8) Since petitioners have stated a claim on which relief -- whether partial or absolute -- may be granted, petitioners argue that there is no justification for dismissing this matter outright. (*Ibid*.)

With respect to the petitioning Borough's standing to bring its claims against the Department, the Borough takes issue with the Department's assertion that it lacks standing to bring its claims because it is a "creature of the state," asserting that the Borough has as much right to bring a claim as a board of education does. In support thereof, the Borough points to *Board of Ed. of Twp. of East Brunswick v. Township Council of Twp. of East Brunswick*, 48 *N.J.* 94, 108 (1966), citing *Botkin v. Mayor and Council of Borough of Westwood*, 52 *N.J. Super*. 416 (App. Div. 1958), app. dismissed 28 *N.J.* 218 (the Borough herein avers the borough in *East Brunswick* "was found to be the sole party in actual interest to proceedings challenging its issuance of a referendum on a school governance issue" [1]), in arguing that an independent governing body that will be adversely impacted by an erroneous action of another governing body has the right, if not the obligation, to seek review. (*Id*. at 9) Moreover, the Borough contends it has a direct interest sufficient to afford it standing to do so. (*Ibid*.) Referencing *East Brunswick, supra*, citing *Inglewood v. Los Angeles*, 451 *F2d* 948 and *Rogers v. Brockette,* 588 *F2d*. and *Botkin*, *supra*, the Borough avers that it is well-settled that municipalities may sue and be sued in civil actions and that "a municipality may maintain an action, including constitutional claims against another municipality, a county, the State, or State department, such as here, provided the municipality is not attacking the laws which created it. (*Id*. at 9-10) The

[1] It is noted that the Commissioner was unable to locate this finding in the *Botkin* decision.

Borough asserts that there is no dispute that the Borough was not created by either the Department of Education or the State's education laws, but has been unfairly impacted by them. (*Id*. at 10)

Moreover, the Borough contends that the *Abbott* cases, specifically *Abbott II*, *supra* at 300-301, stand for the premise that "an Act of the Legislature, even having been declared facially constitutional, may be *** 'unconstitutional as *applied'* to individuals, and/or to local governmental entities." (emphasis in text) (*Ibid*.) Thus, the Borough contends, the ALJ misapplied the decision in *Stubaus v. Whitman*, 339 *N.J. Super*. 38 (2001), cert. den. 171 *N.J.* 442 (2002), because he failed to acknowledge that the *Stubaus* matter involved a claim that CEIFA was unconstitutional on its face, a claim not being asserted by petitioners herein. (*Ibid*.) The Borough also maintains that the ALJ failed to recognize that what the Appellate Division in *Stubaus* actually found was that "the *school district* could not assert a claim for tax relief on behalf of the taxpayers of the municipality, *not* that a municipality was prohibited from asserting such a claim," nor does *Stubaus* stand for the proposition that a municipality must first demonstrate that the taxpayers are incapable of bringing their own claim. (*Ibid*.)

Additionally, the Borough points out that three boroughs raised legal challenges to the equities of the taxation scheme with respect to the funding of the Manchester Regional High School District on their own behalf and that of their constituent taxpayers in matters that were litigated this year before the Appellate Division and the Supreme Court in *In the Matter of the Petition for the Authorization to Conduct a Referendum on the Withdrawal of North Haledon School District from the Passaic County Manchester Regional High School District*, Dockets No. A-2901-01 and 5788, respectively. (*Id.* at 11) At no time during this litigation, the Borough contends, was the question of the boroughs' standing to bring the action raised nor have the boroughs ever been required to show that the taxpayers would have difficulty challenging their respective school tax burden on their own.

