117-23

New Jersey Commissioner of Education
Decision

Board of Education of the Village of
Ridgefield Park, Bergen County,

Petitioner,

v.

Board of Education of the Borough of
Little Ferry, Bergen County, and
Frank R. Scarafile, Superintendent

Respondent.

Synopsis

Petitioner, Ridgefield Park Board of Education (Ridgefield Park), and respondent, Little Ferry Board of Education (Little Ferry), have a longstanding send-receive relationship whereby Little Ferry students attend Ridgefield Park High School on a tuition basis. The two boards are parties to a formal written send-receive agreement which historically has provided for a tuition rate that was lower than the certified tuition rate based on Ridgefield Park's actual cost per pupil. For the 2018-2019 school year, the parties executed a contract that provided an estimated tuition rate and indicated that "there shall be no certified tuition adjustment." Subsequently, in 2022, Ridgefield Park filed the within petition seeking to compel Little Ferry to pay the difference between the estimated tuition cost listed in the contract and the actual State-certified cost. Ridgefield Park filed a motion for summary decision, which Little Ferry opposed; the ALJ considered Little Ferry's opposition as a cross-motion for summary decision.

The ALJ found, *inter alia,* that: although *N.J.A.C.* 6A:23A-17.1(f) requires a receiving district to return an overpayment to a sending district, a receiving district is not required to charge a sending district for an underpayment caused by the difference between the estimated tuition rate in the contract and the State-certified rate; the provision in the parties' contract stipulating that there would be no certified tuition adjustment did not contradict the regulation and was enforceable; although Ridgefield Park could have negotiated contract language stating that it may seek to recoup tuition underpayments, it did not do so in 2018-2019; in this matter, equitable principles favor Little Ferry, which relied upon the contract agreement's negotiated adjustment waiver. Accordingly, the ALJ granted Little Ferry's motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ that Ridgefield Park is not entitled to recoup any underpayment by Little Ferry for the 2018-2019 school year, finding, *inter alia*, that: there was nothing improper in the ALJ's consideration of Little Ferry's opposition as a cross-motion for summary judgment; and the applicable statutes and regulations clearly permit a receiving district to waive its right to any tuition underpayment from a sending district. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter and the petition was dismissed.

117-23
OAL Dkt. No. 02068-22
Agency Dkt. No. 27-2/22

New Jersey Commissioner of Education

Final Decision

Board of Education of the Village of Ridgefield Park, Bergen County,

Petitioner,

v.

Board of Education of the Borough of Little Ferry, Bergen County, and Frank R. Scarafile, Superintendent,

Respondents.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by the petitioner pursuant to *N.J.A.C.* 1:1-18.4, and the respondent's reply thereto, have been reviewed and considered.

This matter involves a sending-receiving relationship whereby students from Little Ferry attend Ridgefield Park High School. Historically, the tuition rate that the Ridgefield Park Board of Education (Ridgefield Park) charged the Little Ferry Board of Education (Little Ferry) was lower than the certified tuition rate calculated by the New Jersey Department of Education (State) based on Ridgefield Park's actual cost per pupil. For the 2018-2019 school year, the parties executed a contract that provided an estimated tuition rate and indicated that "there shall be no certified tuition adjustment." In 2022, Ridgefield Park filed a petition of appeal seeking to compel Little Ferry to pay the difference between the estimated tuition cost listed in the contract and the actual State-certified cost.

Following Ridgefield Park's motion for summary decision, and opposition thereto by Little Ferry – which the Administrative Law Judge (ALJ) considered as a cross-motion for summary decision – the ALJ found that while *N.J.A.C.* 6A:23A-17.1(f) requires a receiving district to return an overpayment to a sending district, a receiving district is not required to charge a sending district for an underpayment caused by the difference between the estimated tuition rate in the contract and the State-certified rate. Accordingly, the ALJ concluded that the provision in the parties' contract stipulating that there would be no certified tuition adjustment did not contradict the regulation and was enforceable. The ALJ found that Ridgefield Park could have negotiated language stating that it may seek to recoup underpayments, but it did not in 2018-2019. Additionally, the ALJ concluded that equitable principles favored Little Ferry, which relied upon the agreement's negotiated adjustment waiver. The ALJ granted Little Ferry's motion for summary decision and dismissed the petition.

