



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 01927-12

AGENCY DKT. NO. 10-1/12

**BOARD OF EDUCATION OF THE
BOROUGH OF MERCHANTVILLE,
CAMDEN COUNTY,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF PENNSAUKEN,
CAMDEN COUNTY,**

Respondent.

Vito Gagliardi, Jr., Esq., for petitioner (Porzio, Bromberg & Newman, attorneys)

Michael Sullivan, Esq., for respondent (Parker McCay, P.A., attorneys)

Record Closed: June 23, 2014

Decided: March 2, 2015

BEFORE **ELIA A. PELIOS**, ALJ:

STATEMENT OF THE CASE

Petitioner Merchantville of Education seeks severance of its sending-receiving relationship with respondent Pennsauken Board of Education and seeks to establish a sending-receiving relationship with Haddon Heights Board of Education.

PROCEDURAL HISTORY

The petitioner requested a fair hearing and the matter was filed at the Office of Administrative Law (OAL) on February 14, 2012, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and 14F-1 to -13. The matter was heard on September 11, 12, 16, 17, 19, 20, 24, and 25, 2013 and on October 7, 2013. The record was held open to allow the parties to submit closing arguments in writing and was closed on March 24, 2014. The record was reopened to allow the parties to provide additional briefing after a final agency decision was issued in a similar matter and was closed again on June 23, 2014. Orders were entered in this matter to allow for an extension of time in which to file the initial decision.

FACTUAL DISCUSSION

Petitioner Merchantville Board of Education (Merchantville, petitioner) is a body politic, which operates a Pre-K through 8th school district, and educates its students in grades 9th-12th by way of a sending-receiving agreement with the Pennsauken Board of Education (Pennsauken, respondent). Respondent Pennsauken Board of Education is a body politic, which operates a Pre-K through 12th school district. Haddon Heights Board of Education (Haddon Heights) is a body politic, which also operates a Pre-K through 12th school district. In or around July 6, 1988, Merchantville filed a petition with the Commissioner of Education seeking to terminate its sending-receiving relationship with Pennsauken. *See generally Bd. of Edu. of the Borough of Merchantville v. Bd. of Educ. of the Twp. of Pennsauken*, 1992 N.J. AGEN LEXIS 5260 (Sept. 16, 1992). The State Board of Education denied Merchantville's petition in a decision issued on January 7, 1998. *Bd. of Educ. Of Borough of Merchantville v. Bd. Educ. Of Twp. Of Pennsauken*, OAL Dkt. No. EDU 5702-88, 4064-89 (Jan. 7, 1998).

In or around 2011, Merchantville commissioned Statistical Forecasting, LLC and James L. Kirtland, CPA to study the feasibility of Merchantville's termination of its sending-receiving relationship with Pennsauken. One of the options explored was the

establishment of a sending-receiving relationship with Haddon Heights for Merchantville students in grades 9th through 12th. In January 2012, the Feasibility Study was finalized and the results shared with Merchantville. (P-28). On January 17, 2012, Merchantville filed a petition with the Commissioner of Education seeking to sever its sending-receiving relationship with Pennsauken and to establish a new sending-receiving relation between Merchantville and Haddon Heights wherein Merchantville's students in grades 9th-12th would be educated at Haddon Heights High School.

The preceding statements are not in dispute and are hereby **FOUND** as **FACT**.

The following is a summary of the witness testimony in this matter:

Stephen Morrone:

Mr. Morrone testified that he has been on the Merchantville Board of Education for eight years, since 2005. He is a Detective Sergeant in the Merchantville Police Department and has been in the Department for twenty-eight years. He is a graduate of LaSalle University. With the exception of about 18 months, Mr. Morrone has lived continuously in Merchantville since 1989 and raised two children and three step-children who all attended Pennsauken High School.

Mr. Morrone recounted problems that his children had at Pennsauken High School, including school violence, problems with the IEP process and bullying to demonstrate that he felt the high school did not meet his children's needs despite that he was in contact with school officials during the children's attendance there. All five of the children either did not attend, or were not adequately prepared for, community college and subsequently none of them have degrees. His own and the community's dissatisfaction with the sending-receiving relationship are the impetus for his interest to serve on the Board of Education.

There is no formal liaison between the Pennsauken and Merchantville School Boards and past efforts by Merchantville to establish communication have been

rebuffed by Pennsauken. This includes Mr. Morrone's own outreach to a specific member of the Pennsauken Board of Education. Mr. Morrone testified that in his experience, despite any racial and socio-economic differences, every person he knows in Merchantville is in favor of changing its receiving district from Pennsauken to Haddon Heights because of a general sense of dissatisfaction with the high school.

Anthony Arcodia

Mr. Anthony Arcodia has been the Superintendent of Schools for Barrington Board of Education for four and half years. He has a Master's in Education Administration from Rutgers. Prior to becoming superintendent, he was a teacher in the district and has been there for thirty-five years. Since he has been there, Barrington has always sent their students to Haddon Heights for high school.

He testified that the professional relationship between Barrington and Haddon Heights school districts is "highly effective" and that the quantity and quality of communication between sending and receiving districts are "essential ingredients for effective schools."

Communication between the districts happens regularly between Mr. Arcodia and the Haddon Heights Superintendent. Mr. Arcodia stressed the importance of communication between the districts at all levels, not just between administrators. He states that good communication also occurs between the district secretaries, the respective directors of special education and between Barrington teachers and the curriculum coordinator for the districts.

Although recently retired, the previous Curriculum Coordinator from Haddon Heights would ask to come into Barrington schools to see the educational practices of even lower grades, like in first grade, and try to change the programs to make sure all the students in the two districts were learning the same curriculum. Additionally, calendars between the districts are coordinated and in-service trainings for teachers are conducted in similar fashions.

Resources such as the Haddon Heights auditorium and the Barrington sports fields are shared between both districts.

He regularly requests and obtains timely information about Barrington students' performance in the high school to target areas of improvement. He keeps track of students' rank and placement in specific tiers. When Barrington students were not performing well in one area, Haddon Heights offered a summer bridge program for 8th graders who needed assistance in certain areas to catch up.

He asks for academic information, all of his students went on to college and one went to the military last year, in many cases he gets a response from Haddon Heights to inquiries on the same day.

Recently, when the Haddon Heights superintendent told him about four or five special education Barrington students who were not performing well at Haddon Heights, a meeting was arranged with Barrington administrators, Haddon Heights administrators, appropriate teachers and parents to correct the issues. Mr. Arcodia testified that the students were redirected and the issues were ironed out. The issue involves Barrington because an out-of-district placement for Barrington students will increase the amount of tuition Barrington owes Haddon Heights for that student and the difference could greatly impact their budget.

There is some social interaction among the two districts' students before high school though sports and participation in dances and plays. Additionally, there is an orientation program in place for all three districts before high school.

Mr. Acordia felt that if there was an increase in racial diversity as a result of Merchantville sending its students to Haddon Heights that this would be a positive experience for Barrington students. Although the Barrington district is two-thirds white, there are programs in place to prepare students for the more diverse student body which is present at Haddon Heights since the Lawnside also sends students to Haddon Heights.

Jacquelyn Fuentes

Ms. Fuentes, a current Merchantville resident, has been on the Merchantville Board of Education since November 2012. She described her ethnic and racial background as mixed race and Latina. Ms. Fuentes and her son, now twenty-years-old, resided within the Pennsauken and Merchantville school districts but they both decided that he would not attend Pennsauken public schools from grades five to twelve. During that time, he attended parochial schools since both Ms. Fuentes and her son believed that there was a lot of violence happening in the schools and that he would not be appropriately challenged in his academics. Her son is currently serving in the military overseas.

Ms. Fuentes' son had two girlfriends in high school; one is his current wife, Amber. Both young women attended Pennsauken high school, at least for part of high school and stated to Ms. Fuentes that they did not feel safe at the school; that they were not academically challenged; and that students regularly left school early. Ms. Fuentes described her experience of going to Pennsauken High School to assist Amber in withdrawing to attend another high school. The scene in the administrative office was chaotic packed with students obtaining late passes, people screaming between offices and fights breaking out.

Ms. Fuentes was inspired to run for the School Board to change the sending-receiving relationship between Merchantville and Pennsauken. She states that there is no contact with the Pennsauken Board of Education but that the Merchantville and Haddon Heights School Boards already have had some communication about coordinating curriculums in anticipation of the new sending-receiving relationship. Ms. Fuentes collected signatures to support severing the sending-receiving relationship with Pennsauken and she did not encounter any Merchantville parents who were against severing the relationship. The parents she spoke with were of diverse racial backgrounds such as black, Vietnamese, Asian, Latino and mixed race. She does not know if she spoke specifically to parents whose of Merchantville students who graduated from Pennsauken High School with high rankings.

Scott Strong

Mr. Strong has a Master's degree in Educational Leadership and has served as the Chief School Administrator for Merchantville Board of Education for about a year and half at the time of his testimony. This position includes the role of superintendent and principal since it is such a small district. Merchantville offers education from pre-k to eighth grade and then for high school students can either go to Pennsauken, local vocational schools, parochial schools, the Audubon school through the New Jersey School Choice program or pay tuition in other public school districts. In Merchantville just fewer than forty percent of students are on the free and reduced price lunch program. About 57% of the students are white, 23% are African/American, 14% Hispanic and other races make up the remaining six percent. The eighth grade class is normally about thirty-five students. In the past, before Audubon became an option, most graduating eighth graders would go to Camden Catholic parochial school and other vocational schools. He understands that the Merchantville and Pennsauken sending-receiving relationship has been in place since the 1950's, but he is not aware of the exact start date.

In the eighteen months since he has been there, the only communication between the Merchantville and Pennsauken Boards of Education have been two letters stating that Merchantville does not meet the minimum requirement for the number of students attending Pennsauken to have a position on the Pennsauken school board. Additionally, the Merchantville members were invited to attend the graduation ceremony in Pennsauken.

In November 2012, he attended a Camden County Department of Education meeting to start a dialogue with Pennsauken Superintendent Dr. Marilyn Martinez. He opened discussions with her and expressed an interest in better communication between the districts. As follow-up to meeting, he sent email to Dr. Martinez requesting info about Merchantville student rankings, how many AP courses Merchantville students were taking, how many Merchantville students took the SATs

and other demographic information. He did not receive a response to this email and he was unable to retrieve a copy of the email because it has been deleted.

In May 2013, Mr. Strong sent an email asking about how the Merchantville Algebra I students were placed at Pennsauken. Martinez responded that she would get back to him but she never did. He did not follow up since he ultimately no longer required the information.

