



*State of New Jersey*

DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
25 MARKET STREET  
P.O. BOX 112  
TRENTON, N.J. 08625-0112

PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lt. Governor*

MATTHEW J. PLATKIN  
*Attorney General*

MICHAEL WALTERS  
*Acting Director*

March 3, 2025

**VIA ECOURTS**

Heather Joy Baker, Clerk  
Supreme Court of New Jersey  
R.J. Hughes Justice Complex  
25 Market Street, P.O. Box 970  
Trenton, New Jersey 08625

Re: I/M/O the Verified Petition for the Proposed Creation of a Pk-12 All-Purpose Reg'l Sch. Dist. by the Borough of Sea Bright, Borough of Highlands, Borough of Atlantic Highlands, Henry Hudson Reg'l Sch. Dist., Atl. Highlands Sch. Dist., and Highlands Borough Sch. Dist., Monmouth Cnty.  
Docket No.: 090182

On Petition for Certification to the Supreme Court of New Jersey from the November 26, 2024 Judgment of the Superior Court of New Jersey, Appellate Division, Docket No. A-0716-23

Sat Below: Hon Thomas W. Sumners, Jr., P.J.A.D.  
Hon. Lisa Perez Friscia, J.A.D.  
Hon. Stanley L. Bergman, J.S.C., (t/a)

Letter Brief on behalf of Respondent, New Jersey Commissioner of Education, in Opposition to Petition for Certification. \_\_\_\_\_

Dear Ms. Baker:

Please accept this letter brief on behalf of Respondent, the New Jersey Commissioner of Education, in opposition to the petition for certification filed



by petitioners, the Oceanport Board of Education (“Oceanport”) and the Shore Regional High School Board of Education’s (“Shore Regional”). The Commissioner relies primarily on its brief filed below, copies of which are attached.

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**PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS<sup>1</sup>**

<sup>1</sup> The facts and procedural history are intertwined and so are presented together for the Court’s convenience.

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The Department relies on, and incorporates by reference, the factual and procedural history in its brief filed in the Appellate Division, supplemented as follows.

**A. School District Regionalization.**

In 2007, the Legislature enacted the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-11 to -35, which created the office of an executive county superintendent (ECS) for each county. (SCa22).<sup>2</sup> The ECS is generally charged with promoting administrative and operational efficiencies and cost savings within school districts, and with the authority to eliminate all districts, other than county-based districts and preschool or kindergarten through grade 12 districts, in accordance with a consolidation plan submitted to the Commissioner for the establishment or enlargement of regional school districts. N.J.S.A. 18A:7-8.

On June 30, 2009, the Governor signed into law L. 2009, c. 78, which sets forth the procedures for the elimination of school districts that are not operating schools and merging them with other districts. N.J.S.A. 18A:8-43 to -51; see N.J.S.A. 18A:8-43 (defining a “[n]on-operating district” as “a school district

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<sup>2</sup> “Pa” refers to Oceanport and Shore Regional’s appendix to the Appellate Division; “SCa” refers to Oceanport and Shore Regional’s appendix with this petition; and “Pb” refers to Oceanport and Shore Regional’s brief.

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that is not operating schools”). The legislation amended N.J.S.A. 18A:7-8 and restated the mandate for the elimination of non-operating districts in accordance with a plan and schedule approved by the Commissioner.<sup>3</sup> N.J.S.A. 18A:7-8(g); see N.J.S.A. 18A:8-44 (directing the ECS to “eliminate any non-operating district and merge that district with the district with which it participates in a sending-receiving relationship”).

Following the enactment of this statute, on July 1, 2009, the Commissioner announced the elimination of thirteen non-operating districts that were in a sending-receiving relationship with a single school district. (SCa4). Among the non-operating districts eliminated was the Sea Bright Borough School District, which was merged and consolidated with the Oceanport Borough School District. Ibid. Students residing in Sea Bright currently attend Oceanport for grades pre-kindergarten through eight, and the Shore Regional High School District for grades nine through twelve. Ibid.

The Legislature further augmented Title 18A of the New Jersey Statutes Annotated concerning school district regionalization when it enacted L. 2021, c.

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<sup>3</sup> The New Jersey Department of Education also enacted regulations setting forth the process for eliminating non-operating districts in an effort to carry out the Legislature’s already-stated goal of promoting regionalization and consolidation under N.J.S.A. 18A:7-8. See N.J.A.C. 6A:23A-2.4.

