

#158-15 (OAL Decision: Not yet available online)

MARGARET GOODE, :
PETITIONER : COMMISSIONER OF EDUCATION
V. : DECISION
KEITH MILES AND :
HYE-WON GEHRING, :
RESPONDENTS. :
_____ :

SYNOPSIS

The petitioner – a tenured teaching staff member employed in the Camden City School District – appealed the actions of the respondent school administrators relative to her teacher evaluations for the 2013-2014 school year. The petitioner sought, *inter alia*, the correction of alleged errors in respondents’ evaluations of her performance, including the removal of “unfair, opinionated and biased Partially Effective and Ineffective judgments” that resulted in petitioner’s classification as a “Partially Effective” educator, pursuant to the Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act, *N.J.S.A.* 18A:6-123b and *N.J.A.C.* 6A:10-4.2; assurances regarding the training being provided to principals and evaluators to help teachers “grow and thrive in their classroom”; and a credit of three sick days that she purported to have used to deal with the stress caused by respondents’ evaluations. Respondents moved to dismiss the petition as untimely, and because petitioner does not raise a cognizable claim over which the Commissioner has jurisdiction.

The ALJ found, *inter alia*, that: the petition was timely filed under the 90-day rule; all of the allegations set forth in the petitioner’s appeal, and all of the relief requested therein, arise from the petitioner’s 2013-2014 teacher performance evaluations; teacher evaluations are governed by the provisions of the TEACHNJ Act, and the corresponding regulations permit only a narrow review by the Commissioner of an annual summative rating of a teacher prior to the filing of tenure charges, and only under circumstances that are not present in the case at hand; petitioner therefore has asserted no cause of action arising under the TEACHNJ Act; further, the appeal process under TEACHNJ regulations requires the teacher to first appeal the evaluation to the chief school administrator, which petitioner did not do; and petitioner asserted no other claim over which the Commissioner has jurisdiction. Accordingly, the ALJ dismissed the petition for lack of jurisdiction.

Upon comprehensive review of the record, the Commissioner concurred with the ALJ that the matter is appropriately dismissed for failure to advance a cause of action over which the Commissioner has jurisdiction. Accordingly, the Commissioner adopted the Initial Decision as the final decision in this matter. 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.
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May 14, 2015

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The record in this matter, along with the Initial Decision of the Office of Administrative Law, have been reviewed. None of the parties filed exceptions as permitted under *N.J.A.C.* 1:1-18.4. Upon full and independent consideration, the Commissioner concurs with the determination of the Administrative Law Judge (ALJ) that petitioner has not advanced a cause of action over which the Commissioner has jurisdiction.

Petitioner – a tenured teaching staff member – alleges that respondents acted improperly when conducting her annual summative educator evaluation during the 2013-2014 school year. Primarily, petitioner requests “the correction of errors in [her] evaluations ‘by removing unfair, opinionated and biased Partially Effective and Ineffective judgments that [led] to [her] being categorized as a Partially Effective’ educator.”¹ (Initial Decision at 2) No tenure charges have been filed against her. Respondents filed a motion to dismiss in lieu of answer, arguing that: (1) the petition lacks a cognizable claim over which the Commissioner has jurisdiction and (2) that the petition was filed beyond the 90-day regulatory period. Ultimately, the Administrative Law Judge (ALJ) granted respondents’ motion and dismissed the petition because the Commissioner lacks jurisdiction, but rejected the argument that the petition was untimely filed.

¹Petitioner also sought removal of a “write-up” by respondent Miles from her personnel file, “assurance” that administrators were being properly trained to use the Danielson framework, and a credit of three sick days used due to stress following receipt of her evaluation. (Initial Decision at 2) Absent jurisdiction over a cognizable claim, the Commissioner lacks authority to award the remedies requested.

Educator evaluations are governed by the Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act, *N.J.S.A. 18A:6A-117 et seq.*, and the related regulations, *N.J.A.C. 6A:10-1.1 et seq.* Enacted in 2012, the Act aims to “raise student achievement by improving instruction through the adoption of evaluations that provide specific feedback to educators, inform the provision of aligned professional development, and inform personnel decisions.” *N.J.S.A. 18A:6-118.* The Act empowers school districts to develop their own evaluation rubrics to assess teacher effectiveness, subject to review and approval by the Commissioner. *N.J.S.A. 18A:6-122.* Under the Act, evaluation rubrics must incorporate student growth objectives, or “multiple objective measures of student learning that use student growth from one year’s measure to the next year’s measure.” *N.J.S.A. 18A:6-123b; N.J.A.C. 6A:10-4.2.* In addition, the evaluation standards adopted by districts must – at a minimum – include four defined annual rating categories for teachers: ineffective, partially effective, effective, and highly effective. *Ibid.*

