92-21

New Jersey Commissioner of Education

Decision

Board of Education of the Village of Ridgefield Park, Bergen County,

Petitioner,

v.

Board of Education of the Borough of Little Ferry, Bergen County,

Respondent.

Synopsis

Petitioner, Ridgefield Park Board of Education (Ridgefield Park), and respondent, Little Ferry Board of Education (Little Ferry), have a longstanding send-receive relationship whereby Little Ferry students attend Ridgefield Park High School on a tuition basis. The two boards are parties to a formal written send-receive agreement which historically has provided for a tuition rate that was lower than the certified tuition rate based on Ridgefield Park's actual cost per pupil. In 2019, Ridgefield Park proposed a contract in which it reserved the right to charge the full certified tuition rate. Little Ferry refused to sign the contract. Ridgefield Park subsequently filed the within petition, seeking to compel Little Ferry to execute the contract and contending that the receiving district has the right to demand tuition in the full amount of the certified per pupil cost as defined by statute and regulation, *N.J.S.A.* 18A:38-19; *N.J.A.C.* 6A:23A-1.1, et. seq. Little Ferry contended that the tuition rate is negotiable; that the new contractual language is inconsistent with the parties' past practice; and that the requested increase in tuition rate is financially untenable for its school district. The parties filed opposing motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; this case raises the purely legal question of whether the statutes and regulations allow Ridgefield Park the discretion to demand that Little Ferry pay the full certified tuition amount for the students it sends to Ridgefield Park High School; the affordability of that tuition is not at issue; the plain language of the applicable statute gives the receiving district exclusive authority to insist on tuition payment from the sending district of any amount up to the certified tuition rate; and Ridgefield Park's claim is further supported by the regulation that allows for tuition adjustments, through which the receiving district may charge the sending district for any shortfall between the estimated tuition rate set upon entering into the contract and the certified tuition rate that is calculated later. Accordingly, the ALJ granted summary decision in favor of Ridgefield Park; ordered that Ridgefield Park may demand the full certified tuition rate; and directed Little Ferry to execute the proposed contract.

Upon review of the record, the Commissioner affirmed the Initial Decision of the OAL as the final decision in this matter. In so doing, the Commissioner found, *inter alia*, that Ridgefield Park may determine the tuition rate between the parties, as long as it does not exceed the actual per pupil cost as determined by the applicable statutes and regulations. Little Ferry was ordered to execute the contract proposed by Ridgefield Park for the 2019-2020 and 2020-2021 school years.

92-21

OAL Dkt. No. EDU 07868-20
Agency Dkt. No. 165-8/20

New Jersey Commissioner of Education

Final Decision

Board of Education of the Village of Ridgefield Park, Bergen County,

Petitioner,

v.

Board of Education of the Borough of Little Ferry, Bergen County, and Frank R. Scarafile, Superintendent,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent pursuant to *N.J.A.C.* 1:1-18.4, and petitioner's reply thereto, have been reviewed and considered.

This matter involves a sending-receiving relationship whereby students from Little Ferry attend Ridgefield Park High School. Historically, the tuition rate that the Ridgefield Park Board of Education charged the Little Ferry Board of Education was lower than the certified tuition rate based on Ridgefield Park's actual cost per pupil. However, in 2019, Ridgefield Park proposed a contract in which it reserved the right to charge the full certified tuition rate. When Little Ferry refused to sign the contract, Ridgefield Park appealed to the Commissioner. The Administrative Law Judge (ALJ) granted Ridgefield Park's motion for summary decision, finding that the plain language of the applicable statute gives the receiving district exclusive authority to insist on any amount up to the certified tuition rate. The ALJ noted

that Ridgefield Park's claim is further supported by the regulation that allows for tuition adjustments, through which the receiving district may charge the sending district for any shortfall between the estimated tuition rate set upon entering into the contract and the certified tuition rate that is calculated later. The ALJ rejected Little Ferry's argument that because the regulation does not require tuition adjustments, it contemplates negotiation of a lower rate, and concluded that the regulation does not deprive Ridgefield Park of its clear statutory right to demand the full certified tuition amount. Accordingly, the ALJ ordered that Ridgefield Park may demand the full certified tuition rate and directed Little Ferry to execute the proposed contract.[1] Finally, the ALJ denied Ridgefield Park's request for attorneys' fees, as the Commissioner has no jurisdiction to enter such an award.

