

211-03

IN THE MATTER OF THE DIVISION OF :  
ASSETS AND LIABILITIES AMONG THE :  
COMMISSIONER OF EDUCATION  
CONSTITUENT DISTRICTS OF LOWER :  
DECISION  
CAMDEN COUNTY REGIONAL HIGH :  
SCHOOL DISTRICT NO. 1, CAMDEN COUNTY.:  
\_\_\_\_\_:

SYNOPSIS

Petitioner, Township of Waterford, appealed the Camden County Superintendent of Schools' distribution of assets and liabilities of the Lower Camden County Regional High School District resulting from the dissolution of the Regional district.

The ALJ found that the undisputed financial data submitted by petitioner substantiated that the non-building districts were treated disproportionately and inequitably when compared to the building districts. *Citing Union County*, the ALJ determined that deviation from the distribution formula in the County Superintendent's Report was necessary to correct the inequities. Moreover, the ALJ found that no binding agreement existed pertaining to the distribution of the liquid assets. The ALJ concluded that although not perfect or fair, the redistribution of the liquid assets from the building districts to the Waterford Board of Education was reasonable and consistent with the spirit and intent of *Union County*. The ALJ found that the County Superintendent's Report should be modified and additional liquid assets should be redistributed only to Waterford and not to the other non-building districts because the other three non-building districts obtained a benefit from their send/receive relationships. The redistribution of an additional \$2,809,011 should be paid to Waterford in five yearly installments commencing June 1, 2003.

The Commissioner modified the Initial Decision. The Commissioner concurred with the ALJ that the facts of the matter justify a deviation from the asset distribution ordered in the County Superintendent's Report as authorized by the Court in *Union County*. The Commissioner, however, could not accept the ALJ's position that involvement in a send/receive relationship constituted a quantifiable asset, which must be factored into a redistribution plan. The Commissioner found that the most equitable allocation would be to divide the total liquid assets among the four non-building districts in proportion to the percentages of school taxes that each of those non-building districts paid to the former regional district, without regard to the contributions of the building districts. Each building district shall make payments in five equal, annual installments commencing July 1, 2004 to each of the non-building districts according to the five-year installment payment schedule.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>
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May 2, 2003

IN THE MATTER OF THE DIVISION OF :  
ASSETS AND LIABILITIES AMONG THE :  
CONSTITUENT DISTRICTS OF LOWER : COMMISSIONER OF EDUCATION  
CAMDEN COUNTY REGIONAL HIGH : DECISION  
SCHOOL DISTRICT NO. 1, CAMDEN COUNTY.:

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exception and reply arguments were submitted in accordance with *N.J.A.C.* 1:1-18.4.

Upon careful and independent review of the record in this matter, including all submissions before the OAL, as well as all *timely* exception arguments<sup>1</sup> and the replies thereto, the Commissioner determines to modify the Initial Decision as set forth herein.

Initially, the Commissioner notes that when submitted to the voters of the constituent districts, the referendum question did not specify a liquid asset distribution scheme; therefore, the issue is fairly raised by petitioner.<sup>2</sup> (Initial Decision at 3) Here petitioner, the Municipality of the Township of Waterford, challenges the distribution of the over \$8.4 million in liquid assets to all seven districts, asserting that the more equitable distribution of those assets is to the non-building districts only, based upon their respective percentages of school taxes paid

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<sup>1</sup> Counsel for the Boards of Education of the Township of Berlin and Borough of Clementon requested, and was granted, an extension of time in which to submit exceptions, in accordance with *N.J.A.C.* 1:1-18.8.

<sup>2</sup> In *Union County, supra*, the Court clarified that the holding in *Egg Harbor Bd. of Ed. v. Greater Egg Harbor, Etc.*, 188 *N.J. Super.* 92 (App. Div. 1982), stands for the proposition “that if a liquid asset distribution scheme is specified in a referendum question, that issue is ‘off the table’ if the referendum is approved; parties to a withdrawal from or dissolution of a regional district cannot later seek alteration of that scheme by the Superintendent of Schools or any other executive body.” *In re Union County* at 14.

to the Regional District, without regard to the taxes paid by the building districts. (Petitioner’s Brief in Support of Motion for Partial Summary Decision at 15-17) In this connection, the Commissioner acknowledges the argument of the respondent Boards of Education of the Township of Berlin and the Borough of Clementon that the informal agreement reached by the constituent districts to distribute the liquid assets proportionately among *all* seven districts should be honored, *not* because it represents a “binding contract,” but because it represents the culmination of an “extensive consultative process” among the constituent districts, each of whom is responsible for providing a thorough and efficient education for its students. (Exceptions, Respondent Boards of Education of the Township of Berlin and the Borough of Clementon at 7-9) The Commissioner stresses, however, that while such an agreement may represent a *recommendation* to the County Superintendent, it is the County Superintendent who is specifically vested with the authority to distribute assets pursuant to *N.J.S.A.* 18A:13-62, subject to review by the Commissioner and State Board of Education.<sup>3</sup> *Union County, supra*, at 13.

