

## **QUESTIONS PRESENTED**

1. Is the Petition of the Riegelsville parents' seeking a transfer of the Borough to the Palisades School District meritorious from an educational standpoint?
2. Has the proof presented to the Secretary of Education demonstrate that the parents' petition is meritorious from an educational standpoint.
3. Does the policy of the Commonwealth disfavor the division of a Borough into two separate school districts in two different counties from an educational standpoint?

## INTRODUCTION

This is a post administrative hearing Memorandum of Law submitted, as allowed by law, in support of the Petitioner's proposed Findings and Conclusions.<sup>1</sup> Throughout this Memorandum Palisades School District will be referred to only as "PSD" and Easton Area School District will be referred to only as "EASD".

## WHAT IS AT STAKE

In remitting the Petition the Commonwealth Court quite clearly spelled out what was at stake in this proceeding. The Court noted that the transfer statute (24 P.S. 242.1) is not a mere procedural nicety that operated in sole favor of the Secretary when making a decision about the educational merit of a proposed transfer and awarding him unbridled discretion in the making such a decision. There is more at stake here than that.

The Commonwealth Court noted that the state school code gave every parent in this matter "a right" to seek a transfer to an adjacent district in order to improve the public education of their children. The Court put it this way:

. . . the Code gives parents the right to seek to improve the public education of their children by filing a petition with the court of common pleas for the creation of an independent school district for purpose of transferring to an adjacent school district. If the Secretary determines that the proposed transfer would not advance the public education of affected students, that determination if incorrect, precludes the

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<sup>1</sup>2 Pa. C.S.A. §506.

improvement of public education that parents have the right to seek for their children (emphasis supplied).<sup>2</sup>

Clearly the parents of Riegelsville who presented this Petition to the Secretary have a statutory right to seek a better education for their children if they can show - in this instance - that such a transfer is meritorious "from an educational standpoint". The Secretary cannot approach this Petition as if he were acting with administrative largess. This is not a matter of his dispensing - or withholding - his benediction.

With overwhelming proof the Riegelsville parents have demonstrated that their petition is clearly meritorious "from an educational standpoint" and the Secretary is now compelled to so advise the Common Pleas Court. He has little choice in these circumstances. If he doesn't and if chooses to approach this Petition out of a sense of extending or withholding his blessing these parents will be deprived of their statutory right. In the face of the proof offered by these parents - and the woeful absence of contrary proof to the contrary by the affected school districts - the Secretary should not now stand in their way as they seek to exercise the right the Commonwealth Court decreed they have.

### **WHAT IS NOT AT STAKE**

Over the last two years there has been a great deal of media attention given to this matter. In virtually all of the media reports representatives of the underlying school districts (PSD and EASD) have complained vociferously to the court of public opinion

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<sup>2</sup>*In Re: Petition for Formation of Independent School District (Riegelsville)*. 962 A.2d 24 at 26 FN3 (Pa.Cmwlth., 2008).

variously, that the debt burden taken on by PSD if the transfer was accomplished would be crushing; that all the Riegelsville parents are seeking is a tax break (another PSD claim), or that the loss of tax revenue by EASD would be devastating to its budget.<sup>3</sup> Of course, all of these cries of woe have been made to influence the Secretary in his decision making. Indeed, PSD has gone so far as to make these anguished cries the very cornerstone - the heart and soul - of its answers to the Secretaries questionnaire proffered by him in the summer of 2007.

At this juncture none of those travails - even if they are true which they are not - are at stake. The only question before the Secretary is whether or not the Petition is meritorious "from an educational standpoint". It is clear from a reading of the transfer statute that the issue of debt and subsidy adjustment as between the sending district and the receiving district is a matter for the common pleas court to work out after the Secretary renders his decision as to the educational merit of the Petition.