He called Martinez one time on the phone and left a message with a secretary and did not receive a call back. He has not made any other attempts to reach out to her. The Pennsauken district has not reached out to him regarding coordinating school calendars, workshops or trainings. There is no coordination or “articulation” regarding the curriculum between the two districts. There are no shared programs between the schools. Around the end of the school year, a counselor from Pennsauken comes to Merchantville to assist eighth grade students in registering for high school classes. Other than that, he has not seen or heard of a Pennsauken staff person coming to Merchantville. The special education programs at Merchantville and Pennsauken do stay in regular contact though. This is the only area where the two districts do communicate.

Since he has been unable to gain any data regarding Merchantville students’ performance at Pennsauken, he tries to obtain anecdotal information from high school students who return to pick up younger siblings and walk home. In general they have told him that high school was not as hard as they thought it would be.

Mr. Strong has maintained regular contact with Superintendent Adams at Haddon Heights. He has found Mr. Adams to be very responsive and he attempts to answer any questions Mr. Strong has within twenty-four hours. Mr. Adams has also provided Mr. Strong with his cell phone number to make himself accessible.

Based on the data available to Mr. Strong, he states that more high school students at Haddon Heights than at Pennsauken take the SATs and on average they perform better on the test.

Currently, Merchantville provides busing for high school students who attend Pennsauken and transportation issues would have to be worked out between Merchantville and Haddon Heights since the distance is further. It is his hope that he could work together with Haddon Heights on “late buses” to allow students to participate in after-school activities.

Although the actual tuition per student is less at Haddon Heights than Pennsauken, Mr. Strong expects more interest in Haddon Heights and, given that the transportation issue may be more involved, the cost total cost to the district could be greater. This cost would be phased in over time, just as the students would be phased into Haddon Heights one class year at a time.

He could not evaluate if educating students in a more racially diverse environment could directly positively impact their overall performance but he felt that diversity is positive and it is part of educating the whole child.

Dr. Ronn Johnson

Dr. Ronn Johnson is the Superintendent of the Lawnside Board of Education. He lives in Pennsauken and has two children in the school district, ages eleven and seven. He has a Master’s degree in School Administration and a Doctoral degree from Wilmington University.

He has been working in the field of education for approximately twenty years and he has been with Lawnside for fourteen years. Four of those years, he has been the superintendent. The eight years prior he served as the Vice Principal. He previously taught in Camden City for eight years. When he learned that he would be asked to

testify in this proceeding, he contacted Ms. Martinez to learn why no one from Pennsauken had reached out to him regarding the petition.

Lawnside's school is Pre-k through eighth grade with 287 students. Approximately 97% of the students are African American, 1% are Hispanic and the other 2% are Asian, Latino or other races.

Dr. Johnson believes that Lawnside has been sending its children to Haddon Heights for high school since 1926. He testified that there is a high level of communication between his district and the Barrington and Haddon Heights districts. There is "vertical articulation" among the three districts, meaning that teachers at the middle school level will work with the teachers at the high school level to discuss the skills the students are going to require. Additionally teachers of the same grade levels will work collaboratively to coordinate curriculums. The three superintendents work together to create a consistent school calendar and coordinate professional development. Additionally, Lawnside will get involved if there's a Lawnside special education student at Haddon Heights where there is an issue or a risk of out-of-district placement.

All three special education directors develop training and in-service training days where all districts work together. They also use the same type of special education software to develop IEPs. The districts provide parent nights for special education students for all three districts so that they may interact.

Dr. Johnson will occasionally go outside of his job description and speak with high school students who came from Lawnside if there is a discipline or motivational issue. Although this is outside of what is required from him, he is happy to do it when Haddon Heights requests it since he is vested in the success of his students at that school. Since he was previously the Vice Principal at Lawnside, he has experience with disciplinary issues.

There are share services agreements with Barrington and Haddon Heights. For example, Lawnside and Haddon Heights have share members of the child study team. Additionally, Haddon Heights has assisted Lawnside when they had to bus a child from outside the district to Haddon Heights when DYFS placed a student outside the home. The districts also share facilities. The Summer Bridge Program for eighth graders is hosted in all three districts. The Haddon Heights athletic teams occasionally use the Lawnside gym. Additionally, in the past Dr. Johnson has sat on a hiring panel for the child study team director at Haddon Heights.

Dr. Johnson is very aware of the academic performance of Lawnside students at Haddon Heights. He knows their graduation rates, the AP class participation, and proficiency test scores. On average, Lawnside students do not perform as well on the NJ ASK test as students in the other two districts, but overall his students are successful at Haddon Heights.

He has had conversations with Haddon Heights to eliminate some of the standardized requirements to take AP or college prep classes to potentially allow more Lawnside students to enroll in these classes. He is not certain if they have done that at this time. Lawnside is part of the Delaware Valley Consortium, which is a group of schools aiming to close the academic achievement gap between schools which are primarily minority and those that are made up of primarily Caucasian students. Eliminating the standardized requirements for these courses was an idea presented by the Consortium.

Haddon Heights and Lawnside have taken steps for Lawnside students' social integration into the high school. There is a mentoring program in place run through a local church. The Haddon Heights athletic department coaches and former students from Lawnside come back to speak with Lawnside students about the athletic transitions they will face. An organization called SADD, Students Against Destructive Decisions, is facilitated through the guidance departments and students will to come and speak with Lawnside eighth graders about drugs and alcohol. The Haddon Heights

administration also speaks with the eighth grade students about the transition to high school; they entertain student questions and quell any rumors.

He believes that Lawnside students are provided with a diverse educational experience when they go to Haddon Heights because they are leaving a primarily African American community and culture and gaining exposure to students and staff members of another socioeconomic status and culture. This is a realistic exposure to a real-world setting. He has not had any founded complaints of racial problems or issues regarding Lawnside students at Haddon Heights.

Ronald Corn

Mr. Corn is the Principal of grades seven through twelve for the Haddon Heights Board of Education. He has twenty years of experience in education including as a social studies teacher for thirteen years, then as Vice Principal at Haddon Heights.

He testified that Haddon Heights has a “hometown feel” with not too many disciplinary programs. There are less than 800 students in total and 650 in the high school. He believes the school has a unique feel because of the diverse cultural and socioeconomic backgrounds present at the school. About twenty-five to thirty percent of the students in the high school are of minority backgrounds, the remainder are white.

The high school is geared toward preparation for a college education. The lowest level is college prep courses, then honors courses and next AP courses. There are rich opportunities for students, given the budget. Mr. Corn estimates that over 85% of the high school students go on to either two or four-year colleges or the military.

The three best things about Haddon Heights High school is that it is an active community and many parents are very involved in the school, there is not a lot of teacher turnover and the three districts blend well to be known as the “Garnets,” the school mascot, instead of three distinct communities.

The school did something called a “lipdub” or a video of the students set to music to show school spirit. They took an entire school day to organize and film the video. The students selected music to represent the different musical interests, clubs and teams at the school. Mr. Corn felt that the video, although it was a scary moment for the faculty since there were no structured classes that day, was a positive experience and made the students feel vested in the school as a whole.

Some things that make Haddon Heights unique are that they do a monthly report to highlight specific activities by teachers and students. Also, Haddon Heights has two Professional Learning Communities a month with the faculty so that teachers who all teach a particular subject, such as algebra, can discuss and improve the curriculum. It allows time for teachers to talk to each other, which doesn’t normally happen within the school day. Also, Mr. Corn has a Site-Based Council which is an avenue for teachers to volunteer to participate in the decision-making process at the school. It is a leadership model to help keep him informed about teacher’s views.

He characterized the academic relationship with Lawnside and Barrington districts as tremendous. Vertical articulation between Haddon Heights High School and the sending middle schools is heightened since Michael Adams took over as Superintendent.

He communicates very often with Dr. Johnson and Mr. Arcodia and believes that communication on all levels of the faculty is extremely important. He will involve Dr. Johnson and Mr. Arcodia when important issues arise such as residency or major discipline issues. They are also involved in graduation.

Compared to five years ago, Lawnside and Barrington students are more prepared for high school. This is due to improved communication among the districts.

Some things they have implemented to close any achievement gaps and to integrate the three districts are the Summer Bridge Program which allows rising freshman to gain more skills, mentoring programs, an orientation program involving all

three districts that includes the parents with events in the spring and summer, and they specifically arrange homerooms to include students from each district in the homeroom for social integration.

To widen cultural and racial understanding among students and staff, Haddon Heights has required teachers to read the book “Black Students, White Teacher,” and they have had professional development regarding how to meet the needs of different learners and the discipline program was revised. For students, they have had guest speakers on the topic, they have an organization called Multicultural Student University that hosts dinners, performs skits and dances based on a various cultures, and they have “Mix it Up” day which pairs students of different cultures or communities together to have conversations about diversity issues and they have a Holocaust curriculum. Additionally, the school has also offered a Multicultural Art class and an African American history class.

Mr. Corn does not see any logistic problem with incorporating roughly 300 more students from Merchantville into the building.

Michael Adams

Mr. Michael Adams is the Superintendent of Schools for the Haddon Heights Board of Education. He has been in the field of education for nineteen years including as a middle school and elementary school teacher, a vice principal and a principal. He has been Superintendent at Haddon Heights for four years.

Every five years, the district does a strategic plan. These are not state mandated, but they are voluntary on the part of the district.

Some of the educational aspirations in the strategic plan for the Haddon Heights School District were: for the Special Education director, who also serves Lawnside students, to work with the Barrington Special Education director to try to bring back out-of-district placements and meet those students’ needs in-district, and for there to be

vertical and horizontal articulation among the three districts. Articulation means engaging in constant communication and bringing teachers together from various grade levels, such as 7th, 8th and 9th grade teachers to determine the educational goals for 9th grade students at Haddon Heights and gear the 7th and 8th grade curriculums to ensure that students are meeting those goals. It also means that the three districts implement the same evaluation standards for the teachers. He believes all goals in the last strategic plan have been met.

Mr. Adams testified that there is excellent communication among the three districts. For example, he provided a bus to Lawnside when a busing issue arose. Additionally, Lawnside and Barrington have allowed Haddon Heights to be on a payment plan for years where the districts have over-paid tuition. The three superintendents are in touch several times in a month. The districts have decided to combine their CPAG meetings for Special Education and they rotate which school will host the meeting. When the superintendents from Lawnside and Barrington have questions for him, he gets back with them, or he has another staff person get back with them immediately.

