

BOARD OF EDUCATION OF THE BOROUGH OF LONGPORT, ATLANTIC COUNTY,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
BOARD OF EDUCATION OF THE CITY OF ATLANTIC CITY, ATLANTIC COUNTY, AND BOARD OF EDUCATION OF THE CITY OF OCEAN CITY, CAPE MAY COUNTY,	:	
	:	
RESPONDENTS.	:	

SYNOPSIS

Petitioner Longport Board of Education (Longport) sought severance of its send-receive relationship with respondent Atlantic City Board of Education (Atlantic City) and establishment of a send-receive relationship with respondent Ocean City Board of Education (Ocean City). Alternately, Longport sought to create a dual send-receive relationship with both Atlantic City and Ocean City. As of June 2013, Longport sent twenty-four students to various local high schools, including nine who attended Atlantic City High School (ACHS) and three who attended Ocean City High School through a Choice Program; the balance of Longport students attended private and parochial schools. Atlantic City opposed severance of the existing send-receive agreement.

The ALJ found, *inter alia*, that: change or severance of a send-receive relationship requires the approval of the Commissioner; pursuant to *N.J.S.A. 18A:38-13*, the Commissioner must make equitable determinations based on all of the circumstances, including the educational and financial implications for the affected districts, the impact on the quality of education received by pupils, and the effect on racial composition of the pupil population, and shall grant a requested change if no substantial negative impact will result therefrom; severance of the relationship with Atlantic City and establishment of a new one with Ocean City would not result in a substantial negative impact upon the quality of education, nor upon the financial state of either district; case law in this arena directs that any exacerbation of a racially imbalanced student population necessitates denial of an application for severance of a send-receive relationship, and has established a two-step query for determining this, namely whether the receiving district is currently in racial imbalance, and if not, whether the departure of the sending district's children will create imbalance or further exacerbate existing imbalance, thus resulting in a substantial negative change in the racial balance of the school; here, ACHS is clearly in a state of racial imbalance, and the departure of Longport's nine students would increase that imbalance. The ALJ concluded that the petition for severance must be denied. Further, Longport's request for a dual relationship must be denied both on the basis of racial imbalance and because it essentially seeks to expand the parameters established by *N.J.S.A. 18A:36B-14* through -24, the Interdistrict Public School Choice Program.

The Commissioner concurred that severing the agreement between Longport and Atlantic City and creating a new one with Ocean City would have no substantial negative impact upon the educational and financial condition of the districts, but disagreed, *inter alia*, with the ALJ's extreme notion that racial imbalance in the receiving district is alone dispositive of whether a substantial negative impact will result from severance. The Commissioner determined that, under all of the instant circumstances, severance will not have a substantial negative impact on the highly diverse racial composition of ACHS. Absent a showing of substantial financial, educational or racial negative impact, the Commissioner is required to grant the requested severance. Accordingly, Longport's application for severance of its send-receive relationship with Atlantic City was granted subject to its entering into a new agreement with Ocean City for a minimum of five years.

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.
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions and replies thereto¹ were timely filed, pursuant to *N.J.A.C.* 1:1-18.4, on behalf of Petitioner and Co-Respondent, Atlantic City Board of Education.²

In this matter, the Longport Board of Education (Longport) seeks to sever its sending-receiving relationship with the Atlantic City Board of Education (Atlantic City) or, in the alternative, to modify the present sending-receiving relationship between Longport and Atlantic City so as to create a dual designation sending-receiving relationship with Atlantic City and the Ocean City Board of Education (Ocean City). Following three days of hearing in the

¹ Petitioner submitted a reply to the reply brief submitted on behalf of Atlantic City. Same was not considered as *N.J.A.C.* 1:1-18.4 makes no provision for replies to reply exceptions.

² While the matter was pending before the Commissioner of Education for final decision, petitioner filed a Motion to Supplement the Record, which the Commissioner determined was more appropriately considered a Motion for Remand to consider whether an appearance of impropriety existed, such that a new hearing before a different ALJ was required. The Commissioner remanded the matter to the Office of Administrative Law for a determination on the issue. The Chief ALJ determined that no appearance of impropriety existed and, therefore, a new hearing was not necessary. As the Commissioner does not have jurisdiction over the disqualification/recusal issue, it will not be addressed herein.

Office of Administrative Law (OAL), the ALJ determined to deny Longport's petition in its entirety.

The Legislature has bestowed upon local school districts lacking high school facilities of their own the power to decide how and where their students should be educated. *Bd. of Educ. of Ho-Ho-Kus v. Bd. of Educ. of Midland Park*, 96 N.J.A.R.2d(EDU) 964 (1996). To that end, N.J.S.A. 18A:38-11 permits the board of education of such a district to designate a high school or high schools for its pupils to attend on a tuition basis. Once a sending district makes the decision to educate its students in another district, it must obtain approval from the Commissioner to terminate or otherwise modify the sending-receiving relationship. N.J.S.A. 18A:38-11.

The modification of an existing sending-receiving relationship is governed by N.J.S.A. 18A:38-13, which provides, in pertinent part:

The commissioner shall make equitable determinations based upon consideration of all the circumstances, including the educational and financial implications for the affected districts, the impact on the quality of education received by pupils, and the effect on the racial composition of the pupil population of the districts. The commissioner shall grant the requested change in designation or allocation if no substantial negative impact will result therefrom.

Thus, in ruling on an application for modification, the Commissioner must evaluate whether granting the requested modification will have a "substantial negative impact" upon 1) the quality of education, 2) the financial condition, or 3) the racial composition of the pupil populations of the districts involved. If, upon consideration of all the circumstances, no substantial negative impact is found, the application must be granted.

In the Initial Decision, the ALJ determined that severance of the sending-receiving relationship between Longport and Atlantic City will not result in a substantial

negative impact upon the quality of education or the financial state of any of the involved districts. Accordingly, the ALJ concluded that the sole issue to be decided was whether the contemplated modification would have a substantial negative impact on the racial composition of Atlantic City High School (ACHS). Ultimately, the ALJ denied Longport’s application upon his determination that the requested modification would have a substantial negative impact on the racial composition of ACHS.

In analyzing that issue, the ALJ recommended a two-part test for determining whether severance of a sending-receiving relationship will result in a substantial negative impact on racial composition.³ The ALJ’s test – purportedly derived from prior decisions of the Commissioner – would establish a bright-line rule that effectively mandates the summary denial of any petition for modification upon a threshold determination that the current receiving district is “racially imbalanced.”⁴ The ALJ reasoned that, if a school is already racially imbalanced, then the departure of even one Caucasian student from that school necessarily constitutes a substantial negative impact on racial composition, such that the application for modification must be denied without further consideration.

The Commissioner cannot countenance such an interpretation. At the outset, the Commissioner finds that such a bright-line rule would dissuade sending districts from entering into agreements with “racially imbalanced” receiving districts. In that regard, both districts would be immediately bound to continue the relationship in perpetuity, regardless of

³ The two-part test advocated by the ALJ is: “Step 1 – Is the receiving district in racial imbalance; and Step 2 – If not, will the departure of the sending district’s children create imbalance or further exacerbate any existing imbalance resulting in a substantial negative change in the racial balance of the school? Step 2 requires a detailed statistical analysis of the student population of the districts involved. But, in order to get to Step 2, the petitioner must meet the test established in Step 1, that is, it must show that the receiving district is not racially out of balance.”

⁴ The ALJ suggested that a school is “racially imbalanced” whenever its minority population is not between 40% and 60% of the total student population.

future educational or financial considerations. This would deprive the districts of any meaningful opportunity to evaluate the new relationship since, regardless of their assessments, there would be no available recourse. In short, both districts would be hamstrung from the moment they signed the agreement.

Moreover, the notion that the current “racial balance” of the receiving district is alone dispositive of whether a substantial negative impact will result from severance is incompatible with the statute’s command that the Commissioner “make equitable determinations based upon consideration of all of the circumstances.” Indeed, the determination of whether a requested modification will result in a substantial negative impact on racial composition requires a fact-sensitive inquiry in which the significance of the statistics are evaluated under “all of the circumstances” of the particular case.⁵ *Bd. of Educ. of Englewood Cliffs v. Bd. of Educ. of the City of Englewood*, 257 N.J. Super. 413 (App. Div. 1992).

Thus, the Commissioner is statutorily required to conduct a comprehensive review of all of the circumstances. The current racial composition of the receiving district’s pupil population is unquestionably a fundamental and indispensable part of the Commissioner’s inquiry. It is, however, a single component of the holistic review mandated by N.J.S.A. 18A:38-13. The significance of that component cannot be determined in a vacuum. Rather, it must be viewed in the context of other relevant factors, such as the extent of the projected statistical changes and the existence of other aggravating circumstances.

⁵ Likewise, the ALJ’s two-part test is inconsistent with the explicit language of the controlling statute. It is a cardinal rule of statutory construction that full effect should be given, if possible, to every word of a statute. *Carlson v. Hannah*, 6 N.J. 202, 214 (1951). Any interpretation that renders statutory language meaningless is to be avoided. *McCann v. Clerk of Jersey City*, 167 N.J. 311, 321 (2001). The operative language of the controlling statute requires the Commissioner to grant the petitioning district’s request for modification, unless a *substantial* negative impact would result. The two-part test espoused by the ALJ requires denial where the requested modification will have *any* negative impact on racial composition, effectively removing the word “substantial” from the statute.

In *Englewood, supra*, the requested modification would have resulted in a de minimis 1.6% proportional change. However, the record established that the petitioning district had begun withdrawal from the receiving district based upon “white flight” long before it filed its application with the Commissioner. Thus, there was evidence of a deliberate and rapid decline in the receiving district’s Caucasian population. Perhaps more importantly, there were so few Caucasian students still enrolled in the receiving district that severance would have resulted in a 16% decrease in the gross Caucasian population, leaving the receiving district with a proportional minority population of 89.8%. The court found this combination of statistics and nefarious motivations, coupled with evidence that the remaining minority population would suffer a significant symbolic loss, supported a finding that the requested modification would have a substantial negative impact upon racial composition and must be denied.

