It's a Small World

by Vito A. Gagliardi Jr. and Kerri A. Wright

These are challenging times for public education in New Jersey. Federal and state governments are regulating the activities of public school districts like never before. Taxpayers are concerned about the cost-effective nature of their districts' programs; parents are more educated, more informed, and more involved. With their activities under such scrutiny and their budgets strained by a two percent cap on annual tax levy increases, small suburban school districts face a unique set of challenges. With a relatively small number of administrators and staff members, there are only so many positions that can be cut and only so many dollars that can be saved. In response to these challenges, various small districts throughout the state have led pioneering efforts to survive—and even to thrive.

Sending–Receiving Relationships

Following efforts by the Elmer and Pittsgrove boards of education to find creative solutions to their ever-constricting financial and educational resources, the commissioner of education and the Appellate Division have breathed new life into a decades-old statute that had previously come under attack during the Corzine administration. In *Edmondson v. Bd. of Educ. of Elmer*, the Appellate Division affirmed the commissioner's decision to uphold an agreement entered into between Elmer and Pittsgrove.[1] The statute at issue permits one board of education to 'receive' students from another board of education and educate those students together with its own students.[2]

While these types of sending-receiving relationships between two communities have been around for more than half a century, they have been gaining in popularity as boards of education struggle to provide their students with a thorough and efficient education despite increasingly tighter financial constraints. Typically, small districts contract with a neighboring district to educate older students, in grades 7-12 or 9-12; in about 20 school districts across the state, including Elmer, the local board of education does not operate any schools. Instead, the board enters into a contract with a neighboring school district or districts to educate all of its students. When this happens, the sending district is known as a non-operating district, because it is no longer operating any schools itself.

Erroneously claiming that a school board that does not, itself, operate a school is *per se* inefficient, the Corzine administration pushed for the elimination of these school districts. The resulting statute provided executive county superintendents with the authority to eliminate any of these districts then in existence.[3] While perhaps counterintuitive, these school districts are actually the *most* efficient in the state, because they pay only the actual cost for educating their students. The statute prohibits them from paying anything more. They only pay tuition (capped at the actual cost), transportation, and special education costs. In exchange, the sending district maintains its autonomy and often has a representative on the receiving district's board of education.

It is no wonder that smaller school districts, with declining and/or low enrollment, would want to enter into these arrangements. These districts can provide their students with a better education than they might be able to provide on their own by teaming up with another school district. This is especially true in light of the recently enacted two percent tax levy cap.

The case study involving Elmer and Pittsgrove is most instructive. For decades, these communities shared a sending-receiving relationship, with Pittsgrove educating the upper-grade students from Elmer. They then began considering expanding this relationship so Pittsgrove would educate all of Elmer's students in grades K-12. At the same time, Pittsgrove was looking to reconfigure the grade levels in its schools. It believed it would be more educationally appropriate to house its fifth-grade students in a grammar school setting, instead of the middle school. Expanding its relationship with Elmer allowed it to lease Elmer's elementary school building, providing it with more options for appropriate grade and building-level alignment. Both the commissioner and the Appellate

Division affirmed Pittsgrove's authority to expand its relationship with Elmer and lease the building from Elmer in order to use it to educate students from both Elmer and Pittsgrove.

The Appellate Division sought to determine whether: 1) creation of a full sending-receiving relationship (where the sending district becomes a so-called non-operating school district) creates a *de facto* regional school district; and 2) a district is prohibited from agreeing to educate another's students via a sending-receiving agreement if it does not have the then-existing facilities to do so. The answer to both of these questions is no. If the answer to either of these questions had been yes, it would have greatly diminished the use of this arrangement for school districts across the state.

