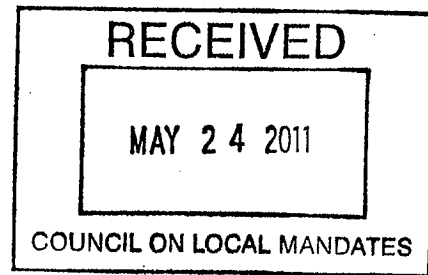


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By: Christopher Huber
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BEFORE THE COUNCIL ON
LOCAL MANDATES
Docket No. 3-11

IN THE MATTER OF COMPLAINT :
FILED BY THE SPRINGFIELD : : NOTICE OF MOTION FOR
TOWNSHIP BOARD OF EDUCATION : : SUMMARY DECISION

To: The Honorable John A. Sweeney, A.J.S.C. (ret.)
The Council on Local Mandates
P.O. Box 627
Trenton, New Jersey 08625-0627

Vito Gagliardi, Esq.
Porzio, Bromberg & Newman, P.C.
100 Southgate Parkway
Morristown, New Jersey 07962

PLEASE TAKE NOTICE that the undersigned, attorney for Respondent, the New Jersey Department of Education, hereby move before this court for an Order granting Respondent's Motion for Summary Decision. In support of this motion, Respondent relies upon the attached letter brief and Certification.

Respectfully submitted,

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: 

Christopher Huber
Deputy Attorney General

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BEFORE THE COUNCIL ON
LOCAL MANDATES
Docket No. 3-11

IN THE MATTER OF COMPLAINT :
FILED BY THE SPRINGFIELD : ORDER
TOWNSHIP BOARD OF EDUCATION :
:

THIS MATTER is before the Council on Local Mandates on the Motion filed by Christopher Huber, Deputy Attorney General, on behalf of the New Jersey Office of the Attorney General, counsel for Respondent, the New Jersey Department of Education, requesting summary decision, and the Council having considered the moving papers of the parties and for good cause shown;

IT IS on this day of , 2011;

ORDERED that Respondent's Motion for Summary Decision is granted; and it is further

ORDERED that the Complaint of Claimant, Springfield Board of Education, is dismissed with prejudice.

Hon. John A. Sweeney, A.J.S.C. (Ret.)
Chairman of the Council on Local Mandates



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
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PAULA T. DOW
Attorney General

ROBERT M. HANNA
Director

May 23, 2011

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
Docket No. 3-11

Dear Judge Sweeney:

Please accept this letter brief on behalf of Respondent, New Jersey Department of Education (hereinafter "Respondent" or "NJDOE"), as its Pleading Summary in support of its Motion for Summary Decision. For the following reasons, Respondent's motion should be granted.

PRELIMINARY STATEMENT

This matter arises out of allegations that mandated increases in the maximum allowable transportation cost for nonpublic students constitutes an unfunded mandate. Claimant, Springfield Township Board of Education, filed a complaint with the Council on Local Mandates alleging that the post 1996 amendments to N.J.S.A. 18A:39-



1 and N.J.S.A. 18A:39-1a are unfunded mandates.

However, the Council lacks jurisdiction to review the mandate to provide transportation to nonpublic students pursuant to N.J.S.A. 18A:39-1 because the last amendment to this statute, L. 1992, c. 33, §1, predates the jurisdiction of this Council. Moreover, the amendments to N.J.S.A. 18A:39-1a are not unfunded mandates. The manner in which the annual maximum allowable transportation cost was calculated up until the 2001 amendments to N.J.S.A. 18A:39-1a was established by L. 1990, c. 52, §51. The 1996 amendments to the statute, L. 1996, c. 138, §66, did not amend this calculation method. Therefore, the mandated method of calculating the annual maximum allowable transportation cost prior to the 2001 amendments predates the jurisdiction of this Council. Furthermore, L. 2001, c. 437, §1, the 2001 amendment to N.J.S.A. 18A:39-1a, amended the manner in which the annual maximum allowable transportation cost was calculated, but it also required the State to bear any increase in the maximum allowable cost above the 2001-2002 amount. Pursuant to L. 2001, c. 437, §1, the State reimburses school districts, including Claimant, for any increases in the maximum allowable transportation cost above \$710. Therefore, an increase in the maximum allowable cost pursuant to L. 2001, c. 437, §1 is not an unfunded mandate.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

