16-19

Borough of Sea Bright Monmouth County, Petitioner, V. Board of Education of the Shore Regional High School District, Monmouth County, Respondents.	:	Commissioner of Education Decision

Synopsis

This case arose out of a dispute between the Shore Regional Board of Education (Board) and one of its constituent members, the Borough of Sea Bright (Sea Bright), over the formula used to apportion the tax burden supporting the regional school district. Sea Bright challenged the action of the Board in declining to place a referendum on the ballot to modify the apportionment method. Specifically, a Sea Bright representative to the Shore Regional school board made a motion to include a referendum on the ballot at its November 2015 meeting, which motion died without a vote after not receiving a second on the motion. Sea Bright alleged that the failure to place the referendum on the ballot was arbitrary, capricious and unreasonable. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: the Shore Regional School District was established in the 1960s on a per-pupil funding basis; subsequently, the funding formula changed in 1975 to equalized valuation, but allowed the voters of each municipality to approve an apportionment method based upon (a) equalized valuation, (b) per pupil basis, or (c) a combination of the two; in April 2015, Sea Bright sought to raise its concerns over the apportionment method with the Board due to a disparity between the percentage of Shore Regional's budget provided by Sea Bright and the percentage of students Sea Bright sent to the regional school district; in November 2015, a Sea Bright Board member made a motion at a public meeting to submit a change to the apportionment method to voters in the next election; no other Board member seconded the motion, and no further vote was taken regarding the request; the decision to place a change to the apportionment method on the ballot is discretionary and, as a result, the Board's decision not to place a referendum on the ballot – in the absence of a second to the motion – was not arbitrary, capricious or unreasonable. Accordingly, the ALJ granted summary decision in favor of the Board.

Upon comprehensive review, the Commissioner concurred with the ALJ that the Board is entitled to summary decision. In so determining, the Commissioner found, *inter alia*, that this matter is limited to a determination as to whether the Board acted in an arbitrary, capricious or unreasonable manner by failing to place a referendum on the ballot; as the motion in question was never seconded, the Commissioner cannot find that the Board was arbitrary, capricious or unreasonable. Accordingly, the Initial Decision was adopted as the final decision in this matter and the petition was dismissed.

January 14, 2019

OAL Dkt. No. EDU 4004-16
Agency Dkt. No. 25-2/16

Borough of Sea Bright, Monmouth County, Petitioner, V. Board of Education of the Shore Regional High School District, Monmouth County, Respondents.	:	Commissioner of Education Decision

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed – as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner, the Borough of Sea Bright (Sea Bright), and the Board of Education of the Shore Regional High School District's (Board) reply thereto. In this case, Sea Bright is challenging the Board's failure to place on the ballot a referendum to modify the method by which taxes are apportioned among the constituent members of the Shore Regional High School District. Sea Bright's representative to the Board made a motion to include a referendum on the ballot to change the apportionment method at its November 2015 meeting; however, the motion was not seconded by any other member of the Board, resulting in no further action. The Administrative Law Judge (ALJ) found that a decision to place such a change on the ballot is discretionary, and as a result, the Board's decision not to place a referendum on the ballot in the absence of a second to the motion was not arbitrary, capricious or unreasonable. Therefore, the ALJ granted summary decision in favor of the Board.

In its exceptions, Sea Bright maintains that the Initial Decision must be rejected because its holding would thwart the Legislature's explicit intent to have voters determine the tax allocation method for regional school districts. Under *N.J.S.A.* 18A:13-23, the tax levy for regional school districts "shall be apportioned among the municipalities included with the regional district, as may be approved by the voters for each municipality at the annual election or a special school election." Therefore, Sea Bright argues that upon receiving a request from one of the constituent members to revise the tax apportionment method, the Board was required to designate and submit the public question to be voted upon by the constituents of the district. Sea Bright also contends that equitable and remedial principles should be applied in this case to allow the voters of Sea Bright, Monmouth Beach, Oceanport and West Long Branch to weigh in on the allocation method.

Sea Bright also suggests that the Initial Decision is flawed because the ALJ found that an arbitrary, capricious or unreasonable analysis was not necessary since the Board's decision was discretionary, and no formal action was taken. Almost every decision made by a board of education involves some form of discretion; further, a public entity's inaction can be challenged as arbitrary, capricious or unreasonable in the same manner as formal action. Despite clear case law to the contrary, the Initial Decision wrongfully upheld the Board's refusal to certify the referendum and determined that no analysis of whether the decision was arbitrary, capricious or unreasonable was necessary.

