

128-01

April 19, 2001

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Dear Parties:

This matter was opened through the filing of a Petition of Appeal entitled *John Morelli v. New Jersey State Juvenile Justice Commission*, Agency Dkt. No. 439-12/00 on December 7, 2000, wherein petitioner seeks to have expunged a psychiatric evaluation, conducted on June 23, 2000 as part of a fitness for duty evaluation. Mr. Morelli (petitioner) filed a grievance with the Juvenile Justice Commission (JJC), which employs him as a learning disabilities teacher-consultant, alleging that its directive that he submit to a psychiatric evaluation “abrogated [his] basic rights and entitlements (as a tenured employee) under *N.J.S.A. 18A*” and he seeks a remedy wherein the JJC “will immediately cease and desist abrogation and circumvention of *N.J.S.A. 18A* relevant to tenured employees.” (Petition, Attachment 3). According to petitioner, “a settlement was reached at the grievance hearing providing that the written evaluation would be classified as confidential and would be filed in the Juvenile Justice Medical Records and not placed in his personnel file. The grievance was subsequently withdrawn by [him].” (*Id.* at 1)

On December 11, 2000, petitioner was notified by the Director of Controversies and Disputes that there were deficiencies in the petition which had to be remedied pursuant to *N.J.A.C. 6A:3-1.1 et seq.*, *i.e.*, the filing of a notarized verification executed by petitioner and proof of service of the petition on the Attorney General, given that a State agency is the respondent. The petition was perfected on January 5, 2001. The JJC was granted an extension to

file its Answer to the petition until February 14, 2001, on which date it submitted a Motion to Dismiss in lieu of filing an Answer to the petition, together with a brief in support thereof. Petitioner's reply to the JJC's submissions was filed on March 12, 2001. The JJC submitted its reply to petitioner's filing on March 21, 2001.

In his pleadings, petitioner avers that the Commissioner of Education has the authority under school laws to grant his requested relief because he is a tenured employee. He cites in support of his position the provisions of *N.J.S.A. 18A:16-2*¹ which, he asserts, entitle him to be provided a statement of the reasons for the evaluation request and that he be given an opportunity to request a hearing and to appeal an adverse decision. *Kochman v. Keansburg Bd. of Ed.*, 124 *N.J. Super.* 203 (Ch. Div. 1973). The JJC rejects petitioner's legal argument, avowing that petitioner is not an employee of a board of education, but is employed by the Juvenile Justice Commission, a State commission created in 1995 pursuant to the provisions of *N.J.S.A. 52:17B-169 et seq.* to be the single State agency responsible for operating State services and sanctions for juveniles involved with the juvenile justice system. The JJC further maintains that the school law provisions relied on by petitioner have no application to a fitness for duty evaluation of an employee in State service because such evaluation is governed by the applicable provisions of Title 11A of the New Jersey Statutes and implementing regulations set forth at *N.J.A.C. 4A*. As such, it avers, this matter is not one which arises under school laws; therefore, the Commissioner of Education is without jurisdiction to decide it.

More specifically, the JJC contends "the petition was not timely filed, the matter is governed by the terms of a final and binding settlement agreement of a prior grievance proceeding concerning identical allegations brought pursuant to the provisions of a collective bargaining agreement, and the Commissioner is without authority to order the relief sought by petitioner." (Brief in Support of Motion to Dismiss at 2) The JJC also notes, *inter alia*, that, as required by law, it maintains all medical records and reports of its employees in separate individual confidential medical files and they are not part of an individual's personnel file.

As to its claim that the petition was untimely filed, the JJC argues that the petition must be dismissed because, contrary to the provisions of *N.J.A.C. 6A:3-1.3(d)*, it was filed more than 90 days after it advised petitioner to report to a fitness for duty evaluation and after petitioner submitted to the evaluation on June 23, 2000. It further argues, *inter alia*, that petitioner's settlement of his grievance under the collective negotiations agreement (CNA) was final and binding and forecloses any action by the Commissioner. Of this, the JJC states:

A Step I hearing was held on [petitioner's] grievance and the matter was settled. The settlement did not require the [JJC] to take any action.

¹ *N.J.S.A. 18A:16-2* permits a board of education to require an employee to undergo psychiatric or physical examinations, whenever, in the board's judgment, an employee shows evidence of deviation from normal, physical or mental health.

