



## **New Jersey Network of Catholic School Families**

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October 13, 2011

### ***Via electronic mail***

The Honorable John A. Sweeney, A.J.S.C. (ret.)

Chairman of The Council on Local Mandates

P.O. Box 627

Trenton, New Jersey 08625-0627

Re: In re the Complaint of the Springfield Board of Education (3-11)

Dear Judge Sweeney:

Please accept this letter brief on behalf of the below signatories, parents, families, administrators, and other stakeholders in the nonpublic schools of New Jersey, collectively referred to as (“the stakeholders”). The stakeholders are those directly affected by the above-captioned matter before the Council on Local Mandates. We submit this letter brief in support of the State’s position that Aid-in-Lieu is not an unfunded mandate, and is due and payable to eligible parents pursuant to N.J.S.A. Section 18:39A-1. In addition, we seek to advance the case of the affected Springfield parents and all other eligible families similarly situated that will be adversely impacted by an outcome of this case favorable to the Springfield Board of Education (hereinafter “the BOE”).

### **Background**

Nonpublic school students living two miles from their school (elementary school aged) and two and one-half miles away from their school (for secondary school aged) in a district where the local board of education transports public school students living the same distance from their public school, are eligible

for transportation to their school, or if a route cannot be organized to transport them to and from school, their families are to receive Aid-in-Lieu payments (hereinafter “AIL”), at the statutory amount of \$884. N.J.S.A. 18A:39-1. Boards of Education are required by law to put a route out to bid for the transportation of nonpublic school students to their school, and if unsuccessful, to then turn the route over to a Coordinated Transportation Services Association (CTSA) for purposes of rebidding the route to increase students’ chances of obtaining a seat on a bus to school. Parents have no control over this process. The district does not consult them regarding where bus stops could be located or seek any information regarding start/end times for the nonpublic school, information which would help the BOE craft a successful bid. Parents have no alternative but to rely on the BOE’s representation that they put the matter out for a bid and were unsuccessful.

In Springfield, the BOE sends eligible parents a letter every August, indicating that they turned the bidding process over to the Union County Commission, and that the Commission was unable to secure a route. The BOE tells parents that in the alternative, if they meet the eligibility requirements per N.J.S.A. 18A:39-1 they will receive AIL in two installments, totaling \$884, the statutory amount.

Parents are then left to obtain transportation for their children however they are able to and are responsible for the full amount of those arrangements, which routinely exceeds the statutory amount of \$884. Parents are at the mercy of private bus contractors who are free to literally charge whatever the traffic will bear. This is not the same for transportation of eligible public school students, who are not subject to price-gouging and the uncertainty and hardship of routes being cancelled at the start of the school year.

In the beginning of August 2010, the BOE notified all eligible parents that it had not secured transportation for them and that accordingly, they would receive AIL payments twice during the school year. (See Exhibit A – Parent AIL Letter dated August 2010). In reliance on this notification, parents made arrangements for their children to be transported to and from school. When February 2011 arrived, parents did not receive the first installment of AIL (\$442). The BOE did not notify parents that

the payments would not be made, and when parents called the BOE to inquire about payments, they were read a statement citing budget cuts but would not be given a copy of the statement when they asked for one. The February AIL payment was not made until Memorial Day Weekend, late May 2011, and was made in response to the directive of the State Commissioner of Education that Springfield make the AIL payment or forfeit all state aid. (See Exhibit B – Letter from Cerf to Davino dated 3/25/11).

During this time, parents were expected to make payments for the transportation of their children to nonpublic school. In good-faith reliance on the BOE's August 2010 representation that it would make AIL payments for the 2010-2011 school year, parents had already entered into private transportation arrangements. Parent payments for private transportation were due and owing obligations. At no time did Springfield suspend bus service for its eligible public school students.

