

IN RE PETITION FOR EQUITABLE : COMMISSIONER OF EDUCATION
MODIFICATION OF THE COST
APPORTIONMENTS FOR THE RIVER : DECISION
DELL REGIONAL SCHOOL DISTRICT,
BERGEN COUNTY. :

SYNOPSIS

The Borough of Oradell (Oradell), one of two constituents comprising the River Dell Regional School District (River Dell), asked the Commissioner to reallocate the respective contributions that Oradell and the Borough of River Edge (River Edge) pay to operate River Dell. River Edge opposed any modification to the existing property value-based cost apportionment formula. The instant petition followed earlier unsuccessful attempts by Oradell to withdraw from the River Dell district. In it, petitioner asserts that application of the principles articulated in *In the Matter of the Petition for Authorization to Conduct a Referendum on the Withdrawal of North Haledon School District from the Passaic County Manchester Regional High School District, North Haledon Board of Education and Borough of North Haledon v. Passaic County Manchester Regional High School District et al.*, 181 N.J. 161 (2004) (*North Haledon*) requires the relief it seeks. The Commissioner submitted the matter to the OAL as an uncontested case, with instructions to "...make recommendations concerning whether Oradell has established that its situation is substantially similar to North Haledon's situation in *Manchester Regional* so as to entitle it to the extraordinary relief directed by the Supreme Court in that case." The Report and Recommendation (OAL Report) was issued in April 2013.

The ALJ found, *inter alia*, that: the issues in this matter were substantially the same as those in *North Haledon*; the fundamental issue in *North Haledon* was the disparity in per-pupil costs among the municipalities, which could not be remedied through statutory withdrawal from the district because of constitutional implications upon the racial demographics of the district; subsequent guidance from the Attorney General's Office stated that the Commissioner may revise cost apportionments where the relative tax burden is inequitable and dissolution or withdrawal of constituent districts would implicate the constitutional rights of students to a thorough and efficient education; petitioner was precluded from withdrawing from the district due to the constitutional obligation of maintaining thorough and efficient public schools; the Commissioner possesses the authority to develop an equitable cost apportionment scheme for the district notwithstanding *N.J.S.A. 18A:13-23*, and this is the only mechanism presently available in instances where a municipality believes it bears a disproportionate tax levy, unalterable due to the "effective veto" result of *N.J.S.A. 18A:13-23*; the growing disparity between River Edge and Oradell's costs per pupil is significant and demands a more equitable method of apportioning costs that excludes both 100% property valuation and 100% per pupil methods. The ALJ ultimately recommended a cost apportionment formula based on 20% property valuation/80% per pupil, to be implemented over a period of two years.

Upon review, the Commissioner rejected the OAL Report, finding, *inter alia*, that: the instant case is neither constitutionally nor equitably similar to the situation in *North Haledon*; *North Haledon* cannot be interpreted as establishing a blanket rule that the Commissioner has the authority to perform the function of *N.J.S.A. 18A:13-23* in any and all cases; unofficial advice from the Division of Law is not binding nor precedential; the ALJ – in proposing an 80% per pupil/20 % property valuation formula – appears not to have taken into account that property values, not per pupil counts, has been regarded by the Supreme Court as the most equitable basis for school funding; and the ALJ's formula is not sufficiently supported. The Commissioner noted that under more compelling circumstances than are present in the instant case, extraordinary relief such as petitioner sought herein might be desirable. The petition was dismissed.

<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>

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DELL REGIONAL SCHOOL DISTRICT,
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The Borough of Oradell (Oradell), whose school district is one of the two constituents comprising the River Dell Regional School District (River Dell) in Bergen County, asks the Commissioner to reallocate the respective contributions which Oradell and the Borough of River Edge (River Edge) pay to operate River Dell. For the reasons that follow, the Commissioner declines Oradell's request.

The history of this matter has been largely recounted by the Appellate Division in *In re Petition for Authorization to Conduct a Referendum on the Withdrawal of the Borough of Oradell from the Riverdell Reg'l Sch. Dist.*, 406 N.J. Super. 198 (App. Div. 2009) (*In re Dissolution of River Dell*). Briefly stated, River Dell educates 7th through 12th grade students from Oradell and River Edge. Because the equalized value of Oradell's real property is higher than that of River Edge, it pays a higher proportion of River Dell's expenses, in keeping with the school funding policy approved in such cases as *Robinson v. Cahill*, 62 N.J. 473 (1973) and its progeny, and as reflected in various statutes and regulations governing school funding. If Oradell's and River Edge's contributions to River Dell were divided by the respective number of students they send to River Dell, the results would generally show a difference of \$5000-6000 between what Oradell pays per student and what River Edge pays.

