

OAL DKT. NOS. EDU 6546-08
AGENCY DKT. NOS. 165-6/08

BOARD OF EDUCATION OF THE BOROUGH :
OF TINTON FALLS, MONMOUTH COUNTY, :
 :
PETITIONER, :
 :
 : COMMISSIONER OF EDUCATION
V. :
 :
 : DECISION
BOARD OF EDUCATION OF THE TOWNSHIP :
OF COLTS NECK, MONMOUTH COUNTY :
 :
RESPONDENT, :
 :
AND :
 :
BOARD OF EDUCATION OF THE MONMOUTH :
REGIONAL HIGH SCHOOL DISTRICT, :
 :
PETITIONER-INTERVENOR, :
 :
AND :
 :
BOARD OF EDUCATION OF THE FREEHOLD :
REGIONAL HIGH SCHOOL DISTRICT, :
 :
RESPONDENT-INTERVENOR. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of petitioner Board of Education of Tinton Falls and replies thereto from respondent Board of Education of Colts Neck and intervenor Freehold Regional High School District – submitted in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching his determination herein.

Petitioner’s exceptions recast and reiterate its arguments advanced below, again urging that *N.J.S.A.* 18A:38-7.8 must not be read in a vacuum. While not disputing that this statute does not delineate specifically “children of Navy personnel residing on federal property,” but rather specifies “persons of school age who reside on federal property,” it maintains that this statute must be

read in conjunction with the stipulation of settlement reached in federal district court in 1988; the October 6, 1987 correspondence reflecting the September 15, 1987 meeting with the Department of the Navy; the Memorandum of Agreement reached with the Department of the Navy on June 16, 1988; the Tinton Falls Resolution passed on April 11, 1988; the April 12, 1988 letter from Board of Education Superintendent Ashley; and County Superintendent Hughes's designation acknowledging the resolution passed by a majority vote of the Tinton Falls Board of Education in order to ascertain the *true* intent of the legislation and why it was adopted in the first place. As it is fully evident that the decision of the Administrative Law Judge (ALJ) considered and addressed all of petitioner's arguments in this regard, they will not be revisited here.

Upon comprehensive review and consideration, the Commissioner determines to adopt the ALJ's recommended decision. Initially, the Commissioner concurs with the ALJ that:

Tinton Falls should have known in 1988, and if not in 1988 then throughout the 1990s and 2000s, that its permanent designation as the district providing an education to the children residing at NWS Earle would require it to educate the civilian population that would likely reside at NWS Earle in the future, particularly because the housing built at NWS Earle was designated as Section 801 housing. Any investigation of available documents or legal research relating to the Section 801 housing would have revealed the eventual use of the housing. Given this notice, Tinton Falls should have filed a petition sooner than it did. (Initial Decision at 12)

However, the Commissioner further agrees with the ALJ – for the reasons presented on pages 12-13 of her decision – that because this matter involves an issue of first impression and one of significant public interest, the 90-day rule should be relaxed to allow the matter to be resolved on its merits.

With respect to the merits of this matter, the Commissioner finds and concludes – for the reasons fully presented on pages 13-16 of the Initial Decision – that the language of *N.J.S.A. 18A:38-7.8* which controls this matter is clear and unambiguous in providing that once Tinton Falls was appropriately designated pursuant to that provision, it became responsible for providing a free public education to *all* school age children residing on NWS Earle. Notwithstanding Tinton Falls' arguments to the contrary, the ALJ in her decision recognized the evidential demonstration of Tinton Falls' intent to educate only Navy-dependent children and, consequently,

undertook a review of the legislative history behind the 1988 legislation to help clarify the legislature's original intent in order to compare this to the plain language of the statute so as to diminish any potential skepticism over the way that language was interpreted, and found them to be consonant. Specifically, the legislative history further supports a plain application of the statute. (Initial Decision at 16-17)

Finally, as aptly noted by the ALJ, “[a]ny further remedy petitioner Tinton Falls BOE seeks rests within the province of the legislature as a plain reading of the statutory provisions at issue herein does not support the relief it now seeks before the Commissioner.” (Initial Decision at 17-18)

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. Pursuant to *N.J.S.A.* 18A:38-7.7 to 7.9, Tinton Falls is hereby ordered to provide a free public education to all children residing in the housing located at NWS Earle.

IT IS SO ORDERED.¹

ACTING COMMISIONER OF EDUCATION

Date of Decision: November 17, 2011

Date of Mailing: November 18, 2011

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1)