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April 8, 2016

VIA FEDEX DELIVERY

Ms. Kathleen Duncan, Director
Bureau of Controversies & Disputes
New Jersey Department of Education
100 Riverview Executive Plaza, 4th Floor
Trenton, New Jersey 08625-0500

**Re: Upper Freehold Regional Board of Education v.
Millstone Township Board of Education and Red
Bank Regional High School District Board of
Education
Agency Ref. No.: TBD
Our File No.: 1/3**

Dear Ms. Duncan:

Please be advised that we represent the Upper Freehold Regional Board of Education in the above captioned matter. Enclosed please find an original and two (2) copies of a Verified Petition, Certification of Richard M. Fitzpatrick, Ed.D., Certification of Stephen R. Fogarty and Proof of Service.

Kindly stamp a copy of the documents "filed" and return same to this office in the enclosed self-addressed stamped envelope.

Ms. Kathleen Duncan, Director
April 8, 2016
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If you have any questions, of course, do not hesitate to contact us.

Very truly yours,

FOGARTY & HARA, ESQS.

BY: /s/ Stephen R. Fogarty
STEPHEN R. FOGARTY

SRF:kd

Enc.

cc: Dr. Richard Fitzpatrick w/encl. - via e-mail only
Superintendent of Schools
Ms. Margaret Hom w/encl. - via e-mail only
Business Administrator/Board Secretary
Mr. Bernard Biesiada w/encl. - via regular & certified mail
Ms. Christina Galvao w/encl. - via regular & certified mail

FOGARTY & HARA, ESQS.
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 Fair Lawn, New Jersey 07410
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 Attorneys for Petitioner
 Upper Freehold Regional Board of Education
 Our File No.: 1/3

UPPER FREEHOLD REGIONAL BOARD	:	BEFORE THE COMMISSIONER OF
OF EDUCATION,	:	EDUCATION OF THE STATE OF NEW
	:	JERSEY
Petitioner,	:	
	:	OAL Docket No.
vs.	:	Agency Ref. No.
	:	
MILLSTONE TOWNSHIP BOARD OF	:	
EDUCATION AND RED BANK	:	
REGIONAL HIGH SCHOOL DISTRICT	:	
BOARD OF EDUCATION,	:	<u>VERIFIED PETITION</u>
	:	
Respondents.	:	

Petitioner Upper Freehold Regional Board of Education (hereinafter referred to as "Petitioner" or "the Board"), with offices located at 27 High Street, in the Borough of Allentown, County of Monmouth, State of New Jersey 08501, hereby requests that the Commissioner of Education (hereinafter referred to as the "Commissioner") consider a controversy that has arisen between Petitioner and Respondents, the Millstone Township Board of Education (hereinafter referred to as "Millstone Township"), with offices located at 5 Dawson Court, in the Township of Millstone,

County of Monmouth, State of New Jersey 08535, and the Red Bank Regional High School District Board of Education (hereinafter referred to as "Red Bank"), with offices located at 101 Ridge Road, in the Borough of Little Silver, County of Monmouth, State of New Jersey 07739, pursuant to the authority of the Commissioner to hear and determine controversies under the school laws of the State of New Jersey, N.J.S.A. 18A:6-9, by reason of the following facts:

PARTIES

1. The Board is a public body organized pursuant to N.J.S.A. 18A:10-1 et seq. to operate the Upper Freehold Regional School District (hereinafter referred to as the "District"), which is a K-12 school district serving the Borough of Allentown and Township of Upper Freehold, as well as high school students from Millstone Township pursuant to a sending/receiving relationship.

2. Respondent Millstone Township is a public body organized pursuant to N.J.S.A. 18A:10-1 et seq. to operate the Millstone Township School District, which is a K-8 school district serving the Township of Millstone.

3. Respondent Red Bank is a public body organized pursuant to N.J.S.A. 18A:10-1 et seq. to operate the Red Bank Regional High School District, which is a regional high school district serving the Boroughs of Little Silver, Red Bank, and Shrewsbury.