### **Parents Have the Fundamental Right to Direct the Education of Their Children**

This is a well-settled principal of law which is not counter to and in fact, complements governmental interest in delivery of education services. Pierce v. Society of Sisters, 268 U.S. 370 (1925). The eligible nonpublic school parents in Springfield are capable of making sound educational decisions for their children, and transporting their children is key to that decision. In its arbitrary action to withhold AIL, the BOE is actively frustrating parents' ability to make basic educational decisions for their children. It is telling that the BOE did not stop ALL transportation services in Springfield. Rather, the BOE actively transported all eligible public school students, with the then President of the BOE stating at a regularly scheduled meeting of the BOE that "no transportation services were disrupted for **our students.**" ([www.springfieldpublicschools.com](http://www.springfieldpublicschools.com) Board Agenda, Minutes & Videos, 3/11) It is curious that the BOE determined AIL is an "unfunded mandate," but retained public school transportation services, so as not to disrupt traveling to and from school for parents of public school students.

## **The NJ Constitution Confers Responsibility on the BOE for Nonpublic School Transportation**

N.J. Const., Art. VIII, Sec. II, Para. 5; and Art. VIII, Sec. IV, Para. 3 speak to the basic right of nonpublic school students to transportation to and from the school of their choice, which furthers governmental interest in education of its youngest residents. The language of the Article and the statements of the 1947 Constitutional Convention support this purpose and make it clear that it is the responsibility of the local district to provide transportation. Further, the Everson case, Everson v. Bd. Of Educ. Of Ewing Twp., 330 U.S. 1 (1947) is dispositive on this issue.

Everson and the constitutional provision establish the responsibility for implementing nonpublic school transportation or aid for same long before the Constitutional amendment instituting state mandate/state pay. N.J.S.A. 52:13H-12. We support and urge the Council to accept Respondent's assertion that Everson demonstrates that the nonpublic transportation statute implements the Article of the Constitution conferring the parental right to transportation or aid therefore and the local district's obligation for same. This issue is not one of state mandate/state pay and is not properly before the Council on Local Mandates.

## **BOE Does Not Administer AIL as Merely a "Pass-Through" of Funding**

In regard to the use of federal education dollars, the local school district is the conduit of funds to nonpublic school students for services. This is seen most readily in federal programs administered by local districts pursuant to No Child Left Behind (NCLB). An example of this is seen in Title I, the federal anti-poverty program. Districts are charged with collecting data on poverty areas within their districts. This also includes any nonpublic schools within the district, and lead administrators of these

schools report this information as well. Title I dollars are distributed to districts according to poverty levels, and the district distributes those funds on behalf of all Title I eligible students, wherever situated within the district. See Title I of the Elementary and Secondary Education Act of 1965 (ESEA). Federal aid to nonpublic school students who are classified as in need of special education services is handled much the same way pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA). All resident students of a school district between the ages of 3 -21 years –no matter where they attend school – who are classified as in need of special education services, generate federal special education dollars. Under the federal law, the funding is distributed to students throughout the district, even if those students attend a nonpublic school within the district. See IDEIA.

The AIL, and indeed the entire transportation statute is not the “pass-through” of funding that the BOE would like the Council to believe. It is a statutory obligation irrespective of any funds in the state budget for education. That the state has in previous years allocated some funds to non-specified transportation is at best a windfall for the district.

**The BOE’s Action in Refusing to Pay AIL and Seeking to Avoid Statutory Obligation to Pay AIL to Nonpublic School Parents is Discriminatory**