In its exceptions, Ridgefield Park argues that the Initial Decision in a prior case between these parties held that the statutory and regulatory scheme governs the right to tuition payments, not the parties' contractual language, and that any contractual language or past practice that is at odds with the regulations is unenforceable. *Bd. of Educ. of the Village of Ridgefield Park, Bergen Co. v. Bd. of Educ. of the Borough of Little Ferry*, OAL Dkt. No. EDU 07868-20 (Initial Decision, March 8, 2021),[1] *adopted*, Commissioner Decision No. 92-21 (decided April 22, 2021).[2] According to Ridgefield Park, the ALJ erred in finding that the 2021 Initial Decision applied only in cases where there was no signed tuition contract, when no such limitation is contained in that decision. Ridgefield Park also contends that there is no basis for the ALJ's conclusion that underpayments and

[1] Hereafter, "2021 Initial Decision."

[2] Hereafter, "2021 Commissioner decision."

overpayments should be treated differently, and that such a result is unfair to receiving districts. Ridgefield Park further argues that while the regulation provides that a receiving district "may" demand an underpayment, this language only means that the receiving district has the discretion to demand or not demand that amount – not that the district can bargain away its right to demand it in a tuition contract. Ridgefield Park notes that Little Ferry did not move for summary decision – and in fact argued that the case should proceed to a hearing – and contends that it was therefore inappropriate for the ALJ to award summary decision to Little Ferry.

In reply, Little Ferry argues that Ridgefield Park agreed to waive any claim for additional tuition costs when it signed the tuition contract providing that "there shall be no certified tuition adjustments for the 2018/2019 school year." According to Little Ferry, the 2021 Commissioner decision allows a receiving district to accept a tuition rate lower than the full certified tuition rate, and that is what Ridgefield Park did in signing the tuition contract. Little Ferry notes that other agreements between the parties either included no language regarding tuition adjustments or expressly confirmed that Little Ferry would pay the adjusted amount, demonstrating that Ridgefield Park was aware of its ability to negotiate the adjustment language. Little Ferry contends that the current matter is factually distinct from the prior matter because of the inclusion of language specifically waiving Ridgefield Park's ability to demand any tuition adjustment. Little Ferry argues that it successfully negotiated for a lower tuition rate, and that Ridgefield Park should be bound by that negotiated term. According to Little Ferry, the ALJ correctly determined that overpayments and underpayments should be treated differently, because while a receiving district can agree to accept less than it is entitled to for the services it provides to the sending district, it should not be unjustly enriched by being permitted to charge the sending district more than the cost the receiving district incurred.

Upon review, the Commissioner concurs with the ALJ that Ridgefield Park is not entitled to recoup any underpayment by Little Ferry for the 2018-2019 school year. Initially, the Commissioner finds unpersuasive Ridgefield Park's argument that it was inappropriate for the ALJ to award summary decision to Little Ferry when Little Ferry had not moved for summary decision. In opposition to Ridgefield Park's motion for summary decision, Little Ferry asserts that its position regarding Ridgefield Park's ability to recoup any underpayments is correct as a matter of law. Little Ferry also argued that there are issues of disputed material facts, but those issues pertain solely to calculation of the tuition rate and the amount Ridgefield Park was seeking to collect. However, in finding that Ridgefield Park is not entitled to recoup the underpayment, those issues of fact become irrelevant, and a plenary hearing to address them would be a waste of judicial resources. The Commissioner finds no basis to disturb the ALJ's decision to view Little Ferry's opposition to Ridgefield Park's motion for summary decision as a cross-motion for summary decision.

Turning to the merits, Ridgefield Park relies heavily on the language in the 2021 Initial Decision that states, "[T]he statutory and regulatory scheme governs the sending-receiving relationship relative to tuition payments, and not the parties' contractual language. …. While the regulatory scheme demands execution of a formal agreement, any contractual language or past practice that is at odds with the regulations is unenforceable." *2021 Initial Decision*, *supra*. Ridgefield Park appears to assume that the portion of the parties' tuition agreement providing for no tuition adjustments is at odds with the regulations, and – pursuant to the 2021 Initial Decision – is therefore unenforceable. However, a board of education choosing to forego its ability to recoup an underpayment is not at odds with the applicable statute or regulation. *N.J.S.A.* 18A:39-19 provides that "the board of education of the receiving district shall determine a tuition rate to be

paid by the board of education of the sending district . . .". That is precisely what occurred between the parties for the 2018-2019 school year. Ridgefield Park determined the estimated tuition rate, and, by virtue of agreeing that it would not recoup any underpayment, also determined the final tuition rate.

