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November 24, 2015

By Hand Delivery

Dr. Lester Richens  
Monmouth County Executive Superintendent  
of Schools  
4000 Kozloski Road  
Freehold, New Jersey 07728-1264

Re: Application of Village of Loch Arbour Pursuant to N.J.S.A. 18A:8-4 *et seq.*

This firm represents the Village of Loch Arbour ("Loch Arbour"). Please accept this Letter Memorandum and the accompanying Financial and Educational Impact Analysis prepared by CGR Group ("CGR Report") in support of Loch Arbour's resolution requesting that the Executive Superintendent, pursuant to N.J.S.A. 18A:8-5 and 6, investigate and report on the feasibility and advisability of Loch Arbour's withdrawing from the Ocean Township School District ("OTSD") in order to establish a non-operating school district that will enter a send-receive relationship with the West Long Branch School District for K-8 students and with Shore Regional School District for high school students (collectively "Receiving Districts").

Loch Arbour is requesting to withdraw from OTSD because its continued presence has grossly unfair consequences for Loch Arbour's taxpayers. Only 16 Loch Arbour children attend public school in the OTSD, including 2 special needs children whom OTSD sends out-of-district. Because of an anomaly in the law, Loch Arbour's taxpayers pay \$125,900 per child in OTSD school taxes. In contrast, Ocean Township taxpayers pay \$16,500 per child. This gross disparity is completely unjustified. Justice, common sense and efficiency require that Loch Arbour be allowed the same right as any municipality to make the most advantageous arrangement for the education of its children.

If Loch Arbour had its own school district, which is its right as a separate municipality, it could enter agreements with the Receiving Districts that would provide its children with as good

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an education as they now receive at a cost of no more than \$10,200 per child,<sup>1</sup> reducing Loch Arbour's school taxes by almost 85%. The educational and financial impact on Ocean Township would be minimal. OTSD would lose only 16 students out of 3,691, less than 0.5% of its enrollment and no more than 3 children per grade. There would be no change in the demographics of OTSD because the number of departing students is *de minimus*. Moreover, the Receiving Districts have substantial excess capacity that would be partly filled by a send-receive relationship with Loch Arbour.

Financially, the withdrawal of Loch Arbour would require no more than a 3% increase in Ocean Township school taxes, between \$160 and \$180 for the average single family home, depending on whether Loch Arbour continued its *pro rata* contribution to OTSD's debt service. OTSD would retain all the physical facilities for which it has incurred indebtedness.

## FINANCIAL AND EDUCATIONAL ANALYSIS

### HISTORICAL BACKGROUND

The Village of Loch Arbour was established in 1957 under the former Village Act.<sup>2</sup> As a village, Loch Arbour enjoys all the powers of self-government of any municipality.<sup>3</sup> It is believed to be one of three remaining villages in New Jersey. According to the 2010 Census Loch Arbour has a population of less than 200 people in 82 households. Its school age population (age 5-19) is 34.<sup>4</sup>

Before it was established as an independent municipality, Loch Arbour was part of Ocean Township. According to the 2010 Census, Ocean Township had a total population of 27,291 and a school-aged population of 5,324. Loch Arbour's total population is 0.7% of Ocean Township's; its school age population is 0.6% of Ocean Township's.

When Loch Arbour separated from Ocean Township, it remained part of the Ocean Township School District as required by N.J.S.A. 18A:8-1.<sup>5</sup> Pursuant to N.J.S.A. 18A:8-37, school taxes are apportioned between Loch Arbour and Ocean Township on the basis of

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<sup>1</sup> This is the arrangement the Receiving Districts now have with Interlaken Borough.  
<sup>2</sup> See *In re Incorporation of the Village of Loch Arbour*, 25 N.J. 258 (1957).  
<sup>3</sup> See *Village of Loch Arbour v. Twp. of Ocean*, 55 N.J. Super. 250 (Law. Div. 1959).  
<sup>4</sup> CGR Report at 2.  
<sup>5</sup> N.J.S.A. 18A:8-1 provides:

Each municipality shall be a separate local school district except as otherwise provided in this chapter and except that each incorporated village shall remain a part of the district in which it is situated at the time of its incorporation.