One way the three districts have been able to work together and save money is to buy only one set of the five required novels for all eighth graders and to rotate them among the districts.

Given his past communication with Mr. Strong from Merchantville he believes Mr. Strong will fit right into the mix of the superintendents from the other two schools. He has spoken with him enough to get a sense of his style and work ethic.

The Haddon Heights Board of Education has eleven members, nine from Haddon Heights and then one from each Lawnside and Barrington. He believes the Haddon Heights members are open to receiving feedback from Lawnside and Barrington. At each Board meeting, he recognizes accomplishments by staff and students in addition to discussing issues. Each Friday he emails a Board Brief to each of the members and the Lawnside and Barrington members are free to forward this

onto their own Boards. If Merchantville did not have enough students to make up the 10% legally required to have a seat on the Board, he would still recognize the students and staff and address Merchantville concerns at the Board meeting.

The Board resolution and contract regarding the potential sending-receiving relationship with Merchantville was passed unanimously with the Haddon Heights Board of Education. No one has expressed to him that this would be a negative change for the school. Some teachers who reside in Merchantville have expressed to him that this would be a positive change.

Haddon Heights has applied for the New Jersey Choice Program whereby they would accept tuition students from other districts.

Approximately 26% of 9th-12th graders at Haddon Heights are minorities and about 12% of 7-8th graders are minorities. Mr. Adams maintains his position that adding Merchantville students will not change these demographic statistics significantly. He sees value in racial diversity at his school since it is representative of what students will later find in the workplace and they are able to learn about one another and other cultures. He stated there is no required score on the NJ ASK in order to be considered for an AP course at Haddon Heights.

He does not see a logistical problem of housing the students if there are more Merchantville students at Haddon Heights than have traditionally attended Pennsauken. He estimates that Lawnside and Barrington pay approximately \$13,000 in tuition per student. He sees value in retaining all students at the school regardless of whether they are high or low achievers on standardized tests since standardized tests are not the best predictor of what students can offer in the classroom.

James Kirtland:

Mr. Kirtland was qualified at the hearing as an expert in School Finance. He performed a feasibility study on behalf of Merchantville to predict the impact of severing

the sending-receiving relationship with Pennsauken and establishing the new relationship with Haddon Heights.

Mr. Kirtland has conducted many New Jersey feasibility studies in the past for schools seeking to dissolve or withdraw from another district. His resume was reviewed and admitted into evidence. He is aware of two dissolutions of Regional Districts in New Jersey, Union County and Lower Camden County and he has been involved with both of them. Mr. Kirtland is a certified CPA in many states now retired, after twenty-six years, from the firm now known as Deloitte & Touche. He has a bachelor's degree and an MBA from Columbia University. He has a tax practice and does consulting mostly in the area of school board finance. He served on the Berkley Heights, New Jersey school board for about fourteen years. He has been performing statistical and mathematical studies since 1995. He performed feasibility studies in North Haledon and Oradell school districts where there was an issue of withdraw or dissolution.

Normally in feasibility studies of school districts, he looks at the last three years of audited finance information. He does not use projected budgets since they are only planning documents. The documents in New Jersey that reflect what districts actually spent are known as the CAFR. He also obtains the equalized property value reports published by the state of New Jersey and the School Report Card. His end result will be a calculation of the projected new tax levy and tax rate after the districts have dissolved or withdrawn.

In this case, he also spoke with the Board Secretaries of Haddon Heights, Pennsauken and Merchantville to obtain the approved tuition rates from the state for those particular sending-receiving relationships. Additionally, he uses past enrollment data, data given to him by the demographer, Dr. Grip, and mathematical calculations to predict enrollment. He prepared three reports.

He has to make assumptions to determine what is going to happen. The main assumption he makes is that this is going to be a permanent change. He does not take into account changes that would have occurred regardless of whether the school

dissolved. Additionally, he assumed that the maximum tuition rate will be charged by Haddon Heights to Merchantville since Lawnside and Barrington already pay that amount. Although this amount is different than the amount in the contract signed between Merchantville and Haddon Heights, in his experience, this number can change from the date of the agreement.

To determine the new tax levy for a community, he looks at the revenue items, state aid, federal aid, projection those against the expenditures and come to a tax levy. He does that for five years and gets the totals and takes an average to determine the projected impact on the tax levy. He uses a five year average in case there is an unusual year.

He uses the available tuition rate and he estimated the total tuition loss to Pennsauken will be \$800,000 at approximately \$200,000 per year during the four-year phase-out period. Given that Pennsauken's expenditures are less than \$800,000, he estimates that in the first year of full implementation, it will cost tax payers in Pennsauken \$259,000. Since the average property value in Pennsauken is \$90,000, he estimates that the tax burden on Pennsauken tax payers on the average home would be \$4.00 per year, for a total of \$16 over the four years of implementation. This is utilizing an equalized tax levy which is calculated according to the full tax levy of the town so it is a rough estimate for the individual tax payer, not taking into account many individualized circumstances. Additionally, since Pennsauken has a surplus, it could use that first before charging tax payers the offset amount.

This increase in tax levy will not violate the new law that places a 2% annual cap on raising property taxes. This is because the increase will be over time and not all in one year and additionally, the past three years of tax levies in Pennsauken have remained the same. Since the 2% cap can carry over from previous years, in the fourth year, there will be an 8% cap, not a 2% cap and Pennsauken will never go above that. The opposing expert, Mr. Higgins calculated that this increase will go above the 2% cap, but that would only happen if the severed relationship occurred all at once in one

year and unused caps could not be carried forward, but that is not the current plan and he reads the legislation to allow a town to “carry over” unused caps.

In his opinion, severing the sending-receiving relationship with Pennsauken will therefore not have a significant negative impact on Pennsauken. Merchantville will actually “break even” since the tuition rate is marginally lower for Haddon Heights than Pennsauken but he factored in an increased transportation cost since Haddon Heights is a few miles farther than Pennsauken. Therefore, Merchantville will not be negatively impacted and Haddon Heights, Barrington and Lawnside will actually benefit from lower tax levies as a result. Since there will be more students at Haddon Heights, this will distribute the tax burden over a larger population and taxes will actually go down somewhat in Haddon Heights, Lawnside and Barrington.

Additionally, he believes that home values in Merchantville will probably go up if they establish a sending-receiving relationship with Haddon Heights since home prices in New Jersey have been traditionally linked to the quality of education available in the community. He had no hard data to rely on when making that assumption.

He also disagrees with Mr. Higgins about what is the “real bottom line” in this situation since he believes the net impact will be on the tax payer, not the loss in revenue to the Pennsauken. Mr. Kirtland assumes there will be an offset in expenditures in Pennsauken since there will be approximately sixty fewer students. When this occurs, Boards usually respond by laying-off teachers or reducing expenses in another way. He makes the assumption that school boards will always try to maintain the current teacher/student ratio. Under that rational, upon losing sixty students, Pennsauken will likely lay off 5.4 teachers to meet the reduced need.

On cross examination, Mr. Kirtland admitted that if Pennsauken did nothing to address the loss in revenue and it actually lost \$800,000 all in the first year that the cost to the taxpayers would be \$16.00 per year, according to his calculations. Therefore, this would be a total increase of \$48.00 over four years. Mr. Kirtland stated that this would

not happen though because of the phase-out period where Merchantville students would be phased out of Pennsauken one grade level at a time over four years.

Richard Grip:

Dr. Grip was qualified as an expert as School Demographer and Psychometrician. His CV was entered into evidence. A Psychometrician is a statistician specializing in the field of education, psychological and sociological fields particular to those fields using quantitative techniques. His main goal is project enrollment and to conduct racial analyses when requested.

Dr. Grip holds a Bachelor's degree in civil engineering, a Master's degree in science and education and a Doctoral degree in Educational Statistics and Measurement. He has performed about twelve educational feasibility studies over the course of his fifteen years in the field and he is also the demographer for New York City schools. Additionally he has performed statistical analyses for universities and he has worked with New Jersey districts in Watchung, Carlstadt, Oradell as part of the Riverdell Regional case, South Hunterdon and Cape May. He was first hired by Merchantville in 2007 to do a preliminary racial impact analysis and he then also wrote the January 2012 expert report for Merchantville. Racial impact is an element of demography.

When Dr. Grip does statistical analyses for school districts he looks at statistics regarding birth rates, census data, and economic data. The data for Merchantville shows a historically stable population from 1940 to 2010 so there is not a lot of change predicted in the number of people there. It is between 3700 and 4400 people. In 2010, sixty-five percent of the population was white and the average family income was \$88,000.

In Pennsauken, there was a lot of growth between 1940 and 1960 and then population has remained stable since that time. The general population is about

36,000. Pennsauken was 47.6% white and the average family income was \$69,000 in 2010.

The best way to predict future enrollment in schools is to first look at historical enrollment. He also looks at birth rates and what type of housing exists in the community. He uses the Cohort Survival Method which shows how many children are progressing, or surviving, to the next grade level. This is the preferred method by the New Jersey Department of Education. When the grade level falls below thirty-five students, it becomes more difficult to predict with accuracy.

For all five districts involved, including Lawnside and Barrington, he projected enrollment for all races combined and then broke it down by race. During his testimony, Dr. Grip went through tables appearing in his expert report and in Dr. Fine's, the Pennsauken expert, and corrected incorrect numbers. Additionally, he wondered if Dr. Fine is factoring in Choice students into her calculations since her numbers were not correct. Additionally, he pointed out that Choice students should not factor into calculations since they are students that attend Merchantville schools but do not reside there. All values regarding the number of Merchantville students attending Pennsauken were obtained from Mr. Strong.

He calculated the average cohort survival for all students in eighth grade in Merchantville going to Pennsauken was 31% over the past six years. Overall he found that Merchantville students generally make up only 4.1% of all students at Pennsauken high school.

He analyzed student populations in all five districts in question. Over the past six years, the population at Pennsauken schools has been stable for Pre-K to eighth grade students but it has been declining at the high school. There is a low survival rate for Pennsauken 8th graders to 9th grade.

There is no increasing or declining trend with regard to births in any of the five districts. They are all relatively stable; therefore there is no indication that there will be

a surge in kindergarten students. There are no major housing changes to effect enrollment projections.

