

#378-13 (OAL Decision: Not yet available online)

TOWNSHIP OF BERKELEY AND BOARD OF EDUCATION :
 OF THE CENTRAL REGIONAL SCHOOL DISTRICT, :
 OCEAN COUNTY, :

PETITIONERS, :

V. : COMMISSIONER OF EDUCATION

BOROUGH OF SEASIDE PARK, BOARD OF EDUCATION : DECISION
 OF THE BOROUGH OF SEASIDE PARK, *ET AL.* :

RESPONDENTS. :

SYNOPSIS

This matter arose out of a controversy among the constituents of the Central Regional School District (Central Regional), which educates the seventh through twelfth grade students from several districts in Ocean County. It follows attempts spanning eight or more years by the Borough of Seaside Park and the Board of Education of Seaside Park to extricate themselves from the regional district, or to reduce the amount it is required to contribute to the operation of Central Regional. Subsequent to the filing of the appeal, petitioners moved to amend their pleadings, which motion alleged, *inter alia*, that the Borough of Seaside Park has entered into a sham consulting contract with a local organization known as Citizens Aligned for Responsible & Equitable Schools (Citizens). The allegations charged that public funds were channeled through Citizens to pay tuition for Central Regional students to attend the Toms River Regional School District (Toms River). Petitioners originally sought, *inter alia*, an order barring Toms River from accepting students from Seaside Park. However, Toms River was dismissed as a party to the case. The Seaside Park respondents filed a motion for summary decision, asserting that the Commissioner lacks jurisdiction to entertain the allegations contained in petitioners' proposed amended complaints.

The ALJ found, *inter alia*, that: the issues raised by petitioners in their motion to amend do not fall under the schools laws, *N.J.S.A. 18A:6-9*, but rather engage laws governing local public contracts, ethical codes for municipal officials, and the operation of Citizens as a charitable organization; these matters are not within the Commissioner's jurisdiction; and petitioners' reliance on *Board of Education of Borough of Englewood Cliffs v. Board of Education of the City of Englewood, 257 N.J. Super. 413 (App. Div. 1992)* in support of the Commissioner having jurisdiction in the instant matter is unfounded, as *Englewood Cliffs* involved other school law factors which placed the case squarely under the Commissioner's jurisdiction. The ALJ denied petitioners' motion to amend the petitions and granted Seaside Park's motion to dismiss the original petitions as moot. The petitions were dismissed.

Based upon comprehensive review of the record, the Commissioner found, *inter alia*, that: for reasons applicable only to the circumstances of this case, an injunction against Toms River would not have been appropriate, even if Toms River were still a party to this controversy; the initial agreement allowing seventh graders from Seaside Park to attend Toms River was in violation of Board policies and state law, however there is evidence that the two Boards believed that the arrangement was sanctioned by the County Superintendent; no more than twelve students have been diverted annually from Seaside Park to Toms River, and the impact is not acute enough to warrant an injunction; further, since it is through Citizens that Seaside Park students are now allegedly diverted from Central Regional to Toms River, the Commissioner lacks jurisdiction to hear this case. Accordingly, the Commissioner dismissed the petitions, but noted that this action should not be construed to signify that future efforts by municipalities to evade the responsibilities of membership in a regional school district will elude Commissioner review and sanction, where appropriate.

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.

OAL DKT. NO. EDU 15559-12
(Bifurcated from EDU 2253-10)
AGENCY DKT. NO. 348-11/09

TOWNSHIP OF BERKELEY, OCEAN COUNTY :
AND BOARD OF EDUCATION OF THE :
CENTRAL REGIONAL SCHOOL DISTRICT, :
OCEAN COUNTY, :

PETITIONERS, :

