

Board of Education of the Township of Mine Hill, Morris County,	:	
	:	
Petitioner,	:	Commissioner of Education
V.	:	
	:	Decision
Board of Education of the Town of Dover, Morris County,	:	
	:	
Respondent.	:	

Synopsis

Petitioning Mine Hill Board of Education (Mine Hill) sought a limited severance of its sending-receiving relationship with the respondent Dover Board of Education (Dover), such that petitioner’s seventh and eighth grade students would be educated in the Mine Hill school district. Petitioner proposed a two-year phase out program, beginning with the seventh grade class in the 2017-2018 school year, followed by the eighth grade class in the 2018-2019 school year. The petitioning Board did not seek any change to the sending-receiving relationship for Mine Hill students in the ninth through twelfth grades. Subsequent to the transmittal of this matter to the OAL, the parties proposed a settlement agreement in which they agreed that petitioner would educate its seventh and eighth grade students in Mine Hill beginning in the 2018-2019 school year; the settlement agreement, however, eliminated the two-year phase out program included in the original proposal. In February 2018, the Commissioner rejected the OAL’s Initial Decision approving the settlement, finding that the parties had failed to follow statutory criteria for adjudicating the termination of sending-receiving relationships, which are set forth in *N.J.S.A.* 18A:38-13, and the procedural requirements for same, which are set forth in *N.J.A.C.* 6A:3-6.1.

The Commissioner ordered further proceedings in accordance with the procedural rules governing uncontested applications for severance. Subsequently, in accordance with the regulatory provisions, interested parties were given the opportunity to submit written comments for consideration by the Commissioner in determining whether the proposed severance met the statutory standard. Seventeen public comments were received and considered by the Commissioner, along with the proposed settlement agreement, the feasibility study, the parties’ submissions, and updated enrollment information.

Upon review, the Commissioner denied the petitioner’s application for limited severance of the sending-receiving relationship with Dover as set forth in the parties’ proposed settlement agreement. In so doing, the Commissioner found, *inter alia*, that: the settlement agreement did not include a transitional plan, which would result in a substantial negative impact on the education received by students at Mine Hill, as it would hinder the continuity of education for the affected students; and the proposed limited severance would have a substantial negative effect on the racial composition of Dover.

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.

Agency Dkt. No. 60-3/17

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In this matter, petitioner Mine Hill Board of Education filed a petition seeking a limited severance of the sending-receiving relationship with respondent Dover Board of Education, such that petitioner's seventh and eighth grade students would be educated in Mine Hill. Petitioner proposed a two-year phase out program beginning with the seventh grade class in the 2017-18 school year, followed by the eighth grade class in the 2018-19 school year. Petitioner did not seek to terminate the parties' sending-receiving relationship for Mine Hill's ninth through twelfth grade classes, which would continue to attend school in Dover. After the matter was transmitted to the Office of Administrative Law (OAL) as a contested case, the parties proposed a settlement agreement in which the parties agreed that petitioner would educate its seventh and eighth grade students in Mine Hill beginning in the 2018-19 school year. In February 2018, the Commissioner rejected the OAL's Initial Decision approving the settlement, thereby declining to permit the proposed severance of the sending-receiving agreement to move forward at that time. The Commissioner based his determination upon the parties' failure to follow the procedural requirements for uncontested severance of a sending-receiving agreement, set forth at *N.J.A.C.* 6A:3-6.1. The Commissioner directed that if the parties still wished to pursue the proposed limited severance plan, they must meet the established statutory criteria for adjudicating the termination of sending-receiving relationships as enumerated in *N.J.S.A.* 18A:38-13, and must follow the procedural requirements in *N.J.A.C.* 6A:3-6.1. *Board of Education of the Township of Mine Hill, Morris County v. Board of*

Education of the Town of Dover, Morris County, Commissioner's Decision No. 27-18, decided February 9, 2018.

