



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**ORDER DENYING EMERGENT RELIEF**

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.

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**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:

## **STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner, Upper Freehold Regional School District (Freehold), seeks an order for emergent relief enjoining respondent Board of Education of the Township of Millstone (Millstone) from sending students to Red Bank Regional High School District (Red Bank). There are currently sixteen students<sup>1</sup> who are sent to Red Bank's specialized academies. Freehold has a send-receive relationship with Millstone pursuant to N.J.S.A. 18A:38-13, which relationship has existed since 1961. Pursuant to this agreement, Millstone students attend Allentown High School, which is in the Freehold School District. Millstone maintains that the students attend specialized high-school programs that Allentown High School does not provide, and that Millstone is therefore permitted, pursuant to N.J.S.A. 18A:38-15, to send its students to Red Bank. Freehold argues that it furnishes instruction in the various courses of studies that the Red Bank academies offer, and, thus, no basis exists to send the students to Red Bank.

On April 11, 2016, petitioner 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. Millstone filed opposition to the Petition on April 27, 2016. 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, 2016.

## **FACTUAL BACKGROUND**

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

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<sup>1</sup> Millstone advised at the argument that four of the sixteen students will be graduating this month and an additional six have been admitted to the Red Bank academies for the next school year.

Upper Freehold, and students from Millstone Township. A send-receive relationship has existed between Freehold and Millstone since 1964. 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 sixteen 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 claims that Freehold does not provide such programs in district at Allentown High School, and that it is entitled to send the students out of district pursuant to N.J.S.A. 18A:38-15. The statute provides in relevant part that “[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 maintains that it offers similar programs and a course of study in all such disciplines, and that the arrangement with Red Bank violates the send-receive relationship. Freehold seeks to enjoin Millstone from sending any students to Red Bank.

### **LEGAL ANALYSIS**

For a request for interim relief or stay, N.J.A.C. 6A:3-1.6 requires as follows:

(b) A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards to be met for granting such relief pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;

2. The legal right underlying petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

Freehold argues that it will suffer irreparable harm if the requested relief is not granted. Harm is considered irreparable if it cannot be adequately redressed by an award of pecuniary relief. Crowe, supra, 90 N.J. at 132–33. Freehold argues that it has met this burden since it is not clear that money damages can be awarded by the Commissioner of Education in this situation. The Commissioner can only award monetary damages in limited situations. However, this argument ignores that other avenues, such as Superior Court, can provide monetary relief to the petitioner. Thus, monetary damages are available to the petitioner. Freehold also argues that its reputation is being harmed because Millstone has refused to send some of its best and brightest students to Allentown High School. There has been no demonstration that the reputation of the school has been harmed by the sending of sixteen students to specialty schools in another district. Thus, the first prong of the test for injunctive relief has not been satisfied.

Freehold argues that the legal right is settled and that Millstone may only modify the send-receive relationship with the approval of the Commissioner pursuant to the procedures set out in N.J.S.A. 18A:38-13. It is undisputed that Millstone has not sought the Commissioner's approval to modify the send-receive relationship pursuant to the provisions of N.J.S.A. 10A:38-13. However, Millstone argues that it is not seeking to modify the send-receive relationship, but merely availing itself of the opportunities available to its students pursuant to N.J.S.A. 18A:38-15. It submits that Allentown High School does not provide instruction in the particular courses of study that these students desire to pursue. Affidavits have been submitted by petitioner and respondents to support their respective positions regarding whether what is provided in district meets the definition of "course of study." Therefore, although the legal right to send students

out of district if the district does not provide a desired course of study is settled, this case involves an analysis of what constitutes a “course of study,” and whether the courses of study of the Millstone students enrolled in Red Bank are provided in district. Therefore, the legal right in the within matter is not settled.

The petitioner argues that Freehold will succeed on the merits because it offers a course of study in every discipline that the Red Bank Regional High School District provides. Although I agree with the petitioner that an analysis under this standard is required to determine if Millstone has a right to send out of district, a factual issue exists as to whether Freehold provides instruction on the particular courses of study in district. It is unclear exactly what constitutes a “course of study.” Moreover a factual analysis is required to determine if an adequate “course of study” exists in the Freehold School District. Accordingly, it is not clear that petitioner will succeed on the merits.

The final prong of the analysis under Crowe v. DeGoia requires a balancing of the equities. When the equities and interests of the parties are balanced in this matter, it is clear that the respondent will suffer greater harm if this requested injunctive relief is granted. The harm suffered by Freehold is monetary, and the analysis in section one demonstrates that avenues of relief are available to Freehold. However, the harm in taking sixteen high-school students out of their current school is significant and very arguably irreparable. The petitioner also argues that since the students and/or their parents are not parties to this matter, their interests should not be considered in balancing the equities. I disagree, and find no case law to support this contention. In balancing the equities, I must find in favor of the Millstone students.

Accordingly, I **CONCLUDE** that Freehold is not entitled to injunctive relief at this time.

**ORDER**

The request for emergent relief in the form of an injunction is **DENIED**. It is hereby **ORDERED** that the sixteen Millstone students will remain in their current enrollments in Red Bank pending the outcome of this matter.

This order on application for emergency relief 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. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.



June 14, 2016  
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DATE

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SARAH G. CROWLEY, ALJ

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