N.J.S.A. 18A:39-1 was enacted in 1967. The statute directed school districts to provide transportation to students attending nonpublic schools within twenty miles of their place of residence. L. 1967, c.271. N.J.S.A. 18A:39-1 was last amended in 1992. See L. 1992, c. 33, §1. Pursuant to L. 1992, c. 33, §1, school districts are directed to provide transportation to those students that attend non-public schools located between two and twenty miles away from the student's residence. The maximum cost of the transportation for the district is capped at \$675 or an amount determined by N.J.S.A. 18A:39-1a. Ibid. (emphasis added). If the cost of the transportation for a particular student will exceed the cap, aid in lieu of transportation must be given to the student's parent at the maximum allowable cost. Ibid.

N.J.S.A. 18A:39-1a was first enacted in 1981. The statute provided:

Beginning in the 1982-1983 school year and in each subsequent year, the maximum amount of non-public school transportation costs per student provided for in N.J.S.A. 18A:39-1 shall be increased or decreased by an amount equal to the percentage increase or decrease in the total amount of estimated approved transportation costs per pupil for the year prior to the prebudget year compared to the amount estimated for the prebudget year.

[L. 1981, c. 57, §2].

The statute was amended in 1990 to read in relevant part

Beginning in the 1992-1993 school year and in each subsequent year, the maximum amount of non-public school transportation costs per pupil provided for in N.J.S.A. 18A:39-1 shall be increased or decreased in direct proportion to the increase or decrease in the State transportation aid per pupil in the year prior to the prebudget year compared to the amount for the prebudget year.

[L. 1990, c. 52, §51].

Thus, the maximum transportation cost will increase or decrease annually in direct proportion to any increase or decrease in State transportation aid from one school year to the next. Ibid. The manner in which the maximum transportation cost is annually calculated did not change until 2001.¹

In 2001, L. 2001, c. 437, §1 was enacted. The amended statute provided in relevant part:

For the 2002-2003 school year, the maximum amount of nonpublic school transportation costs per pupil provided for in N.J.S.A. 18A:39-1 shall equal \$735 and this amount shall be increased in each subsequent year in direct proportion to the increase in the State transportation aid per pupil in the year prior to the prebudget year compared to the amount of the prebudget year or by the CPI, whichever is greater.

In the 2002-2003 school year and thereafter, any additional costs incurred by a school district due to the increase in the maximum

¹ N.J.S.A. 18A:39-1a was amended again in 1992 and 1996. L. 1992, c. 33, §2; L. 1996, c. 138, §66. However, these amendments did not change the provisions regarding the manner in which the maximum allowable transportation cost was calculated.

amount of nonpublic school transportation costs per pupil pursuant to this section shall be borne by the State.

[L. 2001, c. 437, §1 (emphasis added)].

L. 2001, c. 437, §1 provided for a yearly increase in the maximum transportation costs by tying the cap amount not only to the amount of State transportation aid, but also to the consumer price index, and increasing the maximum amount by whichever is greater. However, any increase above the 2001-2002 transportation costs cap amount of \$710 would be borne by the State. (See Certification of Dorothy Shelmet at ¶12).²

School districts receive their reimbursement in July for the previous school year. Id. at ¶15. For example, a district received its reimbursement for the 2009-2010 school year in July 2010. The reimbursement amount for students that receive aid in lieu of transportation is calculated as the maximum allowable cost minus \$710. Id. at ¶13. The reimbursement for those nonpublic students that ride a school bus to school is calculated using an average per student cost for all nonpublic school routes for the district. Id. at ¶14. The average per student cost is based on the final route costs that have been verified by the district.

² N.J.S.A. 18A:39-1a was amended again in 2007; however, those amendments did not effect the calculation of the maximum transportation costs and are not relevant to the issues before the Council. See L. 2007, c. 260, §62.

Ibid. The district is reimbursed that per student amount, up to the allowable maximum, minus \$710; this amount is then multiplied by the number of nonpublic students that ride those buses to come up with a total reimbursement amount. Ibid.