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402, codified at N.J.S.A. 18A:13-47.1 to - 47.11, and titled “Financial Incentives to Form or Enlarge Regional Districts.” (SCa23). The legislation provides a financial incentive for public school districts and governing bodies to explore school district regionalization. In particular, it established a grant program to reimburse eligible costs associated with conducting feasibility studies “that support the creation of meaningful and implementable plans to form or expand regional school districts.” N.J.S.A. 18A:13-47.2; see N.J.S.A. 18A:13-47.3 (setting forth criteria for application to the grant program); N.J.S.A. 18A:13-47.4 (regarding application review and reimbursement for feasibility study); N.J.S.A. 18A:13-47.7 (stating that notice will be provided to the Senate President, the Speaker of the General Assembly, and the Minority Leaders of the Senate and General Assembly of receipt of an application for a grant award); N.J.S.A. 18A:13-47.8 (providing that an annual report shall be submitted to the Governor and the Legislature analyzing the grant program). In addition, it authorizes a board of education or municipality to request permission from the Commissioner to withdraw to form or enlarge a regional school district. N.J.S.A. 18A:13-47.11.

**B. Sea Bright’s September 6, 2023 Petition and the  
Commissioner’s September 22, 2023 Decision.**

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In 2022, Sea Bright initiated efforts to withdraw from Oceanport and Shore Regional, and to form and join a new all-purpose regional school district along with the Highlands and Atlantic Highlands School Districts. (Pa24-42; SCa4). In particular, on July 15, 2022, the Boroughs of Sea Bright, Highlands, Atlantic Highlands, and the boards of education of Highlands, Atlantic Highlands, and the Henry Hudson Regional School District (collectively “Tri-Districts”), filed a verified petition with the Commissioner requesting authorization to proceed to a referendum on the expansion of Henry Hudson from a limited-purpose regional school district serving grades seven through twelve to an all-purpose pre-kindergarten through twelve grade regional school district. (Pa24-42; SCa5). The joint petition also requested the inclusion of Sea Bright in the expanded all-purpose regional school district, when and if Sea Bright’s withdrawal from Oceanport and Shore Regional was approved. (Pa39-40; SCa5).

While the petition was pending, the Tri-Districts submitted an amended petition and feasibility study on March 17, 2023, (Pa372-748; SCa6), requesting to proceed to a referendum, without Sea Bright, to expand Henry Hudson to an all-purpose pre-kindergarten through twelve regional school district consisting of Atlantic Highlands and Highlands as constituent districts. (Pa394; Sca6).

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The Commissioner granted the unopposed, amended petition on July 21, 2023. (Pa19; Sc6).

On September 6, 2023, Sea Bright and Highlands submitted correspondence clarifying the relief they requested — i.e., that in the event the voters of Highlands and Atlantic Highlands approve the creation of Henry Hudson, the Commissioner should also approve Sea Bright’s withdrawal from Oceanport and Shore Regional so that it may join the newly regional school district. (Pa779-84; Sca6).

The Commissioner treated the September 6, 2023 correspondence as another amended petition, and issued a decision on September 22, 2023.<sup>4</sup> (Pa19-21; SCa6). Regarding Sea Bright’s petition for withdrawal, the Commissioner rejected Oceanport and Shore Regional’s argument that because they are “responsible for the education [of] the students of Sea Bright. . . only they have standing to seek withdrawal.” (Pa20; SCa7). Relying upon N.J.S.A. 18A:13-47.11(a), the Commissioner noted that the statute permits a board of education or municipality to request permission to form or enlarge a regional school district. (Pa19-21; SCa7-8). As such, the Commissioner found that Oceanport

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<sup>4</sup> The September 22, 2023 decision was issued by then-Acting Commissioner Angelica Allen-McMillan.

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and Shore Regional’s “reading of the statute clearly belies its clear language[,]” as the “statute contemplated that a municipality, such as Sea Bright, may seek withdrawal from a regional or consolidated school district.” (Pa20; SCa8). Thus, the Commissioner determined that Sea Bright has standing to seek withdrawal from Oceanport and Shore Regional in accordance with N.J.S.A. 18:13-47.11, but found that Sea Bright’s request to join Henry Hudson was “premature” as the referendum vote in Highlands and Atlantic Highlands to form the enlarged all-purpose district had not yet taken place. (Pa20; SCa8). The Commissioner advised that if the referendum passed, Sea Bright and the Tri-Districts could refile a joint request to form an enlarged regional school district. (Pa20-21; SCa8). Oceanport and Shore Regional appealed.

### **C. The Appellate Division’s November 26, 2024 Decision.**

On November 26, 2024, the Appellate Division issued a comprehensive decision affirming the Commissioner’s decision. (SCa1-34). Importantly, the court found that the Commissioner’s interpretation of N.J.S.A. 18A:13-47.11 “comported with the statute’s plain language and purpose that was passed as part of a larger statutory scheme following the enactment of N.J.S.A. 40A:65-1 to -35 and N.J.S.A. 18A:8-43 to -51, to provide financial incentives to encourage shared services, financial accountability, and consolidation and regionalization

of school districts.” (SCa3).

