

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4084-13T2

IN RE PETITION FOR AUTHORIZATION
TO CONDUCT A REFERENDUM ON THE
WITHDRAWAL OF THE BOROUGH OF
WOODCLIFF LAKE FROM THE PASCACK
VALLEY REGIONAL SCHOOL DISTRICT.

Argued April 5, 2017 – Decided July 20, 2017

Before Judges Fuentes, Simonelli and Gooden
Brown.

On appeal from the New Jersey Department of
Education.

William Harla argued the cause for appellants
Township of River Vale and Borough of
Hillsdale (DeCotiis, FitzPatrick & Cole, LLP,
attorneys; Victoria A. Flynn, on the briefs).

Kerri A. Wright argued the cause for
respondent Borough of Woodcliff Lake (Porzio,
Bromberg & Newman, P.C., attorneys; Vito A.
Gagliardi, Jr., of counsel and on the brief;
Ms. Wright, on the brief).

Caroline G. Jones, Deputy Attorney General,
argued the cause for respondent Board of
Review (Christopher S. Porrino, Attorney
General, attorney; Melissa H. Raksa, Assistant
Attorney General, of counsel; Ms. Jones, on
the brief).

PER CURIAM

Appellants Township of River Vale (River Vale) and Borough of Hillsdale (Hillsdale)¹ appeal from the March 27, 2014 final agency decision of respondent Board of Review of the Department of Education (Board) to grant the petition of respondent Borough of Woodcliff Lake (Woodcliff Lake) to pursue a referendum to withdraw from the Pascack Valley Regional School District (the Regional). We affirm.

We begin with a review of the authority pertinent to this appeal. N.J.S.A. 18A:13-51 to -81 establish the process to withdraw from a limited purpose regional school district, such as the Regional. A constituent school district "may, by resolution, apply to the county superintendent of schools to make an investigation as to the advisability of withdrawal of such local district from the regional district." N.J.S.A. 18A:13-51. Within sixty days of the request, the executive county superintendent must issue a report as to the advisability of the proposed withdrawal and the effect upon the educational and financial condition of the withdrawing district and the regional district, or upon each of the remaining constituent districts. N.J.S.A.

¹ We shall sometimes collectively refer to River Vale and Hillsdale as appellants.

18A:13-52. Prior to issuing the report, the executive county superintendent may require the constituent school districts to submit a feasibility study in order to determine the educational and financial impact of the withdrawal. Ibid.

Within thirty days after the filing of the executive county superintendent's report, the municipal governing body or the board of education of the withdrawing district may petition the Commissioner of Education for permission to submit the question of withdrawal to the voters of all constituent districts. N.J.S.A. 18A:13-54. After the filing of any answers to the petition, the Commissioner then submits the matter to a board of review to determine "the effect of the proposed withdrawal . . . upon the educational and financial condition of the withdrawing and the remaining districts." N.J.S.A. 18A:13-56.

The basis for the Board's decision "is closely circumscribed." In re Petition for Authorization to Conduct a Referendum on the Dissolution of Union Cty. Sch. Dist. No. 1, 298 N.J. Super. 1, 7 (App. Div.), certif. denied, 149 N.J. 37 (1997). The Board may only deny a petition to withdraw from a limited purpose regional school district upon a finding that:

1. An excessive debt burden will be imposed upon the remaining districts, or the withdrawing district, or upon any of the constituent districts in the event of a dissolution;

2. An efficient school system cannot be maintained in the remaining districts or the withdrawing district, or in any of the constituent districts in the event of a dissolution, without excessive costs;

3. Insufficient pupils will be left in the remaining districts, or in any of the constituent districts in the event of a dissolution, to maintain a properly graded school system; or

4. Any other reason, which it may deem to be sufficient[.]

[N.J.S.A. 18A:13-56(b).]

