

	SUPREME COURT OF NEW JERSEY
	: Docket No.: 090182
	:
I/M/O THE VERIFIED PETITION	: SUPERIOR COURT OF NEW JERSEY
FOR THE PROPOSED	: APPELLATE DIVISION
CREATION OF A PK-12 ALL-	: Docket No.: A-0716-23T4
PURPOSE REGIONAL SCHOOL	:
DISTRICT BY THE BOROUGH	: CIVIL ACTION
OF SEA BRIGHT, BOROUGH OF	:
HIGHLANDS, BOROUGH OF	: ON PETITION FOR CERTIFICATION
ATLANTIC HIGHLANDS,	: FROM THE FINAL JUDGMENT OF
HENRY HUDSON REGIONAL	: THE SUPERIOR COURT OF
SCHOOL DISTRICT, ATLANTIC	: NEW JERSEY, APPELLATE DIVISION
HIGHLANDS SCHOOL	:
DISTRICT, AND HIGHLANDS	: SAT BELOW:
BOROUGH SCHOOL DISTRICT,	: Hon. Thomas W. Sumners, Jr., P.J.A.D.
MONMOUTH COUNTY.	: Hon. Lisa Perez Friscia, J.A.D.
	: Hon. Stanley L. Bergman, J.S.C., t/a
	:

**AMENDED PETITION FOR CERTIFICATION ON BEHALF OF
THE SHORE REGIONAL HIGH SCHOOL DISTRICT BOARD OF
EDUCATION AND THE OCEANPORT BOARD OF EDUCATION**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
STATEMENT OF THE MATTER INVOLVED	1
PROCEDURAL HISTORY	2
QUESTIONS PRESENTED	7
REASONS WHY CERTIFICATION SHOULD BE GRANTED	
THE SUPREME COURT SHOULD GRANT CERTIFICATION BECAUSE THE APPELLATE DIVISION’S DECISION DOES NOT COMPORT WITH A PLAIN READING OF THE STATUTES AT ISSUE, AND IMPROPERLY EXPANDS THE SCOPE OF N.J.S.A. 18A:13-47.11	8
COMMENTS ON THE APPELLATE DIVISION’S DECISION	
POINT I	
THE COURT’S HOLDING THAT A SCHOOL DISTRICT EXISTED IN SEA BRIGHT AFTER 2009 AND THAT THE BOROUGH OF SEA BRIGHT IS THE GOVERNING BODY OF THAT SCHOOL DISTRICT CONTRADICTS THE PLAIN LANGUAGE OF N.J.S.A. 18A:8-43 TO -51	10
POINT II	
THE COURT’S HOLDING THAT A “MERGED” DISTRICT, PURSUANT TO N.J.S.A. 18A:8-44, IS SYNONYMOUS WITH A “CONSOLIDATED SCHOOL DISTRICT” IN N.J.S.A. 18A:13-47.11, IS INCONSISTENT WITH THE STATUTORY PROVISIONS GOVERNING MERGED AND CONSOLIDATED DISTRICTS.....	13

POINT III

THE COURT’S HOLDING THAT SEA BRIGHT IS A
“CONSTITUENT DISTRICT” OF THE OCEANPORT AND
SHORE REGIONAL HIGH SCHOOL DISTRICTS BELIES
THE FACT THAT THE SEA BRIGHT CEASED TO EXIST
FOLLOWING ITS ELIMINATION IN 2009..... 15

POINT IV

THE COURT’S HOLDING THAT THE BOROUGH OF SEA
BRIGHT IS AN ENTITY PERMITTED TO SEEK
WITHDRAWAL FROM OCEANPORT AND SHORE
REGIONAL MUST BE REVERSED BECAUSE IT DOES
NOT COMPORT WITH THE PLAIN LANGUAGE OF
N.J.S.A. 18A:13-47.11 16

POINT V

THE APPELLATE DIVISION ERRED BY HOLDING THAT
N.J.S.A. 18A:13-47.11 MUST BE CONSTRUED AS
PERMITTING SEA BRIGHT THE RIGHT TO WITHDRAW
TO PROTECT ITS SOVEREIGNTY AND SELF-
DETERMINATION..... 17