(*Id.* at 11-12) The petitioning Borough herein asserts that, in the *North Haledon* matter, standing was conferred as a matter of course, notwithstanding the status of the boroughs as "creatures of the state." (*Id.* at 12) Accordingly, the Borough reasons, petitioners in this matter have a similar right to challenge the school tax burden being imposed on the Borough and its taxpayers. (*Id.* at 12)

The Borough also notes its disagreement with the ALJ's conclusion that standing should be denied to the Borough because no court in this State has yet recognized a borough's standing in a case of this nature. (*Ibid.*) The Borough submits that the absence of any precedential decisions does not preclude standing in a case of first impression, such as the one herein, and argues that "in *In re Camden County, A Body Politic of the State of New Jersey*, 170 *N.J.* 439 (2002), the New Jersey Supreme Court made it clear that the '*only*' requirement needed to confer standing is a substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision." (emphasis in text) (*Ibid.*) In *Camden County*, the Borough avers, the Supreme Court reversed an Appellate Division determination that had denied standing to a governmental entity which was obligated by statute to contribute to funding operations run by that agency but were not within the entity's purview, finding that "'[a]lthough the mere assertion of a public interest -- even by a governing body -- ordinarily is not sufficient to acquire standing to seek judicial review of an administrative agency decision, *the existence of a financial interest that is affected directly by the agency action will confer standing on a governing body*."' (emphasis supplied in text) (*Id.* at 13-14, citing *Camden County* at 448) The petitioning Borough, therefore, contends that the Court's holding in that matter -- that the County was entitled to standing in an administrative hearing where a full record could be developed before the State agency made a final determination on the challenged statutory entitlement -- should be applied in this matter so as to permit the Borough to participate in the development of a record, and to argue its case on the merits of its claim. (*Id.* at 15)

The Borough further excepts to the ALJ's conclusion that its petition should be dismissed because the Carteret Board of Education has a more direct interest in protecting its students' right to a thorough and efficient education. (*Ibid.*) Petitioners note, as clarified above, that their "claim arises from allegations of harm to the taxpayers and the public fisc, in which the interest of the Borough is clearly more direct than the Board," and argues the Borough is thus properly pursuing this claim on behalf of the taxpayers and other citizens and residents to whom it stands as *parens patriae* within the ambit of its political responsibility. (*Id.* at 15-16) The Borough emphasizes that it is the Borough's responsibility to provide mandatory governmental services and competing local service and that its responsibility includes a fiduciary responsibility to the individuals from whom funds are collected, and on whose behalf they are administered and disbursed. (*Id.* at 16) In this regard, the Borough claims that it meets the requirement for standing because it has a real and sufficient stake in the outcome of whether a district has *Abbott* status because the gap between educational funding and educational need must be bridged with local taxes, which results in a demonstrable impact upon both its constituent taxpayers and its own municipal finances. (*Id*. at 16-17)

With respect to whether the petitioning Mayor has standing to bring this action, petitioners vigorously except to the ALJ's conclusion that the Mayor lacks standing because "'he has not alleged that *his* current tax burden is …disparate.'" (emphasis in text) (*Id*. at 17, quoting Initial Decision at 12-13) Petitioners note that it is undisputed that the Mayor is a resident and a taxpayer of the Borough and petitioners have alleged that the Borough's taxpayers are suffering an ongoing disparate tax burden. (*Id*. at 17-18) Thus, it follows, petitioners argue, that the Mayor's tax burden is disparate by definition. (*Id.* at 18) Moreover, petitioners point out that the ALJ made this finding having denied standing to the Borough to bring an action such as this on the basis that such taxpayers should bring their own claims, and the Mayor -- as just such a taxpayer – therefore does

have standing. (*Ibid*.) In this regard, petitioners aver that the ALJ misapplied *Carlin v. City of Newark*, 36 *N.J. Super*. 74 (Law Div. 1955) as precluding the Mayor from bringing his claims in his official capacity on the basis that his right to bring his action "flowed from his private right to sue," and then failing to apply that same premise to the Mayor's right to maintain the within action in his private capacity. (*Ibid*., quoting Initial Decision at 8)

