

#16-13 (OAL Decision: Not yet available online)

TOWNSHIP OF BERKELEY, OCEAN COUNTY :
AND CENTRAL REGIONAL BOARDS
OF EDUCATION, :

PETITIONERS, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE TOMS RIVER: DECISION
REGIONAL SCHOOL DISTRICT AND
MICHAEL RITACCO, AS SUPERINTENDENT, :

RESPONDENTS. :

SYNOPSIS

Respondent school district filed a motion to have itself and its former superintendent dismissed from a larger case in which Berkeley Township Board of Education and Central Regional School District alleged that the board of education and municipal government of Seaside Park had conspired with the respondent Board to siphon students away from Central Regional by allowing these students to attend respondent's schools tuition free rather than attend Central Regional – the high school district that they would otherwise attend. Subsequent to the filing of the initial petition in that matter (OAL DKT. EDU 2253-10), the former superintendent of the Toms River school district, named above, was indicted on unrelated charges and ceased to be employed by the district; additionally, the respondent Board voted to charge tuition for students coming to its high school from Seaside Park. The petitioning school districts opposed respondent Toms River's motion to dismiss.

The ALJ found, *inter alia*, that: respondent Toms River had policies in effect that authorized the acceptance of out of district tuition students when it decided in May 2011 to accept Seaside Park high school freshmen on a tuition basis, and the practice is statutorily approved; no common sense rationale has been presented by petitioners to explain why the respondent should remain in the larger case (OAL DKT. EDU 2253-10), which would continue to place an unnecessary burden upon taxpayers in the Toms River Regional School District; and Toms River is a district of 17,000 students with no plausible reason to covet 10 pupils from Seaside Park. The ALJ determined to sever the question of the within motion from the original case under a new OAL docket number since the OAL has completed its work with respect to these two parties, and issued an Initial Decision granting respondent's motion to dismiss.

The Commissioner concurred with the ALJ's findings and conclusion, and accordingly adopted the Initial Decision of the OAL as the final decision in this matter. In so doing, the Commissioner noted that this matter could have been resolved expeditiously through issuance of a partial Initial Decision under the original OAL docket number.

<p>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.</p>

January 10, 2013

OAL DKT. NO. EDU 15559-12
AGENCY DKT. NO. 348-11/09

TOWNSHIP OF BERKELEY, OCEAN COUNTY :
AND CENTRAL REGIONAL BOARDS
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of Central Regional Board of Education, Township of Berkeley, and Borough of Seaside Park and Seaside Park Board of Education, along with reply exceptions of Toms River Regional Board of Education, Central Regional Board of Education, and Borough of Seaside Park and Seaside Park Board of Education – 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.^{1 2}

¹ Other submissions of the parties outside of those authorized by *N.J.A.C.* 1:1-18.4 were not considered here.

² It is noted that this matter was made unnecessarily complex and convoluted because the Administrative Law Judge (ALJ) – instead of issuing a partial Initial Decision in the case in chief – chose rather to sever this matter from the case in chief and issue an Initial Decision under a new EDU number while retaining the matter’s original Agency Docket Number. Additionally, it was impossible to ascertain from either the instant Initial Decision or the file forwarded to the Agency whether counsel for all parties in the case in chief had received a copy of the instant decision which severs two parties from that cause of action as should have occurred. The Agency, therefore, called all counsel in the case in chief to ascertain whether they had received a copy of this decision from the ALJ and was assured that each of them had, indeed, been copied.

Exceptions and replies of the parties, in relevant part, recast and reiterate their arguments – for and against the granting of Toms River’s Motion to Dismiss itself and Michael Ritacco as parties in the case in chief – advanced in briefing to the ALJ below. In that it is determined that such arguments were considered and addressed by the ALJ in his decision, further elaboration on them here is deemed unnecessary.

Upon review and consideration, the Commissioner is in full agreement with the ALJ – for the reasons presented in his decision – that Toms River’s Motion to Dismiss itself and Michael Ritacco from OAL DKT. EDU 2253-10 is appropriately granted.

Accordingly, the recommended decision of the OAL is adopted and the instant matter is hereby dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: January 10, 2013

Date of Mailing: January 11, 2013

³ 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).