COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY OF EDUCATION

IN RE: Riegelsville Tax and Education Coalition
Petition for Formation of Independent School District
Seeking Transfer from the Easton Area School District to the Palisades School District

BACKGROUND

The Public School Code provides a mechanism for the majority of the taxable inhabitants within a geographic territory to request to transfer from one school district to another adjacent school district which is contiguous thereto. 24 P.S. § 2-242.1. Here, the Riegelsville Tax and Education Coalition ("the Coalition") seeks to transfer the portion of Riegelsville Borough ("Riegelsville") that is currently part of the Easton Area School District to the Palisades School District.[1] As required by section 242.1 of the Public School Code of 1949, 24 P.S. § 2-242.1, the Coalition filed a petition for transfer with the Bucks County Court of Common Pleas.[2] The Court of Common Pleas, in turn referred the Petition for transfer to the Secretary of Education for a determination as to whether the proposed transfer had merit from an educational standpoint. After twice determining that the proposed transfer lacked educational merit, appellate

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[1] The other portion of Riegelsville Borough is part of the Palisades School District. (Sec Rec 1; R5a)

"Sec Rec ___" refers to the indexed documents consisting of the record before the Secretary as it existed at the time of the Secretary's original decision on January 24, 2008. A copy of the index entitled "Record before the Secretary of Education as of January 2008" is attached hereto for reference.

"R ___a" refers to specific pages within the reproduced record filed with the Commonwealth Court during the appellate proceedings.

[2] Public School Code of 1949, Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. §§ 1-101 – 27-2702.

proceedings were commenced, and each time the matter was remanded to the Secretary for further proceedings. *In Re: Petition for Formation of Independent School District,* 962 A.2d 24, 28 (Pa. Cmwlth. 2008) (referred to throughout as "*Riegelsville I*"); and *In Re: Petition Independent School District Appeal of: Riegelsville Tax and Education Coalition*, 17 A.3d 977 (Pa. Cmwlth. 2011) (Referred to throughout as "*Riegelsville II*"). Upon application of the standards set forth in Commonwealth Court's most recent decision in *Riegelsville II,* concerning the definition of educational merit, the Department now finds that the transfer of territory is meritorious from an educational standpoint.

FINDINGS OF FACT

Procedural History

1. In March 2007, the Coalition filed a Petition for Formation of an Independent School District ("the Petition") with the Court of Common Pleas of Bucks County ("Bucks County Court"), docket number 07-02132. (Sec Rec 1; R4a – R79a)

2. The Petition sought to transfer the portion of Riegelsville that is part of the Easton Area School District to the Palisades School District. (Sec Rec 1; R4a – R79a, R235a – R251a)

3. On April 23, 2007, the Bucks County Court held a hearing to consider the adequacy of the Coalition's Petition. (R80a – R262a)

4. By Order dated April 24, 2007, the Bucks County Court referred the Petition to the Secretary of Education ("Secretary") for purposes of determining whether the proposed transfer had educational merit. (Sec Rec 4; R263a – 265a)

5. On May 4, 2007, the Secretary forwarded a questionnaire to the Coalition, the Easton Area School District, and the Palisades School District (collectively referred to as "the parties") seeking information related to the proposed transfer. (Sec Rec 5)

6. Each party submitted written information in response to the Secretary's questionnaire. (Sec Rec 6, 7, and 8)

7. Each party submitted written rebuttal in reaction to the responses provided by the other parties. (Sec Rec 9, 10 and 11)

8. In January of 2008, the Secretary determined that the proposed transfer lacked educational merit and informed the Bucks County Court. (Sec Rec 12 and 13; R266a)

9. By order dated February 27, 2008, the Bucks County Court denied the Petition to create an independent school district. (C Ct Rec; R267a-R268a)[3]

10. The Coalition appealed to the Commonwealth Court of Pennsylvania ("Commonwealth Court"). (C Ct Rec)

11. By order dated December 19, 2008, the Commonwealth Court vacated the February 27, 2008 order of the Bucks County Court and remanded the case "to the trial court [the Bucks County Court] in order that the trial court [the Bucks County Court] may secure a proper adjudication from the Secretary of Education." (C Ct Rec 26)

12. The Bucks County Court held a hearing on March 23, 2009, at which the parties appeared and participated. (Sec Supp Rec 15)[4]

13. In accord with an order dated April 17, 2009, the Bucks County Office of the Prothonotary forwarded the file to the Secretary of Education. (Sec Supp Rec 21)

14. On October 26, 2009, the Secretary determined that the proposed transfer lacked educational merit, issued a decision with findings of fact and discussion, and informed the Bucks County Court. (See generally, *Riegelsville II*)

15. By order dated October 30, 2009, the Bucks County Court denied the Petition to create an independent school district and the Coalition appealed to Commonwealth Court. (See generally, *Riegelsville II*)

16. By order dated April 13, 2011, the Commonwealth Court vacated the October 26, 2009 decision of the Secretary and the subsequent Bucks County Court's order denying the Coalition's Petition and remanded the matter stating that "[i]n adjudicating the coalition's petition, the Secretary must consider the appropriate meaning of the term 'merits from an educational standpoint' as set forth in this opinion." (*Riegelsville II*)

17. By order dated May 23, 2011, the Bucks County Court remanded this matter to the Secretary. (Sec Add Rec)[5]

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[3] "C Ct Rec ___" refers to the indexed documents consisting of the record before the Commonwealth Court on Appeal from the Secretary of Education's January 24, 2008 decision. A copy of the index entitled "Record before the Commonwealth Court On Appeal from the Secretary of Education's January 24, 2008 Decision" is attached hereto for reference.