Furthermore, as the Commissioner indicated in the 2021 matter, "nothing in the statutes or regulations precludes negotiations between the parties, and the receiving district is free to accept a tuition rate lower than the full certified tuition rate. . .". *2021 Commissioner Decision*, *supra*.[3] This outcome is also consistent with *Bd. of Educ. of the Borough of Spotswood, Middlesex Co. v. Bd. of Educ. of the Borough of Milltown, Middlesex Co.*, Commissioner Decision No. 179-99 (decided June 7, 1999). In *Spotswood*, the Commissioner noted, "the pertinent regulations permit, but do not require, a receiving district to charge a sending district for either all or part of the money owed when it is determined that the tentative charge established by written contractual agreement was *less* than the actual cost per pupil during the school year." *Ibid.* (citations omitted)[4] (emphasis in original). Spotswood and Milltown had signed a tuition agreement based on a form prepared by the Commissioner in which they agreed that Milltown would pay the full amount of any underpayment, and, accordingly, Milltown was required to pay that amount. However, the Commissioner also noted that "the contract permits the parties the option to check [a box]

[3] To the extent there is any conflict between the Initial Decision and the Commissioner Decision in the prior matter, the Commissioner decision controls. However, the Commissioner does not find there to be any conflict, as the Initial Decision addresses contractual language that is at odds with the regulation, and, as noted herein, a receiving district forgoing its ability to recoup an underpayment is not at odds with the statute or the regulation.

[4] The pertinent regulations were codified in a different section of the Administrative Code at the time of the *Spotswood* decision but are substantially the same in content.

indicating that a sending district *would not* be charged with any tuition differential"[5] and that the applicable regulations permit the receiving district to forego charging the sending district where tentative costs are found to be underestimated. *Ibid.*

Ridgefield Park did not have to forgo its right to recoup an underpayment, as the statute gives the receiving district full discretion to set the rate, so long as it does not exceed the State-certified rate. Ridgefield Park could have included language in its contract allowing it to recoup any underpayment. The parties could have left the agreement silent on this issue, allowing Ridgefield Park to set the rate once it learned of the State-certified rate later in the cycle. If Little Ferry refused to sign either of such versions of the tuition agreement – which is what led to the prior case between these parties – Ridgefield Park could have insisted that they do so. However, none of those events occurred. The statutory and regulatory scheme clearly permits a receiving district to waive its right to any underpayment, and such a waiver is not ineffective simply because it occurred at the time the parties signed their tuition agreement.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is dismissed.

IT IS SO ORDERED.[6]

Angelina Allen-McMillan, J.d.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 20, 2023
Date of Mailing: April 21, 2023

[5] The Commissioner notes that the form currently provided by the Department of Education for tuition contract agreements also includes an option whereby the receiving district can forgo an underpayment or accept partial payment. *See* https://www.nj.gov/education/finance/tuition/tuition1.pdf.

[6] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SUMMARY DECISION
OAL DKT. NO. EDU 02068-22
AGENCY DKT. NO. 27-2/22

BOARD OF EDUCATION OF THE BOROUGH OF RIDGEFIELD PARK, BERGEN COUNTY,
Petitioner,
v.
BOARD OF EDUCATION OF THE BOROUGH OF LITTLE FERRY, BERGEN COUNTY, AND FRANK R. SCARAFILE, SUPERINTENDENT
Respondents.

Kerri Wright, Esq., (Porzio Bromberg & Newman, attorneys)

John Geppert, Esq., (Scarinici Hollenbeck, attorneys)

Record Closed: January 13, 2023 Decided: February 7, 2023

BEFORE **NANCI G. STOKES**, ALJ:

STATEMENT OF THE CASE

For school year 2018-2019, respondent executed a contract with petitioner to educate its high school-aged residents at an estimated tuition rate, agreeing that "there shall be no certified tuition adjustment" for that year. Petitioner now seeks payment at the higher State-certified tuition rate. Is additional reimbursement owed? No. While statutes allow receiving districts to charge tuition up to the State-certified rate, the parties can negotiate a lower rate. N.J.S.A. 18A:38-8; N.J.A.C. 6A:23A-17.1(f)7.

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PROCEDURAL HISTORY

On February 24, 2022, the Township of Ridgefield Park Board of Education (Ridgefield Park) filed this action with the Department of Education, Office of Controversies and Disputes (DOE), seeking to compel the Little Ferry Board of Education (Little Ferry) to pay the difference between the estimated tuition cost for educating Little Ferry's high school students and the actual State-certified cost. Specifically, Ridgefield Park maintains that its agreement not to adjust the tuition rate after the State calculated the exact cost and certified the rate is unenforceable under the governing statute.

On March 11, 2022, Little Ferry submitted its answer to the petition.

