

#218-06

BOARD OF EDUCATION OF THE :
SOMERSET HILLS REGIONAL SCHOOL :
DISTRICT, SOMERSET COUNTY, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE :
TOWNSHIP OF BEDMINSTER, :
SOMERSET COUNTY, :

RESPONDENT. :

SYNOPSIS

The Somerset Hills and Bedminster boards of education, parties to a sending-receiving relationship, jointly requested a Declaratory Ruling wherein the Commissioner would construe the provisions of *N.J.S.A. 18A:38-8.2a(2)* and determine whether the sending Bedminster Board may appoint an alternate representative to the receiving Somerset Hills Board to function in the absence of the regular representative, and whether such alternate may sit on a committee of the Somerset Hills Board.

The Commissioner held that the controlling statute provides for one, and only one, member of a sending district board to sit as a qualified voting member of the receiving board. Therefore, the law does not permit a sending district board of education to appoint an “alternate” representative to the receiving board of education to function in the absence of the duly designated representative or to sit on a committee of the receiving board. The Commissioner recognized that the existing statutory scheme may be perceived as unsatisfactory by some sending boards, but noted that changes to the governance structure of school districts are a matter of State policy appropriately addressed by the Legislature after full and fair public debate.

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.

June 15, 2006

BOARD OF EDUCATION OF THE	:	
SOMERSET HILLS REGIONAL SCHOOL	:	
DISTRICT, SOMERSET COUNTY,	:	
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PETITIONER,	:	COMMISSIONER OF EDUCATION
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TOWNSHIP OF BEDMINSTER,	:	
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	:	
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This matter came before the Commissioner of Education on February 10, 2006 by way of a Petition for Declaratory Ruling jointly submitted by two parties to a sending-receiving relationship. In their submission, the petitioning receiving district Board of Education (Somerset Hills) and the respondent sending district Board of Education (Bedminster) requested that the Commissioner construe the provisions of *N.J.S.A. 18A:38-8.2a(2)* and determine whether the Bedminster Board may appoint an “alternate” representative to the Somerset Board to function in the absence of the “regular” representative, and whether such “alternate” may sit on a committee of the Somerset Board.

The request was accepted pursuant to the Commissioner’s discretion under *N.J.A.C. 6A:3-2.1 et seq.*, and the parties were afforded an opportunity to submit briefs in support of their respective positions. Primary briefs were duly filed, and the record closed on March 20, 2006 upon expiration of the time for submission of reply briefs.¹

¹ Neither party elected to file a reply brief.

The essential facts of this matter are not in dispute. The Somerset Hills Board of Education operates a limited purpose regional school district serving its constituent districts and also receiving secondary students from the Bedminster school district through a sending-receiving relationship established pursuant to *N.J.S.A. 18A:38-8 et seq.* Because Bedminster’s students comprise at least ten percent (10%) of the total pupil enrollment in the affected grades, the Bedminster Board is entitled to one representative on the Somerset Hills Board pursuant to *N.J.S.A. 18A:38-8.2(a)2.* When annually selecting this representative from among its members, the Bedminster Board has developed a practice of appointing both a “regular” representative and an “alternate,” the latter to attend meetings of the Somerset Hills Board when the regularly appointed member is unable to do so, and to sit in his or her stead on a Somerset Hills Board committee where the “alternate” has particular expertise. Although Somerset Hills has apparently agreed to this arrangement in the past, the Board now questions its legality.

In support of its position, the Somerset Hills Board contends that the use of a “substitute” or “alternate” when the regularly appointed sending district representative is unable to attend a meeting of the receiving board is contrary to the plain language of *N.J.S.A. 18A:38-8.2 et seq.* Those statutes, according to the Board, provide for: 1) sending district representation on the receiving district board of education in accordance with a formula based on pupil enrollment; 2) annual designation of the sending district board member who will represent the district on the receiving board; and 3) the designated board member to be subject to the rules and procedures of the receiving board. Nowhere, Somerset Hills opines, is it suggested that a sending board is entitled to

alternate its representation between different members, in effect creating a “shared seat” on the receiving board. The Board observes that the sending district’s representative is a member of the receiving board of education, taking an oath of office that vests him or her with all the authority and discretion of board membership; it would, therefore, be impossible to have a shared seat, since only one sworn member of the Somerset Hills Board may be from Bedminster. It is likewise impossible, Somerset Hills contends, to have Bedminster’s “alternate” sit on a committee of the Somerset Hills Board, a situation tantamount to having two Bedminster representatives in a position to act as Somerset Hills Board members, contrary to statute. (Somerset Hills’ Brief at 1-3)

