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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 NO. A-1391-15T3

IN THE MATTER OF THE PETITION  
FOR AUTHORIZATION TO ENTER  
INTO A SENDING-RECEIVING  
RELATIONSHIP WITH THE BOARD  
OF EDUCATION OF THE BOROUGH OF  
LAVALLETTE, OCEAN COUNTY.

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Argued April 25, 2017 – Decided May 4, 2017

Before Judges Yannotti, Fasciale and  
Sapp-Peterson.

On appeal from the New Jersey Department of  
Education, Docket No. 66-3/15.

Peter M. Draper argued the cause for appellant  
Toms River Regional Schools Board of Education  
(Carluccio, Leone, Dimon, Doyle, & Sacks,  
L.L.C., attorneys; Stephan R. Leone, of  
counsel; Mr. Draper, on the briefs).

Christopher S. Porrino, Attorney General,  
attorney for respondent Commissioner of  
Education (Kathryn E. Duran, Deputy Attorney  
General, on the statement in lieu of brief).

Vito A. Gagliardi, Jr. argued the cause for  
respondent Seaside Park Board of Education  
(Porzio, Bromberg & Newman, P.C., attorneys;  
Mr. Gagliardi, of counsel; Kerri A. Wright,  
of counsel and on the brief; Deborah H. Share,  
on the brief).

Douglas J. Kovats argued the cause for respondent Lavallette Board of Education (Kenney, Gross, Kovats & Parton, attorneys; Joseph F. Betley and Lauren E. Tedesco, on the brief).

PER CURIAM

Toms River Regional Schools Board of Education (the Toms River Board) appeals from an October 20, 2015 final agency decision by the Commissioner of Education (the Commissioner) approving a petition filed by the Board of Education of the Borough of Seaside Park (the Seaside Park Board) pursuant to N.J.S.A. 18A:38-13 and N.J.A.C. 6A:3-6.1. The decision allowed the Seaside Park Board to enter into a sending-receiving relationship with the Board of Education of the Borough of Lavallette (the Lavallette Board), while maintaining its existing sending-receiving relationship with the Toms River Board. We affirm.

In approximately 2009, the Seaside Park Board closed its elementary school and entered into a sending-receiving relationship with the Toms River Board. Pursuant to this arrangement, the Toms River Board agreed to educate K-6 students from Seaside Park. At no time did the Seaside Park Board express dissatisfaction with the education provided to its K-6 students in Toms River, and consequently, the Seaside Park Board never sought to terminate its sending-receiving relationship with the Toms River Board.

In March 2015, the Seaside Park Board, while maintaining its sending-receiving relationship with the Toms River Board, filed this petition with the Commissioner. In its petition, the Seaside Park Board sought authorization to enter into a sending-receiving relationship with the Lavallette Board. Granting the petition would give the Lavallette Board permission to educate elementary students in grades K-6 from Seaside Park. Seaside Park Board argued that such an arrangement would provide Seaside Park families with educational choice and greater opportunities for their children.

As part of its petition, the Seaside Park Board obtained an eighty-two page feasibility study. The three independent experts who authored the feasibility study analyzed the potential educational, financial, and racial impacts of establishing the proposed dual sending-receiving relationship. The analysis focused on the school districts of Seaside Park, Lavallette, and Toms River Regional (consisting of students from Toms River Township, Beachwood Borough, Pine Beach Borough, and South Toms River Borough).

The feasibility study concluded that a dual sending-receiving relationship would not have a negative educational, financial, or racial impact on the involved school districts. The feasibility study reflects that the parties participated and cooperated with

the team of consultants entrusted to making these recommendations. At no point did the parties dispute the soundness of these recommendations and conclusions.

After reviewing the petition and contents of the feasibility study, the Lavallette Board passed a resolution indicating its readiness to receive K-6 students from Seaside Park. By passing this resolution, the Lavallette Board expressed its support for the dual sending-receiving relationship. Importantly, the Toms River Board did not object to the petition. Instead, it submitted a letter to the Commissioner stating that the Toms River Board would not oppose the petition.

