

379-01

STEPHANIE I. RYAN, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE DEPARTMENT OF : DECISION
EDUCATION, DR. THOMAS J. RUBINO, :
COUNTY SUPERINTENDENT, DAVID HESPE, :
COMMISSIONER, ELLEN SCHECHTER, :
ASSISTANT COMMISSIONER, :
RESPONDENTS. :

SYNOPSIS

Petitioner, retired teacher, alleged respondents failed to enforce New Jersey mandates by allowing the Trenton Board of Education to breach Special Review Assessment guidelines in its administration of the program.

The ALJ found that petitioner failed to meet the administrative code definition of interested person in a controversy. *N.J.A.C.* 6A:3-1.2 defines interested persons as persons who will be substantially, specifically and directly affected by the outcome of a controversy. The ALJ concluded that petitioner did not have legal standing to bring the present petition and that, even if she did, there was no relief that he might order. Petition was dismissed.

In lieu of exceptions, petitioner submitted a motion to amend her pleadings. Finding no legal authority for pleading amendment subsequent to the issuance of an initial decision and, even if such lack was not in and of itself dispositive, that interests of efficiency, expediency and the prevention of undue prejudice preclude acceptance of amendment of pleadings at such a late stage, the Commissioner denied petitioner's motion. The Commissioner adopted the findings and determination in the Initial Decision as his own.

October 15, 2001

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 10411-00
AGENCY DKT. NO. 402-11/00

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner filed no exceptions but, rather, submitted a “Request for Motion to File an ‘Amended Initial Complaint.’” In reply, the Board filed an objection to such request. Petitioner tendered a rejoinder to the Board’s responsive submission.

Preliminarily, the Commissioner determines that petitioner’s request to amend her pleadings, at this late stage in these proceedings, must be denied. It is noted that authorization for amendment of pleadings is derived from two specific rules, *N.J.A.C. 6A:3-1.7* and *N.J.A.C. 1:1-6.2*, whose respective applicability is determined by the stage of the proceedings. First, *N.J.A.C. 6A:3-1.7* specifies:

*Prior to the transmittal of any matter to the OAL, the Commissioner may order the amendment of any petition or answer, or any petitioner may amend the petition, and any respondent may amend the answer; provided, however, that once an answer or other responsive pleading is filed, an amendment to a petition may be made only with the consent of each adverse party or by leave of the Commissioner upon written application. ***(emphasis supplied)*

Subsequent to the transmittal of a matter to the OAL, amendment of pleadings is governed by *N.J.A.C.*

1:1-6.2(a) which states:

Unless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, *an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice.* (emphasis supplied)

While both of these provisions clearly contemplate pleading revisions during the course of the proceedings of a contested case, there is no corresponding regulatory authority for amendment subsequent to an OAL hearing and the issuance of an Initial Decision. Even assuming, *arguendo*, that this absence of legal authority is not, in and of itself, dispositive, the Commissioner finds and concludes interests of efficiency, expediency and the prevention of undue prejudice preclude a process which would essentially operate as vehicle to allow unsuccessful litigants to cure deficiencies and relitigate their cases. Consequently, petitioner's request to amend her pleadings, submitted in lieu of exceptions to the Initial Decision, is hereby denied.

Turning to the substance of the matter before him here, upon careful and independent review of the record, the Commissioner concurs with the findings and conclusion of the Administrative Law Judge that the within petitioner lacks the requisite legal standing to maintain this action.

Accordingly, the Initial Decision of the OAL is affirmed for the reasons stated therein and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: October 15, 2001

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* This decision, as the Commissioner's final determination 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:2-1.1 *et seq.* Commissioner decisions are deemed filed three days after the date of mailing to the parties.