The statutory process that the General Assembly constructed allowing the Riegelsville parents to seek their right of transfer does not include any financial considerations about debt and subsidy adjustments at this stage of the process. The Secretary is relegated - as he should be - to considering the proof before him as to whether or not there is educational merit to the transfer. The messy business of sorting out debt and subsidy adjustments belongs to the common pleas court. The loud cries of anguish by the school districts about financial catastrophe if the transfer is accomplished should not infect the Secretary's decision making process about the educational merit

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<sup>3</sup>E.g. in a post hearing report appearing in the April 8, 2009 edition of *The Bucks County Herald* (Lakaska PA) PSD director Stephen Kunkle was quoted as telling his Board that, "If not for the money, I would be in support of the merger. The concerns are economic, not educational".

of the transfer to begin with. Clearly the General Assembly left that tricky task to the court and left the matter of educational merit to the Secretary.

Debt and subsidy adjustment are not at stake here and should not enter into the Secretary's considerations.

## **1. THE ELEMENTS OF EDUCATIONAL MERITS OF A TRANSFER PETITION DISCOVERED AND DISCUSSED**

As already pointed out the only question before the Secretary is if, in the face of the Riegelsville parents' proof, is their transfer petition meritorious "from an educational standpoint."<sup>4</sup>

This clause was originally placed in the 1911 School Code and reenacted in the 1949 School Code. It has no statutory definition. It has no dictionary definition and it has never - in the 98 years that the statute has been in place - been judicially interpreted. Nor have any past secretaries or superintendents of public education ever opined as to its meaning. Yet that phrase is the very heart of the matter now before this Secretary. What does it mean?

Despite its lack of statutory or judicial or dictionary meaning the clause is not amorphous. It does not float shapeless in a statutory abyss. There are discernable earmarks that give it a very definite shape and which, at the same time, cabin the Secretary's discretion in this matter. These benchmarks - all of which come from some component of the educational process in the Commonwealth - are set out and explored below.

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<sup>4</sup>24 P.S. 242.1, second paragraph, second sentence.

**i. "Geographic Fit" or "Geographic Relevance" or "Geographic Isolation" With Respect to the Affected Areas is Critical**

The now famous 1993 *East Brady* decision of the Board of Education, the last transfer petition that was approved by both the Secretary and the Board of Education, steers a very clear path in this regard.<sup>5</sup> A special committee of the Board (whose report the whole Board accepted and relied on) stated as follows:

It is clear from a review of the maps that Karns City and at least the Armstrong County portion of the East Brady ISD [Independent School District] share a very distinct geographical relationship which divides Armstrong and Butler Counties. There are no imposing physical boundaries dividing the Armstrong County portion of the East Brady ISD and Karns City. . . . Indeed, the transportation arteries on the area greatly facilitate a close geographic relationship between Karns City and the East Brady ISD, including the East Brady and Brady township. . . . Based upon its view of the record and its physical tour of the area, the committee believes that the East Brady ISD and the Karns City Area School District are an appropriate geographic fit.<sup>6</sup>

The Committee and the Board made its decision based largely on this factor of geographic fit.

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<sup>5</sup>*In Re: Application of the East Brady Independent School District for Transfer from Armstrong School District to Karns City School District.* Board of Education Docket No. ISD 92-1 (March 11, 1993).

<sup>6</sup>*East Brady Committee Report* dated February 19, 1993 at pp 24, 25, and 27. This Committee Report is in evidence as Exhibit 47.

In its 2002 decision in the *Woodward Township* case the Board's special committee report, also relied on by the Board but denying the petition, made specific reference to *East Brady* decision and noted that "geographic isolation" of the transfer area from its current school district was a "compelling and unusual" circumstance warranting approval of the transfer petition in that case.<sup>7</sup>

It becomes clear from a reading of both the *East Brady* and *Woodward Township* decisions that the geographic fit or geographic relevance between the transfer area to the area of the proposed transfer or, said another way, a geographic isolation between the transfer area and the current school district is a very definite aspect of the educational merit of any proposed transfer.

## **ii. The Board of Education's 1968 Consolidation Standards Give Guidance As to Educational Merit of a Proposed Transfer**

EASD is a product of Act 150 of 1968.<sup>8</sup> That law required the State Board of Education to adopt standards with respect to the school district consolidations that were born of that Act.<sup>9</sup> The General Assembly mandated that those standards take into account among other things "topography", "community characteristics", and "transportation of pupils".

