
IN THE MATTER OF THE COMPLAINT
FILED BY THE ALLAMUCHY TOWNSHIP
BOARD OF EDUCATION

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BEFORE THE COUNCIL ON
LOCAL MANDATES

DOCKET NO.:

Claimant, the Allamuchy Township Board of Education hereby moves for summary judgment as follows:

- A. Declaring that section 14 of P.L. 2010ch.122 amending section 5 of P.L. 2002 ch.8 (NJS 18A:37-17)which statute requires schools and school districts annually to establish, implement, document and assess bullying prevention programs or approaches and other initiatives involving school staff, students, administrators, volunteers, parents, law enforcement and community members so as to create school-wide conditions to prevent and address harassment, intimidation and bullying is an unfunded mandate in violation N.J.Const. art VIII, §2, ¶5 and NJSA 52:13H-2 and shall cease to be mandatory in effect and shall expire.
- B. Declaring that section 17 of P.L. 2010 ch. 122 which is codified at NJSA 18A:27-20 which statute requires local school districts to create and staff new work titles of anti-bullying specialist and anti-bullying coordinator and to train those individuals is an

unfunded mandate in violation N.J.Const. art VIII, §2, ¶5 and NJSA 52:13H-2 and shall cease to be mandatory in effect and shall expire.

- C. Declaring that section 18 of P.L. 2010 ch. 122 which is codified at NJSA 18A:37-21 which statute requires each school district to establish a school safety team in each school is an unfunded mandate in violation N.J.Const. art VIII, §2, ¶5 and NJSA 52:13H-2 and shall cease to be mandatory in effect and shall expire to the extent that any compulsory appointment to the team requires payment of compensation for such service.
- D. Declaring that section 12 of P.L. 2010 ch. 122 amending Section 3 of P.L.2002, c.83 (C.18A:37-15) which statute provides in subsection 3(b)(7) that a district's policies must make provision for "the range of ways in which a school will respond once an incident of harassment, intimidation or bullying is identified, which shall be defined by the principal in conjunction with the school anti-bullying specialist, but shall include an appropriate combination of counseling, support services, intervention services, and other programs, as defined by the commissioner" thereby requiring the district to provide services, all of which are not funded by the State and therefore will requiring local funds is an unfunded mandate in violation N.J.Const. art VIII, §2, ¶5 and NJSA 52:13H-2 and shall cease to be mandatory in effect and shall expire.

Claimant will rely on the certification of Timothy Frederiks, Ed.D., the chief school administrator for the district in support of this application for summary judgment.

/s/ Francis Gavin
Francis Gavin, President
Allamuchy Township Board of Education

November 7, 2011

IN THE MATTER OF THE COMPLAINT
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BOARD OF EDUCATION

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BEFORE THE COUNCIL ON
LOCAL MANDATES

DOCKET NO.:

MEMORANDUM OF LAW
IN SUPPORT OF
THE APPLICATION OF
ALLAMUCHY TOWNSHIP BOARD OF EDUCATION
FOR SUMMARY JUDGMENT

The Allamuchy Township Board of Education hereby submits this memorandum of law in support of its application for summary judgment.

APPLICABLE FACTS

The facts as set forth in the Certification of Timothy Frederiks, Ed.D. are incorporated herein by reference. These facts are not in dispute. There is no material issue of fact present in this controversy. Therefore, summary judgment is appropriate. *See generally, Judson v. Peoples Bank & Trust Co.*, 17 N.J. 67, 75 (1954).

By way of summary, the Allamuchy Township Board of Education, in response to mandates of NJ Laws 2010, chapter 122 has been or will be required to expend funds directly for the following:

1. The annual establishment, implementation, documentation, and assessment of “ bullying prevention programs or approaches, and other initiatives...” by purchasing the recommended Olweus anti-bullying program for an initial expenditure of \$6,000 (\$4,000 of which will be paid by private sources) and an anticipated annual subscription of \$1,000; (NJ Laws 2010, chapter 122, §14)
2. The creation, staffing and compensation of the required position of anti-bullying specialist (NJ Laws 2010, chapter 122 §17) in each school of the district;
3. The creation, staffing and compensation of the required position of teacher member of the school safety team (NJ Laws 2010, chapter 122 §20) in each school of the district;
4. The provision of services in response to an incident of harassment, intimidation or bullying which shall include an appropriate combination of counseling, support services, intervention services, and other programs, as defined by the commissioner, some of which will require the direct expenditure of district funds for the retention of professionals not on staff to deliver counseling, support services and interventions. (NJ Laws 2010, chapter 122 §15(3)(b)(7))

APPLICABLE LAW

The New Jersey Constitution, in relevant part, provides:

With respect to any provision of a law enacted on and after January 17, 1996, ... any provision of such law ... , which is determined in accordance with this paragraph to be an unfunded mandate upon boards of education ... because it does not authorize resources, other than the property tax, to offset the additional direct expenditures required for the implementation of the law ... , shall, upon such determination cease to be mandatory in its effect and expire.

