

AGENCY DKT. NO. 59-2/08

EMILY DIAZ, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF : DECISION
THE TOWNSHIP OF MAHWAH,
BERGEN COUNTY, :
RESPONDENT. :

This matter was initiated by way of petition of appeal filed with the Commissioner of Education (Commissioner) on February 20, 2008. On February 26, 2008, the parties were directed to submit briefs discussing whether the Commissioner has jurisdiction over the issues articulated in the petition. After thorough consideration of the parties' undisputed factual representations and their legal arguments, the Commissioner is not persuaded that the jurisdictional grounds necessary for her adjudication of this case are present.

The "First Cause" of the petition recites that petitioner, a tenured teacher, is the "target of a disciplinary proceeding before the superintendent's designee." This allegation is made in reliance on a "Notification of Concern – Level 2" to petitioner from her World Language Supervisor, Mimi Lezanski, discussing petitioner's actions in pressuring a student to intervene in a dialogue between petitioner and Lezanski about petitioner's teaching methods. In claiming that she is entitled to legal counsel of her choosing at all meetings concerning the "Notification of Concern," petitioner references Article 11 (Grievances), Sec. C (3) of the collective bargaining agreement (CBA) between respondent and its staff. That provision states

that the grievant “shall have the right to representation of his/her own choosing at the Superintendent’s level and above in the procedure, after first having discussed the grievance with his/her supervisor, if relevant, and then his/her principal.” Petitioner also claims a violation of the constitutional rights of substantive and procedural due process.

The “Second Cause” alleges that petitioner is not being provided with certain documents, such as a letter or letters written by the student from whom petitioner requested assistance. Petitioner has, however, attached an “Exhibit B” to the petition, which is a letter from respondent’s counsel to petitioner’s counsel, stating that although petitioner did not have the right to legal counsel at meetings regarding the Notice of Concern, she could access her personnel file and provide her counsel with copies of documents contained therein.

At the outset, the petitioner is reminded that the Commissioner has no jurisdiction over contractual disputes. *Integrated Security Technology v. Board of Education of the Township of Hardyston, et al.*, Commissioner Decision No. 433-07, November 7, 2007; *Vitacco v. Lincoln Park Board of Education*, Commissioner Decision No. 312-98, July 17, 1998. Thus, she will make no findings on the meaning or application of Article 11 of the CBA.

Second, the facts before the Commissioner reveal that the “process” which has taken place regarding petitioner is set forth in Article 12 of the CBA, entitled “Notification of Concern.” This article of the CBA addresses concerns “about any aspect of an employee’s responsibilities outside the instructional and evaluation process.” As stated above, the Commissioner cannot be the arbiter of controversies that arise concerning the rights and responsibilities of the parties under such contractual provisions as Article 12 of the CBA.

Third, there are no facts before the Commissioner that would support the need for adjudication of constitutional issues. In petitioner’s letter brief dated March 26, 2008, she has

stated that her petition does not appeal the increment withholding which was apparently imposed upon her for the 2007-2008 school year. Nor have any tenure proceedings been filed against her. Thus, there are currently no property or other fundamental rights in jeopardy. Due process rights are consequently not implicated.

Further, the Commissioner does not have jurisdiction to adjudicate constitutional issues unless they are inextricably intertwined with specific violations of school law (*N.J.S.A.18A:1-1 et seq.*) – the area of the Commissioner’s expertise. *Valent v. New Jersey State Board of Education*, 114 *N.J. Super.* 63, 69 (Ch. Div. 1971). As petitioner has identified no specific violations of particular provisions of the education laws, the Commissioner has no grounds upon which to address constitutional claims.

Accordingly, the petition is dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: April 25, 2008

Date of Mailing: April 25, 2008

* 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.*