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<sup>7</sup>*Woodward Township Independent School District to Transfer From the Williamsport Area School District to the Jersey Shore Area School District*. Board of Education Docket No. ISD-01-1 (2002), Report of the Special Committee at pg. 3 FN 4.

<sup>8</sup>This was the Commonwealth's second mandate for school district consolidation. It applied to all districts that had not been consolidated under the prior consolidation act, Act 299 of 1963. It is codified at 24 P.S. §2400.1 et seq.

<sup>9</sup>24 P.S. §2400.1.

On July 11, 1968 the State Board of Education did adopt those standards.<sup>10</sup> Among other aspects Standard No. 2 mandated that all units approved for consolidation "be planned as a contiguous geographic area". While certain limited exceptions to this mandate could be made by the Board for school districts that had a history of non contiguity it is clear that contiguity was a paramount concern of the Board of Education as an element of the educational merit of a proposed consolidation. Such contiguity is easily translatable to the Secretary's weighing the proposed transfer of one area to another. Indeed the transfer statute itself (24 P.S. §242.1) reflects a similar legislative mandate for contiguity. A transfer petition that does not call for a transfer to a "contiguous territory" cannot even be considered by the court or the Secretary. Thus, it is plainly evident that contiguity of districts was uppermost in the eyes of the General Assembly when providing for a consolidation or a transfer of territory. Thus, the current lack of contiguity between EASD and the Borough and, conversely, the resulting contiguity between PSD and the Borough as a result of the transfer should be uppermost in the eyes of the Secretary as well when considering the educational merit of this Petition.

Under Standard 7[a] "Topography", the Board of Education mandated that all units in a consolidated district "should be planned so that all parts of the unit are reasonably accessible for efficient operation and supervision".

Under Standard 7[c] "Community Characteristics" are a very important part of any consolidation process under Act 150. The State Board articulated this mandate as follows:

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<sup>10</sup>Copy annexed as an Appendix.

Consideration should be given to whether a geographic area has developed characteristics of a community. Community, as used herein, includes one or more municipalities and their surrounding territory from which people come for business, social, recreational, fraternal, or similar reasons.

In similar fashion Standard 7[d] calls for an avoidance of cross district busing insofar as practicable. The same standard calls for an avoidance of duplication of school bus service. Quite importantly, under this same standard "distances traveled, travel conditions, time consumed, and the safety and general welfare of the pupils should be basic considerations (emphasis supplied)".

These basic elements of consideration for consolidating districts are perfect guides for the Secretary when considering the educational merit of a transfer of a territory from one district to another. Both processes are highly analogous, i.e. the rearranging of districts albeit that the Board's task is on a larger scale than the Secretary's. It cannot be said with any logic that these criteria are only important to the Board of Education and not to the Secretary when faced with a transfer petition. These standards emanated from the General Assembly which was certainly concerned with the educational merit of a proposed consolidation. Should they not also be strong guides for the Secretary when considering a transfer of territory? It would be contraindicated to say that these educational guide posts as to the merit of the proposed rearrangement of school districts are applicable to the Board but not the Secretary.

Viewed as such (1) intervening topographic barriers, (2) a sense of community with the school, (3) contiguity with the district, (4) avoidance of cross district bus transportation, (5) avoidance of duplicate bus service in the district, and (6) shorter and safer bus rides are all vital considerations that the Secretary should take into

consideration when weighing the merit of a transfer petition "from an educational standpoint".<sup>11</sup>

### **iii. Parity of Educational Programs - or the Lack of it - Are Important Considerations as to Educational Merit**

It would seem all too obvious to argue otherwise than in a calculus directed at the educational merit of a proposed transfer the educational product produced by the respective districts should be of utmost concern.