Article IV of the CNA states that the purpose of the grievance procedure “is to resolve grievances and to assure prompt and equitable solutions of problems arising from the administration of the Agreement, or other conditions of employment by providing the exclusive vehicle set forth in the Article for the settlement of employee grievances... .” (CNA, Article IV, ¶ B 1.) Pursuant to the provisions of Article IV, settlement of a non-contractual grievance at Step I is final, binding and non-appealable. (CNA, Article IV, ¶ D 10b)

Clearly, the settlement of the Step I grievance in this matter was final and binding with respect to the matter set forth in the petition. Mr. Morelli may not now relitigate the matter before the Commissioner of Education. Accordingly, the petition must be dismissed because the grievance settlement was final and binding. (Brief in Support of Motion to Dismiss at 4-5)

In response, petitioner avers that his petition was timely filed, urging that his “initial letter of appeal” was filed with the Commissioner on September 15, 2000, within the 90-days filing requirement of *N.J.A.C.* 6A:3-1.3(d). He further avers that a response to his “initial letter of appeal” was received by way of a letter dated October 13, 2000, from the State Department of Education’s (Department) Director of Controversies and Disputes, which delineated the mechanism and procedure for filing an appeal, which he did on November 29, 2000. Further, deficiencies in the petition were corrected on January 4, 2001. Thus, it is petitioner’s position that the petition “was filed timely and was within the authority and jurisdiction of the Bureau of Controversies and Disputes since the initial appeal date of September 15, 2000.” (Petitioner’s Brief in Opposition to Motion to Dismiss at 2) Moreover, petitioner asserts that the JJC is incorrect in the claim that the Settlement Agreement to the grievance did not require any action by the JJC and submits in support thereof, a February 21, 2001² notarized letter from the CWA representative at petitioner’s grievance hearing.

Additionally, petitioner urges that the Commissioner reject the JJC’s arguments that the relief sought is beyond the power of the Commissioner to grant and that the matter does not arise under school laws, averring that the JJC’s Office of Education functions as a district board of education and cites as support the Department’s regulations relating to Core Curriculum Standards and Assessment, Scope and Definition, *N.J.A.C.* 6A:8-1.2(b)–1.3. Petitioner also avows that the Commissioner has the authority to hear and decide all controversies and disputes

² The February 21, 2001 letter of Bruce Fralinger, CWA Staff Representative, was not part of the Petition of Appeal submitted by Mr. Morelli. The letter avers that Mr. Fralinger received a telephone call from the hearing officer a few days after petitioner’s grievance hearing who advised Mr. Fralinger that the JJC would, in the future, adhere to Title 18A in such matters, that a notice to this effect would be distributed as requested and that the psychiatric evaluation would not be expunged but would be secured as confidential. Mr. Fralinger indicates that neither he nor petitioner received anything to that effect in writing nor was there a notice distributed by the JJC. In its reply papers, the JJC denies that there was any action to be taken by it as a result of the grievance, except placing the psychiatric report in the JJC’s confidential medical record files.

arising under school laws in accordance with *N.J.S.A.* 18A:6-9 and *N.J.A.C.* 6A:3-1.14(a) and urges that:

Mr. Morelli is a State employee and a tenured Teaching Staff Member. He is guaranteed the right of appeal granted to any tenured teacher. The directive given to Mr. Morelli by [the] JJC to submit to a psychiatric evaluation was performed under the provisions of school laws. The appropriate forum for the resolution of this dispute rests with the Commissioner of Education. (Petitioner's Brief in Opposition to Motion to Dismiss at 4)

Upon a thorough examination of the papers submitted by the parties, I find and determine that even if I were to accept, *arguendo*, petitioner's position with respect to the timeliness of his petition, petitioner fails in his legal arguments that the JJC violated his tenure rights and *N.J.S.A.* 18A:16-2 for the reasons set forth below.

As petitioner himself states above, he is a State employee. As a State employee, petitioner's employment rights and responsibilities are controlled by the provisions of Title 11A and the implementing regulations set forth in Title 4A, except for the provisions of *N.J.S.A.* 18A:7B-6, wherein the Legislature mandated that the salary schedules for teaching staff members in State institutions/facilities be comparable to positions in the Department of Education and the Marie Katzenbach School for the Deaf, and *N.J.S.A.* 18A:60, which granted tenure protection to such staff.

