FILED, Clerk of the Appellate Division, April 15, 2024, **A-000716-23**

I/M/O THE VERIFIED PETITION FOR THE PROPOSED CREATION OF A PK-12 ALL-PURPOSE REGIONAL SCHOOL DISTRICT BY THE BOROUGH OF SEA BRIGHT, BOROUGH OF HIGHLANDS, BOROUGH OF ATLANTIC HIGHLANDS, HENRY HUDSON REGIONAL SCHOOL DISTRICT, ATLANTIC HIGHLANDS SCHOOL DISTRICT, AND HIGHLANDS BOROUGH SCHOOL DISTRICT, MONMOUTH COUNTY.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No.: A-0716-23T4 CIVIL ACTION ON APPEAL FROM A FINAL DECISION OF THE NEW JERSEY COMMISSIONER OF EDUCATION Submitted to the Court: April 15, 2024

BRIEF OF APPELLANTS OCEANPORT BOARD OF EDUCATION AND SHORE REGIONAL HIGH SCHOOL DISTRICT BOARD OF EDUCATION

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FILED, Clerk of the Appellate Division, April 15, 2024, **A-000716-23**

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PRELIMINARY STATEMENT

In this, the latest salvo between the Borough of Sea Bright ("Sea Bright") and the Shore Regional High School District Board of Education ("Shore Regional") and the Oceanport Board of Education ("Oceanport"), the school districts which educate its residents' children, Sea Bright seeks to minimize its residents' obligation to pay school taxes by advancing a novel argument which is ultimately contrary to the plain language of N.J.S.A. 18A:13-47.11. Sea Bright sought to withdraw from Oceanport and Shore Regional to join in the newly expanded Henry Hudson Regional School District. In furtherance of this goal, Sea Bright petitioned the Commissioner of Education ("Commissioner") by resolution pursuant to N.J.S.A. 18A:13-47.11, and their petition was opposed by Oceanport and Shore Regional. The Commissioner dismissed Sea Bright's Petition without prejudice, but opined that Sea Bright was the type of entity to which the statute applied.

That decision should be reversed for two reasons. First, Sea Bright and Oceanport are not constituents in a consolidated school district. Rather, Sea Bright's former school district was statutorily eliminated in 2009, thereafter ceasing to exist and being merged, <u>not consolidated</u>, with Oceanport. Second, the plain language of N.J.S.A. 18A:13-47.11 sets forth certain enumerated entities which may seek withdrawal from a regional or consolidated school

district, and then join with another regional school district. Sea Bright, as a municipality without a school district, and a municipality that is not a constituent member of a regional school district, is not one of the entities enumerated in N.J.S.A. 18A:13-47.11(a).

Therefore, the Commissioner's September 22, 2023, decision should be reversed to the extent that the decision grants Sea Bright permission to seek withdrawal under N.J.S.A. 18A:13-47.11(a) now or at any time in the future.

PROCEDURAL HISTORY AND STATEMENT OF THE FACTS[1]

The Procedural History and facts are long and encompass numerous filings before the Commissioner and a prior matter before this court. Below, Appellants present the relevant facts of the instant matter, and include only such details from the prior proceedings necessary to provide the Court with the context of the case currently before it.

A. THE ELIMINATION OF SEA BRIGHT AS A NON-OPERATING SCHOOL DISTRICT AND SEA BRIGHT'S STATUS AS A MUNICIPALITY WITHOUT AN INDEPENDENT SCHOOL DISTRICT.

Sea Bright is a municipality, not a board of education. (Aa750). The Oceanport Board of Education is responsible for overseeing the education of

[1] The Procedural History has been combined with the Statement of the Facts as they are inextricably entwined.

students residing in the Boroughs of Oceanport and Sea Bright. (Aa750). Prior to July 1, 2009, there existed a non-operating Sea Bright School District, which had a send/receive relationship with Oceanport. (Aa794 – Aa795). Effective July 1, 2009, the State eliminated the non-operating Sea Bright School District, along with twelve other non-operating districts pursuant to N.J.S.A. 18A:8-44(a), which authorized the elimination and merger of non-operating school districts in the State. (Aa794 – Aa795).

As a result, the former non-operating school district of Sea Bright ceased to exist and was merged with Oceanport, creating a new local school district known as the Oceanport School District. (Aa794 – Aa795). The Oceanport Board of Education is the "board of education" responsible for educating both Oceanport and Sea Bright students in grades PK-8, and students in the Oceanport School District, including students who live in Sea Bright, attend the Shore Regional High School for grades 9-12.

As it is one school district and one board of education, Oceanport holds annual school elections in which the voters of Sea Bright and the Borough of Oceanport participate at-large with no apportionment of board seats amongst the two municipalities. (Aa751). Additionally, the Oceanport School District receives State aid funding for both the students of the Borough of Sea Bright

and the students of the Borough of Oceanport directly from the State of New Jersey. (Aa751).

Shore Regional is a limited purposed regional school district organized pursuant to N.J.S.A. 18A:13-2 that operates a 9-12 regional high school on its campus in West Long Branch, New Jersey. Shore Regional educates the students in grades 9-12 of Sea Bright, the Borough of Oceanport, the Borough of West Long Branch and the Borough of Monmouth Beach. (Aa750). In addition, Shore Regional receives students from the Borough of Deal through a separate sending-receiving relationship. (Aa750). Students from the Borough of Interlaken and the Village of Loch Arbour, which have separate sending-receiving relationships with West Long Branch Board for grades PK-8, also attend Shore Regional. (Aa750).

Shore Regional receives State aid funding for students residing in both Sea Bright and the Borough of Oceanport directly from the State of New Jersey. (Aa751).

Sea Bright is not a governing body of a non-operating school district since Sea Bright's board of education and non-operating school district were eliminated as of July 1, 2009. (Aa794 – Aa795).

Sea Bright is not a governing body of a municipality constituting a constituent district of a limited purpose regional district, since there is no Sea

Bright school district within the Shore Regional limited purpose school district nor any other limited purpose regional school district in New Jersey.

Sea Bright is not a governing body of a municipality constituting a constituent district that is part of an all-purpose regional district, since there is no Sea Bright school district within any all-purpose school district in New Jersey.

Sea Bright is not a governing body of a municipality constituting a constituent district that is part of a consolidated school district, since the former non-operating Sea Bright school district was eliminated as of July 1, 2009, and enveloped into the new Oceanport School District.

The creation of the new Oceanport School District upon the elimination and merger of the non-operating Sea Bright school district pursuant to P. L. 2009, c. 78 (N.J.S.A. 18A: 8-43 *et seq*.) did not create a "consolidated school district" pursuant to N.J.S.A. 18A:8-25 *et seq*. The creation, supervision and naming of consolidated school districts, as well as the apportionment of membership of the board of a consolidated school district, and the apportionment of appropriations, tax levied and redemption of bonds, are all governed by the provisions of N.J.S.A. 18A:8-25 *et. seq*. The elimination and merger of the eliminated Sea Bright school district with the Oceanport School

District was governed by the provisions of a totally separate statutory article and mechanism—N.J.S.A. 18A:8-43 *et seq*.

B. SEA BRIGHT ATTEMPTS TO REMOVE ITSELF FROM SHORE REGIONAL AND OCEANPORT AND JOIN IN A PROPOSED EXPANDED HENRY HUDSON REGIONAL SCHOOL DISTRICT.

Between February 2022 and July 2022 Respondents each passed resolutions indicating that they respectively found good cause to pursue a referendum seeking: a) the withdrawal of Sea Bright from both Oceanport and Shore Regional; b) the creation of a new, all-purpose regional school district comprised of the Highlands Board of Education, Atlantic Highlands Board of Education, Henry Hudson Regional High School Board of Education, and Sea Bright; and c) permitting special counsel to take any and all actions to effectuate these goals through the pursuit of approval by the Commissioner of a referendum on the proposed regionalization. (Aa754). Sea Bright passed the first resolution on February 2, 2022, followed by the Borough of Highlands on February 9, 2022, and the Borough of Atlantic Highlands on June 9, 2022. (Aa754). The Highlands Board of Education, Atlantic Highlands Board of Education, and Henry Hudson Regional School District Board of Education (collectively "Tri-

Districts") passed their resolutions on June 13, 14, and 15, 2022, respectively. (Aa754).[2]

Consistent with the aforementioned resolutions, on July 15, 2022, Sea Bright, along with the Boroughs of Highlands and Atlantic Highlands and the Tri-Districts, filed with the Commissioner a Verified Joint Petition for Regionalization. (Aa22 – Aa371). Oceanport and Shore Regional were not copied on this Joint Petition. The Joint Petition sought the Commissioner's approval to place on the November 2022 ballot the issues of Henry Hudson's expansion from a limited-purpose regional district to an all-purpose regional district, and Sea Bright's attempted withdrawal from Oceanport and Shore Regional and simultaneous joining in the expanded Henry Hudson Regional District. (Aa39 – Aa41).

On June 23, 2022, Oceanport filed a Petition of Appeal with the Commissioner which, in relevant part, challenged the legal authority of Sea Bright to withdraw from Oceanport and seek to regionalize with Highlands and Atlantic Highlands. (Aa754). Oceanport asked the Commissioner to find that

[2] On June 9, 2022 (Atlantic Highlands), June 15, 2022 (Highlands), June 21, 2022 (Sea Bright), and July 13, 2022 (Tri-Districts), the parties to the Joint Petition passed updated resolutions which superseded their earlier resolutions, and clarified that they sought both the expansion of Henry Hudson from a limited purpose regional district to an all-purpose regional district, and that they sought to include Sea Bright in the new all-purpose district. (Aa344 – Aa371).

Sea Bright lacked the statutory authority to withdraw from Oceanport by resolution, and lacked the authority to unilaterally withdraw from Oceanport and join another district at all. (Aa754). Respondents moved to dismiss Oceanport's Petition, arguing that Oceanport's motion was premature, as no action had been taken in furtherance of Sea Bright's attempted withdrawal. (Aa755).

On July 19, 2022, Shore Regional filed its own Petition of Appeal and Petition for Declaratory Ruling with the Commissioner, seeking relief similar to Oceanport, but also asking that the Commissioner issue a declaratory ruling regarding the status of Sea Bright and its inability to seek withdrawal from Oceanport and Shore Regional. (Aa756 – Aa757). Respondents filed a motion to dismiss Shore Regional's petition that was substantially similar to the motion filed in opposition to Oceanport's Petition. (Aa757). Subsequently, the Petitions from Oceanport and Shore Regional were consolidated. (Aa757). Shore Regional and Oceanport filed a joint opposition to Respondents' motions to dismiss. (Aa758). The consolidated petitions, and the motions to dismiss said petitions, languished for the next seven months, with no decision forthcoming in that time.

C. THE TRI-DISTRICTS FILE AN AMENDED PETITION SEEKING TO ENLARGE HENRY HUDSON REGIONAL SCHOOL DISTRICT WITHOUT SEA BRIGHT.

Subsequently, and while Respondents' Motion to Dismiss was pending, the Tri-Districts filed an Amended Petition for Regionalization on March 17, 2023, seeking approval from the Commissioner to proceed with a referendum that would enlarge the Henry Hudson Regional District to include all grade levels of students from only Highlands and Atlantic Highlands. (Aa372 – Aa748). Significantly, Sea Bright students were not included in this Amended Petition. (Aa372). Indeed, the Amended Petition, *sans* Sea Bright, was fundamentally inconsistent with the original Joint Petition filed on July 15, 2022.[3]

On April 3, 2023, the Commissioner issued a Final Decision granting Respondents' Motion to Dismiss Shore Regional's and Oceanport's Consolidated Petitions. (Aa762). Shore Regional and Oceanport filed a Notice of Appeal from that decision on May 5, 2023, seeking review of the Commissioner's decision dismissing their consolidated Petitions. That matter

[3] These inconsistencies, as well as the in-fighting between counsel for the Tri-Districts and counsel for Sea Bright and the Borough of Highlands, were pointed out in a May 5, 2023, joint submission by Oceanport and Shore Regional to Dr. Lester Richens, Executive County Superintendent for Monmouth County. (Aa749 – Aa775).

bore docket number A-2652-22T4 and was ultimately dismissed as moot on December 15, 2023. (Aa796 – Aa798).

D. THE COMMISSIONER GRANTS THE TRI-DISTRICTS' AMENDED PETITION AND SEA BRIGHT ATTEMPTS TO ATTACH ITSELF TO THE COMMISSIONER'S DECISION ON THE AMENDED PETITION.

During the pendency of the prior appeal by Oceanport and Shore Regional on July 21, 2023, the Commissioner approved the March 17, 2023, Amended Petition filed by the Tri-Districts calling for a special election to take place in September 2023 for the expansion of the Henry Hudson Regional School District that would include all grades for Atlantic Highlands and Highlands students. (Aa776). The Commissioner's July 21, 2023, determination letter made no mention of Sea Bright, Sea Bright students or the original Joint Petition of July 15, 2022, that included Sea Bright in the regionalization plans. (Aa776).