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equalized assessed valuation. As discussed below, the small population and high property values of Loch Arbour create a situation in which Loch Arbour taxpayers must pay a grossly disproportionate cost per pupil to educate the Village's children.

Between 1999 and 2008 the financial disparity was eliminated by the Kiely Law, L. 1999 c. 167, former N.J.S.A. 18A:8-1.1.<sup>6</sup> Under the Kiely Law, Loch Arbour paid the greater of 110% of OTSD's prior year cost per pupil or \$300,000. In practice, Loch Arbour always paid the larger amount, \$300,000, which amounted to a cost of approximately \$16,000 per pupil per year.

The Kiely Law was repealed as part of the comprehensive revision of the school funding statutes in the School Funding Act of 2008. L. 2007 c. 260, § 84.<sup>7</sup> Repeal of the Kiely Law returned Loch Arbour to the situation in which the OTSD school tax levy is apportioned between Ocean Township and Loch Arbour in accord with equalized assessed value. As a result, the Loch Arbour direct school tax rate went from 0.146/1,000 in 2009 to 0.871/1,000 in 2010 and 1.3005/1,000 in 2015-16. This compares with the Ocean Township direct school tax rate of 1.263 in 2010 and 1.3230 in 2015-16.<sup>8</sup>

#### DESCRIPTION OF THE OCEAN TOWNSHIP SCHOOL DISTRICT

The Ocean Township School District is a K-12 district comprised of two municipalities: Ocean Township and the Village of Loch Arbour. It operates three K-4 elementary schools, one 5-8 intermediate school, and one 9-12 high school. Current enrollment is 3,691, projected to decline to 3,414 by 2020. The student body is 66% white, 10% black, 14% Hispanic, 9% Asian and 1% mixed race.<sup>9</sup>

Loch Arbour sends approximately 16 students to OTSD: 2 elementary, 5 intermediate, and 9 high school. Of these, two are special needs students that OTSD sends out-of-district.<sup>10</sup> Fourteen of the 16 Loch Arbour students are white and two of mixed race.

<sup>6</sup> The Kiely Law was named for the then Mayor of Loch Arbour. It applied only to an incorporated village in a county of the fifth class with a 1990 Census population of between 500,000 and 600,000. Only Loch Arbour met those criteria.

<sup>7</sup> The constitutionality of the repeal was affirmed in the unreported case of *Village of Loch Arbour v. Twp. of Ocean*, 2011 N.J. Super. Unpub. LEXIS 1872 (App. Div. 2011).

<sup>8</sup> CGR Report at 3-5. Historic tax rates are from Schedule J-7 of OTSD's 2013-14 Comprehensive Annual Financial Report.

<sup>9</sup> CGR Report at 13-14.

<sup>10</sup> CGR Report at 6-7.

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### FINANCIAL ANALYSIS

The OTSD 2015-16 tax levy is \$60,054,172 for Ocean Township and \$2,014,486 for Loch Arbour. Ocean Township has current equalized assessed valuation of \$4,539,382,409 and Loch Arbour \$151,464,165. Loch Arbour therefore pays 3% of the school tax levy, in proportion to its 3% share of equalized assessed value. The current OTSD tax rate for Ocean Township is \$1.323 per \$100; it is \$1.3005 in Loch Arbour. The average home value in Ocean Township is \$404,571, and the average home value in Loch Arbour is \$1,071,877.<sup>11</sup>

While Loch Arbour is contributing to the OTSD school tax levy in proportion to its assessed valuation, it is paying a grossly disproportionate cost per pupil because it sends so few pupils to the district. When the number of students is divided by the respective share of the tax levy, Loch Arbour taxpayers paid approximately \$125,900 per pupil for 16 pupils, while Ocean Township taxpayers paid \$16,300 per pupil – a 770% difference.<sup>12</sup>

This huge disparity in taxes per pupil results from Loch Arbour's situation as a separate municipality without its own school district. If Loch Arbour had an independent non-operating school district, it would be able to send its pupils to another district at a cost per pupil based on the receiving district's costs. See N.J.S.A. 18A:38-19 (receiving district tuition maximum based on cost per pupil). As discussed below, Loch Arbour intends to enter send-receive relationships with the West Long Branch K-8 district and the Shore Regional high school district at a cost per pupil approximately 90% less than its taxpayers now pay.

