

#91-09 (OAL Decision: Not available online)

BOARD OF EDUCATION OF THE :
BOROUGH OF NEWFIELD, :
GLOUCESTER COUNTY, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION
BUENA REGIONAL SCHOOL :
DISTRICT, ATLANTIC COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioning sending district sought severance of its relationship with the respondent receiving district, contending that no substantial negative impact would result from such severance. The respondent's initial pleadings alleged that a severance would result in negative educational, financial and demographic impact. No evidence in support of this contention was presented at the hearing, and the respondent ultimately entered into a settlement agreement with petitioner, leaving the application for severance effectively unopposed.

The ALJ recommended approval of the parties' proposed settlement agreement, effectuating severance of the 27 year sending-receiving relationship between the petitioner and the respondent.

The Commissioner rejected the Initial Decision, finding that the statutory criteria for adjudicating the termination of sending-receiving relationships are set forth in *N.J.S.A.* 18A:38-13, and the procedural requirements for same are set forth in *N.J.A.C.* 6A:3-6.1. In that the procedural rules governing uncontested applications for severance apply in this case, the Commissioner declined to permit severance at this time, instead ordering further proceedings in accordance with that rule so that the parties' now-mutual application could be properly assessed under the standard prescribed by law.

<p>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.</p>

March 11, 2009

BOARD OF EDUCATION OF THE :
BOROUGH OF NEWFIELD, :
GLOUCESTER COUNTY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BUENA REGIONAL SCHOOL :
DISTRICT, ATLANTIC COUNTY, :
RESPONDENT. :

The record of this matter, the “Resolution” articulating a settlement regarding the severance of the parties’ sending-receiving relationship, the “Joint Stipulation” of facts, and the Initial Decision of the Office of Administrative Law (OAL) recommending approval of the parties’ settlement effectuating severance, have been reviewed.¹

The petition articulated the following, as the impetus for the requested severance:

Par. 6. Recently, Buena Regional has expressed its intention to discontinue operation of the Edgerton School. Such action is contrary to the wishes of the Newfield Board.

Par. 7. Additionally, the Newfield Board has become dissatisfied with other aspects of its sending-receiving relationship with Buena Regional [Emphasis added.]

The respondent pointed out in its answer that formal agreements between the parties since 1993 had contemplated respondent’s construction of new school facilities and

¹ Petitioner’s exceptions, received on February 9, 2009, have been reviewed and found to be without merit.

discontinuance of the use of the aging Edgarton School building. Further, respondent alleged that:

[I]n reliance upon the agreement set forth in the Sending-Receiving Agreements and the Lease Agreements between the parties [respondent] has pursued a building program which will result in the construction of a state of art [sic] middle school and the development of an elementary school which will enable the Respondent to cease utilizing antiquated and substandard school buildings such as . . . the Edgarton Memorial School. (Respondent's Answer, Par. 6)

In reliance upon the Sending-Receiving Agreement, Respondent has pursued a building program, expanded its educational facilities and invested financially and educationally in providing educational services to Petitioner's students. (*Id.*, Sixth Affirmative Defense)

The "other aspects" cited in the petition as grounds for severance were:

Par. 11. Newfield has the opportunity to provide [Newfield] high school students with a similar or greater educational opportunity than they experience at Buena Regional High School, with the potential to do so at a lower cost than that presently paid to Buena Regional.

and:

Par. 17. Newfield has the opportunity to provide its students with a similar or greater educational opportunity than they experience at Buena Regional, at an elementary school located in Newfield, with the potential to do so at a lower cost than that presently paid to Buena Regional.

Respondent countered that:

A severance at this time constitutes a breach of contract. (Respondent's Answer, Third through Fifth Affirmative Defenses)

Finally, notwithstanding the feasibility study that petitioner commissioned to support its severance application – which study concluded that a severance would result in no undue educational, financial or racial detriment to the two school districts – respondent alleged

that a severance would indeed impose financial, educational and racial detriment upon its school district and that:

[t]erminating a Sending-Receiving Agreement that has existed for 27 years for the sole purpose of continuing to use an elementary school that has already been designated for closure does not meet applicable legal standards or constitute sound educational and financial planning for the students of Newfield and the students of Buena Regional. (*Id.*, Fourteenth Affirmative Defense)

Eight days of hearings – the first occurring on October 30, 2007 and the eighth taking place on July 15, 2008 – were conducted before Administrative Law Judge (ALJ) Bruce M. Gorman. Petitioner produced administrators from its district and the districts with whom it wishes to form new sending-receiving relationships. Those administrators presented testimony supportive of the proposed new relationships. The remaining witnesses were the three authors of the feasibility study commissioned by petitioner, all of whose testimony buttressed their study’s findings that termination of the current sending-receiving relationship between petitioner and respondent would result in no significant educational, financial or demographical detriment to any of the affected school districts. Respondent presented no witnesses.

On or about January 14, 2009, the OAL received a proposed settlement from the parties whereby a gradual phase-out of their sending-receiving arrangement would begin in September 2010, and whereby a contract action in Superior Court between the parties would also be resolved. The ALJ recommended approval of the settlement.

