68-99

CHERYL B. PICCOLI AND ROBERT PICCOLI,	:	
PETITIONERS,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE RAMAPO-INDIAN HILLS REGIONAL HIGH SCHOOL DISTRICT, BERGEN COUNTY,	:	DECISION
RESPONDENT.	:	

SYNOPSIS

Petitioners challenged Regional School District Board's revision of Attendance Policy No. 5117. The revised policy provides that students from each of the Regional District's constituent members may choose to attend whichever of the District's two high schools has the lesser enrollment. Petitioning residents of Oakland contended that the policy was arbitrary, capricious, unreasonable and discriminatory, arguing that it gave Oakland students no meaningful choice because their regular school of assignment would always be the school of lesser enrollment.

ALJ determined there was no genuine issue of material fact in dispute and granted the Board's motion for summary judgment. ALJ found that assignment of pupils and other attendance/boundary issues fall within the discretionary authority granted boards of education by the Legislature, and that petitioners failed to prove that the Board's actions were arbitrary, capricious, unreasonable or discriminatory.

Commissioner adopted findings and determination in initial decision as his own, noting that, at this point in time, there is no clear or convincing evidence that would warrant reversal of the Board's lawful action.

March 10, 1999

OAL DKT. NO. EDU 1839-98
AGENCY DKT. NO. 21-1/98

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The record of this matter and the initial decision issued by the Office of Administrative Law (OAL) have been reviewed. Exceptions were timely filed by the parties pursuant to *N.J.A.C.* 1:1-18.4. as were respondent's reply exceptions.[1]

Petitioners object to this matter having been decided by the Administrative Law Judge (ALJ) on a summary judgment basis, questioning how such a ruling can be made when all the facts and affidavits were not disclosed to the judge[2] and averring that they had witnesses ready to testify, such as respondent's two athletic directors, two directors of guidance, the president of the Ramapo-Indian Hills Education Association, the Mayor of Oakland and others,

[1] On February 22, 1999, petitioners filed a reply to the Board's reply exceptions. There is no provision in *N.J.A.C.* 1:1-18.4 for filing a reply to reply exceptions; therefore, petitioner's February 22, 1999 filing cannot be considered by the Commissioner in rendering his final decision in this matter.

[2] Petitioners' exceptions include a number of documents which were not part of the record before the ALJ when she rendered the initial decision. Petitioners state in their exceptions that they submitted the documents in question to Board Counsel during the time the parties were attempting to develop a joint stipulation of facts but Board Counsel determined not to submit them to the ALJ. It is noted that a stipulation of facts was not submitted to the ALJ by the parties. In accordance with the provisions of *N.J.A.C.* 1:1-18.4(c), evidence which was not part of the record before

who would support the allegations in their petition. Petitioners also except to the determination of the ALJ that respondent's actions in this matter approving the revised attendance Policy No. 5117 were neither discriminatory nor arbitrary, capricious, or unreasonable. They maintain that it was unreasonable for respondent not to meet with Oakland's K-8 Elementary Board of Education and Town Council regarding the revised policy and object to the ALJ's conclusion that they offer no factual or legal authority to support assumptions that the revised policy would have a disparate impact on educational programs at either Ramapo or Indian Hills High Schools. Petitioners reiterate that the District's two directors of guidance and two athletic directors could have testified with respect to disparate impact but their testimony was never heard by the ALJ. Petitioners further allege that their witnesses who are employed by respondent needed to be subpoenaed because respondent's counsel "strong armed" their witnesses when he told them "not to communicate with [them] for the purpose of giving information." (See Petitioners' Letter of September 15, 1998 to the ALJ at p. 3.)

Petitioners argue that the revised attendance policy will result in an enrollment shift which violates Policy No. 5117 because the numerical difference in enrollment between the two high schools will be greater than 100 and, thus, will not be considered equivalent as specifically stated in the policy. Moreover, they contend that the enrollment shift will jeopardize the delivery of a thorough and efficient education for all students because it will not be conducive to a learning environment in which children will get a thorough and efficient education. Petitioners object to the ALJ's conclusions that they effectively conceded that the superintendent's proposal was objective and not based on emotion, averring that their position is in fact just the opposite. Of this, petitioners state in their exceptions

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the ALJ may not be submitted with an exception, nor may it be incorporated or referred to within an exception; therefore, such documents cannot be considered by the Commissioner in rendering his final decision in this matter.