Given the decision to move forward with a special election on the Amended Petition with just the Tri-Districts (which was set for September 26, 2023), the status of the original Joint Petition filed by the Respondents herein on July 15, 2022, appeared to be a dead issue. However, on September 6, 2023, counsel for Sea Bright and the Borough of Highlands wrote a "Hail Mary" type letter to the Commissioner seeking to renew their request for the relief requested in the original Joint Petition, specifically recognition of the right of Sea Bright

to withdraw from Oceanport and Shore Regional pursuant to N.J.S.A. 18A:13-47.11. (Aa779 – Aa784). While the letter was framed as a "formal motion" Oceanport and Shore Regional were not copied on this correspondence. The September 6, 2023, submission claimed there was "confusion" in the relief sought by all the parties to the original Joint Petition, and that in reality all the parties continued to want Sea Bright to join in the new PK-12 regional district and to withdraw from Oceanport and Shore Regional. Interestingly, the Tri-Districts, which were parties to the original Joint Petition, were not consulted and took no position on Sea Bright/Highlands September 6, 2023, application. (Aa785 – Aa786). The September 6, 2023, letter/formal motion also sought relief in the form of approval for future referendum questions involving Sea Bright joining in the newly formed Highlands/Atlantic Highlands regional school district (assuming the September 26, 2023, referendum passed), as well as a potential tax allocation formula. The September 6, 2023, letter/motion requested a decision by September 13, 2023 "in order for the voters to be fully informed of the potential new configuration when they vote on the previously approved September 26 referendum . . . ." (Aa779).

On their own initiative and after learning of the September 6, 2023, letter through informal sources, Oceanport and Shore Regional objected to the relief requested via a joint letter to the Commissioner dated September 8, 2023.

(Aa787 – Aa789). Shore Regional and Oceanport also requested that the original Joint Petition of July 15, 2022, be dismissed as moot given the advancement of the Tri-Districts' referendum that did not include Sea Bright. (Aa787 – Aa789). Finally, the Appellants asserted that the issue of whether Sea Bright is even eligible to seek withdraw from Oceanport and Shore Regional was specifically avoided by the Commissioner in her April 3, 2023 decision granting the Motion to Dismiss the consolidated Petitions of Appeal, and that the issue be resolved only after full briefing by the parties (with Oceanport and Shore Regional being copied) as opposed to unilateral letters self-described as formal motions submitted on the fly. (Aa787 – Aa789).

The Commissioner subsequently issued a letter decision on September 22, 2023, which ruled on both the July 15, 2022, joint petition and the Sea Bright's September 8, 2023, request for relief. (Aa19 – Aa21). First, the Commissioner dismissed as moot the July 15, 2022, original Joint Petition filed by the Respondents that included Sea Bright. (Aa19). The basis for the dismissal is the Commissioner's July 21, 2023, decision granting the Tri-Districts' amended petition to expand Henry Hudson from a limited-purpose to an all-purpose regional district, and permitting the issue to proceed to a referendum without Sea Bright. (Aa19). The instant appeal does not take issue with this portion of the Commissioner's September 22, 2023, decision.

Second, the Commissioner's September 22, 2023, decision purported to grant, in part, and deny, in part, a "September 8, 2023, Amended Petition submitted to the New Jersey Department of Education on behalf of the Borough of Sea Bright requesting to form a pre-kindergarten through twelfth grade Regional School District with the Atlantic Highlands and Highlands municipalities." (Aa19).[4]

Regarding the relief sought by Sea Bright and the Borough of Highlands on September 6, 2023, the Commissioner expanded the breadth of N.J.S.A. 18A:13-47.1 *et seq.* by stating that the statutes "permit[] a board of education or municipality to request permission from the Commissioner of Education to form or enlarge a regional school district." (Aa19). The Commissioner goes on to mischaracterize Oceanport/Shore Regional's position, by describing their argument thusly:

> "that Sea Bright as a standalone municipality that is part of a consolidated school district lacks standing to pursue withdrawal and request to join a regional school district pursuant to N.J.S.A. 18A:13-47.1 *et seq.* They further argue that it is Oceanport and Shore Regional Boards of Education that are responsible for [the]

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[4] A subsequent request under the Open Public Records Act, N.J.S.A. 47:1A-1 *et seq.*, seeking the September 8, 2023, Amended Petition was denied because the September 22, 2023, decision incorrectly referred to the date of Sea Bright's and the Borough of Highlands' correspondence as September 8, 2023, instead of September 6, 2023.

> education [of] the students of Sea Bright, and therefore, only they have standing to seek withdrawal."
>
> [(Aa20).]

Based upon this erroneous characterization of Appellants' position the Commissioner held that "[t]his reading of the statute belies its clear language." (Aa20). Instead, the Commissioner states, the statute applies to both boards of education and municipalities "'the governing body of a municipality constituting a constituent district of a limited purpose regional district, part of an all-purpose regional district, or part of a consolidated school district' as governmental bodies that may request to join or form an enlarged regional school district." (Aa20). Therefore, the Commissioner held that Sea Bright may seek withdrawal from Oceanport and Shore Regional under N.J.S.A. 18A:13-47.11, although she noted that Sea Bright's request was premature. (Aa20). What the Commissioner did not do, however, is address Appellants' argument that, because the former Sea Bright School District was not consolidated with Oceanport, but was rather wholly eliminated as a district and reconstituted as part of a new, expanded Oceanport, the municipality does not actually meet the description of any of the approved entities in N.J.S.A. 18A:13-47.11.

This finding was made without being fully briefed and is contrary to the unambiguous statutory language in N.J.S.A. 18A:13-47.11. The Commissioner's decision is underpinned by the incorrect determination that

Oceanport and/or Shore Regional is a "consolidated school district." See (Aa20). The Commissioner does not explain the reasons for making these substantive decisions in the context of an *ex parte* request filed by Sea Bright that was never formally served on Oceanport or Shore Regional and after glossing over this very issue in her earlier April 3, 2023, Final Decision.

Instead, the Commissioner concluded that Sea Bright can do as it wishes, despite its status and the express statutory language to the contrary. (Aa19 – Aa21). Then, recognizing the "unique procedural posture" of the matter, the Commissioner found that Sea Bright's requested relief is premature since the vote on the referendum in Highlands and Atlantic Highlands for the newly enlarged all-purpose regional district had not taken place. She then invited the parties to refile a joint request to form an enlarged regional school district if they choose and if the September 26, 2023, referendum involving the Tri-Districts passed.[5]

Thereafter, on November 6, 2023, Oceanport and Shore Regional filed the instant Notice of Appeal. (Aa1 – Aa9). Following the Commissioner's dismissal of the original Joint Petition, on September 22, 2023, Respondents

[5] Ultimately the referendum passed by a margin of 64.35% to 35.65. See Results – September 26, 2023 Special School Election, available at https://results.enr.clarityelections.com/NJ/Monmouth/118568/web.317647/#/summary (last visited April 15, 2024).

filed a motion to dismiss the appeal bearing docket number A-2652-22T4. That motion was granted on December 15, 2023. (Aa796 – Aa798).

STANDARD OF REVIEW

The standard by which courts review agency decisions is limited: they utilize the arbitrary and capricious standard. See Zimmerman v. Sussex Cnty. Educ. Servs. Com'n, 237 N.J. 465, 475 (2019) (citing In re Stallworth, 208 N.J. 182, 194 (2011)).

> Although sometimes phrased in terms of a search for arbitrary or unreasonable agency action, the judicial role [in reviewing an agency action] is generally restricted to three inquiries: (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
>
> [Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995) (quoted in In re Proposed Quest Acad. Charter Sch. of Montclair Founders Group, 216 N.J. 370, 385-86 (2013)).]

"The standard is applicable to administrative agency actions regardless of whether they are quasi-legislative or quasi-judicial." Quest Academy, 216 N.J. at 386. See also ibid. (citing numerous cases where this standard has been applied to reviews of both quasi-legislative and quasi-judicial agency actions).

The standard is generally deferential with regard to discretionary decisions of an agency. Id. at 385. But, "[i]n an appeal from a final agency decision, an appellate court is 'in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue.'" Ardan v. Bd. of Review, 231 N.J. 589, 604 (2018) (quoting US Bank, N.A. v. Hough, 210 N.J. 187, 200 (2012)). In a case where the court is reviewing a strictly legal question, the court's review stands "on equal footing" with the position of the administrative agency. See Melnyk v. Bd. of Educ. of the Delsea Reg'l High Sch. Dist., 241 N.J. 31, 40 (2020). However, courts do "defer to an agency's interpretation of both a statute and implementing regulation, within the sphere of the agency's authority, unless the interpretation is plainly unreasonable." In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262, (2010) (quoting Reilly v. AAA Mid Atl. Ins. Co. of N.J., 194 N.J. 474, 485 (2008) (internal quotation marks omitted)).

The reason for such deference is that "a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise." Ibid. To determine whether an agency's interpretation of a statute is plainly unreasonable a court will "first consider the words of the statute, affording to those words 'their ordinary and commonsense meaning.'" In re Eastwick Coll. LPN-to-RN Bridge Program,

225 N.J. 533, 542 (2016) (quoting In re Election Law Enf't Comm'n, 201 N.J. at 263).

LEGAL ARGUMENT

THE COMMISSIONER'S DECISION SHOULD BE REVERSED BECAUSE SEA BRIGHT IS NOT ONE OF THE ENUMERATED ENTITIES STATUTORILY AUTHORIZED TO SEEK WITHDRAWAL FROM A LIMITED PURPOSE REGIONAL SCHOOL DISTRICT PURSUANT TO N.J.S.A. 18A:13-47.11 (Aa19 – Aa21).

The Commissioner's decision finding that Sea Bright is permitted to seek withdrawal from Oceanport and Shore Regional should be reversed because her statement that "[t]he statute contemplates that a municipality, such as Sea Bright, may seek withdrawal from a regional or consolidated school district" is a misinterpretation of N.J.S.A. 18A:13-47.11(a). (Aa20). According to the plain language of the statute, Sea Bright is not an entity statutorily permitted to withdraw from a school district pursuant to N.J.S.A. 18A:13-47.11. The statute states:

> Notwithstanding any other law, rule, or regulation to the contrary, a board of education of a local school district or of a local school district constituting part of a limited purpose regional district, the board of education or governing body of a non-operating school district, or the governing body of a municipality constituting a constituent district of a limited purpose regional district, part of an all purpose regional district, or part of a consolidated school district may, by resolution, withdraw from a limited purpose or all

> purpose regional district or consolidated school district in order to form or enlarge a limited purpose or all purpose regional district . . . .
>
> [N.J.S.A. 18A:13-47.11(a).]

Therefore, pursuant to the statute, the following entities may "by resolution, withdraw from a limited purpose or all-purpose regional district or consolidated school district in order to form or enlarge a limited purpose or all-purpose regional district."

1) the board of education of a local school district or
2) the board of education of a local school district constituting part of a limited purpose regional district;
3) the board of education or governing body of a non-operating school district; or
4) the governing body of a municipality constituting one of the following:
    a. a constituent district of a limited purpose regional district,
    b. a constituent district of an all-purpose regional district, or
    c. a constituent district of a consolidated school district.

[Ibid.]

As further background, N.J.S.A. 18A:13-47.1 sets forth several definitions relevant to this matter. First, "'[b]oard of education' means and includes the board of education of a local school district, consolidated school district, non-operating school district, and the board of education of a limited purpose or all-purpose regional district." Ibid. Because there is no board of

education in the municipality of Sea Bright this term does not apply to Sea Bright. Second, "school district" refers to local school districts, consolidated school districts, non-operating school districts, regional school districts, and constituent districts thereof. Ibid. Again, because the former Sea Bright School District was eliminated in 2009, this term does not apply to Sea Bright. Finally, N.J.S.A. 18A:13-47.1 defines "governing body" thusly:

> in the event that a school district enumerated herein does not have a board of education, the governing body of a local school district, a municipality constituting part of a consolidated school district, and the governing body of a municipality constituting a constituent district of a limited purpose or all purpose regional district.
>
> [Ibid. (emphases added)]

Yet again, because this definition is predicated upon either the existence of a school district that does not have a board of education or a municipality being part of a consolidated school district or a constituent of a regional school district, and because there exists no Sea Bright School District that is either part of a consolidated school district or a constituent of a regional school district, this definition does not apply to Sea Bright.

A. SEA BRIGHT DOES NOT QUALIFY AS ANY OF THE ENTITIES DESCRIBED IN N.J.S.A. 18A:13-47.11. (Aa19 – Aa21)

With these statutory provisions in mind, the Commissioner's decision errs when it fails to analyze Sea Bright's status and begins from the assumption that

one of the categories in N.J.S.A. 18A:13-47.11(a) includes Sea Bright. However, none of those categories actually describe Sea Bright. The first two categories above do not apply, as Sea Bright is a municipality, not a board of education. As set forth below, the third category and fourth categories, including subparagraphs (a) (b) and (c), also do not apply. Therefore, Sea Bright cannot avail itself of the procedures set forth in N.J.S.A. 18A:13-47.11.

Regarding category three, it does not apply because there is no extant non-operating school district in Sea Bright. Therefore, there cannot, as a matter of law, be a school board or a governing body for a district that does not exist. Prior to 2009, a non-operating school district existed in Sea Bright, and that district was engaged in a send/receive agreement with Oceanport. However, pursuant to N.J.S.A. 18A:8-44, the non-operating Sea Bright School District was eliminated on July 1, 2009, and merged with Oceanport, creating a new local school district known as the Oceanport School District.

Pursuant to statute, upon elimination of a non-operating school district, after a final audit of non-operating district's accounts, ". . . the books, documents, and records of that district shall be turned over to the board of education of the new district". N.J.S.A. 18A:8-49 (Emphasis added). This did not create a consolidated school district pursuant to N.J.S.A. 18A:8-25 *et seq.*

Rather, the Legislature specifically chose to "merge" those eliminated districts with their send/receive partners—it did not consolidate them.