V. :

COMMISSIONER OF EDUCATION

BOROUGH OF SEASIDE PARK, BOARD OF :
EDUCATION OF THE BOROUGH OF :
SEASIDE PARK, BOROUGH OF ISLAND :
HEIGHTS, BOARD OF EDUCATION OF :
THE BOROUGH OF ISLAND HEIGHTS, :
BOROUGH OF SEASIDE HEIGHTS, :
BOARD OF EDUCATION OF THE BOROUGH :
OF SEASIDE HEIGHTS, BOROUGH OF :
OCEAN GATE, AND BOARD OF EDUCATION :
OF THE BOROUGH OF OCEAN GATE, :
OCEAN COUNTY, :

DECISION

RESPONDENTS. :

Before the Commissioner is a controversy among the constituents of a limited purpose regional school district in Ocean County, *i.e.* the Central Regional School District (Central Regional). Over the last eight or more years, respondents Borough of Seaside Park and Board of Education of Seaside Park have attempted to extricate themselves from their obligations to Central Regional. Upon review of the record, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions and replies thereto submitted by three of the parties,¹ the Commissioner is constrained to agree with the Administrative Law Judge (ALJ) that

¹ To the extent that the parties' exceptions incorporate or refer to evidence which was not part of the record before the OAL, such evidence was not considered. *N.J.A.C.* 1:1-18.4(c).

any remedy for recent actions of the respondent Borough of Seaside Park and others referenced in the record would be more appropriately fashioned in Superior Court.

In 1954, Central Regional was formed by referenda in the constituent municipalities to educate the seventh through twelfth graders of Berkeley Township, Seaside Park, Seaside Heights, Island Heights, Ocean Gate and Lacey Township – all districts in Ocean County.² Central Regional’s High School and Middle School are located at the same address in Berkeley Township.

At the time of Central Regional’s creation, each constituent municipality contributed financially to its operation on a *per capita* basis.³ However, the contribution methodology was unilaterally changed by the Legislature after the New Jersey Supreme Court determined that the State’s overall scheme for funding education was in violation of the State Constitution. *Robinson v. Cahill*, 62 N.J. 473 (1973). More specifically, the *Robinson* Court determined that the constitutional demand of a thorough and efficient education for all children was not being met because of discrepancies in dollar support per pupil, which discrepancies correlated with the location of a pupil’s residence. *Robinson v. Cahill* at 516.⁴ Accordingly, subsequent to the *Robinson v. Cahill* decision, the Legislature amended N.J.S.A. 18A:13-23, changing the manner in which the State would fund education from a “per pupil” basis to a

² These districts had previously sent their students to the Toms River school district, but were advised in 1953 that Toms River could not continue that arrangement.

³ When the New Jersey Legislature first authorized regional school districts in 1931, L. 1931, c. 275, Sec. 1, costs were to be apportioned upon the basis of each constituent’s ratables, *Id.* at Sec. 8. In or about 1953, the Legislature – as an alternative – made a per pupil method of cost apportionment available to regional school districts. L. 53, c. 90.

⁴ See, also, the Court’s language in a later iteration of *Robinson v. Cahill*, wherein the Court referred to its previous determination that “the principal cause of the constitutional deficiency [was] the substantial reliance (under [the then existing] system of financing education) upon local taxation, entailing as it does ‘discordant correlations between the educational needs of the school districts and their respective tax bases.’” *Robinson v. Cahill*, 69 N.J. 133, 141 (1975), referring to *Robinson v. Cahill*, 62 N.J. at 520.

formula based upon the equalized value of the real estate situate in a municipality. The Supreme Court approved the revision in *Robinson v. Cahill* V, 69 N.J. 449, 464-467 (1976):

...the State must pay each school district certain equalization support for its current expenses. The amount of support paid varies depending in part on the relationship of the assessed valuation of the local school district to the State average assessed valuations of all school districts, the general effect being to bring up districts with less than the average nearer to that level. Each of these financial supports reflect legislative recognition that the "discordant correlations between the educational needs of the school districts and their respective tax bases," [*Robinson v. Cahill*,] 62 N.J. at 520, could not be met by exclusive reliance upon local taxation.

....