[4] "Sec Supp Rec ___" refers to the indexed documents consisting of the supplemental information submitted to the Secretary via the Bucks County Court of Common Pleas following the December 19, 2008 Commonwealth Court's remand. A copy of the index entitled "Supplemental Record before the Secretary of Education" is attached hereto for reference.

18. During a June 28, 2011 conference call, the parties were invited to update the record before the Secretary and submit written argument in support of their respective positions. (Sec Add Rec 7)

19. During the June 28, 2011 conference call, the parties agreed that a hearing was not necessary. (Sec Add Rec 7)

20. Following the June 28, 2011 conference call, the Coalition and the Easton Area School District submitted additional information to be included in the record before the Secretary. (Sec Add Rec 4, 12 and 13)

21. Hearing no objection from any of the parties, the following items constitute the record before the Secretary:

    - Items identified in the lists attached to the October 26, 2009 decision of then - Secretary of Education Gerald Zahorchak;[6]
    - Information submitted by the Coalition via cover letter dated June 29, 2011, consisting of:
        - Letters and related materials that should have been but were not included in the initial questionnaire process in 2007;
        - Additional materials related to the performance of both school districts;
    - Letters in support of the Coalition forwarded to the parties via a letter dated July 25, 2011; and
    - Correspondence and items submitted by counsel for the Easton Area School District via letters dated July 25 and August 5, 2011.[7]

    (Sec Add Rec 3, 7 through 16, 18)[8]

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[5] "Sec Add Rec ___" refers to the indexed documents consisting of additions to the Secretary of Education's Record following the April 13, 2011 Commonwealth Court's remand. A copy of the index entitled "Additions to Record Before the Secretary of Education Following April 13, 2011 Remand" is attached hereto for reference.

[6] The items identified in the lists attached to the October 26, 2009 decision of then Secretary of Education Gerald Zahorchak are attached hereto at pages i through vii.

[7] By letter dated August 8, 2011, the Coalition acknowledged that letters from counsel for the Easton Area School District dated July 29 and August 5, 2011 and attachments thereto are part of the Secretary's record. Counsel's letters submitting attachments, however, are dated July 25 and August 5, 2011.

[8] By letter dated August 11, 2011, the Department forwarded 20 additional letters in support of the Coalition to the parties. The Easton Area School District objected to including the 20 letters in the Secretary's record. Consequently, those 20 letters are not referenced in support of any of the findings of fact included in this decision. (Sec Add Rec 17 and 18)

22. The Easton Area School District submitted written argument in opposition to the Petition on August 15, 2011, and the Coalition replied thereto in support of the Petition on August 16, 2011. (Sec Add Rec 19 and 20)

23. Since the June 28, 2011 conference call, the Palisades School District has not submitted additional information, written argument, or responded to correspondence among the Department, the Easton Area School District, and the Coalition. (Sec Add Rec 4 through 16, 18 through 20)

Background

24. Approximately one half of the Borough of Riegelsville is part of the Easton Area School District and the remaining half is part of the Palisades School District. (Sec Rec 8 pp 2, 7; Sec Supp Rec 15 pp 65, 96)

25. The Easton Area School District portion of Riegelsville is bordered by the Palisades School District, the Wilson School District, and New Jersey. (Sec Rec 1 Exhibit A; Sec Supp Rec 15 Exhibits 2, 4, and 6)

26. At the time the Petition was filed in 2007, the Easton Area School District portion of Riegelsville consisted of 431 parcels, virtually all of Riegelsville's residents, and 89 students, further quantified as follows:

    - 65 of the 89 students were attending the Easton Area School District schools;
    - 24 of the 89 students were attending private schools; and
    - The 65 students attending the Easton Area School District schools consisted of less than 1% of the district's total enrollment.

    (Sec Rec 8 p 2; Sec Rec 10 p 1; Sec Rec 11 p 2)

27. At the time of the March 2009 hearing, approximately 59 students from the Easton Area School District portion of Riegelsville were attending the Easton Area School District schools, consisting of less than 1% of the district's total enrollment. (Sec Supp Rec 15 p 97; Sec Add Rec 4)

28. In March of 2009, the Palisades School District portion of Riegelsville consisted of 12 parcels, of which 5 were residential, and 4 students, all of whom attended private schools. (Sec Rec 10 pp 1 – 3; Sec Supp Rec 15 pp 64, 68)

29. Virtually the entire Palisades School District portion of Riegelsville is farmland pasture area. (Sec Supp Rec 15 p 64)

30. The Palisades School District is part of the Bucks County Intermediate Unit # 22, and the Easton Area School District is part of the Colonial Intermediate Unit #20. (Sec Supp Rec 15 pp 147-148, 170-173)

31. The Palisades School District is located in Bucks County and, with the exception of the Riegelsville portion of the Easton Area School District, the Easton Area School District is located in Northumberland County. (Sec Supp Rec 15 pp 75, 11, and Exhibits 2, 4, 6)

