

## Mine Hill students must stay in Dover

By Maria Armental, Daily Record

MINE HILL -- Township middle school students will continue attending the Dover School District, Commissioner of Education William H. Librera has ruled.

Mine Hill officials, who had sought to pull their students from Dover, said they would appeal the decision to the state board of education.

There are eight Mine Hill special education and 77 regular students attending the Dover School District, including 40 in 7th grade and 37 in eighth, according to the latest official figures, Business Administrator Vito Dellibovi said.

In his ruling, Librera said while there was no conclusive evidence that showed the pullout would have a noticeable financial impact or a manifest negative impact on the educational programming, "the substantial negative impact on the racial balance in both districts and, consequently on the quality of education in both districts, precludes granting the severance request."

Calling the ruling disappointing, Mine Hill officials said they were determined to appeal it.

"No, we are not giving up," said Peggy Healey, president of the Mine Hill Board of Education. "We are going to analyze all the options and (appeal) to the state Board of Education."

Should the state board disagree with the commissioner's decision, the matter would be referred back to the commissioner for further consideration.

At issue is whether the high school statute's "substantial negative impact" applies to elementary school students.

Dover officials argued that the racial impact had to be considered in any request regardless of grade level.

"And in fact," Lester Aron, the Dover Board of Education attorney, wrote in a Sept. 14 memorandum, "race should be emphasized even more in the younger grades, where students have a greater opportunity to benefit from interaction with diverse populations for the remainder of their lives.

"If this standard did not apply to elementary withdrawals," Aron continued, "it would continue the tradition of '(paying) lip service to the idea of diversity in our schools.'"

Meanwhile, Mine Hill officials urged the adoption of "an equitable balancing test weighing the financial and educational implications of the proposed withdrawal, giving due weight to the sending district's right to educate its own pupils."

In supporting that claim, Mine Hill Board of Education attorney Paul H. Green cited a 1992 state Board of Education decision that held "termination may be granted where negative impact will result in some area but such impact is outweighed by the benefits that will result from the change sought."

But Librera said that racial composition was paramount to deciding such cases saying that "where a negative impact is shown, severance cannot be granted," Librera said.

Librera did not quantify the extent of that impact.

The Mine Hill School District, which sends 7th to 12th grade students to Dover, first filed a petition of appeal to the commissioner of education in July 1980 asking to withdraw the middle school students. After some legal discussion, the commissioner approved Mine Hill's petition on May 29, 1981, provided Mine Hill closed the Hattie Rice School in Mine Hill and provided a single facility at the district's Canfield Avenue School, developed with Dover officials a plan for shared extracurricular activities for 7th and 8th graders and developed a curriculum and educational programs comparable to those offered in Dover.

A referendum to raise the funds for the building construction was defeated in 1982.

The petition was again filed in December 1998 and voters approved a referendum on Dec. 8 of that year approving the issuance of bonds to finance the expansion of Canfield Avenue School.

This time, the Dover School District objected to the withdrawal and the matter has been in litigation ever since.

In 2001, the commissioner of education ruled Mine Hill could not withdraw its middle school students, as doing so would have a substantial negative racial and educational quality impact. Mine Hill school officials then filed a notice of appeal with the state Board of Education Legal Committee, which ruled the statute used by the commissioner, did not apply in the Mine Hill case. The matter was remanded to the commissioner.

The case has been largely put on hold since then as parties awaited a state Supreme Court decision on a Passaic County case in which the North Haledon School District asked to withdraw its high school students from Manchester Regional High School. North Haledon school officials also argued the current arrangement was hurting the municipality financially while officials from the other municipalities argued the move would have a detrimental impact on the racial diversity.

Ultimately, the judge ruled North Haledon students could not leave the regional high school to preserve the racial balance but, recognizing an unfair burden on the North Haledon taxpayers, instructed the commissioner to devise a more proportional funding formula.

In the case of Mine Hill and Dover, Librera found no racial motivation for Mine Hill's attempted withdrawal, as Dover officials had suggested, but held "the substantial negative impact on the racial balance in both districts and, consequently on the quality of education in both districts, precludes granting the severance request."

Healey said Librera's pronouncement that Mine Hill's decision was not racially motivated was in itself a victory.

"Dover (school officials) thought it was a white flight, that we were doing it for racial reasons," Healey said, but Librera's Dec. 15 judgment found that "it was financially motivated. And that's why we are doing it."

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