It is disingenuous for the BOE to point to transportation as a pass-through funding, especially when they did not seek to cut transportation services altogether when they experienced an overall diminution in state funding in FY2010. Just as parents cannot refuse to pay their school taxes in the amount of AIL, citing a cut in their education monies by the BOE’s refusal to pay that amount, neither can the BOE pass on an unfortunate pay cut to parents. Further, the BOE’s uneven, arbitrary, and capricious compliance with NJSA 18A:39.1 et seq., is discriminatory to eligible parents. The BOE’s action has in effect, created a separate class of eligible parents, unfairly treated simply because their children attend a

nonpublic school. Residency within district is the same, eligibility of mileage is the same, need for transportation to and from school is the same, the only difference here is that the affected students are nonpublic school students. The BOE has created an artificial distinction among all eligible parents which results in overt discrimination against nonpublic school students. By the BOE's own admission, no public school student's bus ride to school was unfunded by the BOE after loss of some state aid. No public school parent eligible for transportation was faced with elimination of this basic service, intrinsic to a child's very attendance at school, and left to scramble for ways to fund their children's ride to school after the BOE refused to pay for such service. In effect, the BOE has set up eligible public school parents as a protected class, where none should exist.

**Nonpublic School Parents Are Economically Harmed by the BOE's Attempt to Circumvent Their**

**AIL Obligation**

Parents of nonpublic school students have the same struggles that all parents have in NJ's current economy. In fact, these parents pay a tremendous premium in terms of local school taxes and tuition costs for their children to attend nonpublic schools. To assume all parents can easily afford this choice is inaccurate. A great many parents struggle to send their children to nonpublic schools, all for reasons that are valid and important to their families. A number of the students attending the nonpublic schools in the greater Springfield area and beyond, do so thanks to scholarship assistance from the Scholarship Fund for Inner-City Children, which awards scholarships for families residing and attending Catholic schools within Bergen, Essex, Hudson, and Union Counties, and not only in struggling urban areas. See [www.sficnj.org](http://www.sficnj.org)

The AIL payments received by parents are not "a convenience" as has been posited by the BOE in proceedings before this Council (Response of Complainant to Council question at August 4, 2011

hearing In Re Springfield BOE, 3-11), but make it possible for parents to transport their children to school. Especially in families with more than one school-aged child, it is a daily challenge to drop off and pick up all the children in one family. While the public schools in Springfield all have staggered start and ending times that take into account travelling from different school sites and locations within the township, a similar configuration is not possible to arrange for the various nonpublic schools. Without reliable transportation for their children, parents of nonpublic school students are faced with real difficulties in getting their children to and from school. This happens already when unforeseen issues crop up with current bussing arrangements. Having to deal with transportation issues on a regular basis would wreak havoc with parent work obligations and be seriously disruptive to family schedules, in addition to the cost of transportation which would make travel to and from the nonpublic school prohibitive.

**An Influx of Students to Their Local Public Schools Would Create an Economic Hardship to the Taxpayers of Springfield and Municipalities Throughout the State**

Nonpublic schools are educational partners in the raising of productive citizens and parents' ability to choose them should not be frustrated by a local government unit, especially a board of education. The BOE reports that its 2009-2010 costs amount per pupil is \$17,168. See, Taxpayers Guide to Education Spending May 2011, [www.state.nj.us/njded/guide](http://www.state.nj.us/njded/guide). If the 144 nonpublic school students receiving AIL or mandated transportation (NJDOE Office of Pupil Transportation) were enrolled in the Township's public schools, the cost to Springfield taxpayers would be approximately \$2,472,192. This has direct impact on the BOE and will affect class size, staffing, school buildings and ingress and egress through town during peak times of arrival and dismissal for students. Currently, the Township of Springfield is witnessing the building of a number of new residential developments which are poised to strain the resources of the BOE, particularly since at least one of the communities is rental in nature.

