

#16-12 (OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu9672-10_1.html)

SONJA MC KENNA AND	:	
MARGARET MAC MURREN,	:	
	:	
PETITIONERS,		COMMISSIONER OF EDUCATION
	:	
V.		DECISION
	:	
BOARD OF EDUCATION OF THE ANDOVER	:	
REGIONAL HIGH SCHOOL DISTRICT,	:	
SUSSEX COUNTY,	:	
RESPONDENT.	:	

SYNOPSIS

Petitioners – formerly tenured members of the respondent Board’s child study team (CST) – challenged the Board’s abolition of the CST and its decision to enter into an agreement with the Sussex County Educational Services Commission (Commission) to provide CST services. Petitioners alleged that the agreement contains no maximum cost and is in violation of applicable statutes and regulations. The petitioners further alleged that these defects rendered the abolition of their positions invalid. Respondent filed a motion for summary decision, alleging that the petition was time-barred and that petitioners lack standing to bring this action.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact, and the matter is ripe for summary judgment; the facts giving rise to the petitioners’ cause of action are the terms of the Board’s agreement with the Commission, final notice of which was not received until July 15, 2010; the petition was therefore filed within the 90-day statutory period; however, to establish standing, a litigant must demonstrate a sufficient stake in the outcome of the proceedings; petitioners in this case have not shown that they have a sufficient stake, or would be directly affected by the outcome of this controversy; courts have consistently ruled that a RIF, if done for reasons of economy, is entirely within the authority of the board; petitioners here have not alleged that the RIF was instituted in bad faith, and without such an allegation, a RIF will not be invalidated. Accordingly, the ALJ determined to grant respondent’s motion for summary judgment; and denied petitioners’ appeal for lack of standing.

Upon a thorough and independent review of the record, the Commissioner concurred with the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter. Accordingly, the petition was dismissed.

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.

January 17, 2012

OAL DKT. NO. EDU 9672-10
AGENCY DKT. NO. 405-8/10

SONJA MC KENNA AND	:	
MARGARET MAC MURREN,	:	
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PETITIONERS,	:	COMMISSIONER OF EDUCATION
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners' exceptions and the Board's reply thereto – filed in accordance with the provisions of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in reaching his determination here.

Petitioners' exceptions essentially replicate their arguments advanced before the Administrative Law Judge (ALJ) below. In that it is determined that the ALJ fully considered and addressed these arguments in her decision, they merit no further discussion here.

Upon his review, the Commissioner initially agrees with the ALJ that the facts giving rise to petitioners' cause of action in this matter are the terms of the Board's Shared Services Agreement Contract with the Sussex County Educational Services Commission and, as such – for the reasons presented on pages 9-10 of her decision – he concludes that the instant petition of appeal was timely filed. This said, the Commissioner further concurs with the ALJ – for the reasons comprehensively articulated in her Initial Decision – that summary decision is appropriately granted to the Board as the petitioners here lack standing to bring their claims.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 17, 2012

Date of Mailing: January 18, 2012

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).