

February 5, 2020

**VIA LAWYER'S SERVICE**

Jennifer Killough-Herrera, Acting Director  
New Jersey Department of Education  
Office of Controversies and Disputes  
100 Riverview Plaza  
Trenton, New Jersey 08625-0500

**RE: Montague Bd. of Educ. v. High Point Reg'l Bd. of Educ.**  
Agency Dkt. No.: 332-12/19

Dear Director Killough-Herrera:

As you are aware, this firm represents Respondent High Point Regional Board of Education ("High Point") in the matter referenced above. Enclosed herewith are an original and two (2) copies the following:

1. High Point's Answer to the Petition of Appeal; and
2. Proof of Service.

The Board respectfully requests that the enclosed be filed with a copy marked "filed" returned in the self-addressed stamped envelope provided.

Your courtesies are greatly appreciated.

Respectfully,

**THE BUSCH LAW GROUP LLC**

*Douglas M. Silvestro*

Douglas M. Silvestro, Esq.  
Partner

cc: Dr. Scott Ripley, Superintendent (via e-mail only)  
Vito A. Gagliardi, Jr., Esq. (via e-mail and regular mail)

DOUGLAS M. SILVESTRO, ESQ.  
THE BUSCH LAW GROUP, LLC  
450 Main Street  
Metuchen, NJ 08840  
(732) 623-9726  
dsilvestro@buschlawgroup.com  
Attorneys for High Point Regional  
High School Board of Education

Board of Education of the Township of  
Montague, Sussex County,

Petitioner,

v.

Board of Education of the High Point  
Regional School District, Sussex County,

Respondent,

STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION

BEFORE THE COMMISSIONER OF  
EDUCATION

Agency Docket No. 332-12/19

ANSWER TO PETITION OF APPEAL

High Point Regional High School Board of Education (“High Point”) by and through its attorneys, the Busch Law Group, LLC, by way of Answer to the Verified Petition of Appeal filed by the Montague Township Board of Education (“Montague”), says as follows:

#### **Background**

1. Prior to 2013, Montague sent their students to attend high school across the Stateline in Port Jervis, New York.
2. Montague and High Point entered into negotiations in or about 2013 to send Montague students to High Point and keep the Montague students within the State of New Jersey and County of Sussex.

3. Montague and High Point entered into a formal Send-Receive Agreement in August 2013 (“Agreement”), which Agreement is still currently in effect and is the subject of the underlying Petition of Appeal filed by Montague (“Petition”).
4. In order for the Agreement to take effect, the Agreement had to be submitted to the Commissioner of Education for the Commissioner’s review and approval.
5. After a thorough review of the application and the information and documents submitted, the State of New Jersey’s Commissioner of Education determined that it was in the best interests of the Montague students to attend High Point.
6. In accordance with the Agreement, the tuition charged for each student from Montague attending High Point beginning in the 2014-2015 school year was less than the certified tuition rate established by N.J.S.A 18A:38-19 and N.J.A.C. 6A:23A-17.1. The tuition rate required by the Agreement increases gradually each year but is always capped at the certified tuition rate.
7. High Point is unaware of any changes in circumstances since the Commissioner of Education determined in 2013 that it was in the best interests of the students of Montague to approve the Agreement.
8. On March 22, 2018, High Point filed its own Petition of Appeal seeking, among other things, to compel Montague to abide by its payment obligations pursuant to the Agreement with respect to two Montague resident students attending High Point Regional High School who were deemed to require out-of-district placements in accordance with their respective Individual Education Programs. That case was docketed as Board of Education of the High Point Regional School District, Sussex County v. Board of Education of the Township of Montague, Sussex County, et al, EDU 04412-18, Agency Dkt. No.: 75-3/18 (“High Point Petition”).

