

PLEASANTECH ACADEMY CHARTER :
SCHOOL EDUCATION ASSOCIATION, :
 :
PETITIONER-APPELLANT, :
 :
V. : STATE BOARD OF EDUCATION
 :
BOARD OF TRUSTEES OF THE : DECISION
PLEASANTECH ACADEMY CHARTER :
SCHOOL AND DAVID HESPE, :
COMMISSIONER OF EDUCATION, :
 :
RESPONDENTS-RESPONDENTS. :

For the Petitioner-Appellant, Zazzali, Zazzali, Fagella & Nowak (Richard A. Friedman, Esq., of Counsel)

For the Respondents-Respondents, Arlene G. Lutz, Deputy Attorney General (John J. Farmer, Attorney General of New Jersey)

In a letter dated July 2, 1999, the PleasanTech Academy Charter School Education Association (hereinafter “petitioner”) filed a complaint with the Commissioner of Education pursuant to N.J.S.A. 18A:36A-15,¹ alleging that teachers employed by the charter school were not being compensated in conformity with the terms of the school’s charter. The petitioner claimed that the school’s action violated N.J.S.A. 18A:36A-11, which requires a charter school to operate in accordance with its charter.

¹ N.J.S.A. 18A:36A-15 provides, in pertinent part:

Any individual or group may bring a complaint to the board of trustees of a charter school alleging a violation of the provisions of this act. If, after presenting the complaint to the board of trustees, the individual or group determines that the board of trustees has not adequately addressed the complaint, they may present that complaint to the commissioner who shall investigate and respond to the complaint....

Consequently, it requested that the Commissioner conduct an investigation of this matter.

By letter dated October 18, 1999, Anne O'Dea, Director of the Office of School Choice in the Department of Education, advised the counsel for the petitioner that the Department's Office of Compliance was conducting an investigation of the complaint. On December 22, 1999, counsel for the petitioner wrote to Ms. O'Dea requesting the status of the investigation. He added that unless a response was received by January 1, 2000, the petitioner "may initiate appropriate action...which may include...instituting litigation...."

By letter dated December 23, 1999, Ms. O'Dea responded that a review by the Office of Compliance of the concerns raised by the petitioner revealed that the school was addressing accounting deficiencies and that its teachers were being compensated in accordance with the terms of their individual contracts. She observed that "although budgeted amounts are included in the charter, the amounts are projections."

On January 18, 2000, the petitioner filed the instant appeal to the State Board "from the final decision rendered on behalf of the Commissioner of Education pursuant to N.J.S.A. 18A:36A-15, by Anne O'Dea, Director, Office of School Choice, New Jersey Department of Education on December 23, 1999."

For the reasons that follow, we remand this matter to the Commissioner for a final decision with respect to the petitioner's complaint.

N.J.S.A. 18A:36A-15, which authorizes "any individual or group" to present a complaint to the Commissioner if they determine that the charter school's board of trustees has not adequately addressed it, requires the Commissioner to investigate and

respond to such complaint if it alleges a violation of the provisions of the Charter School Program Act. In this case, the Commissioner did not respond to the petitioner's complaint. Rather, the only response was from Ms. O'Dea, Director of the Office of School Choice.

Nothing in the correspondence between the parties reflects that Ms. O'Dea was fulfilling, on behalf of the Commissioner, the statutory function imposed on him by the terms of N.J.S.A. 18A:36A-15. Nor is she an assistant commissioner, who may be assigned by the Commissioner to hear and determine disputes arising under the education laws as permitted by N.J.S.A. 18A:4-34c. Consequently, there is not in this case a decision rendered on behalf of the Commissioner that is appealable to the State Board of Education. See N.J.S.A. 18A:6-27 (appeals to the State Board may be taken by any party aggrieved "by any determination of the commissioner"); N.J.A.C. 6:2-1.1(a) (final decisions of the Commissioner are appealable to the State Board).

Hence, it is necessary to remand this matter to the Office of Controversies and Disputes in order to provide the Commissioner with the opportunity to render a determination with respect to the petitioner's complaint. Given the amount of time that has elapsed since the petitioner filed its complaint with the Commissioner, we direct that the Commissioner make such determination expeditiously.

May 3, 2000

Date of mailing _____