In its exceptions, Little Ferry argues that the ALJ improperly determined that the matter was ripe for summary decision, because there are disputed issues of material fact regarding the accuracy and propriety of the methods and calculations Ridgefield Park used to determine the tuition rate. Little Ferry also contends that the statutory and regulatory language affords discretion to the parties to negotiate rates and does not indicate that the payment amount is to be unilaterally decided by the receiving district. Little Ferry states that it seeks the opportunity to engage with Ridgefield Park to negotiate a rate agreed upon by both parties.

In reply, Ridgefield Park argues that the sole issue before the Commissioner is a matter of statutory interpretation – whether Ridgefield Park has the discretion to charge a tuition rate up to the actual cost per pupil. Reiterating arguments set forth in its briefs below, as well as the conclusions reached by the ALJ in the Initial Decision, Ridgefield Park contends that while

[1] The ALJ noted that Ridgefield Park's right to demand the full certified tuition rate is statutory and exists regardless of the language of the contract.

negotiations between the districts are permitted, they are not required, and the ultimate authority to set a rate when the parties cannot reach an agreement lies with the receiving district.

Upon review, the Commissioner concurs with the ALJ that this matter is ripe for summary decision. The relief sought in the petition of appeal pertains to Ridgefield Park's ability to demand the full certified tuition rate and to require Little Ferry to enter into a contract providing for payment of that rate. The calculation of the rate itself is not at issue in the petition of appeal. Should Little Ferry wish to contest the calculation of the certified tuition rate, it is free to file its own petition of appeal, but that issue is outside the scope of the matter now before the Commissioner. The only issue before the Commissioner is whether Ridgefield Park may demand for the full certified tuition rate, which is a legal question appropriate for resolution by summary decision.

The Commissioner also concurs with the ALJ that Ridgefield Park may charge the full certified tuition rate. *N.J.S.A.* 18A:28-19 provides that the receiving district "shall determine" the tuition rate. As the ALJ correctly concluded, the plain language of the statute gives the receiving district – Ridgefield Park – the discretion to set the tuition at any amount, with the only limitation being that it cannot exceed the certified tuition rate. While nothing in the statues or regulations precludes negotiations between the parties, and the receiving district is free to accept a tuition rate lower than the full certified tuition rate, the statutory language clearly provides for a specific outcome in the event that the receiving district does not wish to negotiate, or negotiations are unsuccessful. In those circumstances, the receiving district is permitted to set the tuition rate, as long as it is not more than the certified tuition rate.

Accordingly, the Initial Decision is affirmed, and Ridgefield Park's motion for summary decision is granted. Ridgefield Park may determine the tuition rate between the parties, as long as it does not exceed the actual per pupil cost as determined by the applicable

statutes and regulations. Little Ferry is ordered to execute the contract proposed by Ridgefield Park for the 2019-2020 and 2020-2021 school years. Ridgefield Park's request for attorneys' fees is denied.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 22, 2021
Date of Mailing: April 27, 2021

[2] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 07868-20

AGENCY DKT. NO. 165-8/20

BOARD OF EDUCATION OF THE VILLAGE OF RIDGEFIELD PARK, BERGEN COUNTY,

Petitioner,

v.

BOARD OF EDUCATION OF THE BOROUGH OF LITTLE FERRY, BERGEN COUNTY, AND FRANK R. SCARAFILE, SUPERINTENDENT,

Respondents.