Subsequently, the Commissioner received seventeen comments from the public regarding the proposed settlement – fourteen opposing the partial severance of the sending-receiving relationship and three in favor. The opponents primarily argue that the agreed upon transition plan no longer provides a two-year phase out approach, and instead requires all seventh and eighth graders to transition back to Mine Hill for the 2018-19 school year. Consequently, the then-current 2017-18 seventh grade class, which was being educated in Dover, would return to Mine Hill to attend eighth grade, before going back to Dover for ninth grade. Several additional comments opposing the proposed settlement agreement – including some submitted by affected students – argue that Dover offers more educational opportunities, as well as sports and extracurricular activities, which are not available at Mine Hill. The Mine Hill Education Association, although in favor of returning the seventh and eighth grades to Mine Hill, also opposes the transition plan agreed to by the parties in the settlement agreement.

In response, petitioner challenges the merits of the comments opposing the limited severance of the sending-receiving agreement. Petitioner contends that as a whole, citizens overwhelmingly support educating Mine Hill's students in Mine Hill. Petitioner does, however, agree with the comments that a two-year phased transition would be in the best interest of the students. In a second submission, petitioner urges the Commissioner to delay implementation of the settlement agreement until September 2019, rather than September 2018, given that it would not be able to effectively transition prior to the start of the 2018-19 school year.

In its response, respondent points out that most of the comments opposing the plan do not address whether the proposed partial severance will have a substantial negative impact on the districts, as required by *N.J.A.C. 6A:3-6.1(c)(1)*, and instead seek to modify the terms of the settlement with regard to the transition period. Respondent argues that there is no basis upon which to modify the settlement terms, which were the result of negotiations between the parties and counsel.

The record of this matter has been reviewed, including the proposed settlement agreement, the public comments, the parties' submissions, the feasibility study, and the updated enrollment information jointly submitted by the parties at the Commissioner's request.

Pursuant to *N.J.S.A.* 18A:38-8, school districts at the elementary school level that do not have sufficient accommodations may send students to another school district as part of a sending-receiving relationship. In order to withdraw from a sending-receiving relationship, the Commissioner has determined that "the appropriate standards for evaluating requests for withdrawals at the elementary school level are the same standards which are applicable at the high school level." *Board of Education of the Township of Mine Hill, Morris County v. Board of Education of the Town of Dover, Morris County*, Commissioner's Decision No. 510-04, decided December 15, 2004, at 9, *aff'd* State Board May 4, 2005. The criteria for withdrawal from a sending-receiving relationship at the high school level is set forth at *N.J.S.A.* 18A:38-13, and establishes that prior to severance of a relationship, the Commissioner will make an equitable determination based on 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." If there is no substantial negative impact, the Commissioner will grant the requested severance. *N.J.S.A.* 18A:38-13.

Upon review, the Commissioner is satisfied at the outset that the feasibility study established that the withdrawal of Mine Hill's seventh and eighth grade classes from Dover would cause no substantial negative impact on the financial conditions of the two school districts. However, the Commissioner finds that the transition proposed in the settlement agreement, which does not contain a two-year phased approach, would result in a substantial negative impact on the education received by the students at Mine Hill. The original petition of appeal proposed a two-year transition period, but with the abandonment of this approach during settlement negotiations, the agreement now asks the Commissioner to approve a scenario in which Mine Hill seventh graders would be educated in Dover for seventh grade, then return to Mine Hill for eighth grade, before transitioning back to Dover a second time for high school. Such a plan is impractical and would hinder the continuity of education for the affected students.

As such, the Commissioner cannot approve the withdrawal of Mine Hill's seventh and eighth grade classes from Dover as presently set forth in the settlement agreement.

Additionally, the Commissioner cannot approve the limited severance of the sending-receiving agreement because removal of Mine Hill's seventh and eighth grade classes would have a substantial negative effect on the racial composition of Dover. In 2001, the Commissioner denied a previous request from Mine Hill to sever its sending-receiving relationship with Dover in regard to its seventh and eighth grade students, which would have resulted in a 7 to 8 percent reduction in white students attending Dover Middle School. The Commissioner found that "the changes in minority composition which would inure from severance here cannot be termed insignificant from either a statistical or an educational viewpoint. Rather, it is quite evident that permitting severance here would, at a minimum, serve to exacerbate disparity in the national origin/minority groupings in Dover's student population." *Board of Education of the Township of Mine Hill, Morris County v. Board of Education of the Town of Dover, Morris County*, Commissioner's Decision No. 58-01, decided February 15, 2001, at 81.