Multiply this many, many times over throughout New Jersey, where nonpublic schools students and their families save the state significant funds through their choice of a nonpublic schools. Sustained economic difficulties encountered by NJ families have led to a downturn in nonpublic school enrollment, and in the five years between 2004 and 2009 a loss of enrollment of 29,810 nonpublic school students occurred. With most of those students entering the public schools, it was calculated that this influx of students cost the public school system approximately \$430 million a year in increased expenses. See The Governor's Study Commission on New Jersey's Nonpublic Schools (2010) [http://nj.gov/governor/news/reports/pdf/20100720\\_np\\_schools.pdf](http://nj.gov/governor/news/reports/pdf/20100720_np_schools.pdf)

The New Jersey Association of Independent Schools ( hereinafter "NJ AIS"), a signatory to this amicus letter brief, has detailed the difficulties their parents would face with the elimination of AIL, explaining that access to safe and affordable direct transportation to and from school for their children is a deciding factor in parents' choice of a nonpublic school. If nonpublic school transportation aid is no longer available, enrollment in nonpublic schools most likely will decrease, resulting in a loss of diversity of services and programs offered by the schools represented by NJ AIS. See, Letter from Everett, NJ AIS to Council on Local Mandates, 10/13/11)

**A Ruling in Favor of the BOE Would Be a Stripping Away of  
All Transportation for Nonpublic School Students and an  
Opening of the Door to the Erosion of All Nonpublic Services**

The BOE's complaint, if successful, will open the door to the stripping away of all transportation pursuant to N.J.S.A. 18:39A for nonpublic school students. Today the complaint is regarding AIL; tomorrow it will be about funding the actual bus that transports nonpublic students. This is the wrong result and would be in violation of the right to transportation conferred on parents by the NJ Constitution and implemented by the statute under consideration in this proceeding.

In seizing on a claim of an unfunded mandate, the BOE is attempting to remove itself from any and all obligation to nonpublic school students resident within the district. Subsequently, the BOE will argue that it does not have to provide nursing services, textbook aid, special education and related services which are all protected by statute. The BOE cannot set their sights for these as unfunded mandates and seek their elimination. To do so would be tantamount to refusing to fund educational media services, or teacher benefits, or debt service; in short, everything would become an “unfunded mandate” whenever there is a fluctuation in the state budget.

### **Conclusion**

AIL and nonpublic school transportation are vital services relied upon in good faith by nonpublic school students and their families. Provision of AIL by the BOE is not an unfunded mandate. For the Council to assert jurisdiction and to then rule in favor of the BOE Complainant would have significantly damaging and far-reaching repercussions not only for the residents of Springfield, but for all nonpublic school parents throughout New Jersey. A decision favorable to the BOE would signal the erosion of nonpublic school services, which would result in increased enrollment and therefore critical strain on the public schools of municipalities statewide.

The undersigned, on behalf of the NJ Network of Catholic School Families joins with the signatories to this letter brief, known as the nonpublic school community for the purpose of this amicus filing, and together, we urge the Council on Local Mandates to rule in favor of Respondent in this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Mary McManus McElroy". The signature is written in a cursive, flowing style.

New Jersey Network of Catholic School Families

By: Mary McManus McElroy, J.D.

Dr. Tom Cathey, Association of Christian Schools International

Meir Brody, Agudath Israel-NJ

George V. Corwell, Ed.D., New Jersey Catholic Conference

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Janet Nazif, Noor-Ul-Iman School

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Sadriel Saint-Ulysse, NJ Conference of Seventh Day Adventist Schools

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c:

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Michael Davino

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David M. DeVecchio

Beth Timberman

Christopher Huber, Esq.

Christopher Cerf (via facsimile)

filed mailed 10/2

**SPRINGFIELD BOARD OF EDUCATION  
DEPARTMENT OF TRANSPORTATION  
PO BOX 210  
SPRINGFIELD, NJ 07081**

**PAYMENT IN LIEU OF TRANSPORTATION**

August 2010

Dear Parent(s) or Guardian(s):

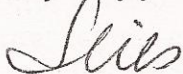
As required by N.J.S.A. 18A:39-1, the Education Service Commission, on behalf of the Springfield Board of Education, solicited public bids for transportation of students registered to attend Private and Parochial Schools in **2010-2011**.