JURISDICTION

4. The Commissioner of Education has jurisdiction to hear this matter pursuant to N.J.S.A. 18A:6-9.

FACTS

5. The Board operates Allentown High School located in Allentown, New Jersey.

6. Millstone Township does not operate a high school for public school students domiciled in Millstone Township.

7. Because it lacks high school facilities, Millstone Township is required by N.J.S.A. 18A:38-11 to designate a high school for its high school students to attend.

8. Millstone Township has designated Allentown High School as the high school for its students to attend.

9. As such, Millstone Township's high school students have attended Allentown High School pursuant to an unwritten sending/receiving agreement since it was constructed in 1964.

10. Before Allentown High School was constructed in 1964, Millstone Township high school students attended high school in the District at what is now Newell Elementary School.

11. Currently, the average daily enrollment of Millstone Township's students attending Allentown High School is 623.56.

12. The Board charges Millstone Township \$12,433 as tuition for each student for the 2015-2016 school year.

13. The Board has learned that Millstone Township is paying tuition and transportation costs to send sixteen Millstone Township students to Red Bank Regional High School (hereinafter referred to as "Red Bank Regional").

14. Red Bank is charging Millstone Township \$13,900 per student to attend Red Bank Regional High School. See Exhibit A.

15. Millstone Township is only permitted to pay the tuition for these students to attend Red Bank Regional if the Board does not furnish "instruction in a particular high school course of study" which the student seeks to pursue at Allentown High School. See N.J.S.A. 18A:38-15.

16. Upon information and belief, two Millstone Township students attend Red Bank Regional's Academy of Finance, two attend the Academy of Information Technology, four attend the Academy of Engineering, seven attend the Visual and Performing Arts Academy, and one attends a culinary program.

17. The Board also offers similar Academy programs at Allentown High School to which Millstone Township students are permitted to enroll.

18. Allentown High School offers five Academies: Agriculture Science Academy, Arts Academy, Engineering Academy, Tomorrow's Teachers Academy, and Academy of Public & International Affairs.

19. In addition to its Academy offerings, the Board also offers its students at Allentown High School the opportunity to participate in an early entrance college program sponsored by Princeton University. Through this program, once students have completed all of the Allentown High School offerings and meet the entrance requirements to the program, the students may attend advanced courses at Princeton University which will be reported on a Princeton University transcript. Currently the Board is offering Mathematics courses through this program, and will expand it for the 2016-2017 school year to include offerings in World Languages, Science, and Fine and Performing Arts.

20. Since the Board has an Arts Academy and an Engineering Academy, it is clear the Board furnishes instruction in these two areas of study and the four students enrolled at Red Bank Regional's Academy of Engineering and the seven enrolled in the Visual and Performing Arts Academy cannot attend Red Bank Regional at Millstone Township's expense.

21. While neither of Allentown High School's finance and information technology offerings are part of a dedicated Academy, the Board furnishes a course of study in each discipline by offering a variety of courses in each subject area to interested students.

22. For example, in the area of finance, Allentown High School has course offerings including Accounting I, Accounting II, Business Law/Retail Marketing, Introduction to Business, Economics Honors, AP Macroeconomics, Financial Literacy, and a Senior Practicum program that allows students to complete an internship. Students may also participate in Future Business Leaders of America. Plainly, the Board furnishes instruction in finance, and the two Millstone Township students attending Red Bank Regional's Academy of Finance cannot do so at Millstone Township's expense.

23. The Board also furnishes instruction at Allentown High School in information technology. Courses include Computer Applications I, Computer Applications II, Computer Science I, Computer Science II, Computer Science III, the Senior Practicum, as well as Independent Study for students who desire to go beyond the courses the Board offers. There is no doubt the Board furnishes instruction in information technology and the two Millstone Township students attending Red Bank Regional's Academy of Information Technology cannot do so at Millstone Township's expense.