See also In re Petition for Authorization to Conduct a Referendum on the Withdrawal of North Haledon from the Passaic Cty. Manchester Reg'l High Sch. Dist., 181 N.J. 161, 173 (2004). As we have stated:

Although N.J.S.A. 18A:13-56(b)(1) mandates that a petition be denied if an excessive debt burden will result, the statute does not define what constitutes an excessive debt burden. N.J.S.A. 18A:24-1 defines certain terms that pertain to a school district's financial status. Included among those terms is "borrowing margin," which establishes a formula for the amount of money a school district may borrow for capital expenditures, and is related to the equalized value of real estate of the municipality.

[In re Petition for Authorization to Conduct a Referendum on the Withdrawal of Oradell from the River Dell Reg'l. Sch. Dist., 406 N.J. Super. 198, 207 (App. Div. 2009).]

We further stated that the catchall phrase in N.J.S.A. 18A:13-56(b)(4)

is limited to a reason of the same character as the other three factors, namely, a constitutional impediment to providing a thorough and efficient free public education for students in grades K-12. Thus, the Board may only deny the petition if any of the first three factors are present, or for a reason that would conflict with the State's obligation to provide a thorough and efficient system of education.

[Ibid. (citations omitted).]

Any "less weighty reason would be an inadequate ground for compelling constituent local school districts and municipalities to preserve a regional school district against the will of a majority of the voters in a majority of its local districts." Union Cty., supra, 298 N.J. Super. at 8.

The record reveals that the Regional is comprised of four constituent school districts: River Vale, Hillsdale, Woodcliff Lake, and Montvale.² Each constituent district operates an independent PK-8³ district and sends their grades 9-12 students to one of the two high schools that comprise the Regional. Students from River Vale and Hillsdale attend Pascack Valley High School;

² Montvale did not participate in this appeal.

³ PK means pre-kindergarten.

students from Woodcliff Lake and Montvale attend Pascack Hills High School.

Based on an agreement between the constituent municipalities, from its inception in 1951, the Regional's annual and special tax levies were apportioned on a per-pupil basis. However, legislation enacted in 1975 required regional school districts to apportion tax levies based on equalized property values. L. 1975, c. 212, § 29. Because Woodcliff Lake and Montvale had higher property values, they paid a higher share of the tax levies. Thereafter, in 1993, the Legislature enacted N.J.S.A. 18A:13-23, which allowed regional school districts to apportion the annual and special tax levies based on per-pupil costs, equalized property values, or a combination of the two; however, all constituent municipalities in the regional school district had to agree.

In 2009, Woodcliff Lake retained experts to analyze various options for educating its students and prepare a feasibility study. Ultimately, the experts recommended that Woodcliff Lake pursue withdrawal from, or dissolution of, the Regional in order to either enter into a sending-receiving relationship with the Regional for the education of its grades 9-12 students, or build its own high

school and become a grade K-12⁴ school district and resume full responsibility for the education of its students.

Woodcliff Lake decided to pursue withdrawal. Because the tax allocation method was the reason for this decision, Woodcliff Lake first sought to modify the method, which required the agreement of all four constituent municipalities. At the request of Woodcliff Lake and Montvale, in September 2010, a special election was held for the voters in the four constituent municipalities to determine by referendum whether to change the tax apportionment method from one based on an equalized property values to one based on per-pupil costs. The referendum failed, and the tax apportionment method remained unchanged.

In 2012, Woodcliff Lake and Montvale each passed resolutions to apply to the Bergen County Executive County Superintendent of Schools (Superintendent) for an investigation of the advisability of their withdrawal from the Regional. Woodcliff Lake submitted an updated feasibility study that analyzed the demographics of each constituent district, including projected population growth and birth-rate data related to the total functional capacities of each district's capabilities to manage individualized education. Using that data, the experts applied the Cohort-Survival Ratio

⁴ K means kindergarten.

Method in projecting enrollments from each constituent district. They also factored in the effects of any proposed housing growth in each constituent district to the best of their ability, as River Vale and Hillsdale declined to provide information necessary to the analysis. The experts indicated that Woodcliff Lake's enrollment for grades 9-12 would likely slowly decline in the coming years, while Montvale's enrollment for the same grades would likely increase by approximately sixty-five students, and Hillsdale's enrollment would remain status quo. The experts stated that if Woodcliff Lake and Montvale both withdrew from the Regional and created a joint regional high school, that high school enrollment would slowly increase yearly. In analyzing school capacity, the experts stated that while certain PK-8 schools may slightly exceed capacity in 2016-17, the capacity of the buildings was not a fixed number and each constituent district should be able to accommodate these students without the need for building additions.

