

EDU #8659-98  
C # 29-05  
SB # 8-05

BOARD OF EDUCATION OF THE :  
TOWNSHIP OF LACEY, OCEAN :  
COUNTY, :  
PETITIONER-APPELLANT, :  
STATE BOARD OF EDUCATION  
DECISION ON MOTION  
V. :  
NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, :  
RESPONDENT-RESPONDENT. :  
\_\_\_\_\_ :

Decided by the Commissioner of Education, January 14, 2005

Decided by the State Board of Education, May 4, 2005

For the Petitioner-Appellant, Stein, Supsie & Hoffman (Michael W.  
Hoffman, Esq., of Counsel)

For the Respondent-Respondent, Allison Colsey Eck, Deputy Attorney  
General (Peter C. Harvey, Attorney General of New Jersey)

The Board of Education of the Township of Lacey (hereinafter "Board" or "Lacey Board") filed a petition of appeal with the Commissioner of Education alleging that the Department of Education had failed to provide it with the appropriate level of funding for the 1998-99 school year pursuant to the Comprehensive Education Improvement and Financing Act ("CEIFA"). The Board contended that the method of determining the municipal income component for State aid purposes when the aid was recalculated in March 1998 after the Department of Treasury discovered an inadvertent error

constituted rulemaking in violation of the Administrative Procedure Act (“APA”). The Commissioner dismissed the petition, concluding that rulemaking had not occurred.

On May 4, 2005, we affirmed the ultimate determination of the Commissioner to deny the relief sought by the Lacey Board, explaining:

...we concur with the Board that rulemaking was required when the Department of Education recalculated State aid for the 1998-99 school year. However, for the same reasons, rulemaking would also have been required when the Department originally calculated State aid for that year. That being the case, there is no basis on the record before us for providing relief to the Board. We stress in that regard that the Board’s claim was limited to the 1998-99 school year and that it made no allegations with regard to any other years. Thus, we concur with the ultimate determination of the Commissioner to dismiss the petition.

State Board’s Decision, slip op. at 1-2.

On May 12, 2005, the Deputy Attorney General representing the Department of Education filed the instant motion for clarification of our decision, contending that:

...it is unclear from its May 4, 2005, determination whether the State Board is suggesting that the Department of Education or the Department of Treasury were required to have adopted rules in order for Treasury to have provided the income estimates for use by the Department in the CEIFA state aid calculation, or whether the State Board was just highlighting the flaws in Lacey’s argument. Thus, the Department is seeking clarification regarding the concurrence “with the Board that rulemaking was required when the Department of Education recalculated state aid for the 1998-99 school year. However, for the same reasons, rulemaking would also have been required when the Department originally calculated state aid for that year.”

Brief in Support of Motion for Clarification, at 3.

The Lacey Board filed a response to the Department’s motion, in which it submitted that:

...the [State] Board's decision was clear in its determination that Respondent was required to follow the mandates of the Administrative Procedure Act when it originally calculated state aid for the 1998-1999 school year as well as when it recalculated the aid. However, Lacey seeks clarification as to whether Lacey would not be entitled to a remedy in the face of Respondent's violations of the law and if not so entitled, why not.

Response to Motion for Clarification, at 3.

The Deputy Attorney General submitted a letter brief in response to the Board's brief, along with a request for leave to file that brief. N.J.A.C. 6A:4-1.18(g).

After reviewing the papers filed,<sup>1</sup> we clarify our decision as follows.

We reiterate that, under any scenario, the Lacey Board has not demonstrated an entitlement to additional funding, and we reaffirm our determination that there is no basis in the record for providing relief to the Board. In so doing, we underscore the Commissioner's observation that: "It is interesting to note that the relief sought by the Board is the difference in aid between the State's first calculation and its second, notwithstanding that the method used for the first calculation was likewise newly developed and not promulgated by rule." Commissioner's Decision, slip op. at 4, n.1.

To the extent that the Lacey Board was claiming that the Department of Education had violated the Administrative Procedure Act, the Appellate Division was the proper forum for determining such a claim. Cf. New Jersey Educ. Ass'n v. Librera, 366 N.J. Super. 9 (App. Div. 2004). In our decision of May 4, we addressed the Lacey Board's claim that recalculation of its State aid by the Department of Education constituted improper rulemaking only to the extent necessary to resolve its appeal. In view of our determination that the Board – whose claim was limited to the 1998-99

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<sup>1</sup> We note that we have considered all of the briefs filed, including the Department's response to the Lacey Board's brief, in determining this motion.

school year – had not demonstrated any entitlement to relief regardless of whether the recalculation constituted rulemaking, we decline to revisit that issue. Thus, questions now raised by the Department regarding what procedures had to be followed in order to comply with the procedural requirements of the APA were not germane to a determination of the Lacey Board's appeal, and, in the absence of a present controversy within our jurisdiction, deciding such questions would be tantamount to issuing an advisory opinion. Accordingly, we decline to address them.

October 19, 2005

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