October 15, 1975

VERNON N. POTTER, *Director*
Division on Civil Rights
1100 Raymond Boulevard
Newark, New Jersey 07102

FORMAL OPINION NO. 28 – 1975

Dear Director Potter:

You have asked whether the Division on Civil Rights has jurisdiction over allegations of unlawful discrimination in public school curricula. This inquiry was generated by a series of complaints filed with the Division against various local school districts charging that they discriminatorily assigned students, on the basis of sex, to courses in shop and home economics. You are advised, for the reasons hereafter set forth, that the Division has no jurisdiction in this area since exclusive jurisdiction inheres in the Commissioner of Education over allegations of unlawful discrimination in public school curricula.

Since the present inquiry involves the alleged discriminatory practices of local boards of education, it necessarily raises serious questions as to the constitutional and statutory responsibility of the Commissioner of Education to oversee this important area. In recent years, the New Jersey Supreme Court has carefully scrutinized the Commissioner's powers and responsibilities and in *Jenkins, et al v. Tp. of Morris School Dist. and Bd. of Ed.,* 58 N.J. 483, 494 (1971), provided the following summary:

> "Our Constitution contains an explicit mandate for legislative 'maintenance and support of a thorough and efficient system of free public schools'. Art. 8, sec. 4, para. 1. In fulfillment of the mandate the Legislature has adopted comprehensive enactments which, *inter alia,* delegate the 'general supervision and control of public education' in the State to the State Board of Education in the Department of Education. N.J.S.A. 18A:4-10. As the chief executive and administrative officer of the Department, the State Commissioner of Education is vested with broad powers including the 'supervision of all schools of the state receiving support or aid from state appropriations' and the enforcement of 'all rules prescribed by the state board'. N.J.S.A. 18A:4-23. The Commissioner is authorized to 'inquire into and ascertain the thoroughness and efficiency of operation of any of the schools of the public school system of the state' (N.J.S.A. 18A:4-24)...and is empowered 'to hear and determine all controversies and disputes' arising under the school laws or under the rules of the State Board or the Commissioner. N.J.S.A. 18A:6-9"

In the *Jenkins* case, certain residents of Morristown and Morris Township had petitioned the Commissioner of Education for an order restraining the Board of Education of Morris Township from withdrawing its students from Morristown High School and to take steps to effectuate a merger of the Morris Township and Morristown school districts. In its decision, the court reaffirmed the "breadth of the Commissioner's powers under the State Constitution and the implementing legislation," 58 N.J. at 494, and found that the Commissioner had:

> "...full power to direct a merger on his own if he finds such course ultimately necessary for fulfillment of the *State's educational and desegregation policies in the public scools.*" (Emphasis added.) 58 N.J. at 508.

The New Jersey Supreme Court in its earlier decision, *Booker v. Board of Education, Plainfield,* 45 N.J. 161 (1965), had held that the Commissioner had the responsibility and power of correcting *de facto* segregation or imbalance which frustrates State constitutional goals. The court pointed out that where the Commissioner determines that the local officials are not taking reasonably feasible steps towards the adoption of a suitable desegregation plan in fulfillment of the State's policies, he may either call for a further plan by the local officials or "prescribe a plan of his own." 45 N.J. at 178. In *Booker,* the Supreme Court also rejected the Commissioner's narrow view of his own powers, finding that he had been misled by an unduly restrictive view of his own responsibilities in the correction of substantial racial inbalance which may be educationally harmful.

In *Shepard v. Bd. of Ed. of City of Englewood,* 207 F. Supp. 341 (D.N.J. 1962), plaintiffs brought action in District Court to enjoin the operation of a racially segregated school system in the City of Englewood. It was concluded therein that the parties, who claimed that the neighborhood school policy resulted in racially segregated schools, had to exhaust their administrative remedies before the Commissioner of Education. The court found:

> "... a determination of the manner in which the neighborhood school policy operates in any particular community requires a consideration and evaluation of a multitude of factors. This court feels that the Commissioner is especially well qualified, by reason of his knowledge and experience in the specialized field of education, to make these factual determinations. There is no reason to assume that the Commissioner, in the performance of his duty, will not be guided by the applicable legal principles. Under all of the circumstances, the Commissioner should be given the opportunity, at least in the first instance, to pass upon the matters set forth in plaintiffs' complaint. Until such time as plaintiffs have exhausted the state administrative remedies provided by N.J.S.A. 18:3-14 and 15, this court should not entertain the action." 207 F. Supp. at 348.

