

DELAWARE VALLEY REGIONAL	:	
EDUCATION ASSOCIATION,	:	
	:	
PETITIONER,	:	
	:	
V.	:	
	:	
BOARD OF EDUCATION OF THE	:	
DELAWARE VALLEY REGIONAL	:	
HIGH SCHOOL DISTRICT,	:	
HUNTERDON COUNTY, AND	:	
HUNTERDON COUNTY EDUCATIONAL	:	
SERVICES COMMISSION,	:	
	:	
RESPONDENTS,	:	
	:	
AND	:	COMMISSIONER OF EDUCATION
	:	
HOLLAND TOWNSHIP BUS DRIVERS'	:	DECISION
ASSOCIATION,	:	
	:	
PETITIONER,	:	
	:	
V.	:	
	:	
BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF HOLLAND,	:	
HUNTERDON COUNTY, AND	:	
HUNTERDON COUNTY	:	
EDUCATIONAL SERVICES	:	
COMMISSION,	:	
	:	
RESPONDENTS.	:	
	:	
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SYNOPSIS

In consolidated matter, Petitioning Education and Bus Drivers' Associations challenged Boards' contracts with County Educational Services Commission (ESC) to provide transportation services to regular education students.

Commissioner found that the ESC and respondent Boards did not act improperly or in contravention of school law or regulation when they entered into agreements to provide transportation services to regular education students. *N.J.S.A. 18A:6-51 et seq.; Colantoni; Impey*. When applying to the New Jersey Department of Education in 1989 to enlarge the scope of its services, the ESC fairly represented that its services, although restricted at the time to the transportation of special education students, could potentially expand to include "overall transportation for districts." Commissioner found it noteworthy that the State Board of Education placed no limits whatsoever on its approval of the ESC's application, notwithstanding the ESC's use of broader language in its appended documents. Petitions were dismissed.

March 12, 1998

AGENCY DKT. NOS. 92-3/97 and 125-4/97 (CONSOLIDATED)

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This consolidated matter comes before the Commissioner by way of two Petitions of Appeal filed on March 13, 1997 and April 10, 1997 by the Delaware Valley Regional Education Association (hereinafter, "Delaware Association") and the Holland Township Bus Drivers' Association (hereinafter, "Holland Association"), respectively. While the petition filed by

Petitioner Delaware Association was initially transmitted to the Office of Administrative Law for determination, in accordance with *N.J.A.C.* 1:1-3.3, the Commissioner subsequently requested that the matter be returned to the Department of Education for determination. In that identical claims have been raised in both cases, and the parties were amenable to consolidation, the Commissioner approved consolidation of these matters, and further determined that petitioners' claims could be adjudicated without plenary hearing. Additionally, by letter dated May 22, 1997, the parties were informed that they were to submit a briefing schedule to the Department. Having received a Joint Stipulation of Facts, primary briefs from all parties and reply briefs from petitioners and respondent Hunterdon County Educational Services Commission (hereinafter, ESC), the record in this matter closed on December 2, 1997.¹ Petitioners move for summary decision in this matter, as does the respondent ESC. The respondent school boards do not contest the motions for summary decision.

UNDISPUTED FACTS

1. Petitioner Delaware Association is the majority representative of a bargaining unit which includes among other employees, school bus drivers employed by respondent, Board of Education of the Delaware Valley Regional High School District (hereinafter, "Delaware Board");

2. Petitioner Holland Association is the majority representative of a bargaining unit which includes among other employees, school bus drivers employed by respondent, Board of Education of the Township of Holland (hereinafter, "Holland Board");

3. Respondent Delaware Board is Responsible for the administration and operation of the schools within the Delaware Valley Regional High School District in accordance with the provisions of Title 18A;

¹ On December 18, 1997, petitioners filed a correction to their previously filed reply brief.