As a State employee working as a teacher in a State institution, petitioner was granted tenure pursuant to *L. 1986, c. 158*. *N.J.S.A.* 18A:60-1.1 states:

The Legislature hereby finds that it is in the best interest of the State of New Jersey to provide job security during good behavior and efficiency for the teachers and other certified professional educators employed in State institutions within the Department of Corrections and the Department of Human Services. To accomplish this goal it is appropriate to provide tenure protection for such professionals teaching in such State institutions *subject to the provisions set forth in this act*. (emphasis supplied)

The specific job protections set forth in the act are thus circumscribed by the statute itself and include protection against dismissal or reduction in salary, except for inefficiency, incapacity, conduct unbecoming a teacher, or other just cause (*N.J.S.A.* 18A:60-2) and tenure and seniority rights in the event of a reduction in the number of positions (*N.J.S.A.* 18A:60-3). Therefore, the tenure rights petitioner alludes to in his petition are limited strictly to those set forth in the statutory provisions of Chapter 60 of Title 18A and its implementing regulations.

Had the Legislature intended to extend *additional* rights to this particular category of State employees, it would have so specified in the statute itself or in another enactment. However, significantly, the Legislature has *not* enacted any statutory provision which accords to teachers in State institutions all of the rights, responsibilities and benefits of teaching staff members employed by public school boards of education, as it did in *N.J.S.A. 18A:6-65*, wherein it authorized the board of directors of an educational services commission to employ teaching staff members, *subject to the provisions of Title 18A for the employment of personnel for public school districts* and *N.J.S.A. 18A:6-66*, which specifically states that “[p]ersons holding office, position or employment under a board of directors of [an educational services commission] shall enjoy the same rights and benefits as are enjoyed by persons holding office, position, or employment under a public school district board of education.” See also *N.J.S.A. 18A:46-26(c)*, *46-43* and *54-22* which specifically accord all the rights and privileges of teaching staff members by boards of education of public school districts to teaching staff members in schools operated by jointure commissions, county special services districts and county vocational school districts, respectively.

In so holding, I reject the arguments advanced by petitioner that because the JJC “functions as a district board of education” pursuant to *N.J.A.C. 6A:8-1.2(b)–1.3* and because he is a tenured teaching staff member, the provisions of *N.J.S.A. 18A:16-2* therefore apply in the instant matter. The regulations petitioner cites, as well as those set forth in *N.J.A.C. 6:9* (Educational Programs for Pupils in State Facilities), relate to rules and regulations promulgated by the State Board of Education, as mandated by *N.J.S.A. 18A:7B-5*, to ensure that a thorough and efficient system of *educational programs and services* is provided to the children in State facilities. Neither these regulations nor *N.J.S.A. 18A:60-1 et seq.* confer on State employees who are tenured teachers in State institutions the employment rights and benefits contained in Title 18A generally with respect to teaching staff members employed by a public school district board of education. As the JJC correctly argues, the application of the definition of “district boards of education” set forth in Chapter 8 of Title 6A of the Administrative Code is, by its own terms, limited specifically to that chapter.³ Similarly, the quasi-board role played by the JJC in the filing and prosecution of tenure charges is specific to that chapter.

Consequently, I fully agree with the JJC’s legal arguments that the Commissioner of Education lacks jurisdiction over the instant matter, since it is controlled by neither education statute nor rules and regulations of the State Board of Education, but is instead controlled by applicable statutes and regulations for employees in State service, Title 11A and *N.J.A.C. 4A*.

³ *N.J.A.C. 6A:8-1.2* which delineates the scope of the Core Curriculum Content Standards states that the standards apply to all students enrolled in public education programs in the State of New Jersey and that “*Throughout this chapter, unless otherwise noted, ‘district boards of education’ shall be interpreted to include all providers of publicly funded elementary, secondary, and adult high school education programs, including county vocational schools, educational services commissions, jointure commissions, charter schools, regional day schools, adult high schools, county special services school districts, the Marie H. Katzenbach School for the Deaf, the Department of Human Services, the Department of Corrections, the Juvenile Justice Commission, State facilities, organizations, and approved private schools for the disabled.*” (emphasis supplied) (*N.J.A.C. 6A:8-1.2(b)*)

Mr. Waller and Mr. Franzini
April 18, 2001
Page 6

Accordingly, the Petition of Appeal is hereby dismissed.⁴

Sincerely,

Vito A. Gagliardi, Sr.
Commissioner

c: Bruce D. Stout, Juvenile Justice Commission Executive Director

⁴ This decision may be appealed to the State Board of Education, pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.