The experts analyzed six different alternative configurations involving possible withdrawal from or dissolution of the Regional and compared them to the status quo configuration. Regarding educational impact, the experts stated that each constituent district: had sufficient infrastructure to handle every alternative configuration; would meet the state requirements for

curriculum; and had substantial community support. The experts noted that the two current high schools servicing the Regional performed at extremely high levels, rivaling the best in the State. They reached similar conclusions as to each constituent district's PK-8 program, finding they exceeded the State-average in skills and knowledge competency. The experts considered the four constituent districts on a comprehensive level, concluding that all were either high performing districts or successful districts on many levels.

The experts found that the current configuration of all constituent districts was working very well for their respective students. While the current configuration was successful, the experts determined that any of the other alternative configurations would also succeed for each district, and cited ample authority and examples for this conclusion. The experts conceded that Woodcliff Lake's withdrawal from the Regional had the potential to create some minor difficulties in maintaining the articulation with the remaining districts. The experts also concluded that the PK-12 regional proposals would offer slightly more possibilities for program continuity. They found that none of the alternative configurations would have a negative racial impact.

As for financial impact, the experts concluded that Woodcliff Lake and Montvale disproportionately shared the tax burden on a per-student basis. After setting forth their methodology and analytical process, the experts concluded that except for remaining status quo, Woodcliff Lake and Montvale residents would save substantial tax monies under any of the alternative configurations while Hillsdale and River Vale residents would pay additional taxes. The experts found that if Woodcliff Lake withdrew and entered into a sending-receiving relationship with the Regional for the education of its grades 9-12 students, Woodcliff Lake would experience savings of more than \$3 million annually. If Woodcliff Lake built its own high school, the experts projected an annual savings of over \$500,000, which would increase following payment of the debt service associated with construction of the high school.

The experts also determined that each constituent district had ample borrowing margin to sustain necessary expenses, and concluded that none of the alternative configurations would cause significant financial harm to any of the districts. The experts opined that while withdrawal would cause minor difficulties, the other alternative configurations were all viable. From a financial perspective, the experts recommended that Woodcliff Lake withdraw from the Regional.

Appellants submitted a joint feasibility report. Their experts opined that the petition should be denied because: some of the educational opportunities may be lost if the Regional broke apart; a greater financial burden would be imposed upon appellants' residents; and the petition ran counter to State policy encouraging consolidation and shared services by and among municipalities. Woodcliff Lake did not contest these assertions, but rather claimed they did not provide a basis for rejecting the petition.

Appellants' experts also found the Regional was a high-performing high school and concluded that potential tax savings that Woodcliff Lake and Montvale may receive was de minimus. Based on enrollment projections, the experts concluded that keeping the Regional intact should be the objective. Regarding educational impact, the experts concluded that the consequences included: the need to set up a curriculum office; replication of certain services; slight reductions in staff; renegotiated schedules; reductions in course offerings; and reduction in professional development opportunities. The experts estimated the total educational expense related to reconfigurations was approximately \$2.2 million. Regarding security, the experts noted that the schools would need independent security and new technology, costing approximately \$150,000. In addition, clubs and sports would be more limited, would cost approximately \$74,000, and

technological expenses would be incurred, such as new email and servers, costing \$683,000. The experts also opined that possibilities for managing enrollment arise, and costs associated with managing a central office staff could exist, costing another \$1.2 million. Ability to share staff would also suffer, as would the ease with which special services could be provided. School transportation and district governance expenses would also increase. In sum, the experts concluded that operational/educational expenses would increase over \$6 million under the proposed withdrawal.

In terms of a financial impact, the experts did not dispute that Montvale and Woodcliff Lake residents would experience significant tax savings each year. Rather, they averred that money should not be considered over the educational deprivation withdrawal would cause.