4. Respondent Holland Board is responsible for the administration and operation of the schools within the Holland Township School District in accordance with the provisions of Title 18A;

5. Respondent Hunterdon County ESC is an educational services commission established and operating pursuant to the provisions of *N.J.S.A.* 18A:6-51. The ESC is responsible for providing educational services to respondents, Delaware Board and Holland Board;

6. When the ESC was first approved on December 6, 1979, it served solely for the purpose of providing services for adult and continuing education programs;

7. As a result of a needs assessment profile conducted by the ESC from June 1988 through November 1988, the ESC was able to determine that additional services were needed, including, but not limited to cooperative transportation services. Hence, on or about February 17, 1989, the ESC applied to the New Jersey State Department of Education to enlarge the scope of the services it can provide to school districts within Hunterdon County;

8. The ESC attached to said application a comprehensive document, entitled *A Plan for the Future*, dated September 1988, which reflects the resources relied upon by the ESC to conduct a needs assessment profile and the data therefrom. The plan states, in pertinent part:

Under "Mission Statement"

Two services are identified as initial priorities in the action plan for expansion:

1. Special Education Transportation
2. Group Purchasing

Following closely will be:

3. Special Education Services
Occupation and physical therapies, coordination of county public school classes, child study team services
4. Programs for Disaffected Youth
5. Planning, Evaluation, Research and In-Service for Curriculum and Instruction ***

Under “Goals”

To administer a coordinated transportation system for eligible students of participating districts in accordance with New Jersey Statute and Code. *** (Joint Stipulation of Facts, Exhibit A at pp. 2, 3 and 5)

9. The ESC also attached to its application an *Expanded Mission Statement*, dated September 28, 1988, describing all the expanded services and the manner by which these services would be provided. The statement provided, in pertinent part,

Under “Expanded Mission Statement”

4. Transportation - Twenty-seven of the 28 districts, with operational schools, who were contacted expressed the need for cooperative transportation for special education students attending classes outside of their home districts. The success of other Commissions in this area supports the projected success of this arrangement.

High schools in Hunterdon County provide shared time vocational programs for each other’s students, requiring transportation. Some interest has been expressed in exploring the cost effectiveness of the Commission providing this service.

Cooperative jointure transportation arrangements are presently in use in the county. More extensive use of this concept will provide more effective transportation. This could lead to the Commission providing transportation for field trips, athletic contests and other activities, as well as overall transportation for districts.

Costs should be no greater than at present and routes should be more efficient. Cost would be shared proportionate to pupil use by districts, with State Transportation Aid continuing to the district of residence. (Joint Stipulation of Facts, Exhibit C at p. 16)

10. On or about December 6, 1989, the State Board of Education approved the ESC’s application for enlargement of purposes;

11. On or about January 21, 1997, the respondent Delaware Board passed a resolution that the ESC and Delaware Board agree to enter into a three-year agreement to provide pupil transportation services, commencing July 1, 1997 through June 30, 2000;

12. The respondent Holland Board passed a resolution that the ESC and Holland Board agree to enter into a three-year agreement to provide pupil transportation services commencing July 1, 1997 through June 30, 2000;

13. Prior to the dates specified herein, the respondent Delaware Board and the respondent Holland Board provided school bus transportation services to some of its pupils through bus drivers employed by its school districts, who are and were members of the Delaware Association and the Holland Association;

14. Respondent Delaware Board and the ESC entered into a contract on or about June 6, 1997, whereby the ESC agreed to provide all school bus transportation services for the Delaware Board for the period beginning July 1, 1997 through June 30, 2000; and

15. Respondent Holland Board and the ESC entered into a contract on or about July 9, 1997, whereby the ESC agreed to provide all school bus transportation services for the Holland School District for the period July 1, 1997 through June 30, 2000.

POSITIONS OF THE PARTIES

Petitioners Delaware Association and Holland Association

Petitioners initially assert that the ESC lacks the statutory authority to contract with the respondent Boards for districtwide pupil transportation services. Citing *N.J.S.A. 18A:6-63*², petitioners argue that the plain language of the statute requires the ESCs to act only in

² The statute provides: “a. The representative assembly shall from time to time determined what services and programs shall be provided by the commission, subject to approval of and pursuant to rules of the State Board of Education. It shall determine the fee to be charged for providing each service and program, and enter into contracts with school districts, whether member districts of the commission or not, to provide any or all such services and programs. *** b. Commissions may enter into contracts with other public and private agencies for

accordance with the regulations promulgated by the State Board of Education. (Petitioners' Primary Brief at pp. 2-3) In turn, petitioners reason, the State Board regulations only authorize an ESC to provide programs for pupils with educational disabilities, as per *N.J.A.C. 6:28-7.1*. (*Id.*) Petitioners argue that while such services to students with disabilities may include transportation services, the ESC is not authorized to provide transportation services on a district-wide basis to other students.