9. In order to resolve the High Point Petition without the need for costly litigation, the Parties entered into a formal settlement whereby Montague agreed to pay for the students' tuition, and High Point agreed not to oppose any future action that Montague might file to terminate the Agreement but reserved the right to provide the Commissioner with factual information relevant to any such action ("Settlement"). The Settlement was approved by the Honorable Jude-Anthony Tiscornia, A.L.J., by decision dated February 14, 2019.
10. In accordance with the Settlement, High Point files this Answer not in opposition to the Petition, but simply to provide additional factual information that was either absent from or misstated by the Petition. Accordingly, the Petition should be considered "unopposed" by High Point pursuant to N.J.A.C. 6A:3-6.1(b).
11. The Petition largely speaks to the history between the Montague and Port Jervis, NY school districts, and High Point is unaware of any facts that would be relevant to that history. With respect to Montague's statement that "Montague citizens have not shared the same level of involvement with the program in High Point that they have continually shared with Port Jervis," however, High Point does direct the Commissioner to Paragraphs 66 through 146 of the High Point Petition (Agency Dkt. No.: 75-3/18), which contains numerous statements of fact with respect to the barriers imposed by Montague's current administration that prevented or otherwise discouraged the participation of Montague citizens in the programs offered by High Point.
12. So as to avoid any appearance of obstruction to the Petition, this submission seeks only to provide factual information focusing on the three areas Montague correctly identifies as relevant to the Commissioner's determination as to whether to

terminate the send-receive relationship between the parties: whether doing so would have a substantial negative financial or educational impact, or upon the racial composition, of either district. This Answer will also seek to provide factual information regarding additional allegations contained in the Petition that do not appear to be directly tied to the key statutory factors.

### **Financial Condition**

13. Petitioner's assertion that High Point would not suffer a substantial negative impact on its financial condition is factually incorrect.
14. The Petition asserts that High Point would experience an estimated "0.05%" increase to its expenses in the event that the Agreement were terminated. It is unclear from the Petition how this figure was reached, but it does not appear to be based on available facts.
15. According to the most-recent audited figures available (2018-2019 school year), High Point realized a total revenue from the Agreement with Montague in the amount of \$1,430,012.
16. High Point's total General Fund expenses for that school year were \$26,720,980. Thus, the revenue from Montague paid for approximately 5.35% of High Point's expenses for that year, the loss of which would result in a much greater negative impact to High Point than the 0.05% cited in the Petition.
17. High Point's tax levy for that same school year equaled \$14,256,964, meaning that High Point's tax levy would have to be raised by more than ten percent (10%) in order to make up for the loss of revenue should the Petition be granted.
18. What makes this figure even more insurmountable is the combination of the State's mandatory 2% cap on the annual amount a school district can increase its tax levy,

coupled with the continued decrease in State aid. High Point received (\$362,989) **less** in State aid for fiscal year 2019 (a decrease of 5.6%); (\$474,618) **less** for fiscal year 2020 (a decrease of 7.8%); and is projected to receive (\$569,000) **less** in State aid for fiscal year 2021 (a further decrease of 10.1%).

19. Even were High Point to receive level funding from the State for the foreseeable future (which it is not projected to), freeze all staff salaries and benefit costs (neither of which can be unilaterally imposed by High Point), cease all programmatic initiatives and pray that no additional classified students required extraordinary services, it would still take High Point at least five (5) years of increasing taxes to the maximum allowable by law in order to make up for the loss of Montague revenue. Given the anticipated cuts in State aid, it is likely that maximum-level tax increases for High Point's residents would be necessary for the better part of a decade were the send-receive agreement with Montague to be terminated.
20. High Point should not be considered to be opposing Montague's Petition; rather, High Point simply seeks to provide the Commissioner with all relevant and accurate facts regarding the Petition.

#### **Educational Condition**

21. The Petition and the report upon which it relies make general allusions to Montague's students somehow not being well-served at High Point. Although High Point disagrees, which descriptors should be used to label the education provided by High Point is the sort of subjective battle that High Point has agreed not to engage in. There are a number of facts regarding the comparison of High Point and Port Jervis, however, that were not included in the Petition.