Because the Toms River Board and the Lavallette Board did not oppose the petition, the matter proceeded to public comment pursuant to N.J.A.C. 6A:3-6.1(b). This regulation outlines the administrative process for petitions filed pursuant to N.J.S.A. 18A:38-13. Importantly, the parties did not dispute the applicability of N.J.A.C. 6A:3-6.1(b) and N.J.S.A. 18A:38-13. The parties treated the petition as unopposed and they therefore proceeded as an uncontested matter.

Thereafter, the Commissioner received comments from the Mayor of the Borough of Seaside Heights; the Superintendent of Schools, Central Regional School District; the Business Administrator and Board Secretary, Central Regional School District; and the Mayor

of the Borough of Lavallette. The Lavallette Board and the Seaside Park Board responded to those comments. In a letter to the Commissioner, the Toms River Board attorney reiterated that the Toms River Board did not object to the petition. He stated that the Toms River Board would "rely [ ] on the Commissioner's decision as to the law and what is in the best interest of the students of Seaside Park."

The Commissioner then considered the petition filed pursuant to N.J.S.A. 18A:38-13, the feasibility study, and the comments received from the public. The Commissioner acknowledged that the parties agreed with the conclusions contained in the feasibility study, specifically that there would be no substantial negative educational, financial, or racial impact "to any of the school districts" if it granted the petition. The Commissioner then stated:

The feasibility study [ ] established to the Commissioner's satisfaction that the withdrawal of some or all of Seaside Park's students from Toms River, and the entry of those students into Lavallette, would cause no substantial negative impact on the educational programs of the school districts or on the quality of education received by the pupils of each of the school districts; and

The feasibility study [ ] established to the Commissioner's satisfaction that establishment of a sending-receiving relationship between Seaside Park and Lavallette would benefit the residents and

students of Seaside Park from an educational perspective by allowing parents and guardians to select from two educational programs which provide students with a thorough and efficient education; and

The feasibility study [] further established to the Commissioner's satisfaction that there would be no substantial negative impact on the financial conditions of the affected school districts, even if all Seaside Park students who currently attend school in Toms River decide to enroll at Lavallette at the same time; and

The feasibility study [] further established to the Commissioner's satisfaction that there would be no substantial negative impact on the racial composition of any of the school districts, and that there exists no evidence of any aggravating circumstances that would exacerbate and minimal change in racial composition at the affected districts[.]<sup>6</sup>

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6 The feasibility study indicated that the racial composition of students at Toms River and Lavallette is similar and would remain so even if [the Commissioner granted] Seaside Park's petition[.] If all Seaside Park students had been removed from Washington Street Elementary between 2010 and 2014, the percentage of white students enrolled would have decreased by 0.26 to 1.66 percentage points over the four-year time period; and, if all Seaside Park students had been removed from Toms River Intermediate School East during the same time period, the percentage of white students enrolled would have decreased by only 0.03 to 0.18 percentage points. Finally, if all Seaside Park students had attended Lavallette between 2010 and 2014 (a district which had only 137-168 students

enrolled during this time period), the percentage of white students enrolled at Lavallette would have decreased by 2.42 to 4.80 percentage points over four years. It is considered unlikely that all Seaside Park students would enroll at Lavallette at the same time if given the opportunity; thus, any resultant change in racial composition to the districts could be even less than those hypothesized above. Due to Seaside Park's relatively small K-6 population (Seaside Park Elementary School "graduated" six students in its last year of operation), a decrease or an increase in Seaside Park's population in either Toms River or Lavallette will not result in a negative impact on any of the students.

Thereafter, the Commissioner approved the unopposed petition and issued the final decision under review.

On appeal, the Toms River Board argues that the Commissioner's decision was plainly unreasonable and contrary to statutory language and intent. It contends that the sending-receiving relationship between the Seaside Park Board and the Lavallette Board improperly terminated its sending-receiving relationship with the Seaside Park Board, in violation of N.J.S.A. 18A:38-21.1. The Toms River Board also asserts that the sending-receiving relationship between the Seaside Park Board and the Lavallette Board is invalid because four members of the Seaside Park Board had a conflict of interest.

We emphasize that the Toms River Board raises these contentions for the first time on appeal. It had full opportunity,

however, to make these arguments before the Commissioner and failed to do so. We see no reason to depart from the rule limiting consideration of issues on appeal to those raised before the agency from which the appeal is taken. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). Nevertheless, for completion's sake, we conclude that the Toms River Board's new arguments are without sufficient merit to warrant discussion in a written decision. R. 2:11-3(e)(1)(D) and (E). We add the following brief remarks.