On March 16, 2022, the DOE transmitted the contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On November 16, 2022, Ridgefield Park filed a motion for summary decision. On December 7, 2022, Little Ferry filed its opposition to the motion, which I now consider a cross-motion for summary decision. See N.J.A.C. 1:1-14.6(d) (allowing an ALJ to "convert any form of proceeding into another."); see also N.J.A.C. 1:1-14.6(p) (providing

that an ALJ may take action to ensure "the proper, expeditious and fair conduct of the hearing or other proceeding, development of the record and rendering of a decision.") Significantly, each party asserts they are correct under the law and entitled to a decision in their favor. On December 19, 2022, Ridgefield Park submitted its reply. At Little Ferry's request, I scheduled oral argument on the motion for January 13, 2023, and I closed the record.

FINDINGS OF FACT

Based on the documents submitted in support of and in opposition to the motions for summary decision, I **FIND** the following as **FACT** for purposes of these motions only:

The Little Ferry School District has no high school. Little Ferry's high school-aged students attend Ridgefield Park High School on a tuition basis under a send-receive agreement. The State calculates the tuition cost per student under a regulatory formula. However, actual audited expenditures and average daily enrollment numbers are unavailable until after the school year ends. Thus, the State calculates and adjusts the tuition rate over a three-year period.

Under this scheme, Little Ferry estimates the number of students attending Ridgefield Park High School the following year in year one, and Ridgefield Park estimates a per-pupil tuition amount. Little Ferry budgets that estimated amount during year two and pays Ridgefield Park. In year three, the Department of Education reviews Ridgefield Park's audited financials and issues "certified tuition rates," representing the actual cost per student in year two. After the State establishes the certified rate, Little Ferry and Ridgefield Park can address or adjust deficits or credits if the State-certified rate or the number of students differs from the estimated numbers. This three-year cycle repeats continuingly.

Boards must prepare a written sending-receiving contract, including the estimated students and cost per pupil. In 2018-2019, the parties' negotiated sending-

receiving contract included language stating that "there shall be no certified tuition adjustment" for that year.

Little Ferry did not budget beyond the contract tuition cost. Historically, the parties did not include this waiver, and the State-certified rate exceeded the estimated figure. Only recently, Ridgefield Park sought to recoup the difference between the lower estimated contract rate and the State-certified cost. Notably, the parties' sending-receiving agreement from 2016-2017 required Ridgefield Park to remit any overpayment above the State-certified per-pupil cost to Little Ferry and for Little Ferry to pay any underpayment below that rate to Ridgefield Park. Based on the 2018-2019 contract tuition amount and Ridgefield Park's inability to upwardly adjust the rate given the agreed-upon waiver, Little Ferry budgeted tuition funds and paid them per the contract.

Undeniably, Little Ferry received a discounted price from the actual cost per pupil. Specifically, Little Ferry remitted a payment to Ridgefield Park of $4,513,644.44 for tuition for the 2018-2019 school year per the contract. However, the State-certified rate for the 2018-2019 school year was $5,556,369.71, leaving a difference of $1,042,725.27, which Ridgefield Park now seeks.

Notably, in a prior case before the Hon. Ellen Bass, CALJ, for the 2019-2020 and 2020-2021 school years, Ridgefield Park refused to include the 2018-2019 adjustment waiver language, and Little Ferry declined to sign the sending-receiving agreement. In other words, Ridgefield Park wanted the ability to adjust tuition costs up to the State-certified rate and to reserve Ridgefield Park's right to demand that difference. That Decision provides the basis for this litigation.

Before the earlier litigation, the Superintendent advised Little Ferry that it owed Ridgefield Park the balance of the State-certified rate for the 2016-2017 school year, absent any tuition waiver and Ridgefield's stated right to the State-certified rate. Indeed, Little Ferry expressly agreed that it owed Ridgefield Park the balance of the certified tuition cost if the estimated cost was less for the 2016-2017 school year.

Further, the Superintendent told Little Ferry that it must sign the 2019-20 and 2020-21 school years' sending-receiving contracts, allowing tuition adjustments up to the State-certified rate. Little Ferry agreed to pay the State-certified tuition rate for the 2020-2021 school year and paid Ridgefield Park the 2016-2017 balance between the lower estimated cost and the State-certified rate.

Despite the explicit language not to adjust for the certified rate in the 2018-2019 school year contract, on June 28, 2021, Ridgefield Park first demanded the difference between the lower estimated rate and the higher State-certified actual cost per student. Little Ferry refused, maintaining that it only owed what the parties negotiated for, which it anticipated and included in its budget. Indisputably, the Boards negotiated that waiver language in drafting the 2018-2019 sending-receiving contract, and Little Ferry relied upon that adjustment waiver.