22. When the current class of 2021 (this year's Juniors) were given the PSAT 8/9 test in October 2017, the average (mean) score for students from Montague was 865, with the rest of High Point averaging a score of 883. After two years of an education at High Point, Montague students who took the PSAT-NMSQT in October 2019 scored an average 971, compared to the rest of High Point's average score of 961. Thus, not only did Montague students see documented academic growth at High Point, their rate of growth actually outpaced the rest of the High Point student body.
23. The feasibility study report also does not provide a complete picture of the collegiate-level course offerings when comparing the educational opportunities of High Point to those of Port Jervis. The report notes that while Port Jervis does not offer any AP courses, it instead has an agreement with Syracuse University to offer college-credit courses at the high school. In fact, Port Jervis's website (<https://www.pjschools.org/departments/academics/accelerated-programs>) states that they also have an agreement with Orange County Community College to offer such courses. Between Syracuse and SUNY Orange, Port Jervis offers just shy of a dozen college-credit courses to students enrolled at Port Jervis High School.
24. The report submitted by Petitioner notes that High Point offers thirty-one (31) different AP courses eligible for college credit. The report fails to mention, however, that High Point also has concurrent enrollment agreements with the New Jersey Institute of Technology, Ramapo College and Sussex County Community College. Through these partnerships, High Point offers over twenty-five (25) college endorsed courses that culminate in college credits being earned at the respective colleges. To be clear, these concurrent enrollment courses are in

addition to the 31 AP courses, meaning that High Point has a total of fifty-six (56) college-credit eligible courses offered at its high school compared to the estimated 11 such courses offered by Port Jervis.

25. Not all information relevant to the academic comparison between Port Jervis and High Point were included in the feasibility study commissioned by Petitioner. For example, neither the graduation nor dropout rates for the respective schools were mentioned. Thankfully, the latest reporting from New York (<https://data.nysed.gov/lists.php?type=district>) and New Jersey (<https://rc.doe.state.nj.us/SearchForSchool.aspx>) provides this information.

26. While Port Jervis has a graduation rate of 86%, High Point boasts a 94.4% graduation rate.

27. A full 8% of Port Jervis's student cohort are considered to have dropped out of school, while High Point's dropout rate is only 0.2%.

28. As stated repeatedly above, High Point should not be considered to be opposing Montague's Petition; rather, High Point simply seeks to provide the Commissioner with all relevant and accurate facts regarding the Petition.

### **Racial Composition**

29. The Petition's conclusion that there will not be a "substantial" negative impact on the racial makeup of the student body at High Point were the send-receive agreement terminated is a subjective statement that High Point will not debate. Rather, it must be noted that High Point's enrollment for the 2018-2019 school year included 99 minority students, 20 of whom were from Montague.

30. Thus, Montague accounts for more than twenty percent (20%) of all minority students attending High Point as of last school year.



31. High Point leaves to the Commissioner to determine whether the loss of one-fifth a school district's minority student population should be considered a substantial racial impact.

### **Transportation**

32. The Petition and the reports upon which it relies focus significantly on the distance between Montague and High Point, the roads traveled and allegations regarding the safety of same.

33. The reports generated by Montague's vendors indicate a three (3) mile difference in the distance traveled by busses traveling routes created by Montague to High Point versus hypothetical routes created by Montague to Port Jervis. It is unclear based on the information and underlying data included in the report how these routes were created or why the difference of three (3) miles is considered by the report's authors to be considered significant, but it is clear that the distance between the center of Montague and Port Jervis High School is nearly identical from the same point in Montague to High Point (9.3 and 9.2 miles, respectively), and Montague transports students to and from the Sussex County Technical School, which is approximately twenty (20) miles away.

34. While the transportation study provided by Montague indicates a 2.5-mile distance between Montague and Port Jervis as opposed to 6.2-mile distance between Montague and High Point, these figures are measured from a Montague-selected point on the border of that town to the respective neighboring town, and are not reflective of any actual transportation route that would be used by bussing.

35. In accordance with the Agreement, Montague is responsible for designing its own bus routes and providing sufficient bussing for its students to traverse between home and High Point.