As noted above, Loch Arbour comprises approximately 3% of the equalized assessed value of property in OTSD and pays the same proportion of the OTSD school tax levy. If Loch Arbour were to withdraw from OTSD, even if no cost reductions were associated with the withdrawal, an increase in the OTSD tax rate from \$1.3230 to 1.3673, or 3.3%, would replace the Loch Arbour tax levy. This change in the tax rate would increase school taxes on the average Ocean Township home by \$180 per year.<sup>13</sup> This is not a substantial impact. Moreover, the withdrawal of Loch Arbour would result in one immediate savings to OTSD. Loch Arbour sends two special needs students to OTSD, and OTSD sends them out-of-district at a total cost of \$120,000 for tuition and \$30,000 in transportation cost. When that \$150,000 savings is factored in, the tax rate for OTSD would rise to \$1.3650, and the average property would receive an increase of approximately \$166.<sup>14</sup>

N.J.S.A 18A:8-7 provides that in the event of withdrawal of a municipality from a school district, the amount of debt to be assumed by the withdrawing municipality is calculated based

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<sup>11</sup> CGR Report at 3-5.  
<sup>12</sup> CGR Report at 3.  
<sup>13</sup> CGR Report at 5.  
<sup>14</sup> CGR Report at 6.

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on the proportion of the original cost of the physical facilities in the withdrawing municipality to the total original cost of physical facilities in the district. There are no OTSD facilities in Loch Arbour. Accordingly, if Loch Arbour withdraws, N.J.S.A. 18A:8-7 imposes no liability on Loch Arbour for any portion of OTSD's bonded debt. However, Loch Arbour's present contribution to OTSD's debt service is \$58,163, or a tax rate of \$0.00375/\$100. If Loch Arbour were to continue that contribution to OTSD after withdrawal, it would result in a \$6.00 per year saving to the average Ocean Township property, with a resulting tax increase of \$160 per year.<sup>15</sup>

The savings to Loch Arbour taxpayers would far outweigh the slight increase to Ocean Township taxpayers. Loch Arbour will be able to enter send-receive agreements with West Long Branch School District for K-8 and Shore Regional School District for high school. Using the existing seven-year send-receive agreements between the Interlaken Board of Education and these two districts as a model, it is anticipated that Loch Arbour would pay tuition of \$10,200 per pupil, increasing by 2% per year, plus all special education costs. This would result in a total outlay by Loch Arbour of approximately \$313,200, consisting of \$163,200 in tuition plus the current \$150,000 in special education costs now paid by OTSD. This translates to a tax rate of \$0.2022 per \$100 for Loch Arbour, as opposed to the current \$1.3005, a decrease of 84.4%. The average residence in Loch Arbour would see its taxes decrease by \$11,772, from \$13,940 to \$2,167.<sup>16</sup> These savings far outweigh the minor impact on Ocean Township homeowners.

#### EDUCATIONAL AND DEMOGRAPHIC ANALYSIS

As noted above, Loch Arbour intends to enter send-receive relationships with the West Long Branch School District for K-8 and the Shore Regional High School District. Both have excess capacity,<sup>17</sup> and both have indicated that they are willing to enter such agreements with the consent of the Commissioner of Education. In all respects, the education available to Loch Arbour students in the two Receiving Districts will be the equal of that available in OTSD. Student-teacher ratios are lower at the elementary level in West Long Branch and equal at the high school level in Shore Regional.<sup>18</sup> English and mathematics proficiency scores at the elementary level are within the range of OTSD's elementary schools. At the middle school level, West Long Branch's English proficiency score is slightly lower and its mathematics proficiency score slightly higher. At the high school level, the graduation rate, English and mathematics proficiency rates, and enrollment in post-secondary education are equal. The same extracurricular and enrichment activities are offered, although Shore Regional has slightly fewer sports teams than the OTSD high school.<sup>19</sup>