32. Generally, children with special needs who reside in the Palisades portion of Riegelsville receive services from the Bucks County Intermediate Unit from birth through school age. (Sec Supp Rec 15 pp 170-173)

33. Generally, children with special needs residing in the Easton Area School District portion of Riegelsville receive services from the Bucks County Intermediate Unit from birth through age three and at age three shift to services provided by the Colonial Intermediate Unit. (Sec Supp Rec 15 pp 170-173)

34. A parent of a child with special needs residing in the Easton Area School District portion of Riegelsville testified that transitioning from one intermediate unit to another when her child reached age three was challenging. (Sec Supp Rec 15 pp 170-173)

The Coalition's Reasons for Seeking Transfer

35. The Petition filed with the Bucks County Court on March 19, 2007 states:

    . . . the reasons for the transfer request include:

    - Educational benefits for the school children, including elimination of the necessity of traveling through another school district in Northampton County to reach the Easton District,

    - A desire to be in a contiguous school district with their Riegelsville neighbors in Bucks County, and

    - Because of unequal school tax treatment from the Easton School District.

    (Sec Rec 1; R4a – R7a)

36. The Petition signed by the taxable inhabitants within the Easton Area School District portion of Riegelsville, which was entered as an exhibit at the April 23, 2007 hearing, identifies the following reason for seeking transfer:

    > In order to join a blue ribbon school district for the benefit of our children, because of a desire to be in a contiguous school district in Bucks County with the other Riegelsville residents and because of the unequal tax treatment from the Easton School District.

    (R10a – R79a, R 27a, R235a – R257a)

General Viewpoints and Opinions of the Districts

37. Prior to the Commonwealth Court's determination in *Riegelsville II*, the Easton Area School District and the Palisades School District clearly opposed the proposed transfer of territory, saw no educational merit, and viewed the proposed transfer as potentially detrimental to their respective educational programs. (Sec Rec 2; Sec Rec 6 cover letter and p 12; Sec Rec 7 p 2; R182a – R183a, R185a – R186a, R262a; Sec Supp Rec 15 pp 59-60)

38. Following the April 13, 2011 remand by Commonwealth Court, the Easton Area School District continued to oppose the proposed transfer of territory. (Sec Add Rec 19)

39. Following the April 13, 2011 remand by Commonwealth Court, the Palisades School District made no indication as to whether or not it opposed, supported, or was otherwise neutral in regard to the proposed transfer of territory. (Sec Add Rec 1 through 16, 18 through 20)

General Viewpoints and Opinions of the Citizens

40. In 2007, when the Petition was filed with the Bucks County Court, more than fifty one percent of the taxable inhabitants within the Easton Area School District portion of Riegelsville supported the proposed transfer. (Sec Rec 4; R263 – R265a)

41. Prior to the Secretary's January 2008 decision and following the Commonwealth Court's December 2008 remand, the Department received correspondence from residents of the Easton Area School District portion of Riegelsville related to the proposed transfer, some of whom supported transfer and some of whom opposed transfer. (Op L 1 – 9)[9]

42. During a March 23, 2009 hearing before the Bucks County Court, taxable inhabitants within the Easton Area School District portion of Riegelsville testified in support of the proposed transfer, in regard to the following areas:

    - Historical information related to why one portion of Riegelsville is within the Easton Area School District and the other portion of Riegelsville is within the Palisades School District. (Sec Supp Rec 15 pp 60 – 71)

    - The demographics and topography of Riegelsville and the surrounding area. (Sec Supp Rec 15 pp 73 – 94)

    - The safety (or lack thereof) and length of the bus routes. (Sec Supp Rec 15 pp 95 – 116)

[9] "Op L ___" refers to the indexed correspondence received by the Secretary related to the Petition. A copy of the index entitled "Correspondence Received by Department" is attached hereto for reference.

- The community activities and opportunities to interact with the Easton Area School District classmates (or lack thereof). (Sec Supp Rec 15 pp 131, 144 – 172)

- The academic performance at the individual school level, the different grade levels, and the subject areas (Reading and Math) within the Easton Area School District and the Palisades School District (Sec Supp Rec 15 pp 117 – 128)

43. Some taxable inhabitants within the Easton Area School District portion of Riegelsville opposed the proposed transfer:

    - Two taxable inhabitants within the Easton Area School District portion of Riegelsville testified in support of continued affiliation with the Easton Area School District. (Sec Supp Rec 15 pp 174-190)

    - At least one person informed the Coalition that he/she did not sign the Petition due to concerns related to potential changes to his/her child's special education program. (R144a – R148a)

    - Prior to the Bucks County Court's April 23, 2007 hearing, several families expressed to the Easton Area School District a desire to remain in the Easton Area School District and indicated that they liked the quality of the education. (R199a; Op L 1, 2, 5)

    - Prior to the Bucks County Court's April 23, 2007 hearing, some families expressed resistance related to moving to the Palisades School District because of their children's existing relationships with the Easton Area School District students residing outside of Riegelsville, events that their children participated in such as athletics, and after-school activities. (R185a – R186a)

    - In 2007, the Easton Area School District surveyed the 48 families with children attending the Easton Area School District's public schools and determined that of the 29 responses, 15 families (representing 22 children) opposed the proposed transfer and 14 families (representing 16 children) supported the proposed transfer. (Sec Rec 7 p 3)

44. Following the Commonwealth Court's April 2011 remand, the Department received additional correspondence from residents of the Easton Area School District portion of Riegelsville expressing their support of the transfer of territory. (Sec Add Rec 7)

Student Performance

45. The Adequate Yearly Progress (AYP) of school districts and schools, as part of the federal No Child Left Behind Act (NCLB), measures three student indicators: Academic Performance; Test Participation; and Attendance (for schools without a High School

graduating class) or Graduation Rate (for schools with a High School graduating class). (Pub Rec 3 and 4)[10]

46. The 2011 targets for the indicators are as follows:

- Performance
  Schools and every measurable student subgroup in the school must have at least 67% of the tested students achieve a Proficient score or higher on the mathematics assessment and 72% of the tested students achieve a Proficient score or higher on the reading assessment.