The Commission, or the Board of Education, was unable to secure transportation for any of the Private or Parochial Schools for the **2010-2011** school year. Therefore, all parents of *eligible* students will be receiving aid in lieu of transportation for the total of \$884.00. Payment of \$442.00 will be sent after the first semester, during the month of *February*, and payment of \$442.00 will be sent after the second semester, during the month of *July*, so that you may make your own transportation arrangements.

Enclosed are reimbursement vouchers for both the first and second semester for the students receiving aid in lieu of transportation. Please complete these forms and return them immediate to the Transportation Department. A separate voucher must be filed for each student. Once the attendance of your child has been verified with the non-public school, and your voucher has been completed and returned, you will automatically receive your reimbursement. Failure to promptly submit these vouchers will delay your eligibility for payments. ***Applications received late will be pro-rated for the year.***

If you have any questions concerning this matter, please call the Transportation Department at 973-376-1025 x5254.

Very truly yours,



Sue Lies  
Transportation Coordinator



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHRISTOPHER D. CERF  
Acting Commissioner

March 25, 2011

Mr. Michael A. Davino  
Superintendent  
Springfield Public Schools  
PO Box 210  
Springfield, New Jersey 07081-1786

Dear Mr. Davino:

We have received calls from the parents of Springfield Township students attending nonpublic schools alleging that your school district has refused to pay them the aid in lieu of transportation to which they are entitled. N.J.S.A. 18A:39-1 states that whenever a student attending a nonpublic school is eligible for transportation as defined in this law, the local board of education must provide that student with transportation to and from school. However, if that transportation cannot be provided for the annual maximum allowable per student expenditure for nonpublic school transportation set by the Legislature or less, the board must pay the student's parent or legal guardian that amount as aid in lieu of transportation. For the 2010-2011 school year the maximum allowable expenditure is \$884. State regulations, N.J.A.C. 6A:27-3.4 and 4.1 extend this limit on the cost of transportation for all students attending out of district charter or choice schools. Parents or legal guardians of students, who are eligible for transportation but are not being provided a ride on a school vehicle, should have been paid half of that \$884 amount after the end of the first semester of the current school year.

If payments of aid in lieu of transportation have been made to the parents of eligible nonpublic, charter or choice school students, please demonstrate evidence of compliance with the law. If the Springfield Township School District has failed to comply with the statute and regulations cited above, you are hereby directed to make all required payments to the parents or legal guardians of all eligible students no later than 4:00 PM, April 8, 2011.

Failure to demonstrate compliance by this deadline will result in my directing the State Treasurer to withhold state aid funds payable by the state from the Springfield Township School District, pursuant to N.J.S.A. 18A:55-2.

If you have any questions, please contact Yut'se Thomas, acting assistant commissioner, Division of Finance and Regulatory Compliance at 609-984-4948.

Sincerely,

Christopher D. Cerf  
Acting Commissioner

CDC/YOT/DRS:T/Doc Orig/Nonpublic/2010-2011/Springfield Twp ALL

c: Yut'se Thomas  
Executive County School Business Administrator  
Dot Shelmet

[www.nj.gov/education](http://www.nj.gov/education)

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## **New Jersey Network of Catholic School Families**

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### **In Re Complaint of the Springfield Board of Education Before the Council on Local Mandates, 3-11**

#### **Certification of Service**

I, MARY MCMANUS MCELROY, hereby certify as follows:

1. I am the Director of the NJ Network of Catholic School Families.
2. On October 13, 2011, at the advice and direction of the Council on Local Mandates, I submitted the within amicus brief and its exhibits to the Council on Local Mandates and to those on the list of interested parties attached hereto.
3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

 Invalid signature

**X** Mary McManus McElroy

Mary McManus McElroy

Director NJ Network of Catholic School Families

IN THE MATTER OF SPRINGFIELD Board Of Education (3-11) SERVICE LIST

Copy of letter, w/enclosures and attachments, by email/fax to:

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Chuck Chiarello (Mayor, Buena Vista Township)  
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IN THE MATTER OF SPRINGFIELD Board Of Education (3-11) SERVICE LIST

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