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<sup>15</sup> CGR Supplemental Debt Analysis.  
<sup>16</sup> CGR Report at 7-8.  
<sup>17</sup> CGR Report at 6 n.12.  
<sup>18</sup> CGR Report at 10.  
<sup>19</sup> CGR Report at 9

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The impact on the racial composition of OTSD and the Receiving Districts from the transfer of Loch Arbour's 16 students would be negligible. Loch Arbour's students are less than 0.5% of OTSD's enrollment. If they withdrew, the percentage of white, black and Asian students would remain unchanged, while the percentage of Hispanic students would increase from 14.1 to 14.2%.<sup>20</sup>

The demographic profile of the Receiving Districts would also remain unchanged. West Long Branch is currently 85% white, 1% black, 8% Hispanic, 2% Asian and 4% mixed race. Shore Regional is currently 91% white, 2% black, 4% Hispanic, 1% Asian and 1% mixed race. The admission of Loch Arbour students would increase the percentage of white students in West Long Branch by 0.2%. In Shore Regional, the proportion of white students would decline slightly.<sup>21</sup>

To express the demographics in terms of classroom experience, if one assumed an average class size of 20, an OTSD class now contains and will continue to contain 14 white and 6 nonwhite students, while a West Long Branch class of 20 now contains and will continue to contain 2 nonwhite students and a Shore Regional class 1.

Loch Arbour students will be moving to a less racially diverse environment, but their number is *de minimis*, and there is no precedent that such a small demographic impact is material.<sup>22</sup> In *In re Petition for Authorization to Conduct a Referendum on the Withdrawal of North Haledon School District from the Passaic County Manchester Regional School District*, 181 N.J. 161 (2004) ("*North Haledon*"), our Supreme Court held that exposure to a racially diverse environment had a positive educational effect and that the impact on students of moving to a less diverse setting must be taken into account. In *North Haledon*, the students from the would-be withdrawing municipality were 93% white. Of the other two municipalities in the regional high school district, one was majority non-white, with a Hispanic plurality, and the other approximately 50% white and 30% Hispanic. The high school district had a bare white majority of 51%. Withdrawal would change the racial balance of the high school district from 51% white to 38% white, a substantial 13% drop. *North Haledon*, 181 N.J. at 171. In addition, the withdrawing municipality proposed to send its students to another district that was 93% white, resulting in a sharply diminished exposure of those students to a diverse racial environment. 181 N.J. at 184 n. 6. On those facts, the Supreme Court held that withdrawal was not in the interest of either the students of the remaining district or the students of the withdrawing district. 181 N.J. at 184.

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<sup>20</sup> CGR Report at 13.

<sup>21</sup> CGR Report at 13.

<sup>22</sup> The impact will be even less if some or all of the high school students are allowed the option to finish high school in OTSD.

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The facts of this case differ markedly from those in *North Haledon*. Both OTSD and the Receiving Districts have substantial majorities of white students, and that will remain the case if Loch Arbour withdraws from OTSD and enters the proposed send-receive agreements. The classroom experience will remain similar, and Loch Arbour's students will continue to have a similar degree of exposure to their nonwhite peers in a white majority setting that they experience at OTSD. More importantly, unlike *North Haledon* the severance of Loch Arbour will not have any impact on the diversity experience of the students remaining in OTSD.

### LEGAL ANALYSIS

#### LOCH ARBOUR HAS THE RIGHT TO WITHDRAW FROM OTSD

Under N.J.S.A. 18A:8-4, a constituent municipality in a school district comprised of two or more municipalities has the right to withdraw and establish its own school district if the criteria of the statute are followed:

Whenever a municipality is divided into two or more municipalities, the school district shall continue as a single school district unless and until the same shall be divided as provided in this article.

For the reasons discussed below, Loch Arbour satisfies the financial, educational and demographic criteria for withdrawal.