Kerri A. Wright, Esq., for petitioner (Porzio, Bromberg and Newman, attorneys)

John G. Geppert, Jr. Esq., for respondent (Scarinci Hollenbeck, attorneys)

Record Closed: February 12, 2021 Decided: March 8, 2021

BEFORE **ELLEN S. BASS**, Acting Director & Chief ALJ:

STATEMENT OF THE CASE

Petitioner, the Ridgefield Park Board of Education ("Ridgefield Park"), seeks an order compelling respondent, Little Ferry Board of Education ("Little Ferry"), to execute a sending-receiving contract which reserves to Ridgefield Park the right to demand

tuition in the full amount of the certified per pupil cost, as defined by statute and regulation. N.J.S.A. 18A:38-19; N.J.A.C. 6A:23A-1.1, et. seq. Little Ferry responds that that the tuition rate is negotiable; that the new contractual language is inconsistent with the parties' past practice; and that it is financially untenable for its school district.

PROCEDURAL HISTORY

A petition of appeal was filed by Ridgefield Park with the Commissioner of Education ("the Commissioner") on August 7, 2020. An answer was filed by Little Ferry and the matter was transmitted to the Office of Administrative Law ("OAL") as a contested case on August 21, 2020. Ridgefield Park filed a Motion for Summary Decision on December 9, 2020, and Opposition to the Motion was filed by Little Ferry on January 29, 2021. Ridgefield Park replied to the Opposition on February 12, 2021, and the record closed.[1]

ISSUE PRESENTED

Can a receiving district, in its sole discretion, set the tuition amount charged to a sending district, and can that tuition be in an amount up to and including the certified per pupil cost as calculated in accordance with applicable law and regulations? If so, can Ridgefield Park compel Little Ferry to execute a sending-receiving agreement that so provides?

FINDINGS OF FACT

The submissions of the parties reveal that the salient facts are not in dispute. I **FIND**:

[1] Via letters dated February 18, 2021, and February 26, 2021, Little Ferry advised that it had retained an accountant who had reviewed documents obtained via an Open Public Records ("OPRA") request. That accountant, via certification, raised questions regarding the validity of the certified tuition rate. Counsel for Ridgefield Park has objected to these late submissions and challenges their relevance. As will be more fully addressed below, I agree that these submissions are not pertinent to the issue presented by the pleadings.

Pursuant to a longstanding sending-receiving relationship, Little Ferry students attend Ridgefield Park High School on a tuition basis. The tuition amount is calculated in accordance with a regulatory formula. Actual audited expenditures and average daily enrollment numbers are not available until the school year has concluded, so the tuition to be paid is calculated and adjusted over a three-year period. In year one of the cycle, Little Ferry provides Ridgefield Park with the estimated number of Little Ferry students who will attend Ridgefield Park High School the following year, and Ridgefield Park provides an estimated tuition amount. Little Ferry includes this amount in its budget in year two and pays Ridgefield Park based on this estimated amount during that year. During year three, the Department of Education reviews Ridgefield Park's audited financials and issues "certified tuition rates," which represent the actual cost per student in year two. If the amount certified by the Department differs from the amount Ridgefield provided as an estimate in year one, any deficits or credits are trued-up by the districts in year three. This cycle is intended to ensure that Little Ferry pays tuition based on the actual number of students received and based on Ridgefield Park's actual audited expenditures. This three-year cycle repeats on a rolling basis.

The two Boards are parties to a formal written sending-receiving agreement which historically has provided for a tuition rate less than the certified rate yielded by the regulatory formula. For example, the certified rate exceeded the parties' contractual rate by $309,626 in 2014; $332,593 in 2015; $589,723 in 2016; $194,786 in 2017 and $277,373 in 2018. It is uncontroverted that Ridgefield Park did not attempt to recoup the difference in the past. But in the spring of 2019, Ridgefield Park presented Little Ferry with a contract that now provided for tuition adjustments, and that reserved Ridgefield Park's right to demand the full certified tuition amount. Little Ferry refused to execute the agreement, and this dispute ensued.

On October 11, 2019, the parties met with the Interim Executive Bergen County Superintendent of Schools to mediate their dispute. Adjustments to the tuition paid for both the 2016-2017 and the 2019-2020 school years were discussed, but the parties were unable to reach an accord. On February 13, 2020, the County Superintendent advised Little Ferry that it owed Ridgefield Park the sum of $251,542 for the 2016-2017 school year. He moreover advised that Little Ferry "must sign the 2019-2020 tuition

contract and reimburse Ridgefield Park for any corresponding tuition adjustments." Ongoing efforts were made to reach an accord, to include discussion of a payment plan for back tuition. As a result of these efforts, the adjustment for the 2016-2017 school year has been paid. And Little Ferry has agreed to pay the certified tuition rate for the 2020-2021 school year but continues to refuse to sign the proposed sending-receiving agreements for the 2019-2020 and 2020-2021 school years.