In making this demand, Ridgefield Park relies upon language from Judge Bass' Initial Decision, stating that:

> The statutory and regulatory scheme governs the sending-receiving relationship relative to tuition payments, and not the parties' contractual language. See, Mountainside Bd. of Educ. v. Berkeley Heights Bd. of Educ., OAL Dkt. No. EDU 09700-06, Initial Decision (July 20, 2007), adopted, Comm'r (January 17, 2008), http://njlaw.rutgers.edu/collections/oal/ [affirmed 2010 N.J. Super. Unpub. LEXIS 545 (App. Div. 2010).] Indeed, the Commissioner of Education has broad powers to oversee sending-receiving agreements. Merchantville Bd. of Educ. v. Pennsauken and Haddon Bds. of Educ., 204 N.J. Super. 508 (App. Div. 1985). While the regulatory scheme demands execution of a formal agreement (N.J.A.C. 6A:23A-17.1(f)), any contractual language or past practice that is at odds with the regulations is unenforceable.
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> [Ridgefield Park Bd. of Educ. v. Little Ferry Bd. of Educ., OAL Dkt. No. EDU 07868-20, Initial Decision (March 8, 2021), adopted, Comm'r (April 22, 2021), http://njlaw.rutgers.edu/collections/oal/.]

Further, Judge Bass addressed the tuition rate-setting process, highlighting that "while the parties obviously negotiate the tentative rate, these negotiations do not deprive Ridgefield Park of its clear right, ultimately, to demand the full certified tuition amount." Ibid.

In turn, Little Ferry relies upon the Commissioner's Final Decision in that case, stating that:

> The Commissioner also concurs with the ALJ that Ridgefield Park may charge the full certified tuition rate. N.J.S.A. 18A:28-19 provides that the receiving district "shall determine" the tuition rate. As the ALJ correctly concluded, the plain language of the statute gives the receiving district – Ridgefield Park – the discretion to set the tuition at any amount, with the only limitation being that it cannot exceed the certified tuition rate. While nothing in the statues or regulations precludes negotiations between the parties, and the receiving district is free to accept a tuition rate lower than the full certified tuition rate, the statutory language clearly provides for a specific outcome in the event that the receiving district does not wish to negotiate, or negotiations are unsuccessful. In those circumstances, the receiving district is permitted to set the tuition rate, as long as it is not more than the certified tuition rate.

In 2022, the parties attempted to resolve the disputed tuition for 2018-2019 and submitted the issue to the Interim Executive Bergen County Superintendent of Schools (Superintendent) for mediation under N.J.A.C. 6A:23A-17.1(f)(5). To date, the Superintendent issued no guidance or pronouncement that would facilitate the settlement of this dispute.

Both Boards stress understandable financial hardships.

Little Ferry also argues that the State improperly calculated the certified tuition rate for the 2018-19 school year.

DISCUSSION AND CONCLUSIONS OF LAW

Summary-Decision Standard

A party may move for summary decision upon all or any substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). A party must make the motion a party makes with briefs, with or without affidavits. When the filed papers and discovery, together with any affidavits, show that no genuine issue of material fact exists and that the moving party is entitled to prevail as a matter of law, the judge may grant the motion. N.J.A.C. 1:1-12.5(b). When a party makes such a motion providing that support, an adverse party, to prevail, must submit an affidavit setting forth specific facts showing that a genuine issue of material fact exists that can only be determined in an evidentiary proceeding. Ibid.

Even though a statute calls for a "hearing," where a motion for summary decision is made and supported by documentary evidence and where the objector submits no evidence to demonstrate that a genuine issue of material fact exists, the motion procedure constitutes the hearing, and no trial-type hearing is necessary. Contini v. Newark Bd. of Educ., 286 N.J. Super. 106, 120–21 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996).

To determine whether a genuine issue of material fact exists that precludes summary judgment, the motion judge must consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to demonstrate that the moving party is entitled to a judgment as a matter of law. Brill v. Guardian Life Ins., 142 N.J. 520, 540 (1995).

Moreover, even if the non-movant comes forward with some evidence, the court must grant summary judgment if the evidence is "so one-sided that [the movant] must prevail as a matter of law." Ibid. at 536 (citation omitted). If the non-moving party's evidence is "merely colorable or is not significantly probative," the judge should not deny summary judgment. Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998).