As a preliminary point, the Superintendent must consider whether N.J.S.A. 18A:8-1 prohibits withdrawal because Loch Arbour is a village instead of some other form of municipal government. That statute provides that each municipality constitutes a separate school district unless consolidated or regionalized under Chapter 18A:8, and "except that each incorporated village shall remain part of the district in which it is situated at the time of its incorporation."<sup>23</sup> Properly understood, the statute only requires that Loch Arbour remain part of OTSD at the time Loch Arbour severed itself from Ocean Township in 1957. Both the plain language of N.J.S.A. 18A:8-4 and the legislative history of the statutes demonstrate that Loch Arbour has the right to withdraw from the OTSD subsequent to incorporation.

To start with plain language, N.J.S.A. 18A:8-4 states that "whenever a municipality" is divided into two or more municipalities, the single undivided district continues unless and until divided as the statute provides. "Whenever a municipality is divided" broadly refers to all circumstances when a municipality is divided. The statute does not differentiate between villages and other forms of municipality. It refers comprehensively to "a municipality" divided into "two or more municipalities" without regard to whether one of them is a village or any other form. This language is therefore broad enough to include the division of a municipality into a

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<sup>23</sup> See note 4, *supra*.

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township and an incorporated village, as occurred when the Village of Loch Arbour was incorporated separately from Ocean Township. All portions of chapter 18A:8 must be read together and harmonized as a whole in light of the general intentions of the act. See generally *Perez v. Zagami LLC*, 218 N.J. 202, 211-12 (2014); *Hubner v. Spring Valley Equestrian Ctr.*, 203 N.J. 184, 194-95 (2003). When § 18:8A-1 is read together with § 18A:8-4, the exception for incorporated villages is seen to be limited to the time of first incorporation.

The history of the statutes governing municipal government in New Jersey supports this conclusion. The language in N.J.S.A. 18A:8-1 that villages would remain in the school district where they were when incorporated was enacted in 1903. L. 1903, 2d Sp. Sess. c. 1, § 32, 3 New Jersey Comp. Stat. (1709-1910), Schools § 32:

Each township, city, incorporated town and borough shall be a separate school district, but each incorporated village shall remain and be a part of the school district in which said village shall be situate at the time of its incorporation.

In contrast to the present day statute, which uses the term "municipality," § 32 specifically enumerates the different types of municipality.

When § 32 was enacted in 1903, different forms of municipal corporation had different powers of government. Villages, under the Village Act of 1891, had only limited powers of local self-government compared to other municipalities. But the Home Rule Act of 1917, L. 1917, c. 142, created a uniform scheme of municipal powers for all types of municipalities. The Home Rule Act defines a "municipality" to include a "village." N.J.S.A. 40:42-1. It abolished the distinction between villages and other forms of municipality in terms of the power of the local government and gave villages the same powers as any other form of municipality. As explained in *Village of Loch Arbour v. Twp. of Ocean*, 55 N.J. Super. 250, 257 (Law Div. 1959), *aff'd o.b.* 31 N.J. 539 (1960):

The statute, N.J.S.A. 40:157-1 et seq., under which the Village of Loch Arbour was incorporated was, as previously noted, originally enacted in 1891. At that time New Jersey had not yet adopted the Home Rule Act and a village or any municipal corporation had only those powers specifically delegated or given to them either in their charters or by law. This act of 1891 gave only limited powers of local government to the board of trustees of a village incorporated thereunder. Since that time New Jersey has adopted the Home Rule Act, N.J.S.A. 40:42-1 et seq., and a village so incorporated today is endowed with not only the limited powers expressly granted but also with all of the powers granted to municipalities by the Home Rule Act.



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Because a village stood on an equal footing with any other form of municipal government after the enactment of the Home Rule Act, the reason to bind it permanently to the municipality from which it was severed disappeared.

