

This the 24th day of January, 2011.

ALLEN AND PINNIX, P.A.

/s/ Alfred P. Carlton, Jr.

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Rest Of The Document Is Redacted

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of January, 2011, I electronically filed the foregoing with the Federal Trade Commission using the Federal Trade Commission E-file system, which will send notification of such filing to the following:

Donald S. Clark Secretary

600 Pennsylvania Avenue, N.W.
Room H-159
Washington, D.C. 20580
dclark@ftc.gov

I hereby certify that the undersigned has this date served copies of the foregoing upon the Secretary and all parties to this cause by electronic mail as follows:

William L. Lanning
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room NJ-6264
Washington, D.C. 20580

Steven L. Osnowitz
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room NJ-6264
Washington, D.C. 20580

I also certify that I have sent courtesy copies of the document via Federal Express and electronic mail to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue N.W.
Room H-113

/s/ Alfred P. Carlton, Jr.

Alfred P. Carlton, Jr.

CERTIFICATION FOR ELECTRONIC FILING

I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and by the adjudicator.

/s/ Alfred P. Carlton, Jr.

Alfred P. Carlton, Jr.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Ion Leibowitz, Chairman

William E. Kovacic

J. Thomas Rosch
Julie Brill (recused)

THE NORTH CAROLINA [STATE] BOARD
ORDINARY MANAGERS

DOCKET NO. 9343

BEFORE THE FEDERAL TRADE COMMISSION

**COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic**

Edith Ramirez

**J. Thomas Rosch
Julie Brill (recused)**

In the Matter of

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)
)
PUBLIC

II. Argument

A. Material Facts Not Considered by the Commission, Which Were Set

Hearing Date.

With respect to the Commission has failed to consider the State Board's

material facts are even more compelling now, given the continued passage of time since these concerns were first raised with the ALJ and the Commission.

Third, the Commission has failed to consider the impact that the outstanding dispositive motions have had on Respondent's ability to meet the outstanding deadlines in the Scheduling Order. When the Commission denied the Respondent's (unopposed) Motion to Stay the Proceedings on November 15, 2010, the possibility existed that the Commission would rule upon the dispositive motions in due time so that the parties would not be required to spend significant time and resources preparing for a hearing that may not take place. However, the State Board has spent—and continues to spend **significant** time and resources to comply with pre-hearing deadlines that ultimately may

At this late date, a mere 18 business days before the

with which certain other deadlines in the Scheduling Order have been provided is grounds to support a good cause finding to postpone the commencement of the hearing

(date in this proceeding)

Fifth, the Commission has failed to consider the bearing on which the State

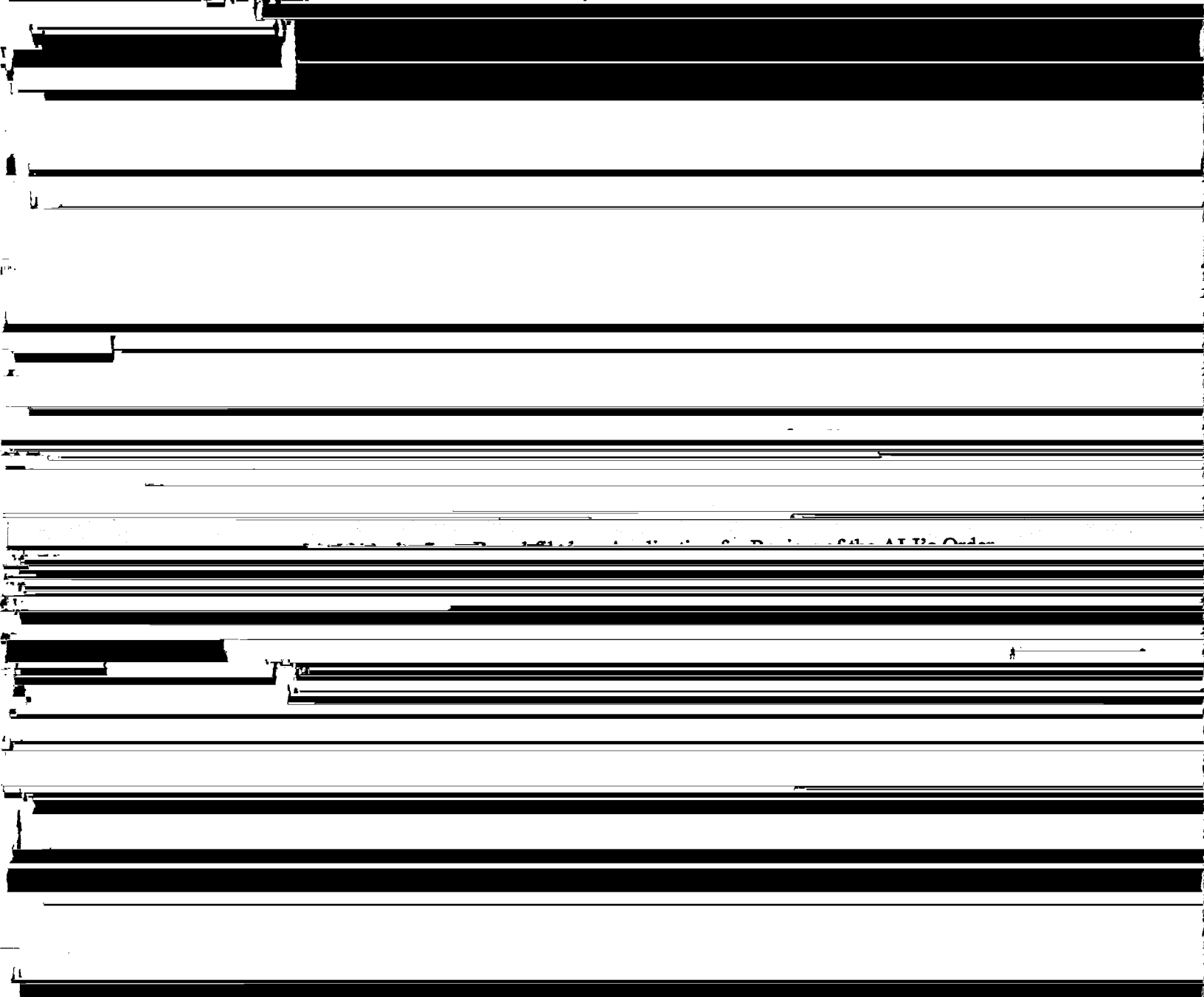
Board of Education, State of Ohio, et al. v. State Board of Education, et al., 1998-1-11

the ability of the State Board to prepare for the upcoming evidentiary hearing. The

available to obtain a full and fair resolution and/or adjudication of the discovery disputes. Allowing the evidentiary hearing to go forward on February 17, 2011 will deprive the State Board of its rights to pursue such remedies.

B. New Material Facts Occurring After the Issuance of the Order Support a Finding of Good Cause to Set a Later Hearing Date.

As set forth above, the State Board's Motion to Compel was denied by the ALJ on January 20, 2011 ("ALJ's Order"). On January 21, 2011, the State Board filed a Notice of Intent to File Application for Review of the Denial of its Motion to Compel Discovery



III. Conclusion

Based on the foregoing grounds, the State Board respectfully submits this Memorandum in Support of its Motion for Reconsideration of the Order Denying Expedited Motion for a Later Hearing Date, and moves the Commission to modify its Order to reflect a finding of good cause to postpone the commencement of the evidentiary hearing.

This the 24th day of January, 2011.

/s/ Alfred P. Carlton, Jr.

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