Petitioners also take exception to the ALJ's conclusion that the Mayor lacks standing "because he failed to demonstrate which and how municipal services will be impacted by an unfavorable decision," claiming that *Brill, supra*, requires an assumption that the alleged adverse impact is actionable for purposes of the Department's motion. (*Id*. at 19) Petitioners assert that the Supreme court in *Printing Mart-Morristown v. Sharp Electronics, Inc*. 116 *N.J*. 739, 746 (1989) established the standard for determining the adequacy of a pleading as "whether the cause of action is suggested by the facts" and that the Commissioner in *George Osborne v. Board of Education of the City of Lakewood, Ocean County*, decided by the Commissioner August 26, 2003, *aff'd* State Board April 7, 2004, *aff'd* App. Div. A4775-03T2 May 4, 2005, concluded that "the petitioning taxpayer, *merely by virtue of being a taxpayer*, was able to demonstrate a sufficient stake in the outcome of the proceedings to confer standing to pursue his constitutional challenge." (emphasis in text) (*Ibid.*) Petitioners thus conclude that the Mayor herein has similarly demonstrated that, as a taxpayer, he is and will be directly impacted by the Department's determinations as to the District's *Abbott* status, which governs the calculation of the Borough's local share under CEIFA of 1996. Petitioners, therefore, request that the Initial Decision be rejected in its entirety and this matter be returned to the OAL for proceedings on the merits. (*Id.* at 19-20)

In response, the Department maintains that the ALJ correctly found petitioners' claim to be derivative to the claims brought by the Carteret Board of Education in that petitioners' appeal

alleges that: 1) the Borough's children have been denied their right to a T&E education under the New Jersey Constitution; 2) the school district has been unable to provide a T&E education and its inability to do so can not be remedied by different programmatic and fiscal choices; 3) the Borough's children have been denied a T&E education on a continuing basis; and 4) there are alleged District educational failures. (Department's Reply Exceptions at 1-2) Notwithstanding the raising of separate allegations regarding the effect of CEIFA on the Borough and its taxpayers in the petition, the Department argues, the relief sought by petitioners herein is identical to that sought by the Board; namely, that CEIFA as applied to the District violates the T&E clause of the State constitution. (*Id*. at 2) Accordingly, the Department contends, petitioners' claim arises under the T&E clause and is, thus, derivative to the Board's claim. (*Ibid*.)

Citing *Robinson v. Cahill*, 62 *N.J.* 473, 513 (1973), cert. denied, 414 *U.S.* 976 (1973), the Department asserts that the T&E clause was not intended to "insure statewide equality among taxpayers," but, instead, was to insure that students be equipped to compete with relatively advantaged students so that they could become citizens and competitors in the labor market. (*Id*. at 2-3) In that it is the school district which is enlisted by the State to provide its students with a T&E education and it is the State which ensures that school districts have the means to satisfy the constitutional obligation, the Department argues, it is the District, not petitioners herein, that has standing to raise a T&E claim. (*Id*. at 3) Moreover, the Department argues, contrary to the petitioners' implication that CEIFA somehow changes the scope of the court's discussion of the T&E clause in *Abbott II*, nothing within CEIFA suggests that a Borough has a direct interest under the statute to support a T&E claim against the Department. (*Id*. at 4) Since CEIFA focuses on the child receiving a T&E and the school district that must deliver the constitutionally-guaranteed education, the Department contends, petitioners' attempt to distinguish their claim from the T&E claim raised by the Board must be rejected. (*Ibid*.)

The Department also takes issue with petitioners' contention that CEIFA directly affects the Borough because the Borough is prohibited from failing to raise the required T&E funds for the District, claiming that such contention is wholly without merit because it is the District, not the municipality, which creates the school budget and the initial determination of the amount of local tax levy to support the budget, pursuant to *N.J.S.A.* 18A:7F-5 and *N.J.A.C.* 6A:23-8.1(b). (*Id.* at 5) Moreover, pointing to *Stubaus, supra,* at 45-46, the Department avers that districts have some limited discretion in determining the amount of local tax levy and that a district may increase the local tax levy by going beyond the T&E minimum or decrease the local tax levy by spending below the T&E minimum budget. (*Ibid.*) The Department notes that the school districts -- not the municipalities -- must submit their budgets to the voters for approval and that, in the event that voters reject a proposed budget that is within the T&E range and the municipality reduces the budget, the district may appeal the reductions to the Commissioner on the grounds that the amount is needed to meet core curriculum content standard or long-term planning and budgeting. (*Id.* at 5-6) Thus, the Department reasons that the Borough's argument should be rejected in that it is the District that must act under CEIFA. (*Id.* at 6)