In this respect the State Board of Education has adopted what amounts to a "parity of performance" standard when dealing with transfers. In its *Woodward Township* decision the State Board overruled the Secretary and denied the transfer petition stating, in essence, that all things being considered equal or on par, it would not subject the students in a proposed transfer district to the trauma of transfer if the educational product of the sending district and the receiving district were roughly equal. The Board's special committee articulated the policy thusly:

Where educational programs are in general parity, as they are in this case, the committee believes that transfer of an independent school district should be disfavored and the petition for transfer should be

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<sup>11</sup>It is odd that in 1968 the County Board of School Directors (for Northampton County) seemed to have violated almost every one of these criteria insofar as Riegelsville was concerned when it submitted the proposed EASD consolidation plan to the State Board for approval. As noted in the proposed Findings there were objections lodged against this plan of consolidation by Riegelsville, Williams Township and Wilson School District and the State Board actually held hearings on those objections in February and April of 1969 but, unfortunately, the decision of the Board is not in its records and the EASD administrative unit was ultimately approved by the State Board in May of 1969.

denied absent other compelling or unusual reasons for transfer. . . . Unless there are other compelling or unusual reasons to transfer that transcend the quality of educational programs, the State Board should not approve a transfer between two educationally comparable school districts. . . . The committee recommends this general policy of maintaining the *status quo* in the face of education parity primarily because it avoids the abrupt disruption of students' educational programs that is the inevitable consequence of a large transfer such as the one proposed in this case.<sup>12</sup>

In an odd and negative way this policy of parity was adopted by the Secretary in this matter when he opined in his first review of the Petition on January 24, 2008 that neither PSD or EASD provided "unacceptable academic programs".

Looking at the policy of parity of performance there are several elements that are seemingly necessary to trigger it. First the proposed transfer must be "large".<sup>13</sup> Secondly, there must be a "general parity" and "educationally comparable" school programs for the policy to obtain. Lastly, the policy may be trumped by "compelling or unusual circumstances" such as lack of "geographic fit" or "geographic isolation" between the proposed transfer area and the schools in the sending district. Quite clearly this policy of parity -

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<sup>12</sup>*Woodward Township Independent School District to Transfer From the Williamsport Area School District to the Jersey Shore Area School District*. Board of Education Docket No. ISD-01-1 (2002), Report of the Special Committee, pg. 3.

<sup>13</sup>The transfer in *Woodward Township* involved 330 students. By comparison the transfer here would effect about 65 students currently enrolled in EASD schools.

adopted by the Secretary as his own - is not absolute and has definite limits.

#### **iv. Shorter and Safer School Bus Rides Are Critical Concerns in an Educational Merit Calculus**

Unfortunately, there has not been a great deal of empirical or scholarly study on the effect of school busing on the educational performance of students on those bus trips.<sup>14</sup> What there is - both anecdotal and systemic - has been summarized in Beth Spence's 2000 paper on this topic.<sup>15</sup> Spence, in turn relies on another well recognized study on the same topic written a year earlier by Belle Zars.<sup>16</sup>

Both Spence and Zars decry the absence of more detailed and recent systematic studies on the topic of how long school bus rides affect scholastic performance and family life. However, both point to the older 1973 study done by Lu and Tweeten concluding that there is a definite negative effect on scholastic performance directly related to the length of the student's school bus trip as being

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<sup>14</sup>The lack of fresh literature on this topic was recently noted by the Joint Legislative Budget and Finance Committee of the General Assembly done by Standard & Poor's School Evaluation Service dated June 1, 2007 entitled *Study of the Cost-Effectiveness of Consolidating Pennsylvania School Districts*, Vol. 1 at pg. 42.

<sup>15</sup> Spence, *Long School Bus Rides, Their Effect on School Budgets, Family Life, and Student Achievement* Reproduced by the Educational Resources Information Center (ERIC), ERIC Document No. ED 448 955, (2000).

<sup>16</sup>Zars, *Long Rides, Tough Rides: Enduring Long School Bus Rides*, ERIC No. 432 419 (1999).

instructive.<sup>17</sup> More recently Ramage and Howley conducted a survey of parents and listed those parents concerns about school busing in general as (1) atmosphere on the bus, (2) length of the ride, and (3) safety.<sup>18</sup>

Virtually all the literature on this topic concludes that a bus trip of 30 minutes one way was the accepted maximum for travel time.<sup>19</sup> Both Spence and Zars conclude that based on the available data - both anecdotal and systemic - some basic conclusions can be drawn as follows:

- School bus time is "dead time" taking away from other valuable activities including homework preparation and participation in after school extracurricular activities.
- As travel time increases students are able to participate in fewer in home and out of home activities that is detrimental to recreation and, social and homework activities.

