



Upper Freehold Regional School District

VS

Millstone Township School District

Comprehensive Legal Update

As of April 4, 2017

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## **1. Introduction:**

Dear Millstone Families,

The following pages reflect a comprehensive update to the current litigation with Upper Freehold Regional School District.

The Millstone Township School District (MTSD) is in the middle of budget season with the adoption of the final budget coming on April 24th. As most of you know, we are also in the process of defending ourselves against a lawsuit filed by the Upper Freehold Regional School District (Allentown High School (AHS)) in April 2016. There are three parts to this lawsuit which are described in detail later in this document. They are:

1. The rights of Millstone parents to send their children to the Red Bank Regional School District for specialized educational programming in State-certified Career and Technical Education Academies.
2. Addressing AHS's Special Education practices.
3. The sharing of student data for Millstone students enrolled at AHS.

The case has recently gone to trial, and so our legal expenses have begun to escalate. As of this writing, our attorney's fees total \$183k. Please be advised these attorney's fees represent only a portion of the lawsuit (a portion of part 1 above). As this lawsuit continues, so does the associated expenses. The MTSD BOE does not have cost projections at this time; however it's important to note that the MTSD BOE has attempted settlement to minimize any legal expenses as discussed in the Settlement Discussions section of this document.

In light of our expenses to date, and the fact we have additional phases to go regarding this lawsuit, I thought it was appropriate to provide the community with a reminder of how we got here, and what's at stake for our parents and students in this dispute.

## **2. Background:**

The MTSD has a long standing relationship with the Red Bank Regional High School (RBR) that goes back over 15 years. It was originally established to provide students with educational opportunities that were not available at AHS. Over the years, AHS has expanded its educational offerings; however, those educational opportunities do not constitute a full course of study in those specialized subject areas which motivate students to attend RBR. In those areas, RBR offers programs which constitute a State-certified Career and Technical Education Academy (CTEs). By contrast, many of the "Academies" advertised by AHS are not certified CTEs, and are comprised mostly of elective courses, some of which don't run for years at a time.

## **3. Basis for Lawsuit and Damages:**

In April of 2016, AHS filed a lawsuit against MTSD claiming that Millstone families should no longer have the option to attend RBR. When it was initially filed, the lawsuit sought that all students currently attending RBR be immediately removed from school and placed at AHS, although this demand has since been dropped. Since the MTSD pays tuition to either RBR or AHS for each public high school student, AHS is essentially seeking that the tuition paid to RBR now be paid to AHS. Curiously, AHS is claiming monetary damages of approximately \$200k to recover tuition dollars on students they never spent a dollar to educate.

#### **4. AHS's Contradiction on "Choice":**

AHS is designated a "Choice" district by the state of New Jersey. This means they are allowed to receive public high school students from any district within a 20 mile radius. Currently AHS educates over 100 "Choice" students from districts other than Upper Freehold, Allentown, Millstone and receives approximately \$11,000, for each "Choice" student. Since AHS is a "Choice" district, they would presumably support providing high school students with choices for their education. It's ironic, then, that AHS is suing MTSD for providing "Choices" to Millstone families. Additionally, Millstone residents pay over \$13,000 (\$2,000 more than "Choice" students from outside of the sending area) to attend AHS and have access to the same programs.

#### **5. Boards of Education Communications and Contract Talks:**

Prior to AHS filing this lawsuit, the MTSD had initiated discussions to develop a Send/Receive Contract between our two districts. The idea was to memorialize important arrangements between both Boards of Education and bring clarity and certainty to the Send/Receive relationship. To facilitate this effort, and to further other shared service arrangements between the two Districts, both Boards created a "Partnership Committee". The Committees from both Boards met for over a year and discussed a variety of issues, including communication, student data sharing, finances, special education information and the like. At no time during these meetings did AHS ever express any concerns or objections to MTSD sending students to RBR. Indeed, during the recent court proceedings, AHS administration admitted under oath that they were aware our RBR relationship for years, and yet the issue was never raised by AHS during nearly 18 months of our Send/Receive contract negotiations.

In September of 2015, AHS discontinued Send/Receive discussions with MTSD and shelved the contract even though substantial progress had been made on a number of issues. AHS then proceeded to send a letter from their attorney which - for the first time - objected to MTSD sending students to RBR. Shortly after MTSD responded to the letter, AHS followed up by filing the lawsuit without any further attempt to discuss the issue.

#### **6. Settlement Discussions:**

Only after filing the lawsuit did AHS begin requesting to meet again with MTSD. They requested this in a public setting several times at our Board of Education meetings. The MTSD - Board of Education did respond and made it clear the only discussions they would engage in would be geared towards a settlement. The MTSD Board of Education concluded that in the face of pending litigation, the only appropriate context for a meeting would be a settlement conference, designed to resolve the legal issues and thereby avoid the time and expense of litigation.