First, the court rejected Oceanport and Shore Regional’s argument that Sea Bright’s district ceased to exist after it merged with Oceanport. (SCa25). The court reasoned that N.J.S.A. 18A:8-1, which provides that “[e]ach municipality shall be a separate local school district except as otherwise provided in this chapter[,]” “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.” (SCa25).

Turning next to the plain language of the relevant statutory provisions, the court found that N.J.S.A. 18A:13-47.11 “vests the governing body of a municipality with the same rights a board of education would possess under the statute, including the right to withdraw[,]” and thus determined that the Legislature authorized Sea Bright’s governing body to “act in the stead of a school board” seeking to withdraw from its current districts. (SCa26). The court also noted that N.J.S.A. 18A:8-50 specifically declares that Sea Bright, as a new district formed pursuant to N.J.S.A. 18A:8-44, is governed by the provisions of Chapter 13 of Title 18A concerning school district regionalization — including the withdrawal provisions at N.J.S.A. 18A:13-47.11. (SCa27).

The court further determined that the terms “merger” and “consolidation”

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are not specifically defined in Title 18A, and in the absence of anything to the contrary, the Legislature intended to include merged districts as a form of consolidated districts. (SCa26-27). The court also found that as Sea Bright is a constituent district of Oceanport, it is also by operation a constituent district of Shore Regional. (SCa27). The court thus ultimately concluded that Sea Bright as a governing body of a “local school district constituting a constituent district of a limited purpose regional district (Shore Regional) . . . or part of a consolidated school district (Oceanport),” has standing to withdraw from Oceanport and Shore Regional pursuant to N.J.S.A. 18A:13-47.11. (SCa28).

In reaching this conclusion, the court explained that “without a specifically enunciated statutory provision or legislative purpose stating otherwise, tethering municipalities like Sea Bright to the larger, more populous Oceanport and foreclosing its ability to withdraw and to regionalize with other districts does not fit into the overall legislative purpose” of consolidation and regionalization of school districts. (SCa31).

This petition for certification followed.

### **LEGAL ARGUMENT**

**THIS COURT SHOULD DENY THE PETITION  
BECAUSE THE APPELLATE DIVISION  
APPLIED THE CORRECT LEGAL STANDARDS  
AND THE MATTER DOES NOT MERIT**

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**FURTHER REVIEW.**

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Certification is not warranted here. A petition for certification will be granted only when the Court's supervision is required—that is, if the petition presents an unsettled question of general public importance, if the decision below is in conflict with other appellate or Supreme Court decisions, or if the interests of justice so require. R. 2:12-4. Certification will be denied, by contrast, where the Appellate Division decision is essentially an application of settled legal principles to the facts of a case and does not present any special reason for review. See Fox v. Woodbridge Twp. Bd. Of Educ., 98 N.J. 513, 515-16 (1985) (O'Hern, J., concurring); In re Contract for Route 280, 89 N.J. 1, 1-2 (1982). This is precisely that type of case.

Here, Oceanport and Shore Regional challenge the interpretation of the withdrawal provisions of N.J.S.A. 18A:13-47.11. But the petition should be denied because it reiterates the same arguments that the Appellate Division's well-reasoned opinion considered and rejected. Because certification is intended to address important and unsettled questions of law that require this Court's attention, R. 2:12-4, certification is not appropriate here.

Oceanport and Shore Regional argue that the Appellate Division erred because the “decision does not comport with the plain reading of the statutes at

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issue, and improperly expands the scope of N.J.S.A. 18A:13-47.11.” (Pb8). Specifically, they contend that the Sea Bright does not qualify as one of the entities subject to N.J.S.A. 18A:13-47.11 because the school district ceased to exist after it was merged, and that a “merged” district is distinct from a “consolidated” district. (Pb10-15). Oceanport and Shore Regional are wrong. The Appellate Division correctly found that the Commissioner’s determination that Sea Bright is an entity that may seek withdrawal under N.J.S.A. 18A:47.11 is consistent with the Legislature’s intent to encourage consolidation and regionalization of school districts; it was not arbitrary, capricious, or unreasonable.

The statutory provision at the heart of this matter, N.J.S.A. 18A:13-47.11(a), supplements Chapter 13 of Title 18A and is a part of a broader statutory scheme concerning school district regionalization. N.J.S.A. 18A:13-47.1 to - 47.11. The legislation provides a financial incentive for public school districts and governing bodies to explore school district regionalization. As the Appellate Division explained, the statutory provisions concerning the elimination of non-operating school districts also indicate legislative intent to “regionalize school districts by encouraging financial accountability and reducing duplicative services by providing financial incentives.” (SCa24); see

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N.J.S.A. 18A:8-44(b) (providing that the ECS shall determine with which district the non-operating district will “merge,” and the determination will be based on the “district that is able to accommodate the merger with the least disruption to its finances and educational operations”); N.J.S.A. 18A:8-50 (declaring that [u]nless otherwise provided in this act, a new district formed pursuant to [N.J.S.A. 18A:8-44] shall be governed by the provisions of Chapter 13 of Title 18A”); N.J.S.A. 18A:8-51 (stating that “[n]othing in this act shall be construed to prohibit an [ECS] from including a former non-operating district in the consolidation plan submitted by the executive county superintendent to the commissioner”).