Through implementation of a new educator evaluation system, TEACHNJ fundamentally changed the process by which teachers earn and maintain tenure. Specifically, the annual summative rating awarded to a teacher has a direct impact on whether the district must file tenure charges under the Act. For example, if a teacher receives a rating of either ineffective or partially effective – and subsequently receives a rating of ineffective the following year – the Act requires the district superintendent to forward a written tenure charge of inefficiency to the Commissioner against that teacher. *N.J.S.A. 18A:6-17.3a(1).* Or, if a teacher receives a rating of partially effective for two consecutive years, the district superintendent is required to forward a tenure charge of inefficiency to the Commissioner, except upon a finding of exceptional circumstances that would permit deferment pending the next annual evaluation. *N.J.S.A. 18A:6-17.3a(2).*

Once tenure charges are filed, the Act requires the Commissioner to appoint an arbitrator to hear the case unless he determines upon review of the charges that the evaluation process has not been followed. *N.J.S.A. 18A:6-17.3c.* If the Commissioner refers the case to an arbitrator for determination, the arbitrator shall consider whether:

- (1) the employee's evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan;
- (2) there is a mistake of fact in the evaluation;
- (3) the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law; or
- (4) the district's actions were arbitrary and capricious. *N.J.S.A.* 18A:6-17.2a.

If the employee is able to demonstrate that any of the above circumstances occurred, the arbitrator shall then determine if that fact materially affected the outcome of the evaluation. *N.J.S.A.* 18A:6-17.2b. If the fact did not materially affect the outcome, the arbitrator shall render a decision in favor of the board and the employee shall be dismissed. *Ibid.* The arbitrator's final determination is binding and cannot be appealed to the Commissioner. *N.J.S.A.* 18A:6-17.1e.

As indicated by the ALJ in her Initial Decision, TEACHNJ's corresponding regulations permit an exceedingly narrow review by the Commissioner of an annual summative rating prior to the filing of tenure charges – but under circumstances that are not present here. Specifically, *N.J.A.C.* 6A:10-4.2(f) provides that “if a teacher's student growth objective score was the sole cause for an ineffective or partially effective summative rating for the 2013-2014 academic year, the teacher may appeal the summative rating by February 1, 2015, or within 15 school days of receiving the summative rating, whichever is later, to the chief school administrator or designee.” Thereafter, the chief school administrator's determination can be appealed to the Commissioner within 15 days. *Ibid.* In this case, petitioner is not arguing that her student growth objective score (SGO) was the sole cause for her partially effective rating, nor did she seek review of her SGO score from the chief school administrator.² (Initial Decision at 6). Apart from the limited review permitted by *N.J.A.C.* 6A:10-4.2(f), nothing else in the current regulations or the legislative history of TEACHNJ suggests an intent to afford teachers any other opportunity to seek the Commissioner's review of an annual summative rating absent the filing of tenure charges.

²The record reflects that petitioner received the highest possible SGO score – a 4.0.

As a result, the Commissioner fully concurs with the ALJ's determination that petitioner has not advanced a cause of action over which the Commissioner has jurisdiction.³ First, petitioner has acquired tenure and no tenure charges have been lodged against her. Second, the limited appeal provision contained within *N.J.A.C.* 6A:10-4.2(f) is not applicable to these facts. If tenure charges are filed against petitioner in the future, however, the process by which she was evaluated for the 2013-2014 school year will be subject to review by the Commissioner, and – unless he determines that the evaluation process has not been followed – also by the arbitrator appointed to hear the matter, thus affording petitioner due process. *N.J.S.A.* 18A:6-17.3c; *N.J.S.A.* 18A:6-17.2a. Nonetheless, at the present time, petitioner lacks a cognizable cause of action under TEACHNJ; therefore, the Commissioner lacks jurisdiction to award the remedies she seeks.

Accordingly, the Initial Decision of the Office of Administrative Law is adopted, respondents' motion to dismiss is granted, and the petition of appeal is dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: May 15, 2015

Date of Mailing: May 15, 2015

³ To the extent petitioner's allegations might be covered by other statutes or regulations, her remedies lie elsewhere.

⁴This 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).