In this case, no genuine issue exists as to the material facts. The only question is whether Ridgefield Park has the statutory right to demand the State-certified tuition rate for the 2018-2019 school year despite contractual language waiving the ability to adjust tuition costs based on that rate. More pointedly, no genuine issue exists that the parties negotiated a sending-receiving contract for the 2018-2019 school year setting forth an estimated tuition rate for Ridgefield Park's education of Little Ferry high school students and agreeing that the parties would make no adjustments for the State-certified rate. Yet, the State-certified tuition rate for 2018-2019 exceeded the tentative cost per student. Further, no dispute exists that Little Ferry executed sending-receiving contracts before and after the 2018-2019 school year, which included Ridgefield Park's ability to demand reimbursement up to the State-certified rate and no tuition adjustment waiver. Lastly, there is no dispute that Ridgefield Park first sought the 2018-2019 tuition underpayment from Little Ferry in June 2021. Since these facts are clear and undisputed, I **CONCLUDE** that this case is ripe for summary decision.

Notably, Little Ferry asserts that the actual tuition costs for 2018-2019 are incorrect. Yet, I **CONCLUDE** that the calculation dispute is immaterial to whether Ridgefield Park can demand the full certified rate under the 2018-2019 sending-receiving agreement. Indeed, Little Ferry can file a petition with the Commissioner if it believes there are errors in the tuition calculations.[1]

Timeliness

Under N.J.A.C. 6A:3-1.3(d), a party must file an appeal with the Commissioner of Education "no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the requested contested case hearing." This rule "provides a measure of repose, an essential element in the proper and efficient administration of the school laws," giving school districts the "security of knowing" that an aggrieved party

[1] Little Ferry raised the same "factual dispute" before Judge Bass, which she similarly dismissed as immaterial. Notably, the Commissioner calculates the actual cost.

cannot challenge its actions after ninety days. Kaprow v. Board of Educ. of Berkeley Twp., 131 N.J. 572, 582 (1993).

Courts strictly construe and consistently apply the ninety-day limitation period. Kaprow, 131 N.J. at 588-89; Nissman v. Bd. of Educ., 272 N.J. Super 373, 380-81, (App. Div. 1994); Riely v. Bd. of Educ., 173 N.J. Super. 109, 112-14, (App. Div. 1980). This period begins to run when the petitioner "learn[s] from the Local Board the existence of that state of facts that would enable him to file a timely claim." Kaprow, 131 N.J. at 588-89. Indeed, the "notice of a final order, ruling or other action" is "sufficient to inform an individual of some fact that he or she has a right to know and that the communicating party has a duty to communicate." Id. at 587. Notably, petitioners need not receive official and formal notification that they may have a valid claim to begin the ninety days. Id. at 588. However, the regulations encourage the parties to resolve their disputes before litigation, and a petitioner should receive notice of the “firm rejection” of its claims before the statutory period begins. Gloucester Bd. of Educ. v. Lenape Bd. of Educ., OAL Dkt. No. EDU 10120-98, Initial Decision, adopted and modified, Comm’r (December 16, 1999), http://njlaw.rutgers.edu/collections/oal/.

Further, the Commissioner may exercise her authority under N.J.A.C. 6A:3-1.1.6 to relax the application of the ninety-day rule where the Commissioner determines that strict observance might be “inappropriate or unnecessary or may result in injustice." Ibid. Yet, exceptions to the ninety-day rule are only appropriate where compelling circumstances exist to justify the enlargement or relaxation of the time limit. See Kaprow, 131 N.J. at 590; DeMaio v. New Providence Bd. of Educ., 96 N.J.A.R.2d (EDU) 449, 453.

In a similar sending-receiving contract dispute, the Commissioner agreed that the petitioner knew its dispute with the respondent was at an impasse *after* an unsuccessful mediation with the County Superintendent's offices. Mountainside Bd. of Educ. v. Berkeley Heights Bd. of Educ., OAL Dkt. No. EDU 09700-06, Initial Decision (July 20, 2007), adopted, Comm’r (January 17, 2008),

http://njlaw.rutgers.edu/collections/oal/, affirmed 2010 N.J. Super. Unpub. LEXIS 545 (App. Div. 2010) (emphasis added). Even though Mountainside filed its claim more than ninety days later, the Commissioner concluded that the petition was not time-barred. The Commissioner relaxed the time requirement because the parties' tuition disagreement spanned years, and resolving the issue was in the public interest. Id.

