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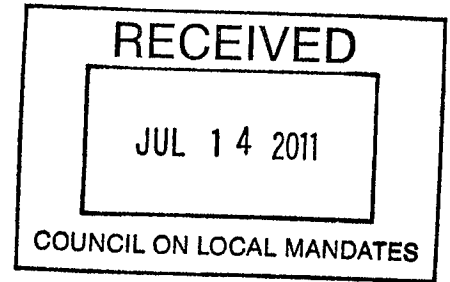
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July 14, 2011



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 in lieu of a more formal response to the Opposition and Cross Motion filed by Claimant, Springfield Township Board of Education, in response to the Motion to Dismiss filed by Respondent, the New Jersey Department of Education. For the following reasons, Claimant's Motion should be denied and Respondent's Motion to Dismiss granted.

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LEGAL ARGUMENT

POINT I

**THE FACT THAT CLAIMANT DID NOT RECEIVE AND IS
PROJECTED NOT TO RECEIVE TRANSPORTATION AID
DOES NOT TURN N.J.S.A. 18A:39-1 and
N.J.S.A. 18A:39-1a INTO UNFUNDED MANDATES.**

The central argument in Claimant's opposition is that the amendments to N.J.S.A. 18A:39-1 and N.J.S.A. 18A:39-1a are unfunded mandates because Claimant did not receive transportation aid for the 2010-2011 school year and is projected not to receive transportation aid for the 2011-2012 school year. Claimant argues that "the State's failure to provide any transportation aid to the Board for the 2010-2011 and 2011-2012 school years renders the requirements of that statutory provision entirely unfunded." See Opposition at 6. Claimant further argues that this cut in funding grants the Council jurisdiction to review N.J.S.A. 18A:39-1 and the pre-2001 amendments to N.J.S.A. 18A:39-1a because State policy and practice have changed. Ibid.

These arguments are without merit and ignore the fact that

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Claimant received State funding for the transportation of nonpublic students for the 2010-2011 school year and will again for 2011-2012. The allocation of State funds is beyond this Council's jurisdiction. The Council only has the ability to strike down that portion of a statute that it deems to be an unfunded mandate. N.J.S.A. 52:13H-12. Transportation of nonpublic students has never been fully paid for by the State. The cost is paid for by districts and subsidized by the State through both reimbursement and transportation aid, if any. Claimant must bear a portion of the cost regardless of whether they receive transportation aid or not. The nature of the mandate to provide transportation to nonpublic school students has not changed. The only difference is the level of funding that Claimant received. Claimant acknowledges that it has received reimbursement of costs for the transportation on nonpublic school students above \$710, up to the annual maximum allowable cost, every year since the 2002-2003 school year, and it will receive its reimbursement for the 2010-2011 school year shortly, if it has not been received already. Thus, what Claimant is essentially arguing is that a decrease in funding for a long preexisting mandate, not a total elimination of funding, amounts to an unfunded mandate.

However, as the Council pointed out in Ocean Township, "the

Council does not have the authority to determine whether the funding of any statute is adequate." In re Ocean Township (Monmouth County) and Frankford Township, decided August 2, 2002, at 12. The Council may review a legislature's method of funding only "if that method is seriously flawed to the point of being illusory." Ibid. The State is still subsidizing the cost of transportation of nonpublic school students through reimbursements pursuant to L. 2001, c. 437, §1. For the 2010-2011 school year, Claimant was reimbursed all transportation costs for nonpublic school students above \$710 up to the maximum allowable cost of \$884. Even if Claimant paid aid in lieu of transportation for every nonpublic student in the district at a cost of \$884 per student, it would be reimbursed \$174 per student. Such a funding methodology is clearly not illusory. Claimant does not contend that the methodology is illusory, but argues that these reimbursements are an insufficient level of funding so as to render the mandated transportation an unfunded mandate. To apply Claimant's argument to all State subsidized programs, any time a portion of that State funding is decreased and the municipality must bear a larger percentage of the cost, however slight, it would be an unfunded mandate. Surely, this was not the intent of "State mandate, State pay." The sufficiency of the level of funding is certainly one of fiscal policymaking that is beyond the

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purview of this Council's review. See Ocean Township, supra, at 12.

Moreover, Claimant's reliance on Shiloh and Morris are also misplaced. In Morris, the New Jersey Department of Transportation materially changed their policy to shift the burden for the collection and removal of deer carcasses entirely to local municipalities. In re Counties of Morris, Warren, Monmouth and Middlesex, decided September 26, 2006, at 14. In this case, the nature and scope of the mandate to provide transportation to nonpublic school students has not changed. No new obligation has been imposed on Claimant. The only change is a decrease in funding to subsidize the cost of the transportation. Claimant is still not responsible for the entire cost of the transportation and whether this level of funding is adequate is a legislative question and beyond the scope of this Council's authority.