For Pennsauken High School he is projecting a decline over the next two years from 1477 students to 1463, but then after that he is predicting an increase of about fifty students to 1527. For Merchantville, he is not predicting an increase or decrease in enrollment. For grades 9th-12th. He predicts about fifty-five to sixty-five students. For Barrington, he predicts stable high school enrollment at about 270 students. For Lawnside the projected range at the high school is stable around 110-120 per year. Haddon Heights Elementary School is projected to increase enrollment slightly but the high school enrollment is projected to come down to 600 students in 2017 and 2018.

Therefore since Merchantville sends about sixty students each year and Pennsauken is projected to increase its population by about fifty by the time a phase in would occur, then he predicts that overall Pennsauken will only have about a ten-student differential and therefore only a loss of .7% students. In his opinion, that is incredibly small compared to the overall 1477 population of the high school. Even if Merchantville withdrew all of its students at once, it would not be as great some of the natural declines that have occurred at Pennsauken. For example in the 2008-2009 school year there was a decline of 120 students and from 2011-2012, there was a decline of approximately sixty students.

In his opinion, Haddon Heights has the ability to house Merchantville students since their facility houses 1777 students and they are about 300 students below that number at the moment. They may have to increase some student/teacher ratios, but housing should not be a problem.

In terms of a racial composition analysis, over the past six year, the white population in Merchantville has comprised between 52% and 58% of the population. This is very different than twenty years ago, the last time Merchantville attempted to sever its sending-receiving relationship with Pennsauken. At that time, the population was about 95% white. He pointed out that since Merchantville and Pennsauken have

both increased their minority populations since that time, and given Haddon Heights's diverse environment, that this is an entirely different analysis.

The percentage of white Merchantville high school students that attend Pennsauken has declined over the past six years from 51% to 28%. In the 2012-2013 school year 72% of the Merchantville student who attended Pennsauken were minorities.

At Pennsauken, for the entire district over the past six years, the white and black populations have declined and the Asian and Hispanic populations have increased. Hispanic students now make up almost 40% of the district. Overall, the minority population in the district went from 81% to 84.66%. It is very unusual to see a district without at least one race occupying at least 50% of the population, but this is what is occurring at Pennsauken. This suggests that you have an unusually diverse environment at that school.

In the past six years, there has been a decline in Pennsauken High School students. First, only 91% of Pennsauken 8th graders actually go to Pennsauken High Schools. Also, the average annual loss of minority students from 8th to 9th grade for the past eleven years is thirty-eight students. The average annual loss of white students from 8th to 9th grade over that time is twenty-five per year.

At Haddon Heights High School, the population is 27% minority and 73% is white. The minority population is primarily due to the Lawnside population, which is predominantly black. Therefore, this school is also diverse.

Overall, he projects a .72% loss, less than 1%, of white students at Pennsauken. To arrive at this number, he took the number of white Merchantville students compared to the entire Pennsauken High School population over five years into the future. This differs from Dr. Fine's analysis where she claims a 12% difference since she looked at only the number of white Merchantville students compared to the entire white sub-

population. Dr. Grip disagrees with that type of analysis since it does not take into account the entire population.

The most recent count of white students who attended Pennsauken from Merchantville was in the 2012-2013 school year. That count was seventeen students. Dr. Grip points out that Pennsauken is losing more white high school students from its own district, on average twenty-five a year. He projected a loss of two white Merchantville students after the fifth year of the phase-in process. He believes with a reasonable degree of certainty that this is not a significant negative impact on Pennsauken school. He did concede that these students would be in addition to any additional loss of white students, which averages twenty-five per year and that the loss of Merchantville students would slightly exacerbate this trend.

Dr. Grip did agree that if in the 20112-2013 school year, the white Merchantville students were removed from the Pennsauken High School; it would have constituted 6.7% of the white subgroup. He believes that Pennsauken will have the ability to absorb the loss of approximately sixty Merchantville students since he expects an increase in the student body of about fifty students.

Peter Carter

Mr. Carter was certified before the court as an expert in the field of Educational Administration and Curricular and Co-curricular programming and New Jersey Public School Administration.

His education includes a Bachelor's degree from Fordham University in Classical Languages and a minor in Philosophy. He also holds a Master's degree in Educational Administration from Hofstra University. He has experience teaching Latin and English in a parochial high school in New York. He then went on to hold various assistant principal, principal and superintendent positions through the region in New York, Delaware and New Jersey for approximately thirty-six years. He served as an assistant principal for an alternative high school in Brooklyn New York for young men who had

criminal records. He worked as a principal in Newark, Delaware during a time when there was court-ordered desegregation in the district and he had to combine two racially-diverse schools. He served as a principal in Metuchen, New Jersey in a primarily white school. He went on to become an assistant superintendent in Irvington schools and improved the HSPT scores for the students there from a passing rate of 15.4% to 50%. He then served as superintendent of Roselle Schools in Union County during a time when the racial and economic make up of the population was in flux. He was then asked to serve as the Essex County Superintendent and he remained there for six years. This was during a time where there was a state take-over of the Newark School District and also during the Abbott decision. He then returned to Irvington school district as superintendent and reduced an \$8 million deficit to a \$3 million surplus.

Mr. Carter then went on to become the superintendent of the K-8 district in Ringwood, New Jersey. He collaborated very closely with the Lakeland District, which is where his eighth graders attended high school. In his semi-retirement, he has served as the interim superintendent in Plainfield and Hoboken in recent years. He has extensive experience reviewing and adjusting school budgets.

He was hired by the Merchantville District to consult with them on the process of severing its sending-receiving relationship with Pennsauken and establishing a new relationship with Haddon Heights.

As part of his services, he spoke with Marilyn Martinez, the Superintendent of Pennsauken schools and she did not express any concerns with him regarding severing the relationship. The district was not receptive to him actually visiting the school. He also spoke with Haddon Heights administrators and visited the school.

In his opinion, the education offered by Haddon Heights is better than Pennsauken High School. In reaching this conclusion and evaluating what the effects of the new relationship could be Mr. Carter reviewed test scores, attendance rates, the number of SAT test-takers, class size, AP course scores, drop-out rates, instructional

time, curriculums, co-curricular activities offered, outreach to students before high school, experience of the administration, social integration of the sending districts and cultural diversity.

Mr. Carter felt that Haddon Heights High School lends itself to a very fine and positive educational experience for the students. He believes the instruction, the curriculum, and the sense of oneness with the other two communities that send students all contribute to this assessment.

The scores on the High School Proficiency Assessment (HSPA) are better at Haddon Heights with 73% of the students score “adequately” or “proficiently” whereas Pennsauken students have 50% of students scoring in this range. On average, Haddon Heights’ SAT scores are better than Pennsauken’s and there are more students at Haddon Heights actually taking the exam. About 23-26% of Pennsauken students take AP classes, but about 50% of Haddon Heights students take them. Of the Haddon Heights students who take the AP test, 83% of them scored a three or better whereas only 22% of the Pennsauken students scored in that range. A score of three, out of a possible five, is usually considered a passing score and could allow the student to obtain three college credits.

Additionally, Merchantville students’ performance in grades 6 and 7 on the NJ ASK test are more in line with the Barrington, Lawnside and Haddon Heights students - with proficiency scores between 63-70% whereas Pennsauken was 50.9% proficient.

Mr. Carter analyzed the language arts and specifically the Persuasive Writing curriculum at both schools. He found that although both schools meet the core standards set by the state, the Haddon Heights curriculum had the state standards more purposely mentioned and incorporated in the school curriculum. Additionally, staff members were named on the document as contributors to the curriculum. He felt this created a “buy in” by the teachers. He felt the Pennsauken language arts curriculum does go to the same lengths and depths as that of Haddon Heights’. In the Persuasive Writing curriculum, he felt that the Haddon Heights’ curriculum was easier to

understand and also went into greater depth and will produce a better performance by students.

Additionally he determined academic rigor between schools by analyzed course offerings, course descriptions, and whether there are prerequisites for upperclassmen course. Overall he felt that although there was a good deal of rigor in some of Pennsauken's courses, Haddon Heights had a greater number of rigorous courses based on the description of the course and prerequisites needed. He felt there was more rigor and challenge in the lion's share of the Haddon Height's courses.

According to his findings, Pennsauken is evolving and trying to improve its current status. The school had a Comprehensive Assessment Performance (CAPA) evaluation by the State of New Jersey. These assessments are only done in districts where there the School Report Card indicates some issues. The CAPA report for Pennsauken indicates that the high school especially needs a lot of work. Mr. Carter is familiar with these reports since the district of Irvington received one when he was there. Action Plans are required when a district receives a CAPA report. Mr. Carter did not see an Action Plan from Pennsauken.

In extra-curricular activities, Pennsauken and Haddon Heights are relatively equal except that Haddon Heights offers the additional suburban offerings of tennis, swimming and golf. He believes that if Merchantville students leave Pennsauken it will have no negative impact upon on the sports programs since the largest number of students in one activity are four students on the football time over a four-year period. This number is so small it would not be influential.

The club offerings and participation by the Merchantville are unclear but Merchantville students participate in clubs in a very low number.

Overall, the Haddon Heights class size is a bit smaller than Pennsauken. Merchantville students would benefit from this since they are already accustomed to

small class sizes. If Merchantville students left Pennsauken and the teaching staff is not reduced, there would be no educational impact on the Pennsauken students.

Haddon Heights reports thirty to thirty-five minutes more of instructional time per day than Pennsauken. This is equivalent to an extra period in the day and it would extend the number of courses per semester that Merchantville students could enjoy.

Overall, more Haddon Heights students come to school when comparing attendance rates. There is a 92.7% attendance rate at Haddon Heights and a 90.4% attendance rate at Pennsauken.

The graduation rate at Haddon Heights is better since it is 88% and Pennsauken is 81%. The drop-out rate at Pennsauken was 2.5% in the previous year, which is 1.1% over the state average. This is compared to Haddon Heights' drop-out rate of .3%.

Mr. Carter asserted that Haddon Heights does better outreach to its sending districts than Pennsauken currently does for Merchantville, currently the only sending district there. Pennsauken did not indicate any outreach activities for the Merchantville students; they only stated that contact with the Merchantville students was left to the guidance department.

Additionally, there is an established operation for articulation for curriculum between Haddon Heights and its sending districts. Pennsauken did not tell him about any curriculum articulation happening between itself and Merchantville when he spoke with administrators and therefore he believes none exists.

From his experience of performing curriculum articulation between the Ringwood and Lakeland district, he believes that this has a direct impact on students. This is because middle-school students met with teachers from the high school and they understood what was going to be expected of them in high school. Some advanced students were sent to the high school to take algebra courses where it was appropriate.