Moreover, Sea Bright contends that the only way to determine whether a public entity's decision was arbitrary, capricious or unreasonable is for the public entity to provide an explanation for its decision. *Caporusso v. New Jersey Dep't of Health and Senior Services*, 434 *N.J. Super* 88, 109 (App. Div 2014). For years, the Board has continuously refused to provide

Sea Bright's taxpayers, and the taxpayers from the other constituent municipalities, with an explanation of how it reached its determination not to certify the referendum. Importantly, the Board did not have any public discussion or deliberation on placing the referendum on the ballot. Finally, there is no legitimate reason for the Board to deny a constituent's formal request to place a referendum on the ballot as the tax allocation method has no impact on the educational services provided to Shore Regional's students, and there also would be no additional cost to the Board. Each year the Board approves its annual budget based on a myriad of factors that allow it to provide the appropriate educational services to its students. After the budget is formally adopted, the total amount to be collected through local taxes is determined. The tax levy is then divided among the constituent municipalities, and – whether it is calculated through pupil enrollment, equalized property value or some combination thereof – does not affect the Board's annual budget or the amount of taxes it receives. Therefore, the Board's failure to place a referendum to modify the school funding formula on the ballot must be overturned as arbitrary, capricious or unreasonable.

In reply, the Board argues that the statutory scheme and the record on appeal does not support the modification of the Initial Decision. Nowhere in *N.J.S.A.* 18A:13-23, nor in the case law, is there any suggestion that the Legislature ever contemplated that the placing of such a question on the ballot was automatic. Instead, school law and election law should control regarding how this matter is placed on the ballot. Additionally, the motion made by Sea Bright's representative to the Board was extremely vague, simply stating "…to have a vote on conducting a referendum to change the State funding." (Respondent's Exceptions at 2) There was no indication as to what the proposed change to the tax collection method would be based on the ambiguous motion.

Additionally, in its exceptions, Sea Bright wrongfully contends that the Board was arbitrary, capricious or unreasonable because it failed to offer a reasonable explanation for why the motion died for lack of a second. There is no case law to suggest that any individual board member must discuss his or her reasons for not seconding a motion. Further, there is no case law that would compel the Commissioner to find that every motion made by a board member must be seconded and discussed, or that any request for a public question under the applicable statute must be debated. Therefore, the Initial Decision should be adopted as the final decision in this matter.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons thoroughly set forth in the Initial Decision – that the Board is entitled to summary decision. Although there may be a longstanding disagreement between the parties regarding the funding formula,[1] this matter is limited to a determination as to whether the Board acted in an arbitrary, capricious or unreasonable manner by failing to place a referendum on the ballot. To that end, Sea Bright has the burden to prove that the Board's inaction was arbitrary, capricious or unreasonable. *Kopera v. Board of Education of West Orange*, 60 *N.J. Super.* 288 (App. Div. 1960). The Commissioner cannot find that the Board was arbitrary, capricious or unreasonable in the absence of the motion being seconded. Further, *N.J.S.A.* 18A:13-23 does not address the Board's obligation to place a referendum on the ballot based on a request by one municipality; rather, it simply states that the tax levy for regional school districts shall be apportioned among the municipalities and approved by the voters for each municipality. Moreover, despite Sea Bright's characterization of the Initial Decision, the ALJ did evaluate the Board's inaction under the arbitrary, capricious or unreasonable standard.

[1] The Initial Decision outlines previous efforts made by Sea Bright to explore the possibility of modifying the funding formula, beginning in 2015.

Finally, the Commissioner is also in accord with the ALJ's determination concerning Sea Bright's claim that the Board violated the Open Public Meetings Act, *N.J.S.A.* 10:4-6 *et seq*.[2]

Accordingly, the recommended decision of the ALJ is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[3]

COMMISSIONER OF EDUCATION

Date of Decision: January 14, 2019

Date of Mailing: January 15, 2019

[2] Although claims against local school boards that do not arise under school laws are typically adjudicated in Superior Court, it is well established that the Commissioner has additional incidental jurisdiction to determine claims arising under the OPMA as they relate to school law controversies. *Sukin v. Northfield Bd. of Educ.*, 171 *N.J. Super.* 184, 197 (App. Div. 1979). Here, the incident jurisdiction is broad enough to encompass the claims made by Sea Bright in connection with the Board's decision not to place a referendum on the ballot.

[3] Pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A*. 18A:6-9.1), Commissioner decisions are appealable to the Superior Court, Appellate Division.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

BOROUGH OF SEA BRIGHT,
MONMOUTH COUNTY,
Petitioner,
v.
BOARD OF EDUCATION OF THE SHORE REGIONAL HIGH SCHOOL DISTRICT, MONMOUTH COUNTY,
Respondent.