This is a distinction with a significant difference. For example, in consolidated districts, board membership is apportioned between the two formerly independent districts according to population. N.J.S.A. 18A:8-29. Conversely, the membership of a Type II board in the merged district following elimination of a non-operating district is elected at large from the new district. N.J.S.A. 18A:8-47(a). Here the Oceanport School District holds annual school elections in which the voters of the Borough of Sea Bright and the Borough of Oceanport participate at-large, and there is no apportionment of the board seats. In short, Oceanport was created through an entirely separate statutory mechanism than consolidated school districts in the state—it does not constitute a "consolidated school district" as defined in Title 18A. Further, since the former non-operating school district in Sea Bright ceased to exist as of July 1, 2009, there is no entity attributable to the municipality of Sea Bright to constitute a constituent of Shore Regional.

Finally, the fourth category of entities that may resolve to withdraw from a consolidated or regional school district is governing bodies of municipalities constituting one of three subcategories: a constituent district of a limited-purpose or all-purpose regional school district, or a consolidated school district.

Sea Bright doesn't satisfy this definition either. Setting aside the fact that the Commissioner eliminated the Sea Bright School District fifteen years ago, as discussed above, Sea Bright is not a constituent district of a consolidated school district.

Similarly, Sea Bright is not a constituent district of a limited-purpose regional school district.[6] As a further result of the elimination of the Sea Bright school district's non-operating status and merger into Oceanport, the Borough of Sea Bright cannot be a governing body of a municipality constituting a constituent school district of a limited-purpose regional school district. Shore Regional is made up of the following school districts: Oceanport, West Long Branch, and Monmouth Beach. It also has a send/receive relationship with Deal. Additionally, students from Loch Arbour and Interlaken attend Shore Regional by virtue of a send/receive relationship between those districts and West Long Branch.

No such relationship exists between Oceanport and Sea Bright, or between Sea Bright and Shore Regional because of the 2009 elimination of the Sea Bright School District and the creation of the present incarnation of Oceanport. There is no "Sea Bright" school district that could be a constituent district to Shore Regional.

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[6] Sea Bright is also not a constituent of an all-purpose regional school district.

B. THE LEGISLATURE AFFIRMATIVELY CHOSE TO NOT INCLUDE ENTITIES SUCH AS SEA BRIGHT IN THE LIST OF ENTITIES ELIGIBLE TO SEEK REGIONALIZATION THROUGH RESOLUTION PURSUANT TO N.J.S.A. 18A:13-47.11. (Aa19 – Aa21)

Examination of the totality of P.L. 2021, § 402, the same act that adopted N.J.S.A. 18A:13-47.11, reveals that the Legislature had the opportunity to describe municipalities such as Sea Bright in N.J.S.A. 18A:13-47.11(a) but chose not to. Elsewhere in P.L. 2021, § 402 the Legislature amended the previously existing statute describing the ability of school districts to form regional schools. See N.J.S.A. 18A:13-34. This provision includes two categories which are similar to those identified in N.J.S.A. 18A:13-47.11(a)—local district boards of education and boards of consolidated school districts—but it also includes a category specifically not found in the N.J.S.A. 18A:13-47.11(a): the board of education of "a district comprising two or more municipalities." See N.J.S.A. 18A:13-34. This new category stands in contrast to a consolidated district and does not appear in the list of entities able to withdraw from a consolidated district or regional district under N.J.S.A. 18A:13-47.11(a). Had the Legislature intended to include entities other than those specified in N.J.S.A. 18A:13-47.11(a) it had the means to do so. The inescapable conclusion that any entities not enumerated in N.J.S.A. 18A:13-47.11(a) were intentionally left out.

Accordingly, under the above statutory language, only the Borough of Oceanport, not Sea Bright, could invoke the procedures in N.J.S.A. 18A:13-47.11, because Oceanport, not Sea Bright, is a constituent district of Shore Regional. For these reasons, Sea Bright does not qualify as any of the entities described in N.J.S.A. 18A:13-47.11.

The Commissioner's September 22, 2023, decision should be reversed to the extent that it interprets N.J.S.A. 18A:13-47.11 in a manner inconsistent with that statute's explicit statutory language. The statute does not describe a municipality, such as Sea Bright, whose former non-operating school district was eliminated by the Commissioner and merged—not consolidated—with another district. For this reason, the Court should reverse the Commissioner's decision and find that N.J.S.A. 18A:13-47.11(a) does not provide a vehicle for Sea Bright to seek withdrawal from either Oceanport or Shore Regional. Such a conclusion is consistent with the general principle that statutes should be interpreted by first examining the plain language of the act. See Point Pleasant Borough PBA Local No. 158 v. Borough of Point Pleasant, 412 N.J. Super. 328, 334-335 (App. Div. 2010). If the statute is clear and unambiguous, then the statute should be interpreted as written. Ibid. Any consideration of external sources is only appropriate when the statute is ambiguous. Ibid..

Overall, N.J.S.A. 18A:13-47.11(a) provides a simplified process for certain, enumerated entities to withdraw from consolidated or regionalized school districts for the purpose of creating or expanding another regional school district. However, because Sea Bright does not meet the definition of any of the entities permitted to take the actions described in the statute, the Commissioner's holding that Sea Bright has standing to pursue withdrawal from Oceanport and Shore Regional pursuant to N.J.S.A. 18A:13-47.11 does not survive scrutiny.

The only reasonable conclusion to reach from a review of the statutory language, and a review of the overarching statutory scheme, is that a municipality such as Sea Bright, whose former school district was statutorily eliminated, does not have the ability to withdraw from the district with which it was statutorily merged, or from any limited purpose regional district of which the merged district is a constituent. Therefore, the Commissioner's statement that the statute contemplates a municipality such as Sea Bright may seek withdrawal is inconsistent with the plain, unambiguous statutory language. Indeed, municipalities such as Sea Bright are specifically excluded from the process set forth in N.J.S.A. 18A:13-47.11(a), precisely because they do not have a school district to remove from either a consolidated district or the regional district. For these reasons, the Commissioner's decision that N.J.S.A.

18A:13-47.11 permits a municipality like Sea Bright to seek withdrawal, must be reversed.

CONCLUSION

Sea Bright's status as a municipality whose former school district was eliminated has rendered it ineligible for the statutory withdrawal process set forth in N.J.S.A. 18A:13-47.11(a). Therefore, the Commissioner's September 22, 2023, decision finding that Sea Bright has standing to seek withdrawal pursuant to that statute should be reversed.

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I/M/O THE VERIFIED PETITION FOR THE PROPOSED CREATION OF A PK-12 ALL-PURPOSE REGIONAL SCHOOL DISTRICT BY THE BOROUGH OF SEA BRIGHT, BOROUGH OF HIGHLANDS, BOROUGH OF ATLANTIC HIGHLANDS, HENRY HUDSON REGIONAL SCHOOL DISTRICT, ATLANTIC HIGHLANDS SCHOOL DISTRICT, AND HIGHLANDS BOROUGH SCHOOL DISTRICT, MONMOUTH COUNTY.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-0716-23T4 ON APPEAL FROM COMMISSIONER OF EDUCATION Decision Dated: September 22, 2023

OPPOSITION BRIEF OF RESPONDENT BOROUGH OF SEA BRIGHT

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FILED, Clerk of the Appellate Division, July 02, 2024, **A-000716-23**

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PRELIMINARY STATEMENT

Appellants Oceanport Board of Education and Shore Regional Board of Education ask this Court to overturn a decision of the Commissioner of Education and to supplant it with an interpretation of the school regionalization statute that is both divorced from the wider statutory scheme and that would lead to an absurd and profoundly unfair result. The Court should not indulge this unwise course of action for two principle reasons: (1) the Commissioner of Education is tasked with enforcing and interpreting the education statutes and possesses extensive expertise and experience in doing so, and her decision therefore is subject to substantial deference that is particularly warranted here; and (2) both the plain language of the school regionalization statute and the overall statutory scheme conclusively support the Commissioner's holding that Respondent Borough of Sea Bright is entitled to pursue withdrawal from Appellants' school districts.

In 2021, the Legislature revised the school regionalization statutes contained in chapter 13 of the school laws (Title 18A of the New Jersey statutes). As revised, chapter 13 permits both boards of education **and municipalities** to seek to withdraw from a regional or consolidated school district. The school laws also expressly state that chapter 13, including its withdrawal provisions,

apply to municipalities containing former non-operating school districts that have since merged with other districts.

Sea Bright is one such municipality. Historically, Sea Bright operated an elementary school district which sent all of its elementary students to Oceanport and educated its high school students by virtue of being a constituent of Shore Regional. In 2009, Sea Bright ceased to be a non-operating school district and was consolidated by operation of law with Oceanport. In 2022, after the changes to the regionalization statute, Sea Bright began an effort to withdraw from Oceanport and Shore Regional and to join a new all-purpose PK-12 Henry Hudson Regional School District, which would be comprised also of students from the Boroughs of Highlands and Atlantic Highlands. Oceanport and Shore Regional opposed this effort, arguing that Sea Bright did not have standing to withdraw from their districts because it is not a "constituent" district within a regional or consolidated school district, but rather has "merged" with Oceanport into a single district. Sea Bright could not seek to withdraw, Appellants argued, until it "unmerged" from Oceanport -- an act that would be impossible under the school laws.

In September 2023, the Commissioner of Education issued a decision holding that Sea Bright could pursue withdrawal from Oceanport and Shore Regional under the school laws. The Commissioner based that decision on the

plain statutory language, interpreted, as it should be, in light of the broader statutory scheme. As the principle agent charged with interpreting and enforcing the school laws, the Commissioner's decision is entitled to substantial deference from this Court. The Commissioner possesses extensive experience and expertise in interpreting and applying the school laws, particularly with regard to broad and complex statutory frameworks such as the school regionalization statute. In such cases, courts defer to the agency's interpretation unless that interpretation is "plainly unreasonable."

The Commissioner's decision here not only is reasonable, it is beyond reproach. The school laws expressly state that the school regionalization statute, including the provisions regarding withdrawal from a regional or consolidated school district, apply to "merged" districts such as Sea Bright and Oceanport. To hold otherwise would be both illogical and unfair. It would prevent communities such as Sea Bright ever from withdrawing from regional or consolidated school districts, keeping them beholden to the district in which they merged and denying them the autonomy and home rule to which they are entitled both by public policy and by the express terms of the school laws. Accordingly, the Court should affirm the Commissioner's decision.

FILED, Clerk of the Appellate Division, July 02, 2024, **A-000716-23**

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

The underlying facts and procedural history leading to the present appeal are long and complex, involving multiple petitions before the Commissioner of Education involving these same parties. The only decision on appeal to this Court is the Commissioner of Education's September 2023 decision regarding Sea Bright's ability to pursue withdrawal from Oceanport and Shore Regional. Nonetheless, the pertinent events leading to that decision will be recounted to provide the Court with appropriate context.

A. Respondents' Initial Efforts To Create An All-Purpose Regional School District With Sea Bright's Participation.

This matter began with Sea Bright's intention to join a new, all-purpose regional school district with the Respondent Boards of Highlands, Atlantic Highlands, and Henry Hudson Regional.[2] Sea Bright does not have its own board of education or its own school system. Instead, its students are educated in the neighboring school districts of Oceanport and Shore Regional. Sea Bright students in pre-K through eighth grade attend school in Oceanport, and high

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[1] The procedural history and statement of facts have been combined for the Court's convenience because they are inextricably intertwined.

[2] Respondents Borough of Highlands and Borough of Atlantic Highlands have since been dismissed from this matter by order of the Court.

school students attend Shore Regional High School in West Long Branch. (Aa750, 794-95)[3]

On February 1, 2022, Sea Bright passed a resolution pronouncing that the municipality found good cause, based on a feasibility study, to seek a withdrawal from Oceanport and Shore Regional and to join the Respondent Boards in a new all-purpose PK-12 regional school district. (Aa754) The resolution further stated that Sea Bright would petition the Commissioner of Education for a referendum to submit this issue to the Borough's voters pursuant to *N.J.S.A.* 18A:13-1, *et seq.*

Highlands Borough and Atlantic Highlands Borough passed similar resolutions on February 2, 2022, and June 9, 2022, respectively, seeking to have the school districts in those municipalities join an expanded PK-12 Henry Hudson Regional School District. (Aa754) On June 13, 14, and 15, 2022, the Respondent Boards passed resolutions calling for the expansion of the Henry Hudson Regional School District from a limited purpose high school district to an all-purpose PK-12 regional district and for Sea Bright's inclusion in the new district. (Aa754)

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[3] "Aa" refers to Appellants' appellate appendix.

Both Oceanport and Shore Regional attempted to block Sea Bright's withdrawal. Appellants filed separate petitions of appeal with the Commissioner of Education in summer 2022, arguing that the resolutions of Sea Bright, Highlands Borough, and Atlantic Highlands Borough were invalid because only a board of education, and not the governing body of a municipality, may pass resolutions seeking the Commissioner's approval to form or enlarge a regional school district or submit such a question to voters. (Aa754, 756-57) Appellants further argued that, because Sea Bright's school district had been eliminated by statute, it must first "unmerge" from Oceanport before pursuing regionalization. Respondents moved to dismiss both petitions, which were later consolidated by consent order.