Based on the record herein, the Commissioner concurs with the ALJ that the facts are sufficiently compelling to justify a deviation from the asset distribution ordered in the County Superintendent’s June 30, 2001 Report, as authorized by the Court in *Union County, supra*. (Initial Decision at 11) There, the Supreme Court determined that “the overriding goal of the statutory scheme is to distribute equitably the regional district’s assets and liabilities.” *Union County* at 15. The Court acknowledged, however, “[that the statutory scheme] presumably can result in equalization for all constituent communities, including those without real property, only when the debt load is significant (or when all communities received real property).” (*Id.* at 16) Due to the relative absence of debt in *Union County*, the Court concluded:

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<sup>3</sup> For this reason, the Commissioner finds the ALJ’s discussion on pages 12 and 13 of the Initial Decision with respect to the enforceability of the agreement to be misplaced.

Given the obvious purpose of the statutory scheme to distribute assets and liabilities equitably, and the generalized assumption in the statute that debt allocation is a sufficient mechanism for ensuring equity, we are persuaded that in these circumstances insistence on strict application of the asset distribution scheme in *N.J.S.A.* 18A:8-24 is unwarranted, particularly where, as here, the parties entering into dissolution have agreed to an alternative liquid asset distribution formula that represents a more equitable asset allocation. (*Id.* at 17)

The Commissioner is likewise persuaded by the undisputed facts in this matter that application of the principles set forth in *Union County* will serve to effectuate a more equitable distribution herein, where equalization cannot similarly be realized through debt allocation,<sup>4</sup> notwithstanding the lack of agreement<sup>4</sup> by the constituent districts to depart from the statutory scheme, which agreement the Commissioner does not view as determinative in the Court's analysis. In so concluding, the Commissioner notes that he finds on this record no "policy justification for insisting on distributing the liquid assets to each municipality, and thereby exacerbating the overall disproportion of the municipalities' asset shares." *Union County, supra*, at 19.

The Commissioner cannot, however, accept the ALJ's position that involvement in a send-receive relationship, in effect, constitutes a quantifiable "asset" that must be factored into an equitable distribution vis-à-vis the non-building districts. The Commissioner, therefore,

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<sup>4</sup> In his June 30, 2001 Report, the County Superintendent noted, "There is no long-term debt regarding building/grounds/equipment to address with the exception of a Lease Purchase Agreement. On March 18, 1999, Lower Camden County entered into a school building lease purchase agreement to finance technology improvements in all four buildings. Certificates of Participation in the par amount of \$2,750,000 were issued and the proceeds were used to finance technology improvements including the acquisition and installation of furnishings, equipment and site work. The distribution of debt was based on the equalized valuation of the three Building Districts and equipment received by each. [Exhibit E] is the breakdown of the percentage share of debt and the specific debt obligation for [the] 01-02 school year. As principal/interest obligations are due in future years, the percentage share of the debt will be used for this calculation.\*\*\*" The report shows the principal/interest obligations for the 2001-2002 school year to be \$83,610.57 for Lindenwold; \$57,340.74 for Pine Hill and \$228,061.19 for Winslow. (*Report of the County Superintendent of Schools on the Division of Assets and Liabilities Among the Constituent Districts of Lower Camden County Regional High School District No. 1* at 3)

does not concur with the ALJ's discussion and findings at pages 13-16 of Initial Decision that the Boards of Education of the Township of Berlin, the Borough of Clementon and the Borough of Chesilhurst should not be included in a redistribution remedy. Rather, consistent with the Court's conclusions in *Union County, supra*, the Commissioner finds that the most equitable allocation of the former Regional District's assets, under these circumstances, would be to divide the total liquid assets among the four non-building districts in proportion to the percentages of school taxes that each of those non-building districts paid to the former regional district, without regard to the contributions of the building districts.

