

New Jersey Commissioner of Education

Final Decision

Board of Education of the Borough of
Oceanport, Monmouth County,

Petitioner,

v.

Borough of Sea Bright, Monmouth County;
Borough of Highlands, Monmouth County;
Borough of Atlantic Highlands, Monmouth
County; Board of Education of the Borough of
Highlands, Monmouth County; Board of
Education of the Borough of Atlantic
Highlands, Monmouth County; and Board of
Education of the Henry Hudson Regional
School District, Monmouth County,

Respondents.

and

Board of Education of Shore Regional
High School, Monmouth County,

Petitioner,

v.

Borough of Sea Bright, Monmouth County;
Borough of Highlands, Monmouth County;
Borough of Atlantic Highlands, Monmouth
County; Board of Education of the Borough of
Highlands, Monmouth County; Board of
Education of the Borough of Atlantic
Highlands, Monmouth County; and Board of
Education of the Henry Hudson Regional
School District, Monmouth County,

Respondents.

Respondents in this matter are municipalities and boards of education who passed resolutions related to a proposed regionalization plan. Currently, students from the Borough of Sea Bright attend pre-K through eighth grade in Oceanport and high school at Shore Regional High School. Sea Bright does not have its own board of education. Sea Bright wishes to leave Oceanport and Shore Regional and join the boards of education of Highlands, Atlantic Highlands, and Henry Hudson Regional in a new all-purpose K-12 regional school district. To that end, Sea Bright passed a resolution authorizing special counsel to file a petition with the Commissioner seeking approval to place the question before the voters as a referendum. The other respondent municipalities and boards of education passed similar resolutions.

In their petitions, the boards of education of Oceanport and Shore Regional ask the Commissioner to find that the resolutions are invalid because 1) Sea Bright does not have the authority to withdraw by resolution from Oceanport and Shore Regional or to pursue a referendum on the creation or enlargement of a regional school district, and 2) the November election date referenced in the resolutions is not authorized by statute.¹

Respondents filed motions to dismiss both petitions. Respondents argue that unless and until the Commissioner authorizes the referenda and the voters approve the actions, Oceanport's and Shore Regional's challenges are not ripe for review. Respondents also contend that the Borough of Sea Bright is a member of the Oceanport consolidated school district and the Shore Regional limited purpose regional school district and therefore is one of the entities

¹ Along with its petition of appeal, Shore Regional filed a motion to consolidate its petition (Agency Dkt. No. 190-7/22) with Oceanport's petition (Agency Dkt. No. 157-6/22). The parties subsequently provided a consent order in which they agreed to the consolidation of the two petitions. The Commissioner concludes that the standards for consolidation set forth in *N.J.A.C. 1:1-17.3* have been met and, accordingly, orders that the two petitions be consolidated.

authorized by *N.J.S.A. 18A:13-47.11* to seek the Commissioner's approval regarding a regionalization referendum. Finally, respondents argue that placing the requested referenda on the ballot for the November election is permissible, and further note that their request to the Commissioner for approval seeks permission for that election or as soon thereafter as permitted by law, such that they will be guided by the Commissioner's direction on this issue.

In response, petitioners argue that there are disputed issues of material fact – for example, whether Oceanport is a consolidated school district – that preclude dismissal at this stage of the proceedings and instead warrant transmittal of the matter to the Office of Administrative Law as a contested case. Petitioners assert that they will suffer harm in the event of Sea Bright's withdrawal, such that they have standing to pursue their petitions, and that their petitions are ripe for review. Petitioners reiterate the arguments made in their petitions, contending that Sea Bright does not have the authority to withdraw from Oceanport and Shore Regional and that the requested referendum cannot be placed on the November ballot.

Along with their opposition to the motions to dismiss, petitioners filed a motion to consolidate their petitions with respondents' request to the Commissioner for approval of their referenda. However, the request for the Commissioner's approval of respondents' referenda is not a controversy or dispute over which the Commissioner has jurisdiction pursuant to *N.J.S.A. 18A:6-9*. Procedures related to the formation, enlargement, and dissolution of regional school districts are set forth at *N.J.S.A. 18A:13-34 et seq.* Those procedures are entirely different than the procedures related to the adjudication of controversies and disputes set forth in *N.J.A.C. 6A:3*. Accordingly, the Commissioner finds it inappropriate to consolidate the matters

and denies petitioners' motion to consolidate their petitions with respondents' request for approval of their referenda.

Upon review, the Commissioner grants respondents' motion to dismiss. In evaluating a motion to dismiss, "the inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim." *Rieder v. State*, 221 N.J. Super. 547, 552 (App. Div. 1987) (internal quotation and citation omitted). The Commissioner must assume the facts asserted by the petitioner are true. *Velantzas v. Colgate-Palmolive Co.*, 109 N.J. 189, 192 (1988).

The resolutions passed by the respondents state that each entity: 1) finds that good cause exists to pursue a referendum regarding regionalization; 2) seeks to have the referendum placed on the November ballot with approval from the Commissioner; and 3) authorizes special counsel to submit a petition to the Commissioner seeking approval of the referendum. The act of passing a resolution is unquestionably within the authority of boards of education and the governing bodies of municipalities. Moreover, the resolutions are fairly limited in substance. They do not authorize the withdrawal of Sea Bright from Oceanport or Shore Regional, or the placing of any measures on the ballot, or the creation, enlargement, or dissolution of any regional school district. The resolutions only authorize the steps necessary to seek the Commissioner's approval of those actions. Even if petitioners are correct that Sea Bright does not have the authority to withdraw from Oceanport or Shore Regional, or that there are any other reasons for the Commissioner to deny respondents' request for approval of their referenda, that does not make the resolutions invalid. Boards of education and municipalities

may submit any number of requests to the Commissioner; if the ultimate disposition of those requests is a denial, the submission of the request is not rendered improper.

Because the approval or denial of a regionalization referendum is governed by *N.J.S.A. 18A:34* and is not a controversy or dispute subject to the procedures set forth in *N.J.A.C. 6A:3*, this decision does not reach the substance of any arguments regarding Sea Bright's ability to withdraw from Oceanport or Shore Regional. Those issues will be considered by the Commissioner as part of the *N.J.S.A. 18A:34* review. Additionally, pursuant to *N.J.S.A. 18A:6-9*, controversies and disputes concerning the conduct of school elections shall not be deemed to arise under the school laws, and therefore any claims regarding the timing of the requested referenda, if approved by the Commissioner, are not justiciable in this forum.

Accordingly, respondents' motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


ANGELINA ALLEN McMILLAN, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 3, 2023

Date of Mailing: April 5, 2023

² 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.