Dissatisfied with its higher contribution, in December 2006 Oradell retained an expert – James L. Kirtland – to produce a study (Kirtland Report) addressing the feasibility of Oradell’s withdrawal from River Dell, including the ramifications for both Oradell and River Edge.¹ Kirtland concluded that withdrawal was feasible so long as River Edge agreed to enter into a send-receive relationship with Oradell. In April 2007, the then-Bergen County Superintendent of Schools, Aaron Graham (Graham), issued a report which articulated about twice as many disadvantages as advantages to the dissolution of River Dell.

Notwithstanding Graham’s conclusion that a dissolution would be disruptive to the students and costly to taxpayers, Oradell petitioned for withdrawal in May 2007. River Edge opposed the petition and the matter went to the Board of Review (Board). In response to the Board’s request for more information, River Edge submitted two expert reports. The first one, produced by Vincent D. Yaniro (Yaniro Report), found, *inter alia*, that dissolution would leave River Edge with an excessive debt burden due to its possession of a middle school that had not been updated since 1968 and needed renovations which would cost more than River Edge’s borrowing capacity. (By way of contrast, Oradell would be left with a high school which had been undergoing renovations that were likely to be completed before a dissolution could be effectuated.) The other report, by Karen Lake (Lake Report), concluded that dissolution would produce staffing shortages at River Dell high school and, more importantly, would leave neither district capable of operating independent K-12 school districts. James Kirtland subsequently submitted a second report, responding to the reports of Yaniro and Lake.

In October 2007 the Board of Review denied Oradell’s petition for withdrawal from River Dell. An apt summary of its reasons was set forth in *In re Dissolution of River Dell*:

¹ Since River Dell consists of only two school districts, Oradell’s withdrawal would constitute dissolution of the district.

[D]issolution of River Dell would produce an excessive debt burden for the constituent districts. The 2005 Long Range Facilities Plan for River Dell anticipates over \$ 24 million in renovations to the middle school in the next few years, which would cause River Edge to exceed its debt limit. Oradell contends that it is likely the repairs would be made prior to the completion of the dissolution process, and that in any event, the need for repairs is speculative at this point. However, it cannot be disputed that the resulting debt limitations would severely constrain River Edge's ability to make the necessary repairs to the middle school.

The ... impact of this excessive debt would be compounded by the tax implications of the proposed dissolution.

....

[T]he configuration proposed by Oradell, whereby the Oradell district would be comprised of K-6 and 8-12, and River Edge would be limited to a K-8 is not in existence anywhere else in the State of New Jersey, would clearly have been designed for no other purpose than addressing Oradell's concerns with the apportionment of River Dell's costs. Moreover, the sending-receiving agreement upon which the entire proposal rests, and which Oradell itself acknowledges as being critical, is one that River Edge does not consent to. The . . . fact that Oradell itself concedes that the dissolution could not be effectuated without such an agreement, supports the view that an efficient school system could not be maintained in either district upon dissolution. In favor of its position, Oradell asserted that River Edge would not have any alternative choice but to acquiesce to a send-receive agreement in the event of a dissolution. The Board was not persuaded by this reasoning.

Additionally,....dissolution of River Dell in favor of two districts that would remain dependent upon each other would be in opposition to the aims of recent legislation, *N.J.S.A. 18A:7-8(h)*, which was enacted to promote the elimination of these types of districts in favor of regional districts over the course of the next three years.

....

Oradell's suggestion that the regional district be dissolved for the sole purpose of realizing a financial benefit is inconsistent with the trend toward consolidation, and ultimately does not further the primary objective of ensuring a Thorough and Efficient Education. The parties are in complete agreement that the River Dell has enjoyed great history of success in educating their students. Oradell's current proposal seeks to dismantle that district for no other purpose but to reduce its costs. However, Oradell may seek a referendum on modification of the apportionment of costs through the mechanism provided by statute at *N.J.S.A. 18A:13-23.3*, without seeking the dissolution of the Regional School District.

In re Dissolution of River Dell, 406 N.J. Super. at 204-05 [Emphasis added.]

