

NEW JERSEY SCHOOL BOARDS ASSOCIATION

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SEMIANNUAL DELEGATE ASSEMBLY
May 17, 2014

The following resolution was received from the
Upper Pittsgrove Board of Education and Alloway Township Board of Education (Salem):

- WHEREAS, The Upper Pittsgrove and Alloway Township Boards of Education are in a sending receiving relationship with the Woodstown-Pilesgrove Regional School District for its students in grades 9-12; and
- WHEREAS, The Upper Pittsgrove and Alloway Township Boards of Education are governed by the statutory language of *N.J.S.A.* 18A:38-8.1 that limits the eligibility of the sending district representative to vote on matters before the receiving district board of education; and
- WHEREAS, The Delegate Assembly is the official policymaking body of the New Jersey School Boards Association; and
- WHEREAS, Education-related policies resulting from prior Delegate Assembly and Board of Directors actions are codified in the NJSBA's *Manual of Positions and Policies on Education*; and
- WHEREAS, The NJSBA's *Manual of Positions and Policies on Education*, at File Code 9300 Governance, contains the official position of the NJSBA on issues concerning sending-receiving relationships but does not address the issue of sending district voting rights; now, therefore be it
- 1 RESOLVED, That the Upper Pittsgrove and Alloway Township Boards of
2 Education propose the following **additional** policy language for
3 adoption by the Delegate Assembly and inclusion in the NJSBA's
4 Manual of Positions and Policies on Education:
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6 **The NJSBA believes** the statutory language of N.J.S.A. 18A:38-8.1
7 should be revised to expand the voting rights of sending district
8 representatives on matters before the receiving district board of

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education to include the ability to vote on all matters that impact the students of the sending district in the receiving district.

11 RESOLVED,
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That this resolution be placed on the agenda for consideration at the May 17, 2014 Delegate Assembly.

Adopted by the Upper Pittsgrove BOE
at their regular monthly board meeting
held on February 19, 2014.

Lisa DiNovi
Business Administrator/Board Secretary

Adopted by the Alloway Township BOE
at their regular monthly board meeting
held on February 25, 2014.

Rebecca S. Joyce
Business Administrator/Board Secretary

RESOLUTION NO. 4

SYNOPSIS

Resolution No. 4 from the Upper Pittsgrove Board of Education (Salem County) proposes that the NJSBA include additional language in its *Manual of Positions and Policies on Education* to establish a belief that voting rights of sending district representatives on receiving district boards of education should be expanded to include the ability to vote on all matters that impact the students of the sending district; all district-wide issues; all board governance matters and all matters related to the grade levels to which the sending district sends its students. Alloway Township Board of Education (Salem County) joins Upper Pittsgrove in the submission of the same resolution request.

BACKGROUND

A sending-receiving relationship is an agreement between two school districts whereby the receiving district receives students from the sending district and provides educational services in exchange for a contractually established tuition payment. N.J.S.A. 18A:28-8, 10-12. Generally, a sending school district lacks the necessary educational accommodations at particular grade levels, usually high school, necessitating the sending-receiving relationship. Entering into a sending-receiving relationship is a simple process; merely entering into a contract. Termination of a sending-receiving relationship is a much more complex process, subject to approval of the Commissioner of Education. N.J.S.A. 18A:38-13.

More than 200 New Jersey school districts are part of a sending-receiving relationship as either a sending district or a receiving district. Until 1995, sending districts had no formal representation on receiving district boards of education. Many receiving districts allowed a sending district to have a courtesy representative; a representative who could sit at the board table in public session, participate in discussions regarding the grade level to which they sent their students but without the ability to vote, as no statutory authorization for sending district voting existed. No closed session attendance was permitted due to issues of privacy and confidentiality. Courtesy sending representatives, where agreed upon by the parties, often participated in discussions regarding items such as curriculum articulation and the transition of students from sending to receiving districts. The depth of courtesy sending representative participation varied greatly across the state and was purely dependent upon the relationship of the parties.

In 1995 the Legislature established statutory sending representation on receiving district boards of education. P.L. 1995, c.8. Sending districts obtained formal representation on their receiving districts boards of education, the number of seats being determined based on sending district enrollment in the receiving district. Sending representatives were and are entitled to all the rights and privileges of receiving district board membership with the exception of limited voting rights. The sending district representation voting statute, N.J.S.A. 18A:38-8.1, states:

In addition to the members of the board of education of a Type I and Type II school district provided by law, in a school district which is receiving pupils from another district or districts pursuant to N.J.S. 18A:38-8, there shall be an additional member as provided

pursuant to section 2 of this act to represent the board of education of each sending district. Any additional member shall be a member of the board of education of a sending district designated annually by the board of that district and shall be eligible to vote on the following matters before the receiving district board of education:

