

EDU #5702-88 and #4064-89 (consolidated)
SB # 47-89
SB # 78-89
C # 214-92
SB # 48-92

BOARD OF EDUCATION OF THE BOROUGH :
OF MERCHANTVILLE, CAMDEN COUNTY, :

PETITIONER-APPELLANT, :

V. :

BOARD OF EDUCATION OF THE TOWNSHIP :
OF PENNSAUKEN, CAMDEN COUNTY, :

RESPONDENT-CROSS/PETITIONER- :
CROSS/APPELLANT, :

STATE BOARD OF EDUCATION

DECISION

V. :

BOARD OF EDUCATION OF THE BOROUGH :
OF HADDONFIELD, CAMDEN COUNTY, :

CROSS/RESPONDENT-RESPONDENT. :

Decision on motion by the Commissioner of Education, July 10, 1989

Decision on motion by the Commissioner of Education, October 6, 1989

Decision on motion by the Commissioner of Education, November 13,
1989

Decision on motion by the State Board of Education, January 3, 1990

Decision on motion by the State Board of Education, September 5, 1990

Decision on motion by the State Board of Education, November 19, 1990

Decided by the Acting Commissioner of Education, September 16, 1992

For the Petitioner-Appellant, Kalac, Newman, Lavendar & Campbell
(Peter B. Kalac, Esq., of Counsel)

For the Respondent-Cross/Petitioner-Cross/Appellant, Hill Wallack
(Joseph J. Finley, Esq., of Counsel)

For the Cross/Respondent-Respondent, Kenney, Kenney, Gross &
McDonough (Malachi J. Kenney, Esq., of Counsel)

This case was initiated on July 6, 1988, when the Merchantville Board of Education petitioned the Commissioner pursuant to N.J.S.A. 18A:38-13, seeking to terminate its sending receiving relationship with the Pennsauken Board of Education and to establish a new relationship with Haddonfield.

On July 25, 1988, Pennsauken filed its answer to this petition and the matter was transmitted to the Office of Administrative Law. Subsequent to the prehearing conference in October, Pennsauken filed a cross-petition against Haddonfield, seeking to enjoin it from accepting tuition students from Merchantville. On February 3, 1989, Haddonfield became a party respondent and filed its answer to Pennsauken's cross-petition on May 17, 1989. On July 26, 1989, the matters were consolidated.

The hearing in the matter commenced in November 1990, after extensive discovery, the issuance of several prehearing rulings, and an interlocutory appeal to the State Board of Education which was decided on September 5, 1990.¹ The hearing concluded in October 1991 after twenty two days of testimony. However, because of additional motions filed by the parties, the record before the Administrative Law Judge (ALJ) was not closed until March 16, 1992.

¹ In that decision, the State Board delineated the burden of production under N.J.S.A. 18A:28-13.

On May 1, 1992, the Administrative Law Judge issued his initial decision, finding that there would not be any significant negative impact on the quality of education or the racial composition of the pupil populations of the districts involved and that there were no financial or educational implications precluding severance of Merchantville's relationship with Pennsauken. The ALJ also found that the effect of Haddonfield's tuition policy was only remotely related to the enrollment at Pennsauken High School, and therefore granted Haddonfield's motion to dismiss Pennsauken's cross-petition against it.

On September 16, 1992, Acting Commissioner John Woodbury rendered his decision, rejecting that portion of the ALJ's decision which found that there would not be a significant negative impact on the racial composition of the pupil population at Pennsauken High if Merchantville were permitted to terminate its relationship with Pennsauken. Rather, the Acting Commissioner concluded that severance of the relationship would result in advancing the deterioration in the balance of racial and national origin groupings represented at Pennsauken High. He therefore denied Merchantville's request to terminate the relationship. However, the Acting Commissioner concurred with the ALJ's determination to deny Pennsauken's cross-motion to enjoin Haddonfield's tuition program.

Both Merchantville and Pennsauken appealed to the State Board from the Acting Commissioner's decision.

By letter of November 22, 1996, the Legal Committee of the State Board of Education notified the parties that, in the process of developing its report in the matter, it had concluded that it was necessary to update the record.

Although Haddonfield has not yet responded, both Pennsauken and Merchantville have responded positively to this notice, indicating that they are willing to provide the State Board with the necessary information.

Therefore, pursuant to N.J.A.C. 6:2-1.9, the State Board of Education directs that the record in this case be updated by supplementation with the following:

1. Current numerical data showing the composition by race and national origin of the student populations of Pennsauken, Merchantville and Haddonfield.
2. Current numerical data showing the composition by race and national origin of the total number of high school age students from Merchantville and of those who attend Pennsauken High.
3. Data from the 1990 census showing by race and national origin the composition of both the general populations and school age populations of Pennsauken, Merchantville and Haddonfield.

We direct that the parties, including Haddonfield, submit this information to our Legal Committee as expeditiously as possible without compromising the accuracy of the information.

Jean D. Alexander abstained.

January 8, 1997

Date of mailing _____