Oradell appealed the Board of Review's determination, but the Appellate Division affirmed same on April 1, 2009, stating "the Board complied with the statutory requirements, and considered appropriate factors. Its decision was supported by substantial evidence in the record, and was not arbitrary, capricious or unreasonable. We affirm substantially for the reasons expressed by the Board." *In re Dissolution of River Dell*, 406 N.J. Super. at 212

In April 2011, two years after the above referenced Appellate Division decision, a referendum was held on the question of whether the cost allocation formula for River Dell should be changed. Because a majority of River Edge residents voted against such a reallocation, the referendum failed to provide Oradell with the relief it sought.

Nine months later, in January 2012, Oradell filed the petition which instituted this proceeding, asking the Commissioner to use his authority to revise the contribution formula for the River Dell constituents. Oradell alleges that the Commissioner would be justified in exercising such an extraordinary remedy because Oradell's circumstances are the same as those which led the Supreme Court to direct the Commissioner to fashion a reallocation formula in *In the Matter of the Petition for Authorization to Conduct a Referendum on the Withdrawal of North Haledon School District from the Passaic County Manchester Regional High School District, North Haledon Board of Education and Borough of North Haledon v. Passaic County Manchester Regional High School District et al.*, 181 N.J. 161 (2004) (*North Haledon*).

After receiving River Edge's answer to the petition, the Commissioner sent the matter to the Office of Administrative Law (OAL) for fact finding. The OAL delivered its Report and Recommendation (OAL Report) to the Commissioner in April 2013, proposing that the

Commissioner reallocate Oradell's and River Edge's contributions to River Dell and, further, suggesting that the new formula be based 20% upon property valuation and 80% upon per-pupil cost. River Edge was granted permission to file exceptions to the OAL Report, and Oradell was allowed to respond to the exceptions – which it did on May 14, 2013.

The Commissioner has carefully considered all of the foregoing. At the outset, he does not see in *North Haledon* the creation by the Supreme Court of a blanket rule that the Commissioner has the authority to perform the function of *N.J.S.A.* 18A:13-23 – *i.e.*, the reallocation of contributions among the constituents of regional districts – in any and all cases. Further, the Commissioner cannot agree with petitioner and the Administrative Law Judge (ALJ) that the considerations which underlay the Supreme Court's holding in *North Haledon* are substantially present in this matter.

First, a review of *North Haledon* reveals that before the Supreme Court ordered the creation of a new formula for Manchester Regional,² the per-pupil cost which North Haledon had been paying to send its students to Manchester Regional had risen to \$18,400, while Haledon's had decreased to \$5,300 and Prospect Park's had decreased to \$3,400. The \$5000-\$6000 disparity between the per-pupil costs of Oradell and River Edge is far less severe than were the differences of \$15,000 and \$13,000 which existed between North Haledon and the other constituents of Manchester Regional.

Second, whereas North Haledon had met the threshold requirements for withdrawal from a district – *i.e.*, the voters had authorized the withdrawal in a referendum, pursuant to *N.J.S.A.* 18A:13-58 – Oradell had not. Thus, the analysis employed by the Board of

² The Commissioner notes that the Supreme Court had hoped that a reallocation could have been effectuated by means of agreements among the parties to the controversy.

Review in its rejection of Oradell's application for withdrawal from River Dell was not congruent with the Supreme Court's reasons for reversing the Board of Review's approval of a referendum on North Haledon's withdrawal from Manchester.

Because education is so crucial to a child's chances of surviving and thriving, it can be said that every act performed by the Department of Education and its subdivisions throughout the State has constitutional implications. However, the Commissioner cannot treat as a constitutional issue every business decision required for the operation of a school district. For example, while the quality of teaching in the public schools could certainly implicate the educational mandate in the State constitution, controversies over teacher renewal, promotion, tenure or dismissal will not be regarded as constitutional unless there is a showing that they have been made upon independent, unconstitutional grounds. Similarly, while State constitutional implications could, under some circumstances, attach to a district's provision, *vel non*, of the goods and services needed to run its schools, it is probable that most disputes regarding the procurement of said goods and services will be resolved based upon statutes and regulations which are designed to protect the administration of education. In other words, not every dispute which arises in relation to the administration of education must be framed as a direct constitutional contest.

As regards the present case, the Commissioner does not find that the dispute over the advisability of the proposed breakup of River Dell, in and of itself, poses a direct constitutional question. Oradell was precluded, first and foremost, from withdrawing from River Dell because, to save itself some money, it had proposed 1) the dismantling of a high functioning school district, and 2) the creation of two districts, neither of which could independently

function. Thus, unlike the situation in *North Haledon*, the Board of Review's rejection of Oradell's petition was an exercise of simple ministerial prudence and common sense.