The Department further points to the Court's discussion in *Abbott II* at 355-357, where municipal overburden was discussed in the context of how the poor urban school districts were laboring under tax rates at a level well-above the State average; the Court noted that the school district suffers the consequences of municipal overburden, and it is the school district that is prevented from raising additional funds for its education program. (*Id.* at 6) Accordingly, the Department concludes, the ALJ properly concluded that petitioners' claim was derivative to the District's claim. (*Ibid.*)

With respect to petitioners' argument that the ALJ did not grant all inferences in favor of the Borough in determining whether petitioners had failed to state a claim for which relief could be

granted as set forth in the Department's motion to dismiss, the Department maintains that the ALJ did not rule on the Department's argument that petitioners failed to demonstrate the educational and poverty failure necessary to bring their claim under the T&E clause, but decided the Department's motion solely on the issue of standing. (*Id*. at 7-8) Citing *New Jersey Citizen Action v. Riviera Motel Corp*., 296 *N.J. Super*. 402, 422 (App. Div. 1997), *appeal dismissed*, 152 *N.J*. 361 (1998), the Department contends that a dismissal for lack of standing amounts to a refusal by the court to resolve the matter as opposed to dismissal for failure to state a claim, which occurs only after the court has agreed to resolve a controversy. (*Id.* at 8) Thus, the Department concludes, the ALJ applied the correct standard in dismissing petitioners' claim. (*Id.* at 9) Moreover, the Department avers, petitioners' argument that the ALJ failed to apply the proper standard of review must be rejected because the ALJ accepted the allegations in the petition as true for purposes of reviewing the Department's motion, and that petitioners failed to support their argument that the ALJ did not draw all legitimate inferences in their favor in that they did not cite to any specific factual conclusions within the Initial Decision that support their assertion. (*Ibid*.)

Turning to the question of the Borough's standing, the Department argues that the Borough is barred from bringing its T&E claim because it is a creature of the State and -- as found by the ALJ -- is, thus, not entitled to invoke the protections of the New Jersey Constitution against the State. (*Id*. at 10) In so arguing, the Department points to *Williams v. Mayor and City Council of Baltimore*, 289 *U.S*. 36, 40, 53 *S.Ct*. 431, 432, 77 *L.Ed*. 1015 (1933), providing that a municipality, created by the state, may not invoke constitutional privileges or immunities against its creator; *City of Newark v. New Jersey*, 262 *U.S*. 192, 196, 43 *S.Ct*. 539, 540, 67 *L.Ed*. 943 (1923), providing that a municipality cannot challenge state action on Fourteenth Amendment equal protection grounds; and *City of Trenton v. New Jersey*, 262 *U.S*. 182, 188, 43 *S.Ct.* 534, 537, 67 *L.Ed*. 937 (1923), providing

that a municipality holds its powers and privileges subject to the sovereign will. (*Ibid*.) Moreover, the Department notes its agreement with the ALJ's analysis that *Board of Educ. of the Township of E. Brunswick v. Township Council of E. Brunswick,* 48 *N.J.* 94 (1966) does not support petitioners' argument that they have standing to bring their constitutional claim against the Department in that the *E. Brunswick* matter involved a municipality and a school district wherein the court found that the board of education was not prevented from bringing its claim against the municipality because the local board had a direct interest in its claim, and previous cases had occurred between municipalities and autonomous municipal agencies. (*Id*. at 11)

Additionally, the Department notes that the ALJ distinguished petitioners' claim from *Bergen County v. Port of New York Authority,* 32 *N.J.* 303 (1960), wherein Bergen County (County) brought a claim alleging that a State statute exempting the Port Authority property from taxation was unconstitutional. (*Id*. at 11-12) The court therein found that a "local governmental body may act with respect to property or power it holds for the benefit of its citizens but it may not generally bring a claim on behalf of its citizen taxpayers." (*Id*. at 12) Moreover, the Department avers, no court has recognized that a Borough or mayor in his official capacity may bring a claim that CEIFA is unconstitutional as applied on behalf of its taxpayers. (*Ibid*.) The Department observes that previous T&E claims were either brought by the individual students and their parents or the school districts. (*Id*. at 12-13)