- Participation
  At least 95% of students overall and within each measurable subgroup must take the test.

- School Attendance (for schools without a high school graduating class)
  Target of 90% or any improvement from previous year.

- Graduation Rate (for schools with a high school graduating class)
  Target of 85%, or a target of 82.5% or a 10% reduction of the difference between the previous year's graduation rate and 85%.

(Sec Add Rec 25)

47. District targets are assessed in three grade spans: Grades 3 – 5, 6 – 8, and 9 – 12. (Pub Rec 3 and 4; Sec Add Rec 25)

48. To meet AYP goals in Academic Performance or Test Participation, a district needs to achieve all targets for both subjects in one grade span. (Pub Rec 3 and 4; Sec Add Rec 25)

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[10] "Public Rec ___" refers to information available to the public, as identified via the attached index entitled "Public Record." Other information available to the public is referenced and attached hereto as Sec Add Rec 21 through 24.

The Secretary takes official notice of the public information. This is so even though the public information was not introduced into evidence at a hearing or submitted by the parties. *See Commonwealth, Department of State v. Stecher,* 484 A.2d 755, 757 (Pa. 1984) (taking official notice of enactment of legislation providing for supplemental appropriation); *Taylor v. Pennsylvania Board of Probation and Parole,* 569 A.2d 368, 371 (Pa. Cmwlth. 1989) (taking official notice of an official form prepared by a board employee contained in petitioner's case file); *Falasco v. Pennsylvania Board of Probation and Parole*, 521 A.2d 991, 995 n.6 (Pa. Cmwlth. 1987) (taking official notice of information in the board's files). An agency may take official notice "of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files in addition to those facts which are obvious and notorious to the average person." *Falasco*, 521 A.2d at 995, n. 6.

49. Districts must meet both targets in school attendance and graduation. (Pub Rec 3 and 4; Sec Add Rec 25)

50. The Easton Area School District and the Palisades School District have met the Commonwealth's school district targets and achieved Adequate Yearly Progress (AYP) for the past five years – 2007 through 2011. (Sec Supp Rec 15 Exhibits 20 and 21; Pub Rec 1 and 5 through 10; Sec Add Rec 21)

51. In 2011, the Palisades School District achieved all the performance and participation goals at *each of the three* grade spans. (Sec Add Rec 21)

52. In 2011, the Easton Area School District achieved all the performance and participation goals in *one of the three* grade spans. (Sec Add Rec 21)

53. Every school building in the Palisades School District has achieved AYP for the past five years – 2007 through 2011; four of the ten school buildings in the Easton Area School District achieved AYP for each of the past five years.[11] (Sec Add Rec 21)

54. For each of the past five years, the percentage of the Palisades School District's students achieving proficiency or above in each subject area exceeded the state average and the Easton Area School District's average. (Sec Add Rec 22)

55. For each of the past five years, the average SAT scores achieved by students in the Palisades School District exceeded the average SAT scores achieved by students in the Easton Area School District. (Sec Add Rec 23)

56. For each of the past two years, the average ACT scores achieved by students in the Palisades School District exceeded the average SAT scores achieved by students in the Easton Area School District.[12] (Sec Add Rec 24)

DISCUSSION

As briefly mentioned above, the procedure for creating an independent school district and ultimately transferring territory from one school district to another is a multi-step process involving citizens of the community, the county Court of Common Pleas, the Secretary of Education, and the State Board of Education. Initially, the Court of Common Pleas reviews the

[11] One of the four buildings identified as achieving AYP over the past five years did not receive an AYP designation for three of the five years. At times a building may not have an AYP designation due to certain circumstances such as: the building is new, and/or the building did not have a tested grade level.

[12] The Department's website provides ACT information for two school years.

petition for creation of an independent school district to determine whether the petition satisfies the requirements of section 242.1 of the Public School Code of 1949, as amended. 24 P.S. § 2-242.1. Generally, the court confirms that the petition was submitted by a majority of the taxable inhabitants within the territory, the petition properly describes the territory, and the petition sets forth the reasons that petitioners seek the transfer. Thereafter, the court requests that the Secretary determine whether or not the proposed transfer has merit from an educational standpoint.

By statute, the Secretary's role is limited to a single issue, whether or not the proposed transfer of territory from one school district to another has merit from an educational standpoint. 24 P.S. § 2-242.1. A finding by the Secretary that the proposed transfer has educational merit is a pre-condition to the creation of an independent school district. If the Secretary determines that the proposed transfer of territory lacks educational merit, an independent school district cannot be created. Conversely, if the Secretary finds that the proposed transfer has educational merit, the Court of Common Pleas may proceed with the creation of the independent school district. 24 P.S. § 2-242.1.