24. For the one student enrolled in a culinary program at Red Bank Regional, the Board also furnishes a similar course of study. Allentown High School offers courses including Foods and Nutrition, Advanced Foods, International Cuisine, Advanced Baking,

and Honors Food Chemistry. Clearly the Board is furnishing a course of study relating to the culinary arts, so the one student in a culinary program at Red Bank Regional cannot attend at Millstone Township's expense.

25. Because the Board furnishes instruction in each course of study in which the Millstone Township students attending Red Bank Regional are enrolled, Millstone Township is prohibited from paying tuition for its students to attend Red Bank Regional.

26. Since it cannot avail itself of N.J.S.A. 18A:38-15 due to the Board's similar course offerings at Allentown High School, Millstone Township is only permitted to pay tuition for its students to attend Red Bank Regional High School by petitioning the Commissioner to modify the sending/receiving agreement it has with the Board pursuant to N.J.S.A. 18A:38-13.

27. Millstone Township has not petitioned the Commissioner to modify the sending/receiving relationship it has with the Board.

28. Therefore, there is no legal basis for Millstone Township's students to attend Red Bank Regional at Millstone Township's expense.

29. All Millstone Township students attending Red Bank Regional should be attending Allentown High School unless the students are attending Red Bank Regional pursuant to individual tuition contracts with each student's parents with Millstone

Township providing nothing towards the cost of their attendance at Red Bank Regional.

30. Millstone Township's unlawful decision to send sixteen of its students to Red Bank Regional High School has deprived the Board of \$198,928 of tuition income for the 2015-2016 school year.

31. Based upon the foregoing, the Board is entitled to an injunction enjoining Millstone Township from sending, and Red Bank from receiving, students for whom Millstone Township pays tuition to Red Bank.

32. The Board is also entitled to damages for the deprivation of tuition income for the sixteen students that it was entitled to pursuant to the sending/receiving agreement.

WHEREFORE, the Petitioner, the Upper Freehold Regional Board of Education, requests the Commissioner of Education to issue an order that:

A. Enjoins Millstone Township from sending, and Red Bank from receiving, students domiciled in the Township of Millstone who have their tuition for Red Bank Regional paid by Millstone Township; and

B. Enjoins Millstone Township from paying tuition for its high school students to attend any high school where the Board furnishes instruction in a similar course of study in the area the student wishes to study; and

C. Millstone Township pay damages to the Board for the students who attended Red Bank Regional that should have attended Allentown High School; and

D. Such other relief as is just and equitable under the circumstances.

FOGARTY & HARA, ESQS.

Attorneys for Petitioner
Upper Freehold Regional Board of
Education

BY: 

STEPHEN R. FOGARTY

Dated: April 8, 2016

VERIFICATION OF PETITION

I, Richard M. Fitzpatrick, Ed.D., of full age, being duly sworn in accordance with law, upon my oath, depose and say:

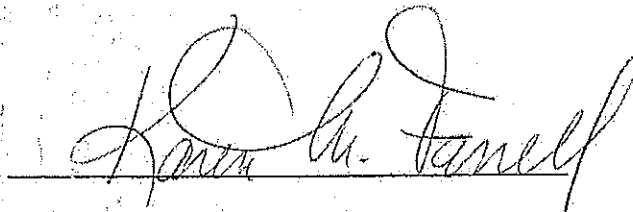
1. I am employed by Petitioner, Upper Freehold Regional Board of Education, as the Superintendent of Schools and, as such, am fully familiar with the facts in the within matter.

2. I have read the Verified Petition and I aver that the allegations contained therein are true to the best of my knowledge and belief.


RICHARD M. FITZPATRICK, Ed.D.

Sworn to and subscribed before me

this 8th day of April, 2016.