There is a positive an apparent social integration at Haddon Heights High School which he felt from the school video and when he visited the building. He expects the same type of social integration that occurs for Lawnside and Barrington will occur for Merchantville students as well. Pennsauken did not mention what they were doing to make Merchantville the totality of the high school building.

In terms of racial diversity, he felt that the current Merchantville composition is diverse in its own right and therefore this is different than the previous instance when Merchantville sought to terminate its sending-receiving relationship with Pennsauken. He believes since Merchantville, Pennsauken and Haddon Heights are all diverse districts that there will be no negative educational impact due to a decreased diversity. He conceded that the diversity at Pennsauken will decrease in a miniscule fashion. He does not agree that Pennsauken is or would be a segregated school if Merchantville left.

There will be a positive educational impact on Merchantville students because they will receive a better education. There will be no negative impact on Pennsauken students since Merchantville students occupy only 4% of the high school and they are there in such low numbers.

The loss of Merchantville student will not be noticed since the Pennsauken students never met them and also because the number of students has traditionally been so small in comparison with the Pennsauken high school students. Losing students from a high school is different than losing students from an elementary school where they have only twenty to twenty-four students in the class and they spend all day together. In the high school, the class size is normally larger and students see a variety of different student all day when they change classes. Although the high school students may better perceive why the Merchantville students are leaving, they will likely not care. If the students were concerned, he would present the issue to them openly and celebrate why Pennsauken is a good place to be.

Since in the past twenty years, which is the last time Merchantville attempted to sever its relationship with Pennsauken, there have been many changes in the choices

students have for education in New Jersey. This includes more Vocation-Technical high schools with more technology-oriented courses, charter schools and the New Jersey School Choice Act which was passed in 2010. These choices nullify any impact which could have been felt from the Merchantville students leaving Pennsauken.

Overall, Superintendent. Martinez at Pennsauken gave him the impression that they were moving forward and they were most concerned with increasing the amount of students who were prepared for higher education. He feels that Haddon Heights has already achieved some gains where Pennsauken is still striving.

Mr. Carter testified that the loss of Merchantville's tuition would not greatly impact Pennsauken's school budget of over \$90 million. There would be very limited educational impact due to the reduction of revenue due to the loss of Merchantville's tuition monies. He estimates that there would be a loss of \$260,000 in the year following Merchantville students leaving Pennsauken. Given Mr. Carter's experience with adjusting school budgets, he made adjustments to Pennsauken's budget to account for the reduction. He did not make any specific suggestions of where those deductions could be made. He reduced the "Regular Programs" line by \$165,000, the "Essential Services, Administration and Information Technology" line by .5% or \$9,300, the "Special Education" line by \$35,000, "Speech, OT, PT and Related and Extraordinary Services" line by \$8,300, and the "Operation and Maintenance of Plant Services" by .5% or \$43,000. He relied on Mr. Kirtland's report for the total amount.

Marilyn Martinez

Ms. Martinez has been the Superintendent at the Pennsauken School District since October 2011. She attended elementary school and Girls High School in Philadelphia. She then earned her Bachelor's degree in Education, a Master's degree in Educational Administration and her Superintendent's letter. She is certified to be a superintendent by the state of Pennsylvania and reciprocally in New Jersey as of 1999.

After teaching English as a Second Language in the Philadelphia School District, she then held various Superintendent and Principal positions in the Philadelphia School District. She then went to Baltimore to serve in the Area Academic Office and returned to the Philadelphia School District in 2010 to serve as Principal to an urban troubled high school with the purpose of improving the academic experience there.

There are eleven schools in the Pennsauken district and they serve approximately 5600 Pre-K to 12th grade students. The racial breakdown is 38% Latino, 34% African American, seventeen or 18% white and a lower-teens count of Asians and then the remainders of the students are multiracial. In the high school, there are a lower percentage of white students and more Latino and African-American students. There is a relatively large Vietnamese population at the school. On cross examination, Martinez admitted that the white population at the high school in the 2012-2013 school year was 17.05% and 15.43% in the elementary population.

Since her arrival at Pennsauken, the Board of Education asked her to improve the perception of the school. She first implemented a code of conduct with earlier consequences for misconduct and more strict enforcement of the school uniform. She met with the young people in town-hall style meetings. This helped to build relationships. She also set high bars for the administration to ensure that students were in their classes on time in the high school. If students were lingering in the hallways, parents would be called. Additionally, the use of cell phones in the hallways is no longer permitted.

Martinez highlighted some further initiatives she created at Pennsauken High School. She identified overaged students and implemented a "credit recovery" program aimed at these students. She has also improved the drop-out rate from 18.2% to 15.3% in the two years she has been there. She initiated partnerships with Camden County College for a Gateway to College program and enabled her students to obtain an Early Childhood certificate through the College upon graduation. She implemented a mentoring program with fifty teachers donating their time to become trained. For the

first time, every sophomore in the school will be taking the PSAT to encourage college readiness, even for military-bound students.

With access to Title 1 dollars, which is grant money to support students at risk, she initiated intensive interventions to increase the reading levels of some students. There is also a new partnership with the Pennsauken Library to make sure all textbooks are accessible.

She made personnel changes by hiring a new principal at the high school. Without regard to whether or not Merchantville withdrawals from Pennsauken, she laid off nine teachers, seven of which were at the high school, and is now proposing to lay off nine more teachers. This is to correspond with the reduction in the student population over the past five years. Additionally, she eliminated a director position.

Martinez testified that there is no way to differentiate who are the Merchantville students in the high school since they are a part of the fabric in the community. Both Merchantville and Pennsauken students attend the same 9th grade orientation programs in the Spring and in September when school begins. She has never been asked to create a separate program for Merchantville students.

Martinez testified that the communication between Merchantville and Pennsauken regarding special education students is a continuous dialogue about the welfare of the children and placement. On cross-examination, Martinez stated she has not actually participated in these conversations.

Martinez stated that no parent or student has ever complained to her specifically about the situation of Merchantville students at Pennsauken. If Merchantville leaves the high school, they are considering reducing the staff by laying-off a counselor, a social worker and possibly other staff. She believes there will be a substantial economic and educational impact if Merchantville severs its relationship with Pennsauken. The economic impact will be felt because 65% to 70% of the students are from low

socioeconomic situations and the resources and materials to address this deficient, such as partnering with social service agencies like Twin Oaks, will be compromised.

She has not implemented any programs specifically geared toward Merchantville students. She has no documentation regarding curriculum articulation or any efforts of such made between Pennsauken and Merchantville students. She has not specifically spoken to any Merchantville students regarding whether they feel a sense of belonging in the school.

She testified that the diversity at Pennsauken would disappear if the seventeen white Merchantville students were removed from the high school since it decreases the other students' chance to have relationships with those students and pointed out that white students are already in the minority at Pennsauken.

Martinez could not specifically pinpoint which of her initiatives would be compromised if the district experienced the loss of Merchantville tuition. She admitted that despite the lay-off of the nine teachers, she has still been able to implement the initiatives she introduced. She has not considered a strategy to reduce overtime costs for custodians, secretaries or bus drivers since she is not planning on Merchantville withdrawing from the district. She disagreed with the Board of Education's plan not to increase taxes in the 2012-2013 school year.

She admits that she did not choose to hire either one of the assistant principals for principal when she terminated the tenured principal. She is aware of a discrimination and harassment lawsuit pending against the current principal from her previous district.

She was aware that some Pennsauken and Merchantville students have been choosing Charter Schools, NJ Choice Schools and Vo-Tech schools instead of Pennsauken High School in recent years. She was unsure of the numbers but did not disagree with any of the numbers the schools provided in response to Merchantville's OPRA requests.

Gary Higgins

Mr. Higgins was qualified as an expert in School Finance and related school financial issues. He was retained by the Pennsauken School District. He has a Bachelor's degree in Accounting in 1980 and he has held a CPA and a Public School Accountant's (PSA) license in New Jersey for thirty years. He is a member of various accounting organizations. He assists in budget projection and analyzing financial transactions for public entities. All of his work has been in the state of New Jersey.

He worked at John J. Eckelsten Accounting Firm for ten years and then opened his own firm with two partners in 1990 and is still employed there. Since 1980 he has worked with many school districts, municipalities and other authorities in the state of New Jersey. His firm currently works with eighty school districts, fifty towns and thirty other authorities in the state and he is the named Auditor for many of them. His financial analyses have never been criticized by the NJ Board of Education and a complaint has never been filed against him.

He was asked by Pennsauken to review the Merchantville expert reports and give his opinion. In order to do his analysis in this case, he looked Pennsauken's Comprehensive Annual Financial Report (CAFR) for the fiscal years ending in 2010, 2011 and 2012, the Pennsauken school budget for the 2013-2014 school year, the most recent tuition contract between Pennsauken and Merchantville, and the Merchantville feasibility reports.

Mr. Higgins noted that the actual revenue loss to Pennsauken will be \$830,000 not \$800,000 and the actual tax increase to the average tax payer at the end of the four-year phase-in period will be \$47 per year forever into the future. Therefore, given that number, Mr. Higgins stated that in his opinion there would be a substantially negative financial impact on Pennsauken if Merchantville students leave.

In Mr. Higgins' opinion, there were no sources to validate the source of some of numbers representing the tax rates in the district. Nevertheless, he utilized those numbers and the calculations using those numbers were done correctly by Merchantville experts. He does not understand how Merchantville arrived at the conclusion that that by cutting 5.4 teachers this would close the budget gap created by the loss of Merchantville students, he assumes it is related to the student/teacher ratio but he cannot be sure.

In Mr. Higgins's opinion, there is nowhere in the Pennsauken budget where they could cut \$200,000 as Mr. Carter attempted to do in his offered budget reduction which he discussed in his testimony. He disagrees with Mr. Carter's proposed cuts because it does not provide any narrative as to which specific account could be cut. Flexible accounts would require more detail than what Mr. Carter provided as to exactly what would be cut. He feels that Mr. Carter crossed two "bridges" without explanation. First he reduced the revenue loss from \$800,000 to \$260,000 without accounting for the rest and then Mr. Carter cut \$260,000 from the Pennsauken budget without a detailed analysis.

The Pennsauken budget surplus has only \$2,370,171.80 available in the "unassigned fund balance" and that amount would be depleted in three years if it is charged with the \$800,000 each year over a three year period. The only sustainable way to make up for the loss of the Merchantville tuition revenue to Pennsauken is to pass on the charge to the taxpayers which would be an average of \$47 each year to the taxpayer with the average home value of approximately \$90,000. On cross examination, Mr. Higgins conceded that his analysis did not consider what expenses could be cut if the sixty Merchantville students no longer attended Pennsauken. Additionally, he did not refute that there would be a financial benefit to the tax payers of the four other districts involved, that was outside the scope of what he was asked to analyze.

