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Dear Counsel:

I have reviewed the papers filed in conjunction with respondents' request for interlocutory review of the ALJ's decision denying motions for summary dismissal, on grounds of mootness and lack of standing, in the matters of *Board of Education of the City of Bayonne, Hudson County v. Dr. Leo Klagholz, Commissioner of Education, et al.*, and *Board of Education of the City of Hackensack, Bergen County v. Dr. Leo Klagholz, Commissioner of Education, et al.*, OAL Dkt. No. 1431-97 (EDU 6021-94 and EDU 5721-94 On Remand). Upon such review, I have determined to reverse the decision of the ALJ and, instead, dismiss the appeals as moot for the reasons set forth below.

The fundamental issue before me in this regard is whether petitioners' equal protection claims regarding the treatment of enrollment increases under the Quality Education Act (QEA) as amended and superseded by the Public School Reform Act (PSRA) have been rendered moot by enactment of the Comprehensive Educational

Improvement and Financing Act (CEIFA). That act was passed by the Legislature and approved by the Governor subsequent to both the initial decision underlying the Acting Commissioner's prior interlocutory ruling and the State Board of Education's reversal of that ruling on appeal.

Initially, I do not find that, as claimed by petitioners and held by the ALJ, respondents should be precluded from arguing mootness because that issue has already been raised and foreclosed by the State Board's decision remanding petitioners' equal protection claims for hearing. That decision reversed, without elaboration, the determination of the Acting Commissioner, which did not reach to issues of mootness, but, instead, was grounded solely on a rejection of the ALJ's finding that respondents had not demonstrated, on the basis of papers already filed, a sufficient rational basis for the Legislature's adoption of PSRA so as to satisfy the equal protection guarantee. Thus, the State Board's decision must be seen as an affirmance of the underlying ALJ's decision that petitioners should be entitled to develop a factual record to provide guidance for development of future aid allotment schemes and support for future constitutional challenge. The ALJ's determination on the issue of mootness clearly flows from his concern that petitioners not be denied the opportunity to address the eventuality that they will "receive less than their fair share in the foreseeable future."

The enactment of CEIFA fundamentally alters the posture of petitioners' claims in this regard. The basis underlying the ALJ's decision, and, hence, the State Board's affirmance on appeal, no longer has any validity given that CEIFA undisputedly incorporates the fundamental formulaic component sought by petitioners, *i.e.*, entitlement to aid based on current-year pupil counts, so that it is subject to neither further amendment nor constitutional challenge on the grounds put forth by petitioners. Thus, for the fashioning of prospective relief, no purpose would be served by the creation of a factual record, and to permit further proceedings for this reason would be an inappropriate use of scant administrative and judicial resources.

Turning to the question of retroactive relief, I concur with respondents that no such relief can result from the present proceedings. In their pleadings, petitioners have specified the remedy they seek, namely, reimbursement of the difference between the aid amounts they would have received using current-year pupil counts and the amounts they actually received during the years at issue. As noted in respondents' filings and undisputed by petitioners, the courts have, in school funding cases spanning the past three decades and more, consistently granted prospective remedy only, notwithstanding findings of even very specific infirmities in a limited number of districts. Moreover, even if this were not the case, the only legitimate purpose to be served by the retroactive relief sought by petitioners herein would be to provide funds enabling them to meet their constitutional obligation to offer a thorough and efficient system of education (T&E) to the pupils of their districts. Such purpose is inapplicable here, however, because petitioners were unable to establish in prior proceedings that they could not provide T&E during the years at issue, and because, for the current year and beyond, T&E has been assured by CEIFA through establishment of specific standards and a mechanism for their fiscal support, so as

to have already provided the "change" envisioned by the ALJ as the potential benefit of any retroactive relief petitioners may have been found to warrant. Indeed, it is worth noting, as an indicator of the degree to which CEIFA addresses the ALJ's concern, that petitioner Bayonne Board of Education enjoyed an aid increase for 1997-98 of 41% over 1996-97 QEA/PSRA amounts, while petitioner Hackensack Board of Education realized an increase of 63%.

Accordingly, as there is no relief that can result from further proceedings in these matters, I find that no purpose would be served by such proceedings and I reverse the determination of the ALJ to deny respondents' motions for summary decision. I hereby dismiss the Petitions of Appeal and direct that the files of these matters be returned to the agency by the Office of Administrative Law pursuant to *N.J.A.C.* 1:1-3.3. Having so ruled, I find it unnecessary to reach to the ALJ's conclusions on standing. [*]

Sincerely,

Leo Klagholz
Commissioner

LK/DH/DAbayhack
c: County Superintendents
Board Secretaries

[*] In holding as I have herein, I am fully cognizant of the court's recent ruling on the constitutionality of CEIFA, but deem such ruling inapplicable herein in that petitioners are not among the districts to which that ruling pertains.