Notary Public of the
State of New Jersey

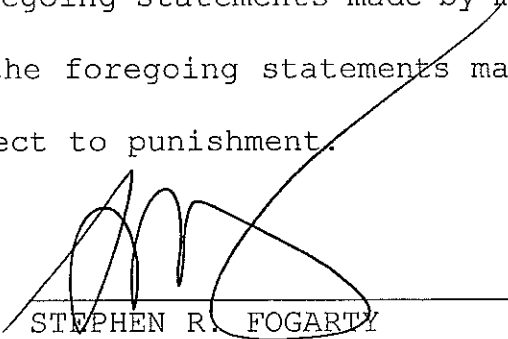
KAREN M. FARRELL
NOTARY PUBLIC OF NEW JERSEY
ID # 50016417
My Commission Expires 5/26/2020

CERTIFICATION OF GENUINNESS OF ELECTRONIC SIGNATURE

I am an attorney-at-law of the State of New Jersey and a partner in the law firm of Fogarty and Hara. I am fully familiar with the facts and circumstances set forth herein.

The signature of Richard M. Fitzpatrick, Ed.D., on the Verification is an electronic transmission. Dr. Fitzpatrick advised me that he executed the Verification page and acknowledged the genuineness of his signature prior to sending it to me by electronic mail. An original of the signature page will be provided, if required.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


STEPHEN R. FOGARTY

Dated: April 8, 2016

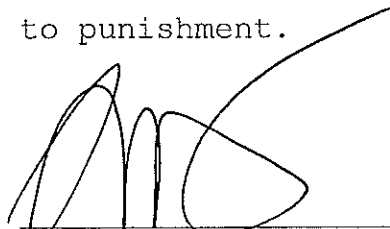
PROOF OF SERVICE

I certify that that an original and two copies of the within Verified Petition were filed with M. Kathleen Duncan, Director, Bureau of Controversies and Disputes, New Jersey Department of Education, 100 Riverview Plaza, Route 29, P.O. Box 500, Trenton, New Jersey 08625-0500, via Federal Express.

I further certify that a copy of the Verified Petition was served upon Mr. Bernard Biesiada, Business Administrator/Board Secretary, Millstone Township Board of Education, 5 Dawson Court, Millstone Township, New Jersey 08535 via regular mail and certified mail.

I further certify that a copy of the Verified Petition was served upon Ms. Christina Galvao, Business Administrator/Board Secretary, Red Bank Regional High School District Board of Education, 101 Ridge Road, Little Silver, New Jersey 07739 via regular mail and certified mail.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



STEPHEN R. FOGARTY

Dated: April 8, 2016

TUITION CONTRACT AGREEMENT 2015-2016

AGREEMENT dated this 5th day of August 2015, between the Millstone Board of Education, in the County of Monmouth and the State of New Jersey (*hereinafter referred to as the "SENDING DISTRICT"*), and the Red Bank Regional High School Board of Education, in the County of Monmouth and the State of New Jersey (*hereinafter referred to as the "RECEIVING DISTRICT"*).

WITNESSETH

NOW, THEREFORE, in consideration of the covenants herein contained, the parties agree as follows:

1. The SENDING DISTRICT agrees to purchase educational services from the RECEIVING DISTRICT. The RECEIVING DISTRICT agrees to provide educational services to the SENDING DISTRICT in accordance with the applicable New Jersey Statutes and the rules and regulations of the State Board of Education. The specific educational services to be purchased and provided are described in 1a. below.
- 1a. The specific educational services described in this section or attached as an appendix to this AGREEMENT are to be provided for the resident pupils in grades 9 through 12 from the SENDING DISTRICT.
DESCRIBE THE EDUCATIONAL SERVICES IN THIS SPACE OR ATTACH A DESCRIPTION AS AN APPENDIX TO THIS AGREEMENT.