Cf. *Morean v. Bd. of Ed. of Montclair,* 42 N.J. 237 (1964), wherein it was held that racial balance is integral to a sound educational system. These cases clearly highlight the symbiotic relationship extant between the Commissioner's dual responsibilities of assuring a thorough and efficient system of public education and assuring that it is racially balanced.

In a further effort to eliminate discriminatory practices in the public schools, the Legislature recently enacted L. 1973, c. 380, § 1,* effective January 14, 1974. This law provides in its entirety:

> "No pupil in a public school in this State shall be discriminated against in admission to, or in obtaining any advantages, privileges, or courses of study of the school by reason of race, color, creed, sex or national origin." N.J.S.A. 18A:36-20.

Although this statute does not specifically confer enforcement powers upon the Commissioner, it is clear, under *Jenkins*, that the Commissioner has general jurisdiction to enforce all requirements of the education laws of the State. He, therefore, does have jurisdiction to assure that the express provisions of N.J.S.A. 18A:36-20 are implemented by the local school districts.

The Commissioner has taken steps to discharge his positive responsibility to enforce this statute by developing regulations to implement the broad provisions of N.J.S.A. 18A:36-20. These regulations were published in 7 N.J.R. 136 (4/10/75) and formally adopted on May 7, 1975, 7 N.J.R. 252 (6/5/75). N.J.A.C. 6:4-1.5 provides in pertinent part:

> "(a) All public school students shall have equal access to all educational programs and activities.
> "(b) There shall be no differential requirements for completion of course offerings or courses of study solely based on race, color, creed, sex or national origin.
>
> * * *
>
> "(d) Public school students shall not be segregated on the basis of race, color, creed, sex or national origin in any duty, work, play, classroom or school practice.
> "(e) *No course offering, including but not limited to physical education, health, industrial arts, business, vocation or technical courses, home economics, music and adult education, shall be limited on the basis of race, color, creed, sex or national origin.*" (Emphasis added.)

Pursuant to N.J.A.C. 6:4-1.3, each local school district must develop a policy of equal educational opportunity and must also enact affirmative action plans which include corrective measures "to overcome the effects of previous patterns of discrimination and a systematic, internal monitoring procedure to ensure continuing compliance." The regulations also contain a timetable for submission of such plans to the Commissioner for his approval. Furthermore, the Commissioner:

> ". . . or his designee shall provide technical assistance to local school districts for the development of policy guidelines, procedures and in-service training for school personnel so as to aid in the elimination of bias on the basis of race, color, creed, sex or national origin." N.J.A.C. 6:4-1.4.

The question posed by your inquiry is whether the jurisdiction of the Division on Civil Rights over public accomodations duplicates the jurisdiction of the Commissioner of Education with respect to the subject of discrimination in public school curricula. In order to respond to this issue, the parameters of the jurisdiction of the Division on Civil Rights must be briefly examined. The Division has jurisdiction over those matters delegated to it by the Law Against Discrimination, N.J.S.A. 10:5-1 *et. seq.* Pursuant to this law, the Division has general jurisdiction over housing, employment and use of public accommodations and the power to eliminate discrimination in these areas based on "race, creed, color, national origin, ancestry, age, marital status or cause of . . . liability for service in the Armed Forces of the United States." N.J.S.A. 10:5-6. This jurisdiction may be contrasted with the pervasive

jurisdiction and responsibility of the Commissioner of Education to enforce all laws pertaining to the operation and administration of the public schools. The Commissioner's broad authority unquestionably extends to all discriminatory practices in the public schools and clearly encompasses exclusive jurisdiction of allegations of sex discrimination in public school curricula.

The recent enactment of N.J.S.A. 18A:36-20 which expressly deals with discrimination in public schools curricula further reinforces the exclusive jurisdiction of the Commissioner of Education in this area. The specificity with which N.J.S.A. 18A:36-20 addresses the problem of discrimination in the public schools sharply contrasts with the general language of N.J.S.A. 10:5-1 *et seq.* Operation of the rule of statutory construction, that the specific supersedes the general,** fortifies the conclusion that exclusive jurisdiction inheres in the Commissioner of Education over complaints involving unlawful discrimination in public school curricula. It may be inferred that the reason for this legislative confirmation of authority was the realization that the elimination and correction of sex-based restrictions in the public schools necessarily involves the educational expertise of the Commissioner of Education. It is this official who is specifically charged with the responsibility of assuring that the public school students of this State receive a thorough and efficient education. N.J.S.A. 18A:36-20 specifically confirms and strengthens his obligation to eliminate those practices which foster discrimination, based on sex, and to eradicate through educational programs their negative impact upon the youth of this State. Such a program is essential to the provision of a sound education system and is, therefore, within the exclusive responsibility of the Commissioner of Education.