It is against this backdrop that the Appellate Division noted that “although N.J.S.A. 18A:8-44 eliminated Sea Bright's status as a non-operating local school district, Sea Bright as a municipality remained ‘a separate local school district’ pursuant to N.J.S.A. 18A:8-1 especially because it was not defined differently anywhere in Title 18A.” (SCa24); see N.J.S.A. 18A:8-46 (providing that for the purposes of calculating State school aid, both the former non-operating district and the district with which it is merged will continue to be considered separate school districts). Moreover, despite Oceanport and Shore Regional’s attempt to distinguish merged districts from consolidated districts, the ordinary meaning of

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the terms “merger” and “consolidation” are synonymous, and the overall statutory purpose of regionalization underscores that the Legislature intended to treat merged districts as a form of consolidated districts. (SCa26-27); see also N.J.A.C. 6A:23A-2.4 (governing the elimination of non-operating school districts and providing that the ECS’s plan to eliminate non-operating districts shall include the ECS’s “recommendation as to the most appropriate local public school district within the county for the . . . [non-operating district] with which to consolidate”).

And while it is true, as Oceanport and Shore Regional argue, that merged and consolidated districts have different elected and composed boards of education (Pb14), a plain reading of N.J.S.A. 18A:8-50 confirms that municipalities such as Sea Bright are still subject to the regionalization provisions set forth in N.J.S.A. 18A:13-47.11. (SCa30); N.J.S.A. 18A:8-50 (providing that a “new district formed pursuant to [N.J.S.A. 18A:8-44] shall be governed by the provisions of Chapter 13”). As the Appellate Division astutely noted, “no where in the statute does it state or even suggest the districts ‘merged’ with other districts in 2009 should not be considered consolidated with that district for withdrawal purposes despite the different election process delineated between merged and consolidated districts.” (SCa30). To otherwise require Sea

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Bright to first “demerge” before seeking withdrawal would be “illogical and contrary to legislative intent”, which reflects a commitment towards consolidation and regionalization of districts – not demerger. (SCa32); N.J.S.A. 18A:8-50; N.J.S.A. 18A:8-51.

Oceanport and Shore Regional’s remaining arguments fare no better. Their reliance on Borough of Rocky Hill v. State of New Jersey, a non-binding Chancery Division decision, for the proposition that the elimination of non-operating districts and merger with larger districts “does not offend the principle of one person, one vote” and deprive Sea Bright of representation, (Pb18-19), is misplaced. 420 N.J. Super. 365, 386-87 (Ch. Div. 2010). In Rocky Hill, the former non-operating districts brought a constitutional challenge to N.J.S.A. 18A:8-43 to -51, asserting a violation of the federal and State equal protection clause. 420 N.J. Super. at 377-78. But no such constitutional claims are being made here, and the matter involves the interpretation and examination of a different statutory provision and issue — the regionalization and withdrawal provisions at N.J.S.A. 18A:13-47.11.

As such, the court correctly determined that if Sea Bright is excluded from availing themselves of the withdrawal and regionalization provisions set forth in Chapter 13, it would frustrate the Legislature’s intent and contravene the

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express provisions within chapters 8 and 13, to encourage K-12 school district regionalization. (SCa32-33).

Thus, the Appellate Division followed well-settled legal principles in upholding that the Commissioner's decision that Sea Bright has standing to withdraw from Oceanport and Shore Regional "flows logically from the language in N.J.S.A. 18A:13-47.11, fulfills the legislative purpose of the Act, follows the common synonymous definitions of 'consolidate' and 'merge,' and is adequately supported by the record." (SCa33). Certification is not required to address that straightforward conclusion. And rather than raising issues of general public importance, Oceanport and Shore Regional merely questions the Appellate Division the affirmance of the Commissioner's interpretation of the regionalization statute as to Sea Bright and whether the court correctly applied the law to the facts of this case. But this determination does not implicate any public interest or special need for review, and as such, certification must be denied.

### **CONCLUSION**

For these reasons, and the reasons set forth in the Appellate Division's thoughtful opinion, this Petition for Certification should be denied.

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Respectfully submitted,

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY

By: /s/Amna T. Toor  
Amna T. Toor  
Deputy Attorney General  
Attorney ID #259182018  
Amna.Toor@law.njoag.gov

Donna Arons  
Assistant Attorney General  
Of Counsel

cc: All counsel of record (via eCourts)