CONCLUSION 20

TABLE OF AUTHORTIES

Cases

Page

<u>Borough of Rocky Hill v. State of New Jersey</u> , 420 N.J. Super. 365 (Ch. Div. 2010)	18,19
<u>DiProspero v. Penn</u> , 183 N.J. 477 (2005)	11
<u>English v. Board of Education of Boonton</u> , 301 F. 3d 69 (3d Cir. 2002)	18,19
<u>In re Virtua-Wes Jersey Hosp. Voorhees for a Certificate of Need</u> , 194 N.J. 413 (2008)	11
<u>Lozano v. Frank DeLuca Const.</u> , 178 N.J. 513 (2004)	11
<u>N.J. Div. of Child Prot. & Permanency v. Y.N.</u> , 220 N.J. 165 (2014).....	11
<u>Spade v. Select Comfort Corp.</u> , 232 N.J. 504 (2018)	11
<u>Township of Franklin v. Board of Education</u> , 74 N.J. 345 (1977)	18

Statutes/Rules

N.J.S.A. 18A:8	5,12
N.J.S.A. 18A:8-1	12
N.J.S.A. 18A:8-25 to -41	9,13,14
N.J.S.A. 18A:8-42	13
N.J.S.A. 18A:8-43 to -51	<i>passim</i>
N.J.S.A. 18A:8-44	<i>passim</i>
N.J.S.A. 18A:8-45	16

N.J.S.A. 18A:13	6,7
N.J.S.A. 18A:13-2	13
N.J.S.A. 18A:13-47.1 <i>et seq.</i>	4
N.J.S.A. 18A:13-47.11	<i>passim</i>

STATEMENT OF THE MATTER INVOLVED

This matter arises out of efforts by the Borough of Sea Bright (“Sea Bright”) to change the school districts in which its resident children are educated. Petitioners, the Shore Regional High School District Board of Education (“Shore Regional”), and the Oceanport Board of Education (“Oceanport”) oppose these efforts as the governing bodies of the school districts that have educated the students of Sea Bright for decades. Prior to July 1, 2009, Sea Bright had a non-operating district that was a constituent of Shore Regional and engaged in a send/receive relationship with Oceanport. On July 1, 2009, Sea Bright’s district was “eliminated” pursuant to N.J.S.A. 18A:8-44(a) and merged with the Oceanport to create a new Oceanport School District, which encompassed both municipalities. (Aa794 – Aa795).¹ Since then, students in Sea Bright attend Oceanport schools as residents, and attend Shore Regional by virtue of Oceanport being a constituent of Shore Regional.

Subsequently, the Legislature enacted N.J.S.A. 18A:13-47.11, which provided for certain enumerated entities to seek withdrawal from consolidated or limited purpose regional school districts to join an all-purpose regional district. Pursuant to this statute, Sea Bright seeks to separate from both Oceanport and Shore Regional and send its students to another regional district. Shore Regional and Oceanport

¹ “AaXX” shall refer to the appendix filed by Appellants Shore Regional and Oceanport before the Appellate Division.

argue that N.J.S.A. 18A:13-47.11 applies to a finite list of entities, and that Sea Bright whose non-operating school district was eliminated, is not one such entity.

PROCEDURAL HISTORY

On July 15, 2022, the municipalities of Sea Bright, Highlands and Atlantic Highlands, and the Boards of Education of Highlands, Atlantic Highlands, and the Henry Hudson Regional School District (“Henry Hudson”) (collectively “Joint Petitioners”), filed a Verified Joint Petition (“Joint Petition”) for Regionalization with the Commissioner of Education. (Aa22 – Aa371).

On June 23, 2022, Oceanport filed a Petition of Appeal with the Commissioner, arguing that Sea Bright lacked the legal authority to withdraw from Oceanport. (Aa754). Thereafter, on July 19, 2022, Shore Regional filed a similar Petition of Appeal. (Aa756 – Aa757). Joint Petitioners moved to dismiss both Petitions of Appeal. (Aa755; Aa757). These Petitions of Appeal were consolidated, and Shore Regional and Oceanport jointly opposed the motions to dismiss. (Aa758). The Petitions of Appeal, and the motions to dismiss them, remained undecided until April 3, 2023, when the Commissioner granted Respondents’ Motion to Dismiss Shore Regional’s and Oceanport’s Consolidated Petitions. (Aa762).²

² Shore Regional and Oceanport filed a Notice of Appeal from that decision on May 5, 2023, seeking review of the Commissioner’s decision dismissing their

In March 2023, the Boards of Education of Highlands, Atlantic Highlands, and Henry Hudson filed an Amended Petition for Regionalization seeking the Commissioner's permission to expand from a limited purpose regional school district to an all-purpose regional school district. (Aa372 – Aa748). This Amended Petition did not include Sea Bright. (Aa372).