After an independent school district is created, the Court of Common Pleas transmits the matter to the State Board of Education, which makes the final decision as to whether the territory is transferred. 24 P.S. § 2-293.1. When making its decision, the State Board, which is not bound by the Secretary's determination, considers the educational merit and other matters that it deems relevant. *In Re: Application of the East Brady Independent School District to Transfer from*

Armstrong School District to Karns City Area School District, ISD -92-1 (Pa. State Board of Education 1993).[13]

Educational Merit

Historically, the Secretary has examined the educational merit of a proposed transfer of territory by considering the anticipated educational impact upon three groups of students: 1) the students within the territory proposed for transfer; 2) the students remaining in the district which would lose the territory; and 3) the students in the district which would gain the territory (collectively referred to as "the student groups"). When a negative impact upon the education of any of the three student groups was anticipated, the proposed transfer was found to lack educational merit.[14]

The Coalition argues that the Secretary's historical practice of examining the educational impact upon all three groups of students was rejected by Commonwealth Court in *Riegelsville II.* See Sec Add Rec 20. Upon careful examination of the Commonwealth Court's decision, however, there is no mention and/or discussion related to the Secretary's practice of examining the educational impact upon all three groups of students. Rather, the Commonwealth Court ordered that "the Secretary must consider the appropriate meaning of the term 'merits from an educational standpoint' as set forth in [its] opinion" and did not limit the application of the meaning of "merits from an educational standpoint" to the group of students subject to the proposed transfer.

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[13] In *East Brady,* the State Board considered the educational merit and the following additional matters: Geography, Transportation, Teacher Assignments, Facilities and Financial Impact.

[14] The Coalition argues that the Secretary's earlier determinations in this matter, wherein the Secretary considered the educational impact upon all three student groups, was an analysis borrowed from the State Board of Education. The Coalition is mistaken. The Secretary did not borrow the analysis from the State Board. Rather, the Secretary has used this analysis without State Board instruction.

The phrase "educational merit," which appears in section 242.1 of the Public School Code of 1949, 24 P.S. § 2-242.1, is not specifically defined by statute, regulation, or case law. In *Riegelsville II*, however, the Commonwealth Court instructed that the provisions of the Public School Code give meaning to the phrase "educational merit." The Commonwealth Court pointed to two sections of the Public School Code as guideposts – sections 201 and 242.1. The Commonwealth Court "construed section 201 to mean that 'in general students in a particular borough should attend the same schools.'"[15] The Commonwealth Court further explained as follows:

> The Coalition's petition is consistent with Section 201 of the Public School Code of 1949. It will place all of Riegelsville into one school district, and it will end Easton's discontiguous borders, with its "island" of one half of Riegelsville, which is not even in the same county as the rest of the Easton [Area] School District.

Riegelsville II, 17 A.3d at 989. The Commonwealth Court pointed out that "[t]he repeated use of 'contiguous' in section 242.1 expresses the legislature's intention that school districts be comprised of contiguous territory." *Riegelsville II*, at 989 (footnote omitted). In this respect, reasoned the Commonwealth Court, the Coalition's petition has merit from an educational standpoint.

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[15] Section 201 states:

> All school districts shall remain as now constituted until changed as authorized by this act. Except as otherwise now or hereafter constituted, each city, incorporated town, borough, or township in this Commonwealth, now existing or hereafter created, shall constitute a separate school district, to be designated and known as the "School District of _____:" Provided, That where any city incorporated town, borough, or township, or a part of the school district remaining after its separation would constitute a third or fourth class school district, it shall remain a part of the school district to which it formerly belonged until the change to a new school district is approved by the council of Basic Education, as hereinafter provided.

24 P.S. § 2-201.

Thus, as the Secretary considers the dimensions of the concept of educational merit, one element must be whether the petition seeks to connect an otherwise separated piece of a community. In this case, that is certainly so. As the court aptly recognized, the Easton Area School District portion of Riegelsville is effectively an "island" bordered by the Palisades School District, the Wilson School District, and New Jersey. See Finding of Fact 25.

Because of this analysis, before the Secretary considers other dimensions of educational merit, we begin with the factor of geographic contiguity as strongly supporting the petition. As explained below, the other elements of educational merit do not undermine the contiguity element.

Upon examination of the academic achievement/performance of students enrolled in the two school districts, Palisades School District's students have consistently exceeded the academic achievement of students attending the Easton Area School District on the PSSAs, the SATs, and the ACTs. See Findings of Fact 50 through 56. While both school districts achieved AYP each of the past five years, only Palisades School District achieved AYP at each school building over the past five years. See Findings of Fact 50 and 53. In addition, the percentage of students achieving proficiency or above in the Palisades School District has exceeded that of the Easton Area School District and the state average in every subject for the past five years. See Finding of Fact 54. Based upon the academic performance of students in the two school districts, there is no doubt that the educational impact upon students residing in the portion of Riegelsville subject to the proposed transfer would be positive.

The analysis, however, does not end there. We turn now to the Easton Area School District's claim that students remaining in the district following the transfer of territory will be harmed educationally. The Easton Area School District explains:

> [t]he students remaining in the School District will be negatively impacted by an increased financial disparity in their already financially strapped school district, particularly because of the Act 1 restrictions on millage, if succession were allowed. The situation could spiral down into state subsidies being directed to pay debt that would otherwise be directed at educational programming. Also, the students remaining will lose advanced placement classes due to decreased enrollment. These outcomes clearly would negatively impact the education of the School District's students.