The equality of villages with all other forms of municipality appears in the successive amendments to the predecessors of N.J.S.A. 18A:8-4 that authorize the separation of school districts after the separation of municipalities. The process for dividing school districts after division of a municipality, now N.J.S.A. 18A:8-4 through 24, was created in 1924, after the enactment of the Home Rule Act gave all municipalities uniform powers. That year, L. 1924, c. 191, 1925 Comp. Stat. Supp. § 285-32, added a proviso immediately after the initial sentence of § 32 quoted above:

Each township, city, incorporated town and borough shall be a separate school district, but each incorporated village shall remain and be a part of the school district in which said village shall be situate at the time of its incorporation. *Provided, however,* that from and after the passage of this act whenever a municipality heretofore or hereafter shall under the authorization of a legislative enactment been divided into two or more smaller municipalities, such municipalities shall remain and constitute but one school district until such time as at an election duly called in the manner hereinafter provided it shall be determined by a majority vote of the inhabitants of either or any of the municipalities comprising the school district that one or more of such municipalities shall separate and constitute separate school districts. [Emphasis in original].

The remainder of the 1924 amendment deals with the procedure for conducting the election. The proviso for separation modifies the initial sentence, including the requirement that a village remain part of the municipality from which it was created.

In 1937, the first sentence of § 32 was codified as N.J.S.A. 18:5-1, providing as follows:

Each township, city, incorporated town and borough shall be a separate school district except as provided in section 18:5-2 of this title, but each incorporated village shall remain and be a part of the school district in which it is situated at the time of its incorporation.

The second sentence of § 32, incorporating the 1924 amendment, became N.J.S.A. 18:5-2, which provided:

Whenever a municipality is divided into two or more municipalities, such municipalities shall remain and constitute but one school district until such time as the legal voters of one of such municipalities shall have determined, by an

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election conducted as provided in section 18:5-3 of this title, that such municipality be constituted a separate school district.

However, in L. 1953, c. 417, the Legislature repealed and replaced N.J.S.A. 18:5-1 through 3. In doing so, it abolished any possible restriction on a village using the separation procedure by folding all forms of municipal entity into the term "municipality" without distinction. The new N.J.S.A. 18:5-1.1 tracked the earlier language.:

Each township, city, incorporated town and borough shall be a separate school district, but each incorporated village shall remain and be a part of the school district in which it is situated at the time of its incorporation.

But the new N.J.S.A. 18:5-1.2 applied to all municipalities regardless of form:

Whenever a municipality is divided into two or more municipalities, such municipalities shall remain and constitute but one school district until such time as the legal voters of one of such municipalities shall have determined by an election conducted, as provided in this act, that such municipality shall be constituted a separate school district.

Thereafter, N.J.S.A. 18:5-1.3 through 1.7 provided for the procedure now used in N.J.S.A. 18A:8-4 *et seq.* – request to and report by the County Superintendent, followed by a petition to and approval by a Board of Review, followed by the election. Thus, N.J.S.A. 18:5-1.2 provided that any "municipality" created by the division of another municipality can invoke the procedure to divide the former school district.

The 1967 recodification of Title 18A, L. 1967 c. 271, changed the former N.J.S.A. 18:5-1.1 to read "each municipality" instead of "each township, city, incorporated town and borough," further clarifying that all municipalities were to be treated identically in the statutory scheme that provides for the creation of new school districts. See N.J.S.A. 18A:8-1. It simplified the language of N.J.S.A. 18:5-1.2, recodified as N.J.S.A. 18A:8-4, without substantive change.

This background demonstrates that the 1917 Home Rule Act and the 1924, 1953 and 1967 amendments to original § 32 are in *pari materia* and modify the 1903 statute. Under the Home Rule Act a village, in our case Loch Arbour, has all the rights and powers of a municipality. *Village of Loch Arbour v. Twp. of Ocean*, 55 N.J. Super. 250 (Law Div. 1959), *aff'd o.b.* 31 N.J. 539 (1960). When the Legislature enacted the right to divide a school district in 1924, and in all subsequent modifications and recodifications of that right, it therefore knew that a "municipality" included an incorporated village.

If there was any doubt after 1924 that the division process was available to a village, it was removed by the 1953 amendments, which applied the division process to a "municipality"

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without the 1937 distinction. The 1953 amendments also, for the first time, subjected the process of division to the review and approval of the County Superintendent and the Board of Review instead of leaving it entirely to the will of local voters. In light of that control, and in light of the uniformity of municipal powers under the Home Rule Act, there is no reason to continue the obsolete 1903 distinction between a village and all other forms of municipality. The division process is therefore available to a village regardless of the language of present day N.J.S.A. 18A:8-1.