> ***In our Petition we stated that his decision **should** be based *strictly* on a numbers rationale. How could the Superintendent by looking at the enrollment numbers from last year, seeing the steady increase at one high school and the steady decrease at the other, (which has also manifested itself again with the new enrollment numbers this year) put in place such a policy. It defies all logic and reasoning. Furthermore, while the Board brought Mr. Saxton "up to speed" through the review of consultants reports, demographic trends and projections, long-range plans and History of the Franklin Lakes Split, he missed out on the **most valuable resource** he had at his disposal. All the years of experience and hands on knowledge from the Educators within the Regional High School District. (emphasis in text) (Petitioners' Exceptions at p. 4)

Petitioners except to the ALJ's finding that the revisions to the attendance policy were made as an integral step in the implementation of the comprehensive Horizon Project, averring, *inter alia,* that such a finding was based on speculation and an idea not to come to fruition for years. They further contend that "***[t]o turn a Regional High School District upside down with a decision on attendance which [affects] not only all the students at both schools, but all the Educators as well, is totally unreasonable and without any educational merit at this point in time." (*Id.* at p. 9) Petitioners also contend that the University Programs which may start next September at Indian Hills High School are only being offered to fill up the enrollment disparity which they believe is inevitable if the revised attendance policy goes into effect because Ramapo High School will not be able to support any of the program due to overcrowding.

Petitioners reject the ALJ's reliance on *Marcewicz, supra; Parents United for Better Learning in the Community, supra; Fullen, supra; and Hussnatter, supra,* asserting that these cases are not applicable herein because they all dealt with redistricting due to overcrowding at one of the schools in those districts, while in the instant matter, revised Policy No. 5117 was

not passed to alleviate overcrowding but only compounds the overcrowding at Ramapo High School.

Respondent urges that the initial decision be affirmed, averring, *inter alia*, that the ALJ appropriately determined that petitioners had no legal or factual basis to successfully challenge its revised attendance policy. It states that notwithstanding petitioners' numerous allegations that various individuals, including staff members of the Regional High School District, Board members and town council members from constituent districts, were unhappy with the revisions to Policy No. 5117, they cite no affirmative legal obligation for the respondent Board to consult with these individuals prior to the development or implementation of any new Board policy. Of this, respondent states

> The [ALJ] has duly noted that the New Jersey Legislature has expressly delegated the authority to make, amend and repeal rules for its own government, the transaction of business and the government and the management of school property to local and regional boards of education [Initial Decision at p. 6-7]. Having demonstrated that the Board duly exercised that authority, Petitioners fail to establish any prima facie allegations against it. Consequently, they are entitled to no relief. (Respondent's Reply Exceptions at p. 4)

Respondent further argues that petitioners misconstrue the purpose of a stipulation of facts, averring that petitioners' allegations relative to this attempts to sidestep petitioners' legal obligation to demonstrate each and every allegation that respondent acted in violation of its duty by clear and convincing evidence. Respondent goes on to state that "[n]otwithstanding Petitioners' repeated statements, that they, and others similarly situated, disagree with the revision of Board policy, Petitioners failed to demonstrate by clear and convincing evidence that the Board's actions were arbitrary, prejudiced, discriminatory, capricious or burdened the taxpayers of the District." (Respondent's Reply Exceptions at p. 4) Moreover, respondent

strongly rejects petitioners' allegation that the Board prevented them from speaking with their witnesses, calling such an allegation specious at best. Of this, respondent states

> The witnesses in question are employees of the Ramapo-Indian Hills High School District. [The witnesses] had no contact with either Petitioner prior to the initiation of the instant action. Petitioners' attempt to contact Board employees in reference to this litigation violated fundamental rules of representation. (*See* RPC 4.2). Petitioners were authorized to interview any and all Board employees upon prior notification, and an opportunity by a designated Board representative to observe these contacts. Petitioners' characterization of this common litigation courtesy as "obstruction and tampering" of their witnesses is absurd. Petitioner Cheryl Piccoli was given any and all documents requested, was granted ample opportunity to meet with Superintendent Saxton. Further, the only objection made by the District was that Petitioners would not interview potential Board employed witnesses during school hours. This was agreed to by Petitioners. (*Id.* at pp. 4-5)

Lastly, respondent contends that petitioners' allegations regarding enrollment projections do not demonstrate arbitrary, prejudicial, discriminatory or capricious behavior by the Board.

COMMISSIONER'S DETERMINATION

After thorough consideration of the record of this matter, the Commissioner agrees with the conclusion of the ALJ that summary judgment be granted to respondent, essentially for the reasons set forth in the initial decision.

The appropriate standard for summary decision as set forth by the Courts in *Brill, supra,* allows for summary judgment even in the face of evidence opposing the motion, as long as that evidence is not sufficient to allow a rational factfinder to resolve the dispute in favor of the non-moving party. *Brill, supra* at 540. As correctly stated by the ALJ at page 5 of the initial decision

> Recently, the Supreme Court of New Jersey held when deciding a motion for summary judgment under *R.* 4:46-2,

> …[a] determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged dispute issue in favor of the non-moving party. [*Brill, [supra]* at 520, 540]
>
> The essential question is "whether the evidence presents a sufficient disagreement to require [a hearing] and whether it is so one-sided that one party must prevail as a matter of law. *Id*. at 533.