On July 13, 2022, and with Appellants' legal challenges to Sea Bright's participation stalling the regionalization efforts, the Respondent Boards approved superseding resolutions substantially similar to their original resolutions, but clarifying that the regionalization effort would move forward regardless of Sea Bright's participation. (Aa344-371) The resolutions clarified that Henry Hudson Regional's expansion should proceed even if Sea Bright's request is delayed or prohibited. (Aa344-372) Sea Bright would be permitted to join if and when it was permitted by the Commissioner of Education to withdraw from Oceanport and/or Shore Regional. Appellants later challenged these

revised resolutions in their opposition to Respondents' motion to dismiss the consolidated petitions of appeal. (Aa758)

On July 15, 2022, shortly after Oceanport and Shore Regional filed their respective petitions of appeal, Respondents jointly filed with the Commissioner a verified petition requesting authorization for the referenda expanding Henry Hudson Regional to an all-purpose regional school district. (hereafter, the "July 2022 Referendum Petition"). The new all-purpose district would include students from Sea Bright, when and if Sea Bright's withdrawal from Oceanport and Shore Regional was approved by the Commissioner of Education (Aa39-40). Appellants later cross-moved to consolidate their petitions of appeal with the July 2022 Referendum Petition.

On April 3, 2023, the Commissioner issued a written decision granting Respondents' motion to dismiss the consolidated petitions of appeal, and denying Appellants' cross-motion to consolidate the July 2022 Referendum Petition. (Aa762) Appellants appealed the Commissioner's April 3, 2023 decision to this Court. This Court dismissed that appeal in December 2023. (Aa796-98)

B. The Respondent Boards' March 2023 Referendum Petition And Sea Bright's Separate Request For Relief To The Commissioner.

Meanwhile, Respondents' July 2022 Referendum Petition before the Commissioner remained pending. On March 17, 2023, the Respondent Boards (but not Sea Bright or the municipalities of Highlands and Atlantic Highlands) submitted an amended petition and feasibility study to the Commissioner requesting to proceed to a referendum to form a PK-12 regional school district consisting of the Atlantic Highlands and Highlands municipalities (hereafter, the "March 2023 Referendum Petition"). (Aa372-748) The Commissioner granted this petition, which Appellants did not oppose, on July 21, 2023. (Aa776)

On September 6, 2023, Sea Bright and Highlands wrote to the Commissioner to clarify their position regarding the March 2023 Referendum Petition. (Aa779-784) The correspondence explained:

> While the Commissioner of Education has approved a referendum to expand the Henry Hudson Regional School District into a PK-12 regional, this was only part of the relief sought by the six entities [Sea Bright, Highlands, Atlantic Highlands, their respective boards of education, and Henry Hudson Regional]. It appears there seems to be some confusion as to the relief sought by the parties to this petition, including the Borough of Sea Bright. We wish to clarify any confusion. At all times, all six entities have sought to have Sea Bright join the new PK-12 regional and

> specifically have sought, as part of this process, approval from your office for Sea Bright to withdraw from the Oceanport and Shore Regional School Districts pursuant to *N.J.S.A.* 18A:13-47.11. To the extent that was not evident from the prior petition, we request that you consider this correspondence as a formal motion to grant the requested relief. To be clear, request specifically is made that in the event the voters of Highlands and Atlantic Highlands approve the creation of a regional PK-12 district, the Commissioner approve Sea Bright's withdrawal from Oceanport and Shore Regional so that it may join the newly created PK-12 Regional school district pursuant to the terms of *N.J.S.A.* 18A:13-47.11.
>
> (Aa779-784)

Appellants later responded to this September 6, 2023 letter to the Commissioner, arguing that Sea Bright, as a standalone municipality that is part of a consolidated school district, lacked standing under *N.J.S.A.* 18A:13-47.1, *et seq.*, both to withdraw from a school district and to request to join a regional school district. (Aa787-789)

C. **The Commissioner's September 2023 Decision.**

On September 22, 2023, the Commissioner issued a written decision in response to the September 6 letter from Sea Bright and Highlands. The Commissioner treated the letter as an "Amended Petition submitted to the New Jersey Department of Education on behalf of the Borough of Sea Bright requesting to form a pre-kindergarten through twelfth grade Regional School

District with the Atlantic Highlands and Highlands municipalities." (Aa19) The Commissioner began by clarifying the procedural posture of the related Referendum Petitions, explaining that

> the Petition dated July 15, 2022 and filed on behalf Sea Bright, Henry Hudson Regional High School District, Atlantic Highlands and Highlands [i.e., the July 2022 Referendum Petition] is dismissed as moot in light of the July 21, 2023 decision [i.e., the decision approving the March 2023 Referendum Petition] permitting the Boards of Education of Atlantic Highlands and Highlands to proceed to referendum on forming a pre-kindergarten through grade 12 regional school district.
>
> (Aa19)

The Commissioner then granted in part and denied in part Sea Bright's requested relief. She first held that Sea Bright had standing to pursue withdrawal from a consolidated school district because "[t]he statute contemplates that a municipality, such as Sea Bright, may seek withdrawal from a regional or consolidated school district." (Aa20) In reaching this conclusion, the Commissioner disagreed with Appellants' arguments that Sea Bright "lacks standing to pursue withdrawal and request to join a regional school district pursuant to *N.J.S.A.* 18A:13-47.1, *et seq.*" (Aa20). She explained:

> [Appellants'] reading of the statute belies its clear language. The statute applies not only to boards of education, but also specifically identifies "the governing body of a municipality constituting a constituent district of a limited purpose regional

> district, part of an all-purpose regional district, or part of a consolidated school district" as governmental bodies that may request withdrawal to join or form an enlarged regional school district. The statute contemplates that a municipality, such as Sea Bright, may seek withdrawal from a regional or consolidated school district. Therefore, Sea Bright has standing to seek withdrawal from Oceanport and Shore Regional in accordance with *N.J.S.A.* 18A:13-47.11.
>
> (Aa20.)

Nonetheless, the Commissioner found that Sea Bright's request was premature. She explained:

> The relief requested and its timing, however, places this matter in a unique procedural posture. The Petition requests to move forward with a referendum to join a regional school district that does not yet exist and presents alternative relief requests depending upon whether the September 26, 2023 referendum passes or fails. In light of the pending referendum, Sea Bright's requested relief is premature. If the referendum passes on September 26, 2023, Sea Bright and the newly formed school district may refile a joint request [to] form an enlarged regional school district. The joint request should address the requirements of *N.J.S.A.* 18A:13-47.1 *et seq.*, including [a] revised feasibility study, if necessary, and revised resolutions reflecting this new request. All other requests for relief are denied.
>
> (Aa20-21)

In summary, the Commissioner held that Sea Bright (1) is entitled by law to withdraw from Appellants' school districts; and (2) can file a joint request

with the Respondent Boards to form an enlarged regional school district. On September 26, 2023, voters in the municipalities of Highlands and Atlantic Highlands approved the referendum for an all-purpose regional school district.[4]

Appellants then filed the present appeal of the Commissioner's September 22, 2023 decision, challenging only that portion of the Commissioner's decision holding that Sea Bright is entitled by statute to pursue withdrawal from Appellants' school districts.

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[4] The Court is permitted to take judicial notice of the referendum results. *See N.J.R.E.* 201(b)(2), (b)(3); *Nordstrom v. Lyon*, 424 N.J. Super. 80, 89 (App. Div. 2012) (taking judicial notice of primary election and general election results). The results of the referendum here were well publicized. The result also is acknowledged in Appellants' appellate brief. (Ab15) "Ab" refers to Appellants' appellate brief.

LEGAL ARGUMENT

THE COMMISSIONER'S DECISION SHOULD BE AFFIRMED BECAUSE IT IS A REASONABLE AND PRACTICAL INTERPRETATION OF THE SCHOOL LAWS THAT READILY MEETS THE HEIGHTENED DEFERENTIAL STANDARD APPLIED BY APPELLATE COURTS TO AGENCY DECISIONS INTERPRETING STATUTES THAT THE AGENCY IS ENTRUSTED TO APPLY AND ENFORCE.

Appellants' appeal fails and the Commissioner's decision should be affirmed for several reasons. As an initial matter, the Commissioner's decision interpreting the school regionalization statute that she is charged with interpreting, applying, and enforcing is entitled to substantial deference from this Court. It should not be overturned unless it is plainly unreasonable. As to the statute itself, the Commissioner's interpretation not only is reasonable, it is unassailable. The school laws expressly provide that merged districts such as Sea Bright and Oceanport are subject to the regionalization provisions set forth in chapter 13 of the school laws, including the chapter's withdrawal provisions. Given this express inclusion, as well as the fact that chapter 13 specifically states that municipalities may seek to withdraw from regional or consolidated school districts, there is no question that Sea Bright is entitled to seek withdrawal from Oceanport and Shore Regional. Finally, Appellants' arguments to the contrary would create an illogical result at odds with the school laws and with the

Legislature's intent in amending the regionalization statute to encourage increased regionalization efforts. Appellants' position would leave a select few municipalities unable ever to withdraw from the districts into which they have merged, effectively surrendering their autonomy with regard to public education matters, while permitting almost every other municipality in the state to seek withdrawal freely. It is illogical to believe the Legislature intended any such result for these municipalities -- which are particularly vulnerable given that they often merge with larger districts that may come to exercise complete control over their public education affairs -- when it amended the regionalization statute.

A. The Court Should Affirm The Commissioner's Decision Because The Decision Is Entitled To Substantial Deference And Should Not Be Overturned Unless It Is Plainly Unreasonable, Which It Clearly Is Not.

Appellate courts review "decision[s] made by an administrative agency entrusted to apply and enforce a statutory scheme under an **enhanced deferential standard**." *E. Bay Drywall, LLC v. Dep't of Lab. & Workforce Dev.*, 251 N.J. 477, 493 (2022) (emphasis added). *See also Melnyk v. Bd. of Educ. of the Delsea Reg'l High Sch. Dist.*, 241 N.J. 31, 40 (2020) (noting same with regard to Commissioner of Education); *Hargrove v. Sleepy's, LLC*, 220 N.J. 289, 301 (2015) (noting deferential standard generally). The deferential standard is consistent with "the strong presumption of reasonableness that an appellate

court must accord an administrative agency's exercise of statutorily delegated responsibility." *City of Newark v. Nat. Res. Council, Dep't of Env't Prot.*, 82 N.J. 530, 539 (1980). Accordingly, "[a]n agency's determination on the merits 'will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record.'" *Saccone v. Bd. of Trs., Police & Firemen's Ret. Sys.*, 219 N.J. 369, 380 (2014) (*quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys.*, 206 N.J. 14, 27 (2011)).

Thus, the judicial role in reviewing all administrative action on appeal generally is limited to three inquiries: "(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law"; (2) "whether the record contains substantial evidence to support the findings on which the agency based its action"; and (3) "whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors." *Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n*, 234 N.J. 150, 157 (2018) (*quoting In re Stallworth*, 208 N.J. 182, 194 (2011)). *See In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp.*, 216 N.J. 370, 383 (2013).

If an agency's decision clears those threshold inquiries, "then a court owes substantial deference to the agency's expertise and superior knowledge of a particular field." *In re Herrmann*, 192 N.J. 19, 28 (2007). *See also Messick v.*

Bd. of Rev., 420 N.J. Super 321, 325 (App. Div. 2011) (stating that appellate court must defer to an to an administrative agency's "technical expertise, its superior knowledge of its subject matter area, and its fact-finding role").

Relatedly, and of particular relevance here, appellate courts "defer to an agency's interpretation of both a statute and implementing regulation, within the sphere of the agency's authority, unless the interpretation is 'plainly unreasonable.'" *See E. Bay Drywall*, 251 N.J. at 493 (quoting *In re Election L. Enf't Comm'n Advisory Op. No. 01-2008*, 201 N.J. 254, 262 (2010). *See also Reilly v. AAA Mid-Atl. Ins. Co. of N.J.*, 194 N.J. 474, 485 (2008) (noting same); *In re N.J. Tpk. Auth. v. Am. Fed'n of State, County, & Mun. Employees, Council 73*, 150 N.J. 331, 351 (1997) (noting that interpretation of agency charged with enforcing statute is entitled to "substantial deference"). "This deference comes from the understanding that a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise." *E. Bay Drywall*, 251 N.J. at 493.

The Commissioner's decision here is a fair, practical, and unassailable interpretation of the plain language of *N.J.S.A.* 18A:13-47.11(a), regarding a municipality's withdrawal from a regional or consolidated school district, particularly when viewed in light of the overall statutory scheme. Indeed, if the Court were to adopt Appellants' reading of the statutory language,

municipalities such as Sea Bright that do not have functioning school districts and that have merged with other, larger school districts would lose their autonomy with regard to matters of public education. They never could pursue their own ends to leave a regional or consolidated school district or to join another regional school district. Rather, they would forever be at the mercy of the larger district into which they merged – creating a subcategory of communities that could never take advantage of the new law promoting the creation of K-12 regional school districts. The Commissioner here interpreted the statute's plain language and, in concordance with the Legislature's intent, avoided that harsh and unfair result, a result the Legislature obviously did not contemplate or want given that the statute does not create that odd subcategory. The Commissioner's decision therefore is not "plainly unreasonable" and should be affirmed.

B. The Commissioner's Determination That Municipalities Such As Sea Bright Are Among The Entities Enumerated In *N.J.S.A.* 18A:13-47.11 And Permitted To Seek Withdrawal From A Regional Or Consolidated School District Is Supported By The Statute's Plain Language And The Overall Statutory Scheme.