The 1975 Act has taken a positive step to more nearly equalize per pupil tax resources by establishing a guaranteed valuation per pupil for the school year 1976-1977 of 1.3 times the state average of equalized assessed valuations per pupil. Thereafter the figure is 1.35. *N.J.S.A. 18A:7A-3*.

....

It is our conclusion that the Public School Education Act of 1975 is in all respects constitutional on its face, again assuming it is fully funded.

Pertinent to the instant controversy is the fact that, in 1975, the legislature also changed the methodology for determining the contributions of constituent members within regional districts from the *per capita* basis to a system wherein a constituent's contribution would depend upon the equalized value of real property in its municipality, *L. 1975, c. 212*.⁵ This meant that Seaside Park, whose property value is higher than that of the other

⁵ See, *Princeton v. New Jersey Dep't of Education*, 163 N.J. Super. 389, 392 (1978) (Section 29 of the Public School Education Act of 1975 (*N.J.S.A. 18A:13-23*) provides that the budget allocations for all purposes for members of regional school districts be apportioned according to the **equalized valuations** or ratables in each community. This represents a radical departure from the prior method of apportionment of costs upon the sole basis of per **pupil** enrollment, which method had been utilized by many municipal members of regional school districts.)

Central Regional constituents, was required to contribute more than the other constituents to the operation of Central Regional.⁶

In 1993 the Legislature again changed the law concerning regional district constituents' funding contributions, *L. 1993, c. 67, Sec 1*. Apportionment options were expanded in order to encourage regionalization. *Statement to Assembly Substitute for A. 1822 and 1063*, (February 8, 1993). The new options were 1) *per capita* levies, 2) levies based upon equalized property valuation, or 3) levies based upon some combination of options 1 and 2. *See, e.g. N.J.S.A. 18A:13-23; N.J.S.A. 18A:13-34*. However, constituents – such as Seaside Park – of preexisting regional districts could not change the basis for their levies without a referendum in which a majority in each constituent district approved the change. *Ibid*.

An alternate avenue to obtaining relief from the contribution methodology imposed by the 1975 legislation was application for withdrawal from a regional district or, with the consent of the majority of the other constituents, dissolution of a regional district. *N.J.S.A. 18A: 13-51 et seq.* Lacey Township, an original member of the Central Regional School District, successfully withdrew after the 1975 legislation changed the regional district levy allocation formula.

Seaside Park initiated an attempt to end its membership in the district in April 2005, when it submitted to the County Superintendent a feasibility study recommending

⁶ Such an arrangement was approved in *Borough of Seabright v. State*, 242 *N.J. Super.* 225 (App. Div.), *certif. denied* 127 *N.J.* 320 (1990), wherein the Appellate Division analogized it to other taxing schemes:

Generally, the extent of tax obligations is a function of wealth rather than the value or cost of government services received by individual taxpayers. Thus, the amount of income taxes is determined by a person's income, sales taxes by how much a person can afford to purchase and property taxes by the assessed value of a person's property.

Borough of Seabright, supra, at 233.

Seaside Park's withdrawal from or the dissolution of Central Regional. (Exhibit D to the Certification of Lucille E. Davy, Commissioner of Education, dated May 19, 2008 [Davy Certification]) By November of 2005, the boards of education and governing bodies of Seaside Heights and Island Heights had also passed resolutions seeking an investigation into the advisability of the dissolution of Central Regional. (Davy Certification, Par. 4.) As a result of the passing of such resolutions by the majority of Central Regional constituents, the above referenced withdrawal request by Seaside Park was treated as a request for dissolution of Central Regional. (Davy Certification, Par. 4, n. 1.) On November 9, 2005 Central Regional also submitted a feasibility study to the County Superintendent. (Exhibit C to the Davy Certification.)