See Sec Add Rec 19 at p 2. The Commonwealth Court rejected the school districts' evaluation of the Petition in terms of their respective potential financial consequences, stating:

> Neither school district has offered a coherent interpretation of the term 'from an educational standpoint;' rather, each has evaluated the Coalition's petition strictly in terms of its potential financial consequences.

Riegelsville II, 17 A.3d at 984. Upon review of the record, the Easton Area School District's financial argument does not differ substantively from its argument in *Riegelsville I* or *Riegelsville II.* See Sec Rec 7 and 11; Sec Add Rec 12, 13, and 19. Accordingly, the financial aspect of the Easton Area School District's argument must be rejected.

Upon consideration of the Easton Area School District's argument that students remaining in the School District will not have access to some AP courses due to lack of enrollment, the district's assertion is not supported by the record. The number of students subject to the proposed transfer is about 60 students, less than 1% of the Easton Area School District's total enrollment. Findings of Fact 25 and 26. The record establishes a possibility that the proposed transfer of territory might prevent some AP courses from attaining the districts' established minimum enrollments. See Sec Rec 7 pp 1, 4; Sec Supp Rec 15 pp 54-60. However, other than a general assertion that "the Riegelsville students make up a significant portion of the registration for honors and advanced placement courses within the School District," there is no evidence related to the actual number, actual percentage and/or trends of such enrollments as they relate to students currently residing in Riegelsville. In short, the Easton Area School

District has not established *any* harm to the students who would remain in its district following the proposed transfer of a portion of Riegelsville to the Palisades School District, let alone a sufficient level that would overcome the other reasons why the transfer has educational merit.

In conclusion, the Petition has educational merit. First, transferring the territory to the Palisades School District will ensure that the entire Borough of Riegelsville will be part of the same school district, Palisades, to which it is contiguous. Second, the transfer will benefit the students of Riegelsville who would now attend the Palisades School District. Finally, there is no evidence demonstrating that the students who remain in the Easton Area School District or that the students in the Palisades School District will be harmed by the transfer of the territory to Palisades.

ACCORDINGLY, the following order is entered:

ORDER

AND NOW, this 20th day of October 2011, based upon the foregoing findings of fact and discussion, I hereby find the Petition for Formation of Independent School District filed by the Riegelsville Tax and Education Coalition for purposes of transferring a portion of the Riegelsville Borough from the Easton Area School District to the Palisades School District is meritorious from an educational standpoint.

Ronald J. Tomalis
Secretary of Education

Date Mailed: 10/20/2011

Record before the Secretary of Education as of January 2008
"Sec Rec"

1.	3/19/2007	Petition of the Riegelsville Tax and Education Coalition for Formation of Independent SD
2.	4/20/2007	Letter to Secretary Zahorchak from Joseph Kish, Acting Superintendent of Easton Area School District, stating that the School Board opposes the Petition
3.	4/25/2007	FAX from William H. R. Casey enclosing Coalition's March 19, 2007 Petition (without exhibit B) and April 4, 2007 Scheduling Order
4.	4/24/2007	Bucks County Court of Common Pleas Order, date stamped 4/26/07, referring Petition to Secretary of Education for educational merit determination
5.	5/4/2007	Letter to William H. R. Casey, Charles N. Sweet, and Alan B. McFall from Secretary Zahorchak requesting response to questionnaire
6.	6/28/2007	Letter to M. Patricia Fullerton from Charles N. Sweet submitting response of Palisades School District
7.	Undated	Response of Easton Area School District, received July 3, 2007
8.	7/4/2007	Letter to Patricia Fullerton from Michael Graeff submitting response of Coalition
9.	7/31/07	Letter to M. Patricia Fullerton from Michael Graeff enclosing rebuttal of Coalition
10.	7/31/07	Letter to M. Patricia Fullerton from Charles N. Sweet enclosing rebuttal of Palisades School District
11.	8/6/2007	Letter to M. Patricia Fullerton from Alan B. McFall enclosing rebuttal of Easton Area School District
12.	1/24/2008	Letter to the Honorable Clyde Waite from Secretary Zahorchak informing the Court that Coalition's petition lacks educational merit
13.	2/27/2008	Letter to Charles N. Sweet, Alan B. McFall, and Michael Graeff from M. Patricia Fullerton enclosing Secretary Zahorchak's 1/24/2008 letter to the Honorable Clyde Waite

Record before the Commonwealth Court
"C Ct Rec"