Both Boards state that they are in precarious financial situations, with Ridgefield Park asserting that a signed contract is its only assurance that the moneys expected from Little Ferry will be paid. Little Ferry does not contest the facts set forth in the petition, but rather, vigorously urges that it simply cannot afford the tuition adjustment sought by Ridgefield Park. Little Ferry moreover points out that in the past, the two Boards have cooperatively agreed to tuition charges, and have negotiated caps on tuition adjustments. And it urges that financial mismanagement by Ridgefield Park has resulted in the astronomical tuition increases which are presently at issue, and which Little Ferry can ill afford. Little Ferry asserts in its Opposition to the Motion, for the first time, that the tuition rate has been improperly calculated and that there has been a lack of transparency by Ridgefield Park relative to how that tuition rate was calculated.

But the accuracy of the certified tuition amount is an issue raised nowhere in the pleadings. And neither the financial situation of each of these Boards, nor the history of their past efforts to agree on a tuition amount are pertinent to the narrow issue presented; that is, whether the law permits Ridgefield Park to demand the full certified tuition amount. Suffice it say, however, and I **FIND**, that Ridgefield will struggle to meet its fiscal demands without the amount of tuition it seeks. And I further **FIND** that Little Ferry has fiscal constraints of its own that have prompted it to protest payment of the full tuition amount.

CONCLUSIONS OF LAW

N.J.A.C. 1:1-12.5(b) provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving

party is entitled to prevail as a matter of law." Our regulation mirrors R. 4:46-2(c), which provides that "[t]he judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Our courts have long held that "if the opposing party . . . offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, 'Fanciful, frivolous, gauzy or merely suspicious,' he will not be heard to complain if the court grants summary judgment." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 75 (1954)).

The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Brill, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)). When the evidence "is so one-sided that one party must prevail as a matter of law," the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 252. I **CONCLUDE** that this matter is ripe for summary decision. The petition of appeal raises a purely legal question, one which asks that I determine whether the statutory and regulatory scheme affords Ridgefield Park the discretion to demand that Little Ferry pay the full certified tuition amount for the students it sends to Ridgefield Park High School. The affordability of that tuition is not at issue; nor it is pertinent that Ridgefield Park may sorely need the full tuition amount. The facts raised by Little Ferry in regard to the calculation of the certified tuition amount, while controverted, are a proverbial "red herring." [2] They are not material to the limited issue presented by the

[2] A claim that the certified tuition amount was improperly calculated could be brought by Little Ferry in a separate action. See also: N.J.A.C. 6A:23A-17.1(f)(5).

pleadings. I **CONCLUDE** that the law supports Ridgefield Park's demand for the full certified tuition, and that it is entitled to the relief it seeks.

N.J.A.C. 6A:23A-1.2 defines a sending-receiving relationship as "an agreement between two district boards of education, one of which does not have the facilities to educate in-district an entire grade(s) or provide an entire program(s), and as an alternative sends such students to a district board of education having such accommodations and pays tuition, pursuant to N.J.S.A. 18A:38-8 et seq." The calculation of tuition payments is governed by N.J.S.A. 18A:38-19, which provides as follows:

> Whenever the pupils of any school district are attending public school in another district, within or without the State, pursuant to this article [N.J.S.18A:38-8 through N.J.S.18A:38-24], the board of education of the receiving district **shall determine** a tuition rate to be paid by the board of education of the sending district to an amount not in excess of the actual cost per pupil as determined under rules prescribed by the commissioner and approved by the State board… (emphasis supplied).