As to the plan which the ESC submitted for expansion of its services, petitioners contend that the stated purpose in seeking expansion was, as stated *supra*, to “administer a coordinated transportation system for eligible students of participating districts ***.” (Joint Stip., Ex. A at p. 5) Petitioners further cite to the related objective for this purpose, as noted in the ESC's *A Plan for the Future* document. To the extent the ESC suggested in broader terms an interest in providing “cooperative jointure transportation,” petitioners claim the ESC could only have been offering such services to special education students, in view of its stated plan and its limited authority. (Petitioners' Primary Brief at pp. 4, 5) The “eligible students” to which the ESC refers are, by definition and its own acknowledgment, students with disabilities.

Petitioners further contend that their position is consistent with “****the well settled principle that governmental entities, particularly school boards, have no greater authority than permitted by the legislature.” (Citations omitted). (*Id.* at pp. 5, 6) Moreover, petitioners reason that, where the language of a statute is plain and unambiguous, the statute must be construed in accord with its plain language. (*Id.* at p. 6) Here, petitioners reason that the ESC's authority is limited to what is authorized by the State Board of Education regulations, and no State Board regulation authorizes ESCs to provide districtwide transportation. (*Id.*) To adopt a

the provision of approved services and programs to participating public school districts and nonpublic schools. These contractual arrangements shall conform to the rules of the State Board of Education and be approved by the county superintendent or superintendents, as the case may be.” *N.J.S.A. 18A:6-63*.

reading of the statute which allows that an ESC must act, in general, in accordance with the State Board's regulations governing public educational entities would, according to petitioners, lead to an absurd result since "[t]he ESC must already follow school law statutes and regulations of general applicability. ***" (*Id.* at p. 7)

Petitioners additionally argue that, even assuming, *arguendo*, that the ESCs are authorized to provide district-wide transportation services, the Hunterdon ESC failed to obtain the approval from the State Board of Education for the provision of such services, and therefore violated *N.J.S.A.* 18A:6-63 and *N.J.A.C.* 6:28-7.1 . (*Id.* at p. 8) Petitioners thus maintain that the ESC's application for expanded services addressed only special education matters:

The ESC's stated objectives for 1991 refer to special education transportation. The same document refers also to cooperative jointure transportation. Moreover, the term "jointure" is an educational term of art, signifying special education. (*Id.* at pp. 8-9)

In reply to respondents' positions, *infra*, petitioners argue that the decisions rendered in *Colantoni v. Board of Education of the Township of Long Hill, Morris County*, 97 *N.J.A.R.* 2d (EDU) 326 and *Impey v. Board of Education of the Borough of Shrewsbury*, 142 *N.J.* 388 (1995) are not dispositive in the instant matter.

***In *Colantoni*, the issue before the court was whether the board acted within its discretion when it abolished petitioner's position as a guidance counselor and later contracted out those services to the county jointure commission, and not an ESC. Significantly, while a jointure commission and ESC are obligated to act in accordance with the rules of the state board, *** the statute governing a jointure commission *** specifically delineates the powers and duties of a jointure commission. *** In sharp contrast, the statute governing ESC's does not provide powers by the same mechanism. On the contrary, the programs and services which an ESC may provide are "subject to the approval of *and* in accordance with the rules governing the state board of education." Under those rules, those services and programs are limited to special education pupils and do not extend to the general student population. (emphasis in text) (Petitioners' Reply Brief at pp. 5, 6)

Further, although the ALJ in *Colantoni* suggested in *dicta* that an ESC's services are not limited to those for handicapped pupils, this opinion is not controlling, according to petitioners. (*Id.* at p. 6) Similarly, petitioners reason that *Impey* does not control the instant matter, since that case concerned a contract between a local board and an ESC for the provision of remedial services to classified pupils.

