

EDU # 3863-02  
C # 235-97L  
SB # 53-97  
App. Div. #A-7438-97T1  
S. Ct. #A-106-99  
C # 47-04R  
SB # 14-04

IN THE MATTER OF THE DISTRIBUTION :  
OF LIQUID ASSETS UPON DISSOLUTION : STATE BOARD OF EDUCATION  
OF THE UNION COUNTY REGIONAL HIGH : DECISION ON MOTION  
SCHOOL DISTRICT NO. 1, UNION COUNTY. :

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Decided by the Commissioner of Education, May 5, 1997

Decision on motion by the State Board of Education, May 6, 1998

Decided by the State Board of Education, July 1, 1998

Decided by the Appellate Division, October 1, 1999

Remanded by the New Jersey Supreme Court, January 30, 2001

Decision on remand by the State Board of Education, March 6, 2002

Decision on remand by the Commissioner of Education, February 5, 2004

Decision on motion by the Commissioner of Education, March 29, 2004

For the Respondents-Respondents Boards of Education of the Township of Springfield, the Township of Berkeley Heights, the Township of Clark, and the Borough of Kenilworth, Sills, Cummis, Epstein & Gross (Cherie L. Adams, Esq., of Counsel)

For the Petitioner-Respondent Borough of Mountainside, Post, Polak, Goodsell, MacNeil & Strauchler (Robert A. Goodsell, Esq., of Counsel)

For the Respondent-Respondent Board of Education of the Borough of Mountainside, David B. Rubin, Esq.

For the Respondent-Respondent Borough of Kenilworth,  
Harvey Fruchter, Esq.

For the Respondent-Respondent Board of Education of the Borough of  
Garwood, Apruzzese, McDermott, Mastro & Murphy (Linda Ganz  
Ott, Esq., of Counsel)

For the Respondent-Respondent Borough of Garwood, Palumbo and  
Renaud (Robert F. Renaud, Esq., of Counsel)

For the Commissioner of Education and the State Board of Education,  
Allison C. Eck, Deputy Attorney General (Peter C. Harvey, Attorney  
General of New Jersey)

In a decision issued on March 6, 2002, the State Board of Education, pursuant to a remand by the New Jersey Supreme Court, concluded that the amount of the liquid assets to be distributed to Mountainside and Garwood following dissolution of the Union County Regional High School District included the entire amount of those assets and not just the amount identified by the county superintendent in June 1997 as available for distribution at that time. However, on the basis of the record before us, we were not able to ascertain the exact amount to be distributed. Accordingly, we remanded this matter to the Commissioner of Education to establish that amount and effectuate its distribution. We directed that upon verification of the amount of the liquid assets remaining and available for distribution, the Commissioner order the immediate distribution of those assets to Mountainside and Garwood. We further directed that once the Commissioner established the amount of the liquid assets that already had been distributed, he establish a payment schedule whereby 76% of that amount is redistributed to Mountainside and 24% to Garwood within a five-year period.

On February 5, 2004, the Commissioner adopted the payment schedule recommended by the Administrative Law Judge:

It is hereby **ORDERED** that the Fiscal Agent release immediately the sum of \$577,211 to Mountainside and Garwood, \$438,680.36 to Mountainside and \$138,530.64 to Garwood.

It is further **ORDERED** that the four constituent districts, Berkeley Heights, Clark, Kenilworth and Springfield, hereby initiate the redistribution of assets over five years, commencing April 15, 2004 as follows:

A. Berkeley Heights to Mountainside: ten equal payments of \$176,564.08 commencing April 15, 2004, every six months until the last payment due on October 15, 2008.

B. Berkeley Heights to Garwood: ten equal payments of \$55,757.08 commencing April 15, 2004, every six months until the last payment due on October 15, 2008.

C. Clark to Mountainside: ten equal payments of \$151,855.17 commencing April 15, 2004, every six months until the last payment due on October 15, 2008.

D. Clark to Garwood: ten equal payments of \$47,954.26 commencing April 15, 2004, every six months until the last payment due on October 15, 2008.

E. Kenilworth to Mountainside: ten equal payments of \$80,386.56 commencing April 15, 2004, every six months until the last payment due on October 15, 2008.

F. Kenilworth to Garwood: ten equal payments of \$25,385.23 commencing April 15, 2004, every six months until the last payment due on October 15, 2008.

G. Springfield to Mountainside: ten equal payments of \$166,119.30 commencing April 15, 2004, every six months until the last payment due on October 15, 2008.

H. Springfield to Garwood: ten equal payments of \$52,458.73 commencing April 15, 2004, every six months until the last payment due on October 15, 2008.

It is further **ORDERED** that the Fiscal Agent shall continue to account for the current liabilities and reserves for contingent liabilities, and accumulate accounts receivable until those have been fully accounted for. Thereafter, upon completion and acceptance of the final audit, the Fiscal Agent shall disburse the remaining funds, 76% to Mountainside and 24% to Garwood.

Initial Decision, slip op. at 26-28.

On March 3, 2004, the Boards of Education of Berkeley Heights, Kenilworth and Springfield filed a motion with the Commissioner seeking to stay his decision of February 5, 2004. On March 4, the Clark Board joined in that motion. On March 29, 2004, the Commissioner denied the motion, finding that the movant Boards had not satisfied the criteria for such relief set forth in Crowe v. De Gioia, 90 N.J. 126 (1982).

On April 1, 2004, the Berkeley Heights, Clark, Kenilworth and Springfield Boards filed the instant motion with the State Board seeking to stay the Commissioner's decision of February 5.

After careful consideration of the moving papers and the responses filed thereto, we agree with the Commissioner that the movant Boards have not demonstrated a likelihood of prevailing on the merits of their appeal or that they will suffer irreparable harm in the absence of a stay. As the Commissioner points out, the movants "have had ample opportunity to plan for the payments now due to Mountainside and Garwood

given the history of this matter....” Commissioner’s Decision on Motion, slip op. at 7-8. We further agree that “in balancing the equities and interests of the parties, the greater harm ensues to Mountainside and Garwood, who have waited since 1997 for this distribution of monies.” Id. at 8. Hence, we conclude that the Berkeley Heights, Clark, Kenilworth and Springfield Boards have failed to meet the standard that would entitle them to relief under Crowe, supra, and we deny their application for a stay of the Commissioner’s decision.

June 2, 2004

Date of mailing \_\_\_\_\_