On July 21, 2023, the Commissioner approved the Amended Petition for Regionalization that was filed sans Sea Bright, and directed that a special election on the expansion of the Henry Hudson occur in September 2023. (Aa776). The July 21, 2023, decision made no mention of the then still-pending Joint Petition filed on July 15, 2022, which included Sea Bright. (Aa776).

On September 6, 2023, Sea Bright filed a letter with the Commissioner which ostensibly renewed its request as outlined in the July 2022 Joint Petition. (Aa779 – Aa784). Oceanport and Shore Regional objected to the relief requested through a joint letter to the Commissioner dated September 8, 2023, and requested that the July 15, 2022, Joint Petition be dismissed as moot. (Aa787 – Aa789).

On September 22, 2023, the Commissioner dismissed the original July 15, 2022, Joint Petition as moot³ and found that Sea Bright was permitted to seek

consolidated Petitions. That matter bore docket number A-2652-22T4 and was ultimately dismissed as moot on December 15, 2023. (Aa796 – Aa798).

³ Shore Regional and Oceanport's appeal did not take issue with this portion of the Commissioner's decision, nor is this portion of the decision implicated in the instant Petition for Certification.

withdrawal under N.J.S.A. 18A:13-47.1 *et seq.* (Aa19). Additionally, the Commissioner held that Oceanport/Shore Regional’s “reading of the statute belies its clear language.” (Aa20). Instead, the Commissioner states, the statute applies to both boards of education and municipalities: “the governing body of a municipality constituting a constituent district of a limited purpose regional district, part of an all-purpose regional district, or part of a consolidated school district’ as governmental bodies that may request to join or form an enlarged regional school district.” (Aa20). Therefore, the Commissioner held that Sea Bright may seek withdrawal from Oceanport and Shore Regional under N.J.S.A. 18A:13-47.11, although she noted that Sea Bright’s request was premature. (Aa20).

Shore Regional and Oceanport filed a Notice of Appeal on November 6, 2023. On June 10, 11, 12, 2024, respectively, the Boards of Education for Highlands, Atlantic Highlands, and Henry Hudson entered into a settlement agreement with Shore Regional and Oceanport and were voluntarily dismissed from the appeal.⁴ On June 24, 2024, the Boroughs of Highlands and Atlantic Highlands were dismissed from this appeal upon the granting of their own motions. On July 17,

⁴ Sea Bright and the Borough of Highlands have filed a Complaint and Order to Show Cause in the Superior Court against the Tri-Districts seeking to invalidate said settlement agreement. On June 24, 2024, their request for emergent relief was denied, but that matter continues before the Hon. Linda G. Jones, J.S.C. under docket number MON-L-1930-24.

2024, Sea Bright filed a motion to accelerate the instant appeal, which was granted on August 2, 2024, over opposition from Shore Regional and Oceanport.

Finally, on July 30, 2024, Sea Bright and the Borough of Highlands filed a new petition with the Commissioner seeking the same relief previously sought in the July 15, 2022, Joint Petition. That new Petition is pending before the Commissioner, with opposition to it having been filed from Henry Hudson, Shore Regional, and Oceanport.

The Appellate Division affirmed the Commissioner's decision on November 26, 2024.⁵ The Court found that, despite the district in Sea Bright being eliminated pursuant to N.J.S.A. 18A:8-44, a school district continued to exist in Sea Bright. (Pa24 – Pa25). Further, the municipal governing body was authorized to act on the school district's behalf and seek withdrawal under N.J.S.A. 18A:13-47.11. (Pa25).

