

EDU # 5290-01
C # 280-02L
SB # 35-02

BOARD OF EDUCATION OF THE :
BOROUGH OF MOUNTAIN LAKES, :
MORRIS COUNTY, : STATE BOARD OF EDUCATION

PETITIONER-RESPONDENT, : DECISION ON MOTION

V. :

BOARD OF EDUCATION OF THE :
TOWNSHIP OF BOONTON, MORRIS :
COUNTY, :

RESPONDENT-APPELLANT. :

Decision on motion by the Commissioner of Education, July 25, 2002

For the Respondent-Appellant, Riker, Danzig, Scherer, Hyland & Perretti,
L.L.P. (Lance J. Kalik, Esq., of Counsel)

For the Petitioner-Respondent, Porzio, Bromberg & Newman, P.C. (Vito A.
Gagliardi, Jr., Esq., of Counsel)

The Board of Education of the Township of Boonton (hereinafter "Boonton Township") has been sending its high school students to be educated by the Board of Education of the Borough of Mountain Lakes (hereinafter "Mountain Lakes") since 1992. In May 2001, Mountain Lakes filed a petition with the Commissioner seeking to sever the sending-receiving relationship. On August 13, 2001, Boonton Township filed a motion for summary decision contending that Mountain Lakes' failure to designate an

alternative district to which Boonton Township could send its students if its sending-receiving relationship was terminated was fatal to Mountain Lakes' petition.

On July 3, 2002, an Administrative Law Judge ("ALJ") denied Boonton Township's motion for summary decision, finding that N.J.S.A. 18A:38-13 did not require a receiving district to designate an educational alternative for the sending district before termination of a sending-receiving relationship could be granted. In doing so, the ALJ stressed that although the case law required a sending district to designate an educational alternative for its students when it petitioned the Commissioner to sever a sending-receiving relationship, it did not place such an obligation on receiving districts. The ALJ also found that because N.J.S.A. 18A:38-11 requires every district lacking high school facilities to designate a high school outside the district for the attendance of its students, it is solely the prerogative of the sending district to choose where its students should be educated. Consequently, requiring the receiving district to name an educational alternative for the sender would permit a sender to argue that the receiver had "overstepped its bounds by trying to force the sending district to send its students to [a] particular school." Order denying summary decision, slip op. at 7. The ALJ therefore concluded that Mountain Lakes was not required to identify an educational alternative for Boonton Township's students. The ALJ further concluded that once the receiving district submitted a feasibility study addressing the statutory criteria, the burden at hearing would shift to the sender to establish that there is no feasible educational alternative. Id.

Boonton Township then sought interlocutory review of the ALJ's determination from the Commissioner. On July 25, 2002, the Commissioner exercised his discretion

under N.J.A.C. 1:1-14.10 and determined not to grant the request for interlocutory review.

Boonton Township now is requesting that the State Board grant interlocutory review of the ALJ's determination, and urges us to hold that a receiving district's petition to terminate a sending-receiving relationship must be dismissed if it does not identify an alternative district that is willing to accept the sending district's students. In support of its position, Boonton points to the State Board's decision in Board of Education of the City of Absecon v. Board of Education of the City of Pleasantville, decided by the State Board, October 5, 1988, and the Commissioner's decision in Board of Education of the Borough of Belmar v Board of Education of the City of Asbury Park, decided by the Commissioner, June 20, 1989, both of which held that a sending district's failure to identify an educational alternative for its students is fatal to an application to terminate pursuant to N.J.S.A. 18A:38-13.

Upon our review of the papers filed, we grant Boonton's request for interlocutory review. After careful consideration, we affirm the ALJ's determination of the issue that has been presented for the reasons expressed in his order. As the ALJ correctly pointed out, it is the sending district, not the receiving district, that is authorized to determine where its students are to be educated. That being the case, no legal significance can be placed on any educational alternative identified by the receiver. In addition, the sending district, not the receiving district, is the district that is in a position to ascertain the educational needs of its students as well as to assess the practicalities attached to choosing any particular alternative. Hence, any requirement that the

receiving district identify an educational alternative for the sending district would have no meaning.

However, as we emphasized in Absecon, supra, it is the obligation of the State Board of Education to ensure that the students from a sending district will have an educational alternative before we direct termination of a sending-receiving relationship. As the ALJ determined, in cases where termination of a sending-receiving relationship is sought by the receiver rather than the sender, issues relating to the availability of an educational alternative for the sender's students are appropriately resolved at hearing, and we agree that the sender bears the initial burden of demonstrating that there is no feasible educational alternative available to it. Once the sending district has met that burden, the receiving district must be given the opportunity in rebuttal to show that a feasible educational alternative does in fact exist. In this respect, we again stress that neither the Commissioner nor the State Board would approve termination of a sending-receiving relationship when it has been established that no feasible educational alternative exists. Moreover, it is axiomatic that the lack of an educational alternative for a sender's students would indicate that the sending district would experience a significant negative impact within the meaning of N.J.S.A. 18A:38-13 should a given sending-receiving relationship be terminated.

October 2, 2002

Date of mailing _____