Springfield school district has been reimbursed their costs above \$710, up to the annual maximum allowable cost, in every year since the 2002-2003 school year. Id. at ¶16. Springfield received \$5,875 for the 2002-2003 school year, \$8,528 for the 2003-2004 school year, \$12,078 for the 2004-2005 school year, \$17,724 for the 2005-2006 school year, \$20,648 for the 2006-2007 school year, \$31,617 for the 2008-2009 school year and \$25,651 for the 2009-2010 school year. Ibid. NJDOE is in the process of calculating the reimbursement amounts for the 2010-2011 school year, but Claimant is again projected to receive reimbursements. Id. at ¶17.

On or about March 29, 2011, Claimant filed a complaint with the Council on Local Mandates. In its complaint, Claimant alleges that N.J.S.A. 18A:39-1 and N.J.S.A. 18A:39-1a constitute "an unfunded mandate because the State has not provided resources, other than property taxes, to offset the additional direct expenditures required for implementation of each of the amendments" to N.J.S.A. 18:39-1a.³ Complaint at paragraph II(3). Claimant

³ The complaint does not specify which amendments Claimant is referring to. However, since it refers to allegations since 1996, Respondent assumes Claimant is speaking about amendments to

further alleges that each amendment to N.J.S.A. 18A:39-1a after 1996 "increased the amount local boards of education are required to pay for the transportation of non-public school students . . . without a corresponding increase in state aid specifically earmarked for this transportation or aid in lieu amounts to an unfunded mandate." Ibid. Claimant also alleges that it did not receive any state aid for 2010-2011 and is projected not to be receiving any transportation aid for the 2011-2012 school year, and therefore, the requirement to provide transportation or aid in lieu of transportation for non-public students is an unfunded mandate. Ibid.

LEGAL ARGUMENT

POINT I

THE COUNCIL LACKS JURISDICTION TO REVIEW N.J.S.A. 18A:39-1.

To the extent Claimant is challenging the directive in N.J.S.A. 18A:39-1 for school districts to provide transportation to nonpublic students, the mandate predates the formation of the Council on Local Mandates and is, therefore, not subject to its jurisdiction. The Council on Local Mandates may review and issue rulings regarding any provision of a statute enacted on or after January 17, 1996. N.J.S.A. 52:13H-12. The statute requiring

N.J.S.A. 18A:39-1a because N.J.S.A. 18A:39-1 has not been amended since 1992.

school districts to provide transportation to nonpublic students was originally enacted in 1967. L. 1967, c. 271. The original statute established the requirement that is still in effect today. N.J.S.A. 18A:39-1. Moreover, N.J.S.A. 18A:39-1 has not been amended since 1992. L. 1992, c. 33, §1. Therefore, even the latest amendment to N.J.S.A. 18A:39-1 predates this Council's formation and the Council has no jurisdiction to review this statute. N.J.S.A. 18A:39-1.

POINT II

THE MANNER IN WHICH THE MAXIMUM ALLOWABLE TRANSPORTATION COST WAS CALCULATED UP UNTIL THE EFFECTIVE DATE OF L. 2001, c. 437, §1 PREDATES THE JURISDICTION OF THIS COUNCIL.

A. L. 1990, c. 52, §51 Predates the Jurisdiction of This Council.

The mandated annual calculation of the maximum allowable transportation cost pursuant to L. 1990, c. 52, §51 predates the jurisdiction of this Council. L. 1990, c. 52 read in relevant part

Beginning in the 1992-1993 school year and in each subsequent year, the maximum amount of non-public school transportation costs per pupil provided for in N.J.S.A. 18A:39-1 shall be increased or decreased in direct proportion to the increase or decrease in the State transportation aid per pupil in the year prior to the prebudget year compared to the amount for the prebudget year.

[L. 1990, c. 52, §51].

This amendment established the method for the annual calculation of

the maximum allowable cost until it was amended in 2001 by L. 2001, c. 437, §1. As noted above, the Council has jurisdiction to review any provision of a statute enacted on or after January 17, 1996. N.J.S.A. 52:13H-12. It is clear that the mandated annual calculation of the maximum allowable cost established by L. 1990, c. 52, §51 predates the jurisdiction of this Council.

B. L. 1996, C. 138, §66 Did Not Amend the Calculation Method for the Maximum Allowable Transportation Cost, and Therefore, the Method Predates this Council's Jurisdiction.