1.	3/26/08	Letter from William H.R. Casey enclosing Notice of Appeal
2.	3/28/08	Notice of Docketing Appeal
3.	4/14/08	Coalition's Response to Order Requesting Statement of Errors
4.	4/15/08	Opinion of Court of Common Pleas of Bucks County
5.	5/06/08	Certificate and Transmittal of Record from Court of Common Pleas of Bucks County to Commonwealth Court
6.	5/08/08	Letter from Commonwealth Court advising that the original record has been filed
7.	5/14/08	Letter from William H.R. Casey enclosing Designation of Reproduced Record
8.	5/14/08	Letter to Tom Corbett, Attorney General, informing him of the Appeal
9.	5/16/08	Letter from William H.R. Casey enclosing Designation of Supplemental Reproduced Record
10.	5/16/08	Coalition's Motion to Modify Record
11.	6/06/08	Order granting the motion to modify the record
12.	6/10/08	Supplemental Order entered by Court of Common Pleas of Buck County
13.	6/11/08	Certificate and Transmittal of Supplemental Record from Court of Common Pleas of Bucks County to Commonwealth Court
14.	6/13/08	Letter from William H.R. Casey enclosing Coalition's Brief
15.	6/13/08	Reproduced Record
16.	7/15/08	Letter from M. Patricia Fullerton requesting 30-day extension to file the Department's brief
17.	7/16/08	Order of the Court granting extension
18.	7/16/08	Entry of Appearance of David F. Conn on behalf of Palisades School District

19.	7/16/08	Letter from David F. Conn enclosing Brief of Palisades School District
20.	7/17/08	Letter from Alan B. McFall enclosing Brief of Easton Area School District
21.	8/15/08	Letter from M. Patricia Fullerton enclosing Department of Education's Application in the Nature of a Motion for Enlargement of Time
22.	8/18/08	Order of the Court granting extension until September 15, 2008
23.	9/15/08	Letter from M. Patricia Fullerton enclosing Department of Education's Reply Brief
24.	9/24/08	Coalition's Reply Brief
25.	9/29/08	Letter notifying counsel that argument for the case is fixed for Thursday, November 13, 2008 at 9:00 am
26.	12/19/08	Order of Commonwealth Court vacating February 27, 2008 Order of the Court of Common Pleas of Bucks County and remanding case to Court of Common Pleas

Supplemental Record before the Secretary of Education
"Sec Supp Rec"

1.	12/31/08	Letter from William H.R. Casey confirming conference call scheduled for January 8, 2009
2.	1/06/09	Fax from William H.R. Casey enclosing dial-up number and passcode for January 8, 2009 conference call
3.	1/08/09	Letter from Judge Waite informing parties of intent to schedule hearing for January 22, 2009
4.	1/08/09	Order of the Bucks County Court of Common Pleas ordering that a hearing be held to assist in the creation of a record in accordance with the Public School Code of 1949
5.	1/09/09	Letter from Attorney William H.R. Casey enclosing January 8, 2009 Court Order
6.	1/12/09	Letter from David F. Conn to William H.R. Casey advising Dr. Barnes unavailable for hearing on January 22, 2009
7.	1/15/09	Letter from James G. Sweeney to Judge Waite requesting new hearing date
8.	1/16/09	Letter from James G. Sweeney to all parties related to new hearing date
9.	1/21/09	Coalition's Motion for Hearing
10.	1/26/09	Entry of Appearance of James G. Sweeney on behalf of Coalition
11.	1/30/09	Letter from William H.R. Casey enclosing a copy of Order signed setting a new hearing date
12.	2/26/09	Letter from Victoria Molloy enclosing Palisades Motion in Limine Requesting Offer of Proof
13.	3/09/09	Letter from William H.R. Casey enclosing Coalition's Answer to Motion in Limine
14	3/18/09	Letter from William H.R. Casey advising that the hearing has been relocated
15.	3/23/09	Transcript of March 23, 2009 Hearing before Honorable Clyde W. Waite
16	4/10/09	Coalition's Proposed Findings and Conclusions in Support of Petition

17.	4/10/09	Coalition's Brief in Support of Petition
18.	4/13/09	Letter from Victoria Molloy enclosing Palisades' Proposed Findings of Fact and Conclusions of Law
19.	4/14/09	Easton's Proposed Findings of Fact and Conclusions of Law
20.	4/17/09	Order of the Court forwarding file to the Secretary of Education

Correspondence Received by Department
"Op L"

1.	7/02/07	Letter to Secretary Zahorchak from Riegelsville parents of children attending Easton opposing Transfer – Victor & Kelly Egberts; Diane & Joseph Evanowski; David & Sherry Mastiller and Robert & Patricia McWilliams
2.	8/08/07	Email to M. Patricia Fullerton from Victor Egberts attaching 7/2/07 letter to Secretary Zahorchak
3.	1/24/08	Letters to Secretary Zahorchak from Damion Newton supporting transfer
4.	1/24/08	Letter to Secretary Zahorchak from Kathy Anderson supporting transfer
5.	12/22/08	Email to M. Patricia Fullerton from Victor Egberts attaching 7/21/07 letter to Secretary Zahorchak
6.	12/22/08	Email to M. Patricia Fullerton from Diane Evanowski attaching 12/21/08 letter to Secretary Zahorchak opposing transfer
7.	4/08/09	Letter to Secretary Zahorchak from Representative Quinn enclosing letters in support of transfer
8.	5/12/09	Letter to Secretary Zahorchak from Senator Wonderling
9.	9/11/09	Letter to Secretary Zahorchak from John Panasuik in support of transfer

Public Record
"Pub Rec"

1. 2003-2009 District AYP Status
http://www.able.state.pa.us/a_and_t/lib/a_and_t/AYP_District_2009.pdf

2. 2002 District Performance
http://www.pde.state.pa.us/a_and_t/lib/a_and_t/2002MathandReadingperformancelevelsalldistricts.pdf