Regarding the difference between consolidated districts and merged districts, the Appellate Division found that neither term is defined in N.J.S.A. 18A:8, and therefore relied upon the dictionary definition of both terms to find that they may be interpreted interchangeably, rejecting the argument that they are different statutory creations. (Pa26 – Pa27). As an extension of these rulings, the court found that Sea Bright was a constituent district of both Oceanport and Shore Regional. (Pa27).

⁵ A copy of the Appellate Division's opinion is appended hereto. References to the opinion shall appear in this Petition as "PaXX."

Next, the Court found that Sea Bright was actually a newly created school district pursuant to N.J.S.A. 18A:8-44, and that it should be governed by the provisions of N.J.S.A. 18A:13. (Pa27) (citing N.J.S.A. 18A:8-50). The Court went on to find that, “because the legislature did not specifically set forth terms or rules anywhere in Title 18A for the withdrawal of non-operating school districts merged pursuant to N.J.S.A. 18A:8-44, and specifically applied the Act to these districts,” the provisions of N.J.S.A. 18A:13-47.11 applied to Sea Bright. (Pa27). Further, Sea Bright should be treated as a constituent district of both a consolidated and regional district. (Pa28).

The Court also rejected the arguments of Shore Regional and Oceanport regarding the legislature’s use of different categories of public entities in different portions of the statute which are not set forth in N.J.S.A. 18A:13-47.11 based upon its finding that Sea Bright is the governing body of a local school district. (Pa29). Next, the Court rejected the arguments of Shore Regional and Oceanport regarding the statutory differences between the operation a consolidated school district and a merged school district. (Pa29 – Pa30). Considering the fact that in consolidated districts the membership of the board of education is apportioned between constituents, while in a merged district, like Oceanport, members are elected at large, the Court determined that the differences between the two competing statutory

provisions were eclipsed, because “new districts including Sea Bright” are governed pursuant to N.J.S.A. 18A:13. (Pa30).

Finally, the court held that the size of Oceanport as compared to Sea Bright was another basis to conclude that the statute was intended to apply to Sea Bright. (Pa31). Because elections in Oceanport were held at-large, the arguments advanced by Shore Regional and Oceanport would mean Sea Bright had “little to no real ability to ever withdraw from the district.” (Pa31). Therefore, because the statutes did not otherwise provide a means for Sea Bright to leave Shore Regional and Oceanport, N.J.S.A. 18A:13-47.11 should be interpreted to provide such a mechanism. (Pa32).

Following issuance of the Appellate Division’s opinion, Shore Regional and Oceanport filed a Notice of Petition for Certification on December 16, 2024. They now file the instant Petition for Certification.

QUESTIONS PRESENTED

1. Did the Appellate Division err in holding that N.J.S.A. 18A:8-44 created a new Sea Bright school district, and that the Borough of Sea Bright is its governing body?
2. Did the Appellate Division err in holding that, as used in N.J.S.A. 18A:13-47.11, the term “consolidated school district” is synonymous with a merged school district created after the elimination of a non-operating school district pursuant to N.J.S.A. 18A:8-44?
3. Did the Appellate Division err in holding that the Borough of Sea Bright is a constituent district of the Shore Regional High School District and the Oceanport School District?

4. Did the Appellate Division err in holding that the Borough of Sea Bright is an entity permitted to seek withdrawal from Shore Regional and Oceanport pursuant to N.J.S.A. 18A:13-47.11?

REASONS WHY CERTIFICATION SHOULD BE GRANTED

THE SUPREME COURT SHOULD GRANT CERTIFICATION BECAUSE THE APPELLATE DIVISION'S DECISION DOES NOT COMPORT WITH A PLAIN READING OF THE STATUTES AT ISSUE, AND IMPROPERLY EXPANDS THE SCOPE OF N.J.S.A. 18A:13-47.11.

N.J.S.A. 18A:13-47.11 is a relatively new statute, with no history of judicial interpretation. As a result, there are no specific conflicts between prior decisional law and the Appellate Division's decision presented in this Petition. However, the Appellate Division's ruling interprets the statutory provisions at issue in a manner that is directly at odds with the plain language of the provisions being interpreted. The decision and the reasoning underpinning said decision must be reviewed since it is irreconcilable with the plain language of the statute. The Supreme Court should therefore grant certification to review and correct the Appellate Division's various interpretations of the statutes.