The Legislature extensively revised New Jersey's school regionalization statute in 2021. *See P.L.* 2021, *c.* 402. The preamble to the revised and supplemented regionalization statute, *N.J.S.A.* 18A:13-47, *et seq.*, states: "An

Act concerning school district regionalization, amending various parts of the statutory law, and supplementing chapter 13 of Title 18A of the New Jersey Statutes." The particular statutory provision at issue here, *N.J.S.A.* 18A:13-47.11(a), is contained within chapter 13 and is titled "Withdrawal from local district to form, enlarge regional district." It provides in pertinent part:

> Notwithstanding any other law, rule, or regulation to the contrary, a board of education of a local school district or of a local school district constituting part of a limited purpose regional district, the board of education or governing body of a non-operating school district, **or the governing body of a municipality constituting a constituent district of a limited purpose regional district . . . or part of a consolidated district may, by resolution, withdraw from a . . . limited purpose or consolidated school district in order to form or enlarge a limited purpose or all purpose regional district** provided that the withdrawal:
>
> (1) is approved by the Commissioner of Education . . . as meeting the criteria set forth in paragraphs (2) through (8) of this subsection, 7 which approval shall be obtained prior to any election held to determine whether to form or enlarge a limited purpose or all purpose regional district that the withdrawing . . . governing body will join.
>
> (emphasis added).

N.J.S.A. 18A:13-47.1 states that a "Governing body" for purposes of the regionalization statute "means and includes, in the event that a school district enumerated herein does not have a board of education . . . a municipality

constituting part of a consolidated school district, and the governing body of a municipality constituting a constituent district of a limited purpose . . regional district." The statute also defines "'Board of education" as "the board of education of a local school district, consolidated school district, non-operating school district, and the board of education of a limited purpose or all purpose regional district." *N.J.S.A.* 18A:13-47.1

Appellants argue that Sea Bright is not among the entities permitted to seek withdrawal from a regional or consolidated school district because Sea Bright no longer has a board of education and because the municipality itself is not part of a "consolidated school district." Instead, Appellants argue, Sea Bright "merged" with Oceanport to form a single school district, not a consolidated school district. Accordingly, "[t]here is no 'Sea Bright' school district that could be a constituent district to Shore Regional" or to Oceanport. (Ab18-23) Appellants conclude that only the Oceanport Board of Education may act on behalf of the interests of the people of Sea Bright regarding matters of public education. In sum, Appellants contend that Sea Bright now operates as a "merged" school district with Oceanport and has no educational governing body, legal status, or say in the future of its students' education. Appellants' position belies the plain statutory language.

At the outset, Title 18A does not discuss or recognize a "merged" school district as a type or classification of school district distinct from consolidated or regional school districts. *N.J.S.A.* 18A:8-44(2)(a), titled "Elimination of non-operating district through merger," describes the process for merger, but does not state that such districts are subject to a unique classification separate and distinct from regional or consolidated school districts. The statute merely states that ". . . the executive county superintendent of schools shall eliminate any non-operating district and merge that district with the district with which it participates in a sending-receiving relationship." *N.J.S.A.* 18A:8-44(2)(a). Accordingly, Appellants' arguments that the school laws somehow single out or treat merged districts differently from regional or consolidated districts is without merit.

Moreover, contrary to Appellants' assertions, the school laws expressly provide that municipalities containing former non-operating districts, such as Sea Bright, that merge with other districts pursuant to *N.J.S.A.* 18A:8-44(2)(a) are entitled to invoke the statutory provisions permitting municipalities to withdraw from regional and consolidated school districts. In particular, *N.J.S.A.* 18A:8-50(8), titled "**Governing law**," provides: "Unless otherwise provided in this act, a new district formed pursuant to section 2 of this act [i.e., a municipality "merged" into another district pursuant to *N.J.S.A.* 18A:8-44(2)(a)]

shall be governed by the provisions of chapter 13 of Title 18A of the New Jersey Statutes." (emphasis added). As discussed above, chapter 13 of Title 18A contains the statute at issue here: *N.J.S.A.* 18A:13-47.11.

Thus, the school laws expressly contemplate that a "merged" district, including a municipality of a former non-operating school district that forms part of that merged district, is subject to the same regionalization provisions set forth in chapter 13, including the provisions regarding withdrawal from a regional or consolidated school district. If the Legislature intended to exclude municipalities that have been merged into other districts from seeking to withdraw from those districts, it could have excised the language of *N.J.S.A.* 18A:8-50(8) or otherwise altered it. The Legislature did not do so. Accordingly, any interpretation of chapter 13's language must begin with the understanding that it expressly includes merged districts created through pairing a municipality containing a former non-operating school district with its former receiving district. *See DiProspero v. Penn*, 183 N.J. 477, 496 (2005) ("[E]ach part or section [of the statute] should be construed in connection with every other part or section so as to produce a harmonious whole." (alteration in original)). *See also State v. Green*, 62 N.J. 547, 554 (1973) ("It is basic in the construction of legislation that every effort should be made to harmonize the law relating to the same subject matter.").

Simply put, after Sea Bright's non-operating school district was eliminated, it did not become a "merged" school district with no right of withdrawal as Appellants contend. Rather, *N.J.S.A.* 18A:8-50(8) provides that both Sea Bright and Oceanport are subject to chapter 13 of Title 18A, which governs all matters concerning regional and consolidated districts, including withdrawal. It would be illogical for the Legislature to provide as such if it did not consider "merged" school districts to be a form of regional or consolidated school district from which one constituent party could withdraw. If a "merged" district really is just a single school district, as Appellants contend, there would be no reason for the regionalization provisions to apply, thus rendering the language of *N.J.S.A.* 18A:8-50(8) meaningless at best and contradictory at worst. *See generally DiProspero*, 183 N.J. at 492-97 (noting that courts must construe statutory language harmoniously and presume that the Legislature acts with specific intent to harmonize statutory language). *See also State v. Frye*, 217 N.J. 566, 575 (2014) (noting that courts must avoid statutory interpretation that leads to an absurd result); *Shelton v. Restaurant.com, Inc.*, 214 N.J. 419, 440-41 (2013) (holding that courts must avoid interpreting a statute in a manner that renders certain words or provisions to be meaningless or mere "surplusage").

In sum, Sea Bright and Oceanport both are subject to the regionalization provisions of chapter 13, which was amended by *N.J.S.A.* 18A:13-47.11 to

expressly permit municipalities to withdraw from their current district and to join or form new regional school districts. Thus, the Legislature has specifically provided that municipalities such as Sea Bright, which do not have their own boards of education, are covered by the withdrawal provisions of chapter 13, regardless of whether they have "merged" with another district. To hold otherwise would be to ignore the wider statutory scheme that the Legislature has implemented and that the Commissioner is charged with enforcing.

Relatedly, the statute's use of the disjunctive term "or" also supports the Commissioner's interpretation of the statute. *N.J.S.A.* 18A:13-47.11 provides that a board of education **or** a municipal governing body may seek to withdraw from a regional or consolidated school district. The use of disjunctive phrasing suggests that the Legislature intended that both boards of education **and** municipalities, independently and of their own accord, have the ability to seek withdrawal from a regional or consolidated school district. *See Pine Belt Chevrolet v. Jersey Cent. Power*, 132 N.J. 564, 578 (1993) (explaining importance of disjunctive phrasing and use of the term "or"). Moreover, the Legislature also authorized municipal governing bodies to apply for regionalization feasibility study grants under *N.J.S.A.* 18A:13-47.3. Given that chapter 13's statutory scheme empowers municipalities to seek withdrawal from a district on their own accord, permits them to apply for feasibility study grants,

and expressly applies chapter 13 to municipalities that have been merged into other school districts, it is clear that the Legislature intended that municipalities such as Sea Bright are permitted to seek withdrawal from a regional or consolidated school district. The statutory scheme as a whole would not make sense otherwise. *See DiProspero*, 183 N.J. at 492-97. The Commissioner's decision therefore not only is reasonable, but beyond reproach.

Appellants' arguments to the contrary are designed to support the absurd suggestion that Sea Bright must first somehow "demerge" from Oceanport, become its own non-operating district, and elect a local board of education before it may withdraw from Oceanport or Shore Regional. Any such action would be impossible. No statute or regulation provides a mechanism to facilitate such a process; there is therefore no way for the Commissioner of Education to review and approve any such action. Indeed, on its face, Appellants' position is that none of the municipalities of any previously non-operating school districts could seek to form new or enlarged regional districts without undergoing this pointless conversion process. Appellants' position would undermine New Jersey's salutary public policy of encouraging Kd-12 regionalization, as well as educational and fiscal improvement. More importantly, it would leave municipalities such as Sea Bright beholden to the districts that they have joined and powerless to control their own destiny with regard to decisions concerning

public education. The Commissioner's decision, relying on the plain statutory language and the wider statutory scheme, wisely avoided that fundamentally unfair and contradictory result.

C. Appellants' Arguments That The Legislature Expressly Chose To Exclude Municipalities Such As Sea Bright From Withdrawing From Regional Or Consolidated School Districts Both Ignores The Wider Legislative Scheme And Leads To An Absurd Result.

Appellants next argue that the Legislature must have chosen to exclude municipalities such as Sea Bright from N.J.S.A 18A:13-47.11 because it "had the opportunity to describe municipalities such as Sea Bright in N.J.S.A. 18A:13-47.11(a) but chose not to." (Ab24.) Appellants support this argument by claiming that a separate statutory provision within chapter 13 "includes a category specifically not found in the [sic] N.J.S.A. 18A:13-47.11(a): the board of education of a district comprising two or more municipalities.' See N.J.S.A. 18A:13-34." (Ab24.)

There are several fatal flaws in Appellants' position. To begin, *N.J.S.A*. 18A:13-34 has nothing at all to do with a municipality's ability to withdraw from a regional or consolidated school district. Rather, it concerns districts joining and creating regional school districts and the apportionment of appropriations between the municipalities or districts in question. Moreover, chapter 13 defines "municipality" and "board of education," but does not define

"the board of education of a district comprising two or more municipalities," signaling that the Legislature did not ascribe the term any particular significance. Given that the Legislature did not define the term and that it does not appear throughout chapter 13, there is no credence to Appellants' argument that the Legislature created a "new category" of district for purposes of chapter 13. Nor would it make sense for the Legislature to create a new category of district, fail to define it, include it in only a single section of the statute, and intend for it to apply in another section of the statute in which it is not referenced.

Furthermore, because the term is undefined, it does not expressly apply to "merged" districts such as Sea Bright and Oceanport, as Appellants strain to suggest. Rather, given the greater context of *N.J.S.A.* 18A:13-34's language, it is clear that the term is intended to apply to limited purpose regional districts that seek to expand to an all-purpose district. Indeed, something very similar happened here; the Henry Hudson Regional School District, which was a limited purpose 7-12 regional school district encompassing the municipalities of Highlands and Atlantic Highlands, expanded to an all-purpose PK-12 regional school district. *N.J.S.A.* 18A:13-34 expressly applies to such situations, and provides the requirements for funding apportionment between municipalities within such districts. No statutory language suggests that the Legislature

intended a specific term within *N.J.S.A.* 18A:13-34, which does not concern withdrawal from a regional or consolidated school district, to apply to municipalities such as Sea Bright. Indeed, the statutory language itself discredits any such reading.

Most importantly, the Legislature **did** include municipalities such as Sea Bright within the withdrawal provisions of *N.J.S.A.* 18A:13-47.11(a) through *N.J.S.A.* 18A:8-50(8). As noted above, *N.J.S.A.* 18A:8-50(8) provides: "Unless otherwise provided in this act, a new district formed pursuant to section 2 of this act [i.e., a "merged" district, as Appellants call it] shall be governed by the provisions of chapter 13 of Title 18A of the New Jersey Statutes," including *N.J.S.A.* 18A:13-47.11. Contrary to Appellants' assertions, the Legislature expressly provided that "merged" districts such as Sea Bright and Oceanport shall be entitled to invoke the withdrawal provisions of *N.J.S.A.* 18A:13-47.11(a).

Appellants then lay bare the absurd implications of their position by acknowledging that, under their interpretation of the statutory language, "only the Borough of Oceanport, not Sea Bright, could invoke the procedures in *N.J.S.A.* 18A:13- 47.11, because Oceanport, not Sea Bright, is a constituent district of Shore Regional. For these reasons, Sea Bright does not qualify as any of the entities described in *N.J.S.A.* 18A:13-47.11." (Ab25) Appellants thus ask

the Court to overturn a decision of the Commissioner of Education and hold that the Legislature -- without express statutory language or explanation -- intended to exclude forever a select few "merged" municipalities from the right to withdraw from a regional or consolidated school district. At the same time, Appellants concede, the Legislature granted that same authority to every school board and nearly every municipality in the state, including municipalities hosting non-operating school districts that have not yet been "merged" within another district. Appellants do not explain why the Legislature would make such a narrow, baseless, and irrational distinction, which would arbitrarily trap certain municipalities, without reason or explanation, from withdrawing from a regional or consolidated school district, while permitting other, similarly-situated municipalities to do so.

More egregiously, Appellants' position robs Sea Bright and similarly-situated municipalities of the ultimate autonomy to make their own decisions concerning public education. Once a municipality without its own operating school district has its board of education merged into another district, it never can get out without the express permission of the district into which it merged. In such cases, the larger receiving district could exercise veto power over the sending municipality's efforts to withdraw and form or enlarge a limited or all-purpose regional district.

Indeed, as Appellants note, Oceanport holds at-large elections for its board of education, and the seats are not apportioned between Oceanport and Sea Bright. Because Oceanport is four times more populous than Sea Bright,[5] its candidates likely will win any open seat by an overall majority. In fact, the stranglehold over the school board that Oceanport and other similar districts possess is precisely the reason the Legislature amended Title 18A to authorize municipal governing bodies to act on their own accord. *See N.J.S.A.* 18A:13-47.3 & 11. The Legislature likely realized that the previous Title 18A regime did not work for municipalities without boards of education that no longer were aligned with the districts of which they are members, and wanted to institute changes to benefit those municipalities' taxpayers and students, and to provide them the autonomy to which they are entitled.