### **LOCH ARBOUR MAY ESTABLISH A NON-OPERATING SCHOOL DISTRICT**

The separation of Loch Arbour from OTSD pursuant to N.J.S.A. 18A:8-4 *et seq.* will create a new school district in Loch Arbour. Because of the small number of students involved, the district will be non-operating. Loch Arbour intends to send its K-8 students to the West Long Branch district and its high school students to the Shore Regional district under send-receive agreements. Both of the Receiving Districts have indicated that they have available capacity and that they are willing to enter send-receive agreements with the Commissioner's consent. Under a send-receive agreement, Loch Arbour would contribute an agreed amount up to the maximum tuition allowed by N.J.S.A. 18A:8-39, which caps tuition at the receiving district's cost per pupil.

There is no legal obstacle to establishing a non-operating school district in Loch Arbour. It is true that N.J.S.A. 18A:8-43 and 44 require a County Superintendent to merge a "non-operating" district into the receiving district. However, N.J.S.A. 18A:8-43 defines a "non-operating district" as one "that is not operating schools on the effective date of P.L.2009, c.78," which was June 30, 2009. Because the Loch Arbour district did not exist as of that date, it does not fall within the definition of a non-operating district. Creation of a non-operating school district with a send-receive relationship after 2009 was upheld in *Edmondson v. Bd. of Educ.*, 424 N.J. Super. 256 (App. Div. 2012). In *Edmondson*, the Elmer school district leased its one remaining school building to the Pittsgrove district and entered a send-receive agreement with Pittsgrove for its remaining students.<sup>24</sup> Elmer would operate no schools. Affirming the Commissioner, the Appellate Division held that the two school boards had statutory authority to enter the lease and the send-receive agreement. It then held that N.J.S.A. 18A:8-43, *et seq.* did not prohibit the post-2009 creation of a non-operating district. *Edmondson*, 424 N.J. Super. at 265-66. *Edmondson* therefore permits the creation of Loch Arbour as a non-operating district under N.J.S.A. 18A:8-4, *et seq.* without automatic merger into a receiving district.

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<sup>24</sup> Before 2010 Elmer had sent its 5 through 12 students to Pittsgrove and educated K-4 in its elementary school. The 2010 agreement sent the K-4 students to Pittsgrove and reallocated students among the available school buildings. *Edmondson*, 424 N.J. Super. at 259.

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**ALLOWING LOCH ARBOUR TO CREATE A NON-OPERATING SCHOOL DISTRICT WILL NOT HARM EITHER OTSD OR LOCH ARBOUR'S STUDENTS**

N.J.S.A. 18A:8-11 allows a municipality to oppose an application for withdrawal on four grounds: (i) that withdrawal will impose an excessive debt burden upon it; (ii) that it can no longer maintain an efficient school district after withdrawal; (iii) that there will be insufficient pupils left to maintain a properly graded school district after withdrawal; or (iv) any other reason. The Supreme Court has held that "other reasons" include that withdrawal will have an adverse educational impact by changing the racial balance to which students in both the withdrawing and remaining municipalities are exposed. See *In re Petition for Authorization to Conduct a Referendum on the Withdrawal of North Haledon School District*, 181 N.J. 164, 179-84 (2004).

Loch Arbour contributes only 3% of the school property tax levy of OTSD, including revenue for debt service. The withdrawal of Loch Arbour and its 16 students from OTSD more than complies with these standards. As demonstrated above, OTSD will be left with all its physical facilities and with more than 3,650 students; it will lose no more than 3 Loch Arbour students in any grade, and it will be relieved of the burden of two special needs students. The financial impact on the OTSD system will be approximately 3% of its tax levy. To replace that amount, the taxes on the average Ocean Township residence would increase by between \$160 to \$180 per year, depending on special education savings and on whether Loch Arbour continues to contribute to debt service. While this increase is probably unwelcome, it falls far short of preventing OTSD from maintaining an efficient system at a reasonable cost, which is the statutory standard. Because OTSD will keep all physical facilities and 99.5% of its enrollment, withdrawal of Loch Arbour will not leave OTSD with an excessive debt burden in proportion to its enrollment or its resources, even if Loch Arbour makes no continuing contribution to debt service. Educationally, the Receiving Districts are at least as high quality as OTSD in terms of performance and enrichment opportunities. Withdrawal of Loch Arbour will not affect the racial balance of either OTSD or the Receiving Districts, and its students will experience approximately the same diversity in the Receiving Districts as they have in OTSD. While imposing only slight costs on Ocean Township, Loch Arbour's withdrawal from OTSD in order to enter a send-receive relationship with the Receiving Districts will allow it to educate its students in an equal educational environment at an immense savings.