With respect to petitioners' argument that *Stubaus, supra*, is distinguishable because it involved a school district's standing to bring a third party claim on behalf of its taxpayers, not a municipality, the Department argues that the overriding principle derived from *Stubaus* is that litigants should be discouraged from asserting the constitutional rights of third parties. (*Id*. at 13-14) The Department emphasizes that the ALJ noted the limited circumstances where litigants may assert the

rights of third parties as set forth in *Stubaus*, as follows: 1) when a plaintiff finds it difficult to assert his/her own claims; 2) when the third party's rights are likely to be diluted or adversely affected unless they are raised by a plaintiff holding a confidential relationship with the third party; and 3) when a non-profit organization has sued on behalf of its injured members. (*Id.* at 13) In that none of these circumstances are present in this matter, the Department concludes that the ALJ properly applied *Stubaus* to petitioners' appeal. (*Id.* at 14) The Department also contends that petitioners' reliance on *North Haledon, supra,* is misplaced because that matter involved a withdrawal of a municipality from a regional high school district, not a municipality bringing a claim against a state agency for an alleged T&E claim. (*Id*. at 14) Standing was not an issue in that matter, the Department maintains, because standing was conferred by *N.J.S.A.* 18A:13-54 and -55. (*Id.* at 15) Moreover, the Department points out, *North Haledon* did not involve a municipality bringing suit against the State, but, instead, was a dispute between the constituent districts and their municipalities. (*Ibid*.)

The Department contends petitioners' reliance on *Camden County, supra,* is also unpersuasive because that matter arose from the County's claim that its statutorily authorized contractual obligation to provide a substantial portion of the cost of health benefits for employees who become disabled and are incapacitated. Thus, it did not involve a County bringing a constitutional claim against the State or one of its agencies. (*Id.* at 16) Moreover, the Department maintains, the Department has not ordered the Borough to directly pay for the District's provision of T&E, and it is not the Borough -- but the taxpayers -- that will be required to pay more money if the local tax levy is increased to accommodate the District's educational needs. (*Id*. at 17) The Department argues that petitioner's claim, however, falls squarely within the limitations of standing as set forth in *Camden, supra* at 447, wherein the court found that: 1) "a claim brought based on a perceived public interest is too 'generalized' to confer standing;" 2) "a real and direct interest must be present before

granting a third party standing to seek a judicial review of agency action[,]…[c]ounty or local governing bodies generally lack standing to challenge actions of governmental agencies merely because they represent the public;" and 3) "[p]rotecting public interests is important, but it does not take precedence over the need to prevent one governmental body from interfering with the actions of another pubic body." (*Id.* at 17-18) In this matter, the Department avers, petitioners' interest is the general tax burden. (*Id*. at 18) Thus, the Department argues, petitioners assertions with respect to the alleged injury to their taxpayers are "too generalized" and do not take precedence over the State's interest in maintaining order within its governmental structure. (*Ibid*.)

Additionally, the Department asserts that petitioners cannot ignore that they "brought their claim asserting a constitutional educational violation," and that a claim brought pursuant to the T&E clause is not concerned with the Borough's ability to manage its fiscal and political obligations. (*Id*. at 19) Thus, the Department reasons, "the Borough's ability to manage its financial and political obligations does not make its interests more direct than the District's interests under a T&E claim." (*Id.* at 20) Moreover, the Department reiterates that municipal overburden as discussed in *Abbott II* refers to overburden with respect to a school district, not a municipality, and to accept such a remote interest as a basis of standing to bring a T&E claim would divert the focus from the education received to general financial issues of the municipality, which is outside the intent of the T&E clause. (*Ibid.*)

Finally, with respect to the Mayor's standing to bring his claim, the Department avers that the Mayor is precluded in his official capacity from bringing a claim in this matter, noting that the situation herein differs from that in *Carlin v. City of Newark*, 36 *N.J. Super.* 74 (Law Div. 1955) because the claim brought by the Newark Mayor was not a constitutional claim, and his claim was brought by that mayor in his individual capacity. (*Id*. at 21) Moreover, the Department's position is that Mayor Reiman also does not have standing to pursue a claim in this matter as an individual

taxpayer because he has not demonstrated how he will be adversely affected by an unfavorable decision by the Department. (*Ibid*.) In this regard, the Department notes its disagreement with the Mayor's assertion that he will have to pay the costs of a rising tax levy to support the District's T&E obligation, citing *N.J.A.C.* 6A:24-7.1(d)5 and *Board of Education of the Township of Neptune v. Department of Education,* decided by the Commissioner October 20, 2003, in support of its contention that the grant of *Abbott* status does not guarantee that the tax levy will not be increased. (*Id.* at 21-22)