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[5] According to the official 2020 Decennial United States census, Sea Bright had 1,449 residents to Oceanport's 5,832 residents. *Compare*, https://www.census.gov/searchresults.html?searchType=web&cssp=SERP&q=Sea%20Bright%20borough,%20New%20Jersey (Sea Bright), *with* https://www.census.gov/searchresults.html?searchType=web&cssp=SERP&q=Oceanport%20borough,%20New%20Jersey (Oceanport). The Court can take judicial notice of the census as a "determination" of a governmental subdivision of the United States. *See N.J.R.E.* 201.

To hold otherwise would create an irrational and profoundly absurd result whereby some municipalities may withdraw from a regional or consolidated school district, but others, such as Sea Bright, may not. To further compound the inherent lack of logic in this position, municipalities such as Sea Bright are those most in need of the ability to withdraw from a regional or consolidated school district. Without that power, they stand at the mercy of the district in which they have merged. Simply put, it defies all logic and belief that the Legislature would permit some municipalities to withdraw, but would leave the most vulnerable behind. *See Frye*, 217 N.J. at 575 (holding that courts "have the responsibility to avoid" a statutory interpretation that would "create a manifestly absurd result, contrary to public policy, [such that] the spirit of the law should control." (alteration in original)).

The Commissioner thus reached the appropriate result by interpreting the plain statutory language and harmonizing the overall statutory scheme. By doing so, the Commissioner correctly concluded that the statute permits a municipality such as Sea Bright to withdraw from a regional or consolidated school district. That conclusion is entitled to substantial deference from this Court because the Commissioner brings her own experience and specialized knowledge in interpreting the school laws, particularly with regard to a complex statutory scheme such as school regionalization. *See E. Bay Drywall*, 251 N.J. at 493.

Given the nature of the overall statutory scheme, which specifically contemplates that "merged" districts such as Sea Bright and Oceanport are subject to the school regionalization laws, including the withdrawal provisions of the regionalization statute, it is beyond doubt that the Commissioner's decision and interpretation of the statutory provisions at issue not only was reasonable, but conclusively gives effect to the Legislature's design and intent as evidenced by the complete statutory scheme.

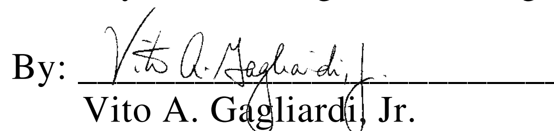
Accordingly, this Court should affirm the Commissioner's decision.

CONCLUSION

Based on the foregoing, Respondent Borough of Sea Bright respectfully requests that the Court affirm the Commissioner of Education's September 2023 decision.

Respectfully submitted,

PORZIO, BROMBERG & NEWMAN P.C.
Attorneys for Borough of Sea Bright



By: ____________________________
Vito A. Gagliardi, Jr.

Date: July 2, 2024

FILED, Clerk of the Appellate Division, August 01, 2024, **A-000716-23**

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August 1, 2024

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Re: I/M/O the Verified Petition for the Proposed Creation of a PK-12 All-Purpose Regional School District by the Borough of Sea Bright, Borough of Highlands, Borough of Atlantic Highlands, Henry Hudson Regional School District, Atlantic Highlands School District, and Highlands Borough School District, Monmouth County
Docket. No.: A-000716-23T04

Civil Action: On Appeal From a Final Agency Decision of the New Jersey Commissioner of Education

Letter Brief on Behalf of Respondent, New Jersey Commissioner of Education

Dear Mr. Orlando:

Please accept this letter brief pursuant to Rule 2:6-2(b) in lieu of a more formal brief on behalf of Respondent, the New Jersey Commissioner of Education, in opposition to the brief filed by appellants, the Oceanport Board of

Education ("Oceanport") and the Shore Regional High School Board of Education ("Shore Regional").

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

On June 30, 2009, the Governor signed into law L. 2009, c. 78, which sets forth the procedures for the elimination of school districts that are not operating schools and merging them with other districts. N.J.S.A. 18A:8-43 to -51; see N.J.S.A. 18A:8-43 (defining a "[n]on-operating district" as "a school district that is not operating schools"). The legislation directed the State's executive county superintendents to eliminate non-operating districts in accordance with a plan and schedule approved by the Commissioner pursuant to N.J.S.A. 18A:7-8(g).[2] See

[1] The procedural history and counterstatement of facts are combined to avoid repetition and for the court's convenience.

[2] The Department also had regulations setting forth the process for eliminating non-operating districts in an effort to carry out the Legislature's already-stated goal of

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N.J.S.A. 18A:8-44 (stating that the executive county superintendent "shall eliminate any non-operating district and merge that district with the district with which it participates in a sending-receiving relationship"). On July 1, 2009, the Commissioner announced the elimination of the initial thirteen non-operating districts that were in a sending-receiving relationship with a single school district.[3] Among the non-operating districts eliminated was the Sea Bright Borough School District, which was merged and consolidated with the Oceanport Borough School District. Ibid. Students residing in Sea Bright currently attend Oceanport for grades pre-K through eight, and the Shore Regional High School District for grades nine through twelve. (Aa25).

Thirteen years later, in 2022, Sea Bright initiated efforts to withdraw from Oceanport and Shore Regional, and to form and join a new all-purpose regional school district – the Henry Hudson Regional School District – which would also be comprised of students from the Highlands and Atlantic Highlands School Districts. (Aa24-42).[4] In particular, on July 15, 2022, the Boroughs of Sea Bright, Highlands,

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promoting regionalization and consolidation under N.J.S.A. 18A:7-8. See N.J.A.C. 6A:23A-2.4.

[3] This July 1, 2009 release is publicly available and can be accessed at https://www.nj.gov/education/news/2009/0701nonops.pdf (last visited July 25, 2024).

[4] "Aa" refers to Appellants' appendix, and "Ab" refers to Appellants' brief.

Atlantic Highlands, along with the boards of education of Highlands, Atlantic Highlands, and the Henry Hudson Regional School District (collectively "Tri-Districts"), filed a verified petition with the Commissioner requesting authorization to proceed to a referendum on the expansion of Henry Hudson from a limited-purpose regional school district serving grades seven through twelve to an all-purpose pre-K through twelve grade regional school district. Ibid. The joint petition also requested the inclusion of Sea Bright in the expanded all-purpose regional school district, when and if Sea Bright's withdrawal from Oceanport and Shore Regional was approved. (Aa39-40).

While this petition was pending, the Tri-Districts submitted an amended petition and feasibility study on March 17, 2023, (Aa372-748), requesting to proceed to a referendum, without Sea Bright, to expand Henry Hudson to an all-purpose pre-K through twelve regional school district consisting of Atlantic Highlands and Highlands as constituent districts. (Aa394). The Commissioner granted this unopposed, amended petition on July 21, 2023. (Aa19). But on September 6, 2023, Sea Bright and Highlands submitted correspondence clarifying the relief they requested – i.e., that in the event the voters of Highlands and Atlantic Highlands

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Appellants' appendix includes items that are not a part of the statement of items comprising the record on appeal, and therefore should not be considered.

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approve the creation of a regional pre-K through twelve district, the Commissioner approve Sea Bright's withdrawal from Oceanport and Shore Regional so that it may join the newly regional school district. (Aa779-84).

The Commissioner treated the September 6, 2023 correspondence as another amended petition, and issued a decision on September 22, 2023, holding that the Tri-Districts' first joint petition – which was filed July 15, 2022, and included Sea Bright – was moot in in light of her July 21, 2023 decision permitting Atlantic Highlands and Highlands to proceed to referendum on forming a regional school district. (Aa19-21).

Turning next to Sea Bright's September 6, 2023 amended petition, the Commissioner found that N.J.S.A. 18A:13-47.1 to -47.11 permits a board of education or municipality to request permission to form or enlarge a regional school district. Ibid. In particular, the Commissioner determined that Sea Bright has standing to seek withdrawal from Oceanport and Shore Regional in accordance with N.J.S.A. 18:13-47.11. (Aa20). In doing so, the Commissioner rejected Oceanport and Shore Regional's argument that because they are "responsible for the education [of] the students of Sea Bright. . . only they have standing to seek withdrawal." (Aa20). The Commissioner found "this reading of the statute clearly belies its clear

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language[,]" and that the "statute contemplated that a municipality, such as Sea Bright, may seek withdrawal from a regional or consolidated school district." Ibid.

However, the Commissioner found that Sea Bright's requested relief was premature in light of the pending September 26, 2023 referendum. Ibid. The Commissioner advised that if the referendum passed, Sea Bright and the newly formed Henry Hudson Regional School District could refile a joint request to form an enlarged regional school district. (Aa20-21).

This appeal followed.[5]

ARGUMENT

THE COMMISSIONER'S DECISION SHOULD BE AFFIRMED BECAUSE IT ACCORDED WITH THE LAW.

The Commissioner's decision that Sea Bright has standing to petition to withdraw from the Oceanport Borough School District was consistent with the governing statute and should be affirmed. Judicial review of an agency decision is generally limited to three inquiries: (1) whether the agency decision violates express or implied legislative policies; (2) whether the record contains substantial evidence

[5] Pursuant to the court's June 24, 2024 order, the Borough of Highlands and Borough of Atlantic Highlands have since been dismissed from this matter. On June 28, 2024, Appellants entered a stipulation of dismissal, agreeing to dismiss the Tri-Districts from this matter.

to support the Commissioner's findings; and (3) whether, in applying the legislative policies to the facts, the Commissioner "clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors." In re Herrmann, 192 N.J. 19, 28 (2007) (quoting Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995)). If an agency's decision meets this threshold, "then a court owes substantial deference to the agency's expertise and superior knowledge of a particular field." Ibid. Accordingly, the court will "defer to an agency's interpretation of both a statute and implementing regulation, within the sphere of the agency's authority, unless the interpretation is 'plainly unreasonable.'" E. Bay Drywall, LLC v. Dep't of Lab. & Workforce Dev., 251 N.J. 477, 493 (2022).

"This deference comes from the understanding that a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise." E. Bay Drywall, 251 N.J. at 493. Thus, while a court examines legal questions de novo, it must be "mindful of an administrative agency's day-to-day role in interpreting statutes 'within its implementing and enforcing responsibility.'" In re State Bd. of Educ.'s Denial of Petition to Adopt Regulations Implementing N.J. High Sch. Voter Registration Law, 422 N.J. Super. 521, 530-31 (App. Div. 2011) (quoting Wnuck, 337 N.J. at 56).

Once the court has interpreted the meaning of a statute, the review of an agency's decision in applying the statute is "more deferential." In re State Bd. of Educ., 422 N.J. Super. at 531. And a final agency decision must be upheld on appeal absent "a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." In re Herrmann, 192 N.J. at 27-28; see also In re Proposed Quest Acad. Charter Sch., 216 N.J. 370, 385 (2013); Brady v. Bd. of Review, 152 N.J. 197, 210 (1997).

Here, the Commissioner's determination that a municipality like Sea Bright may seek withdrawal from Oceanport and Shore Regional is both reasonable and consistent with the Legislature's overarching purpose in adopting the statutory scheme at issue, which is to promote, not bar, the creation of K-12 districts.

To begin with, the Legislature enacted L. 2021, c. 402, codified at N.J.S.A. 18A:13-47.1 to - 47.11, to amend and supplement Chapter 13 of Title 18A of the New Jersey Statutes Annotated concerning school district regionalization. The legislation provides a financial incentive for public school districts and governing bodies to explore school district regionalization. In particular, it established a grant program to reimburse eligible costs associated with conducting feasibility studies "that support the creation of meaningful and implementable plans to form or expand regional school districts." N.J.S.A. 18A:13-47.2; see N.J.S.A. 18A:13-47.3 (setting

forth criteria for application to the grant program); N.J.S.A. 18A:13-47.4 (regarding application review and reimbursement for feasibility study); N.J.S.A. 18A:13-47.7 (stating that notice will be provided to the Senate President, the Speaker of the General Assembly, and the Minority Leaders of the Senate and General Assembly of receipt of an application for a grant award); N.J.S.A. 18A:13-47.8 (providing that an annual report shall be submitted to the Governor and the Legislature analyzing the grant program).

In addition, it authorizes a board of education or municipality to request permission from the Commissioner to withdraw to form or enlarge a regional school district. N.J.S.A. 18A:13-47.11. The statutory provision at the heart of this matter, N.J.S.A. 18A:13-47.11(a), provides in pertinent part:

> Notwithstanding any other law, rule, or regulation to the contrary, a board of education of a local school district or of a local school district constituting part of a limited purpose regional district, the board of education or governing body of a non-operating school district, or the governing body of a municipality constituting a constituent district of a limited purpose regional district, part of an all purpose regional district, or part of a consolidated school district may, by resolution, withdraw from a limited purpose or all purpose regional district or consolidated school district in order to form or enlarge a limited purpose or all purpose regional district provided that the withdrawal:
>
> (1) is approved by the Commissioner of Education . . . as meeting the criteria set forth in paragraphs (2) through (8)

> of this subsection, which approval shall be obtained prior to any election held to determine whether to form or enlarge a limited purpose or all purpose regional district that the withdrawing . . . governing body will join.
>
> [(emphasis added).]

The plain language of the controlling statute makes clear that the governing body of a municipality that is part of a consolidated or regional district may withdraw from a consolidated district to join another. Ibid. A "governing body" "means and includes, in the event that a school district enumerated . . . does not have a board of education, . . . a municipality constituting part of a consolidated school district, and the governing body of a municipality constituting a constituent district of a limited purpose or all purpose regional district." N.J.S.A. 18A:13-47.1.