The Bedminster Board, on the other hand, urges the Commissioner to permit its present practice to continue “to further the intent and plain meaning of the statute and the logical application of the facts.” (Bedminster’s Brief at 3) The Board first observes that operative statute neither provides a definition of “representative” nor uses terms such as “person” or “individual,” and that neither case law nor legislative history provides guidance on the issue in dispute herein. (*Id.* at 3-4) Analyzing the statute in terms of its “plain language” and “common sense,” the Board argues that: 1) there is nothing in the statute prohibiting the use of an “alternate;” 2) had the Legislature wanted to limit the sending district’s representation to one specific person or require a rotation of substitutes, it would have expressly said so; and 3) a sending district has the right to representation on the receiving board, so that a flat denial of any substitute for the regularly appointed member would disenfranchise the sending community altogether when the regular designee cannot attend, while haphazard designation of substitutes would destroy the sending district’s continuity of

representation—a particularly important point where, as here, the chosen “alternate” would provide expertise to a receiving board committee. (*Id.* at 5, 7)

Bedminster next contends that its position does not violate statute by placing two representatives on the Somerset Hills Board, since at any given meeting there will be only one Bedminster member attending and voting, which is exactly what the law contemplates; it further argues that the use of the indefinite “an” and “any” in *N.J.S.A.* 18A:38-8.1 supports its position. (*Id.* at 6-7) Finally, Bedminster opines that the equities lie in its favor, since denying representation to a sending district when its regular designee cannot attend meetings—or preventing the board from sending an alternate with expertise to sit as a member of a receiving board committee—results in great injustice, considering that the sending district must still send tuition payments to the receiving district even though it has not had a voice in the receiving board’s decision-making; whereas there is no harm to the receiving district if its board meetings are attended by an “alternate” in lieu of the sending district’s regular representative. (*Id.* at 7)

Upon careful review and consideration, the Commissioner concludes that the “alternate” arrangement used by Bedminster is not permissible under controlling law.

N.J.S.A. 18A:38-8.1 provides in pertinent part:

18A:38-8.1. In addition to the members of the board of education of a Type I and Type II school district provided by law, in a school district which is receiving pupils from another district or districts pursuant to *N.J.S.*18A:38-8, there shall be an additional member as provided pursuant to section 2 of this act to represent the board of education of each sending district. Any additional member shall be a member of the board of education of a sending district designated annually by the board of that district and shall be eligible to vote on the following matters before the receiving district board of education: *** [a. – d. omitted]***

N.J.S.A. 18A:38-8.2 provides:

18A:38-8.2. A school district which is sending pupils to another school district pursuant to N.J.S.18A:38-8 shall have representation on the board of education of the receiving school district as follows:

a. (1) If the pupils of the sending district comprise less than 10 percent of the total enrollment of the pupils in the grades of the receiving district in which the pupils of the sending district will be enrolled, the sending district shall have no representation on the receiving district board of education.