In answering the first question, the Appellate Division specifically held that the 2009 statute empowering executive county superintendents to eliminate non-operating school districts "responds to, but does not prohibit, arrangements where, as here, one of the districts in a sending-receiving relationship no longer operates any school."[4] The Appellate Division noted this type of arrangement provides an alternative method for reaching the Legislature's goal of consolidation, one that was clearly acceptable to the Legislature, since it was left as a viable option. The statutes guiding sending-receiving relationships are distinct from those pertaining to the creation, or expansion, of regional school districts. Therefore, even when a sending-receiving relationship leaves one district in a position where it is not operating any schools, it does not result in the automatic creation of a regional district.[5] Both boards of education retain their autonomy and authority to provide for the education of the students in their respective communities.

The favorable answer to the second question, equally important, allows school districts to work together to come up with creative strategies for educating students—a particularly important goal given today's tough fiscal times. The Appellate Division noted that "accommodating pupils at the expense of taxpayers necessarily requires a forward-looking approach."[6] Sending-receiving relationships are not limited to those school districts that can absorb another district's students without any change in the accommodations available in both districts prior to the districts' consideration of a sending-receiving relationship.[7]

One further example of creative thinking involves the shore communities of Avalon and Stone Harbor. After years of considering how each community should address its respective declining student enrollment without abandoning its local elementary schools or its autonomy, the two K-8 districts expanded on their previous relationship of sharing services, and entered into dual sending-receiving agreements. By the time the boards entered into these agreements, each community had a relatively low number of students per grade (in some cases as few as four or five students). The critical issue for each was providing its students with a cost-effective, appropriate education, which had become harder to achieve with so few students per grade. With the assistance of legal counsel and consultants, the two boards essentially combined staffs and student bodies without having to give up their autonomy. One school district would educate students from both communities in grades K–4; the other would educate students from both communities in preschool and grades 5–8. By entering into this arrangement, they were able to achieve more appropriate class sizes; increase their curricular and extracurricular offerings; and improve the overall education provided to all of their students. And they accomplished this while saving their taxpayers money.

These are only a few examples of innovations employed by districts to provide their students with greater educational opportunities while delivering tax savings to their communities through the use of sending-receiving arrangements.

Apportionment of Regional School Tax Levies

Some communities are too small to have their own high schools. For many of these districts, the solution was to join with their neighboring communities and form a limited-purpose regional school district to educate children in grades 7–12 or 9–12. Currently, there are 67 regional school districts in New Jersey, only two of which were formed after 1975. This is significant because of a dramatic change in the law effectuated by the Legislature at that time. That is to say, regional school districts are formed by virtue of a public referendum in all of the communities looking to join the region; the vast majority of those formed in New Jersey were approved by voters who agreed to fund the district by allocating the tax levy among the constituent districts based 100 percent on pupil enrollment. In other words, the communities would be assessed a share of the regional school district costs based on the number of pupils they each sent.

When the Legislature changed the law in 1975, it unilaterally modified the method of allocation, forcing all regional districts in existence to move to an allocation method based 100 percent on equalized property values. What that meant, over time, was that the community or communities in the region with relatively greater property wealth, and typically a relatively smaller number of students, wound up subsidizing the costs of educating the students in the region from the other towns. For example, a regional school district could have a cost of $15,000 per pupil, and have one community paying the equivalent of $8,000 per pupil and another community paying the equivalent of $80,000 per pupil, or even more. As a result, these small communities are faced not only with the

challenge of providing a cost-effective education for the students in their lower grades, but an escalating cost of educating the older students by paying the full costs of educating their own pupils and a portion of the costs of educating the pupils from other towns.

Until recently, hope for effectuating any relief was virtually nonexistent. Communities could seek to change the tax allocation method, given the Legislature's further modification of the law in 1993, but that would require the approval of the voters in every community in the region, which is essentially impossible in places where the imbalance is the greatest. Then, if that failed, districts could seek to withdraw from or dissolve a regional school district, but this has happened only twice in state history, and is a challenging undertaking.