Ultimately, the Boards did agree to meet in the context of a settlement conference, which took place at the MTSD Board of Education office on December 1, 2016. The meeting was attended by members of the respective Partnership Committees as well as legal counsel.

As a result of the meeting, both Committees agreed to go back to their respective full Boards to obtain authority to continue settlement discussions. The Millstone Board voted to authorize its Committee to continue to try to settle the case; however, after that vote, the MTSD received a letter from the AHS attorney saying the AHS Board would no longer discuss a settlement. What appeared to be a strong step in avoiding huge legal bills was simply turned away by the AHS Board of Education with no explanation or further attempt to work through the issues.

Now the legal bills for Millstone taxpayers to date are up to \$183k and counting and I would assume AHS taxpayers are similar. When thinking about the good use these funds could have had in both districts, whether in the form of lower taxes or investments in education, it's a clear waste of resources. These expenditures could have been avoided or reduced had AHS's Board of Education been willing to try to resolve this issue with us directly, both before and after filing their lawsuit. Why they have persisted in this refusal is a question for the AHS Board, and its attorney.

#### **7. Special Education:**

The sending of Millstone students to RBR is not the only legal issue between the parties. For years, the MTSD administration had been working with the AHS administration to correct the troubling practice that developed at AHS regarding the way they administer Individual Education Plans (IEP) for children with special needs.

The issue that drew the attention of MTSD administration was focused around where these students are placed and the expenses incurred by Millstone taxpayers as a result.

The law says that children with special needs are to be placed in something called the Least Restrictive Environment (LRE). This means that a school district should not automatically provide children with the greatest amount of services possible without trying a more gradual approach to see what works best. A child may very well need more robust services at some point, but these services should be provided only after a less restrictive approach is attempted. Of course, the particular level of services will vary from child to child, and no child should ever be denied services which are deemed necessary for their educational success. Taxpayers also benefit from LRE, since providing a higher level of services comes at a higher cost. By complying with LRE, Districts are able to promote student success in a fiscally responsible way. This is especially true when it comes to out of district placements. Generally, out of district placements are very costly and dependent on the amount of services provided.

Over time, MTSD became concerned that AHS was placing students in far more restrictive environments without fully complying with LRE, which comes at a substantial cost to Millstone taxpayers. It was also discovered that individual aids and busing services were provided without even developing a corresponding Individual Education Plan (IEP). In many cases, AHS did not

evaluative students or consult with Millstone faculty in any way prior to making decisions of these restrictive placements.

These costs began to escalate with no explanation. Imagine the costs to the Millstone taxpayers when AHS can choose to provide any level of service to students with 100% of the financial burden placed on Millstone taxpayers. Understand, when services are needed, when IEP's and evaluations are properly developed and performed, Millstone would support these true and honest findings. Unfortunately, this was not found to be the practices used by AHS, as can be found at the link below.

It's important to note that after years of discussion with AHS administration on these egregious practices, the MTSD administration finally called the New Jersey Department of Education and reported this, even though the AHS administration had already admitted to this, yet no changes to their practices were made.

**The State report clearly shows that AHS was found to be “Non-Compliant” on almost all counts.**

Please see state findings at:

[http://www.millstone.k12.nj.us/web/site\\_flash/Litigation/OSEP%20FINDINGS.pdf](http://www.millstone.k12.nj.us/web/site_flash/Litigation/OSEP%20FINDINGS.pdf)

I ask you to take special note of the following dates. In February 2016, the State of NJ released their findings informing AHS of their significant noncompliance in taking care of our special needs students. Only a couple of months later in April of 2016, AHS filed their lawsuit regarding RBR, a topic never raised by AHS during nearly 18 months of face to face negotiations.

Millstone is prepared to identify the significant and excessive costs that have been incurred and paid by the Millstone taxpayers directly related to these findings. We do not yet even know the full extent of the damages as AHS has blocked access to information about the Millstone students. Just on what we know, and in only three cases, we can identify nearly \$200k in excessive costs that have been charged to Millstone that are directly related to these findings. Recovering these costs, and getting AHS to comply with the law as to the services provided to our special needs students is part of the legal dispute which we are now engaged with AHS.