(2) If the pupils of the sending district comprise at least 10 percent of the total enrollment of the pupils in the grades of the receiving district in which the pupils of the sending district will be enrolled, the sending district shall have one representative on the receiving district board of education.

b. If the total number of pupils of two or more sending districts, which do not qualify for representation under subsection a. of this section, comprise at least 15 percent of the total enrollment of the pupils in the grades of the receiving district in which the pupils of the sending districts will be enrolled, they shall have collectively two representatives on the receiving district board of education. The annual designation of the representatives, in the event more than two districts collectively qualify under this subsection, shall be rotated among the boards of education of the sending districts according to a schedule determined by the joint agreement of the boards.

c. Notwithstanding the provisions of subsections a. and b. of this section, the number of representatives designated by the sending districts to be additional members shall not exceed three additional members on a receiving board with originally nine or more members, two additional members on a receiving board with originally seven or eight members, and one additional member on a receiving board with originally less than seven members. In the event that this restriction results in an unequal representation of sending districts, the annual designation of the representative or representatives shall be rotated among the boards of education of the sending districts according to a schedule determined by the joint agreement of the boards.

d. A representative of a sending district board of education shall be designated at the meeting of the board which is closest in time to the annual organizational meeting of the receiving district board of education and shall serve a one-year term beginning with the organizational meeting of the receiving district board. The representative shall be subject to the rules and procedures of the receiving district board of education.

e. The calculation of percentages required under this section shall be based on the number of pupils reported as of the last school day prior to October 16 of each prebudget year.

The intent of these statutes is clearly and unequivocally that any sending district board of education qualifying for representation on a receiving board of education pursuant to sections 18A:38-8.2a. and 8.2b shall be entitled to designate, annually for a term of one year beginning with the organizational meeting of the receiving board, one of its members to represent the sending district's interests as a member of the receiving board.

Where the larger statutory framework is so clear in its intent, the absence of express references to "persons" or "individuals" and the lack of an express prohibition against "alternates" carry no weight in arguing for the permissibility of the practice used by Bedminster. Neither is the use of indefinite articles of any import; such usage plainly reflects the law's applicability to situations where there may be more than one sending district with representation on any given receiving board ("*an* additional member as provided pursuant to section 2 of this act to represent the board of education of *each* sending district;" "*any* additional member shall be *a* member of *a* sending district;" "A representative***shall be designated***," but *cf.* "*The* representative shall be subject***," *emphasis supplied*). Taken in context, what the legislative language clearly intends is that each qualifying sending district is entitled to designate from among its own number one member, and one member only, as its representative to the board which receives its students.²

Moreover, the corollary of the statutory directive that a sending district representative shall be a voting member of the receiving board(s) of education is that an

² Nothing herein is intended to preclude the appointment of a new representative for the remainder of an unexpired term should the representative appointed pursuant to section 18A:38-8.2d subsequently cease to be a member of the sending district board of education or become unable to fulfill the duties of the representative.

“alternate” cannot be thus sworn without creating a situation where the receiving board will then have two duly authorized additional board members from a single sending district, notwithstanding that only one of the two members may be present and acting at any given time. This situation cannot be allowed to occur: Not only does the law make no express provision for it; it is also clearly contrary to the plain language of sections 18A:38-8.2a. through 8.2c., which collectively act to limit the extent of sending district membership on a receiving board.

Finally, the statute itself belies Bedminster’s arguments based on the “injustice” of paying tuition to a receiving board when sending district representation is not guaranteed at each and every meeting of the receiving board. Although not applicable to the situation herein, the rotation provisions of sections 18A:38-8.2b. and 8.2c. clearly demonstrate that the Legislature contemplated circumstances where a sending district would be paying tuition to its receiving district while having reduced—or even no—representation on the receiving board of education, in some cases for a year or more. Moreover, there are other means available to a sending board to mitigate the impact of its representative’s individual absences, such as electronic or telephonic participation when the representative is unable to be physically present at a receiving district board meeting, or having another member of the sending board attend the receiving district board meeting as a member of the public.

Consequently, the Commissioner determines and declares that *N.J.S.A.* 18A:38-8.2a(2) does not permit the Bedminster Board of Education, or any other sending district board of education, to appoint an “alternate” representative to its receiving board of education to function in the absence of the “regular” representative or

sit on a committee of the receiving board. To the extent that the existing statutory scheme for representation of sending districts on receiving boards of education is perceived as resulting in injustice to sending districts, this is a matter of State policy appropriately addressed by the Legislature after full and fair public debate.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 15, 2006

Date of Mailing: June 16, 2006

³ 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.*