Finally, in its reply, petitioners object to the ESC's submission of the certification of John F. Stansky, Superintendent and Business Administrator for the ESC. Here, petitioners charge that the parties agreed to submit this matter based upon stipulated facts, and the ESC's submission was an attempt to submit additional facts through the certification. Petitioners further contend that the certification is not relevant to the within issue. (*Id.* at p. 2)

Respondent Hunterdon County ESC

The ESC contends that the State Board of Education expressly authorized it to provide cooperative transportation services to regular education pupils attending its member school boards. (ESC's Primary Brief at p. 11) The ESC points to the statute which defines it as

an agency established or to be established in one or more counties *for the purpose of carrying on programs of educational research and development and providing to public school districts such educational and administrative services* as may be authorized pursuant to the rules of the state board of education. (emphasis in text) (*N.J.S.A.* 18A:6-51(a))

The enabling statute further provides, the ESC adds, for expansion or alteration of services under *N.J.S.A.* 18A:6-69, upon application and approval by the State Board of Education. The ESC contends that it complied with this procedure when it applied for, and obtained, as stated, *supra*, such approval. The ESC points out that the documents attached to its application consistently identify a need to provide transportation services beyond special education. In the document entitled *A Plan for the Future*, the ESC notes that one of its goals for the 1989-90 school year

was to “administer a coordinated transportation system for eligible students of participating districts ***. (*Id.* at p. 12, citing Joint Stip. Ex. A at p. 5) This goal, the ESC reasons, is not restricted to handicapped pupils. Additionally, the *Expanded Mission Statement*, as noted *supra*, refers to “overall transportation for students.” (*Id.*, citing Joint Stip. Ex. C at p. 16) The ESC further notes that the mission statement states that “cooperative jointure transportation arrangements are presently in use in the county. More extensive use of this concept will provide more effective transportation.” (*Id.*) Thus, the ESC concludes that it could not have more clearly stated its desire to provide general transportation services. (*Id.* at pp. 12, 13)

Moreover, the ESC avers that the cover letter to its formal application stated, in pertinent part,

Following an in-depth needs assessment of and by the county school districts, the Commission Board requests approval to offer the following services in addition to our previously established mission of providing adult and continuing education which has been most successful in meeting the needs of the county: Cooperative Transportation ***. (*Id.* at p. 13, citing to Joint Stip. Ex. B)

The ESC further reasons that its position is buttressed by the fact that, notwithstanding referring to cooperative transportation services throughout its application documents, the State Board of Education did not qualify or limit its approval to certain services or purposes. (*Id.* at p. 13)

Citing *Impey, supra*, the ESC argues that

***[i]t is implicit that if the same agency which makes the rules governing the authority of an ESC approves the Commission’s application for enlargement purposes to utilize certain services, then such services are, in fact, authorized under the rule of the State Board. (*Id.*)

The ESC next contends that the statutory scheme, regulations and case law authorize it to provide cooperative transportation services to regular education pupils. (*Id.* at p. 15) Here, the ESC first points to a 1985 document published by the New Jersey State

Department of Education, entitled *Policies and Procedures for Pupil Transportation*, which established that ESCs may provide transportation for pupils under joint agreements with participating districts, pursuant to *N.J.S.A. 18A:6-51*. (*Id.* at p. 15, citing to *Pupils* document at p. 30) The ESC then claims that the statutory scheme reveals that the Legislature intended a broad spectrum of educational and administrative services to be available to school boards in order to effectuate cost savings. (*Id.*) There is no language in the statute, the ESC contends, which would limit the scope of its services; neither is there language which suggests that in the absence of a regulation, an ESC is prohibited from acting. (*Id.* at pp. 15-16)

The ESC points to the definition contained in *N.J.S.A. 18A:6-51(a)*, *supra*, and notes that no services are therein delineated. Similarly, *N.J.S.A. 18A:6-63(a)* “provides further support that an ESC is not limited to providing those services which are explicitly enumerated.” (*Id.* at p. 16) Rather, the ESC reasons that the Legislature contemplated that, as the needs of the school districts changed over time, the ESCs would need to expand the scope of their services. Hence, *N.J.S.A. 18A:6-69* was implemented to allow for an enlargement of an ESC’s purposes. It is, according to the ESC, the intent of the Legislature which must control when construing statutory enactments. (*Id.* at pp. 16-17) Clearly, the ESC concludes, a reading of *N.J.S.A. 18A:6-51*, *N.J.S.A. 18A:6-63* and *N.J.S.A. 18A:6-69* demonstrates that the Legislature intended for an ESC to provide a broad range of services within the educational and administrative realm. (*Id.*)

The ESC refers to statutes and regulations in other areas of school law which lend support to the notion that school boards are encouraged to utilize cooperative or joint transportation arrangements for regular education pupils. See *N.J.S.A. 18A:39-11.1*; *N.J.A.C. 6:21-16.11*. Similarly, the ESC argues that an examination of other statutory enactments and pending bills compels the Commissioner to be guided by a trend toward regionalization among school districts, shared costs, savings and services outside the realm of special education.