OAL DKT. NO.: EDU 04004-16
AGENCY NO.: 25-2/16

Vito A. Gagliardi, Jr., Esq. and **Kerri A. Wright,** Esq., for petitioner (Porzio Bromberg and Newman, P.C., attorneys)

Dennis A. Collins, Esq., for respondent (Collins Vella and Casello, LLC, attorneys)

Record Closed: September 6, 2018 Decision: October 15, 2018

BEFORE **SARAH G. CROWLEY**, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF CASE

This case arises out of a dispute between the Shore Regional Board of Education (Shore Regional or Board) and one of its constituent members, the Borough of Sea Bright (Sea Bright) over the funding formula used to allocate the final burden supporting the regional school district. Sea Bright challenges the action of Shore

Regional in declining to place a referendum on the ballot to modify the school funding formula. A Sea Bright board member made a motion to include such a referendum on the ballot at its November 2015, meeting. No member of the Board seconded the motion, and thus, it died without a vote. There was no discussion regarding the motion and/or the reason why no one chose to second the motion.

The petitioner filed the instant action challenging the Board's failure to put the proposed referendum on the ballot. The allege that the decision was arbitrary, capricious and unreasonable. The matter was filed with the Commissioner of Education, who transmitted the matter to the Office of Administrative Law as a contested matter on March 11, 2016. On April 11, 2018, the respondent filed a motion for summary decision. On April 16, 2018, the petitioner filed a cross motion for summary decision. Opposition was filed by the petitioner to the motion of respondent on May 16, 2018. Opposition was filed by the respondent to the petitioner's motion on May 16, 2018. Reply briefs were filed by both parties and oral argument conducted on September 6, 2018, and the record closed at that time.

Issue:

Whether the failure of the Shore Regional Board of Education to place a change in the funding formula for its constituent districts on the ballot was arbitrary, capricious or unreasonable where a Sea Bright's Board member introduced a motion to place that question on the ballot, no other member seconded the motion, and consequently the motion failed?

FACTUAL BACKGROUND

A brief history of the funding mechanism for regional school districts is helpful to contextualize this dispute. Originally, in "1931 the Legislature authorized the establishment of regionalized school districts" with a "per pupil" funding mechanism. Borough of Seaside Park v. Comm'r of New Jersey Dept. of Educ., 432 N.J. Super. 167, 177 (App. Div. 2013). However, the New Jersey Supreme Court "[i]n a series of

decisions in the 1970s . . . held the existing system of public school funding in New Jersey unconstitutional[.]" Ibid.

"In response, the Legislature passed an amendment . . . in 1975 that altered the [funding formula] from a per pupil basis to an equalized value of real estate situated in each district[.]" Ibid. "The Legislature also adopted procedures for initiating withdrawal from a limited purpose regional school district[.]" "In 1993, the Legislature again passed an amendment to allow regional districts to choose among equalized valuation, per pupil enrollment, or a combination of the two through voter approval at an annual or special election. Id. at 178. The Legislature also created a procedure allowing regional school districts to dissolve themselves as an alternative to withdrawal.

Shore Regional School District was established in the 1960s on a per-pupil funding basis. The members of Shore Regional are Sea Bright, West Long Branch, Oceanport and Monmouth Beach. Subsequently, Shore Regional's funding formula changed in 1975 to equalized valuation and has not been amended since.[4] In April 2015, Sea Bright sought to raise its concerns over the funding formula with the Board due to a disparity between the percentage of Shore Regional's budget provided by Sea Bright and the percentage of students Sea Bright sent to the regional school district. While the disparity varies somewhat from year to year, the disparity amounts to approximately twenty percent of the budget compared to five percent of the student body.[5]

On July 23, 2015, the Mayor of Sea Bright submitted a letter to Shore Regional requesting that the Board "explore the possibility of modification of the school budget apportionment method." The letter specifically requested an update on the status of the request. On November 19, 2015, the Sea Bright Board member made a motion at the public meeting of the Board to submit a funding formula change to the voters in the next

[4] Sea Bright unsuccessfully challenged the validity of the 1975 amendment. See Borough of Sea Bright v. State, Dep't of Educ., 242 N.J. Super. 225 (App. Div. 1990) (affirming constitutionality of the regional school district funding formula under the New Jersey Constitution).

[5] Monmouth Beach, similarly, sends roughly 15% of the total pupils enrolled at Shore Regional but pays around 25% of the total appropriations. See Pet. Brief, p. 17.

election. Sea Bright, Exh. L, p. 95. It is undisputed that no other Board member seconded the motion. Consequently, no further vote was taken regarding the request to place the funding formula on the ballot, and there was no discussion regarding same.

The minutes reflect that the Board went into closed executive session to discuss its response to the Mayor of Sea Bright's July 23, 2015, letter regarding the issue of the funding formula. Ultimately, a response was sent to Sea Bright indicating that Shore Regional Board of Education decided not to explore the possibility of a change in apportionment formula of the Shore Regional High School District. Long Cert., Exh. B. Sea Bright has also argued that the executive session was in violation of the Open Public Meetings Act. However, there was no action taken in the meeting, and even assuming there was a violation, it has no bearing on the failure of the motion for a referendum to carry.