In March 2006, the County Superintendent issued a report opining that the disadvantages of such a dissolution, *e.g.* the projected heavy tax burdens on Berkeley Township and Ocean Gate, outweighed the advantages. (Exhibit B to Davy Certification.) Nonetheless, on April 28, 2006, Seaside Park petitioned for a referendum on dissolution. (Exhibit E to Davy Certification.) Seaside Heights filed papers supporting the petition, and Central Regional, Berkeley Heights, Ocean Gate and Island Heights all filed pleadings opposing it. (Davy Certification, Paras. 8 and 9)

After a public meeting on August 15, 2006, the Board of Review – a body comprised of representatives from New Jersey's Department of Community Affairs, Treasury, and State Board of Education, and headed by the Commissioner of Education – voted to grant Seaside Park's petition to conduct a referendum on the dissolution of Central Regional. In its written decision, the Board of Review reasoned that, subsequent to a dissolution, the debt burden

to Berkeley Township would not be excessive, and most of the other districts would enter into send-receive arrangements with other school districts. (Exhibit A to Davy Certification, at 4-6.)

A referendum on dissolution of the Central Regional district was held on March 13, 2007. Pursuant to *N.J.S.A.* 18A:13-59, dissolution of a regional district requires an affirmative vote in a majority of the individual constituent districts and an affirmative vote by a majority of the voters overall. It is undisputed that the referendum failed because it was not approved by an overall majority of voters in the regional district. Next, Seaside Park petitioned to change the method of allocating contributions to the support of Central Regional. That issue was put to a referendum on April 21, 2009, and was voted down.

A few months after the defeat of its campaign for change in Central Regional's funding allocation methodology, *i.e.*, on September 14, 2009, the Seaside Park and Toms River Boards of Education executed an agreement establishing that the seventh-graders of Seaside Park residents would be educated in Toms River – *gratis*. (Exhibit D to Berkeley Township's petition of appeal.) At the time, Michael Ritacco was the School Superintendent for both towns. The Commissioner notes that the September 14, 2009 agreement was in violation both of Toms River's existing internal policies,⁷ and of Seaside Park's membership in the Central Regional school district, which membership gives the Central Regional board of education – not the Seaside Park board of education – jurisdiction over the education of seventh through twelfth graders who reside in Seaside Park. Toms River proceeded to allow Seaside Park seventh graders to enroll in its district tuition free.

⁷ Under Toms River's Policy 5111, created in July 2006, students from other districts could not attend Toms River schools for free. (*See*, Exhibit K to the May 7 Certification of Angela Koutsouris in support of Central Regional's opposition to a motion to dismiss by Toms River and other parties [Koutsouris Certification]) However, in November 2009 the Toms River Board of Education added a sentence to policy 5111 allowing itself to permit nonresident students to attend Toms River schools on whichever terms it pleased – including tuition free. (Exhibit L to Koutsouris Certification)

At the end of the first year of implementation of the agreement between Toms River and Seaside Park, Toms River revised its tuition policy. More specifically, in June 2011, Toms River's new Superintendent, Frank Roselli,⁸ advised the ALJ in charge of this matter that Toms River would henceforth charge tuition to educate students from other municipalities – including seventh to twelfth graders from Seaside Park. (Letter dated June 15, 2011 from Roselli to ALJ Solomon A. Metzger.) The new policy went into effect in September 2011.

The record indicates that Toms River's new policy to charge tuition did not stem the diversion of Seaside Park seventh graders away from Central Regional and into the Toms River school system. That diversion resulted in the imposition of larger levies upon the other constituents of Central Regional. In addition, Central Regional's finances were destabilized by Seaside Park's failure to pay its contribution in 2011. Thus, in the autumn of 2011, Central Regional was forced to file an Order to Show Cause in Superior Court, seeking the overdue levy payment(s). (Exhibits B and D annexed to April 5, 2013 Certification of Arthur Stein [Stein Certification]).

Central Regional and Berkeley Township maintain that since Toms River was not a "school choice" district⁹ and had no send-receive relationship with Seaside Park or Central Regional for grades seven to twelve, it improperly accepted Central Regional seventh thru twelfth graders. Seaside Park argues that the school laws do not prohibit a school district such as Toms River from entering into individual arrangements with parents who are willing to

⁸ Former superintendent Ritacco was indicted in 2010 on charges of corruption and bribery within the Toms River School District, as well as tax fraud and other offenses.