Similar public interest considerations exist here. This case is the second one addressing tuition reimbursement under sending-receiving contracts between the parties. Notably, Ridgefield Park did not make its demand until June 2021, after receiving Judge Bass' decision, and learning it may have a claim to the 2018-2019 actual tuition costs. Significantly, the parties attempted mediation as in the other case, including involving the Superintendent in January 2022. When it became clear that the Superintendent would not step in to resolve the issue, Ridgefield Park filed its petition of appeal in February 2022. Thus, I **CONCLUDE** that Ridgefield's claim against Little Ferry is not time-barred.

Sending-Receiving Agreements

Through N.J.S.A. 18A:38–19, New Jersey school districts may enter into sending-receiving agreements whereby the sending district sends its students to the receiving district's schools, N.J.S.A. 18A:38– 8, in return for a tuition payment set by the receiving district that cannot exceed the "actual cost" of the students enrolled. Ibid. Further, regulations govern the Commissioner's calculation of the "actual cost" per pupil. N.J.A.C. 6A:23A–17.1(b).

To allow for appropriate budgeting, the sending and receiving districts must execute a yearly written contract setting the tentative tuition charge, which cannot exceed "the receiving district board of education's 'estimated cost per student' for the ensuing school year . . . multiplied by the estimated average daily enrollment of students expected to be received during the ensuing school year." N.J.A.C. 6A:23A-

17.1(f). Indeed, the receiving district calculates the estimated cost per pupil with an appropriate supporting schedule. N.J.A.C. 6A:23-17.1(f)(1).

Under N.J.A.C. 6A:23A-17.1(f), receiving school districts have differing obligations for overpayment and underpayment of tuition charges compared to the actual certified cost per student. When the Commissioner determines that the tentative tuition charge under the contract exceeds the actual cost per student, the "receiving district board of education *shall* return to the sending district board of education . . . the amount by which the tentative charge exceeded the actual charge." N.J.A.C. 6A:23A-17.1(f)(6) (emphasis added).

However, when the Commissioner determines that the tentative tuition charge under the contract was less than the actual cost per student, the "receiving district board of education *may* charge the sending district board of education *all or part* of the amount owed by the sending district board of education." N.J.A.C. 6A:23A-17.1(f)(7) (emphasis added). In other words, an overpayment by the sending district must be returned to it by the receiving district, but an underpayment request is not mandatory. The parties could not contract otherwise when action is compulsory under a regulation.

Notably, the decision cited by Judge Bass, addressing unenforceable tuition contract provisions, involved *overpayments* by the sending district that the receiving district refused to reimburse. See, Mountainside Bd. of Educ. v. Berkeley Heights Bd. of Educ., OAL Dkt. No. EDU 09700-06, Initial Decision (July 20, 2007), adopted, Comm'r (January 17, 2008), http://njlaw.rutgers.edu/collections/oal/, affirmed 2010 N.J. Super. Unpub. LEXIS 545 (App. Div. 2010). Indeed, the parties sending-receiving agreement set a *maximum* tuition rate without consideration of the Commissioner's actual tuition cost determination and the mandatory overpayment reimbursement requirement. Ibid. (emphasis added). In the last case between these parties, Judge Bass concluded, and the Commissioner agreed, that Ridgefield Park had the right to demand the total certified tuition cost where the parties could not resolve the terms of the sending-receiving agreement.

To be sure, Ridgefield Park has no obligation to accept a lower tuition payment than the State-certified rate in a sending-receiving contract, even if it did so in the past. Instead, the regulation allows Ridgefield Park to demand the State-certified per pupil tuition cost in its contract. Yet, Judge Bass had no agreement like the 2018-2019 contract wherein Ridgefield Park, aware of the ability to demand the actual cost, chose not to. Indeed, her decision addressed Ridgefield Park's authority to insist upon the State-certified rate should it wish to include that provision in the sending-receiving agreement. Significantly, the regulation only allows districts to negotiate a potential underpayment of the difference between the anticipated and actual tuition costs once the Commissioner determines that rate. Thus, I **CONCLUDE** that because this case involves an underpayment, in line with the parties' prior history, the parties' contract provision does not contradict N.J.A.C. 6A:23A-17.1(f)(7), nor is it unenforceable.

Notably, a court has no right "to rewrite the contract merely because one might conclude that it might well have been functionally desirable to draft it differently." Levison v. Weintraub, 215 N.J. Super. 273, 276, (App. Div.), certif. denied, 107 N.J. 650, (1987); Brick Tp. Mun. Util. Auth. v. Diversified R.B. & T., 171 N.J. Super. 397, 402, (App.Div.1979). Nor may the courts remake a better contract for the parties than they have seen fit to enter or to alter it for the benefit of one party and to the detriment of the other. James v. Federal Ins. Co., 5 N.J. 21, 24, (1950).