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<sup>17</sup>Yao-Chi Lu and Luther Tweeten, *The Impact of Busing on Student Achievement, Growth and Change*, 4 (1973) pp. 44-46 and *The Impact of Busing on Student Achievement: Reply*, *Growth and Change* 7 (1976) pp. 48-49.

<sup>18</sup>Ramage and Howley, *Parents' Perception of the Rural School Bus Ride*, Rural School Community Trust, Fall 2005.

<sup>19</sup>In addition to the literature referred to above Professors Craig and Aimee Howley of Ohio University have gathered empirical data and written extensively on the physicality of school bussing but have not opined on the impact of busing on scholastic performance or home life. See e.g. Howley, Howley and Shamblen, *Riding the School Bus: A Comparison of the Rural and Suburban Experience in Five States*, *Journal of Research in Rural Education*, Spring 2001, Vol. 17, No. 1 pp. 41-63. Howley, like Spence and Zars, urges more study on these topics. See Howley, *An Agenda For Studying Rural School Busing*, *Journal of Research in Rural Education*, Spring 2000, Vol. 16, No. 1 pp. 51-58.

- Where travel time exceeds 30 minutes, it has a greater effect on the routines of both students and parents and as travel time increases the household member all exhibited a marked drop in the quantities of activities they pursue.
- As travel time increases parents and students are less satisfied with the educational system.
- As travel time increases so does fatigue and a corresponding lack of attentiveness in school and at home.

These broad brush conclusions seem absolutely obvious. So too does the corresponding conclusion that a shorter bus trip reduces the element of fatigue and lack of attention in school and at home in homework preparation and is beneficial from a sociological and educational standpoint. Such is almost too obvious to articulate. These studies and observations, such as they are - demonstrate clearly that a shorter more convenient school bus trip to and from the school in question is something that has great merit from an educational standpoint.<sup>20</sup>

That safer school bus trips - no matter what the distance - is a critical element of the educational merit of a proposed transfer should be obvious and above discussion. It clearly showed up in the 2005 Ramage and Howley study as a serious concern of parents. Additionally, along these lines the National Association of State Directors of Pupil Transportation Services in conjunction with the Federal Highway Traffic Safety Administration - a division of the U.S. Department of Transportation - has promulgated an Evaluation of School Bus Routes which calls for, among other things, a route that

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<sup>20</sup>Of course, as discussed above, the State Board's own standards (Standard 7[d]) advises that safe and shorter school bus trips "should be a basic consideration" on consolidation of districts.

minimizes curves and intersections with limited sight distances and areas of roads with no shoulders.<sup>21</sup>

It would seem to go without saying that a shorter bus trip - especially one under 30 minutes one way - and a safer bus trip minimizing road conditions that involve an isolated narrow road with sharp blind turns and very limited pull off areas are critical elements of an educational merit analysis of a petition to transfer a given area from one school district to another.

**v. Parental and Community Involvement Is Absolutely Essential to a Successful Educational Program and Should Be Paramount in Any Analysis of the Educational Merit of a Transfer Petition**

The critical element of parental and community involvement in the success of any educational program was attested to the Commonwealth's immediate past Secretary of Education, Dr. Francis Barnes, PhD, in this very proceeding. Referring to a strategic plan for the PSD - of which he is now the Superintendent - Dr. Barnes testified that "the primary responsibility for learning rests with the student supported by the community, school, home and family".<sup>22</sup>

Dr. Barnes' testimony echos scores of scholarly studies on the subject of parental and community involvement.<sup>23</sup> It would seem

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<sup>21</sup>NASDPT Final Report, *Identification and Evaluation of School Bus Route and Hazard Marking Systems*, June 1998.

<sup>22</sup>Exhibit 46.