On cross examination he agreed that in its 2011-2012 budget, Pennsauken budgeted to pay \$2 million in charter school tuition and \$712,500 in tuition to county

vocation schools for Pennsauken students who attend these schools, but he had not reviewed that document prior to his testimony.

As a result of the recent law that imposes a 2% tax levy cap, districts are now using any surplus for cash flow and contingency purposes. Therefore, in his opinion, there is less money readily available to districts than before the tax levy cap. Districts are only allowed to 2% of their adjusted general fund expenditure if it is a surplus. Mr. Higgins agreed with Mr. Kirtland in that the 2% cap could be carried over or “banked” from one year to the next for either three or four years. He clarified that a district will lose the “compound effect” of the 2% over the years, if it banks the levy cap. Theoretically, if a district banks for four years, then it could charge an 8% increase to the tax payers in the fourth year, but it could not charge 2% of what the total increase would have been in the previous years had the district incrementally raised the tax levy by 2% in the preceding four years.

Michelle Fine:

Dr. Fine was admitted as an expert in Social Psychology of Education, Race Relations, and Youth Development as they pertain to Education and Psychology. She obtained an undergraduate degree from Brandeis University and a Master’s degree at Columbia University in psychology and philosophy. She holds a Ph.D. in social psychology from the Teacher’s College of Education at Columbia. She was first employed at the University of Pennsylvania in 1981 as a professor in the human development program and was there until 1992. She worked with the public schools of Philadelphia by assisting in the major transition of separating large high schools in smaller schools.

Dr. Fine has conducted thirty years of research on schools, racial stratification in schools and she evaluates educators’ and students’ reactions to school changes. She focuses on youth development and the relationship of student outcomes to policy change. She has taught at universities from undergraduate to doctoral level. She is a past chair of her department and currently a Distinguished Professor of Social

Psychology and Urban Education at the City University of New York Graduate Center since 2002. She conducts ethnographic studies inside high schools in New York and New Jersey. Additionally Dr. Fine has consulted with the New Jersey and New York Departments of Education to determine the impact of standardized testing on English language learners and has worked in an effort to keep charter schools accessible to the public.

Dr. Fine was retained by Pennsauken. As part of her charge, she read the studies and materials provided by Merchantville to offer another perspective. She did not conduct interviews of students or administrators.

Dr. Fine found that severing the sending-receiving relationship in this case will have a substantial negative impact on race and class distribution and a substantial negative educational impact. She differentiated between “diversity” and “segregation.” Diversity is a term used to talk about various groups, they may be racial, national, ethnic, first language groups, or special education groups. The word segregation is usually used in an analysis of white groups compared to black, Latino, and Asian groups. There can be racial imbalance at a school despite its diversity.

Pennsauken as a town is much more racially and ethnically diverse than the high school. Students who move from Merchantville 8th grade to 9th grade at Pennsauken do not represent the full racial and ethnic compositions of Merchantville. Far fewer white students at Merchantville are choosing to go to Pennsauken high school. Educational research shows that New Jersey schools are becoming increasingly segregated, which means there is heavily one race at a school. Dr. Fine agreed with Dr. Grip’s changes to the student statistics in her report.

When the school becomes less white, usually middle class black and Latino families also move out. When this happens, an unpleasant dynamic historically occurs. As the white students leave, the high level courses are harder to fill, AP classes are harder to sustain, and attracting highest quality educators becomes more difficult as the student body becomes less diverse or elite. Additionally, it is her position that this case

is not just about a loss of sixty-one Merchantville students, but that other families will leave the district based on the perceptions generated by allowing Merchantville to sever the relationship.

Numerically, Pennsauken High School is a segregated school and this would increase if Merchantville students were removed. She pointed out that Dr. Grip's statistics project that Pennsauken will be at 90% minority in the fourth year of the phase out. Since a disproportionate number of white students at Merchantville already choose not to go to Pennsauken, severing the relationship would have a substantial negative racial impact both on the loss of the literal bodies but also in the stigma associated with that school. She projects that as a result of severing the sending-receiving relationship; there would be a loss of ninety-nine white students, which would be 12% of the white student body, after completion of the phase-out period. Dr. Fine concluded that severing the relationship would in essence create a subsidy to Merchantville families who would have otherwise opted for private high schools.

Dr. Fine believes the New Jersey Interdistrict School Choice program exacerbates segregation. More white students are availing themselves of a Choice option than the black and Latino students. Economically disadvantaged students are less likely to take advantage of choice options because of language barriers, knowledge of the programs, potential transportation issues and the loss of the free lunch program in charter schools.

Dr. Fine looked at the annual yearly progress (AYP) in Haddon Heights and Pennsauken. Often, larger schools and schools with a substantial number of students under the poverty line are less likely to meet AYP. In New Jersey 29% of schools did not meet AYP in 2006 and this number increased to 50% in 2011. If Merchantville leaves, this would continue to hamper Pennsauken's capacity to meet AYP.

Dr. Fine compared the performance of economically disadvantaged students at Haddon Heights to those at Pennsauken. The data for language arts shows that

Haddon Heights' students are outperforming their Pennsauken counterparts, but Pennsauken has more English language learners.

Contrary to the arguments made by Merchantville, the data does not show that students will excel beyond their current achievement levels if they attend Haddon Heights. For example in mathematics, the Lawnside students are performing lower than the Haddon Heights and Barrington students on the HSPA and in AP classes. Additionally, the Lawnside students are mostly in the lower level math classes are also disproportionately in the ASHA class. The ASHA is the test administered for New Jersey students who do not perform well on the HSPA.

Additionally, at Haddon Heights High School, white students are more likely to be in the high level math classes and African American students are much less likely to be represented in these classes. At Haddon Heights, 70.5% of the students are white and 68% of the students in the advanced math classes are white.

When Dr. Fine looked at economically disadvantaged students in both schools, the Pennsauken students are more likely to be advanced proficient in mathematics than their economically disadvantaged counterparts at Haddon Heights.

With regard to SAT averages, students from Haddon Heights have the highest average verbal, math and writing scores. They score better than students from Barrington, who in turn scores better than students from Lawnside.

Dr. Fine disagreed with Mr. Carter's statements that Pennsauken students will not care about Merchantville students leaving Pennsauken. She has found that in general lower-income students are much attuned to educational decisions which are made by adults on their behalf.

On cross examination, Dr. Fine admitted that as an expert in a previous case involving Englewood Cliffs school district, there were a lower percentage of white students at the school and she determined as an expert that it was an integrated

district. Dr. Fine stated that she made the determination that Pennsauken was segregated in part because the racial makeup of the school does not match the overall Pennsauken community. Additionally, she admitted that the largest decrease in any one racial group at Pennsauken high school recently has occurred amongst black students.

Hypothetically speaking, if there were only a total of ten Merchantville students attending Pennsauken and they were all minorities, she would say the loss would still be a negative racial impact to Pennsauken but it would not be substantial. It could still create another layer of social stigma. There would be an educational impact, but she would have to know more about the students to determine if it was a substantial impact.

She is not aware of any action taken by Pennsauken Board of Education to limit the number of children who leave the school through the Choice program.

James Kirtland – Rebuttal

Mr. Kirtland was called as a rebuttal witness after the testimony of Mr. Higgins was presented. There are two reasons why he believes Mr. Higgins' opinion about the \$47 tax levy increase is not correct. First, Mr. Higgins incorrectly started off by talking about the cumulative effect over four years. This is illogical because increases are not normally presented to tax payers in this way; they are normally presented in yearly increments. Second, Mr. Kirtland disagreed with the concept that there would only be revenue loss and that expenditures would not be reduced in response to that loss. This reasoning defies logic. There are ways that schools can reduce expenditures like privatizing services or controlling overtime. Mr. Higgins only defended this position by stating that he was not hired to investigate other ways of reducing expenditures.

Mr. Higgins also admitted that he did not review the total taxes for Pennsauken. He uses inappropriate comparisons in order to make the tax levy appear more significant since he compared the tuition only to the school tax levy, \$35 million, and not the overall tax levy for the town, which is \$77 million.

In his experience on school boards, when enrollment is down the normal practice is to lay off teachers. The testimony of Mr. Higgins and Superintendent Martinez did not address declining enrollment. Although the district recently laid-off some teachers, neither witness testified that the district had issued the layoffs in response to declined enrollment.

Upon analyzing the video of a recent Pennsauken Board of Education meeting, Mr. Kirtland surmised that the reason for the layoffs was declining enrollment and it was not a purely financial decision. This was because the County Superintendent wanted the Board to raise taxes and to address the problem of declining enrollment in recent years. Since the County Superintendent recommended a \$700,000 increase in tax levy, this goes against Dr. Higgins' argument that a \$65,000 increase in tax levy to address the Merchantville tuition shortfall, after reducing expenditures, is substantial.

Additionally, Mr. Kirtland pointed out that the projected \$800,000 loss in tuition from the Merchantville students may actually be less if other school choices in the area become more prevalent in the coming years.

Camille Zubrinsky Charles

Dr. Charles was admitted as an expert in Sociology specifically related to the study of Racial Inequity in Public Institutions. She holds a Ph.D. in sociology from University of California in Los Angeles. She also holds a Master's degree in sociology and two undergraduate degrees, one in sociology and the other in communication studies. She is professor of Sociology, Africana studies and Education at the University of Pennsylvania where she is also the Director for the Center of Africana Studies. She teaches many classes in her areas and she has been the principle investigator on national and regional sociological research studies on race and education. She is on the editorial board for the American Sociological Review and was invited to be a fellow at the Strauss Institute for Advanced Study of Law and Social Justice at NYU School of Law. In that fellowship, she produces research on racial,

ethnic, and economic segregation in neighborhoods and schools. She has been admitted as an expert in sociology in various legal contexts.

Dr. Charles was retained by Merchantville to be a rebuttal witness to Dr. Fine's report. She reviewed Dr. Fine's report and other legal documents, the feasibility studies in this matter and other literature on segregation and diversity as it relates to AYP. She is of the opinion that there will not be a substantially negative racial or educational impact on Pennsauken if the sending-receiving relationship is severed.

In her review of the statistics, Dr. Charles found that all five of the districts involved in this case are undergoing racial transition. This transition is felt differently in communities that have more land and less population such as Merchantville, as opposed to more densely populated towns like Pennsauken.