Appellants argue that Sea Bright does not qualify as any of the entities described in N.J.S.A. 18A:13-47.11 because, pursuant to N.J.S.A. 18A:8-44, the non-operating Sea Bright School District was eliminated and "merged" with Oceanport, creating a new local school district – not a consolidated school district pursuant to N.J.S.A. 18A:8-25 to -41. (Ab21). Appellants are wrong. The Commissioner properly interpreted the regionalization statute and determined that Sea Bright is an entity that may seek withdrawal under N.J.S.A. 18A:47.11.

Basic canons of statutory construction apply. When construing the meaning of a statute, courts must look first to the statute's plain language

because it is the "'best indicator' of legislative intent." DiProspero v. Penn, 183 N.J. 477, 492 (2005). The words of a statute must be afforded "ordinary meaning and significance." Ibid.; see also N.J.S.A. 1:1-1 (the words in a statute should be given their "generally accepted meaning, according to the approved usage"). In addition, "[e]ach part or section [of the statute] should be construed in connection with every other part or section so as to produce a harmonious whole." DiProspero, 183 N.J. at 496 (alterations in original). Thus, "[i]t is basic in the construction of legislation that every effort should be made to harmonize the law relating to the same subject matter." Id. (citing State v. Green, 62 N.J. 547, 554 (1973).

As an initial matter, the law does not define or otherwise classify a "merged" district as one that is distinct from consolidated districts. Indeed, N.J.S.A. 18A:8-44(a), governing the elimination of non-operating school districts, simply states that the executive county superintendent "shall eliminate any non-operating district and merge that district with the district with which it participates in a sending-receiving relationship." The Department's regulations, specifically N.J.A.C. 6A:23A-2.4 (governing the elimination of non-operating school districts), lends further support for the Commissioner's interpretation. N.J.A.C. 6A:23A-2.4(a)(1) provides that the executive county superintendent shall submit a plan to the Commissioner to

eliminate non-operating districts, and this plan shall include the executive county superintendent's "recommendation as to the most appropriate local public school district within the county for the . . . [non-operating district] with which to consolidate[.]" (emphasis added). The plan shall also include "[a]n estimate of efficiencies and cost savings, if any, resulting from the consolidation of school districts. . . ." N.J.A.C. 6A:23A-2.4(a)(6) (emphasis added).

Thus, the Department uses the term "consolidate" synonymously with "mergers." There is nothing in the plain language of the applicable law suggesting that Sea Bright is foreclosed from regionalizing with another school district just because it consolidated with a district once before – and the law does not draw any telling distinction between consolidation and mergers. And in any event, N.J.S.A. 18A:8-50 declares that, "[u]nless otherwise provided in this act, a new district formed pursuant to [N.J.S.A. 18A:8-44] shall be governed by the provisions of [N.J.S.18A:13-1 et seq.] . . . ." (emphasis added). So because Sea Bright originally consolidated with another district pursuant to N.J.S.A. 18A:8-44, a plain reading of N.J.S.A. 18A:8-50 confirms that municipalities such as Sea Bright are subject to the regionalization provisions set forth in N.J.S.A. 18A:13-13-47.1 to -47.11. That includes the ability to withdraw from one consolidated district in order to form or enlarge a regional school district. The Commissioner properly concluded, therefore,

that Sea Bright had standing to withdraw from Oceanport and Shore Regional under N.J.S.A. 18A:13-47.11. (Aa20).

This interpretation of N.J.S.A. 18A:8 and N.J.S.A. 18A:13 aligns with the State's public policy to encourage the formation of K-12 school districts. To illustrate, N.J.S.A. 18A:8-51 states that, "[n]othing in this act [governing non-operating districts] shall be construed to prohibit an executive county superintendent from including a former non-operating district in the consolidation plan submitted by the executive county superintendent to the commissioner pursuant to subsection h. of N.J.S.18A:7-8." N.J.S.A. 18A:7-8(h) tasks the executive county superintendent with devising "a school district consolidation plan to eliminate all districts, other than county-based districts and other than preschool or kindergarten through grade 12 districts in the county, through the establishment or enlargement of regional school districts." It further provides that the regional district "shall be established or enlarged in accordance with chapter 13 of Title 18A. . . ." Ibid.

This helps explain why appellants' secondary argument – that the Legislature intended to exclude "merged" municipalities from the ability to withdraw from a regional or consolidated school district – fares no better. (Ab24). Appellants point out that N.J.S.A. 18A:13-34 (relating to the creation of regional school districts) includes categories that are similar to those identified in N.J.S.A. 18A:13-47.11(a)

(relating to the withdrawal from local school districts) but also includes another category not specified in N.J.S.A. 18A:13-47.11(a): the board of education of a "district comprising two or more municipalities." Ibid. They contend that this demonstrates the intentional exclusion of municipalities such as Sea Bright from the withdrawal provisions of N.J.S.A. 18A:13-47.11 because the Legislature had the opportunity to include other entities in the statute, but chose not to. Ibid. Appellants' argument is flawed. As noted above, the Legislature, through N.J.S.A. 18A:8-50, did expressly provide municipalities such as Sea Bright a pathway to invoke the provisions of Chapter 13, including withdrawal under N.J.S.A. 18A:13-47.11. N.J.S.A. 18A:8-50 (providing that "a new district formed pursuant to . . . this act shall be governed by the provisions of chapter 13 . . . of Title 18A").

Finally, appellants assert that only the Borough of Oceanport, not Sea Bright, could invoke the procedures in N.J.S.A. 18A:13-47.11 because Sea Bright was merged, not consolidated, with Oceanport. (Ab25). Yet appellants simultaneously concede that a governing body of a non-operating school district can seek withdrawal under N.J.S.A. 18A:13-47.11. (Ab19). And there lies the fallacy with their argument. Appellants imply that in order for Sea Bright to avail itself of N.J.S.A. 18A:13-47.11, it must first then demerge from Oceanport. But no such "demerger" process exists within Title 18A. And this makes sense. Provisions

within Chapter 8 reflect an intent towards consolidation and regionalization of districts – not demerger. See, e.g., N.J.S.A. 18A:8-50; N.J.S.A. 18A:8-51.

Moreover, if former non-operating districts are excluded from availing themselves of the withdrawal and regionalization provisions set forth in Chapter 13, they will be left beholden to the district with which they merged and could not ever initiate efforts to withdraw and to join to form or enlarge a regional school district. And that would frustrate the Legislature's intent and contravenes the express provisions within chapters 8 and 13, to encourage K-12 school district regionalization.

A review of the overall statutory scheme demonstrates that municipalities such as Sea Bright have standing to withdraw under N.J.S.A. 18A:13-47.11(a). Accordingly, the Commissioner's decision is reasonable and consistent with legislative intent.

CONCLUSION

For these reasons, this court should affirm the Commissioner's decision.

Respectfully submitted,

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FILED, Clerk of the Appellate Division, August 16, 2024, **A-000716-23**, AMENDED

I/M/O THE VERIFIED PETITION FOR THE PROPOSED CREATION OF A PK-12 ALL-PURPOSE REGIONAL SCHOOL DISTRICT BY THE BOROUGH OF SEA BRIGHT, BOROUGH OF HIGHLANDS, BOROUGH OF ATLANTIC HIGHLANDS, HENRY HUDSON REGIONAL SCHOOL DISTRICT, ATLANTIC HIGHLANDS SCHOOL DISTRICT, AND HIGHLANDS BOROUGH SCHOOL DISTRICT, MONMOUTH COUNTY.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No.: A-0716-23T4 CIVIL ACTION ON APPEAL FROM A FINAL DECISION OF THE NEW JERSEY COMMISSIONER OF EDUCATION Submitted to the Court: August 16, 2024

AMENDED REPLY BRIEF OF APPELLANTS OCEANPORT BOARD OF EDUCATION AND SHORE REGIONAL HIGH SCHOOL DISTRICT BOARD OF EDUCATION

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FILED, Clerk of the Appellate Division, August 16, 2024, **A-000716-23**, AMENDED

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PRELIMINARY STATEMENT

The decision on appeal should be reversed, because the finding that the Borough of Sea Bright ("Sea Bright") was an entity authorized to withdraw from Appellants Oceanport Board of Education ("Oceanport") and Shore Regional High School Board of Education ("Shore Regional") (collectively "Appellants") pursuant to N.J.S.A. 18A:13-47.11(a) was contrary to the explicit statutory language.

The opposition briefs filed by Respondents the Borough of Sea Bright ("Sea Bright") and the Commissioner of Education ("Commissioner") (collectively "Respondents") do not set forth a reasonable justification for expanding the class of entities enumerated in N.J.S.A. 18A:13-47.11(a) to include an eliminated former non-operating school district. The statute does not include the municipalities of eliminated former non-operating districts such as Sea Bright.

Respondents argue that the Commissioner is entitled to heightened deference in decisions interpreting educational statutes, and therefore the decision should only be reversed if it is plainly unreasonable. Further, they claim that the Commissioner has interpreted the terms "merged" and "consolidated" to be synonymous. However, the terms in the statute are not synonymous, and the Commissioner's interpretation of N.J.S.A. 18A:13-47.11(a) conflicts with the plain statutory language. That conflict renders the Commissioner's interpretation of the statute plainly unreasonable and should therefore be reversed.

PROCEDURAL HISTORY AND STATEMENT OF THE FACTS[1]

Appellants continue to rely upon the Procedural History and Statement of the Facts set forth in their initial brief to the Court. However, based upon substantive procedural developments which have occurred since the filing of their brief, they offer updates to the Procedural History as set forth below.

On June 10, 11, 12, 2024, respectively, the Boards of Education for Highlands, Atlantic Highlands, and the Henry Hudson Regional School District (collectively "Tri-Districts") entered into a settlement agreement with Appellants, and were voluntarily dismissed. Sea Bright and the Borough of Highlands have filed a Complaint and Order to Show Cause in the Superior Court against the Tri-Districts seeking to invalidate said settlement agreement. On June 24, 2024, their request for emergent relief was denied, but the matter continues before the Hon. Linda G. Jones, J.S.C. under docket number MON-L-1930-24.

On June 24, 2024, the Boroughs of Highlands and Atlantic Highlands were dismissed from this appeal upon the granting of their own motions. On July 17, 2024, Sea Bright filed a motion to accelerate the instant appeal, which was granted on August 2, 2024, over Appellants' opposition. Finally, on July 30, 2024, Sea Bright and the Borough of Highlands filed a new petition with the Commissioner seeking

[1] The Procedural History and Statement of the Facts have been consolidated because they are inextricably linked, and because they were so joined in the Appellants' initial briefing.

the same relief previously sought in the July 15, 2022, Petition that was dismissed by the Commissioner in the September 23, 2023, decision on appeal here.

LEGAL ARGUMENT

POINT I

THE COMMISSIONER'S DECISION SHOULD BE REVERSED BECAUSE SEA BRIGHT IS NOT ONE OF THE SPECIFIC CLASSES OF ENTITY WHICH ARE EXPLICITLY PERMITTED TO AVAIL THEMSELVES OF THE WITHDRAWAL PROCEDURES SET FORTH IN N.J.S.A. 18A:13-47.11. (Aa19 – Aa21)

The briefs filed by Sea Bright and the Commissioner begin with the same two fundamental flaws: 1) they ignore, or attempt to gloss over, the Legislature's choice to differentiate "consolidated" school districts from those, like Sea Bright and Oceanport, which are joined following the elimination of a non-operating district and its subsequent merger with its former send-receive partner; and 2) they assume that Sea Bright is a constituent member of Shore Regional. These are the same errors at the heart of the Commissioner's September 22, 2023, decision, in which the Commissioner stated, without any analysis of the statutes, "[t]he statute contemplates that a municipality, such as Sea Bright, may seek withdrawal from a regional or consolidated school district". (Aa20) (emphasis added). However, neither the Commissioner nor Sea Bright, offers any response to the plain language of the statute, which, Rather than announce a broad rule that any municipality

may withdraw from a regional or consolidated school district, sets forth a list of enumerated entities that may do so. N.J.S.A. 18A:13-47.11(a).

Where the legislature has set forth an enumerated list of applicable entities, not even the Commissioner's expertise can extend its reach beyond the four corners of the page. See DiProspero v. Penn, 183 N.J. 477, 492 (2005) (identifying the plain language of a statute as the best indicator of the legislature's intent in passing it).

The question at the heart of this appeal—whether Sea Bright, as an entity, fits into any of the above-listed entities—is resolved by looking at the statute's plain language: Sea Bright is not an entity so listed, and therefore cannot avail itself of the process outlined therein. Any alleged ambiguity identified by Sea Bright, or need for harmonization with other provisions in the law which the Commissioner alleges is necessary, are mere illusions, read into the statute as a means of reaching Sea Bright's desired result.

A. SEA BRIGHT IS NOT A CONSTITUENT DISTRICT OF A CONSOLIDATED SCHOOL DISTRICT. (Aa19 – Aa21)

Sea Bright is not a constituent of a consolidated school district. Throughout the briefing by Respondents, and at the heart of the Commissioner's decision on appeal, is their assertion that Oceanport and Sea Bright were "consolidated" following the 2009 elimination of the non-operating Sea Bright School District. However, the term "consolidated school district" as used in N.J.S.A. 18A:13-47.11

is a term of art which refers to districts created and operated pursuant to N.J.S.A. 18A:8-25 *et seq*. This is wholly separate from the statutory provisions which apply to districts created after the elimination of a formerly non-operating district. See generally N.J.S.A. 18A:8-43 *et seq*.; N.J.S.A. 18A:13-1 *et seq*.

