

NEPTUNE TOWNSHIP EDUCATION :
ASSOCIATION, :

PETITIONER, :

V. :

COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE :
TOWNSHIP OF NEPTUNE, :
MONMOUTH COUNTY, :

DECISION

RESPONDENT. :

_____ :

SYNOPSIS

Petitioning Association challenged Board's selection of department chairpersons to serve on School Based Planning Teams (SBPTs).

ALJ concluded that the petition was time barred as petitioner filed more than 180 days after the date on which it received a detailed list of approved 1995-96 SBPT members by school and, further, that there was no merit to petitioner's claims that the Board violated the provisions of *N.J.A.C.* 6:8-9.2(b)2 and 3 as the Board was no longer classified as a "Special Needs District." Petition was dismissed.

Commissioner adopted finding that petition was untimely filed. Petition was dismissed. However, Commissioner concurred with petitioner's position that, as a matter of policy, the requirements of *N.J.A.C.* 6:8-9.2(b) would require full-time classroom teachers to comprise a majority of the SBPTs.

December 29, 1997

OAL DKT. NO. EDU 6244-96
AGENCY DKT. NO. 121-4/96

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Petitioner's exceptions and respondent's replies, both of which recast and reiterate many of the arguments previously presented to the Administrative Law Judge (ALJ), are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review, the Commissioner agrees with the conclusion of the ALJ that the within Petition of Appeal must be dismissed as untimely filed. Specifically, he determines that petitioner's cause of action in this matter arose on May 24, 1995, when the Board appointed, at a public meeting, the School Based Planning Team (SBPT) members for the 1995-96 school year. However, even assuming *arguendo*, that petitioner's cause of action was triggered on October 10, 1995, when the superintendent provided petitioner with the detailed list of the approved 1995-96 SBPT members, petitioner's filing on April 4, 1996

would still be beyond the limitations of rule. (*Kaprow, supra; North Plainfield, supra*) No cause for relaxation having been demonstrated, the petition must therefore be held as untimely pursuant to the 90-day time limit requirement of *N.J.A.C. 6:24-1.2(c)*.

However, given the importance of the question raised on the merits as a matter of State policy, and given that the ALJ made findings and conclusions on such question, the Commissioner here states his concurrence with *petitioner's* position that *N.J.A.C. 6:8-9.2(b)2* is to be read as imposing a requirement that *full-time* classroom teachers comprise a majority of the SBPTs. While department supervisors and other similar positions are not precluded from membership on SBPTs, they may not be considered as classroom teachers for purposes of fulfilling the distribution requirement of rule, notwithstanding that their duties may include some classroom teaching.

Accordingly, the within Petition of Appeal is dismissed as untimely filed.¹

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

December 29, 1997

¹ The Commissioner notes that even if this matter were not dismissed as untimely filed but, instead, considered on its merits, he would not have granted the requested relief of compensation to the association. This is so because of the absence of any showing of need for compensatory damages and, therefore, the payment to the association would be punitive in nature. Such compensation is inappropriate since no evidence exists that the Board acted in bad faith; but, instead, for most of the period at issue, it relied upon advice it received from the Office of the County Superintendent.