

#449-10 (OAL Decision: Not available online)

TRACEE EDMONDSON, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

BOROUGH OF ELMER AND BOARD :

OF EDUCATION OF THE TOWNSHIP :

OF PITTSBORO, SALEM COUNTY, :

RESPONDENTS. :

SYNOPSIS

Pro-se petitioner challenged the 2010 agreement between the respondent Boards to expand their pre-existing sending-receiving relationship pursuant to *N.J.S.A. 18A:38-8*. Petitioner alleged that the actions of both school districts violated the law applicable to regionalization of school districts, since their agreement provides that all Elmer students be educated in Pittsgrove, rendering the Elmer district non-operating and creating a regional district without a referendum. Respondent Pittsgrove Board of Education filed a motion to dismiss the petition, and the Elmer Board of Education joined in the motion.

The ALJ found, *inter alia*, that: *N.J.S.A. 18A:8-43 to 8-51* was enacted in an effort to merge and consolidate small non-operating school districts for operational efficiency and cost cutting; Elmer and Pittsgrove decided to expand their sending-receiving relationship to include all students from Elmer after the effective date of the legislation; this action was not a regionalization under *N.J.S.A. 18A:13-34*, but rather an exercise of managements' prerogative permitted by *N.J.S.A. 18A:38-8*; and there was no statute, regulation or applicable authority cited by petitioner prohibiting the two districts from broadening their sending-receiving agreement to include all students in Elmer. Accordingly, the ALJ concluded that the petition must be dismissed.

Upon independent review of the record and the Initial Decision of the OAL, the Acting Commissioner found that involuntary district mergers shall be effectuated by the Executive County Superintendent pursuant to *N.J.S.A. 18A:8-44 et seq.* As the Executive County Superintendent has taken no action, the petition against respondents cannot bring about the relief petitioner seeks. Accordingly, the Acting Commissioner dismissed the petition, and denied the petitioner's motions for emergent relief.

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.

October 25, 2010

OAL DKT. NO. EDU 6992-10
AGENCY DKT. NO. 93-5/10

TRACEE EDMONDSON, :
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 PETITIONER, :
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 V. : COMMISSIONER OF EDUCATION
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 BOARD OF EDUCATION OF THE : DECISION
 BOROUGH OF ELMER AND BOARD :
 OF EDUCATION OF THE TOWNSHIP :
 OF PITTSBORO, SALEM COUNTY, :
 :
 RESPONDENTS. :
 _____ :

Petitioner challenges the decision of respondent Elmer Board of Education to expand its sending-receiving relationship with respondent Pittsgrove Board of Education, alleging that the decision creates an unauthorized regionalization.

At the outset, the Acting Commissioner of Education (Acting Commissioner) is constrained to supplement the procedural history set forth in the Initial Decision. The record reveals that petitioner filed papers with the Commissioner of Education on or about May 11, 2010 and June 21, 2010. Respondent Elmer Board of Education filed its answer on June 14, 2010, and on June 21, 2010 respondent Pittsgrove Board of Education filed a motion to dismiss in lieu of answer to the petition.¹ The Bureau of Controversies and Disputes transmitted the pleadings to the Office of Administrative Law (OAL) on June 22, 2010 and the OAL's filing notation indicates that it received the pleadings on June 30, 2010.

As noted in the Initial Decision, petitioner did not respond to Pittsgrove's motion to dismiss but – taking into consideration petitioner's *pro se* status – the Administrative Law

¹ The Commissioner has reviewed all of the referenced pleadings.

Judge (ALJ) declined to issue a default decision. Further, the petitioner filed with the Commissioner three motions for interim relief on August 24, 2010, which motions were transmitted to the OAL on August 26, 2010 and were ultimately considered by the ALJ after disposition of the threshold issues raised in Pittsgrove's motion to dismiss – which the Elmer Board joined.

There appears to be no factual dispute about the present posture of this matter. Respondents entered into an agreement to expand a preexisting sending-receiving relationship, as they are permitted to do under *N.J.S.A. 18A:38-8*. A consequence of the contemplated expansion was that – commencing at the beginning of the 2010-2011 school year – all Elmer primary and secondary school children would be educated in Pittsgrove-operated schools, including the one remaining school building in Elmer, which would be leased to Pittsgrove.²

Petitioner correctly points out that the practical result of respondents' agreement may be to render Elmer a non-operating district, pursuant to the definition in *N.J.S.A. 18A:8-43*.³ However, she reasons that this signifies that regionalization pursuant to *N.J.S.A. 18A:13-34* has occurred. This is a leap unsupported by the facts presented to the ALJ or the relevant law.

The recently enacted “Non-operating District” statute provides for executive county superintendents to eliminate non-operating districts and merge same with the districts which receive the non-operating district's students. *N.J.S.A. 18A:8-44(a)*. There is no indication that the Salem County superintendent has made the determinations and taken the actions prescribed in *N.J.S.A. 18A:8-44* to 8-49. Consequently, there is no relief which could be provided to petitioner by the respondents in this case. Further, none of the determinations or actions outlined in the regionalization statute, *N.J.S.A. 18A:13-34*, have been executed by

² The lease proposal is currently under review by the Office of School Facilities of the Department of Education.

³ The ALJ raises a question in the Initial Decision about the impact of the reference in *N.J.S.A. 18A:8-43* to the date of June 30, 2009. Were the date not applied prospectively, it would defeat the legislative intent.

respondents. Nor is there reason for the Acting Commissioner to order the initiation of such actions, since *N.J.S.A. 18A:8-44 et seq.* provides the means of effectuating involuntary district mergers.

Petitioner's September 15 exceptions to the Initial Decision appear to reiterate her position that respondents have carried out a *de facto* regionalization, and to suggest that Pittsgrove's rental and operation of the Elmer school building is an *ultra vires* action. The Acting Commissioner rejects the latter proposition as petitioner has failed to meet her burden to offer authority for same, and rejects the balance of petitioner's exceptions for the reasons set forth above.⁴

Finally, having found that the ALJ's dismissal of the petition was warranted by the facts and relevant law, the Acting Commissioner upholds the ALJ's denial of petitioner's motions for emergent relief.⁵

The petition is dismissed and petitioner's motions for emergent relief are denied.

IT IS SO ORDERED.⁶

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 25, 2010

Date of Mailing: October 26, 2010

⁴ There is no provision under the OAL's procedural regulations for the second, third, fourth and fifth exceptions submitted by petitioner. They were consequently not considered.

⁵ Attached to petitioner's exceptions were copies of the motions for emergent relief which were transmitted to the OAL, considered and rejected by the ALJ. Thus, the Acting Commissioner denies same.

⁶ 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*).