Upon a thorough and independent review of the record, the Initial Decision, the parties' exception arguments and the relevant case law, the Commissioner has determined that grant of summary decision to the Department is appropriate in this instance. Pursuant to *N.J.A.C.* 1:1-12.5(b) and *Contini v. Bd. of Educ. of Newark,* 286 *N.J. Super*. 106, 121-122 (App. Div. 1995) (*citing Brill, supra),* summary decision may be granted in an administrative proceeding if there is no genuine issue of material fact in dispute and the moving party is entitled to prevail as a matter of law.

In this regard, notwithstanding petitioners' assertion to the contrary, there are no "material facts" in dispute in this matter with respect to the threshold issue of whether petitioners have standing to pursue their claims. *Black's Law Dictionary, seventh edition,* at 610-611, defines "fact" as "[a]n actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation" and a "material fact" as "[a] fact that is significant or essential to the issue or matter at hand." The issues characterized by petitioners as "material facts that remain in dispute" as set forth in petitioner's exceptions, such as "the percent differential between the municipality's equalized tax rate and the State tax rate and the use of Free and Reduced Lunch Figures," are facts related to the underlying merits of the case, not to the threshold issue of standing. "It is well-established that where no disputed issues of material fact exist, an administrative agency need not hold an evidential hearing in a contested case." *Frank v. Ivy Club,* 120 *N.J.* 73, 98 (1990), *citing Cunningham v. Dept. of Civil*

*Service*, 69 *N.J*. 13, 24-25 (1975). "Moreover, disputes as to the conclusions to be drawn from the facts, as opposed to the facts themselves, will not defeat a motion for summary judgment." *Contini v. Board of Education of Newark*, 96 *N.J.A.R.* 2d (EDU) 196, 215, *citing Lima & Sons, Inc. v. Borough of Ramsey*, 269 *N.J. Super*. 469, 478 (App. Div. 1994); *In the Matter of the Tenure Hearing of Andrew Phillips, School District of the Borough of Roselle, Union County*, Commissioner's Decision No. 129-97, decided March 20, 1997; and *In the Matter of the Tenure Hearing of Neal A. Ercolano, Board of Education of Branchburg Township, Somerset County,* Commissioner's Decision No. 140-00, decided May 1, 2000. Additionally, the Commissioner agrees that the Department prevails as a matter of law for reasons provided in the Initial Decision and explicated below.

Initially, the Commissioner rejects petitioners' contention that the ALJ mischaracterized the nature of their appeal and the relief sought. Petitioners' appeal alleges, *inter alia*, that: 1) the children of the Carteret School District have been denied their right to a T&E education on a continuing basis under the New Jersey Constitution (Petition at 9, No. 44); 2) the District has been unable to provide a T&E education, and its inability to do so cannot be remedied by different programmatic and fiscal choices (*Id.* at 9, No. 43); 3) socioeconomic conditions make it impossible or overly burdensome for the Borough to raise the additional taxes necessary to meet the District's special funding needs (*Id.* at 9, No. 46); 4) the Borough is prohibited under CEIFA from failing to meet the District's funding requirements (*Id.* at 9, No. 48); 5) the Department's failure to properly designate the Carteret School District as eligible for *Abbott* status has resulted in an ongoing disparate and burdensome tax levy upon the Borough and its taxpayers (*Id.* at 8-9, No. 41) and 6) CEIFA as applied to the District violates the T&E clause of the State constitution (*Id.* at 10, No. 51).

