



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING SUMMARY

DECISION MOTIONS

OAL DKT. NO. EDU 06068-16

AGENCY DKT. NO. 108-4/16

**BOARD OF EDUCATION OF THE UPPER
FREEHOLD REGIONAL SCHOOL DISTRICT,
MONMOUTH COUNTY,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF MILLSTONE AND BOARD OF EDUCATION OF
RED BANK REGIONAL HIGH SCHOOL DISTRICT,
MONMOUTH COUNTY,**

Respondents.

Stephen R. Fogarty, Esq., for petitioner Upper Freehold Regional School District
Board of Education (Fogarty and Hara, attorneys)

Kerri A. Wright, Esq., for respondent Millstone Township Board of Education
(Porzio, Bromberg & Newman, P.C., attorneys)

Bruce E. Helies, Esq., for respondent Red Bank Regional High School District
Board of Education (Wolff, Helies, Spaeth & Lucas, attorneys)

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

PROCEDURAL HISTORY

On April 11, 2016, petitioner Upper Freehold Regional School District (Freehold) filed a Verified Petition and application for emergent relief with the Commissioner of the Department of Education. The Director of the Bureau of Controversies and Disputes of the New Jersey Department of Education transmitted the matter to the Office of Administrative Law (OAL), where it was filed for hearing as a contested case on April 21, 2016. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Respondent, Board of Education of Millstone Township (Millstone) filed opposition to the petition on April 27, 2016. Red Bank Regional High School District (Red Bank) filed an answer and opposition to the petition on April 29, 2016. On May 9, 2016, Freehold filed a reply to Millstone's opposition. On May 16, 2016, Millstone filed an answer and cross-petition. On June 7, 2016, Freehold filed a motion to dismiss the cross-petition. Oral argument was heard on June 10, 2010. By Order dated June 14, 2016, the request for emergent relief was denied.

On August 10, 2016, Freehold filed a Motion for Summary Decision. In support of their Motion for Summary Decision, they also filed the Certifications of Richard Fitzpatrick, Ed.D., Marc Guterl and Robert Lorfink, Esq. On August 11, 2016, Millstone filed a Motion for Summary Decision. In support of their Motion, they submitted the Certifications of Christina Galvano and Scott Feder. On August 19, 2016, Red Bank Regional Board of Education advised that it will rely upon the briefs filed and submitted by counsel for Millstone. Millstone filed opposition to petitioner's Motion for Summary Decision on September 15, 2016.

FACTUAL BACKGROUND AND SUMMARY

Freehold is a public body organized pursuant to N.J.S.A. 18A:10-1 et seq. Freehold is a K–12 school district serving the Borough of Allentown, the Township of Upper Freehold, and students from Millstone Township. A send-receive relationship has existed between Freehold and Millstone since 1964. However, it has never been memorialized. There are currently 623 students from Millstone that attend Allentown

High School pursuant to the send-receive relationship. Freehold charges Millstone \$12,433 per student, per year, for tuition.

Millstone Township sends sixteen¹ students to the Red Bank Regional High School District and pays Red Bank tuition in the amount of \$13,900 per student, per year. Busing is also provided for these students from Millstone to Red Bank. The Millstone students who attend Red Bank Regional High School are enrolled in the following education programs: Academy of Finance, Academy of Information Technology, Academy of Engineering, Academy of Visual and Performing Arts, and the Culinary Program. Millstone maintains that they are legally sending these students to Red Bank pursuant to N.J.S.A. 18A:38-15, since Freehold does not provide a “course of study” in these areas.