In Merchantville, she noted that in 1990 the population was 96% white and is now just over 75% white. The black population has increased six fold from 2% to 13%, the Asian population has doubled and the Hispanic population increased five times.

Pennsauken is also transitioning racially. There is a larger decline in their white population which was 80.5% in 1990 and more recently at 47.6%. There is a much steeper decline of the black population, a slower decline of the Hispanic population and an increase in the Asian population. The high school is experiencing the same declines and increases as the larger community.

Removing Merchantville from Pennsauken High School is not a traditional story of "white flight" since there has not recently been one group leaving the school. Statistically speaking, removing the white Merchantville students from the school will not result in any change regarding racial composition at the school since the change in the minority population would be less than 1%. This is not a school with just two racial groups. The Merchantville students that attend Pennsauken are more black and Hispanic. They are a diverse set of students, but not identically diverse to the Pennsauken high school student body.

She disagrees with Dr. Fine's argument that it would be predominantly white families exiting Pennsauken High School – it would be predominately minority families. There is a loss of all populations at the school except Asians. Therefore, severing the relationship would not set a precedent for allowing "white flight."

Usually segregation is measured by the presence or absence of white students and there is virtually no change in the racial composition of Pennsauken High School if Merchantville students are not there. There will not be a loss to the Pennsauken students since they would not have known the Merchantville students before they were to attend. Dr. Fine's arguments about loss are not supported since she did not interview any Pennsauken students about this subject.

There would be a 3.5% increase in the minority population at Haddon Heights High School over the five-year phase in of Merchantville students. Additionally, the addition of Merchantville will also increase the class diversity at the school because Merchantville is not as affluent as Haddon Heights, but more affluent than Lawnside. Overall, she believes the new relationship at Haddon Heights will have a positive racial and educational impact on Haddon Heights and by extension also Barrington and Lawnside.

Dr. Fine's comparison of economically disadvantaged students at Pennsauken and Haddon Heights is lacking information since compiling statistics of students based only on the free or reduced-lunch program is a crude measure of economic disadvantage. More information about the students would require a higher security clearance since it would include private information about students and therefore would be difficult to obtain. Additionally, there is no precise information about test scores available to determine if some students were close to proficient on the standardized tests. Dr. Fine's statistical analysis of the racial groups at Pennsauken and Merchantville is not reliable because she uses statistical methods that require large sample sizes and she is not satisfying the basic numeric assumptions in order for the

data to be reliable. Also, Dr. Fine's opinion about how Merchantville students will perform at Haddon Heights is based on unclear data.

Dr. Charles disagrees that severing the relationship will necessarily lead to the departure of additional white students since there is already an increasing tendency among many Pennsauken and Merchantville students to make choices outside of Pennsauken High School that do not require financial resources.

After considering the testimony offered and the exhibits entered, factual determinations and conclusions of law must be made regarding the impact severance of the relationship will have on the quality of education, the financial condition and the racial composition of the student population of each district.

With regard to the quality of education, the credible testimony of Anthony Arcordia, Dr. Johnson, Ronald Corn and Michael Adams regarding the existing sending-receiving relationships Barrington and Lawnside enjoy with Haddon Heights, coupled with the credible testimony of Scott Strong, Corn and Adams as to their vision for adding Merchantville to the Haddon Heights student population compel me, in the absence of any evidence to the contrary, to **FIND** that no negative impact will be visited upon Merchantville with regard to the quality of the educations its students receive if severance is granted.

Considering the expert testimony of Peter Carter and Dr. Fine, I assign greater weight to the testimony of Mr. Carter with regard to the impact severance will have on the quality of education offered by Pennsauken in light of his vast lifelong accumulation of practical hands on experience in operating schools and school districts. Accordingly, I **FIND** that severance of the sending-receiving relationship between Merchantville and Pennsauken will not result in a negative impact on the quality of education offered by Pennsauken.

Regarding the financial condition of the school districts, the credible testimony of Strong, Adams and Johnson paint a picture wherein even though petitioner would face

higher transportation costs if severance were granted, that the districts have many opportunities of trying to mitigate costs through the use of shared services agreements and book rotations.

The parties offered expert testimony by Mr. Kirtland and Mr. Carter, on behalf of petitioner, and Mr. Higgins, on behalf of respondent to opine as to whether either district would suffer substantial negative impact if the petition is granted. Kirtland and Carter concluded that there would be no negative impact on the financial condition of either district, while Higgins asserted that there would be a substantial negative impact on the financial condition of respondent.

I give the most weight to the testimony of Mr. Kirtland. He demonstrated vast depth of experience in the area of school finance and particularly in the area of the impact of dissolution of regional school districts and the severance of sending-receiving relationships. He thoroughly and meticulously delineated each of his findings and conclusions, and explained in detail the methodology utilized to obtain those findings and conclusions, walking through each set of data reviewed.

Mr. Higgins, while certainly knowledgeable and practiced in his field of expertise, did not appear to provide a similarly rigorous analysis. He appeared to adopt a linear approach, indicating by his testimony that the loss of tuition dollars by itself constituted a substantial negative impact on respondent. Were that the standard to be applied, no petitioning district would ever be able to clear the bar to obtain severance. Higgins also seemed to not fully appreciate the mitigating effect that the phase-in plan would have on any impact to the financial condition of respondent, at first overstating the impact on the tax levy and ultimately acknowledging that respondent has and will have the ability to bank a levy increase under the 2% cap provisions.

Accordingly, I adopt the findings of Mr. Kirtland and **FIND** that granting petitioner's petition for severance will create no substantial negative impact to either district.

Regarding the impact on the racial composition of the districts, petitioner offered expert testimony by Dr. Grip and Dr. Charles, while respondent offered expert testimony by Dr. Fine. All three presented as experienced and learned with significant experience in their respective fields and considerable bodies of accomplishment. Dr. Grip, like Mr. Kirtland earlier, offered a thorough detailed analysis of his findings accompanied by explicit explanation as to methodologies used and weight given to specific data. Dr. Fine did not offer the same thorough presentation, and her testimony was undermined to some degree by her acknowledgement that she had relied on some incorrect data; her agreeing that she had concluded in another proceeding that a school with a lower percentage of white students than respondent currently has was diverse and not segregated while concluding that respondent is; and her admission that she did not employ in the current matter certain methods which she characterized in a prior hearing as essential to validating her expert opinions.

Given the forgoing, I assign greater weight to the testimony provided by Dr. Grip and Dr. Charles. Accordingly, I **FIND** that the racial composition of the Merchantville students who attended Pennsauken High School during the last year data was available, the 2012-13 school year, is seventeen white, three Asian, and forty-one African American and Hispanic. I further **FIND** that 72% of the students Merchantville sent to Pennsauken High School were minorities. I further **FIND** that were Merchantville's students removed, at once, during the 2012-13 school year, the change in the racial composition at Pennsauken High School would have been only a .47% increase in the minority student population. I further **FIND** that if Merchantville students are phased-out over the course of four years, the total change would be only a .72% increase in the minority population. I finally **FIND** that since the 2007-2008 school year, the black student population at Pennsauken High School has decreased more rapidly than the Caucasian student population.

LEGAL ANALYSIS AND CONCLUSION

N.J.S.A. 18A:38-11 mandates that any school district that lacks high school facilities must designate a high school for its pupils through a sending-receiving

relationship. The “sending” and “receiving” districts then enter into a contract where the “receiving” district accommodates the out-of-district students while the “sending” district pays a fixed rate of tuition. N.J.S.A. 18A:38-8. To subsequently change or sever such relationship between school districts requires the approval of the Commissioner of Education. Bd. of Ed. of Englewood Cliffs v. Bd. of Ed. of Englewood, 257 N.J. Super. 413, 458 (App. Div. 1992), aff’d 132 N.J. 327 (1993), cert. den. 510 U.S. 991 (1993) (“termination of a sending-receiving relationship is subject ... to the approval of the Commissioner of Education”) (citing N.J.S.A. 18A:38-13). Approval requires satisfaction of the criteria of N.J.S.A. 18A:38-13, which provides in pertinent part:

[To change a sending-receiving relationship requires an] application made to and approved by the commissioner. Prior to submitting an application the district seeking to sever the relationship shall prepare and submit a feasibility study, considering the educational and financial implications for the sending and receiving districts, the impact on the quality of education received by pupils in each of the districts, and the effect on the racial composition of the pupil population of each of the districts. The commissioner 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 commissioner shall grant the requested change in designation or allocation if no substantial negative impact will result therefrom.

[N.J.S.A. 18A:38-13.]

“[W]hen a local board of education applies for permission to alter or terminate a sending-receiving relationship with another board [the] commissioner is required to grant the requested change in designation or allocation if no substantial negative impact will result.” Bd. of Educ. of Borough of Englewood Cliffs v. Bd. of Educ. of City of Englewood, 257 N.J. Super. 413, 459 (App. Div. 1992), aff’d, 132 N.J. 327, cert. denied, 510 U.S. 991 (1993) (citation omitted). The statutory analysis pursuant to N.J.S.A. 18A:38-13 for evaluating a modification request does not follow a traditional balancing process. Id. at 462. Instead, **any** finding of a substantial negative impact,

regardless of the benefits or positive impacts in other areas, defeats the petition for termination of the sending-receiving agreement. Ibid. “The focus of the Commissioner’s inquiry is whether a substantial negative impact exists **at all**; if it does, severance is to be denied. . . . There is simply no place in this analysis for the weighing of positive impacts once a substantial negative impact has been found.” Ibid. In determining the impact of changing a sending-receiving relationship, N.J.S.A. 18A:38-13 specifies the factors to consider “including: the educational (offerings) and financial (budgetary) implications for both districts, the impact on the quality of education in both districts, and the effect on the racial composition of the pupil population in both districts. Ibid. (emphasis in original). Therefore, once a party has established that there would be a substantial negative impact on the racial composition, quality of education, educational offerings, or the financial standing of either district, the petition must fail.