<sup>23</sup>See e.g. Epstein, *Developing And Sustaining Research Based Programs Of School, Family and Community Partnerships*, Johns Hopkins University, September 2005; Ballen & Moles, *Strong Families, Strong Schools, Building Community Partnerships for Learning*, U.S. Department of Education, 1994, and  
(continued...)

inarguable that a strong bond between school, student, parent and community - the "collaboration of community" as Epstein calls it - is essential for a healthy and productive educational environment. The literature and studies show that without this collaboration of community students suffer with failure and drop out rates increasing.

#### **vi. Conclusion on This Point**

Summarized below are the discernable elements of what is important in assessing the merit of a transfer petition "from an educational standpoint" all of which should be employed by the Secretary in deciding whether or not this transfer petition is educationally meritorious.

- *East Brady* and *Woodward Township* tell us that the "geographic fit" or "geographic relevance" of community to school and that a "geographic isolation" of a student from his school is important.
- *Woodward Township* tells us that the limited "policy of parity" between the respective school districts is important.
- The 1968 standards developed by the Board of Education pursuant to Act 150 relative to consolidating districts tell us that the following aspects of the delivery of a healthy educational program and environment are all important
  - (1) avoidance of difficult topography,
  - (2) harmony with community,
  - (3) avoidance of noncontiguous districts,

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<sup>23</sup>(...continued)

Henderson & Berla, *Benefits of Parents and Family Insolvent*, North Central Educational Laboratory, 1998.

- (4) avoidance of cross district school busing,
- (5) avoidance of duplicate bus service in the same district, and
- (6) shorter safer school bus rides

- The scholarly literature and studies on the topic - as well a testimony by a former Secretary of Education (Dr. Barnes) in this matter - tells us the element of a strong bond between student, school, family and community is very important.
- The scholarly literature and studies on the topic also tells us that shorter and safer school bus trips are important - something that seems self evident.

## **2. THE POLICY OF THE COMMONWEALTH ABHORS THE BIFURCATION OF BOROUGHES BY SEPARATE SCHOOL DISTRICTS**

There is another point to be made with respect to what standards the Secretary should employ in his calculus of educational merit. It is quite important. Indeed, it is overarching and superimposes itself over the entire issue of the educational merit of this proposed transfer.

There are 955 Boroughs in the Commonwealth.<sup>24</sup> Of that a mere 14 - or about one tenth or one percent - are bifurcated by a school district boundary. Of that number it appears that only one sends its

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<sup>24</sup>This figure is a matter of public record.

children to two different school districts located in two different counties - Riegelsville.<sup>25</sup>

It is painfully obvious that the strange situation that exists in Riegelsville is wholly out of sorts with the policy adopted by the Board of Education when consolidating school districts in the 1960's. That policy has a point. It was not educationally meritorious in the Board's mind to split a borough - the smallest municipal entity on the Commonwealth - in half and to send its children to two different school districts in two different counties. Such a result - occurring by reason of a long ago necessity that has since evaporated - exacerbates community disharmony and seriously undermines the concept of community ties that is so important in delivering a healthy educational program. Such a fractured educational environment is a recipe for disaster splitting the Borough in half and thus splitting this very small community in half pitting one half against the other when it comes to educational performance. Can it seriously be doubted that when the PSD area of the Borough is developed, as it surely will over time, that the residents of the Borough will choose sides as to which school district is performing better academically - and athletically ?<sup>26</sup> That type of disharmony in a small rural community is to be avoided at all costs.

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<sup>25</sup>This information was obtained via a RTK request of the Department of Education. A listing of the 14 Boroughs that are bifurcated by a school district boundary is annexed in the Appendix hereto.

<sup>26</sup>The PSD area of the Borough is 290± acres that zoning allows to be developed with perhaps as many as 100 or more homes. It already has four residences within its bounds that currently produce four (4) school age children serviced by PSD.

True, it has been held that a borough may be split by a school district line and not violate any law.<sup>27</sup> However, as noted by the Commonwealth Court in this very case, it has long been the public policy of the Commonwealth that "students in a particular borough should attend the same schools".<sup>28</sup> It seems to be inarguable that the conditions existing in Riegelsville - which border on the irrational - are incongruous with any notion of educational merit. To the contrary, this fractured and tortured arrangement works against a healthy educational environment and is distinctly un-meritorious from an educational standpoint and should be recognized as such by the Secretary.