- a. Tuition to be charged the sending district by the receiving district and the bill lists or contracts for the purchase, operation or maintenance of facilities, equipment and instructional materials to be used in the education of the pupils of the sending district;*
- b. New capital construction to be utilized by sending district pupils;*
- c. Appointment, transfer or removal of teaching staff members providing services to pupils of the sending district, including any teaching staff member who is a member of the receiving district's central administrative staff; and*
- d. Addition or deletion of curricular and extracurricular programs involving pupils of the sending district.*

The limited voting rights for sending representatives was the result of a legislative compromise among several legislative and lobbying factions; some believed in full voting rights; some believed that no formal sending representation should exist; some believed that the two districts should regionalize. The original bill was vetoed by Governor Whitman, who expressed concern that it authorized the sending district representative to vote on all matters even those which might not affect the sending district. Governor Whitman pointed out in her veto message that the goal of the bill was a laudable one since it was designed to foster an atmosphere of trust and cooperation between the respective boards.

In 1996, the Commissioner, in Callowhill v. Bd. of Ed. of Atlantic City, determined that sending representative voting rights under the new statute extended to the superintendent of schools, the school business administrator, but not the school board solicitor. Section C of the law was amended in 1996, to codify this decision, to include, "any teaching staff member who is a member of the receiving district's central administrative staff."

In a series of 1997 decisions (Lincoln Park v. Boonton, Little Ferry v. Ridgefield Park, Green v. Newton) the Commissioner established that sending district representatives could vote on non-statutory enumerated matters that encompassed internal procedural and organizational receiving board matters; election of officers, parliamentary items, approval of minutes, etc. The Commissioner reiterated these holdings in the 2004 decision of Bloomingtondale v. Butler.

In 2008 the Appellate Division of Superior Court affirmed a Commissioner of Education and State Board of Education decision that held that a sending district representative was not authorized to participate in the receiving district's determination to appoint the board solicitor. In reaching its decision the Evans v. Atlantic City Board of Education court found no authority for the Commissioner's expansive voting rulings in Lincoln Park, Little Ferry, Green or Bloomingtondale. The court was "convinced that in this statute the Legislature intended to limit the voting eligibility of sending district representatives to the four items expressed and that it did not grant sending districts the discretion to permit voting in other areas."

Evans v. Atlantic City represents the state of the law on sending representative voting at this time.

RELEVANT NJSBA POLICY

File Code 9300 – Proportional Representation/Sending-Receiving.

The NJSBA believes that sending boards of educational should have proportional representation, including voting privileges, on receiving districts’ boards of education. Representation should be determined by the percent of enrollment that students from the sending district(s) comprise among the student population in the grades for which a sending/receiving relationship exists. Representation and voting privileges of a sending board of education or combination of sending boards should be limited to ensure that a receiving district board of education always retains the majority voting privilege. [*Authority: DA 6/89-CR (Sending to Level III Districts), DA 11/98-CR (School Finance) DA 11/02-CR (Sending/Receiving – 2002, DA 5/03-SR, DA 5/08-SR), DA 5/13-SR*)]

DISCUSSION

In its cover letter accompanying its resolution submission, the Upper Pittsgrove Township Board of Education (“Upper Pittsgrove”) advises that it is in a sending-receiving relationship with the Woodstown-Pilesgrove Regional School District (“Woodstown-Pilesgrove”) for its students in grades 9 – 12. All Woodstown-Pilesgrove curricular and co-curricular programs are made available to Upper Pittsgrove’s high school students. Upper Pittsgrove has one representative sitting on the Woodstown-Pilesgrove board and its students represent 20 percent of the Woodstown-Pilesgrove high school student body.

Governed by the statutory language of N.J.S.A. 18A:38-8.1, Upper Pittsgrove’s representative is only eligible to vote on limited matters before the Woodstown-Pilesgrove board. In its current form, the law provides Upper Pittsgrove with no input into many important educational and administrative matters that impact its students. For example, it may not vote on the choice of personnel to perform administrative or business functions, district policy, staff evaluation criteria, student policy or student discipline, including HIB.

Upper Pittsgrove advises that while the NJSBA does address governance issues of districts in sending-receiving relationships in its Manual of Positions and Policies on Education in Policy 9300, the current policy does not address the limited voting rights of sending districts. Hence the submission of this resolution. The Alloway Township board of education similarly is in a sending receiving relationship with Woodstown-Pilesgrove Regional School District and joins Upper Pittsgrove Township in its submission espousing the same concerns and viewpoints.

The Upper Pittsgrove Township and Alloway Township boards of education express a valid concern. Each send it students to the Woodstown-Pilesgrove Regional School District for grades 9-12. Each pays tuition to Woodstown-Pilesgrove for the education of its students. Each has a seat on the Woodstown-Pilesgrove board of education; the Upper Pittsgrove Township and Alloway Township sending representatives are full-fledged members of the Woodstown-

Pilesgrove board of education. They may participate in all aspects of Woodstown-Pilesgrove board of education activities with one exception. They have limited voting rights under the current statute.