Relying on the words "shall determine," Ridgefield Park urges that it may set any tuition amount, so long as that amount does not exceed the "actual cost per pupil." The "actual cost per pupil" is defined at N.J.A.C. 6A:23A-17.1(b) as "the local cost per student in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined and consistent with the grade/program categories in N.J.S.A. 18A:7F-50 and 18A:7F-55…"

When interpreting a statute or regulation, our courts assume that the framers intended to ascribe to words their ordinary meaning. Jablonowska v. Suther, 195 N.J. 91, 105 (2008). The intent of a statute or regulation should be gleaned from a view of the whole and of every part of the statute, with the real intention prevailing over the literal sense of its terms. Schierstead v. City of Brigantine, 29 N.J. 220, 230 (1959). I **CONCLUDE** that the plain language of N.J.S.A. 18A:38-19 supports Ridgefield Park's view that it may insist on the full amount of tuition yielded by the regulatory scheme. The statute clearly and unequivocally indicates that the receiving district "shall" set the

tuition rate. It does not state that that the sending district has any power to dictate the amount of tuition to be paid.

Ridgefield Park's view is supported by the applicable regulations, which set forth an express procedure for the payment and calculation of tuition. N.J.A.C. 6A:23A-17.1(f) provides:

> The receiving district board of education and the sending district board of education shall establish by written contractual agreement a tentative tuition charge for budgetary purposes. Such tentative charge shall equal an amount not in excess of the receiving district board of education's "estimated cost per student" for the ensuing school year for the purpose or purposes for which tuition is being charged, multiplied by the "estimated average daily enrollment of students" expected to be received during the ensuing school year. Such written contract shall be on a form prepared by the Commissioner.

The districts must sign an agreement for the "ensuing school year," and the sending district must pay ten percent of the tentative tuition no later than the first of each month from September through June of the contract year." The agreement must specify that all adjustments resulting from a difference in cost of number of students will be made only during the second school year following the contract year. N.J.A.C. 6A:23-17.1(f)(3). The regulations anticipate a need to reconcile the estimated and certified amounts and provide that "[a]ll contracts must include a payment schedule for all adjustments that may be made." Ibid.

Once the Department of Education determines the actual cost per student, the receiving district may charge for any shortfall.[3] N.J.A.C. 6A:23-17.1(f)(7) provides as follows:

> If the Commissioner later determines that the tentative charge established by written contractual agreement, except for a contractual agreement for a student enrolled in a special education class, was less than the actual cost per student during the school year multiplied by the actual average daily enrollment received, the

[3] The regulations also allow the sending district to recoup an overpayment. N.J.A.C. 6A:23A-7.1(f)(6).

> receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid during the second school year following the school year for which the tentative charge was paid. Such adjustment for a contractual agreement for a student enrolled in a special education class shall be made no later than the end of the second school year following the contract year. The executive county superintendent of schools of the county in which the sending district board of education is located may approve the payment of the additional charge over another period, if the sending district board of education can demonstrate that payment during the second school year following the school year for which the tentative charge was paid would cause a hardship.(emphasis supplied)

Ridgefield Park asserts, persuasively so, that the regulation does not require that it demand the full actual cost per student; but it nonetheless grants it full discretion to do so. An administrative regulation is subject to the same canons of construction as a statute. In re N.J.A.C. 14A:20-1.1, 216 N.J. Super. 297, 306 (App. Div. 1987). A regulation should be "construed in accordance with the plain meaning of its language . . . and in a manner that makes sense when read in the context of the entire regulation." Medford Convalescent and Nursing Ctr. v. DMAHS, 218 N.J. Super. 1, 5 (App. Div. 1985). Here, the regulatory scheme envisions an adjustment of the estimated amount. N.J.A.C. 6A:23A-17.1(f)(6) and (7). And by stating that the receiving district "may charge all or part" of the difference between the estimated cost, the regulation plainly permits Ridgefield Park to choose to demand the full amount.