Oceanport School District is a single local school district, responsible for making the educational decisions for both Oceanport and Sea Bright students. State aid for Sea Bright students is paid directly to Oceanport, and Oceanport has at-large board seats available to either Sea Bright or Oceanport residents. It is one school district and one board of education. The creation, supervision, and naming of consolidated school districts, as well as the apportionment of board membership and appropriations, tax levies, and redemption of bonds, for consolidated school districts are all governed by separate statutory articles than govern Oceanport precisely because Oceanport, and by extension Sea Bright, is not a consolidated school district as contemplated by N.J.S.A. 18A:13-47.11.

B. SEA BRIGHT IS NOT A CONSTITUENT DISTRICT OF A LIMITED PURPOSE REGIONAL SCHOOL DISTRICT. (Aa19 – Aa21)

Likewise, Sea Bright is not a constituent district of a limited purpose regional district and has not been since July 1, 2009. Limited purpose regional school districts are comprised of multiple constituent school districts and are "organized to provide and operate in the territory comprised within such districts

one or more of the following: elementary schools, junior high schools, high schools, vocational schools, special schools, health facilities or particular educational services or facilities." N.J.S.A. 18A:13-2(b) (emphasis added).

Constituents of a limited purpose regional district have their own boards of education, which provide for those grade levels not provided for by the regional district. For example, N.J.S.A. 18A:13-40.1 – Coordination of limited purpose regional school districts with constituent district – which provides the procedures for how the limited purpose regional school district is to coordinate with the constituent school district. N.J.S.A. 18A:13-40.1. By contrast, all-purpose regional districts are "organized for all the school purposes of the municipalities included within such regional districts." N.J.S.A. 18A:13-2(a). Municipalities, like Sea Bright, are only constituents of all-purpose regional school districts because, when an all-purpose regional school district is formed, the local districts which formed it are dissolved. See N.J.S.A. 18A:13-3. Municipalities cannot constitute a constituent of a limited purpose regional district because the board of education governing the local district still exists.

Sea Bright, which is within the boundaries of the Oceanport School District, has no school board of its own, and therefore cannot be a constituent district of Shore Regional. On the contrary, by virtue of the Commissioner's merger of Sea Bright and Oceanport, and consistent with the statutory scheme

governing such merger, Sea Bright's local school district is the Oceanport School District. Therefore, Sea Bright, as a municipality, cannot be a constituent district of a regional school district as required to avail itself of N.J.S.A. 18A:13-47.11.

C. THE LEGISLATURE OPTED TO NOT INCLUDE ENTITIES SUCH AS SEA BRIGHT IN THE CLASS OF ENTITIES ELIGIBLE TO SEEK WITHDRAWAL THROUGH RESOLUTION PURSUANT TO N.J.S.A. 18A:13-47.11. (Aa19 – Aa21)

Respondents' briefs encourage the Court to consider the totality of the statutory scheme surrounding N.J.S.A. 18A:13-47.11. Appellants agree with this course of action, particularly because, as set forth in our opening brief, the text of P.L. 2021 c. 402, the Act which adopted N.J.S.A. 18A:13-47.11 which reveals that the Legislature did not include municipalities such as Sea Bright in the class of entities listed N.J.S.A. 18A:13-47.11(a).

Initially, it is imperative to ground any examination of this statute in the fact that it limits municipal governing body applicants, in relevant part, to those "constituting a constituent <u>district</u> of a limited purpose regional district, part of an all-purpose regional district, or part of a consolidated school district." N.J.S.A. 18A:13-47.11(a) (emphasis added). As previously established, Sea Bright is not a constituent district of Shore Regional, and is not a part of a consolidated school district.

FILED, Clerk of the Appellate Division, August 16, 2024, **A-000716-23**, **AMENDED**

1. The Legislature chose not to authorize municipalities, such as Sea Bright, to withdraw pursuant to N.J.S.A. 18A:13-47.11. (Aa19 – Aa21)

Elsewhere in P.L. 2021, c. 402 the Legislature amended the statute describing the ability of school districts to form regional schools. See N.J.S.A. 18A:13-34. This provision includes two categories which are similar to those identified in N.J.S.A. 18A:13-47.11(a)—local district boards of education and boards of consolidated school districts—but it also includes a category specifically not found in the N.J.S.A. 18A:13-47.11(a): the board of education of "a district comprising two or more municipalities." See N.J.S.A. 18A:13-34.

This new category is different from a consolidated school district, but does not appear in the list of entities eligible to withdraw from a consolidated district or regional school district under N.J.S.A. 18A:13-47.11(a). The implication for this new class of entity being included in one section of the Act, but not in another is unmistakable: the Legislature had the means to include entities other than those specified in N.J.S.A. 18A:13-47.11(a), but it affirmatively chose not to do so. The inescapable conclusion is that any entities not enumerated in N.J.S.A. 18A:13-47.11(a), such as Sea Bright, were intentionally left out.

The Commissioner argues that the Department uses the term "consolidate" synonymously with "merger." (Cb12).[2] However, whether the Commissioner

[2] "Cb" shall refer to the Commissioner's brief.

has chosen to use these terms interchangeably is irrelevant. Respondents wholly ignore that "consolidated school district" is a term of art, with a definition grounded in specific statutory language, and far narrower than the broad one Respondents advocate for. The definition of a consolidated school district cannot be changed simply because Respondents wish it to be so. What matters is how the Legislature used the terms, and the statute does not use them interchangeably.

Similarly, the Commissioner's citation to N.J.A.C. 6A:23A-2.4(a)(6) is unpersuasive. It appears that the language cited was adopted by the Commissioner of Education in 2017, long after the elimination of multiple non-operating districts, including Sea Bright in 2009, and again, reflects the Commissioner's own use of those terms, not the Legislature's.

Next, the Commissioner asserts that "[t]here is nothing in the plain language of the applicable law suggesting that Sea Bright is foreclosed from regionalizing with another school district just because it consolidated with a district once before—the law does not draw any telling distinction between consolidation and mergers." (Cb12). Those assertions are simply not true.

The primary barrier that exists to Sea Bright independently joining a regional school district is that there is no Sea Bright school district, having been eliminated in 2009. Further, as to the distinction between merger and consolidation, in drafting N.J.S.A. 18A:8-44 the Legislature did not instruct the

executive county superintendent ("ECS") to consolidate an eliminated non-operating district with its former send-receive partner pursuant to N.J.S.A. 18A:8-25 *et seq*. Rather, it instructed the ECS to "merge" the eliminated non-operating district with its former send-receive partner.

Likewise, in framing N.J.S.A. 18A:13-47.11 the Legislature set forth specific enumerated entities that were applicable. It could have included, for example, "the governing body of a municipality constituting a former non-operating district eliminated pursuant to N.J.S.A. 18A:8-44." But the Legislature did not do so. The Commissioner cannot read ambiguity into plain statutory language to support a decision that was otherwise erroneously made.

2. The Legislature did not authorize municipalities, such as Sea Bright, to submit a question regarding regional school district enlargement to voters. (Aa19 – Aa21)

The fact that Legislature did not include municipalities governing former non-operating districts in the enumerated entities listed in N.J.S.A. 18A:13-47.11 is further supported by the fact that the Legislature has only authorized boards of education to submit a question regarding regional school district enlargement to the voters. N.J.S.A. 18A:13-43, as amended by P.L. 2021 c. 402. When it passed P.L. 2021 c. 402, the Legislature had the opportunity to add municipalities to the list of entities who may submit a question on the

enlargement of a regional school district to the voters. The Legislature did not amend N.J.S.A. 18A:13-43 in this regard.

POINT II

THE COMMISSIONER'S DECISION SHOULD BE REVERSED BECAUSE IT ERRONEOUSLY IDENTIFIES SEA BRIGHT AS AN ENTITY COVERED BY N.J.S.A. 18A:13-47.11. (Aa19 – Aa21)

The Commissioner's interpretation of N.J.S.A. 18A:13-47.11 ignores the plain language of the statute and instead interprets it in a manner so as to increase ambiguity and reach a conclusion not otherwise provided-for by the statutory text. It is therefore erroneous and is owed no deference by this Court. As set forth above, Sea Bright is not any entity described in the statute as being permitted to seek withdrawal from Oceanport and Shore Regional. Because the Commissioner misapplied the statute, the September 22, 2023, decision constitutes an abuse of discretion and should be reversed.

The Commissioner's brief asserts that its interpretation of N.J.S.A. 18A:8 and 18A:13 is in accordance with the public policy encouraging the formation of K-12 districts. (Cb13). It notes that N.J.S.A. 18A:8-51 allows an ECS to include an eliminated former non-operating district in a consolidation plan created according to N.J.S.A. 18A:7-8(h), which supports its interpretation that the terms "merge" and "consolidate" are interchangeable. Appellants disagree. Instead, the text of N.J.S.A. 18A:8-51 shines a spotlight on the fact that, if it

wanted to, the Legislature could have included entities such as Sea Bright clearly and without ambiguity in N.J.S.A. 18A:13-47.11, but did not. It was capable of identifying a "former non-operating district" like Sea Bright, but it chose not to do so. The Commissioner is not permitted to effectuate the wholesale expansion of a statutory provision beyond its clear, unambiguous text.

Next, the Commissioner asserts that, because N.J.S.A. 18A:8-50 provides for the governance of merged districts in accordance with N.J.S.A. 18A:13-1 *et seq*. "unless otherwise provided in this act," this expressly provides Sea Bright a pathway to withdraw under N.J.S.A. 18A:13-47.11(a). (Cb14). This is a circular argument, which fails precisely because eliminated former non-operating districts, such as Sea Bright, are not enumerated entities capable of withdrawal pursuant to N.J.S.A. 18A:13-47.11(a). The Commissioner's brief essentially ignores the prefatory clause in N.J.S.A. 18A:8-50 which limits its application. N.J.S.A. 18A:13-47.11 expressly limits the application of 18A:8-50 by excluding entities such as Sea Bright.

The Commissioner notes that no provision exists to provide for the demerger of a former non-operating district which has been eliminated and merged into another district pursuant to N.J.S.A. 18A:8-44. The Commissioner than explains that the statutes generally prefer smaller districts to be consolidated, presumably pursuant to N.J.S.A. 18A:8-25 *et seq*., or regionalized pursuant to N.J.S.A. 18A:13.

But the inability of Sea Bright to leave Oceanport and Shore Regional absent explicit statutory authorization actually fits with the Commissioner's public policy goals.

Initially, Sea Bright was eliminated precisely because its existence as a non-operating district was redundant, creating unnecessary administrative and practical overhead. Its merger into Oceanport, where its students already attended school, would not upset the proverbial applecart, but instead would reduce such administrative overhead, and sow stability into the education of the students. Similarly, because Oceanport is a constituent district of Shore Regional, Sea Bright students would continue to attend Shore Regional as they already were. Appellants' tortured statutory interpretation would see a municipality whose district was eliminated fifteen years ago permitted to unilaterally force a reduction in both Oceanport and Shore Regional, thereby introducing new instability, and a reduction in size to both Appellants' districts. Further, it would create a mechanism by which other similar municipalities could introduce such instability in other districts. This cannot be what the Legislature intended and should not be rubber stamped by the Commissioner absent explicit statutory language which does not exist here.

Finally, the Commissioner's brief worries that, if Sea Bright were not able to withdraw it would be "beholden to the district with which they merged." (Cb15). Sea Bright raises a similar argument when it asserts that adoption of Appellants' position would cause Sea Bright to effectively surrender its autonomy with regard

to public education. (SBb14). However, the people of Sea Bright are not helpless outcasts who are subject to the whims of a school board in which they have no voice. Rather, members of the Oceanport Board of Education are elected at large from both Oceanport and Sea Bright. See N.J.S.A. 18A:8-47(a). The people of Sea Bright, like any other constituency within the geographic boundaries of a school district can put forth candidates and elect members who share their policy goals. The fact that this may be an uphill battle is not a basis to expand the withdrawal statutes beyond their express language. Rather than frustrate the Legislature's intent, it represents the finality inherent in the Legislature's instruction to eliminate non-operating school districts. By contrast, the position advocated by both Sea Bright and the Commissioner would permit an eliminated district to essentially re-form at will and jump from one home to another. No definition of the word "eliminate," much less the statutory scheme governing either the elimination of non-operating districts or the formation/enlargement of regionalization provides for such actions.

This matter turns on a weighing of interests between Sea Bright, a municipality whose school district has not existed for fifteen years, and Oceanport and Shore Regional, where the children of Sea Bright have received a high-quality education for the duration of that fifteen years, and beyond. Sea Bright and the Commissioner argue that, despite the lack of express statutory language, a twisting and winding interpretation of other, peripheral provisions should nonetheless permit

Sea Bright to dictate its own withdrawal. This position essentially nullifies Sea Bright's 2009 elimination, and subjugates Oceanport and Shore Regional to Sea Bright. Such a scheme is inconsistent with the statutory text, or any reasonable interpretation thereof. Therefore, the Commissioner's decision finding that Sea Bright is entitled to withdraw pursuant to N.J.S.A. 18A:13-47.11 should be reversed.

CONCLUSION

As set forth in Appellants' initial briefing, and supplemented above, Sea Bright, as a municipality whose former school district was eliminated, is ineligible for the withdrawal process in N.J.S.A. 18A:13-47.11(a). Therefore, the Commissioner's September 22, 2023, decision finding that Sea Bright has standing to seek withdrawal pursuant to that statute should be reversed.

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Dated: August 16, 2024