⁹ During the time period in question Toms River was not listed on the Department of Education's website as an approved choice district. (*See*, Exhibit N to Koutsouris Certification)

pay tuition to send their children outside their district of residence, and that such agreements were, in fact, entered into by Toms River and parents residing in Seaside Park. However, Central Regional's discovery requests for copies of any such individual agreements between the Toms River School District and Seaside Park parents yielded none.¹⁰

The record instead reveals that a source other than individual Seaside Park parents took financial responsibility for sending Seaside Park seventh through twelfth graders to Toms River schools. Annexed to Berkeley Township's papers opposing Seaside Park's motion to quash Central Regional's discovery requests, and to amend its petition, are copies of twelve sequential cashiers checks issued by Wells Fargo Bank, all dated September 13, 2011 and all made payable to "TR BOARD OF EDUCATION." Each check was specifically designated "for the benefit of" a particular student from Seaside Park, including the daughter of Carol Kane, then president of the Seaside Board of Education. *See, also*, Exhibit O to Stein Certification. A review of the transcript of the June 7, 2012 deposition of Roselli, annexed as Exhibit J to the certification of Keri A. Wright, Esq. in support of Seaside Park's March 5, 2013 motion for summary decision *et al.* (Wright Certification), reveals that the tuition checks were paid by a local organization which calls itself "Citizens Aligned for Responsible and Equitable Schools" (Citizens). *See, e.g.* Roselli Deposition, at 128-30; 137-38.

According to information which was posted on its website on October 25, 2011 and remains there to date, Citizens is a non-profit organization first formed in 2006 for the purpose of Seaside Park's withdrawal from the Central Regional school district. (*See*, Exhibit R to Stein Certification). After Toms River stopped providing free educations to Seaside Park

¹⁰ The record contains form letters from the Toms River Board of Education to various Seaside Park residents in July and October of 2011, indicating that their children may attend school in Toms River contingent upon their payment of \$10,064.60 tuition per child. (*See, e.g.* Exhibit H to Wright Certification and Exhibit Q to Central Regional's amended cross petition)

seventh through twelfth graders, the mission of Citizens apparently became the provision of tuition for local students to attend middle school and high school in Toms River.

On its website Citizens asserts that through its efforts “and on the advice of Vito Gagliardi, Attorney for the Borough of Seaside Park,” it has saved and can continue to save the taxpayers of Seaside Park large amounts of money for each child it provides with scholarships to attend seventh through twelfth grade in Toms River. (*See*, Exhibit R to Stein Certification) Its most recent posting advises that it “has reenacted to raise \$140,000 to secure continuity for the 14 students currently being educated in Toms River schools from grades 7 to 12,” and that “[i]n doing so, we will secure a \$500,000 tax savings for the residents of Seaside Park.” *Ibid.*¹¹

Over the last six or seven years, Citizens appears to have had connections with various government entities in Seaside Park. First, some of its principals are or have been members of the Seaside Park Board of Education or Town Council.¹² Second, it has admittedly received legal advice from counsel to the Seaside Park borough and board of education. Third, it

¹¹ The amount which Seaside Park is required to contribute to Central Regional depends both on its equalized real property value and the proportion of its students which are actually enrolled in Central Regional. Thus, by reducing the number of students enrolled in Central Regional they reduce their contribution to the Central Regional district. Further, the per pupil tuition which Toms River charges for the seventh through twelfth graders from Seaside Park is apparently far less than the amount Seaside Park would pay if those students were attending Central Regional.

