#120-11 (OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu13022-10_2.html)

TRACEE EDMONDSON,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP OF PITTSGROVE, SALEM COUNTY,	:	DECISION
RESPONDENT.	:	

SYNOPSIS

Pro-se petitioner, a resident of Pittsgrove who is currently home-schooling her child, challenged – for the second time – the respondent Board's decision to send all first and second graders in its district to a school located in and leased from the neighboring Borough of Elmer. The instant petition offers a cause of action distinct from those articulated in the first petition, urging that respondent's use of the Elmer school facility violates New Jersey's compulsory education and residency laws. Respondent Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: petitioner's new claims were subsumed in and resolved once the send-receive relationship was adjudicated as valid and lawful, and are therefore barred under the principle of *res judicata;* by failing to present all of her claims in the first action, petitioner violated the entire controversy doctrine; and petitioner failed to present a factual or legal basis upon which relief can be granted. Accordingly, the ALJ granted respondent's motion for summary decision and dismissed the petition.

Upon independent review of the record and the Initial Decision of the OAL, the Acting Commissioner concurred with the ALJ that respondent is entitled to summary decision, finding that the claims in petitioner's most recent appeal are without merit or support in the law, and precluded by both the entire controversy doctrine and by petitioner's withdrawal of her child from the public schools.

March 18, 2011

OAL DKT. NO. EDU 13022-10
AGENCY DKT. NO. 600-10/10

TRACEE EDMONDSON,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP OF PITTSGROVE, SALEM COUNTY,	:	DECISION
RESPONDENT.	:	

Petitioner comes before the Commissioner for the second time, challenging the respondent Pittsgrove Board of Education's decision to send all first and second graders in its district to a school located in and leased from the neighboring Borough of Elmer.[1] As a basis for her second appeal, petitioner offers a cause of action distinct from those articulated in the first petition. Upon review of the record, Initial Decision and parties' exceptions, the Commissioner grants respondent's motion to dismiss this latest petition.

At the outset, the Commissioner must concur with the Administrative Law Judge's (ALJ) conclusion that the entire controversy doctrine applies to this case. Petitioner's prior appeal, filed in May of 2010, implicated the same parties, facts and transactions. The theory of recovery now offered by petitioner could have – and should have – been asserted in the first appeal.

[1] The previous appeal brought by petitioner was a challenge to the send-receive relationship between Pittsgrove and Elmer which provided Pittsgrove with access to the Elmer school facility in question. The Commissioner dismissed the appeal on October 25, 2010 (Commissioner Decision No. 449-10).

The entire controversy doctrine:

> embodies the principle that the adjudication of a legal controversy should occur in one litigation in only one court; accordingly, all parties involved in a litigation should at the very least present in that proceeding all of their claims and defenses that are related to the underlying controversy. . . . The purposes of the doctrine include the needs of economy and the avoidance of waste, efficiency and the reduction of delay, fairness to parties, and the need for complete and final disposition through the avoidance of piecemeal decisions.
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> [*Cogdell v. Hosp. Ctr. at Orange*, 116 *N.J.* 7, 15, (1989).]

In light of the foregoing, the instant appeal would be justifiably dismissed on procedural grounds.

The Commissioner also takes notice of respondent's exhibit R-15, a handwritten letter dated November 16, 2010 from petitioner to respondent stating her intention to home school her child. Such a withdrawal of a child from a school district's purview removes any issues concerning the child's education from the jurisdiction of the Commissioner. Nonetheless, the Commissioner will exercise his discretion to offer comment on the merits of this controversy.

The arguments in the current petition and the exceptions to the Initial Decision that petitioner submitted urge that respondent's use of the Elmer school facility violates New Jersey's compulsory education and residency laws. In the petition, these laws were initially identified as *N.J.S.A.* 18A:38-25 and *N.J.S.A.* 18A:38-1. *N.J.S.A.* 18A:38-25[2] states, in pertinent part, that parents and guardians shall cause children from 6-16 years of age to regularly attend 1) the public schools of their districts, 2) day schools with equivalent instruction, or 3) other

[2]**Attendance required of children between six and 16; exceptions.**
Every parent, guardian or other person having custody and control of a child between the ages of six and 16 years shall cause such child regularly to attend the public schools of the district or a day school in which there is given instruction equivalent to that provided in the public schools for children of similar grades and attainments or to receive equivalent instruction elsewhere than at school.

means of equivalent instruction. Petitioner erroneously interprets this statute to require that her child be educated in her school district.

If petitioner's interpretation were correct, it would conflict with the laws – such as *N.J.S.A.* 18A:38-8 – which allow school districts to enter into send-receive relationships. The rules of statutory construction dictate that laws shall, where possible, be interpreted to harmonize:

> When reviewing two separate enactments, the Court has an affirmative duty to reconcile them, so as to give effect to both expressions of the lawmakers' will. In other words, it is our obligation to make every effort to harmonize separate statutes, even if they are in apparent conflict, insofar as we are able to do so. . . . Statutes that deal with the same matter or subject should be read *in pari materia* and construed together as a "unitary and harmonious whole."
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> [*St. Peter's Univ. Hosp. v. Lacy*, 185 *N.J.* 1, 14-15 (2005) (citing *In re Adoption of a Child by W.P. and M.P.*, 163 *N.J.* 158, 182-83, (2000) (Poritz, C.J., dissenting) (citations and footnote omitted)).]

The gravamen of *N.J.S.A.* 18A:38-25 is not regulation of how districts provide public education, but rather an unambiguous directive to parents and guardians that they must see to it that their children are educated. Thus, petitioner's invocation of *N.J.S.A.* 18A:38-25 is rejected.