The statutory criteria for adjudicating the termination of sending-receiving relationships such as the one between petitioner and respondent are enumerated in *N.J.S.A.* 18A:38-13, which is set forth below in its entirety.² The party proposing the severance

must provide the Commissioner with a thorough feasibility study which addresses the likely educational, financial and demographic effects on all participating districts. The other party to the sending-receiving relationship may respond. After consideration of the circumstances, the Commissioner must make an equitable determination.

Also governing any applications for severances of sending-receiving relationships are the procedural requirements in *N.J.A.C. 6A:3-6.1*,³ which regulation is set forth below. Of special significance in the present case is section (b) of *N.J.A.C. 6A:3-6.1*.

² *N.J.S.A. 18A:38-13*. Change in designation, allocation.

No such designation of a high school or high schools and no such allocation or apportionment of pupils thereto, heretofore or hereafter made pursuant to law, shall be changed or withdrawn, nor shall a district having such a designated high school refuse to continue to receive high school pupils from such sending district except upon application made to and approved by the commissioner. Prior to submitting an application the district seeking to sever the relationship shall prepare and submit a feasibility study, considering the educational and financial implications for the sending and receiving districts, the impact on the quality of education received by pupils in each of the districts, and the effect on the racial composition of the pupil population of each of the districts. The commissioner shall make equitable determinations based upon consideration of all the circumstances, including the educational and financial implications for the affected districts, the impact on the quality of education received by pupils, and the effect on the racial composition of the pupil population of the districts. The commissioner shall grant the requested change in designation or allocation if no substantial negative impact will result therefrom.

³ *N.J.A.C. 6A:3-6.1* Application for termination or change in allocation or apportionment.

(a) An application for change of designation of a high school (termination or severance of relationship) or of allocation or apportionment of students pursuant to [N.J.S.A. 18A:38-13](#) shall be made by petition of appeal, accompanied by the required feasibility study, and shall proceed in accordance with the provisions of this chapter except as set forth below.

(b) Where an application for change is unanswered within the requisite filing period, or is answered by a filing or filings indicating that each respondent does not oppose the application, the Commissioner shall so notify the petitioning district board of education and each respondent district board of education. At the next public meeting of each district board of education following notice from the Commissioner, each district board of education shall announce that the record before the Commissioner shall remain open for a period of 20 days from the date of the announcement in order that interested persons or entities may submit written comments to the Commissioner. Such announcement shall indicate the manner in which, and the address to which, comments may be submitted to the Commissioner as set forth in [N.J.A.C. 6A:3-1.2](#) and [6A:3-1.3](#), and shall further indicate the nature and purpose of such comments as set forth in (c) below.

1. Each district board of education shall, within 10 days of the date of the announcement, submit to the Commissioner a certification indicating the date the announcement was made and the content of the announcement.

(c) Comments submitted pursuant to (b) above shall not exceed 10 pages in length, shall be submitted to the Commissioner in duplicate, shall be served on all parties to the case, shall include proof of such service when filed with the Commissioner, and shall specifically address the following statutory standard for the Commissioner's review of applications for change in designation, allocation or apportionment:

N.J.A.C. 6A:3-6.1(b) addresses situations in which there is no opposition to an application for severance. While respondent's initial pleadings alleged that a severance would result in negative educational, financial and demographic (racial balance) effects, it presented no evidence to that effect at the hearing, and ultimately waived its objections by entering into a settlement. Thus, petitioner's application is, as a practical matter, unopposed.

Accordingly, under *N.J.A.C.* 6A:3-6.1(b), the Commissioner must notify the petitioning and respondent boards of education who, at their next public meetings "shall announce that the record before the Commissioner shall remain open for a period of 20 days from the date of the announcement in order that interested persons or entities may submit written comments to the Commissioner," in the form of petitions. *N.J.A.C.* 6A:3-6.1(b) and (c) contain further instructions about the information to be included in the announcements by the respective boards of education, and the nature and purpose of the comments. Certifications indicating the dates and contents of the boards' announcements are required to be filed with the Commissioner within ten days of the publishing of the announcements, pursuant to *N.J.A.C.* 6A:3-6.1(b)(1).

At the end of the 20-day comment period the boards of education who are parties to the severance application have 20 days to serve responses upon the Commissioner and all

1. Comments shall address the question of whether the proposed change in designation, allocation or apportionment will result in a substantial negative impact in any of the affected districts in one or more of the following areas: educational and financial implications; quality of education received by students; and racial composition of the student populations.

(d) Each party to the application for change shall have 20 days to reply to any comments at the close of the designated comment period. Any reply shall be served on all other parties to the application.

(e) If the Commissioner determines, upon review of the record at the close of the period established for submission of comments and replies, that further inquiry, fact-finding or exploration of legal argument is necessary in order to decide the matter consistent with the standard of statute, the Commissioner shall direct such further proceedings as the Commissioner deems necessary.

other parties, *N.J.A.C.* 6A:3-6.1(d). At the close of that period it is within the Commissioner's discretion to direct further proceedings or make a determination. *N.J.A.C.* 6A:3-6.1(e).

In accordance with the foregoing, the Commissioner rejects the Initial Decision of the OAL and directs the parties to this action to make the announcements mandated by *N.J.A.C.* 6A:3-6.1(b) and to submit to the Commissioner the certifications required by same.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: March 11, 2009

Date of Mailing: March 11, 2009

⁴ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36.