Englewood is the seminal case regarding termination of sending-receiving relationships and its effect on the racial balance of public schools. Englewood Cliffs (Cliffs) was an affluent, predominately white, borough that sought to terminate its sending-receiving relationship with the neighboring Township of Englewood (Englewood), and filed a petition with the Commissioner of the Department of Education. The Commissioner transmitted the matter to the OAL as a contested case. At the time of the hearings, Cliffs was sending only twenty-one students to Englewood, fifteen of whom were white. However, the Englewood public school, Dwight Morrow High School (DMHS), had an increasing population of black and Hispanic students. Englewood claimed that Cliffs sought to terminate the sending-receiving relationship because Cliffs was engaged in “white flight,” as opposed to the educational reasons cited by the Cliffs board. After ninety-nine days of hearings on the matter, the administrative law judge (ALJ) made numerous findings and determined that severance of the sending-receiving relationship would have a substantial negative impact on both the racial composition and the quality of education at DMHS. Englewood, supra, 257 N.J. Super. at 439–40.

The ALJ found that the number of Englewood Cliffs students who would be departing DMHS constituted a relatively small portion of the student population. But the

ALJ held that the minimal number of students affected was outweighed by the fact that the termination of the sending-receiving relationship between the two schools would give the appearance of white flight. The Commissioner affirmed.

The State Board of Education affirmed the finding below, but for different reasons. The State Board's decision focused more on the State policy that "[e]ducational considerations are primary in eliminating school segregation. The elimination of racial imbalance is not to be sought as an end in itself but because such imbalance stands as a deterrent and handicap to the improvement of education for all." Englewood Cliffs Bd. of Educ. v. Englewood Bd. of Educ., 12 N.J.A.R. 566, 688 (1990). Though the Board stated that the State policy against segregation sought to avoid a concentration of students in a school such that it would be characterized as a "minority school with the attendant 'sense of stigma and resulting feeling of inferiority,'"

[s]uch educational considerations do not include the beliefs and social values of the individuals attending a particular school. Rather, as set forth above, resolution of the legal and policy questions with which we have been presented rests on fundamental educational principles applicable in all educational settings as those principles have been expressed in the decisions of the United States and New Jersey Supreme Courts.

[Ibid.]

In other words, the Board rejected the reliance on the mere appearance of white flight as a foundation for the finding of a substantial negative impact on the quality of education. Instead, the Board focused on the connection between racial imbalance and the quality of education, noting that when there is a substantial negative impact on racial composition of a school, there is also a substantial negative impact on the quality of education at that school due to both the inherent benefits of an integrated learning environment as well as the stigma attached to "minority schools." This was made plain by the Appellate Division, which after affirming the holding of the State Board, declared that a mandate of N.J.S.A. 18A:38-13 was "to avoid withdrawals for discriminatory purposes which would have the effect of recreating segregated school systems with

their inherent inequality of educational opportunity.” Englewood, supra, 257 N.J. Super. at 464. “More to the point is the interrelationship between racial balance and education . . . These are not isolated factors. They are different sides of the same coin.” Ibid.

In a recent decision considering a petition seeking severance, the Commissioner of Education noted that “*Englewood* and its progeny establish that a de minimis statistical change may constitute a “substantial negative impact” when coupled with certain aggravating circumstances. Examples of such aggravating circumstances include, *inter alia*, a trend of rapidly declining Caucasian enrollment, evidence of projected symbolic loss, and a high percentage of projected change in the gross Caucasian population upon severance.” Board of Education of the Borough of Longport, Atlantic County v. Board of Education of the City of Atlantic City, Atlantic County, and Board of Education of the City of Ocean City, Atlantic County, OAL DKT. NO. EDU 8152-12, AGENCY DKT. NO. 112-4/12 (2014).

In the present matter, the record reflects that whether the Merchantville Students were to move to Haddon Heights all at once or phased in over a four year period, as is expected, the resulting increase in the minority population at Pennsauken High School would be less than one percent. I **CONCLUDE** that this constitutes a de minimis statistical change which much nonetheless be scrutinized for aggravating circumstances.

The record reflects, per the credible expert testimony of Dr. Charles, that departure of the Merchantville students will not statistically significantly change the racial composition of Pennsauken High School, thus there cannot be said to be a high percentage of projected change in the gross Caucasian population should severance be granted. Additionally, Dr. Grip noted that an anticipated subsequent change in racial composition (also less than one percent in 2017-2018 school year) will occur after the phase-in has completed and cannot be attributed to severance. Similarly, Dr. Charles noted that the population of black students has decreased more rapidly in Pennsauken since 2007-2008 than the Caucasian student population. This would tend against a finding of a consistent and rapid decrease in Caucasian enrollment at Pennsauken over

time. Dr. Fine's assertion that this is because any Caucasian students who could leave have already left, either to Parochial Schools or through School Choice is unsupported net opinion.

Similarly, the record does not contain evidence of projected symbolic loss. To the contrary, Dr. Charles and Mr. Carter offered credible expert testimony that the phase in to be employed, by which Merchantville Students currently enrolled at Pennsauken High School would remain so until graduation while Merchantville students entering high school would attend Haddon Heights rather than Pennsauken would guarantee that students at Pennsauken would not be noticing an absence of former classmates. Essentially, these students, having attended separate middles schools, would not have met and their absence would be neither noted nor felt. Dr. Fine's testimony that students are perceptive and generally aware of policies affecting their education appears to also be unsupported net opinion.

The record does not reflect the existence of aggravating circumstances which would render an otherwise de minimis change in the racial composition of Pennsauken High School a substantial negative impact. It appears that a racially diverse, majority-minority subset of students would be removed from a somewhat similarly (although not identically) diverse school population and be placed into another diverse setting. Accordingly, I **CONCLUDE** that granting Merchantville's petition would not have a substantial negative impact on the racial composition of either district.

The foregoing demonstrates that severing the sending-receiving relationship between petitioner and respondent would produce no substantial negative impact on the quality of education, the financial condition and the racial composition of the student population of districts. I therefore **CONCLUDE** that Merchantville's petition must be **GRANTED**.

ORDER

Merchantville's application for severance of its sending-receiving relationship with Pennsauken is hereby **GRANTED**, subject to its entering into a new sending-receiving relationship with Haddon Heights for a minimum duration of five years.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 2, 2015

DATE



ELIA A. PELIOS, ALJ

Date Received at Agency:

March 2, 2015

Date Mailed to Parties:

LIST OF WITNESSES:

For Petitioner:

Stephen Morrone
Anthony Arcodia
Jacqueline Fuentes
Scott Strong
Ronn Johnson
Ronald Corn
Michael Adams
James L. Kirtland
Richard Grip
Peter Carter
Camille Zubrinsky Charles

For Respondent:

Marilyn Martinez
Gary Higgins
Michelle Fine

LIST OF EXHIBITS:

For Petitioner:

P-1 Haddon Heights Alumni Newsletters
P-2 Authorization to Terminate Merchantville and Pennsauken Send/Receive
Agreement
P-3 Tables
P-5 County Superintendent letter to Merchantville – 4/10/00

- P-6 County Superintendent letter to Merchantville – 4/11/12
- P-7 Haddon Heights Monthly Reports
- P-8 New Jersey Charter School List
- P-9 Camden County Charter School List
- P-10 New Jersey Charter School Fact Sheet
- P-11 New Jersey Department of Education Fact Sheet on School Choice Program Dated 4/14/11
- P-12 New Jersey Department of Education Fact Sheet on School Choice Program 2013
- P-13 Camden County School Choice Districts
- P-14 Haddon Heights Curriculum
- P-15 Pennsauken Curriculum
- P-16 Haddon Heights Program of Study 2011-12
- P-17 Demographics re: Camden County Vo-Tech
- P-18 Pennsauken State Tuition Rates
- P-19 Haddon Heights State Tuition Rates
- P-21 Camden County Promise and Pride Academy Enrollment for 2013-2014 and Camden County Vo-Tech enrollment for 2010-2014
- P-22 Haddon Heights School Performance Report Cards
- P-23 Pennsauken School Performance Report Cards
- P-24 Strong Email to Martinez – 5/2012
- P-25 Haddon Heights Strategic Plan 1998-2003 Revised 2006
- P-26 Haddon Heights Strategic Plan 2009-2013
- P-27 Haddon Heights District Goals 2012-2013
- P-28 Kirkland and Grip Feasibility Study January 2012
- P-29 Kirkland and Grip Expert Report March 2013
- P-30 Kirtland Rebuttal Report
- P-31 Curriculum Vitae of Richard s. Grip, Ed.D.
- P-32 Curriculum Vitae of Peter Carter
- P-33 Kirtland Curriculum Vitae
- P-34 Dr. Charles' CV
- P-35 Strong's Ninth Grade Enrollment by Race

- P-36 Demonstrative
- P-37 Demonstrative, Pennsauken '12-'13 Enrollment with Merchantville
- P-38 Demonstrative, Pennsauken '12-'13 Enrollment without Merchantville
- P-39 Demonstrative
- P-40 List of Courses at Pennsauken High School
- P-41 Sports Offered as Pennsauken High School and Haddon Heights High School
- P-42 Club Participation Information 2011-2012 and 2012-2013
- P-43 Sports Participation Information
- P-44 Pennsauken Vision Statement
- P-45 Merchantville and Pennsauken Students at Audubon School List
- P-46 Pennsauken Students at Woodbury Heights Schools List
- P-47 Pennsauken 2011-12 Budget Proposal
- P-48 Pennsauken 2013-14 Budget Proposal
- P-49 Certification of Dr. Fine
- P-50 Excerpts from Charter Schools and the Corporate Makeover of Public Education
- P-51 Pennsauken deseg./integ. Policy

For Respondent:

- R-5 Pennsauken Course of Study Program 2012-13
- R-14 Dr. Fine's Report
- R-15 Dr. Fine's CV
- R-16 Higgins Report
- R-17 Higgins CV
- R-18 Article from the Philadelphia Inquirer
- R-19 Haddon Heights School Club List
- R-20 Pennsauken List of Clubs and Advisors with List of Merchantville Students
- R-22 2011 Senior Class Ranking
- R-23 2012 Senior Class Ranking
- R-27 Haddon Heights High School Courses

- R-30 Pennsauken CAFR – 6/30/2012
- R-31 Pennsauken Table of Aggregates 2013
- R-32 Pennsauken Auditor's Management Report – 6/30/12
- R-33 Pennsauken School Budget – 2013-14
- R-33A Pennsauken Budget – 2013
- R-35 Pennsauken CAFR – 6/30/09
- R-36 Pennsauken CAFR – 6/30/10
- R-37 Pennsauken CAFR – 6/30/11
- R-40 Merchantville/Pennsauken Tuition Contract Agreement 9/2012 to 6/2013

Joint Exhibits:

- J-1 Merchantville and Haddon Heights Send/Receive Agreement
- J-2 Haddon Heights Board Resolution on Merchantville
- J-3 Pennsauken High School Program of Study 2011-12