Further, an equitable difference exists between the present case and *North Haledon*. In *North Haledon*, there was no finding that – aside from the issue of student diversity – either the regional district or North Haledon would be unable to deliver to their students a satisfactory education after a North Haledon withdrawal.³ The constitutional issue arose by way of a demographic circumstance beyond the control of North Haledon, which circumstance would have created racial imbalance in Manchester Regional High School had North Haledon withdrawn. Since levy reallocation was not available to North Haledon via *N.J.S.A.* 18A:13-23, the Supreme Court directed the Commissioner to use his powers to lessen North Haledon's very disparate contribution to Manchester Regional's operating expenses.

By way of contrast, in the present case, the record reveals no issue of racial imbalance or any other specific constitutional risk to River Dell's constituent school districts. The only possible threat to the State constitutional mandate of a thorough and efficient education for River Dell's children would be one created by Oradell – in attempting to reduce its taxes by replacing a healthy school district with two unhealthy ones. This is not a goal for which the Commissioner is compelled to or inclined to exercise his authority to bestow extraordinary remedies.

Because the instant case is neither constitutionally nor equitably similar to the situation in Manchester Regional, the Commissioner need not further analyze the respective financial statistics which have been offered regarding Oradell and River Edge. However, the Commissioner cannot fail to note the following. First, the ALJ does not appear to have taken

³ North Haledon had already entered into a consensual send-receive relationship with Midland Park, contingent only upon North Haledon's successful withdrawal from Manchester Regional.

into account that property valuation, not per-capita counts, has been regarded by the Supreme Court as the most equitable basis for school funding.⁴ Second, while the OAL Report's statement of facts recites some figures concerning the parties' property values and median incomes, Report at 6-7, it includes no in-depth analysis of same during its very brief discussion of the appropriate allocation formula for River Dell.⁵ (Report at 17) Absent the kind of analysis of a broad range of factors which the Commissioner conducted in *In the Matter of the Petition for Authorization to Conduct a Referendum on the Withdrawal of North Haledon School District from the Passaic County Manchester Regional High School District, Passaic County*, Commissioner Decision No. 304-13 (August 29, 2013), the 80% per-pupil/20% property-valuation formula suggested by the ALJ is not sufficiently supported.

Finally, the Commissioner must register puzzlement at petitioner's and the OAL's reliance upon unofficial advice provided in a letter to the Commissioner from his counsel, the Division of Law, dated September 21, 2004 and annexed to the petition as Exhibit A. *See, e.g.*, pages 8, 9, 11, 13 and 15 of the OAL Report. The letter neither binds the Commissioner herein nor, generally, holds any precedential value. *See WWP Dist. v. Bd. Of Educ. of Delran*, 361 N.J. Super. 488, 493-494 (App. Div. 2003).

The Commissioner understands that under the current legislation, which favors the continuation of established regional districts, it is difficult for a constituent district to terminate its participation in a regional district. In the Commissioner's view, extraordinary relief such as petitioner seeks herein might be desirable where circumstances have drastically changed

⁴ Robinson v. Cahill and its progeny.

⁵ ALJ looked to some legislative reports for guidance in sorting out the issues raised by petitioner. However, the ideas expressed in the cited reports were not implemented, making them unhelpful in discerning the true legislative intent concerning the issues at bar. Nor does the ALJ's speculation about future willingness of districts to regionalize provide an adequate basis for adjudicating the matter at hand.

over time through no fault of a petitioning district. However, grounds for relief would have to be substantially more compelling than the situation in the instant case.

That being said, petitioner in the instant case may certainly follow the prescribed legal procedure for gaining relief from statutory mandates, *i.e.* urge the Legislature to amend the law. As was explained in *Borough of Seaside Park et al. v. Commissioner, New Jersey Department of Education, et al.*, 432 N.J. Super. 167, 208f (App. Div.), *certif. denied* 216 N.J. 367 (December 3, 2013)⁶:

[a party's] recourse is to lobby the Legislature to change the statutory mechanisms for dissolving or withdrawing from a regional school district, or for revising its funding formula.

Accordingly, the Report and Recommendation of the OAL is rejected and the petition is dismissed.

IT IS SO ORDERED.⁷

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 2, 2014

Date of Mailing: June 3, 2014

⁶ Noting that Seaside Park – unlike North Haledon – had not had a successful referendum permitting withdrawal, the court concluded that there was no basis to invoke the extraordinary remedy directed by the Court in the Manchester Regional case.

⁷ 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).