Notwithstanding petitioners' argument that the raising of separate allegations applicable to the Borough's taxpayers -- *i.e.*, that the Department's failure to properly designate the

Carteret School District as eligible for *Abbott* status has resulted in an ongoing disparate and burdensome tax levy upon the Borough and its taxpayers and, as a result, the strictures of CEIFA are unconstitutional as applied to the Borough and its taxpayers -- the underlying premise of petitioners' claim, as pled in their petition and noted above, is that CEIFA as applied to the District violates the T&E clause of the State constitution. As set forth in *Robinson, supra,* at 513, the T&E clause was not intended to ensure statewide equality among taxpayers, but, instead, was to ensure that disadvantaged students were able to compete with those who were relatively advantaged. Accordingly, as the ALJ properly determined, petitioners' claim is derivative to the Board's claim.

Moreover, since it is the school district, rather than the Borough, that has the obligation to provide its students with a T&E education, it is the District that has the authority to challenge Department determinations that it believes have had an adverse impact on its ability to provide its students a T&E education. It is instructive that in *Abbott II* at 355-357, the Court noted that the school district suffers the consequences of municipal overburden, and it is the school district that is prevented from raising additional funds for its education program. Thus, although the Borough argues that the adverse and disparate tax impact of the Department's failure to classify the Borough's school district as an *Abbott* district gives it standing to challenge the Department's *Abbott* classification of the District, the Commissioner finds that such argument is beyond the weight of authority.

Additionally, as thoroughly discussed in the Initial Decision, New Jersey courts have consistently held that municipalities have limited grounds upon which to challenge State action. As noted in *Stubaus, supra* at 48, "courts generally recognize that political subdivisions of the State, including municipalities and local boards of education, lack the legal capacity to challenge State action based on equal protection grounds" (citations omitted). Moreover, the Commissioner concurs that the Borough is barred from bringing its claim because it is a creature of the State and, thus, cannot

challenge State action on equal protection grounds. See *Williams, supra,* (a municipality, created by the state, may not invoke constitutional privileges or immunities against its creator) and *Newark, supra,* (a municipality cannot challenge state action on Fourteenth Amendment equal protection grounds). With respect to petitioners' reliance on *Camden, supra,* and *North Haledon, supra,* the Commissioner finds these cases are inapplicable to this case. *Camden* arose from the County's statutorily-authorized contractual obligation, not a constitutional claim against the State or one of its agencies; and in *North Haledon,* a matter involving the withdrawal of a municipality from a regional high school district, standing was conferred by *N.J.S.A.* 18A:13-54 and -55.

Moreover, it is noted that the Appellate Division in *Stubaus* concluded that the only parties who possessed standing to challenge the CEIFA funding mechanism were the taxpayers residing in the various school districts. *Stubaus, supra,* at 52. That court also set forth the limited circumstances where litigants have been permitted to assert the constitutional rights of third parties, *i.e.*., where third parties find it difficult to bring their own claims, where the third party's rights are likely to be diluted or adversely affected unless they are raised by a plaintiff holding a confidential relationship with the third party and where a non-profit organization sues on behalf of its injured members. *Stubaus* at 51. Even assuming, *arguendo,* that the Borough and the Mayor in his official capacity are not precluded from raising a constitutional claim challenging CEIFA as noted above, neither the Borough, nor the Mayor in his official capacity, satisfies these limited circumstances so as to raise these claims on behalf of the Borough's taxpayers.

Finally, with respect to the Mayor's standing as an individual taxpayer to assert his own constitutional rights and to seek invalidation of CEIFA, the Commissioner concurs that, while the "liberal application of the standing rules is particularly appropriate in taxpayer suits" (*Stubaus* at 52, citation omitted), in this particular matter, petitioner, in his individual capacity, has failed to allege

actual harm or a substantial likelihood of same. Furthermore, the essence of such harm as he does allege is not the harm against which the T&E clause protects. T&E mandates a system of educational opportunity for children, not equitable tax burdens. "…[T]he T&E constitutional mandate does not protect taxpayers." (*Id.* at 56) The Commissioner, therefore, agrees with the ALJ that the mayor as an individual citizen is precluded from maintaining this action based on the T&E constitutional provision.

Accordingly, as articulated above, the Commissioner adopts the Initial Decision granting the Department's motion and dismissing the within petition for the reasons set forth therein.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 27, 2005

Date of Mailing: December 27, 2005

[2] This decision 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.* 6A:4-1.1 *et seq.*