

**IN THE MATTER OF A COMPLAINT FILED BY THE
ALLAMUCHY TOWNSHIP BOARD OF EDUCATION**

Council on Local Mandates

Argued January 27, 2012

Decided January 27, 2012

Written Opinion Issued May 1, 2012

Syllabus

(This syllabus was prepared for the benefit of the reader and is not part of the opinion of the Council. The syllabus does not purport to summarize all portions of the opinion.)

On August 31, 2011, the Allamuchy Township Board of Education filed a complaint with the Council on Local Mandates seeking a declaration that five portions of P.L. 2010, c.122, the "Anti-Bullying Bill of Rights", constitute unfunded mandates. The Attorney General answered on behalf of the Acting Commissioner of the Department of Education and the parties cross-moved for summary judgment, which were argued on January 27, 2012. At the conclusion of the argument, the Council chair announced that claimant's motion was granted and the respondent's motion was denied. This opinion explains and memorializes that decision.

HELD: The challenged sections of P.L. 2010, c.122 impose unfunded mandates in violation of N.J. Const. Art. VIII, §2, ¶5(a) and N.J.S.A. 52:13H-2.1.

The challenged sections require every school district to adopt a policy for responding to incidents of harassment, intimidation or bullying, including "an appropriate combination of counseling, support services, intervention services, and other programs"; to establish bullying prevention programs and provide training of school personnel therein; to appoint a "district anti-bullying coordinator" and a "school anti-bullying specialist" and a "school safety team" in each school. The legislation creates a "Bullying Prevention Fund" to provide grants to local districts to provide training on bullying

prevention and "the effective creation of positive school climates", but no monies have been appropriated to that fund.

The Allamuchy board presented uncontested proofs that, at the suggestion of the State Department of Education, it had adopted the Olweus Bullying Prevention Program, whose initial cost is \$6000, with annual subscription updates of \$1000. Further, the school personnel appropriate for appointment as school anti-bullying specialists and members of the school safety teams were all members of the local bargaining unit of the teaching staff; the stipends for their additional duties had not yet been negotiated, but were expected to be fixed between \$2000 and \$4000 per year.

Those facts demonstrate that the challenged statutory sections do not authorize resources, other than the property tax, to offset the additional direct expenditures for their implementation. The Council finds no merit in the Acting Commissioner's reliance on the Security Aid annually paid by the State to local districts: that aid is provided pursuant to a statutory formula for "at-risk pupils" alone and in any event was not increased upon the adoption of P.L. 2011, c.122.

The Council also rejects the Acting Commissioner's contentions that the challenged sections fall beyond its jurisdiction because they (1) implement the New Jersey constitutional requirement of a "thorough and efficient system of free public schools" or (2) "repeal, revise or ease an existing requirement". Neither the facts nor Council precedents support those arguments.

In an Addendum, the Council notes that P.L. 2011, c.133 was amended and supplemented by P.L. 2012, c. 1, adopted March 15, 2012 and signed by the Governor on March 26, 2012. That enactment precipitated a motion from the Acting Commissioner to dismiss this proceeding as moot. The Council denies that motion. The case was decided on January 27, 2012. The later events do not render that decision moot.

Council Chair John A. Sweeney and members Leanna Y. Brown, Timothy Q. Karcher, Nirmal Mulye, John K. Rafferty, James J. Toolen and Janet L. Whitman join in the opinion; members Jack Tarditi and Sharon L. Weiner dissent.

Francis Gavin, President of the Allamuchy Township Board of Education, argued the cause for claimant.

Daniel F. Dryzga, Deputy Attorney General, argued the cause for respondent Acting Commissioner of the New Jersey Department of Education (Paula T. Dow, Attorney General, attorney).

Thomas Hoff Prol and Luanne Peterpaul argued on behalf of amicus curiae New Jersey State Bar Association (Susan Feeney, attorney; Candida Griffin, John Keating, Felice T. Londa, Ms. Peterpaul and Mr. Prol, on the brief).

OPINION

I

On August 31, 2011, the Allamuchy Township Board of Education filed a complaint with the Council on Local Mandates seeking a declaration that certain provisions of P.L. 2010, c. 122 impose unfunded mandates in violation of N.J. Const. Art. VIII, §2, ¶5(a) and N.J.S.A. 52:13H-2.1. The Attorney General filed an answer on behalf of the Acting Commissioner of the Department of Education and the parties thereupon filed cross-motions for summary judgment, which were orally argued before the Council on January 27, 2012. At the conclusion of the argument, and after a brief recess, the Council chair announced that the claimant's motion for summary judgment was granted, the Acting Commissioner's cross-motion was denied. This opinion explains and memorializes that decision.

II

The legislative preamble to P.L. 2010, c. 122 describes the enactment as "concerning harassment, intimidation, and bullying in school settings, amending various parts various parts of the statutory law and supplementing P.L. 2002, c. 83 (C. 18A:37-13 et seq.) and Chapter B of Title 18A of New Jersey Statutes"; the bulk of the statute is designated as the "Anti-Bullying Bill of Rights Act." P.L. 2010, c. 122, sec. 1. The Allamuchy Board of Education challenges five provisions of that Act:

Section 12, amending N.J.S.A. 18A:37-15 and requiring every school district to adopt a policy establishing "the range of ways in which a school will respond once an incident of harassment, intimidation or bullying is identified, which shall be defined by the principal in conjunction with the school anti-bullying specialist but shall include an appropriate combination of counseling, support services, intervention services, and other programs, as defined by the commissioner."