Accordingly, the Initial Decision of the ALJ is modified as set forth herein.<sup>5</sup> The Commissioner underscores that the five-year installment payment schedule for the initial distribution of liquid assets, as determined by the County Superintendent of Schools, shall remain unchanged by this decision,<sup>6</sup> and designated as "Payment Schedule I." (*See, Report of the County Superintendent of Schools on the Division of Assets and Liabilities Among the Constituent Districts of Lower Camden County Regional High School District No. 1* at Exhibit C2, showing a total of \$2,795,535 in liquid assets to be distributed to the non-building districts.)

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<sup>5</sup> Pursuant to *N.J.A.C.* 1:1-14.10(j), however, the Commissioner declines to adopt the ALJ's interlocutory order dated November 25, 2002. On September 16, 2002, more than two months *after* the Board of Education of the Borough of Pine Hill Board was due to make its first of five payments in accordance with the County Superintendent's June 30, 2001 Report, the Board moved for a stay of the payments ordered in the June 30 report. (Pine Hill Board of Education's Motion for Stay, September 16, 2002) The ALJ entertained the motion, notwithstanding that: the motion was not made directly to the Commissioner; the Pine Hill Board was a respondent in this matter; the motion wholly failed to address the legal standard for granting such relief, *N.J.A.C.* 6A:3-1.6; and based on the pleadings filed herein, together with the Prehearing Order agreed upon by the parties (Initial Decision at 6), the issue raised by Pine Hill's motion was not before the ALJ. To the extent the Pine Hill Board of Education sought to challenge the distribution schedule ordered by the County Superintendent in his June 30, 2001 Report, it should have filed a Petition of Appeal before the Commissioner of Education pursuant to *N.J.A.C.* 6A:3-1 *et seq.*; however, *it did not*. Pine Hill's motion, therefore, should have been summarily dismissed.

<sup>6</sup> The County Superintendent's June 30, 2001 Report, reflecting the *original* distribution of liquid assets, directed that "payments among districts shall be made over a five year period **beginning July 1, 2002**, in 5 equal installments \*\*\*." (*Report of the County Superintendent of Schools on the Division of Assets and Liabilities Among the Constituent Districts of Lower Camden County Regional High School District No. 1* at 7) (emphasis added) **Thus, to the extent any payments have not been made relative thereto, all boards in this matter are directed to immediately comply with the terms of the County Superintendent's Report.**

Of the total \$8,469,326 in liquid assets, \$5,673,792 remains to be *redistributed*, as per this decision, on “Payment Schedule II.” Specifically, funds shall be redistributed from the liquid assets received by, and remaining in, the Board of Education of the Township of Winslow (\$3,702,885), the Board of Education of the Borough of Pine Hill (\$706,840) and the Board of Education of the Borough of Lindenwold (\$1,264,067). Each building district shall make payments in five equal, annual installments, commencing July 1, 2004,<sup>7</sup> to **each** of the non-building districts as follows:

- 29.39% to the Board of Education of the Township of Berlin for a total increase of \$1,667,720 over the five-year period;
- 4.47% to the Board of Education of the Borough of Chesilhurst for a total increase of \$253,575 over the five-year period;
- 16.63 % to the Board of Education of the Borough of Clementon for a total increase of \$943,485 over the five year period; and
- 49.51% to the Board of Education the Township of Waterford, for a total increase of \$2,809, 011 over the five-year period.<sup>8</sup>

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<sup>7</sup> Both the Board of Education of the Township of Winslow and the Board of Education of the Borough of Lindenwold indicate that, to the extent there is a redistribution remedy ordered by the Commissioner herein, payments should not begin until July 1, 2004 at the earliest, since the additional funds were not included in either the 2002-2003 or 2003-2004 school year budgets. (Winslow Exceptions at 4; Lindenwold Exceptions at 1)

<sup>8</sup> By way of example, the Board of Education of the Township of Winslow shall distribute its \$3,702,885 in five equal installments of \$740,577. For each of five years, Berlin shall receive 29.39% of \$740,577, Chesilhurst shall receive 4.47% of \$740,577, Clementon shall receive 16.63% of \$740,577 and Waterford shall receive 49.51% of \$740,577.

In so directing, the Commissioner notes he does not include any award of interest, which is governed by *N.J.A.C.* 6A:3-1.17.

IT IS SO ORDERED.<sup>9</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 2, 2003

Date of Mailing: May 2, 2003

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<sup>9</sup> This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*