

BOARD OF EDUCATION OF THE	:	
TOWN OF BOONTON,	:	
MORRIS COUNTY,	:	COMMISSIONER OF EDUCATION
	:	
PETITIONER,	:	DECISION
	:	
V.	:	
	:	
BOARD OF EDUCATION OF THE	:	
BOROUGH OF LINCOLN PARK,	:	
MORRIS COUNTY,	:	
	:	
RESPONDENT.	:	
	:	

SYNOPSIS

Petitioning receiving district sought severance of its relationship with the respondent sending district, contending that no substantial negative impact would result from such severance. Respondent moved for dismissal of the petition on contractual grounds, but later withdrew its opposition and entered into a settlement with petitioner, agreeing to sever their relationship under the terms and conditions specified.

The ALJ recommended approval of the parties' Consent Order effectuating severance.

The Commissioner rejected the proposed order, holding that the record was insufficient for him to determine whether the criteria of *N.J.S.A.* 18A:38-13 had been met and that the parties could not, in any event, compel Commissioner-directed issuance of bonds if referenda to construct a new high school failed in the respondent district. The Commissioner declined to permit severance at this time, instead ordering further proceedings in accordance with *N.J.A.C.* 6A:3-6.1 so that the parties' now-mutual application could be properly assessed under the standard prescribed by law.

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 9211-02
AGENCY DKT. NO. 251-8/02

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The record of this matter, the Consent Order Regarding the Severance of the Parties' Sending-Receiving Relationship, the 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 pursuant to *N.J.A.C.* 1:1-19.1(a) and (b).

Upon review, the Commissioner cannot agree with the OAL's recommended approval of the proposed Consent Order, nor can he, on the present record, approve the parties' proposed severance as consistent with *N.J.S.A.* 18A:38-13.

This matter was commenced as a contested case by the Boonton Board of Education (Boonton), through a petition seeking to sever its sending-receiving relationship with the Lincoln Park Board of Education (Lincoln Park), alleging, among other things, that no negative impact in any area of consideration prescribed by *N.J.S.A.* 18A:38-13 would result. In lieu of an answer, Lincoln Park filed, as permitted by

N.J.A.C. 6A:3-1.5(g), a Motion to Dismiss the petition, contending that Boonton could not presently seek to sever the relationship because it had entered in 1999 into a binding seven-year contract with Lincoln Park with no provision for severance prior to the contract's expiration. Subsequent to transmittal of the matter to the OAL but prior to adjudication of this motion, to which Boonton had by then duly replied, Lincoln Park withdrew its demand for dismissal because the parties had determined to engage in settlement discussions. These discussions ultimately led to the agreement herein proposed.

Because the Motion to Dismiss in Lieu of Answer was withdrawn and the parties proceeded directly to settlement, no answer to Boonton's petition was ever filed; instead, the request for severance became mutual and the parties, in their Consent Order and Joint Stipulation of Facts, attested to their agreement that no negative impact would result from severance. In effect, then, notwithstanding its initial posture and transmittal to the OAL as a contested case, Boonton's application for severance became uncontested before any record could be developed beyond Boonton's initial feasibility study and the parties' later settlement documents.¹

As the State Board of Education has recognized in a prior matter involving the same parties, notwithstanding that member districts may agree to sever their sending-receiving relationship, pursuant to *N.J.S.A.* 18A:38-13, it is "the *Commissioner's* ultimate determination whether to grant severance" after "consideration of all relevant circumstances" so as to ensure that "no substantial negative impact will result therefrom."

Board of Education of the Borough of Lincoln Park, Morris County, v. Board of

¹ In this regard, the Commissioner notes that Lincoln Park's Motion to Dismiss and the ensuing responsive papers were centered on contractual principles, and the Commissioner's jurisdiction over them, rather than on the criteria of *N.J.S.A.* 18A:38-13.

Education of the Town of Boonton, Morris County, decided April 5, 1995, slip opinion at 3, emphasis in text.² The State Board further recognized that the Commissioner could not make such determinations absent a sufficient record, and, understanding the potential for insufficiency in this regard where a request for severance is uncontested, the Board in December 1999 proposed rules, later promulgated as *N.J.A.C. 6A:3-6.1*,³ 32 *N.J.R.* 1177,

² In the referenced matter, Lincoln Park sought to enjoin Boonton from incorporating its 7th and 8th grades into the high school facility, and, as part of a proposed settlement, Boonton agreed not to oppose any request for severance filed within two years of the agreement. The State Board rejected that provision and remanded the settlement to the Commissioner, who had also rejected it, for deletion of the inappropriate provision or proceedings on the merits if the parties did not agree to such deletion. Following transmittal to the OAL on remand, the matter was withdrawn.

³ These rules provide as follows:

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 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 above, 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 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:

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.