After reviewing the arguments made by the parties and the documentary evidence in support thereof, the Commissioner finds that the ALJ correctly determined under the *Brill* standard that this matter is appropriate for summary decision as no genuine issue of material fact exists. The record unequivocally establishes that for nearly three decades the various Boards of Education of Ramapo-Indian Hills School District examined the issue of attendance areas. (See *History of Franklin Lakes Split.*) The record also establishes that respondent considered the issue of enrollment shifts which could result from the revisions to the attendance policy proposed by its superintendent. The uncertified transcripts of the both the December 15, 1997 and January 5, 1998 Board of Education meetings document that respondent considered the educational impact on the programming for both educational program offerings and athletics. For example, Superintendent Saxton stated in pertinent part at the December 15, 1997 meeting

> ***We looked at the impact of that programming, we spent many days, our administrative team, in reviewing the impact of that programming, looking at the pros and the cons, looking at the impact of the athletic conference, does it change our athletic conference, what's the impact*** we looked at the consequences of all of these actions and a cause and effect relationship and felt very strongly and felt very confidently that it's not going to have a negative impact in terms of our operation as a regional school district.*** Dr. Stein [Director of Curriculum] did a review of our program, even reviewed the programs in the context of our current program format. What would happen ***if this policy were in

> effect right now, what would happen to our existing courses? Would we be able to implement our existing programs, especially in terms of the singletons***. (Uncertified Transcript of December 15, 1997 meeting at p. 5)

In response to this question, Dr. Stein indicated that all courses currently running at Indian Hills would continue to run. (*Id*. at p. 7) Further, the uncertified transcript of the December 1997 meeting indicates that, at that time, there were 978 students at Ramapo and 747 at Indian Hills High Schools, and, even if the unlikely scenario comes about where all students from Franklin Lakes opted for Ramapo High School, there would still be 638 students at Indian Hills. (*Id*. at p. 6)

Moreover, the record also unequivocally establishes that there can be no question that respondent had an overwhelming amount of input from a wide spectrum of its constituencies before acting to revise Policy No. 5117. As correctly noted by respondent, the fact that there are segments of those constituencies that disagree with the revisions it adopted does not make its actions arbitrary, capricious, unreasonable or discriminatory.

The standard of review for arbitrary, capricious or unreasonable is narrow in its scope and consequently imposes a heavy burden on those who challenge actions of boards of education. The standard defined by the New Jersey Courts states

> In the law, "arbitrary" and "capricious" means having no rational basis. Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached. Moreover, the court should not substitute its judgment for that of an administrative or legislative body if there is substantial evidence to support the ruling. (internal citations omitted) (*Bayshore Sewerage Co. v. Dept. of Envt. Protection*, 122 *N.J. Super*. 184 199-200 (Ch. Div. 1973), aff'd 131 *N.J. Super*. 37 (App. Div. 1974))

In applying this standard to the instant matter, the Commissioner could not substitute his judgment for that of the Ramapo-Indian Hills Board of Education, even if he believed an erroneous conclusion had been reached by respondent because the record establishes that respondent did not take willful or unreasoning action, without consideration and in disregard to the circumstances. This is not to say that petitioners' concerns about the impact of enrollment shifts are not legitimate. The record shows that at least one Board member, Mr. Rork, acknowledged their concerns which prompted him to abstain from the vote which otherwise carried affirmatively by the remainder of the Board. Mr. Rork stated as he cast his vote, "I would like to make sure that my vote sends two messages. One, for the superintendent, I support in the strongest way possible. The other message I wanted to say is that I hear the concerns from many of these people in the district, and I want to make sure that they understand that as long as I'm on the Board, although we come and go, that I will maintain vigilance over the educational opportunities for every kid in this district. Therefore, I'll have to abstain." (Uncertified Transcript of January 5, 1999 Board meeting at p. 32) Board Member Madigan spoke to the issue of equity in numbers and educational opportunity as well, commenting at the same Board meeting

> I support this proposed policy. But while I am concerned about the student growth of Ramapo, with or without additional Franklin Lakes students, I am confident that this policy is the right course. It is my expectation that all three towns now will be united, and will re-affirm their commitment to putting the educational goals of this district forefront. I know that the academic reputation and the achievement of both schools can only be enhanced. The most important task before us is the Horizon Educational Curriculum and Facilities Study. Objective and focused, this Board and the community can map out the strategic future of our district. The superintendent has wholeheartedly endorsed this policy and is committed to equity in program. He has made it clear that equity and quality in program do not require equity in numbers. As a proud parent of children who have attended both high schools, I know the programs of both high schools, and I have been equally

> impressed and this is why I can endorse this policy without reservation and because of my confidence in the superintendent, two strong principles in the united Board. So I applaud the superintendent for his foresight in initiating this policy. I commend my fellow Board members for their conviction and their commitment to the educational excellence. And I, too, challenge this community to hold this Board and future Boards accountable for channeling their efforts in the strategic, educational goals and objectives. (*Id*. at p. 30)

Notwithstanding the fact that petitioners express legitimate concerns relative to the enrollment shifts, a thorough review of the record convinces the Commissioner that, at this point in time, there is no clear and convincing evidence that would warrant reversal of the Board's lawful action.

Consequently, the Commissioner adopts as his own the initial decision rendered by the OAL granting respondent's Motion for Summary Judgment. The Petition of Appeal is, therefore, dismissed.[3]

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

March 10, 1999

[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.