The Secretary's approval of the Petition in this case would right a very serious wrong "from an educational standpoint" and go a long way to establishing an educational environment in the Borough that is healthy and productive.

### **3. THE RIEGELSVILLE PARENTS HAVE SHOWN BY A PLETHORA OF PROOF THAT THEIR TRANSFER PETITION IS MERITORIOUS FROM AN EDUCATIONAL STANDPOINT**

The proof that the Riegelsville parents have presented to the Secretary in support of the educational merit of their petition is voluminous and meets every criteria for measuring such that there is.

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<sup>27</sup>*In Re: Borough of Irwin*, 90 A.2d 365, 369-570 (Sup. Ct. Pa., 1952).

<sup>28</sup>*In Re: Petition For Formation of an Independent School District (Riegelsville)*, 962 A.2d 24, 26 FN 3 ["Thus, in general, students in a particular borough should attend the same schools."]

- The parents have shown that the situation in their tiny borough is an anomaly among the 955 boroughs of the Commonwealth. It appears that no other borough is split by a school district line with the result that its students attend at two different school systems in two different counties.
- The parents have shown that this strange and almost unintelligible situation that exists in their small borough, i.e. an island splintered off from EASD, was born long ago before WW-II out of necessity, the need for a nearby highschool, a necessity that has long since evaporated.
- The parents have shown that there is a distinct lack of "geographic fit" or "geographic relationship" between their community and the City of Easton and, conversely, that there is a "geographic isolation" between the Riegelsville student and the City schools. As such the unique and compelling reasons for transfer discussed in the *Woodward Township* case should control.
- The parents have shown that there is no parity of performance between EASD and PSD. To the contrary these parents have shown that EASD operates at very serious deficiency in 11 out of 17 state categories and that its IEP program is pathetic. Several of its schools are under directives from the Secretary to make corrective action and have been so for years. Conversely, the parents have shown that PSD is an exemplar in the educational field exceeding state standards in virtually all categories with three out of five of its schools possessing the much coveted national Blue Ribbon School Award.
- The parents have shown that the school bus trip to Easton schools is long- 30+ minutes as compared to a 10+ minute ride to PSD, and is more dangerous, by far, than the corresponding

trip to PSD schools and that there are viable alternative routes to PSD schools and none to EASD schools to accommodate inclement weather and emergency road closures.

- The parents have shown that their tiny borough set in a rural environment is set off and virtually isolated from the urban City of Easton by the south mountains, by the two rivers, by a limited crossing Interstate highway and by a substantial railroad viaduct making this large City accessible from for them by only one tiny portal, the 3<sup>rd</sup> Street Bridge across the Lehigh River.
- The parents have shown that in order for their children to reach the schools in the City of Easton they must be bussed across the breadth of an intervening school district - Wilson - for 5+ miles.
- The parents have shown that the their tiny borough being split in half as one half of the Borough travels north along the dangerous River Road 9 to 11 miles to the schools in the City of Easton in another County and the other half, when fully developed, would travel south to PSD schools by a much safer and shorter route in their home county of Bucks.
- Perhaps most importantly, the Riegelsville parents have shown that there is a severe community disconnect between the City of Easton and their borough to the south with a resulting geographic isolation that undercuts the sense of student-parent-community "collaboration" in serious ways, a collaboration that is necessary for a healthy and productive educational environment.

In every way and from every measurable perspective the Riegelsville parents have demonstrated with powerful evidence that their petition is meritorious "from an educational standpoint". How could it not be? The Secretary should now so say.

#### **4. PSD AND EASD HAVE FAILED TO REBUT THE PLETHORA OF EVIDENCE PRESENTED BY THE RIEGELSVILLE PARENTS**

At the March 23, 2009 hearing EASD came forth with two anecdotal witnesses that testified that from their perspective there was no community disconnect between the Borough and the City. One witness (Diane Evanowski) is the wife of a member of the EASD board of school directors which voted against supporting the Petition and which has publicly condemned it. What would one expect her to say?<sup>29</sup> The other witness (Victor Egberts) has a very bright older child in the EASD program (as does Mrs. Evanowski) and both clearly do not want to disrupt their children's educational paths at this point. The purpose of their testimony in that respect was immediately transparent.