In *Board of Education of the Borough of Englewood Cliffs, Bergen County v. Board of Education of the City of Englewood, Bergen County*, 257 N.J. Super. 413 (App. Div. 1992), severance of Englewood Cliffs' sending-receiving relationship with Englewood – in which Englewood Cliffs sent its high school students to Englewood's high school – was denied because of the substantial negative impact on racial balance and educational quality. *Ibid.* Had severance been granted in that case, the percentage of white students at Englewood's high school would have decreased by only 1.6 percent – arguably a negligible or *de minimis* effect on the racial population at Englewood. *Id.* at 439. However, the loss of those 15 white Englewood Cliffs students – considering that Englewood had only 94 white students in total – represented a 16 percent reduction in the overall white population at Englewood, resulting in a significant impact on the racial balance of Englewood's high school. *Ibid.* Additionally, given the trend toward a rapid decline in white student enrollment, withdrawal of the Englewood Cliffs students would

have a substantial negative impact on the quality of education because it would be seen as a symbolic loss. *Id.* at 430.

On the other hand, in *Board of Education of the Borough of Longport, Atlantic City v. Board of Education of the City of Atlantic City, Atlantic County and Board of Education of the City of Ocean City, Cape May County*, Commissioner's Decision No. 238-14, dated June 5, 2014, at 7, the withdrawal of 9 white Longport students from Atlantic City's high school represented a proportional change of 0.4 percent. Those 9 students, in the overall context of Atlantic City's 442 white students, represented a 2 percent change in the gross population of white students in Atlantic City. *Id.* at 7-8. Considering the circumstances, the Commissioner granted permission for Longport to sever its sending-receiving relationship with Atlantic City, finding that severance would not have a substantial negative impact on the racial composition of Atlantic City's high school. *Id.* at 8-9.

In the current application, the updated enrollment information provided by the parties shows that if severance of the sending-receiving relationship were granted, the loss of Mine Hill students from Dover would result in a proportional change of only 3 percent in the white population at Dover for the 2017-18 school year, and only 2.6 percent for the 2018-19 school year. Nevertheless, the gross population of white students at Dover would be reduced by 45 percent – a loss of 17 of 38 white students in the 2017-18 school year, and 14 of 31 in 2018-19.¹

Given that Dover would lose nearly half of the gross population of white students at its middle school if severance were granted, a substantial negative effect on the racial composition of Dover certainly exists. A loss of 45 percent of the white population at Dover is significantly higher in magnitude than the 16 percent loss in the gross population of white students in *Englewood Cliffs* that resulted in the denial of severance of the sending-receiving relationship. It is also considerably more than the 2 percent gross population loss of white students in *Longport* that was found to be *de minimis*. Although the approximately 3 percent proportional reduction in white students at Dover is considerably

¹ When the application was initially filed, the feasibility study only included enrollment information for the 2015-16 school year. With respect to that school year, the loss of Mine Hill students from Dover would result in a proportional change of 4.2 percent in the white population in Dover and a 52 percent reduction in the gross population of white students in Dover.

lower than the 7 to 8 percent reduction when the Commissioner first denied severance of the sending-receiving relationship between Mine Hill and Dover in 2001, the significant impact on the gross population of white students cannot be ignored. As such, the Commissioner cannot approve severance of the sending-receiving agreement.

Accordingly, petitioner's application for limited severance of the sending-receiving relationship with Dover, as set forth in the parties' proposed settlement agreement, is denied due to the substantial negative impact severance would have on the racial composition of Dover, and the substantial negative impact that the transition plan would have on the quality of education for Mine Hill's seventh grade class.

IT IS SO ORDERED²

COMMISSIONER OF EDUCATION

Date of Decision: January 14, 2019

Date of Mailing: January 15, 2019

² 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)*.