While designed to prevent sending districts from voting on matters which might not affect the sending district students, the current statutory scheme, N.J.S.A. 18A:38-8.1, has gone well beyond that goal. It has created a situation where numerous items which affect sending district students are outside the umbrella of sending district voting authority. It has created the rather bizarre situation where a sending representative may fully participate in the deliberations over a matter that will significantly impact sending district students, yet be unable to vote on that item. Examples of these items include:

- Receiving District Budget – The budget is the fiscal blueprint for the district. It is the embodiment of the school district’s educational goals and objectives. It affects all students, be they from the sending or receiving district. Yet the sending district representative is precluded from voting on this item.
- Receiving District Collective Bargaining Agreements – The receiving district’s collective bargaining agreements govern terms and conditions of employment for all employees covered by the agreements; employees who provide services to the students of the sending district. Collective bargaining agreements generally cover more than 80% of a school district’s budget. While the sending district representative may fully participate in the collective negotiations process, absent other conflicts, even to the point of being on the negotiations team, the sending representative may not vote on the agreement.
- Receiving District Policy Manual – The receiving district policy manual is the receiving school district’s procedural bible. It governs the conduct of the board of education, students, teachers, other employees, parents and members of the community. Every person connected to the school district is affected by the board policy manual, including students from the sending district and the sending district representative on the receiving district board of education. Yet, the sending district representative may not vote on the board’s policy manual.
- Board Solicitor – Sending district representatives are full fledged members of the receiving district board of education. The board solicitor represents the receiving district board of education and provides legal advice to the board, of which the sending representative is a member. Yet the sending representative cannot vote on the attorney who represents the board of which he is a member. The same analysis would apply to the board auditor and other professional services positions.
- Board President, Vice President and Other Receiving Board Governance Issues - Sending district representatives are full fledged members of the receiving district board of education. Yet they cannot vote on board officers and other board governance issues not covered by statute.

These are but a few of the significant items that impact sending district students or the sending district representative but on which a sending district representative cannot vote. Sound public policy requires a change in the law to allow sending district representatives to vote on these areas significant to the sending districts.

In addition to the reasons set forth above, the current voting structure is difficult to manage from an administrative perspective. Even after almost 20 years, it is still unclear from the statute as to whether certain agenda items may be voted on by the sending district representative. In establishing an agenda for each meeting, the board president, chief school administrator and school business administrator must carefully scrutinize agenda items and decide whether the sending district representative may vote on the item. Sometimes that decision is not an easy decision as the matter does not clearly fall within or without the four categories of permitted voting. Once decided, the school business administrator must divide each section of the agenda into two sections depending on voting eligibility; a cumbersome and time consuming process. Changing sending district representation voting rights, as Upper Pittsgrove Township and Alloway Township have proposed, would clarify the issue, provide a clear delineation between permitted and prohibited sending district representative voting and maintain the legislative intent of not extending sending district representative voting rights to matters that do not affect the sending district students and representatives.

For the reasons set forth above, it is recommended that this resolution be supported.

STATEMENT OF REASONS

1. Under current law sending districts have representation on receiving district boards of education, the level of representation being dependent on the number of sending students. Sending representatives are full fledged members of the receiving district board of education on which they sit, may fully participate in all matters but have limited voting rights.
2. The current statutory scheme goes well beyond the legislative intent of preventing sending district representatives from voting on matters which might not affect the sending district student. In its current form numerous matters affecting sending district students are beyond the scope of sending district representative voting authority.
3. Numerous situations exist where sending district representatives are authorized to fully participate in matters that affect sending district students or the sending district representative yet cannot vote on the final decision. Examples of these items, usually district-wide in nature, include the receiving district budget, the receiving district collective bargaining agreements, the receiving district policy manual, the board solicitor, board auditor, board president and vice president and other board governance items.
4. Revising sending district representative voting rights as proposed by Upper Pittsgrove Township and Alloway Township would clarify the issue and provide a clear delineation between permitted and prohibited sending district representative voting while maintaining the legislative intent of not extending sending district representative voting rights to matters that do not affect sending district students or sending representatives.

1 **RECOMMENDATION**

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3 The Resolution Subcommittee recommends approval of this resolution with the following
4 substitute resolved policy language which would create **additional** language in the NJSBA
5 Manual of Positions and Policies on Education, File Code 9300.

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7 **The NJSBA believes** the statutory language of N.J.S.A. 18A:38-8.1 should be revised to
8 expand the voting rights of sending district representatives on matters before the
9 receiving district board of education to include the ability to vote on all matters that
10 impact the students of the sending district in the receiving district; all district-wide issues,
11 all board governance issues and all matters related to the grade levels to which the
12 sending district sends its students.