#### **8. Student Data:**

The third legal issue in dispute between the parties has to do with Millstone's access to data about its students. AHS continues to deny Millstone any access to any type of student information about the Millstone students. To put this in perspective, Millstone sends around 600 students to AHS each year and spends about \$8.5 million taxpayer dollars annually. Despite this, AHS refuses to share any information about how they are performing. It is our belief that this refusal is contrary to State and Federal code and guidance. Amazingly, AHS has persisted in this refusal even though they agreed to provide student performance data in October, 2014 after their own attorney told them that they are legally permitted to do so. Instead, they have chosen to keep us in the dark. We had hoped to be able to analyze this data in order to assess how well we (MTSD) are doing in preparing our students for high school, and to develop and

improve programs at the K-8 level which support that goal. Developing educational programs without this data is difficult. We can try to figure out what works best, but we have no guidance as to what the final product should look like.

The data we do have makes this lack of access all the more troubling. For example, we know that our 8th graders consistently leave MTSD with very high performance as compared to the rest of the state's other high performing districts. When looking at the performance of AHS, the scores no longer compare favorably to those same districts on these metrics. This does not mean that MTSD students are not still performing at a high caliber, but we have no way to make that determination since we only have access to state level data vs specific data about the MTSD cohort. I wish I could tell you that our students maintain or even grow further once they get into the high school, but I cannot speak to this either way. In the end, we want to promote the positive outcomes of our students and simply cannot do so.

It is important to note in this regard that MTSD is not and has not ever said that AHS is not a great school for our students. What we are saying is that the performance data on the high school as a whole does not show the same strong results our students demonstrated through 8th grade. To put this in perspective, we spend over \$8 million dollars for AHS to provide this service to our students and in return, they refuse to provide us with any information on whether that service is producing the results we would all hope for in regard to our children.

In our current legal dispute with AHS, MTSD is attempting to enforce its rights to obtain data from AHS about our students and their performance as a group. We believe these documents are readily available and could be produced if and when AHS decides to turn them over. It is not our intent to make any party look or feel bad; indeed, the data could show that we (MTSD) need to do a better job getting students ready for high school. But without this data, we cannot accurately and fully assess either the quality of the education here at MTSD, or the quality of education at AHS. The MTSD Board of Education is committed to continuing its efforts to secure that data so that we can answer these important questions, which taxpayers have every right to ask.

#### **9. Current Litigation :**

To learn more about the lawsuit itself, please visit our website and click "Current Litigation". The crux of the lawsuit regarding RBR relates to whether or not RBR has a course of study that is not offered at AHS and to that end, what constitutes a course of study? Please take the time to watch an important presentation on this exact question - "HIGH SCHOOL TRANSITION VIDEO" at [https://drive.google.com/file/d/0B6m1dUf\\_IKtkOEJnZWR1ZW1tdkk/view](https://drive.google.com/file/d/0B6m1dUf_IKtkOEJnZWR1ZW1tdkk/view)

Please note that ALL information presented in this video has been confirmed through direct testimony this past month in court. This video represents only a sampling of the courses of study that are at the heart of the case.

The current case has been in trial since February and is scheduled to conclude in April of this year. However, the final judgement is not expected until months after, as the process just takes

a good deal of time. I am not able to give you an exact expectation of when the RBR component of this lawsuit will conclude, but one should not expect a final determination that is approved by the Commissioner of Education prior to the summer and possibly even a little after that. It is important to note that this only represents the RBR portion of the lawsuit and has not even begun to address the elements associated with special education and student information.

**10. Potential for a Positive Outcome:**

Another recent development of note is that AHS presented to the court in March 2017 a large expansion of their Visual and Performing Arts program for the 17-18 school year. These were presented to the court as fully credited course offerings. These include:

Jazz Improv	Madrigal Choir	Costume Construction
Wind Ensemble	Musical Theater	Playwriting/Screenwriting
Music Appreciation	Theater Tech	History of Theater
Classical Masters Choir	Set Design	Theater Arts 11/12
Acting for the Camera	Dance History	Swing/Africa/Yoga
Radio/TV/Film Research & Criticism		

If you have children attending AHS next year in any grade, please make sure that you are aware of these new courses they presented to the court. If any of these are of interest to your child, make sure they are signed up.

We hope that one positive outcome of this lawsuit is that AHS continues to improve its offerings in all of these areas.

**11. Summary:**

Defending a lawsuit filed against you by a partner in educating our children is disheartening. So is spending taxpayer dollars to do so. However, we believe that defending the rights of our families to educational choice is a worthwhile endeavor. So is protecting the rights of our special need students, and the interests of Millstone taxpayers. The costs associated with this lawsuit are high and anticipated to go higher. We regret that it has come to this point.

Our hope is to resolve all issues without continued escalating costs and we hope our partners in educating our children have similar goals. The MTSD Board of Education remains committed to working in the best interests of our students and families.

Thank you,



Scott Feder  
 Superintendent of Schools  
 Millstone Township School District