Petitioner's reliance on *N.J.S.A.* 18A:38-1 is similarly misplaced. This statute mandates, in pertinent part, that a student who is domiciled in or otherwise properly residing in a public school district on a long term basis is eligible for a free education provided by that district.[3] Rather than dictating how school districts may provide public education, this statute's

[3] **18A:38-1. Attendance at school free of charge**
Public schools shall be free to the following persons over five and under 20 years of age:
a. Any person who is domiciled within the school district;
b. (1) Any person who is kept in the home of another person domiciled within the school district and is supported by such other person gratis as if he were such other person's own child, upon filing by such other person with the secretary of the board of education of the district, if so required by the board, a sworn statement that he is domiciled

plain language establishes criteria for determining in which school district a student may enroll. To construe it as petitioner urges would contradict the language and legislative intent, and ignore the directives of such other statutes as *N.J.S.A.* 18A:38-8.

Finally, it has been found by the Third Circuit Court of Appeals that there is nothing in New Jersey's residency or compulsory education laws . . . requiring that each school district construct and maintain its own schools in order to fulfill its obligation to educate students domiciled within the district. *See, English v. Bd. of Educ.*, 301 *F.*3d 69, 72-73 (3d Cir. 2002), *cert. denied* 537 *U.S.* 1148 (2003).

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within the district and is supporting the child gratis and will assume all personal obligations for the child relative to school requirements and that he intends so to keep and support the child gratuitously for a longer time than merely through the school term, and a copy of his lease if a tenant, or a sworn statement by his landlord acknowledging his tenancy if residing as a tenant without a written lease, and upon filing by the child's parent or guardian with the secretary of the board of education a sworn statement that he is not capable of supporting or providing care for the child due to a family or economic hardship and that the child is not residing with the resident of the district solely for the purpose of receiving a free public education within the district. The statement shall be accompanied by documentation to support the validity of the sworn statements, information from or about which shall be supplied only to the board and only to the extent that it directly pertains to the support or nonsupport of the child. If in the judgment of the board of education the evidence does not support the validity of the claim by the resident, the board may deny admission to the child. The resident may contest the board's decision to the commissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the commissioner on the validity of the claim and shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in this subsection. The board of education shall, at the time of its decision, notify the resident in writing of his right to contest the board's decision to the commissioner within 21 days. No child shall be denied admission during the pendency of the proceedings before the commissioner. In the event the child is currently enrolled in the district, the student shall not be removed from school during the 21-day period in which the resident may contest the board's decision nor during the pendency of the proceedings before the commissioner. If in the judgment of the commissioner the evidence does not support the claim of the resident, he shall assess the resident tuition for the student prorated to the time of the student's ineligible attendance in the school district. Tuition shall be computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance and shall be collected in the manner in which orders of the commissioner are enforced. Nothing shall preclude a board from collecting tuition from the resident, parent or guardian for a student's period of ineligible attendance in the schools of the district where the issue is not appealed to the commissioner . . . .

c. Any person who fraudulently allows a child of another person to use his residence and is not the primary financial supporter of that child and any person who fraudulently claims to have given up custody of his child to a person in another district commits a disorderly persons offense;

d. Any person whose parent or guardian, even though not domiciled within the district, is residing temporarily therein, but any person who has had or shall have his all-year-round dwelling place within the district for one year or longer shall be deemed to be domiciled within the district for the purposes of this section;

e. Any person for whom the Division of Youth and Family Services in the Department of Children and Families is acting as guardian and who is placed in the district by the division;

f. Any person whose parent or guardian moves from one school district to another school district as a result of being homeless and whose district of residence is determined pursuant to section 19 of P.L.1979, c.207 (C.18A:7B-12).

In her exceptions to the Initial Decision, petitioner adds *N.J.S.A.* 18A:8-1[4] as support for her position. However, that statute – which directs that most municipalities will subsume congruent school districts – contains no guidance about the manner in which a school district may 1) implement its responsibility to educate its students, or 2) allocate its resources. Petitioner also cites to *Shuster v. Bd. of Education of Hardwick Tp.,* 17 *N.J. Super.* 357 (App. Div. 1952), a case in which a deed condition with no relevance to this controversy was construed, and *Joshua Crawford,* et al. *v. Lucille Davy,* et al., 2009 *N.J. Super.* LEXIS 3226 (Docket No. A-1297-07T2), an unpublished case with no precedential value.

In the latter case, a class of students from school districts that were not performing well argued, *inter alia,* that enforcement of the laws preventing them from obtaining free educations in other districts was unconstitutional. They demanded the restructuring of New Jersey's system of locally-based public schools, but the Appellate Division ruled that prior to there having been an opportunity for the full implementation and operation of the statutory evaluative and remedial measures outlined [in *N.J.S.A.* 18A:7A-10 *et seq.*], the relief that the plaintiff class demanded was premature and, consequently, non-justiciable. *Crawford v. Davy, supra*, at 37. Thus – even if the case had precedential value, and even if the plaintiff class had prevailed – the relief demanded by the class was the opposite of the relief that the petitioner in this case seeks.

In summary, the claims in petitioner's most recent appeal are without merit or support in the law, and precluded both by the entire controversy doctrine and by petitioner's

[4] ***N.J.S.A.* 18A:8-1 Municipalities as separate school districts; exceptions.** Each municipality shall be a separate local school district except as otherwise provided in this chapter and except that each incorporated village shall remain a part of the district in which it is situated at the time of its incorporation.

withdrawal of her child from the public schools. Respondent's motion to dismiss the petition is accordingly granted.

IT IS SO ORDERED.[5]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 18, 2011
Date of Mailing: March 21, 2011

[5] This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).