Petitioners note four significant areas in which the Appellate Division has interpreted the relevant statutory provisions in a manner that is irreconcilable with the statutory language. First, the Appellate Division found that a new school district was created in Sea Bright, and that the borough was the governing body of that school district. Certification should be granted because the Supreme Court must

clarify whether a school district continues to exist following its elimination pursuant to N.J.S.A. 18A:8-44. Further, the Court must clarify whether N.J.S.A. 18A:8-44 operates to create a new school district in a municipality after a non-operating district is eliminated and merged with its send/receive partner, as set forth therein.

Second, the Appellate Division determined that a “merged” school district and a “consolidated” school district were synonymous, despite being created by different statutory articles, and being subject to different rules for governance. Certification should be granted because the Supreme Court must clarify that merged school districts created pursuant to N.J.S.A. 18A:8-43 to -51 are different statutory entities than consolidated school districts, created pursuant to N.J.S.A. 18A:8-25 to -41. Third, because no “Sea Bright School District” exists, the Appellate Division’s holding that Sea Bright is a constituent district of both Shore Regional and Oceanport is contrary to the relevant statutes. The Supreme Court should grant Certification to clarify that a school district eliminated pursuant to N.J.S.A. 18A:8-44 ceases to exist and cannot be a constituent of any other entity post-elimination.

Finally, flowing from the three prior errors, the Appellate Division erred in finding that Sea Bright was an entity described in N.J.S.A. 18A:13-47.11(a). In doing so, the Appellate Division unjustifiably expanded the statute’s applicability beyond its legislatively-enacted boundaries. Accordingly, the Supreme Court must grant certification to clarify the scope of applicability with regard to entities to which

the process set forth in N.J.S.A. 18A:13-47.11. For these reasons the instant Petition for Certification filed by Shore Regional and Oceanport should be granted.

COMMENTS ON THE APPELLATE DIVISION’S DECISION

I. THE COURT’S HOLDING THAT A SCHOOL DISTRICT EXISTED IN SEA BRIGHT AFTER 2009 AND THAT THE BOROUGH OF SEA BRIGHT IS THE GOVERNING BODY OF THAT SCHOOL DISTRICT CONTRADICTS THE PLAIN LANGUAGE OF N.J.S.A. 18A:8-43 TO -51.

Contrary to the Appellate Division’s holding, there is no Sea Bright School District, and the municipal government of Sea Bright is not the governing body of a school district, as referenced in N.J.S.A. 18A:13-47.11. N.J.S.A. 18A:8-43 to -51 provided for the elimination of non-operating school districts, the merger of an eliminated district with that district’s send/receive partner, and the management and governance of the newly-created merged district. N.J.S.A. 18A:8-44(a) provides that “the executive county superintendent of schools shall eliminate any non-operating district and merge that district with the district with which it participates in a sending-receiving relationship.” N.J.S.A. 18A:8-44(a) (emphasis added). It was pursuant to this statute that the Commissioner eliminated the former non-operating school district that existed in Sea Bright on June 30, 2009, and merged it with Oceanport to create a new Oceanport School District. (Aa794 – Aa795).

The Appellate Division’s holding stands in direct conflict with the plain language of the statute cited above. The Court specifically, and illogically, found

that following the Commissioner's 2009 elimination of the Sea Bright School District a school district nevertheless continued to exist in Sea Bright. (Pa24 – Pa25). Further, the Court found that N.J.S.A. 18A:8-44 actually created a new school district in Sea Bright, over which the Borough of Sea Bright was the governing body. (Pa27). This holding is not supported by factual record and is contrary to the statute. As such, in affirming the Commissioner of Education's decision, the Appellate Division itself made a decision that did not follow the law, was not supported by the factual record, and was arbitrary, capricious, and unreasonable. See In re Virtua-Wes Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008).