The Supreme Court addressed the question of what a community might be able to do when neither method of relief is possible, in the precedent-setting case of *In re Petition for Authorization to Conduct a Referendum on the Withdrawal of the North Haledon School District from the Passaic County Manchester Regional High School District*.[8]

North Haledon was in a limited-purpose regional high school district with two other towns. It was unsuccessful in the vote on changing the funding formula, and was precluded from withdrawing or dissolving because of the impact it would have on the racial make-up of the community. Under the circumstances of that case, the Supreme Court ruled the commissioner of education should establish an "equitable cost apportionment scheme for the Regional District." The commissioner of education ultimately implemented a formula that was no longer 100 percent equalized property value, but rather 33 percent per-pupil and 67 percent equalized property value. This formula saves North Haledon over $1 million a year.

The case is being litigated to this day, with North Haledon seeking further relief and the other two communities seeking to return to the 100 percent equalized property value formulation. An administrative law judge has recommended a transformation to provide for a formula that gives North Haledon even greater relief, namely 67 percent per-pupil and 33 percent equalized property value. In Sept. 2013, the commissioner ruled that North Haledon was entitled to greater relief, but did not go quite as far; he ordered the implementation of a 50 percent per-pupil and 50 percent equalized property value formula, to be phased in over the next two years.

The key, however, is the extent to which the *North Haledon* decision is applicable to other communities. According to the Office of the Attorney General, *North Haledon* stands for the proposition that, once administrative remedies are exhausted, the commissioner has equitable authority to modify a regional school district's tax allocation formula if the community seeking relief is burdened by a disproportionate tax levy and the community is forced to remain part of a regional school district for any number of constitutionally based reasons.[9]

The first community to obtain a decision advancing *North Haledon* was Oradell. Its taxpayers are paying about $2.5 million more under the equalized property value formulation than they would be paying under a per-pupil formulation to support their two-town grades 7-12 limited purpose regional school district. Oradell could not convince the other community to change the formula and was unable to pursue withdrawal from the regional district. As a result, it sought to have the commissioner exercise the equitable authority provided by *North Haledon*.

In Jan. 2012, the commissioner of education transferred the matter to an administrative law judge for a hearing to determine whether or not Oradell was "substantially similar" to North Haledon and, if so, to recommend a remedy. On April 9, 2013, Administrative Law Judge Leslie Celentano ruled that Oradell's situation was indeed "substantially similar" to that present in *North Haledon*.[10] As a result, Judge Celentano recommended the commissioner modify its regional district tax allocation method to one that is based 80 percent on per-pupil enrollment and 20 percent on equalized property value. This would provide a substantial savings to Oradell of approximately $2 million annually. As of press time, this recommendation is pending before the commissioner. Either way, it seems certain the ruling will be appealed and there will be further appellate case law on this issue.

In the meantime, many constituents of regional school districts who face challenges similar to those of North Haledon and Oradell, such as Seaside Park, Cape May City and others, have begun to pursue this relief. The case law in this area is still developing, but it is yet another example of what the small communities in New Jersey are doing to address their regional school tax levies.

Current challenges have compelled districts throughout the state to take unusual action and, in doing so, a trail of precedents has been blazed. As the law develops, communities will have an opportunity to seek more efficient and equitable structures to provide for the best education available at the right price. ⚖

Endnotes

1. 424 N.J. Super. 256 (App. Div. 2012).
2. N.J.S.A. 18A:38-8.
3. N.J.S.A. 18A:8-43, *et seq*.
4. *Edmondson*, 424 N.J. Super. at 265.
5. *Id*. at 266.
6. *Id*. at 264.
7. *Id*.
8. 191 N.J. 161 (2004).
9. Attorney General Opinion Letter, issued by Michelle Lyn Milller, D.A.G.

to William Librera, Commissioner of Education, dated Sept. 21, 2004.

10. Petition for Equitable Modification of the Cost Apportionment for the River Dell Regional School District, Agency Dkt No. 12-1/12, OAL Dkt No. EDU-01022-2012 (April 9, 2013).

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