Dr. Lester Richens  
November 24, 2015  
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CONCLUSION

For the forgoing reasons, and those stated in the Financial and Educational Impact Analysis prepared by CGR Group, the Village of Loch Arbour respectfully requests that the County Superintendent report pursuant to N.J.S.A. 18A:8-6 that the withdrawal of Loch Arbour from the Ocean Township School District and the establishment of a non-operating school district in Loch Arbour is both feasible and advisable.

Respectfully yours,

SILLS CUMMIS & GROSS P.C.

By: 

JAMES M. HIRSCHHORN

Attorneys for the Village of Loch  
Arbour

JMH;mb  
Enclosure

VILLAGE OF LOCH ARBOUR  
RESOLUTION 2015-88

WHEREAS, the Village of Loch Arbour is a constituent municipality of the Ocean Township School district, together with Ocean Township; and

WHEREAS, the Board of Commissioners of the Village of Loch Arbour is desirous of resolving the present situation in which the taxpayers Loch Arbour taxpayers are compelled to pay sums per pupil in Ocean Township School District that are greatly disproportionate to the amount per pupil paid by taxpayers in Ocean Township; and

WHEREAS, the Board of Commissioners believes that the children of Loch Arbour can receive an education equal in quality to that received in the Ocean Township School District at a substantially reduced cost per pupil through send-recvle agreements with the West Long Branch School District and the Shore Regional High School District; and

WHEREAS, it will be necessary for the Village of Loch Arbour to obtain approval to separate from the Ocean Township School District and to establish a Village of Loch Arbour Board of Education pursuant to N.J.S.A. 18A:8-4 *et seq.* in order to enter the aforesaid send-recvle agreements; and

WHEREAS, the initial measure to obtain the aforesaid approval is to request by resolution that the Monmouth County Executive Superintendent of Schools investigate and report on the advisability and the educational and financial effect of the proposed separation of the Village of Loch Arbour from the Ocean Township School District pursuant to N.J.S.A. 18A:8-5 and 6;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Village of Loch Arbour that the Village of Loch Arbour hereby requests, pursuant to N.J.S.A. 18A:8-5 that the Monmouth County Executive Superintendent of Schools investigate and report within 30 days pursuant to N.J.S.A. 18A:8-6; on the advisability and the educational and financial effect of the proposed separation of the Village of Loch Arbour from the Ocean Township School District and the establishment of a Board of Education for the Village of Loch Arbour; and

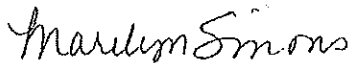
BE IT FURTHER RESOLVED that in support thereof the Village of Loch Arbour submits to the Executive Superintendent and incorporates herein the attached Financial and Educational Impact Analysis Report prepared by CGR Programming Solutions and supporting Memorandum of Law prepared by the law firm of Sills Cummis & Gross P.C.

Recorded Vote:

	AYE	NAY	ABSENT	ABSTAIN
Commissioner Cheswick	x			
Commissioner D' Angelo	x			
Mayor Fericola	x			

CERTIFICATION

I, Marilyn Simons, Deputy Clerk of the VILLAGE OF LOCH ARBOUR, do hereby certify the above to be a true and exact copy of the resolution adopted by the Board of Commissioners of the Village of Loch Arbour at their Special Meeting held the 19<sup>th</sup> day of November, 2015.



Marilyn Simons, Deputy Clerk  
Village of Loch Arbour