- Full Time Tuition Students: 16
See attached list

2. This AGREEMENT shall be in effect for the 2015 - 2016 school year. The educational services shall commence on September 3, 2015 and terminate on or approximately June 17, 2016.
3. Tuition charges, as part of this AGREEMENT, as well as the payment of same shall be made in accordance with the applicable New Jersey Statutes and the rules and regulations of the State Board of Education.
4. The SENDING DISTRICT agrees to pay one-tenth of the tentative tuition charge of \$222,400.00, each month less any prior year credits to the RECEIVING DISTRICT commencing no later than September 3rd, 2015 and continuing through June. The payments shall be due on the first of each month. The tentative tuition charge equals the estimated cost per pupil of \$13,900.*** multiplied by an estimated average daily enrollment of 16 pupils. *An amount not in excess of the amount shown on line 7 of the "Estimated Code Per Pupil for Tuition Purposes form.
- 4a. In the event that it is later determined that the tentative tuition charge was greater than the "actual cost per pupil" as certified by the commissioner multiplied by the actual average daily enrollment received, the RECEIVING DISTRICT will return the excess amount to the SENDING DISTRICT no later than the end of the third school year following this contract year. The RECEIVING DISTRICT has the option to pay such excess amount or to credit such excess amount to the SENDING DISTRICT in accordance with the following payment schedule: (*Insert day and month payment or credit is due*) and (*insert percentage of payment or credit due*).
- 4b. In the event that it is later determined that the tentative tuition charge was less than the "actual cost per pupil" as certified by the commissioner multiplied by the actual average daily enrollment received, the RECEIVING DISTRICT will charge the SENDING DISTRICT no later than the end of the third school year following the contract year the amount owed as follows:

CHECK ONE ONLY

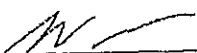
- All of the amount owed.
 None of the amount owed.
 Part of the amount owed as indicated in this space.

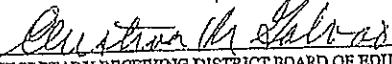
- The SENDING DISTRICT will pay any amount owed to the RECEIVING DISTRICT in accordance with the following payment schedule: (*Insert day and month payment is due*) and (*insert percentage of payment due*).
- 4c. In the event it becomes necessary for the SENDING DISTRICT to request that the county superintendent waive the payment schedule in 4b. due to hardship, the SENDING DISTRICT will immediately notify the RECEIVING DISTRICT of such request.
 5. The RECEIVING DISTRICT agrees to provide the SENDING DISTRICT with monthly tuition bill and a monthly report showing pupil enrollment and attendance.
 6. In the event any dispute arises out of this AGREEMENT the parties will seek to resolve the dispute as expeditiously as possible. Except as may be set forth herein, the interests of the pupil(s) shall be of the foremost concern in resolving such disputes.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be duly executed as of this 5th day of August 2015.


PRESIDENT SENDING DISTRICT BOARD OF EDUCATION


PRESIDENT RECEIVING DISTRICT BOARD OF EDUCATION


SECRETARY SENDING DISTRICT BOARD OF EDUCATION


SECRETARY RECEIVING DISTRICT BOARD OF EDUCATION

<u>ID</u>	<u>Student Name</u>	<u>Grade</u>	<u>City</u>
[REDACTED]	[REDACTED]	10	Clarksburg
[REDACTED]	[REDACTED]	10	Clarksburg
[REDACTED]	[REDACTED]	11	Clarksburg
[REDACTED]	[REDACTED]	12	Clarksburg
[REDACTED]	[REDACTED]	12	Clarksburg
[REDACTED]	[REDACTED]	09	Millstone
[REDACTED]	[REDACTED]	09	Millstone
[REDACTED]	[REDACTED]	09	Millstone
[REDACTED]	[REDACTED]	10	Millstone
[REDACTED]	[REDACTED]	10	Millstone
[REDACTED]	[REDACTED]	10	Millstone
[REDACTED]	[REDACTED]	11	Millstone
[REDACTED]	[REDACTED]	12	Millstone
[REDACTED]	[REDACTED]	09	Millstone
[REDACTED]	[REDACTED]	09	Township
[REDACTED]	[REDACTED]	10	Millstone
[REDACTED]	[REDACTED]	10	Township
[REDACTED]	[REDACTED]	10	Millstone
[REDACTED]	[REDACTED]	10	Township