

#330-97

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James P. Granello, Esq.  
530 Prospect Avenue  
Little Silver, New Jersey 07739

Charles R. Church, Esq.  
Post, Polak, Goodsell & MacNeill  
75 Livingston Avenue  
Roseland, New Jersey 07068

Thomas A. Vitale, Esq.  
562 Boulevard  
Kenilworth, New Jersey 07033

Lawrence S Schwartz, Esq.  
Schwartz, Simon, Edelstein,  
Celso & Kessler  
Ten James Street  
Florham Park, New Jersey 07932

Agnes I. Rymer, Esq.  
DeCotiis, Fitzpatrick & Gluck  
500 Frank W. Burr Boulevard  
Teaneck, New Jersey 07666

Township of Clark  
315 Westfield Avenue  
Clark, New Jersey 07066

David Rubin, Esq.  
44 Bridge Road  
P.O. Box 4579  
Metuchen, New Jersey 08840

Douglas J. Kovats, Esq.  
Kenny, Gross & McDonough  
130 Maple Ave. Bldg. 8  
P.O. Box 8610  
Red Bank, New Jersey 07701

Lester Aron, Esq.  
Sills, Cummis, Zuckerman, Radin, Tischman  
Epstein, & Gross  
One Riverfront Plaza  
Newark, New Jersey 07102

Bruce H. Bergen, Esq.  
Krevsky, Silber & Brown  
P.O. Box 1111  
288 N. Broad Street  
Elizabeth, New Jersey 07207

Steven B. Hoskins, Esq.  
McCarter & English  
Gateway Four Center  
100 Mulberry Street  
P.O. Box 652  
Newark, New Jersey 07102

Dear Parties:

I have reviewed the papers filed in *In the Matter of the Distribution of Assets and Liabilities upon Dissolution of the Union County Regional High School District No. 1*, Agency Dkt. No. 95-3/97. Therein, the Kenilworth Board of Education, joined by the Borough of Kenilworth, seeks return or replacement of all furnishings, equipment and personal property identified in the April 1995 Union County Superintendent's Report on the feasibility of dissolution as being located at the David Brearley High School, as well as a determination as to the need and cost of repairs and improvements to that building and assumption of such costs by the dissolving regional district.

Petitioner argues that the county superintendent's report used furnishings and equipment then at Brearley as its basis for various cost and indebtedness calculations, and that this report in turn served as the basis for the decision of the Board of Review to permit dissolution and the subsequent referendum vote. Additionally, petitioner argues that the regional district failed to maintain the Brearley building and keep it suitably furnished in a manner similar to its other buildings once Brearley closed in 1993, and that the district further failed to abide by its 1995 five-year facilities maintenance and improvement plans as they pertained to projects at Brearley. Petitioner contends that, absent granting the relief it seeks, it will be deprived of its rightful assets, suffer an unfair share of the regional district's indebtedness and incur unduly heavy facility improvement costs.

Upon review, I find that the operative statute, *N.J.S.A. 18A:13-61*, clearly provides for withdrawing districts to take title to and control of the grounds, buildings, furnishings and equipment within the district, other than those which are shared or rotated, *as they are situated on the effective date of the dissolution*. Until that date, such grounds, buildings, furnishings and equipment remain in the possession of the regional district, and no prohibition exists against continuing to employ these resources for purposes of operating the regional district subsequent to Board of Review action or voter approval of dissolution. Additionally, allegations that the regional board has systematically failed to maintain Brearley High School since its closure in 1993, and has further failed to comply with applicable facilities plans since 1995, cannot be raised before the Commissioner in an action filed little more than three months prior to the effective date of dissolution in an attempt to force improvement of assets as they will exist at that time.

Accordingly, for the reasons expressed above, I hereby dismiss the instant petition of appeal pursuant to the authority granted me by *N.J.A.C. 6:24-1.9*, and direct the county superintendent to abide by *N.J.S.A. 18A:13-61* in the report prepared by her at the end of the current school year pursuant to *N.J.S.A. 18A:13-62*.<sup>1</sup>

Sincerely,

Leo Klagholz  
Commissioner

c: Dr. Frances Lobman, County Superintendent  
Michele Miller, DAG

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<sup>1</sup> In dismissing the appeal on the merits, the Commissioner notes his concurrence that the County Superintendent is not an appropriate respondent in this matter and hereby severs her as a party.