The above facts are undisputed and are, thus, **FOUND** as **FACT**.

LEGAL ANALYSIS

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, "[a] party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). Summary decision may be granted "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b).

Shore Regional argues that placing the funding formula on the ballot is a discretionary act. Moreover, the Board entertained a motion in an open pubic meeting and no one seconded the motion. There was no discussion on this motion and that after there was no second, the motion died. Sea Bright argues that a discussion regarding the reasons for not seconding the motion were required, and the absence of such a discussion is arbitrary, capricious and unreasonable as a matter of law. The Board maintains that there was no need for any discussion, and assuming a reason is

required, there are legitimate non-arbitrary reasons for the Board's rejection of the motion, which are entitled to deference.

Sea Bright argues that a "regional board, upon receipt of [a request to change the funding apportionment], has a duty to submit the question to the voters . . ." Sea Bright Brief, p. 15. However, the statute does not mandate any such action. Moreover, N.J.S.A. 18A:13-23 provides three options for regional school districts to apportion the appropriations from its constituent members. First, a district may utilize a "equalized valuation" method based on property values. N.J.S.A. 18A:13-23(a). Second, a district may now elect to apportion appropriations based on the "proportional number of pupils enrolled." N.J.S.A. 18A:13-23(b). Last, a district may opt for "any combination of apportionment" between equalized valuation and per pupil contribution. N.J.S.A. 18A:13-23(c). In addition, N.J.S.A. 18A:13-23.3 provides that a "regional district may modify [how appropriations] are apportioned" as long as a qualifying event has occurred. Ibid. There is nothing in the statute that mandates the Board to put the referendum on the ballot, in the absence of a vote by the Board.

It is well settled that a modification of the funding formula is a discretionary act by the Board. Moreover, the plain language of N.J.S.A. 18A:13-17 and N.J.S.A. 18A:13-23 to 23.3, reflect that such an act is permissive not mandatory. The School Elections law sets a deadline for the submission of public questions but does not impose additional procedural requirements on the Board's conduct. Under N.J.S.A. 18A:13-23 the role of the voting public is to approve or disapprove of the apportionment method placed on the ballot by the Board. Nothing mandates that a district place such a referendum on the ballot.

The foregoing interpretation is consistent with the provisions concerning withdrawal and dissolution of regional school districts. N.J.S.A. 18A:13-51 provides that the board of education of any . . . district constituting part of a limited purpose regional school district or the governing body of the [district's] municipality . . . may, by resolution, apply to the superintendent . . . [for] an investigation as to the advisability of withdrawal." N.J.S.A. 18A:13-51.

The Legislature also gives individual constituent municipalities the power to begin the withdrawal process. The Executive County Superintendent must then produce a report pursuant to N.J.S.A. 18A:13-52 and, within thirty days of the issuance of that report, the "municipal governing body or the board of education of the withdrawing district . . . may . . . petition the commissioner [to place the issue on the ballot]." N.J.S.A. 18A:13-23 to 23.3, in contrast, does not require the regional board of education or commissioner to conduct an impact study for modification of the funding formula. Nor does the statute set timelines or other decisional factors for consideration. Essentially, not only is the decision to place a funding formula change on the ballot discretionary, the Legislature did not place limitations on that discretion beyond the qualifying events listed under N.J.S.A. 18A:13-23.3—unlike for withdrawal and dissolution.

In conclusion, a decision to hold a referendum to change the funding formula is a discretionary act within the powers of the regional school board. Moreover, there was no need for a discussion of the reasons for the failure of the motion to receive event a second. Finally, since there was no second on the motion, it clearly failed. There was nothing substantively or procedurally improper regarding the decision of the Board not to place a referendum on the ballot. As to the allegation of a violation of the Open Public Meetings Act, the Board argues that no decision or vote occurred in the closed executive session because no further vote was required after the Sea Bright apportionment motion failed. Board Reply, p. 14. Finally, the Board's closed executive session was entirely proper under the Open Public Meetings Act because the Board was aware of the likelihood of litigation resulting from their decision and went into Executive Session to discuss a response to the letter from the Mayor only. There was no formal action taken in the executive session, as there was no formal action taken on the motion which failed to carry.

CONCLUSION

For the foregoing reasons, I **GRANT** the Board's motion for summary decision and **DENY** Sea Bright's motion for summary decision for the following reasons:

ORDER

I hereby **ORDER** that the Motion of Sea Bright is hereby **DENIED,** and the cross-motion of Shore Regional is **GRANTED**, and the petition of Sea Bright is hereby **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION,** who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 15, 2018
DATE

SARAH G. CROWLEY, ALJ

Date Received at Agency: October 15, 2018 (emailed)

Date Mailed to Parties:

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