N.J. Const. art VIII, §2, ¶5.

DISCUSSION

The New Jersey Constitution, as cited above, nullifies any law that imposes “additional direct expenditures required for the implementation of the law” unless those expenditures are funded by the Legislature. The recently enacted Anti-Bullying Bill of Rights, NJ Laws 2010, chapter 122, to the extent that it requires school districts to expend funds to comply with the mandates of that law is in violation of the New Jersey Constitution.

As itemized above, additional training and programs must be annually established, implemented, documented and assessed. These programs and the training involved with these programs must be focused on bullying prevention “so as to create school-wide conditions to prevent and address harassment, intimidation and bullying.” *Id.* at §14. The State suggests that the law imposes no new obligations on the district because any training is “meant to supplement the existing training given to employees and will not require additional expenditures.” The State, however, fails to recognize that a completely new cohort of individuals must now be trained under the statute, namely: students, volunteers, parents, law enforcement and community members. *Id.* Moreover, the training to be provided is new and in addition to any other training that already occurs. These costs of these programs are therefore “additional direct expenditures required for the implementation of the law.” N.J. Const. art VIII, §2, ¶5.

The State further suggests that “State aid to local districts is meant to fund at least a portion of the cost of training employees of local school districts.” As a general proposition that

may be true. But there has been no increase in State aid to reflect additional costs attributable to programs and training as required by the Anti-Bullying Bill of Rights. The State aid covers a portion of preexisting professional development program costs for employees. The new additional costs are for new additional programs covering a new and additional set of program participants. No new funding has been provided. This is a clear violation of the constitutional mandate.

Likewise, the law requires the creation of job titles. While some may be able to be staffed by administrators which result only in indirect additional costs, in the Allamuchy Township School District, others, such as the anti-bullying specialist and the safety team members can only be staffed by non-administrative personnel, namely teachers. As a result, new job titles not previously covered by the collective bargaining agreement must be negotiated with concomitant stipends. These are now new, additional direct expenditures that the District will incur. The State suggests that these expenditures “will be reimbursed” by the Department of Education pursuant to the provisions of NJSA 18A:37-19. That statute predates the new law and was not repealed or amended in any respect. But the only mandatory part of the law is that the local school district shall apply to the Commissioner of Education for reimbursement. The actual reimbursement is not mandatory. Moreover, there is no regulation, guideline, procedure or mechanism in place at the Department of Education so that the District can make such an application. In effect, there is no funding available for these expenditures.

The new law mandates the provision of services in response to an incident of harassment, intimidation or bullying which shall include an appropriate combination of counseling, support services, intervention services, and other programs, as defined by the commissioner, some of which will require the direct expenditure of district funds for the retention of professionals not on

staff to deliver counseling, support services and interventions. The State has taken no issue with the allegation of the complaint in this regard.

All of the additional expenditures referred to above must be financed through the local property tax because the law that has imposed these additional requirements does not authorize resources, other than the local property tax, to offset the additional direct expenditures required for its implementation.

CONCLUSION

For the foregoing reasons, the Allamuchy Township Board of Education requests judgment:

- A. Declaring that section 14 of P.L. 2010ch.122 amending section 5 of P.L. 2002 ch.8 (NJS 18A:37-17) which statute requires schools and school districts annually to establish, implement, document and assess bullying prevention programs or approaches and other initiatives involving school staff, students, administrators, volunteers, parents, law enforcement and community members so as to create school-wide conditions to prevent and address harassment, intimidation and bullying is an unfunded mandate in violation N.J.Const. art. VIII, §2, ¶5 and NJSA 52:13H-2 and shall cease to be mandatory in effect and shall expire.
- B. Declaring that section 17 of P.L. 2010 ch. 122 which is codified at NJSA 18A:27-20 which statute requires local school districts to create and staff new work titles of anti-bullying specialist and anti-bullying coordinator and to train those individuals is an

unfunded mandate in violation N.J.Const. art. VIII, §2, ¶5 and NJSA 52:13H-2 and shall cease to be mandatory in effect and shall expire.