36. By letter dated June 24, 2013, the Commissioner wrote a letter to Montague's then-counsel stating as follows:

Please be advised that the application submitted on behalf of the Montague Board of Education, dated June 18, 2013, requesting that the Commissioner withdraw his consent for the attendance of pupils in grades 9 through 12 at the public schools of Port Jervis, New York, pursuant to N.J.S.A. 18A:38-10 is hereby granted. After carefully considering the information submitted, including a historical description of the circumstances that led to the creation of the out-of-State send-receive relationship **and an explanation of the improved road and travel conditions in the geographic area served by the Montague Board of Education and the surrounding school districts**, I conclude that the reasons for the initial consent now cease to exist. [Emphasis added].

37. There have been no reported accidents due to road conditions involving the Montague-High Point transportation since the Agreement has been implemented, nor have there been any negative changes to the road or travel conditions in the geographic area served by Montague or the surrounding school districts since the Commissioner approved the Agreement in 2013.

### **Rights of Students**

38. The Petition appears to seek two things; first, the termination of the Agreement between High Point and Montague; and, secondly, the Commissioner's authorization for Montague to send its high school students to Port Jervis High School.

39. Although the Petition appears relatively clear on what it is seeking, it is not as clear as to what, specifically, Montague is requesting from the Commissioner with respect to the rights of its students to attend school in High Point moving forward.

40. At its public meeting on December 17, 2019, the following exchange between a parent and Montague's superintendent of schools was recorded in the official Montague Board minutes (available at: [http://www.montagueschool.org/ms/Board of Education/Board Minutes/2019 Minutes/December 17 2019.pdf](http://www.montagueschool.org/ms/Board%20of%20Education/Board%20Minutes/2019%20Minutes/December%2017%202019.pdf)):

Stephanie Guida, of Autumn Drive, On behalf of herself and other parents, they have questions with decisions made at the last board meeting. She will like to know more about these choice options and what our children choices will be staying in NJ and not go to Port Jervis. She wants her child to go to High Point and wants to know for sure that in two years where a child can attend high school

Mr. Capone stated that multiple statures govern this. If you want to send a child to a school, you can get an exemption, that part of the Stature, under the circumstance to exercise an exemption to have a NJ High School Diploma, the Board and Administration will work with that to make that an option, state will make an exemption. If the plan goes forward the way it is intended that is how it will work out. Students can [go] to High Point. [Emphasis added].

41. High Point is unaware as to what "exemption" Mr. Capone was referring to in his public statements of December 17, 2019, what law would allow Montague students to attend High Point should Montague's Petition be granted, or what "plan" Montague has to seek an exemption to allow students to continue to attend High Point moving forward. High Point trusts that the Commissioner will provide guidance on this issue.

**WHEREFORE**, High Point submits no affirmative defenses nor specific requests for relief from the Commissioner, but simply requests that all relevant facts are considered with respect to the Petition.

BUSCH LAW GROUP, LLC  
Attorneys for Respondent,  
High Point Reg'l Bd. of Educ.

*Douglas M. Silvestro*

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By: Douglas M. Silvestro, Esq.

Dated: February 5, 2020

DOUGLAS M. SILVESTRO, ESQ.  
THE BUSCH LAW GROUP, LLC  
450 Main Street  
Metuchen, NJ 08840  
(732) 623-9726  
dsilvestro@buschlawgroup.com  
Attorneys for High Point Regional  
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Board of Education of the Township of  
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BEFORE THE COMMISSIONER OF  
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PROOF OF SERVICE

1. I, Alison Van Leeuwen, am employed by The Busch Law Group, LLC.
2. On February 5, 2020, I caused to be sent by e-mail and regular mail the within Answer to the Petition of Appeal and this Proof of Service

TO: Vito Gagliardi, Jr., Esq.  
Porzio, Bromberg & Newman, P.C.  
100 Southgate Parkway  
P.O. Box 1997  
Morristown, NJ 07962-1997  
[VAGagliardi@pbnlaw.com](mailto:VAGagliardi@pbnlaw.com)

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Alison Van Leeuwen