The fact that the Appellate Division's holding directly contradicts the plain language of the statutes at issue is of particular concern because “[t]he starting point of all statutory interpretation must be the language used in the enactment.” Spade v. Select Comfort Corp., 232 N.J. 504, 515 (2018) (quoting N.J. Div. of Child Prot. & Permanency v. Y.N., 220 N.J. 165, 178 (2014)). As the Appellate Division set forth, courts “ascribe to the statutory words their ordinary meaning and significance.” DiProspero v. Penn, 183 N.J. 477, 492 (2005). Further, a “court should not resort to extrinsic interpretive aids” where the language of a statute is clear and unambiguous. Ibid. (quoting Lozano v. Frank DeLuca Const., 178 N.J. 513, 522 (2004)). Against the practice of ascribing ordinary meaning to the language

in an enactment, the Appellate Division reviewed a statute calling for the elimination of non-operating school districts, and their merger with other districts, and determined not only that a stand-alone school district existed in Sea Bright following its 2009 elimination, but that the statute actually created a new district in Sea Bright for which the municipality was the governing body. The creation of this legal fiction is not supported by any tenet of statutory construction.

In doing so, the Court began its analysis by noting language in N.J.S.A. 18A:8-1 that “[e]ach municipality shall be a separate local school district except as otherwise provided in this chapter.” The Appellate Division stated that this provision was “enacted as part of these consolidation and regionalization statutes [and] clearly intended for a municipality like Sea Bright, although merged, to retain its status as a local school district thereby preserving its sovereignty from Oceanport.” (Pa25). The Court’s statement here is simply not true. N.J.S.A. 18A:8-1 was enacted in 1967, not 2009 or 2021, and sets forth the baseline structure of public educational systems in the state that each municipality shall have its own local school district. The court essentially dismisses the qualifying language in that very provision, which states: “except as otherwise provided in this chapter.” *Ibid.* (emphasis added). N.J.S.A. 18A:8 goes on to set forth circumstances which deviate from the one-municipality/one-district general rule.

One such circumstance is where a non-operating district is eliminated pursuant to N.J.S.A. 18A:8-44. Other examples include all-purpose regional school districts, see N.J.S.A. 18A:8-42 and N.J.S.A. 18A:13-2(a), and consolidated school districts. See N.J.S.A. 18A:8-25 to -41. Included in its reasoning, the Appellate Division states that Sea Bright remained a separate local school district “especially because it was not defined differently anywhere in Title 18A.” (Pa24). However, this statement completely ignores the fact that merged districts are specifically described in N.J.S.A. 18A:8-43 to -51. The Appellate Division’s holding is irreconcilable with the statutes at issue. Therefore, the Petition for Certification should be granted.

II. THE COURT’S HOLDING THAT A “MERGED” DISTRICT, PURSUANT TO N.J.S.A. 18A:8-44, IS SYNONYMOUS WITH A “CONSOLIDATED SCHOOL DISTRICT” IN N.J.S.A. 18A:13-47.11, IS INCONSISTENT WITH THE STATUTORY PROVISIONS GOVERNING MERGED AND CONSOLIDATED DISTRICTS.

“Merged” and “consolidated” school districts are created by separate statutory mechanisms, and governed by different statutory articles. The Appellate Division’s holding that they are synonymous stands in direct conflict with the statutes at issue. N.J.S.A. 18A:8-44 provides for the elimination of non-operating school districts and the creation of new “merged” districts comprised of the eliminated non-operating district and the district with which the eliminated non-operating district participated

in a send/receive agreement. Merged districts created pursuant to N.J.S.A. 18A:8-44 are managed and governed pursuant to the provisions set forth in N.J.S.A. 18A:8-43 to -51. Elsewhere in the education law, the statutes provide for the creation, management, and governance of “consolidated school districts.” N.J.S.A. 18A:8-25 to -41. By the plain terms of their respective statutory articles, merged districts and consolidated school districts are different statutory creations, which are governed by differently elected and composed boards of education.

Again, the Appellate Division’s holding conflicts with the plain language of the statutes it is interpreting. However, as opposed to the holding discussed above regarding the existence of a school district in Sea Bright, here the Appellate Division found that neither “merged” nor “consolidated” districts are defined in the education statutes, and thereafter determined that they should be considered synonymous for the purpose of N.J.S.A. 18A:13-47.11. The Court’s statement that these two terms are not defined in the statute is again not accurate. The Legislature specifically framed different statutory sections setting forth the means of creating each type of district, the governance of each type of district, including the apportionment and means of electing their respective board of education members, and various other provisions outlining governance and management matters applicable only to those specific types of district. Compare N.J.S.A. 18A:8-25 to -41 (concerning

consolidated school districts) with N.J.S.A. 18A:8-43 to -51 (concerning elimination of non-operating school districts and their merger with other districts).

