

6-99L

January 8, 1999

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Dear Counsel:

Upon review of the papers filed in connection with the matter entitled *Township of Berkeley v. New Jersey State Department of Education, Leo Klagholz, Commissioner*, Agency Dkt. No. 453-10/98, I have determined to dismiss the within Petition of Appeal, for the reasons set forth below.

Petitioner appeals a determination rendered by the State Department of Education affirming that the Central Regional High School (CRHS) District is not entitled to supplemental senior stabilization aid for the 1998-99 school year. As a municipality located within the CRHS District, petitioner asserts that it is composed of more than 45 percent senior citizens and, therefore, is entitled to supplemental senior stabilization aid in the amount of approximately \$300,000, pursuant to the Comprehensive Education Improvement Finance Act (CEIFA), *N.J.S.A. 18A:7F-10g*. Petitioner notes that it received such aid for the 1997-98 school year. Respondent moves for dismissal of the Petition of Appeal.

Although it appears that the within matter was not timely filed pursuant to *N.J.A.C. 6:24-1.2(c)*,<sup>1</sup> and a finding of untimeliness generally precludes the need to reach to the substantive

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<sup>1</sup> Respondent argues, and I concur, that petitioner should have been on notice, by March 18, 1998 at the latest, that the CRHS District would not qualify for senior stabilization aide for the 1998-99 school year, as I informed the

issue, given the important policy question raised by the petition, and noting the likelihood of its recurrence in future fiscal years, I reach beyond the procedural defect of this petition to determine that the department acted lawfully in accordance with the applicable statute in this matter.

The pertinent statute provides that

Additional supplemental stabilization aid shall be paid to any district which is located in a municipality which has a population composed of more than 45% senior citizens or older according to the most recent federal decennial census. The aid shall equal \$200 multiplied by the district's resident enrollment projected for October 1997. *N.J.S.A. 18A:7F-10(g)*

Petitioner argues that the CRHS District is located in Bayville, which is in Berkeley Township, thus entitling the district to aid under the aforementioned CEIFA provision. Respondent, however, contends that the CRHS District is not located in Berkeley Township, or in any municipality, and it, therefore, does not generate senior supplemental stabilization aid. (Respondent's Brief at p. 6) By contrast, respondent notes that the Berkeley Township School District received such aid for its students for the 1998-99 school year. Moreover, to the extent the CRHS District received such aid in the prior school year, respondent warrants that the appropriation was made pursuant to the FY98 Appropriations Act, not CEIFA, which *specifically* provided that the CRHS District was to receive senior stabilization aid for the 1997-98 school year. However, "\*\*\*absent Central Regional qualifying for the aid, and without an appropriation in the [FY99] Appropriations Act, Central [R]egional was not provided funds in this regard." (*Id.* at p. 7)

I do not find petitioner's arguments persuasive. It is only logical that if CEIFA conferred upon the CRHS District the entitlement which petitioner urges, the language in the FY98 Appropriations Act is rendered superfluous. Statutes of like subject matter are to be construed together in order to ascertain legislative intent. (*International Broth. of Elec. Workers v. Gillen*, 174 *N.J. Super.* 326 at 329 (1980), citing *State v. Green*, 62 *N.J.* 547, 554-555 (1973)) Although petitioner provides evidence that members of the 9<sup>th</sup> District support its position (Petitioner's Brief at Exhibit A), I decline to impute to the entire Legislature that which is voiced by two of its members, particularly where the interpretation urged by those members is untenable.

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Mayor of Berkeley Township of the same by my letter on that date. (Respondent's Reply at Exhibit A) Petitioner filed a Petition of Appeal on October 5, 1998, well outside the regulated 90-day time period. I recognize that the purpose of the 90-day limitation period is to encourage litigants to use proper diligence in the enforcement of their rights so as to allow an opposing party the fair opportunity to defend itself, thus preventing the litigation of stale claims and penalizing dilatoriness. Here, petitioner provides no explanation for its failure to submit a timely petition. I, therefore, decline to relax the rule, under these circumstances.

Accordingly, respondent's Motion to Dismiss is hereby granted; the within Petition of Appeal is dismissed.<sup>2</sup>

Sincerely,

Leo Klagholz  
Commissioner

c: Mike Azzara  
County Superintendent

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<sup>2</sup> This decision, as the Commissioner's final determination in the instant matter, 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.