

EDU #2637-00 through 2646-00, 2649 through 2652, 2654-00 through 2656-00
C # 50-03
SB # 4-03

ROSALIE BACON, individually and on behalf :
of G.P., Z.P., J.B., J.B., M.B., D.B., AND Z.H.; :
JOSEPH BARUFFI, individually and on :
behalf of J.B.; ELIZABETH CULLEN, :
individually and on behalf of T.C.; :
EDIE RILEY, individually and on behalf :
of S.R.; ARNETTA RIDGEWAY AND :
CHRISTOPHER GLASS, individually and :
on behalf of J.G., F.G., AND D.G., :

PETITIONERS, :

STATE BOARD OF EDUCATION

AND :

DECISION ON MOTION

BUENA REGIONAL, CLAYTON, :
COMMERCIAL, EGG HARBOR CITY, :
FAIRFIELD, LAKEHURST, LAKEWOOD, :
LAWRENCE, MAURICE RIVER, AND :
WOODBINE SCHOOL DISTRICTS, :

PETITIONERS-APPELLANTS, :

AND :

HAMMONTON, LITTLE EGG HARBOR, :
OCEAN, QUINTON, SALEM CITY, :
UPPER DEERFIELD, AND WALLINGTON :
SCHOOL DISTRICTS, :

PETITIONERS, :

V. :

NEW JERSEY STATE DEPARTMENT :
OF EDUCATION, :

RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, February 10, 2003

Decision on motion by the State Board of Education, July 2, 2003

For the Petitioner-Appellant Lakewood Board of Education, Michael I. Inzelbuch, Esq.

For the Petitioners-Appellants Buena, Clayton, Egg Harbor, Fairfield, Lakehurst, Lawrence and Woodbine Boards of Education, Jacob, Ferrigno & Chiarello (Frederick A. Jacob, Esq. and Kathy Balin, Esq., of Counsel)

For the Respondent-Respondent, Kathleen Asher and Michael C. Walters, Deputy Attorneys General (Peter C. Harvey, Attorney General of New Jersey)

For the amicus curiae, Gibbons, Del Deo, Dolan, Griffinger & Vecchione (Shavar D. Jeffries, Esq., of Counsel)

This matter had its genesis in a challenge brought by 17 school districts and the parents of children in those districts to the constitutionality of the Comprehensive Educational Improvement and Financing Act of 1996 (“CEIFA”) as applied to them. The petitioners claimed that the school districts involved did not have the economic capacity to provide a thorough and efficient education and that CEIFA did not provide adequate redress for such deficiency.

The Administrative Law Judge (“ALJ”) found that five of the petitioning districts were entitled to “special needs” status, but that 12 of them had not established that they were entitled to relief.

The Commissioner adopted the ALJ’s determination that 12 of the districts were not entitled to relief. The Commissioner also adopted the ALJ’s conclusion that Salem City was entitled to “special needs” status, but he rejected the ALJ’s conclusion that Buena Regional, Commercial, Fairfield, and Woodbine should be afforded such status.

Buena Regional, Clayton, Egg Harbor, Fairfield, Lakehurst, Lawrence, Woodbine, Commercial, and Maurice River appealed to the State Board from the Commissioner's decision, but on July 2, 2003, Commercial and Maurice River withdrew their appeals.

On July 2, 2003, the State Board of Education granted leave to the Education Law Center to appear as amicus curiae in the matter, and, on July 31, 2003, the Education Law Center filed its brief.

On August 6, 2003, a Deputy Attorney General representing the State respondents filed a motion with the State Board of Education seeking to strike two exhibits supporting the Education Law Center's brief. The Deputy Attorney General also sought to strike two pages of the brief that referenced the Commercial school district. The Deputy Attorney General argues that the State Board should strike the exhibits because they include information that is either not in the record or is inconsistent with the record. He further contends that the State Board should strike the references to Commercial because that school district has withdrawn its appeal.

The Education Law Center counters that the State Board should not strike the exhibits in question because the information they contain is public data drawn mostly from the Department of Education's own publicly available data and, as such, the State Board could properly take notice of the information in the exhibits. The Education Law Center also argues that the State Board should not strike the references to Commercial since a full evidentiary record has been developed before an administrative law judge concerning the district's ability to provide a constitutionally adequate education.

In addition, a parent of a student in Commercial Township who was a petitioner in the matter has filed a certification urging the State Board to consider the merits of the arguments in support of affording Commercial Township “special needs” status.

After carefully reviewing the arguments, the State Board of Education denies in all respects the motion to strike portions of the amicus curiae’s brief. In addition, we direct supplementation of the record pursuant to N.J.A.C. 6A:4-1.9 with Exhibits A and B of that brief.

November 5, 2003

Date of mailing _____