Freehold has filed a Motion for Summary Decision alleging that there are no factual issues in dispute and they are entitled to judgment as a matter of law. Freehold asserts three separate legal theories in support of their Motion. First, they argue that N.J.S.A. 18A:38-15 does not apply to Millstone because it does not have their own high school. They further argue that since N.J.S.A. 18A:38-15 is not applicable to them that they need the approval of the Commissioner of the Department of Education to modify the send-receive relationship. They further argue that Millstone has no authority under N.J.S.A. 18A:54-7 to send students to Red Bank because they are not a vocational school. Finally, Freehold argues that even assuming Section 15 of the statute is applicable to them, they provide “a course of study” in all such programs in-district and therefore, Millstone is not permitted to send any of the students to Red Bank. Millstone opposed the motion and also moves for Summary Decision arguing that the statute is applicable and that Freehold does not provide a course of study in any of the subject areas. Accordingly, they are legally sending these students to Red Bank.

¹ Millstone advised that four of the sixteen student who were the subject matter of the within matter graduated in June 2016. However, an additional six were admitted to Red Bank Academies for the 2016-17 academic year, bringing the total students for the 2016-17 academic year to eighteen.

LEGAL ANALYSIS

Freehold argues that N.J.S.A. 18A: 38-15 is not applicable to Millstone Township, because they do not have a high school in their district. Freehold argues that the plain language of the statute provides that it is only applicable to districts which operate their own high school. The statute provides as follows:

“[a]ny board of education not furnishing instruction in a particular high school course of study, which any pupil resident in the district and who has completed the elementary course of study provided therein may desire to pursue, may, in its discretion, pay the tuition of such pupil for instruction in such course of study in a high school of any other district.” N.J.S.A. 18A:38-15.

Freehold provides a lengthy argument on statutory interpretation, and argues that the language which states “any board of education not furnishing instruction in a particular high school course of study,” means it applies only to those districts which have a high school in district. There is nothing in the foregoing statute which indicates that it is inapplicable to a district that is in a send-receive relationship. Moreover, it is illogical to preclude sending districts from the right to send students to a specialty high school. Finally, Freehold’s argument ignores the decision in D.M o/b/o minor child A.M. v. Bd. of Education of City of Asbury Park, 1997 W.L. 715018, which specifically found the provisions of N.J.S.A. 18A:38-15 applicable to a sending district. In that case, the Commissioner affirmed the ALJ’s ruling that N.J.S.A. 18A:38-15 gave discretion to the board of education of a sending district to send their students to out-of-district programs. In that case, the ALJ and the Commissioner rejected the petitioner’s argument that case that they were violating their send-receive relationship by availing themselves of the statutory provisions of N.J.S.A. 18A:38-15.

Freehold’s final argument is that it provides a “course of study” in all of the subject areas at issue, and therefore, as a matter of law, Millstone is precluded from sending any of their students out-of-district. The petitioner provides a very detailed analysis of what “course of study” means. However, they concede that it is not defined

in the statute and there is no case law interpreting this term of art. The remainder of Freehold's argument provides references to certifications which provide factual detail regarding the type courses provided in the district and compares them to those provided out-of-district. Similarly, Millstone argues that Freehold does not provide a "course of study" in the subject areas and submits certifications and descriptions of the courses provided in Red Bank as opposed to those at Allentown High School.

CONCLUSION

I **CONCLUDE** that the provisions of N.J.S.A. 18A:38-15 are applicable to a sending district, and I therefore **CONCLUDE** that since there is no basis to preclude a sending district from sending students out of the receiving district pursuant to the foregoing statutory provision, there is no legal basis for finding Millstone in violation of the send receive relationship with Freehold. I also **CONCLUDE** that permission of the Commissioner is not required to send students out of district pursuant to this statutory provision.

I further **CONCLUDE** that a material issue of fact exists as to what constitutes a "course of study," as well as whether what is provided in the respective districts constitutes a "course of study" in the five separate disciplines at issue. Accordingly, this matter is not one that can be determined as a matter of law and a hearing on the material factual issues in dispute is required. The Motions of the petitioner and the respondent for Summary Decision are hereby **DENIED**.

ORDER

I hereby **ORDER** that the Motions for Summary Decision filed by Freehold and Millstone are denied and this matter shall proceed to a hearing on the issues of fact presented in this matter.

This order may be reviewed by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.

September 29, 2016
DATE



SARAH G. CROWLEY, ALJ