L. 1996, C. 138, §66 did not amend the manner in which the maximum allowable transportation cost was annually calculated, and therefore, this mandate is predates this Council's jurisdiction. Claimant alleges that L. 1996, c. 138, §66 (the 1996 amendment to N.J.S.A. 18A:39-1a) constituted an unfunded mandate. Claimant argues that from the 1996 amendment forward, the mandated increases in the maximum amount of transportation costs for nonpublic students constitutes an unfunded mandate. However, L. 1996, c. 138, §66 did not alter the manner in which the maximum allowable transportation cost is calculated. As noted above, the statute was amended in 1990 to provide for increases or decreases in the maximum transportation cost "in direct proportion to the increase or decrease in the State transportation aid per pupil in the year prior to the prebudget year compared to the amount for the

prebudget year." L. 1990, c. 52, §51.

This provision remained unchanged until the 2001 amendment to the statute. The mandated annual increase in the maximum transportation cost from 1996 until the effective date of the 2001 amendment was established pursuant to L. 1990, c. 52, §51. Therefore, the provision mandating the increase in the maximum transportation cost was enacted before the formation of this Council, and therefore, is not subject to its review. See N.J.S.A. 52:13H-12.

POINT III

**THE ANNUAL INCREASE IN THE MAXIMUM
TRANSPORTATION COST PER PUPIL PURSUANT TO THE
L. 2001, C. 437, §1 IS NOT AN UNFUNDED
MANDATE.**

The annual increases in the maximum transportation cost pursuant to L. 2001, c. 437, §1 are borne by the State and are, therefore, not an unfunded mandate. To meet its burden of proof that the statute is an unfunded mandate, the Claimant must prove that the statute "does not authorize resources, other than property tax, to offset the additional direct expenditures required" for its implementation. N.J. Const. Art. VIII, §II, para. 5. L. 2001, c. 437, §1 provides for an annual increase in the maximum transportation cost for nonpublic students "in direct proportion to the increase in the State transportation aid per pupil in the year

prior to the prebudget year compared to the amount of the prebudget year or by the CPI, whichever is greater."

However, the statute also provides that any increase in the maximum allowable cost from the 2002-2003 school year forward shall be borne by the State. Ibid. The maximum transportation cost for the 2001-2002 school year was \$710. See Certification at ¶9. The 2001 amendment to N.J.S.A. 18A:39-1a raised the maximum cost to \$735, but that increase was, and all future increases are, borne by the State. Each year, NJDOE reimburses school districts, including Claimant, any amount they paid per pupil for transportation or for aid in lieu of transportation pursuant to N.J.S.A. 18A:39-1 greater than \$710, the maximum cost the year before the effective date of the 2001 amendment to the statute. See Certification of Dorothy Shelmet at ¶12.

Claimant's allegation that its State aid has not increased to compensate for the increases in the cap amount for transportation of nonpublic students pursuant to N.J.S.A. 18A:39-1a is without merit.⁴ The increases in the transportation cap have been borne by the State and school districts have been reimbursed the difference

⁴ To the extent that Claimant alleges that L. 2001, c. 437, §1 is an unfunded mandate because it has not received transportation aid under the School Funding Reform Act ("SFRA"), L. 2007, c. 260, §62, this argument is similarly without merit. Reimbursement pursuant to L. 2001, c. 437, §1 is outside of the SFRA and is not effected by the amount of State aid that a district receives.

between the original cap amount of \$710 and the cap amount for any subsequent year. L. 2001, c. 437, §1; Certification of Dorothy Shelmet at ¶12. Claimant has received reimbursement every year since the 2002-2003 school year. See Certification of Dorothy Shelmet at ¶16. Moreover, to the extent that Claimant alleges that the transportation costs that it incurred for the 2010-2011 school year and its projected costs for the 2011-2012 school year are unfunded, these claims are without merit because Claimant has not set forth any evidence that these reimbursements will not occur as provided in L. 2001, c. 437, §1 . As the law currently stands, any per pupil amount incurred by Claimant up to the maximum allowable cost is reimbursable pursuant to the calculation noted above.

Contrary to Claimant's assertions, the yearly increases in the transportation cap for nonpublic students have not been borne by the school districts but have been borne by the State, as is required pursuant to L. 2001, c. 437, §1. Each increase in the maximum transportation cost per pupil above \$710 is reimbursed by the State, including Claimant's. Therefore, the increases in the nonpublic transportation cap pursuant to L. 2001, c. 437, §1 is not an unfunded mandate.