Generally, we will only reverse an administrative decision if it is arbitrary or capricious, not supported by evidence in the record, or violates legislative policies implied in the statutory scheme. Dore v. Bd. of Educ. of Bedminster, 185 N.J. Super. 447, 453 (App. Div. 1982) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)). "We accord a strong presumption of reasonableness to such decisions and do not substitute our judgment for the wisdom of agency action if that action is statutorily authorized and not arbitrary or unreasonable." A.M.S. ex rel. A.D.S. v. Bd. of Educ. of Margate, 409 N.J. Super. 149, 159 (App. Div. 2009).

As long as an agency decision is contemplated under its enabling legislation, the action must be accorded a presumption of validity and regularity. Reilly v. AAA Mid-Atlantic Ins. Co.

of N.J., 194 N.J. 474, 485 (2008). However, we are not bound by the agency's statutory interpretations "because it is the responsibility of a reviewing court to ensure that an agency's administrative actions do not exceed its legislatively conferred powers." In re Application of Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008). Nonetheless, we must give "great deference" to an agency's interpretation of a statute it is charged with enforcing. N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 549 (2012).

Here, the Seaside Park Board never requested permission to terminate or withdraw from its sending-receiving relationship with the Toms River Board. As a result, N.J.S.A. 18A:38-21.1 is inapplicable. Instead, it sought permission to enter into a second send-receive relationship, relying on N.J.S.A. 18A:38-13, which states in pertinent part:

The [C]ommissioner shall make equitable determinations based upon consideration of all the circumstances, including the educational and financial implications for the affected districts, the impact on the quality of education received by pupils, and the effect on the racial composition of the pupil population of the districts. The [C]ommissioner shall grant the requested change in designation or allocation if no substantial negative impact will result therefrom.

The proposed dual sending-receiving relationship does not contravene the applicable regulation and statute.<sup>1</sup> We have stated that "even if legitimate educational reasons are advanced for severance or the establishment of a dual sending-receiving relationship," these relationships will not be granted "where compelling reasons, such as substantial negative impact on racial composition and educational quality [] outweigh the educational benefits sought by the sending district in a new relationship with another district." Bd. of Educ. of Englewood Cliffs v. Bd. of Educ. of Englewood, 257 N.J. Super. 413, 446 (App. Div. 1992), aff'd, 132 N.J. 327 (1993), cert. denied, 510 U.S. 991, 114 S. Ct. 547, 126 L. Ed. 2d 449 (1993). The Commissioner will not approve a dual sending-receiving relationship if there will be a substantial negative impact at one of the school districts involved. Id. at 457.

The Commissioner applied these standards after reviewing the feasibility study, the parties' positions, and the public comments. Based on this record, the Commissioner determined Seaside Park established that there would be no substantial negative educational, financial, or racial impact to the school districts upon establishment of the proposed sending-receiving

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<sup>1</sup> Counsel for the Toms River Board conceded before us that no statute precludes a multiple send-receive relationship.

relationship. We conclude that such a determination is supported by substantial evidence in the record, and is not unreasonable, arbitrary, or capricious.

Finally, we reject the Toms River Board's argument that the Seaside Park Board's action, in seeking approval of the new sending-receiving relationship, is invalid because four of the five Board members allegedly had disqualifying financial interests in the application. According to the Toms River Board, these Board members were purportedly paying tuition for their children to attend the Lavallette schools, which would have allegedly ceased upon approving the sending-receiving relationship between Seaside Park and Lavallette.

Assuming this is correct, the children of the School Board members are not the only Seaside Park students attending the Lavallette schools. Moreover, this issue was never presented to the School Ethics Commission for a decision. N.J.S.A. 18A:12-29(a). In addition, even if the Seaside Park School Board members had a conflict of interest, the rule of necessity would have allowed them to vote on the matter. Mt. Hill, LLC v. Middletown Township, 353 N.J. Super. 57, 61 (App. Div.), certif. denied, 175 N.J. 78 (2002).

Affirm.

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

  
CLERK OF THE APPELLATE DIVISION