No one is asking either the obviously biased Mrs. Evanowski or Mr. Egberts to disrupt their children's educational path at EASD. The State Board of Education has opined that older students in the last years of their scholastic careers who desire to remain in the sending district's schools can do so on a tuition basis paid for by the receiving district notwithstanding the transfer.<sup>30</sup> This worry about

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<sup>29</sup>This witness was reprehensible in her attempt to introduce race and ethnicity into this matter under the duplicitous guise of "diversity" (T-181 and T-183). She did so without any expertise in this field at all (T-183, ll.18,19) and her testimony was utter conjecture. Race and ethnicity has never had and does not now have a place in this matter - especially when it comes to the educational merit of the proposed transfer. This testimony was irresponsible and further undercuts her already questionable credibility.

<sup>30</sup>*Application of Woodward Township Independent School District, Board of Education Docket No. ISD-0101(2002), Report of Special Committee at pg. 13, FN8.*

disruption is a "red herring" and does not detract from the educational merit of the transfer. If it were a controlling factor a transfer could never take place.

Other than Mrs. Evanowski and Mr. Egberts the school districts came up with nothing to refute the parents' proof. They seem to rely primarily on their responses to the Secretary's questionnaire of May 2007.

As pointed out earlier the PSD and EASD responses to the Secretary's questionnaire were almost exclusively devoted to feared fiscal impacts upon their respective districts either because of the assumption of a supposedly crushing debt service (PSD) or because of the supposedly disastrous loss of real property tax revenue (EASD). Of course, these elements of concern have no place in the Secretary's assessment of the educational merit of the Petition.<sup>31</sup>

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<sup>31</sup>See "What is Not at Stake Here" above. Even assuming the totality of the operational and debt service burden resulting from the transfer put forth by PSD (summarized in PSD's rebuttal of July 21, 2007, summary box) when the reality of the state and federal subsidies for 2008-9 are factored in there may well have been a positive result for PSD. E.g. the state and federal subsidies for 2008-9 for PSD amounted to \$7,380,000.00 or \$3,355.00 per student (@ 2,200 students) according to the public records of the Department of Education and PSD's 2008-09 budget (Exhibit 49). Even if only half of that amount (\$1,677.00 per student) were allocated to all 95 students (including private school enrollees) from Riegelsville it would still have resulted in a positive return to the District - even assuming the truth of all the increased operational and assumed debt service costs calculated by PSD in its July 21<sup>st</sup> rebuttal. Noteworthy is that PSD's summary conveniently leaves blank any estimate of subsidies marking the relevant box "TBD by DOE" and, strangely, calculating its overall cost burden resulting from the transfer without those subsidies being included in any amount. For PSD it was as if subsidies for Riegelsville students would never exist. Even PSD Superintendent Barnes testified that there should be some subsidies allocated for the Riegelsville students (T-51, ll.1-9). As such these cost projections are simply unreliable even if they were to be considered by the Secretary - which they should not be.

## CONCLUSION

The Parents of Riegelsville have exercised their statutory right to seek a better education for their children by way of a transfer of their disconnected and physically separated borough - by distance and county - from EASD to the adjacent and quite proximate PSD in their own county of Bucks. They have shown by every measurable standard with overwhelming proof that such a transfer is beneficial and meritorious from an educational standpoint. They have also shown that their situation born of a long ago and now ameliorated necessity is perhaps the only one in the entire Commonwealth. As it now stands tiny Riegelsville is spit in half by PSD and EASD and it sends its children to two different school systems in two different counties and that the trip to EASD in Northampton County is long, tortuous and dangerous while the trip to PSD schools in Bucks County is just the opposite. They have shown that there is a serious breakdown in a sense of community between their very rural Borough and a distant very urban City. The situation in Riegelsville "from an educational standpoint" borders on the absurd and needs correction. These parents' transfer petition is the vehicle to that long overdue correction and it is meritorious - obviously so - from an educational standpoint. The Secretary should so advise the Common Pleas court.

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Respectfully submitted,

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Listing of Boroughs Split by School District

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