- C. Declaring that section 18 of P.L. 2010 ch. 122 which is codified at NJSA 18A:37-21 which statute requires each school district to establish a school safety team in each school is an unfunded mandate in violation N.J.Const. art. VIII, §2, ¶5 and NJSA 52:13H-2 and shall cease to be mandatory in effect and shall expire to the extent that any compulsory appointment to the team requires payment of compensation for such service.
- D. Declaring that section 12 of P.L. 2010 ch. 122 amending Section 3 of P.L.2002, c.83 (C.18A:37-15) which statute provides in subsection 3(b)(7) that a district's policies must make provision for "the range of ways in which a school will respond once an incident of harassment, intimidation or bullying is identified, which shall be defined by the principal in conjunction with the school anti-bullying specialist, but shall include an appropriate combination of counseling, support services, intervention services, and other programs, as defined by the commissioner" thereby requiring the district to provide services, all of which are not funded by the State and therefore will requiring local funds is an unfunded mandate in violation N.J.Const. art. VIII, §2, ¶5 and NJSA 52:13H-2 and shall cease to be mandatory in effect and shall expire.

/s/ Francis Gavin
Francis Gavin, President
Allamuchy Township Board of
Education

November 7, 2011

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BEFORE THE COUNCIL ON
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DOCKET NO.:

Certification of
Timothy Fredericks, Ed.D

I, Timothy Fredericks, Ed.D., do hereby certify as follows:

1. I am a school administrator duly certificated by the State of New Jersey.
2. I hold the position of Chief School Administrator for the Allamuchy Township School District [hereafter: ATSD].
3. The ATSD is a pre-kindergarten through grade 8 school district providing educational services to 427 students from Allamuchy Township.
4. The ATSD provides such services in two schools, the Mountain Villa [hereafter: MV] School for pre-kindergarten through grade 1 students and the Allamuchy Township School [hereafter: ATS] for grade 2 through grade 8 students.
5. The ATSD employs 9 teachers at the Mountain Villa School and 28 teachers at the Allamuchy Township School.

6. At the Allamuchy Township School there is one full time certificated administrator, the principal, Seth Cohen, Ed.D.
7. At the Mountain Villa School, I act as the full time certificated administrator, namely the principal, in addition to my duties as CSA.
8. The implementation of the new Harassment, Intimidation and Bullying law[hereafter:HIB] has imposed significant additional duties on the administration of the district. As a result, Dr. Cohen, the principal of ATS, and I, as the CSA and to a lesser degree as principal of MV, spend a significant amount of time, in addition to the time spent previous to the adoption of the HIB law, on the mandated procedures under HIB.
9. Before HIB was enacted, the ATSD had adopted policies in conformance with the then existing law that effectively addressed conduct that now is defined as HIB under the new law. We crafted procedures that did so efficiently and that were tailored to the size and organization of our district. It was not a significant drain of the attention and energy of the administration. We were able to address effectively any HIB within our traditional disciplinary processes.
10. Now the law requires several additional procedural steps including personal notification of parents or guardians for every complaint possibly invoking HIB, conducting formal investigations on every such complaint, preparing written reports on such investigations and then preparing reports monthly for the board of education on such complaints and investigations. This has increased the administrative work load by an estimated 10%. While this has not translated into a discrete financial expenditure, it has caused the administration to focus a significant amount of additional time on HIB than previously and more importantly to the exclusion of other activities designed to further advance

student learning. Although the cost is not readily quantifiable, there is clearly a reallocation of significant district financial resources from student learning to HIB. The additional procedures have added only inefficiency to what was, for us, a rather efficient and effective system for addressing HIB.