3. Academic Achievement Overview
http://paayp.emetric.net/

4. About AYP in Pennsylvania
http://paayp.emetric.net/Home/About

5. Easton 2009 AYP Overview
http://paayp.emetric.net/District/Overview/c48/120483302

6. Easton 2009 AYP Data Table
http://paayp.emetric.net/District/DataTable/c48/120483302

7. Easton 2009 AYP Information for Educators
http://paayp.emetric.net/District/Educators/c48/120483302

8. Palisades 2009 AYP Overview
http://paayp.emetric.net/District/Overview/c9/122098003

9. Palisades 2009 AYP Data Table
http://paayp.emetric.net/District/DataTable/c9/122098003

10. Palisades 2009 AYP Information for Educators
http://paayp.emetric.net/District/Educators/c9/122098003

11. Easton Strategic Plan Assurance, submitted 12/21/07

12. Palisades Strategic Plan Assurance, submitted 9/19/06

Additions to Record Before the Secretary of Education
Following April 13, 2011 Remand
"Sec Add Rec"

1.	5/23/2011	Order of the Court of Common Pleas of Bucks County remanding case to the Secretary of Education.
2.	5/24/2011	Letter from Deputy Prothonotary, Court of Common Pleas of Bucks County, remanding the record to the Secretary of Education.
3.	6/14/2011	Letter from M. Patricia Fullerton scheduling a conference call for June 28, 2011.
4.	6/29/2011	Letter from William H.R. Casey enclosing documents to supplement record before the Secretary of Education, including: a. 2007-2011 Student enrollment for Easton Area School District and Palisades School District; b. Adequate Yearly Progress comparisons for Easton Area School District and Palisades School District for 2002-2010; c. Real Estate Mils comparison; and d. Letters and related materials that for some reason were never transmitted the Secretary at the time of the initial questionnaire process in 2007.
5.	6/29/2011	Letter from James G. Sweeney indicating that the record of the March 23, 2009 hearing before the Common Pleas Court supersedes the parties' written responses to the Secretary of education's original questionnaire and rejecting suggestion to update such responses.
6.	7/18/2011	Letter from James G. Sweeney in support of Coalition's Petition.
7.	7/25/2011	Letter from M. Patricia Fullerton summarizing June 28, 2011 conference call, indicating plan for moving forward, and enclosing letters from ten citizens in support of Coalition's Petition.
8.	7/25/2011	Letter from James G. Sweeney indicating the Secretary's record consists of the March 23, 2009 transcript and exhibits, materials referred to in the Secretary's October 26, 2009 decision, and materials submitted by cover letter dated June 29, 2011 from William H.R. Casey.
9.	7/29/2011	Letter from James G. Sweeny related to the record before the Secretary of Education.
10.	7/29/2011 (1:05 pm)	Email from Pat Fullerton related to the record before the Secretary of Education.

11.	7/29/2011 (1:59pm)	Email from Jim Sweeney related to the record before the Secretary of Education.
12.	7/29/2011	Letter from John E. Freund enclosing portions of Easton Area School District bond statement and 2010-11 PSSA results and requesting additional time to submit updated financial information.
13.	8/5/2011	Letter from John E. Freund enclosing tax base and revenue information.
14.	8/8/2011	Letter from James G. Sweeney related to record before the Secretary of Education and addressing financial information submitted by Easton Area School District.
15.	8/9/2011 (12:52 pm)	Email from Pat Fullerton informing parties of intent to add 20 letters from community members in support of Coalition's Petition.
16.	8/9/2011 (1:11 pm)	Email from Jim Sweeney indicating the Coalition does not object to including the 20 letters from community members in the Secretary of Education's record.
17.	8/11/2011	Letter from M. Patricia Fullerton to the parties enclosing copies of the 20 letters from community members.
18.	8/12/2011	Letter from John E. Freund objecting to including 20 letters from community members in the Secretary of Education's record.
19.	8/15/2011	Brief of Easton Area School District.
20.	8/16/2011	Letter Brief from Coalition.

Public Record Additions to Record Before the Secretary of Education Following April 13, 2011 Remand

21. School District and School Building AYP status over five year period, 2007-2011
http://www.education.state.pa.us/portal/server.pt/community/school_assessments/7442

22. Percentage of students achieving advanced and proficient by subject area over five year period, 2007-2011
http://www.education.state.pa.us/portal/server.pt/community/school_assessments/7442
http://www.education.state.pa.us/portal/server.pt/community/school_assessments/7442/2009_-2010_pssa_and_ayp_results/770183
http://www.education.state.pa.us/portal/server.pt/community/school_assessments/7442/2008-2009_pssa_and_ayp_results/600286
http://www.education.state.pa.us/portal/server.pt/community/school_assessments/7442/2007-2008_pssa_and_ayp_results/507514
http://www.education.state.pa.us/portal/server.pt/community/school_assessments/7442/2006-2007_pssa_and_ayp_results/507511

23. Average SAT scores over five year period, 2007-2011
http://www.education.state.pa.us/portal/server.pt/community/data_and_statistics/7202/sat_and_act_scores/674663

24. Average ACT scores over two year period, 2010 and 2011
http://www.portal.state.pa.us/portal/http;//www.portal.state.pa.us;80/portal/server.pt/gateway/PTARGS_0_123031_1203389_0_0_18/ACT_Scores_2010-2011.xlsx

25. 2011 AYP/PSSA targets
http://paayp.emetric.net/Home/About