To determine the intention of the parties to a contract, the court must consider the relations of the parties, the attendant circumstances, and the objects they were trying to attain. Tessmar v. Grosner, 23 N.J. 193, 201, (1957). An agreement must be construed in the context of the circumstances under which it was entered, and it must be accorded a rational meaning in keeping with the express general purpose. Id.

While Ridgefield Park maintains an absolute right to demand the balance, despite its contract precluding adjustments, the Commissioner's Final Decision recognized that the parties could negotiate a lower rate than the actual cost per pupil. The only limit to the sending-receiving contracts relates to overpayments, not

underpayments. Had this been a case of overpayment by Little Ferry, Ridgefield Park would have to return the overpayment as that amount exceeds the statutory maximum. Yet, importantly, the parties did not experience that situation. Instead, the parties' sending-receiving agreements historically resulted in Little Ferry's underpayment of the State-certified actual cost to Ridgefield Park. Thus, the parties' tuition circumstances when entering the 2018-2019 contract were clear. Based on earlier sending-receiving agreements, Ridgefield Park was well aware it could negotiate language stating that it could seek such underpayments, but it did not in 2018-2019.

Here, equitable principles favor Little Ferry. Equitable considerations are appropriate in assessing governmental conduct, Skulski v. Nolan, 68 N.J. 179, 198 (1975), and in trying to prevent manifest injustice, Vogt v. Borough of Belmar, 14 N.J. 195, 205 (1954). The New Jersey Supreme Court has defined equitable estoppel as:

> The effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might otherwise have existed ..., as against another person, who has in good faith relied upon such conduct, and has been led to change his position for the worse. . . .
>
> [County of Morris v. Fauver, 153 N.J. 80, 104 (1998).]

The doctrine of equitable estopped is invoked when one party changes its position in reliance on the conduct of another party, and the repudiation of that conduct would prejudice the relying party. Amir v. D'Agostino, 328 N.J. Super. 141 (Ch. Div. 1998). The claiming party may rely on conduct, inaction, or representations of the actor. Miller v. Miller, 97 N.J. 154, 163 (1984). Further, the claiming party must show that the other party made the representation intentionally or under such circumstances that it would likely induce action. Ibid. Then, the claiming party must act in a way that is to their detriment. Id. (citing to Fidelity Union Trust Co. v. Essex Cty. Mortgage Co., 130 N.J. Eq. 351, 353 (E. & A.1941)).

Undeniably, Little Ferry did not anticipate or budget for the difference between the tentative cost and the State-certified actual cost for 2018-2019. Instead, Little Ferry relied upon the agreement's negotiated adjustment waiver. Although Ridgefield Park asserts that cost is irrelevant, it goes to Little Ferry's detrimental reliance on the contract's tuition payment provision when creating the budget for such costs. On the contrary, Ridgefield Park had no legitimate expectation of receiving such underpayments when it negotiated and agreed not to seek tuition adjustment payments. Significantly, Ridgefield Park argues it only learned that it might be able to claim such reimbursement after Judge Bass ruled in its favor in the earlier case. Certainly, Ridgefield Park knew its prior experience under these contracts or underpayments and that it had the right to demand the total tuition costs, having included this provision in an earlier agreement. Thus, I **CONCLUDE** that Little Ferry reasonably relied upon the negotiated contract provision for the 2018-2019 tuition, and Ridgefield Park may not now demand the State-certified tuition cost. As such, I **CONCLUDE** that Little Ferry is entitled to summary decision in its favor, and Ridgefield Park is not.

ORDER

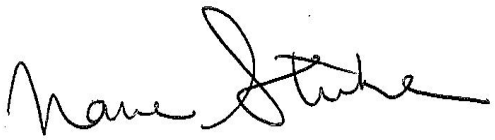
Given my findings of fact and conclusions of law, I **ORDER** that the Little Ferry Board of Education be **GRANTED** summary decision and that the Ridgefield Park Board of Education be **DENIED** summary decision. I further **ORDER** that Ridgefield Park Board of Education's petition be and is hereby **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.



February 7, 2023

DATE

NANCI G. STOKES, ALJ

Date Received at Agency: February 7, 2023

Date Mailed to Parties: February 7, 2023

ljb

DOCUMENTS RELIED ON

- Ridgefield Park's motion for summary decision, dated November 16, 2022
- Little Ferry's opposition to the motion, dated December 7, 2022
- Ridgefield Park's reply, dated December 19, 2022