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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NOS. A-2768-12T3  
A-2826-12T3  
A-1943-13T3  
A-1968-13T3

TOWNSHIP OF BERKELEY,

Petitioner-Appellant,

v.

CENTRAL REGIONAL BOARD OF  
EDUCATION,

Respondent/Cross-Petitioner-  
Appellant,

v.

TOMS RIVER REGIONAL SCHOOLS  
BOARD OF EDUCATION,<sup>1</sup>

Respondent/Cross-Respondent-  
Respondent,

and

BOROUGH OF ISLAND HEIGHTS, BOARD OF  
EDUCATION OF THE BOROUGH OF ISLAND  
HEIGHTS, BOROUGH OF SEASIDE HEIGHTS,  
BOARD OF EDUCATION OF THE BOROUGH OF  
SEASIDE HEIGHTS, BOROUGH OF OCEAN  
GATE, BOARD OF EDUCATION OF THE

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<sup>1</sup> Improperly pled as Board of Education of Toms River Regional  
School District.

BOROUGH OF OCEAN GATE, and  
MICHAEL RITACCO,

Respondents.

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TOWNSHIP OF BERKELEY,

Petitioner-Appellant,

v.

CENTRAL REGIONAL BOARD  
OF EDUCATION,

Respondent/Cross-Petitioner-  
Appellant,

v.

BOROUGH OF SEASIDE PARK, and  
BOARD OF EDUCATION OF THE  
BOROUGH OF SEASIDE PARK,

Respondents/Cross-Respondents-  
Respondents,

and

BOROUGH OF ISLAND HEIGHTS, BOARD  
OF EDUCATION OF THE BOROUGH OF  
ISLAND HEIGHTS, BOROUGH OF SEASIDE  
HEIGHTS, BOARD OF EDUCATION OF THE  
BOROUGH OF SEASIDE HEIGHTS, BOROUGH  
OF OCEAN GATE, and BOARD OF EDUCATION  
OF THE BOROUGH OF OCEAN GATE,

Respondents.

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Argued March 28, 2017 – Decided August 10, 2017

Before Judges Reisner, Rothstadt and Sumners.

On appeal from the Commissioner of Education, Agency Docket No. 348-11/09.

Francis J. Campbell argued the cause for appellant Township of Berkeley (Campbell & Pruchnik LLC, attorneys; Mr. Campbell, of counsel and on the briefs; Roslyne G. Novack, on the briefs).

Christopher Dasti argued the cause for appellant Central Regional Board of Education (Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors, attorneys; Arthur Stein, on the briefs).

Vito A. Gagliardi, Jr., argued the cause for respondents Seaside Park Board of Education and Borough of Seaside Park (Porzio, Bromberg & Newman, PC, attorneys; Mr. Gagliardi, of counsel; Kerri A. Wright and Phillip C. Bauknight, on the brief).

Marguerite Kneisser argued the cause for respondent Toms River Regional Schools Board of Education (Carluccio, Leone, Dimon, Doyle & Sacks, LLC, attorneys; Stephan R. Leone, of counsel; Ms. Kneisser, on the brief).

Lauren A. Jensen, Deputy Attorney General, argued the cause for respondent Commissioner of Education (Christopher S. Porrino, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Ms. Jensen, on the brief).

PER CURIAM

In these four consolidated appeals, petitioners Berkeley Township and Central Regional School District (collectively, petitioners) have each appealed from two final decisions issued by the Commissioner of Education. The Commissioner's January 10,

2013 decision adopted the initial decision of an administrative law judge (ALJ) dismissing as moot petitions filed against the Toms River Board of Education and its former superintendent, Michael Ritacco. The Commissioner's November 4, 2013 decision adopted an initial decision denying petitioners' motions to amend their petitions, because the amendments sought to add a party over which the Commissioner had no jurisdiction and sought relief that was beyond the Commissioner's jurisdiction to provide. Agreeing with the ALJ, the Commissioner concluded that the new claims, which petitioners sought to assert, should be adjudicated in Superior Court or elsewhere, and not before the Commissioner. For the reasons that follow, we affirm the January 10, 2013 and November 4, 2013 final decisions.

The history of the underlying dispute was exhaustively detailed in this court's prior opinion in Borough of Seaside Park v. Commissioner of New Jersey Department of Education, 432 N.J. Super. 167, 177-90 (App. Div.), certif. denied, 216 N.J. 367 (2013), and in the ALJ's and Commissioner's decisions in this case. The Central Regional school district consists of five Ocean County municipalities, including Seaside Park and Berkeley Township. For approximately a decade, Seaside Park, which is smaller and more affluent than most of the other municipalities in the district, has been trying to either withdraw from the

regional district or obtain a modification of the formula by which it contributes to the district's costs.

In 2009, some of the parents in Seaside Park began sending their children to school in nearby Toms River, rather than sending them to the Central Regional district schools. Initially, by agreement with the Seaside Park Board of Education, Toms River allowed the children to attend its schools without paying out-of-district tuition. However, after petitioners complained to the Commissioner, Toms River began charging tuition. According to petitioners, a local citizens group known as Citizens Aligned for Responsible and Equitable Schools (C.A.R.E.S.) actually paid the students' tuition. Petitioners contend that C.A.R.E.S. obtained the tuition funding through an illegal scheme in which Seaside Park awarded C.A.R.E.S. a no-bid municipal contract for work the group did not actually perform.

The Seaside Park opinion addressed the right of individual Seaside Park parents to send their children to out-of-district schools. "They [the parents] are not required to send their children to Central Regional. They can send their children to other schools at their own expense, relocate to another school district, or even home-school their children." Id. at 222.