¹² For example, Mary Jo Sites, a Board member who in July 2009 had signed a group letter asking the Toms River Board of Education to accept her child into its seventh grade (Exhibit F to Koutsouris Certification) and who had on September 10, 2009 voted in favor of a “shared services agreement” to send Seaside Park seventh graders to Toms River instead of Central Regional (Exhibit T to Koutsouris certification), was the chairperson of Citizens in October of 2011. (*See*, Exhibit N to Amended Cross Petition of Central Regional) And Dave Meyer was simultaneously president of the Seaside Park borough council (Exhibits U, V and W to Central Regional amended cross petition) and a trustee of Citizens – according to the Citizens website (Exhibit R to Stein Certification). Meyers was also designated by both the Seaside Park Board of Education and Borough Council as their official representative for purposes of a January 2010 deposition taken by counsel for Central Regional. (Exhibits G and H to Koutsouris certification)

as received permission to use borough facilities *gratis*.¹³ Fourth, as referenced above, it has raised money to send at least one board of education member's child to a Toms River school.

Further, petitioner and cross petitioner have offered documents – such as bid documents, reports, and the official minutes of multiple Seaside Park borough council meetings – which indicate that the borough awarded a contract to Citizens for the performance of a parking study where there were no other bidders, where there was no evidence that Citizens was qualified to perform the work, where the work was actually done and signed by the Seaside Park Borough Planning Board Chairman ‘as a volunteer,’ and where former members of Citizens publically disapproved of the transactions between the Borough Council and Citizens. (Exhibits N through R, V, and W to the Amended Cross Petition) These circumstances could support petitioner and cross-petitioner's contentions that Citizens and various Seaside Park municipal entities cooperated to pay for children to attend middle school and high school in Toms River – using taxpayer funds – in order to avoid the expenses associated with Seaside Park's statutory obligations to Central Regional.

On May 16, 2013 an Initial Decision was issued by the OAL. The gist of the ALJ's analysis was that “[t]he trial of such a matter would necessarily engage laws and regulations governing local public contracts, ethical codes for municipal officials and the operation of [Citizens] as a [‘non-profit’] organization.” (Initial Decision at 4) He concluded that “the Commissioner has no supervisory authority over these entities, and thus no direct remedy should wrongdoing be established. . . . The Superior Court can, if an improper scheme is exposed, end it directly with the immediate parties.” (*Id.* at 5)

Education is a matter of public concern; the expenditures necessary to fulfill that responsibility need not be met on a basis of direct benefit to the property charged.

¹³ See, Exhibit V to Amended Cross Petition.

Berkeley Heights v. Board of Education, 23 N.J. 276, 282-82 (1957), citing *Kelly v. City of Pittsburgh*, 104 U.S. 78 (1881); *Dickinson v. Porter*, 240 Iowa 393, 35 N.W. 2d 66 (Sup. Ct. 1948), appeal dismissed 338 U.S. 843 (1949). The focus of implementing the provisions of the New Jersey Constitution which mandate “thorough and efficient” education is not equality among taxpayers, but rather equality of education for all students. *Borough of Seaside Park et al. v. Commissioner of Education et al.*, Appellate Division, Docket No. A-0743-10T4, p. 61 (approved for publication August 12, 2013).

“The distribution of education costs among taxpayers is a policy decision to be made by the Legislature, which determined that a wealth-based formula for funding regional districts was an appropriate option.” *Id.* at 62. Both the Appellate Division and the Supreme Court have rejected constitutional challenges to same. Oversight of the legislative scheme for apportioning costs in regional school districts – which scheme was, as explained *supra*, created by the Legislature to remedy an unconstitutional method of funding education that existed prior to *Robinson v. Cahill*¹⁴ – is within the realm of concerns of the Commissioner of Education.¹⁵ If the Commissioner were to find that districts are involved in illegal circumvention of the statutory requirements which were enacted to cure unconstitutional inequalities in educational funding, his broad powers to supervise education in New Jersey would permit him to take action.

In a case implicating the constitutional prohibition of racial segregation in education, the court determined that one of the remedies available to the Commissioner in

¹⁴ The inequitable funding of education for poor urban children was also the subject of the *Abbott v. Burke* cases, beginning in 1990 with *Abbott v. Burke*, 119 N.J. 287 (1990).