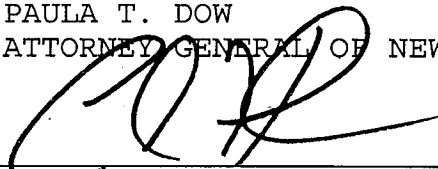
CONCLUSION

For the foregoing reasons, Claimant's complaint should be dismissed with prejudice.

Respectfully submitted,

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: _____


Christopher Huber
Deputy Attorney General

c: Vito Gagliardi, Esq.

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BEFORE THE COUNCIL ON
LOCAL MANDATES
Docket No. 3-11

IN THE MATTER OF COMPLAINT :
FILED BY THE SPRINGFIELD : CERTIFICATION OF
TOWNSHIP BOARD OF EDUCATION : DOROTHY SHELMET
_____ :

I, Dorothy Shelmet, hereby affirm:

1. I am the Acting Director/Planning Associate I for the Office of Student Transportation and Shared Services within the New Jersey Department of Education. I have been Acting Director for one year and nine months.
2. As Acting Director, I oversee all aspects of student transportation, including transportation of nonpublic students by school districts.
3. I have been a Planning Associate I with the Office of Student Transportation for the last 20 years.
4. As a Planning Associate I with the Office of Student Transportation, I oversee all legislative and financial analysis for student transportation, including

transportation of nonpublic students.

5. Pursuant to N.J.S.A. 18A:39-1, school districts are directed to provide transportation to students residing in their district that attend a nonpublic school located between two and twenty miles from the student's residence.
6. The school district is required to pay the cost of this transportation up to a maximum allowable per student expenditure that is set annually pursuant to a statutory calculation.
7. If the cost of transportation will exceed the maximum allowable cost per pupil, the school district is directed to pay aid in lieu of transportation to the student's parents in the amount of the maximum allowable cost.
8. From 1991 through 2001, the maximum allowable cost per pupil was calculated in accordance with L. 1990, c. 52, §51.
9. The maximum allowable cost for the 2001-2002 school year was \$710.
10. L. 2001, c. 437, §1 increased the maximum allowable cost per pupil for the 2002-2003 school year to \$735 and mandated annual increases in the maximum allowable cost equal to the consumer price index or the increase in State transportation aid, whichever is greater.
11. The statutory amendments also required reimbursement of

school districts for any increases in the maximum allowable cost beginning in the 2002-2003 school year.

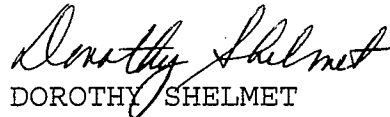
12. The base cost for calculating how much a school district is to be reimbursed is \$710 (the maximum allowable cost for the 2001-2002 school year).
13. For those students whose parents receive aid in lieu of transportation, the reimbursement amount is calculated as the maximum allowable cost minus \$710. So for the 2010-2011 school year, the maximum allowable cost was \$884 and school districts would be reimbursed \$174 per student. The number of students receiving aid in lieu of transportation is determined by a district's State aid report that is submitted in October of each year.
14. For nonpublic students who ride to school on a school bus, the Department of Education has the districts verify their final cost of those routes, then uses that data to calculate an average per student cost for all nonpublic school bus routes for that district. The district is reimbursed that per student amount, up to the allowable maximum, minus \$710 and then multiplied by the number of nonpublic students that ride those buses.
15. Both reimbursement amounts are combined into one payment made in early July after the end of each school year.
16. Springfield school district has received reimbursement each

year through the 2009-2010 school year. They received \$5,875 for the 2002-2003 school year, \$8,528 for the 2003-2004 school year, \$12,078 for the 2004-2005 school year, \$17,724 for the 2005-2006 school year, \$20,648 for the 2006-2007 school year, \$31,617 for the 2008-2009 school year and \$25,651 for the 2009-2010 school year.

17. The Department of Education is currently in the process of calculating the reimbursement amounts for the 2010-2011 school year, but Springfield is again projected to receive reimbursement.

I swear under penalty of perjury under the laws of the State of New Jersey that the statements in this certification are true. Executed this 23rd day of May 2011.

5/23/2011
Date


DOROTHY SHELMET