The Superintendent issued a report, concluding it was not advisable for Woodcliff Lake singly, or Woodcliff Lake and Montvale jointly, to withdraw from the Regional, or to dissolve the Regional. Thereafter, Woodcliff Lake filed a verified petition with the Commissioner of Education and Board pursuant to N.J.S.A. 18A:13-56, requesting authorization to pursue a referendum for the voters in each constituent municipality to determine whether

Woodcliff Lake could withdraw from the Regional. Montvale did not join in the petition; River Vale and Hillsdale opposed it.

Woodcliff Lake submitted a supplemental report, which largely reiterated the findings made in the prior feasibility study. Its experts added there would be a sufficient number of students for Woodcliff Lake to operate a successful K-12 program if necessary, as shown by a comparison with similarly situated Midland Park. The experts also concluded that curriculum and management would benefit from a stand-alone model, as the Woodcliff Lake school district could more clearly direct grades K-12 coursework and more directly manage the board of education. The experts also noted that there may be a reduction in teaching staff for the Regional, and the Regional may have to cut selected foreign languages and may not be able to field a football team.

Appellants submitted a supplemental report, which reiterated the financial analysis in their prior feasibility study. Their experts also cited "community sentiment" and school size, along with hypothetical logistical issues, as reasons for maintaining the status quo.

Following public hearings and review of the entire record, the Board granted the petition in a March 27, 2014 written opinion. The Board did not find that an excessive debt burden would be imposed on any of the remaining constituent districts or Woodcliff

Lake by granting the petition. Rather, the Board found that while the record presented the potential for a financial impact upon Woodcliff Lake's withdrawal, there was no evidence it would constitute an excessive debt burden.

The Board did not find evidence that an efficient school system could not be maintained in the remaining constituent districts or in Woodcliff Lake without excessive costs. The Board observed that in the event Woodcliff Lake decided to build a new high school and create a new K-12 structure, it demonstrated it could do so without excessive costs.

Lastly, the Board determined that although student enrollment of a proposed district would be small and would not provide the same level of varied educational opportunities of a larger regional district, it was within what was currently accepted as sufficient to provide a thorough and efficient education. The Board noted there would be sufficient pupils in both Woodcliff Lake and the remaining constituent districts to maintain properly graded school systems in each district.

On appeal, appellants argue that Woodcliff Lake should not have been permitted to rely on the withdrawal statute, N.J.S.A. 18A:13-56, to change the tax allocation method. Appellants also argue that the Board failed to articulate a valid legal,

educational or financial basis to grant Woodcliff Lake's petition to withdraw from the Regional.

Our role in reviewing an agency's decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). "[A] 'strong presumption of reasonableness attaches to [an agency decision].'" In re Carroll, 339 N.J. Super. 429, 437 (App. Div.) (quoting In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993), aff'd, 135 N.J. 306 (1994)), certif. denied, 170 N.J. 85 (2001). "In order to reverse an agency's judgment, [we] must find the agency's decision to be 'arbitrary, capricious, or unreasonable, or [] not supported by substantial credible evidence in the record as a whole.'" Stallworth, supra, 208 N.J. at 194 (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). As our Supreme Court has instructed,

[i]n determining whether agency action is arbitrary, capricious, or unreasonable, [we] must examine:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Ibid. (quoting In re Carter, 191 N.J. 474, 482-83 (2007)).]

We "may not substitute [our] own judgment for the agency's, even though [we] might have reached a different result." Ibid. (quoting Carter, supra, 191 N.J. at 483). "This is particularly true when the issue under review is directed to the agency's special 'expertise and superior knowledge of a particular field.'" Id. at 195 (quoting In re Hermann, 192 N.J. 19, 28 (2007)). Furthermore, "[i]t is settled that [a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference." E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 355 (App. Div. 2010) (second alteration in original) (quoting Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001)). "Nevertheless, 'we are not bound by the agency's legal opinions.'" A.B. v. Div. of Med. Assistance & Health Servs., 407 N.J. Super. 330, 340 (App. Div.) (quoting Levine v. State Dep't of Transp., 338 N.J. Super. 28, 32 (App. Div. 2001)), certif. denied, 200 N.J. 210 (2009). "Statutory and regulatory construction is a purely legal issue subject to de novo review." Ibid. (citation omitted). The burden of proving that an agency action is arbitrary, capricious, or unreasonable is on the challenger. Bueno v. Bd. of Trustees of the Teachers' Pension and Annuity Fund, 422 N.J. Super. 227, 234 (App. Div. 2011) (citing

McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002)).