In Shiloh, the Council determined that partial funding of a new mandate for rural municipalities to provide their own police services constituted an unfunded mandate. In re the Mayors of Shiloh Borough and the Borough of Rocky Hill, decided October 22, 2008, at 12. However, the mandates imposed by N.J.S.A. 18A:39-1 and N.J.S.A. 18A:39-1a are not new. The mandate to provide transportation to nonpublic school students has been in effect since 1967, well before the jurisdiction of this Council.

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Throughout that time, the State has never funded the entire cost of the transportation. The only thing that changed for 2010-2011 and 2011-2012 is the level of funding, not the nature or scope of the obligations on Claimant. The cost of transportation is still subsidized by the State through the annual reimbursements pursuant to L. 2001, c. 437, §1. The adequacy of this level of funding is a legislative issue and beyond the scope of this Council's authority.

____As stated in Respondent's moving papers, this Council lacks jurisdiction to review L. 1967, c. 271, or the 1992 amendment, L. 1992, c. 33, §1. The mandate to provide transportation to nonpublic school students has not changed since N.J.S.A. 18A:39-1 was first enacted in 1967. Moreover, as noted above, the decrease in the level of funding for the 2010-2011 school year and the projected decrease for the 2011-2012 school year does not confer jurisdiction on this Council because the nature and scope of the mandate has not changed and the State is still subsidizing a portion of the district's costs for complying with this mandate. The costs associated with N.J.S.A. 18A:39-1 have never been fully paid for by the State and Claimant is still receiving State funds through the reimbursements pursuant to L. 2001, c. 437, §1. The mandate of N.J.S.A. 18A:39-1 predates the formation of this Council and the change in funding has not created an unfunded

mandate. Therefore, L. 1967, c. 271 and L. 1992, c. 33, §1 are beyond this Council's jurisdiction.

POINT II

THE COUNCIL STILL LACKS JURISDICTION TO REVIEW L. 1990, c. 52, §51 and L. 1996, C. 138, §66.

Likewise, the Council lacks jurisdiction to review L. 1990, c. 52, §51 and L. 1996, C. 138, §66. As stated in Respondent's moving papers, L. 1990, c. 52, §51 established the method for the annual calculation of the maximum allowable cost until it was amended in 2001 by L. 2001, c. 437, §1. L. 1996, C. 138, §66 did not alter this calculation method. The method of calculating the maximum allowable cost did not change until the 2001 amendment to N.J.S.A. 18A:39-1a. Therefore, this method of calculation predates the jurisdiction of this Council.

Claimant again argues that the Council has jurisdiction to review the pre-2001 amendments to N.J.S.A. 18A:39-1a because they did not receive transportation aid for the 2010-2011 school year and are projected not to receive transportation aid for the 2011-2012 school year. However, this argument is wholly unfounded. The FY2011 and FY2012 Appropriations Act have no bearing on statutes that were superceded by L. 2001, c. 437, §1, the 2001 amendment to N.J.S.A. 18A:39-1a, and did not change any mandate

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in L. 1990, c. 52, §51 and L. 1996, C. 138, §66. Therefore, the Council lacks jurisdiction to review L. 1990, c. 52, §51 and L. 1996, C. 138, §66.

In addition, Claimant argues that it should be reimbursed for any increase in the maximum allowable transportation cost above \$675, the maximum allowable cost when this Council was created. The only basis that Claimant has for setting the base amount for reimbursement as the maximum allowable cost in 1996 is because that is when the Council was created. However, as stated above, the Council lacks jurisdiction to review the maximum allowable transportation cost as it existed in 1996. The maximum allowable transportation cost in 1996 was calculated pursuant to a methodology in L. 1990, c. 52, §51. This calculation of the maximum allowable cost predates the jurisdiction of this Council. Any increases in the maximum allowable cost following the 2001 amendment to N.J.S.A. 18A:39-1a were in accordance with the methodology outlined in that amendment, and as Claimant's admit, districts have been reimbursed the difference between the maximum allowable cost for a given year and \$710 pursuant to L. 2001, c. 437, §1.

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CONCLUSION

For the foregoing reasons Respondent's Motion to Dismiss should be granted and Claimant's Cross-Motion should be denied.

Respectfully submitted,

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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.


PATRICIA A. COLLINS

DATED: July 14, 2011