You are advised, therefore, that the Division on Civil Rights has no jurisdiction over complaints alleging unlawful discrimination in public school curricula since exclusive jurisdiction over such matters inheres in the Commissioner of Education, pursuant to N.J.S.A. 18A:36-20.

Very truly yours,
WILLIAM F. HYLAND
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

* A 823, introduced 3/13/72, referred to Committee on Education.

** It is a fundamental principle of statutory construction, that when two enactments deal with the same subject, one in specific and concrete terms and the other in a more general manner, the former will supersede the latter and be controlling in the given situation. *Lawrence v. Butcher*, 130 N.J. Super. 209, 212 (App. Div. 1974). This doctrine has consistently been applied by the Supreme Court of this jurisdiction whenever such an issue has arisen. *See, e.g., State, by State Highway Commissioner v. Dilley*, 48 N.J. 383, 387 (1967); *Goff v. Hunt*, 6 N.J. 600, 607 (1951); *Hackensack Water Co. v. Division of Tax Appeals*, 2 N.J. 157, 165 (1949). *See also Blasi v. Ehret*, 118 N.J. Super. 501, 503 (App. Div. 1973).

October 27, 1975

CHRISTOPHER DEITZ, *Chairman*
New Jersey State Parole Board
Trenton, New Jersey

FORMAL OPINION NO. 29 – 1975

Dear Mr. Deitz:

The Parole Board has requested an opinion as to whether it may engage in a system of contract parole as an innovative means for the rehabilitation and parole of inmates incarcerated in our correctional institutions. You are advised that a proposal for a system of contract parole is permissible within our existing statutory framework provided the terms of the contract are consistent with the statutory responsibilities of the Parole Board.

A contract of parole is a mutually agreed upon document stipulating specific rehabilitative programs to be provided by a correctional institution, the inmates' agreement to successfully complete the prescribed program and objectives specified, and a parole at a fixed time contingent upon the successful fulfillment of these objectives. We have been advised that inmates who have been convicted of less serious nonviolent crimes and whose minimum parole eligibility dates fall not more than 30 nor less than 9 months from the date of sentencing will be selected for participation in the program. The contract will consist of a standard format with flexibility to negotiate the individual rehabilitative objectives to be pursued by the inmate, such as vocational training, work assignments, education, treatment and discipline. The program represents a cooperative effort between an inmate, the correctional facility and the Parole Board to design an individualized program to prepare an inmate for successful re-entry into society on a fixed date in the future.

An analysis of this issue must proceed with a review of the applicable New Jersey statutory provisions governing the responsibilities of the Parole Board. The New Jersey State Parole Board (hereinafter "Board"), pursuant to N.J.S.A. 30:4-123.1 *et seq.*, is the State agency empowered to determine when, and under what conditions, persons serving sentences having fixed minimum terms or serving sentences for life in the several correctional institutions of the State may be released on parole. N.J.S.A. 30:4-123.5. The Board is authorized to promulgate reasonable rules and regulations establishing the general conditions under which parole might be granted or revoked. N.J.S.A. 30:4-123.6. Once an inmate becomes eligible for parole pursuant to the time limitations set forth in N.J.S.A. 30:4-123.10 *et seq.*, and "when the board has been furnished all existing available records pertaining to the prisoner it shall consider the merits of his parole and shall make such other investigation as it shall deem necessary and proper." N.J.S.A. 30:4-123.9. The Board shall also consider the institutional report of the inmate's "behavior, discipline, type and manner of work performed, his own efforts to improve his mental and moral condition and his attitude toward society and the law enforcement officials responsible for his arrest, conviction and sentence." N.J.S.A. 30:4-123.18. Additionally, the personal views and recommendations of at least one of the Board members as to the prisoner and his eligibility for release are considered. A prisoner is not to be released on parole merely as a reward for good conduct or efficient performance of institutional duties, but only when, in the opinion of the Board, there is a reasonable probability that he will assume his proper place in society, without violation of law, and that his release will not be incompatible with the welfare of society. N.J.S.A. 30:4-123.14.

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