11. The law requires us, among other things, to annually establish and implement bullying prevention programs designed to create school-wide conditions to prevent and address harassment, intimidation, and bullying. Based on suggestions from the State Department of Education we have identified the Olweus Bullying Prevention Program as an appropriate program to satisfy our obligations. The initial cost of the program is \$6,000 with an annual subscription update of \$1,000. We have secured partial funding, approximately \$4,000 from our local PTO and the Allamuchy Education Foundation. The remainder is to be funded from the district's budget.
12. The law refers to a Bullying Prevention Fund as a potential source of funding for programs described above. The law indicates that we can apply to the Department of Education for a grant from that Fund. We inquired of the Department of Education about applying for a grant. The Department advised that the Legislature has appropriated no money to the Fund and therefore no process has been established.
13. The law has also required the ATSD to establish a district anti-bullying coordinator and a school anti-bullying specialist in each of our two schools. The law also required us to establish a school safety team for each, to which the law assigns specific duties. One of the mandatory positions must be filled by a teacher in the school. We have filled those positions as follows:

- a. District anti-bullying coordinator – Dr. Cohen, who also serves as the principal of
ATS
- b. ATS anti-bullying specialist – Julie Profito, the district guidance counselor
- c. MV anti-bullying specialist – Julie Profito, the district guidance counselor
- d. ATS safety team teacher member – Jennifer Chickey, Christine Rodriguez
- e. MV safety team teacher member – Jennifer Sauter

14. Dr. Cohen is an administrator. As such, his appointment as district anti-bullying coordinator has not generated any direct additional expenditure. It has, however, required us to reallocate his time and attention to the HIB process rather than student learning and other administrative functions. This poses an indirect cost to the district.

15. Ms. Profito is our district guidance counselor. She has duties in both of our schools.

That has allowed us to appoint one person to do perform both functions. Although she is a guidance counselor, her job description under which she work does not include the title or the specific duties of the anti-bullying specialist. She is a member of the local bargaining unit of the teaching staff, the Allamuchy Education Association. As of the date of execution of this certification, we have not reached agreement on the amount of compensation for this additional position and these additional duties.

16. As of this date, we have filled the positions for each school safety team, including the position of teacher members as listed above. These teacher positions must be filled by a teacher from each school. All of our teachers are members of the Allamuchy Education Association. As of the date of execution of this certification, we have not reached agreement on the amount of compensation for this additional position and these additional duties.

17. Part of the difficulty in negotiating the amount of stipends is that the Department of Education has not yet issued regulations or guidelines on implementation of HIB. Another element of uncertainty, related to the absence of guidelines is that the application of the law to every day settings and a deeper understanding of what constitutes HIB is still evolving. While there is a significant amount of time that the district anti-bullying coordinator and the school anti-bullying specialists must spend on meeting the requirements of the HIB law, it is hoped that as it evolves the dedication of time will diminish. Hence, finding an appropriate amount for a stipend must also evolve. Likewise, the uncertainty the time requirements of the safety team render uncertain a proper amount of a stipend for a teacher's serving on the team. It may ultimately result that the stipend will be negotiated only after sufficient time and experience has occurred to gauge accurately the time commitment with ultimate payment being made retroactively. We anticipate that the stipend for the anti-bullying specialist may be as much as \$4,000 and the safety team member \$2,000.
18. The law also requires the district to provide a range of responses to a confirmed incident of HIB. Many of the responses are within our usual disciplinary regimen. However, some, such as counseling, support services, intervention services and others, to be defined by the Commissioner of Education, all would require the district to incur additional costs because we cannot provide such services in the district. We would have to contract to the provision of outside professional services.
19. The new HIB law places a uniform set of requirements to address a perceived problem in our unique district. We are a small pre-K through grade 8 district. We cultivate a caring and familial environment. We had found effective and efficient methods to address acts

that could be characterized as HIB. The new requirements may work well and efficiently for a large district where many of the obligations can be spread among administrative staff members. We cannot do that. The cost of the Olweus program, while relatively modest, is an additional unexpected cost that puts a strain on an already tight budget. Thankfully, we will receive some financial support from private sources. The additional stipends, in amounts still to be determined, are ongoing additional financial expenditures. The additional potential remedial interventions present potential additional financial costs. The reallocation of our administrative efforts and time is an additional indirect cost taking away from advancements in learning. No funding is forthcoming from the State for any of these expenses.

20. With respect to State funding of additional costs, the law does provide that the District shall apply to the Commissioner of Education for reimbursement. There is no procedure known to us to apply for such reimbursement. The Department of Education has promulgated no regulations, rules, guidelines or directives for local school districts to apply for reimbursement. There is no procedure adopted to make such an application.

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.

November 7, 2011

/s/ Timothy Frederiks
Timothy Frederiks