(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 required in order to determine the matter consistent with the standard of statute, the Commissioner shall direct such further proceedings as the Commissioner deems necessary.

specifically addressing the need for

***development of a record where a district board of education has applied for severance or alteration of a sending-receiving relationship and the application is unopposed by the responding parties. In these situations, there are no adversarial proceedings through which to develop a record beyond the feasibility study required by law upon submission of an application to the Commissioner. The proposed rules offer a mechanism by which public comment may be brought to the record, and by which the Commissioner may direct further inquiry as needed, prior to the Commissioner's making a decision on whether the standard of N.J.S.A. 18A:38-13 for granting of a severance or alteration has been met. (31 *N.J.R.* 4173(a), Summary of Proposed Readoption and Recodification with Amendments: *N.J.A.C.* 6:24 as 6A:3, quotation at 4174)

In the present matter, not only has there been no opportunity for presentation of opposing perspectives, but the Commissioner is also not satisfied, based on the feasibility study alone, that the criteria of *N.J.S.A.* 18A:38-13 have been met. By way of example, in the area of educational impact, it is unclear how "sufficient planning" and "incremental changes" over the three-year withdrawal period posited by the feasibility study can ensure that there will be "little consequence" to the quality of education in Boonton High School; according to the study, its 9-12 student body will eventually be reduced by nearly half, from approximately 650 to 360, there will be a significant drop in the number of class sections, *e.g.*, from 32 to 21 in language arts, 31 to 20 in math, 32 to 21 in science, and 29 to 19 in social studies, and teaching staff will be reduced by a third, typically by 2 positions out of 6 in each major discipline. (Feasibility Study at 29-32, 72, 80-81, 100) The Commissioner's concern is heightened by the fact that the proposed Consent Order calls for the actual withdrawal of Lincoln Park students to occur over a period *not exceeding two years*, making the study's "three-year incremental" argument even less persuasive notwithstanding the agreement's one-year notice provision. (Consent Order at 3)

Additionally, in the area of racial impact, the feasibility study concludes that data in tables based on Fall Reports “indicate that Lincoln Park and Boonton are similar racially,” with “student populations that are predominantly white with small percentages of minority students,” so that “there would be no substantial negative racial impact as a result of the withdrawal of the Lincoln Park students from Boonton High School.” (Feasibility Study at 82-87, 100; quotation at 83) However, the referenced tables show that Boonton’s student population is 66% white as compared to Lincoln Park’s 85%, and that withdrawal of Lincoln Park students will result in 12.31% decrease in white students attending Boonton High School. The Commissioner finds that the referenced statistics may not necessarily support the bare assertions drawn from them, and he notes with particular concern that, notwithstanding Boonton’s feasibility study having been based in part on a review of “recent legal cases involving the terminating of sending-receiving relationships” (*Id.* at 5), the record includes no mention whatsoever of the cases reviewed or how the proposed severance is consistent with them.

Another area of concern is that the Commissioner cannot meaningfully assess the fiscal impact of severance on Lincoln Park, since the feasibility study focuses on comparative tuition rates based on sending Lincoln Park students to other districts in the area, while the proposed settlement agreement clearly contemplates the district’s building of its own school. There is no discussion on record of the impact of this option, except insofar as the feasibility study notes its existence and concludes that, should it be chosen, the referendum process will include information on cost so the decision to build can be made by local citizens. (Feasibility Study at 98-99, 100) Moreover, in the proposed Consent Order, the parties have agreed that, should these same citizens twice

fail to approve building referenda, issuance of bonds will be ordered by the Commissioner pursuant to *N.J.S.A. 18A:7G-12*, with no decrease in State Aid eligibility. (Consent Order at 4) With or without a discussion of fiscal impact, this provision cannot stand, since the parties cannot compel the Commissioner to require issuance of bonds, nor can Lincoln Park make application for such issuance, or receive State Aid, except through the processes and at the levels prescribed by law. *In the Matter of the Application of the Board of Education of the Township of Clark, Union County, for an Order Directing Issuance of Bonds pursuant to N.J.S.A. 18A:7G-12*, decided by the Commissioner June 2, 2003.

In sum, while the Commissioner does not preclude the possibility of permitting Boonton and Lincoln Park to sever their long-standing sending-receiving relationship, the parties have not complied with the procedure for consideration of uncontested severance applications, and the areas discussed above are indicative of need for the fuller record contemplated by that procedure in order for the Commissioner to carry out his obligation under *N.J.S.A. 18A:38-13*. That this matter is not a simple one is demonstrated by the parties' own prior disagreement, as reported in the feasibility study, on whether an application for severance was even viable; indeed, as part of its historical introduction, the study notes that Boonton took the step of initiating the present application because Lincoln Park has long "supported a legal position that it is unable to terminate the send-relationship in light of the Commissioner's previous decisions." (Feasibility Study at 5)

Accordingly, the Commissioner rejects the Initial Decision of the Office of Administrative Law recommending approval of the settlement agreement, and, instead,

consistent with the process established by law for uncontested severance applications, the Commissioner directs that at the next public meetings of the Boonton and Lincoln Park Boards of Education, each Board shall announce that the record before the Commissioner in this matter 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 addressing the question of whether the proposed severance will result in a substantial negative impact on either district. Such announcement, and its certification to the Commissioner, shall comply with the provisions of *N.J.A.C. 6A:3-6.1(b) and (c)*, and, pursuant to *N.J.A.C. 6A:3-6.1(d)*, at the close of the designated comment period, each district shall have 20 days to reply to any comments filed. If, upon review of the record at the close of the period established for submission of comments and replies, the Commissioner determines that additional inquiry, factfinding or legal argument is required in order to determine whether to grant severance consistent with the standard of statute, further proceedings will be directed as necessary pursuant to *N.J.A.C. 6A:3-6.1(e)*

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: December 23, 2003

Date of Mailing: December 30, 2003

⁴ 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.*