The pertinent education statute, N.J.S.A. 18A:38-3, authorizes any school district to permit out-of-district students

to attend its school system, with or without paying tuition. Putting aside whether Toms River could lawfully permit Seaside Park students to attend without paying tuition in the circumstances of this case, the dispute over the "free tuition" policy was rendered moot in 2011, when Toms River instituted a policy of requiring tuition payments. See Greenfield v. N.J. Dep't of Corr., 382 N.J. Super. 254, 257-58 (App. Div. 2006) (addressing the mootness doctrine). Accordingly, substantially for the reasons stated by the ALJ and adopted by the Commissioner, we affirm the January 10, 2013 decision dismissing the original petitions as moot.

Considering the record in light of the applicable standard of review, we likewise find no basis to disturb the Commissioner's decision denying the motions to file amended petitions. See Bd. of Educ. of Bor. of Englewood Cliffs v. Bd. of Educ. of the City of Englewood, 257 N.J. Super. 413, 455-56 (App. Div. 1992), aff'd o.b., 132 N.J. 327 (1993). The new claims petitioners sought to assert raised legal issues that were beyond the Commissioner's jurisdiction. As we have previously recognized, although the Commissioner has plenary jurisdiction to determine controversies arising under the school laws, N.J.S.A. 18A:6-9, that does not mean the Commissioner has jurisdiction over every conceivable controversy that concerns a board of education. See Archway

Programs, Inc. v. Pemberton Twp. Bd. of Educ., 352 N.J. Super. 420, 424-26 (App. Div. 2002). In Archway, for example, we held that a breach of contract claim against a board of education did not fall within the Commissioner's jurisdiction, but instead was properly filed in the Law Division. Id. at 431. However, to the extent that the contract claim implicated legal issues within the Commissioner's jurisdiction, the court might, under the doctrine of primary jurisdiction, refer that discrete issue to the Commissioner for resolution. Id. at 425.

In this case, petitioners allege that the Seaside Park municipal government, and the Seaside Park Board of Education (BOE), conspired with C.A.R.E.S. to illegally provide public funds with which to pay local students' tuition to attend the Toms River schools. According to petitioners, the conspiracy involved the awarding of an allegedly illegal no-bid contract to C.A.R.E.S., for work that the organization itself did not actually perform. Petitioners also alleged that one or more members of the municipal governing body or the BOE had conflicts of interest in approving or facilitating the contract, and that C.A.R.E.S. was not operating as a legitimate charitable organization.

We agree with the Seaside Park respondents that, so long as the Toms River Board of Education permits it, Seaside Park parents can lawfully pay tuition and send their children to the Toms River

schools.<sup>2</sup> See Seaside Park, supra, 432 N.J. Super. at 222; N.J.S.A. 18A:38-3. The parents can raise the tuition by holding bake sales, soliciting private donations, or by any other lawful means. However, the crux of petitioners' claims is that the tuition money was obtained by unlawful means, and that the alleged unlawful funding conspiracy should cease. Their proposed amended petitions asserted that the various named respondents (including C.A.R.E.S.) committed fraud and money laundering, N.J.S.A. 2C:21-25, as well as violations of the Local Public Contracts Law, local government ethics laws, and statutes governing non-profit corporations. None of those causes of action arose under the school laws. We agree with the Commissioner that such claims, against the municipal defendants and C.A.R.E.S., should be asserted in the Superior Court. See, e.g., R. 4:69-1. Additionally or alternatively, some of the claims may fall within the jurisdiction of the Local Finance Board, see N.J.S.A. 40A:9-22.4, or the county prosecutor.<sup>3</sup>

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<sup>2</sup> We do not mean to imply that Toms River must charge tuition; that issue is moot and we do not address it. Nor do we address a situation, not present here, where a sending and receiving agreement, or a private-tuition arrangement, will increase racial segregation in the public schools. See Englewood Cliffs, supra, 257 N.J. Super. at 450-51, 473-74.

<sup>3</sup> For the sake of completeness, we note that, if petitioners prove their underlying claims in the trial court, but some aspect of the



Petitioners' remaining arguments are without sufficient merit to warrant discussion, beyond the following brief comments. See R. 2:11-3(e)(1)(E).

The parties engaged in discovery for over a year. We find no abuse of discretion on the part of the ALJ or the Commissioner in not delaying the decisions here to permit more discovery. See Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011). Further, additional discovery would not have affected the jurisdictional decision or the mootness issue.

Contrary to petitioners' arguments, the Commissioner did not implicitly or explicitly approve either a de-regionalization plan or the withdrawal of Seaside Park from the Central Regional school district. The fact that a handful of parents in a tiny school district chose to send their children to a school in another district, pursuant to N.J.S.A. 18A:38-3, did not constitute de-regionalization or withdrawal from the district. As the Commissioner noted, given the few students involved and the termination of the "free tuition" arrangement, he would not "exercise the extraordinary remedy of injunction to preclude Toms

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relief they seek concerns a remedy that is within the Commissioner's exclusive jurisdiction to provide, the court could refer that discrete issue to the Commissioner under the doctrine of primary jurisdiction. See Archway, supra, 352 N.J. Super. at 425.

River from allowing individual Seaside Park students from attending its schools on a tuition-payment basis."

As previously addressed above, to the extent petitioners contend that an unlawful scheme is being used to raise the tuition money, that claim belongs in a forum other than the Department of Education.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.



CLERK OF THE APPELLATE DIVISION