(*Id.* at p. 22) Here, for example, the ESC cites to the Comprehensive Improvement and Financing Act (CEIFA) at *N.J.S.A.* 18A:7F-1 *et seq.* “which encourages school districts to regionalize or share services for ‘. . . education and administrative services . . . [such] as transportation.’ *N.J.S.A.* 18A:7F-31.” (*Id.*) The ESC continues,

***the current outgrowth of pending legislation reflects a trend toward broadening the services which can be supplied jointly through the assistance of educational commissions. Senate Bill No. 1856, 207th Leg., 2d. Sess., (1977) [sic][,] introduced into Senate on March 3, 1997, seeks to broaden the scope of services a jointure commission can provide, by expanding educational programs and services to non-handicapped pupils. As this proposed legislation makes clear, drawing trivial distinctions between services for special education pupils and regular education pupils will not serve to promote the intended purpose of established agencies, such as ESCs and jointure commissions. (*Id.* at p. 23)

Finally, the ESC argues that the Commissioner has previously determined, in *Colantoni, supra*, that where nothing in an enabling statute precludes cooperative transportation services for regular education, such services may be provided where the contracting districts find such expansion to be in the best interest of efficient delivery of services. The ESC recounts that, in *Colantoni*, the ALJ found that an ESC may provide services to the handicapped but is not limited by statute to this role, as is a jointure commission. Yet, the Commissioner reversed the ALJ’s decision and, thus, his distinction between the ESCs and the jointure commissions, noting that, notwithstanding the express mention of handicapped pupils in the jointure commission statute, while the primary purpose of a jointure commission is to assist boards of education in carrying out their common duties with respect to the training and education of handicapped pupils, there is nothing in the statute which would preclude it from expanding its services to include nonhandicapped pupils, where the contracting districts find such expansion to be in the best interest of the delivery of services. Thus, the ESC finds that *Colantoni* stands for the proposition that, absent prohibitory language, an agency is authorized to act. (*Id.* at p. 20)

In reply to petitioners' primary brief, the ESC notes that, contrary to petitioners' contention, the ESC's reference to "eligible students" in its document appended to its application for expansion does not refer to "special education pupils." Rather, the ESC argues that, in prior paragraphs, it specifically refers to "special education pupils" and "common sense" dictates that if the ESC had intended the terms "eligible students" to be construed as special education pupils, it would have stated the same. (ESC's Reply Brief at p. 6)

As to petitioners' objection to the ESC's submission of Stansky's certification, the ESC maintains that it merely exercised its right to serve its motion for summary decision with supporting affidavits, pursuant to *N.J.A.C.* 1:1-12.5(b).

Respondent Delaware Board

The Delaware Board concurs with the ESC's view that the State Board of Education approved the ESC's application to provide general transportation services for member school districts. (Delaware Board's Primary Brief at pp. 6, 7) It further agrees that the statutory scheme permits the ESC to provide general transportation services, after approval by the State Board of Education. Urging a statutory interpretation which is consistent with the purpose of the statute which, in this case, is to effectuate cost savings among local boards, (*id.* at p. 8) the Delaware Board points to a Senate Education Committee Statement to the 1989 amendment to *N.J.S.A.* 18A:6-51 which "specifically mentions the 'transportation program' as one which can legitimately generate revenues for the ESC. The 'transportation program' would not have been mentioned in the seventh paragraph of the Statement," the Board argues, "if it was not intended to be a statutorily authorized ESC service." (*Id.* at p. 9)

The Delaware Board contends that a common sense reading of *N.J.S.A.* 18A:6-51(a) supports its position. That statute

makes reference to "such educational and administrative services as may be authorized *pursuant to* rules of the State Board of