¹⁵ “The **Commissioner of Education**, who is the chief executive and administrative officer of the Department of Education, has the statutory **duty** to inquire into the thoroughness and efficiency of the operation of public schools. *N.J.S.A. 18A:4-22*, -24. . . . [T]he Commissioner has the ‘affirmative obligation to see to it that the statutory objectives are met’ and that local school boards and governing bodies fulfill their delegated duties.” *In re Application of Bd. of Education*, 86 N.J. 265, 273 (1981), citing *Robinson v. Cahill*, 62 N.J. 473, 509 n.9 (1973).

adjudicating constitutional issues – regarding the diversion of students away from designated receiving or regional school districts – is an order enjoining other public school districts from accepting students from municipalities which are obligated to send their pupils to specific receiving or regional districts. *See, e.g. Englewood Cliffs Board of Education v. Englewood Board of Education*, 257 N.J. Super. 413 (App. Div. 1992), *aff'd* 132 N.J. 377 (1993). Such an injunction is sought against Toms River by Central Regional and Berkeley Township.¹⁶ However, while the Appellate Division of Superior Court has recently indicated that racial diversity may not be the only constitutional issue warranting judicial intervention, *Borough of Seaside Park et al. v. Commissioner of Education et al.*, Appellate Division, Docket No. A-0743-10T4, at 56, the Commissioner finds that, for reasons applicable to the circumstances of this case only, an injunction against Toms River would not be appropriate – even if Toms River were still a party to the controversy.¹⁷

First, while there is no question that the initial agreement allowing seventh grade students from Seaside Park to attend school in Toms River for free – which agreement was executed by the Seaside Park and Toms River Boards of Education in 2009, and implemented in the 2010-2011 school year – was in violation of Toms River’s Board policies and the statutes discussed *infra*, nonetheless the record includes evidence that the two boards of education believed that the arrangement was sanctioned by the Ocean County Superintendent. (*See, e.g.* Exhibit A to Seaside Park’s reply to Central Regional’s exceptions to the November 29, 2012

¹⁶ Petitioners also originally sought certain forms of relief that became moot when Toms River discontinued the above described “shared services” agreement with Seaside Park. They further asked that Central Regional be given state aid credit for the seventh through twelfth graders from Seaside Park who were being sent to Toms River. However, the Department of Education considers those students to be ‘parent paid’ students, for whom neither Toms River nor Central Regional receives state aid. (*See, eg.* Exhibits O, Q and R to the Wright Certification)

¹⁷ Toms River was dismissed as a party to this litigation, and an appeal of that ruling is pending in Superior Court, Appellate Division.

Initial Decision of the OAL, and the April 5, 2013 Affidavit of Triantafillos Parlapanides, Central Regional Superintendent)

Second, the record indicates that annually there have been a dozen or fewer students diverted from Seaside Park to Toms River. The Commissioner would be reluctant to exercise the extraordinary remedy of injunction where the impact of the challenged action is not acute. Third, the diversion of students is no longer a direct arrangement between two boards of education – entities over which the Commissioner does have authority. Thus, the Commissioner must concur with the ALJ that Superior Court is the forum in which the adjudication of 1) applicable public contract laws, 2) regulations concerning purported charitable organizations,¹⁸ 3) apposite codes of ethics, and 4) any issues related to the New Jersey Constitution may be adjudicated.

Accordingly, the Commissioner is constrained to decline jurisdiction. This determination rests largely upon the specific facts of the instant controversy. It should not be construed to signify that future efforts by municipalities to evade the responsibilities of membership in a regional school district will elude Commissioner review and, if appropriate, sanctions.

The petition and cross petition are hereby dismissed for the reasons set forth *infra*.

IT IS SO ORDERED.¹⁹

COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2013

Date of Mailing: November 4, 2013

¹⁸ By its own account, Citizens' 'charitable purpose' appears to be lowering the taxes of Seaside Park residents.

¹⁹ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).