Thereafter, the Appellate Division reverted to a dictionary to conclude that the words “merge” and “consolidate” could be synonyms. However, as set forth above, extrinsic sources should not be relied upon unless there is ambiguity in the statutory provision at issue. Here, there are differentiated types of districts, and the terms “merged” and “consolidated” have easily-identifiable and obvious statutory meanings. There was no need for the Court to circumvent those statutory meanings in order to rely on a dictionary definition that was not intended from the overall context of the statutory provision. It is unmistakable that Sea Bright’s local school district was eliminated and merged with Oceanport pursuant to N.J.S.A. 18A:8-44, not consolidated with Oceanport pursuant to N.J.S.A. 8-25 *et seq.*

Again, the Appellate Division’s holding is irreconcilable with the language of the applicable statutes, which provide for wholly separate statutory animals of merged and consolidated school districts, which are not synonymous with each other.

III. THE COURT’S HOLDING THAT SEA BRIGHT IS A “CONSTITUENT DISTRICT” OF THE OCEANPORT AND SHORE REGIONAL HIGH SCHOOL DISTRICTS BELIES THE FACT THAT THE SEA BRIGHT CEASED TO EXIST FOLLOWING ITS ELIMINATION IN 2009.

Contrary to the Appellate Division’s holding, the school district in Sea Bright was eliminated for all purposes, and therefore does not continue to exist. The

statutes refer to the merged district as a wholly new creation. See, e.g., N.J.S.A. 18A:8-45 (appropriating to the singular “new district”). The eliminated non-operating district cannot form part of a consolidated school district, nor can it be a constituent district of a limited purpose regional district—it simply no longer exists.

Constituent districts of limited-purpose regional districts all maintain their own separate boards of education, which provide for the grades of education their students are not receiving in the regional district. The Appellate Division’s holding that Sea Bright constituted a constituent district of both Shore Regional and Oceanport conflicts directly with the 2009 elimination of Sea Bright’s school district. Certification should be granted so that the Court may clarify that a district eliminated pursuant to N.J.S.A. 18A:8-44 ceases to exist and cannot be artificially revived as a constituent of any other entity following its elimination.

IV. THE COURT’S HOLDING THAT THE BOROUGH OF SEA BRIGHT IS AN ENTITY PERMITTED TO SEEK WITHDRAWAL FROM OCEANPORT AND SHORE REGIONAL MUST BE REVERSED BECAUSE IT DOES NOT COMPORT WITH THE PLAIN LANGUAGE OF N.J.S.A. 18A:13-47.11.

N.J.S.A. 18A:13-47.11 sets forth several specific entities that are entitled to seek withdrawal from a regional or consolidated school district. The Appellate Division’s decision that Sea Bright constituted a governing body of a school district is at odds with the plain language of the statutes. N.J.S.A. 18A:13-47.11 would only apply to Sea Bright if it is either the governing body of a non-operating school

district, or the governing body of a municipality constituting a constituent district of a limited purpose regional school district or “part of a consolidated school district.”

By holding that Sea Bright was the governing body of a school district, that the Oceanport School District constituted a “consolidated school district,” and that Sea Bright was a constituent district of both Shore Regional and Oceanport, the Appellate Division contradicted the plain language of the education statutes and expanded the statute’s applicability beyond its legislatively-enacted boundaries. Accordingly, the Supreme Court must grant certification to clarify the applicable scope of entities to which the process set forth in N.J.S.A. 18A:13-47.11 applies.

V. THE APPELLATE DIVISION ERRED BY HOLDING THAT N.J.S.A. 18A:13-47.11 MUST BE CONSTRUED AS PERMITTING SEA BRIGHT THE RIGHT TO WITHDRAW TO PROTECT ITS SOVEREIGNTY AND SELF-DETERMINATION.