Little Ferry argues that the use of the word "may" in the regulations reflects that the parties may negotiate any tuition rate they like, and that both districts are equally empowered players in the negotiation process. Little Ferry urges that had the rule makers intended to give Ridgefield Park the authority it claims they would have used the word "shall." And since under N.J.S.A. 18A:38-19 the tentative charge is to be an amount "not in excess of" the certified rate, Little Ferry asserts that the law provides for an arm's length negotiated rate that would allow the parties to determine a lesser amount than the certified rate. These arguments are unpersuasive. The regulation is intended to give breath and meaning to N.J.S.A. 18A:38-19; in other words, to allow the regulated community to understand the mechanics of implementing the statute's requirements. And the statute could not be clearer. It provides that the receiving district

"shall" determine the tuition rate, thus vesting in Ridgefield Park the exclusive authority to forgive the difference between the estimated tuition rate and the certified rate, or not, in its sole discretion. The parties obviously negotiate the tentative rate. But these negotiations do not deprive Ridgefield Park of its clear right, ultimately, to demand the full certified tuition amount.

The prior agreements between the parties did not expressly confirm Ridgefield Park's right to the full tuition amount, but this fact offers Little Ferry no solace. It is well established that the statutory and regulatory scheme governs the sending-receiving relationship relative to tuition payments, and not the parties' contractual language. See: Mountainside Bd. of Educ. v. Berkeley Heights Bd. of Educ., Dkt. No. EDU 09700-06, Initial Decision (July 20, 2007), adopted, Comm'r (January 17, 2008), <http://njlaw.rutgers.edu/collections/oal/>. Indeed, the Commissioner of Education has broad powers to oversee sending-receiving agreements. Merchantville Bd. of Educ. v. Pennsauken and Haddon Bds. of Educ., 204 N.J. Super. 508 (App. Div. 1985). While the regulatory scheme demands execution of a formal agreement (N.J.A.C. 6A:23A-17.1(f)), any contractual language or past practice that is at odds with the regulations is unenforceable.

Finally, Little Ferry's reliance on N.J.S.A. 18A:38-8.1 is misplaced. This statute allows for sending district representation on the receiving district's board of education and permits its representative to participate in discussions on several delineated topics. But N.J.S.A. 18A:38-8.1 makes it clear that there would be insufficient representation to shift the balance of power in favor of the sending district. Little Ferry thus contends that, "sending districts are deprived of virtually any opportunity to voice any meaningful agreement or objection to decisions made by the receiving board that ultimately result in significant increases to certified tuition rates." But Little Ferry can meaningfully assert that the tuition rate is improperly calculated via the filing of its own petition before the Commissioner of Education.

In summary, I **CONCLUDE** that Ridgefield Park may seek the full certified tuition amount from Little Ferry. Since N.J.A.C. 6A:23A-17.1(f) requires the execution of a written contract, Little Ferry must execute a sending-receiving contract with Ridgefield

Park. Having determined that Ridgefield Park has the legal right to demand the full certified tuition amount once the tuition is reconciled in accordance with the regulatory formula, I **CONCLUDE** that the agreement may so provide. But importantly, Ridgefield Park has the right to full tuition regardless of the contractual language. Accordingly, deleting that language would in no way abrogate its rights.

Ridgefield Park demands that Little Ferry reimburse the attorney's fees it has expended in asserting its claims. It is well established that the Commissioner of Education is without jurisdiction to award attorneys' fees. See: Balsley v. North Hunterdon Reg. H.S. Bd. of Educ., 117 N.J. 434, 447 (1990) where the Court held that "[t]he specialized remedy of counsel fees is not one within the statutory authority of the Commissioner." Accordingly, I **CONCLUDE** that the request for attorney's fees must be denied.

ORDER

Based on the foregoing, it is **ORDERED** that Summary Decision is **GRANTED** in favor of Ridgefield Park. It is further **ORDERED** as follows:

1. Ridgefield Park may determine the tuition amount between the parties, so long as that amount is not more than the actual cost per pupil as determined by the statutory and regulatory scheme governing tuition payments in sending-receiving relationships.

2. Little Ferry is directed to execute the contract proposed by Ridgefield Park for 2019-2020 and 2020-2021 school years.

3. The demand for attorneys' fees is **DENIED**.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION,** who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 8, 2021

DATE

ELLEN S. BASS, Acting Director & Chief ALJ

Date Received at Agency: March 8, 2021

Date Mailed to Parties: March 8, 2021

sej