Section 14, amending N.J.S.A. 18A:37-17 and requiring every district to establish bullying prevention programs and to train school personnel and others regarding those programs; applications may be made to the Department of Education for funding such programs "to the extent funds are appropriated for these purposes or funds are made available through the Bullying Prevention Fund established pursuant to section 25."

Section 17, codified as N.J.S.A. 18A:37-20, requiring each school principal to appoint, from currently employed school personnel, a "school anti-bullying specialist" in that school, and requiring the superintendent of schools to appoint a "district anti-bullying coordinator" and to "make every effort" to appoint a current employee to that position.

Section 18, codified as N.J.S.A. 18A:37-21, requiring the formation of a school safety team in each school "to develop, foster and maintain a positive school climate", whose members must include at least one teacher employed in the school and the school anti-bullying specialist.

Section 25, codified as N.J.S.A. 18A:37-28, creating a "Bullying Prevention Fund" "to offer grants to school districts to provide training on harassment, intimidation and bullying prevention and on the effective creation of positive school climates". No monies are appropriated that fund.

III

The salient facts certified by Chief School Administrator Timothy Fredericks of the Allamuchy Township School District are uncontested. With respect to the Sections 12 and 14 duties to establish and implement bullying prevention programs "based on suggestions from the State Department of Education", the Board has "identified the Olweus Bullying Prevention Program as an appropriate program to satisfy our obligations." The initial cost of that program is \$6000, to be followed by annual subscription updates of \$1000; the Board has received contributions totalling approximately \$4000 from the local parent-teacher organization and the Allamuchy Education Foundation, but the remainder is to be funded from the district's budget.

As required by Sections 17 and 18, the Board has appointed current employees as the district anti-bullying coordinator, and as the specialists and safety team teacher members in the two district schools. The district anti-bullying coordinator is an administrator whose appointment has not generated any direct additional expenses. The remaining appointees, however, are all

members of the local bargaining unit of the teaching staff and the Board has not yet reached agreement on the amount of compensation for their additional positions and duties; the Board "anticipate[s] that the stipend for the anti-bullying specialist may be as much as \$4000 and the safety team member \$2000."

Those facts, together with the conceded absence of funding for the Bullying Prevention Fund, make abundantly clear that the challenged provisions of P.L. 2010, c.122 do not authorize resources, other than the property tax, to offset the additional direct expenditures for the implementation of the law. Indeed, the Office of Legislative Services reported, prior to adoption of the statute, that its cost to local districts is "largely contingent" on the very considerations advanced by the Board here:

1) the amount of additional compensation provided to school and district personnel for serving as anti-bullying specialists, anti-bullying coordinators, or serving on a school safety team; 2) whether or not a school has already implemented the type of program on bullying prevention required pursuant to section 14 of the bill; and 3) the manner in which schools not already having a program choose to implement it.

The Council finds no merit in the Assistant Commissioner's contention that existing Security Aid received from the State will suffice to pay the additional costs incurred in

implementing the statute. Security Aid is provided pursuant to a statutory formula solely for "at-risk pupils". See N.J.S.A. 18A:7F-56. The Acting Commissioner does not suggest that potential victims of bullying fall within the definition of "at-risk pupils", nor did the State allocate additional Security Aid to the Allamuchy district to implement the statute.

The Council also rejects the Assistant Commissioner's arguments that the challenged sections of P.L. 2011, c.122 fall beyond the Council's jurisdiction. There is no sufficient showing that the statutory provisions implement the New Jersey constitutional requirement of a "thorough and efficient system of free public schools". N.J.Const. Art. VIII, §4, ¶1. See I/M/O Highland Park Board of Education, et al., (Council on Local Mandates, August 5, 1999), at pp. 20-23. Nor can the challenged sections be said to "repeal, revise or ease" the provisions of P.L. 2002, c.83. Id., at pp. 23-25. They are thus not exempted from Council action as laws "which implement the provisions of [the New Jersey] Constitution)" (N.J. Const. Art. VIII, §2, ¶5(c)(5); N.J.S.A. 52:13H-3e) or "which repeal, revise or ease an existing requirement" (N.J. Const. Art. VIII, §2, ¶5(c)3; N.J.S.A. 52:13H-3c).

Summary judgment is accordingly granted to claimant Allamuchy Township Board of Education and denied to the Assistant Commissioner of Education.

ADDENDUM

On March 15, 2012 the Legislature enacted, and on March 26, 2012 the Governor signed, P.L. 2012, c. 1, which amends and supplements P.L. 2010, c. 122. Included in its provisions are an appropriation of \$1 million to the Bullying Prevention Fund and a procedure for local districts to apply to the Department of Education for grants for programs, services and personnel expenses necessitated by the legislation. On March 29, 2012, the Assistant Commissioner moved to dismiss the complaint in this matter as mooted by the new law.

The motion is denied. The Attorney General is correct in saying that a case may be dismissed as moot "prior to judicial resolution". See Anderson v. Sills, 143 N.J.Super. 432, 437-38 (Ch.Div. 1976). This case, however, was decided on January 27, 2012 and the parties and public were informed that day of the Council's ruling. The ensuing enactment of P.L. 2012, c.1 does not render that ruling moot. The Council, of course, has not addressed the substance of the present P.L. 2012, c.1, which was not in issue in this proceeding.