The Appellate Division reasoned that, if the text of N.J.S.A. 18A:13-47.11 were to exclude municipalities such as Sea Bright from withdrawing from their merged district, it would disempower such municipalities, and “leave[] Sea Bright with little to no real ability to ever withdraw from the district.” (Pa31). In essence, because Sea Bright is less-populous than Oceanport the Court determined the merger of Sea Bright and Oceanport dilutes the votes of Sea Bright citizens and limits that municipality’s self-determination. However, nothing in the record indicates that Sea

Bright citizens are not represented by the members of the Oceanport Board of Education or that Sea Bright citizens cannot hold membership on the board.

In Borough of Rocky Hill v. State of New Jersey, the Chancery Division in Somerset County considered a similar argument and rejected it. 420 N.J. Super. 365 (Ch. Div. 2010).⁶ That case involved a constitutional challenge to N.J.S.A. 18A:8-43 to -51. Id. at 370-71. In part, the plaintiffs contended that the elimination of the non-operating districts and merger with larger districts violated the Federal and State Equal Protection Clause by denying them permanent representation on the new board of education contrary to the one person, one vote principle. Id. at 377-78. Because the new seats were elected at large, their votes, as a smaller municipality, were being diluted, and therefore, their rights were being infringed. Id. at 381.

Judge Accurso disagreed. After considering both Federal and State caselaw including English v. Board of Education of Boonton, 301 F. 3d 69 (3d Cir.2002) and Township of Franklin v. Board of Education, 74 N.J. 345 (1977), cert. denied, 435 U.S. 950 (1978), Judge Accurso reasoned that “the elimination of school districts that do not operate schools . . . does not offend the principle of one person, one vote, [and] plaintiffs' rights are not infringed.” Rocky Hill, 420 N.J. Super. at 386-87. Essentially, the fact that the residents of the former non-operating school district are

⁶ While not binding on the Appellate Division or this Court, Judge Accurso’s reasoning is nonetheless instructive.

now voting for representation in a bigger pond did not mean that they were no longer represented. The representation right does not rest with the municipality, but with the individual voter. See id. at 384 (citing English, 301 F.3d at 75). Further, “[t]here is no constitutional tenet that requires the Legislature to provide for municipal representation in fashioning a school district.” Ibid. This language is particularly relevant here, because the Appellate Division adopted Sea Bright’s position that the statute must be interpreted to allow its withdrawal precisely because its elimination left Sea Bright with little autonomy over the future of its educational system.

But in eliminating non-operating districts, the Legislature sought to do exactly that: encourage fiscal responsibility in districts that were duplicative. Id. at 385. The Legislature’s goal was realized: Sea Bright was merged with Oceanport. Here, the Appellate Division’s holding implies that only through Sea Bright’s withdrawal is such fiscal responsibility realized. However, what Sea Bright is seeking is the ability to unravel the fiscal stability that was realized by Commissioner’s actions under the 2009 law. As Judge Accurso found regarding N.J.S.A. 18A:8-44, the elimination of non-operating districts, like Sea Bright, was rationally related to the State’s interest in creating efficient and cost-effective districts. Rocky Hill, 420 N.J. Super. at 386.

Therefore, it follows that reading N.J.S.A. 18A:13-47.11 as inapplicable to eliminated, former non-operating school districts such as Sea Bright, does not lead to a sovereignty-destroying result, despite what the Court concluded. See (Pa30 –

Pa31). The Legislature did not provide for the shared governance of non-operating districts, or the placing of non-operating districts on hiatus until a future date. Rather, it mandated that they be eliminated, and so Sea Bright's school district was eliminated. To that end, absent clear statutory direction, it is not the judiciary's place to read a contradictory meaning into N.J.S.A. 18A:13-47.11 which essentially revives the Sea Bright School District to its former status, reestablishing it as a political entity. That would be a manifestly absurd result, not the plain reading of the statute advanced by Shore Regional and Oceanport.

The Appellate Division's opinion has essentially ruled that, notwithstanding its elimination over fifteen years ago, the Sea Bright School District has continued to exist in a phantom-like state under the eye of the municipal government. There is no legal basis for such a decision, and no reasonable reading of the statutes at issue supports it. The Supreme Court must grant certification and reverse the Appellate Division's decision.

CONCLUSION

As set forth below, the Appellate Division's decision is contrary to the plain language of N.J.S.A. 18A:13-47.11, and other relevant statutes. Accordingly, this Court should grant the instant Petition for Certification.

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