Applying the above standards, we discern no reason to reverse the Board's decision. The Board was not required to articulate a valid legal, educational, or financial basis to grant Woodcliff Lake's petition to withdraw from the Regional. Rather, the Board had to determine whether any of the four criteria in N.J.S.A. 18A:13-56(b) were implicated by Woodcliff Lake's withdrawal. If the Board found none of the four criteria were implicated by the withdrawal, it had to grant the petition.

There was no evidence in this case establishing any of the four criteria in N.J.S.A. 18A:13-56(b). There was no proof that an excessive debt burden will be imposed on the remaining constituent districts or Woodcliff Lake if Woodcliff Lake withdrew from the Regional. Woodcliff Lake's experts opined that in all alternative configurations they analyzed, each constituent district had ample borrowing margin to sustain necessary expenses. In concluding that none of the alternative configurations would cause significant financial harm to any of the constituent districts, the experts opined that Woodcliff Lake would experience substantial tax savings. The experts concluded that Woodcliff Lake may have to build a new high school; however, even in that

circumstance, it would save Woodcliff Lake \$500,000 annually, exclusive of the land acquisition costs.

As for tax implications on residents of the constituent districts, Woodcliff Lake's experts predicted that if Woodcliff Lake withdrew and entered a sending-receiving relationship with the Regional, its residents would save nearly \$1500 per year in taxes, while the residents of the remaining constituent districts would see a yearly tax increase of less than \$380. If Woodcliff Lake withdrew entirely and built its own high school, the residents in the remaining constituent districts would see yearly tax increases of approximately \$1100, but the Regional would experience savings in other areas, such as teacher and administrative salaries, of nearly \$3 million annually, which would help offset any expenses incurred. The experts concluded that these savings would reduce the tax impact to less than \$830 for the residents of the remaining constituent districts.

Appellants' experts opined that these reductions would reduce the Regional's savings, may implicate added personnel costs, and cause a reduction of staff. They also claimed that withdrawal would cause "disproportionate impact upon taxpayers" in the remaining constituent districts. They opined that the Regional would lose \$3.64 million in revenue, if Woodcliff Lake withdrew and entered into a sending-receiving relationship.

All experts presented the Board with a detailed estimate of financial impact. They all agreed there would be substantial tax savings for Woodcliff Lake residents and added costs somewhere between \$3 and \$6 million annually. However, none of the experts deemed these costs "excessive," and the record supports a finding that they are not excessive.


There also is no evidence that an efficient school system cannot be maintained without excessive costs in the remaining constituent districts or in Woodcliff Lake if Woodcliff withdrew. There will be, without doubt, some consequences to withdrawal, especially in such a high performing district, to curriculum, technology, clubs, and sports. However, each constituent district has adequate facilities and are entirely competent to educate their respective students. Woodcliff Lake's experts conducted a thorough investigation, compiling large quantities of data, interviewing leaders of the respective districts, and highlighting test scores, all of which indicate that each remaining constituent district could support 9-12 education either alone, or as a remaining Regional, without Woodcliff Lake's participation. In fact, the experts opined that each constituent district operating as individual K-12 districts may even offer "slightly more possibilities for articulation and program continuity."

Lastly, none of the experts suggested that withdrawal of Woodcliff Lake would leave an insufficient number of pupils in the remaining constituent districts to maintain a properly graded school system. The record also does not contain, nor have appellants pointed to, any other reason why the Board should have denied the petition.

We conclude that the record amply supports the Board's decision to grant Woodcliff Lake's petition, and the decision is not arbitrary, capricious, or unreasonable.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION