

#133-15 (OAL Decision: Not yet available online)

BOARD OF EDUCATION OF THE BOROUGH OF MERCHANTVILLE, CAMDEN COUNTY,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
BOARD OF EDUCATION OF THE BOROUGH OF PENNSAUKEN, CAMDEN COUNTY	:	
	:	
RESPONDENT.	:	

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SYNOPSIS

Petitioner Merchantville Board of Education (Merchantville) sought severance of its sending-receiving relationship with respondent Pennsauken Board of Education (Pennsauken) and establishment of a sending-receiving relationship with the Haddon Heights Board of Education (Haddon Heights). Merchantville currently sends its students in grades 9-12 to Pennsauken High School via the existing send-receive relationship. Pennsauken Board of Education opposed the severance of the agreement, arguing that removal of Merchantville students from Pennsauken schools would, *inter alia*, negatively impact the racial diversity of the district.

The ALJ found, *inter alia*, that: *N.J.S.A.* 18A:38-11 mandates that any school district that lacks high school facilities must designate a high school for its pupils through a sending-receiving relationship; 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 Pennsauken and establishment of a new one with Haddon Heights would not result in a substantial negative impact upon the quality of education, nor upon the financial state of either district; here, it appears that a racially diverse, majority-minority subset of students would be removed from a similar, though not identical, diverse school population and be placed into another diverse school setting. The ALJ concluded that granting Merchantville’s petition to sever its sending-receiving relationship with Pennsauken would produce no substantial negative impact on the quality of education, the financial condition and the racial composition of the student population of the districts. Accordingly, the ALJ granted Merchantville’s petition for severance of the agreement with Pennsauken, subject to its entering into a new sending-receiving relationship with Haddon Heights for a minimum duration of five years.

The Commissioner concurred with the ALJ’s findings of fact and conclusions of law, and adopted the Initial Decision as the final decision in this matter, finding that – absent a showing of substantial negative financial, educational or racial impact herein – the Commissioner is required to grant the requested severance pursuant to *N.J.S.A.* 18A:38-13.

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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April 10, 2015

OAL DKT. NO. EDU 1927-12  
AGENCY DKT NO. 10-1/12

BOARD OF EDUCATION OF THE BOROUGH	:	
OF MERCHANTVILLE, CAMDEN COUNTY,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
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The voluminous record<sup>1</sup> in this matter and the Initial Decision issued by the Office of Administrative Law (OAL) have been carefully reviewed. Neither party filed exceptions with the Commissioner pursuant to *N.J.A.C.* 1:1-18.4.

Petitioner, Merchantville Board of Education (Merchantville), initiated this action to request severance of its sending-receiving relationship with respondent, Pennsauken Board of Education (Pennsauken) in favor of establishing a new sending-receiving relationship with Haddon Heights Board of Education (Haddon Heights). Pennsauken opposed severance, arguing that removal of Merchantville’s students<sup>2</sup> from Pennsauken High School will result in a substantial negative impact upon the quality of education, the financial condition, and the racial composition of the student body at the high school under *N.J.S.A.* 18A:38-13.

Following nine days of hearing at the OAL, and additional briefing to address the effect of *Board of Education of Longport v. Board of Education of Atlantic City*, Commissioner’s

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<sup>1</sup> The record contains the hearing transcripts from the Office of Administrative Law, which were reviewed in connection with this matter.

<sup>2</sup> Merchantville students, a majority-minority population, comprise approximately 4.1% of the student body at Pennsauken High School. (Initial Decision at 21)

Decision No. 238-14, decided June 5, 2014, the Administrative Law Judge (ALJ) granted Merchantville's petition and determined that severance of its sending-receiving relationship with Pennsauken will not result in a substantial negative impact upon the quality of education, the financial condition, or the racial composition of any of the districts involved.

The Commissioner concurs with the ALJ's findings of fact and conclusions of law – which are fully supported by his credibility determinations<sup>3</sup> as well as the sufficient credible evidence in the record – for the reasons stated in his extensive Initial Decision. Because the ALJ's determination is sustained by the record and consistent with applicable law, the Commissioner finds no reason to disturb it. Absent a showing of substantial negative financial, educational, or racial impact herein, the Commissioner is required to grant the requested severance pursuant to *N.J.S.A. 18A:38-13*.

Accordingly, the Initial Decision is adopted and Merchantville's application for severance of its sending-receiving relationship with Pennsauken is hereby granted, subject to establishment of a sending-receiving relationship with Haddon Heights for a minimum duration of five years.<sup>4</sup>

IT IS SO ORDERED.<sup>5</sup>

COMMISSIONER OF EDUCATION

Date of Decision: April 10, 2015

Date of Mailing: April 10, 2015

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<sup>3</sup> The ALJ's credibility determinations are entitled to deference from the Commissioner, absent a finding that they are arbitrary, capricious, unreasonable or unsupported by the record. *N.J.S.A. 52:14B-10(c)*; *In the Matter of the Tenure Hearing of Dominic Costanzo*, Commissioner Decision No. 142-14, decided April 4, 2014.

<sup>4</sup> See *N.J.S.A. 18A:38-13.1*.

<sup>5</sup> 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*).