Englewood and its progeny⁶ establish that a de minimis statistical change may constitute a “substantial negative impact” when coupled with certain aggravating circumstances. Examples of such aggravating circumstances include, *inter alia*, a trend of rapidly declining Caucasian enrollment, evidence of projected symbolic loss, and a high percentage of projected change in the gross Caucasian population upon severance. *Id.*

Longport has long provided for the education of its high school-aged students through a sending-receiving relationship with Atlantic City. ACHS has a total student population of 2,040.⁷ Longport sends only nine (9) students to ACHS. The Longport students represent .4% (9/2040) of the total student population of ACHS. Including the nine (9) Longport

⁶ The Commissioner finds that each severance case presents a unique set of facts, statistics and circumstances, which require independent review. Accordingly, the Commissioner finds no prior case dispositive of the instant application.

⁷ For purposes of this decision, the Commissioner adopts the enrollment figures and statistics contained in the Joint Stipulation of Facts, which the ALJ admitted into evidence yet inexplicably disregarded.

students, 442 Caucasian students attend ACHS. Caucasians represent 21.7% of the total student population, while various minority groups represent the other 78.3%.

By all accounts, ACHS currently has a very diverse racial composition: the school has a Hispanic population of 31%, an African American population of 29%, an Asian/Pacific Islander population of 17.9%, and a Caucasian population of 21.7%. The Commissioner recognizes that the departure of the nine (9) Longport students will have *some* impact on that diversity. However, as our Supreme Court has observed, “[n]ot every action that reduces the percentage of white students necessarily implicates the State’s policy against segregation in the public schools.” *North Haledon Board of Education v. Passaic County Manchester Regional School District*, 181 N.J. 161, 165 (2004). Thus, the pertinent question is not whether there will be a negative impact, but whether that impact will be “substantial” as contemplated by the controlling statute, N.J.S.A. 18A:38-13.

In the event that all nine (9) Longport students departed ACHS, the Caucasian population at the school would decrease from 442 to 433. The remaining 433 Caucasians would represent 21.3% of the total student population of ACHS, a proportional change of .4%. In the abstract, a .4% proportional change can only be characterized as *de minimis*. The significance of these statistics must, however, be evaluated in light of all of the circumstances of the case. Only then can a determination be made as to whether the impact on racial composition is substantial.

Here, the Commissioner finds insufficient evidence of aggravating circumstances in the record to support a finding that the otherwise *de minimis* .4% proportional change represents a “substantial negative impact” on the racial composition of ACHS. In that regard, the record does not establish that severance will result in a significant decrease in the gross Caucasian population at ACHS. The nine (9) Longport students represent 2% of the Caucasian

population at ACHS. Thus, the loss of those nine (9) students would represent only a 2% decrease in the gross population of Caucasian students. Further, ACHS would continue to have a sizeable Caucasian population of 433 students, representing 21.3% of the total student population.

Nor does the record establish a consistent and rapid decrease in Caucasian enrollment at ACHS over time. While the evidence presented at hearing demonstrates a minor decline in the proportion of Caucasian students enrolled at ACHS over a 10 year period, it also demonstrates a decline in the proportion of African-American students during that same time period. In fact, the proportion of African-American students enrolled at ACHS suffered the greatest decline over the past 10 years. Furthermore, in more recent years, the record reflects a slight increase in the proportion of Caucasian students enrolled at ACHS. This can hardly be analogized to the calculated mass exodus of Caucasian students seen in *Englewood*.

The Commissioner finds the record similarly devoid of any tangible evidence that would support a finding that symbolic loss will occur in the wake of severance. To that end, the Commissioner finds that there was no objective evidence presented to establish any actual or potential psychological impact on ACHS minorities as a consequence of the departure of Longport's Caucasian students. ACHS has a very diverse racial composition, and will continue to have a very diverse racial composition with nearly identical proportional percentages following severance.

Based upon the foregoing, the Commissioner finds that, under all of the circumstances here presented, severance will not have a substantial negative impact on the racial

composition of ACHS.⁸ Further, the Commissioner is persuaded that, for the reasons outlined by the ALJ in his decision, severance will not result in a substantial negative impact on the quality of education or the financial condition of the districts involved. Absent a showing of substantial financial, educational, or racial negative impact herein, the Commissioner is required to grant the requested severance.⁹

Accordingly, the Initial Decision is adopted in part and rejected in part, as modified above. Longport's application for severance of its sending-receiving relationship with ACHS is hereby granted, subject to its entering into a new sending-receiving relationship with Ocean City for a minimum duration of five years.

IT IS SO ORDERED.¹⁰

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 5, 2014

Date of Mailing: June 6, 2014

⁸ The Commissioner further finds that the .1% proportional change in racial composition resulting from addition of the nine (9) Longport students to Ocean City High School will not have a substantial negative impact upon the racial composition of the school.

⁹ In light of the Commissioner's decision on the application for severance, it is unnecessary to reach the alternative application for dual-designation.

¹⁰ 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*).