Education.” (emphasis added) If the [Associations’] argument is to be credited, the Legislature could have easily stated that ESC’s may provide such services as may be authorized *by* State Board rules. The use of the phrase “pursuant to,” rather than “by,” is critical to a determination of the Legislature’s intent ***. When the word “authorized” was combined with “pursuant to,” it is apparent that the Legislature intended that “authorized” be synonymous with “approved.” Thus, *** the Legislature intended that the State Board must follow its own rules in the approval process for ESC programs. ***(*Id.* at pp. 9, 10)

Similarly, the Delaware Board reasons that, where *N.J.S.A.* 18A:6-63(a) states that services and programs shall be “***subject to approval of and pursuant to rules of the State Board of Education,” the statute is requiring that, once the State Board approves an ESC program, the ESC must conduct that program in accordance with State Board rules. (*Id.* at pp. 10, 11)

The Delaware Board concludes that

[t]he task at hand is to read the three statutes [*N.J.S.A.* 18A:6-51(a), *N.J.S.A.* 18A:6-63(a) and *N.J.S.A.* 18A:6-69] *in pari materia* in order to arrive at a sensible balanced interpretation. ***[T]hat interpretation is as follows: (1) the State Board must approve ESC services and enlargements of purposes, (2) the State Board must act in accordance with its procedural rules in granting such approval, and (3) once approved, ESC services and programs must comply with State Board regulations.***” (*Id.* at pp. 11, 12)

Respondent Holland Board

Respondent Holland Board concurs with respondents ESC and the Delaware Board that the statutory scheme permits joint transportation contracts for regular education pupils, and further argues that such contracts are in keeping with the public policy of this state that cooperative agreements among governmental agencies are to be encouraged.

DETERMINATION

Upon careful review of the arguments presented in this matter, the Commissioner finds that the ESC and respondent Boards did not act improperly or in contravention of school

law or regulation when they entered into agreements to provide transportation services to regular education students. The Commissioner notes that he makes this determination without reaching to the facts presented in the Stankys certification, as offered by the ESC.

A plain reading of *N.J.S.A. 18A:6-51 et seq.* leads to the inevitable finding that *nowhere* in the statute is the scope of services to be offered by an ESC circumscribed as petitioners contend. To the contrary, the statutes merely refer to the “educational and administrative services” to be offered by ESCs. See *N.J.S.A. 18A:6-51(a)* and *N.J.S.A. 18A:6-52*. Petitioners’ argument that an ESC is only authorized, pursuant to *N.J.S.A. 18A:6-63* and *N.J.A.C 6:28-7.1(a)* to provide services to special education students is specious. Here, the Commissioner finds that the statute’s language, “subject to approval of and pursuant to rules of the State Board of Education” does not require, as petitioners suggest, that an ESC’s authorization to provide services may *only* follow the State Board’s adoption of *specific rules*. Rather, the Commissioner finds respondents’ interpretation of the applicable statute to be more consistent with its overall purpose and intent. Furthermore, that the State Board has chosen to include in its special education code a provision for programs offered by the ESCs does not in any way suggest that it has, by such reference, defined or delineated the range of services which may be offered by an ESC.

Further, the Commissioner finds that, based on the passages cited, *supra*, from the ESC’s application and cover letter to the State Board for enlargement of its purposes, pursuant to *N.J.S.A. 18A:6-69*, the Commission fairly represented that its services, although perhaps restricted at the time to the transportation of special education students, could potentially expand to include “overall transportation for districts.” (Joint Stip., Ex. C at p. 16) Further, the Commissioner finds it noteworthy that the State Board of Education placed no limits whatsoever on its approval of the ESC’s application, notwithstanding the ESC’s use of broader language in its

appended documents. Finally, the Commissioner finds that the position set forth by respondents reflects sound educational and fiscal policy, as well as consistency with the law.

Accordingly, the Commissioner finds that respondent ESC has not violated either state education statute or code by its entry into an agreement to provide transportation services to respondents Delaware Board and Holland Board. The Petitions of Appeal in this matter are, therefore, dismissed.³

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

March 12, 1998

³ This decision, as the Commissioner's final determination in the instant matter, 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. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.