

KINNELON EDUCATION ASSOCIATION, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF KINNELON, MORRIS COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner, the representative of the teaching staff members employed by the respondent Board, challenged the Board’s policies with regard to development of Professional Improvement Plans (PIP) as being contrary to applicable regulations. Specifically, petitioner argued that the Board predetermined topics and goals for PIPs, thus circumscribing staff members’ participation and precluding development of individual PIPs. The Board denied that its policies were contrary to regulation, noting that staff members are permitted to add objectives to their PIP.

The ALJ determined that teachers had not been restricted to predetermined professional growth objectives and that inclusion of district-wide goals in addition to choices made by teachers in collaboration with their supervisor did not circumscribe the role of the teacher. The ALJ also determined that the format utilized by the Board for development of PIPs is contrary to regulation insofar as it does not delineate district responsibilities.

The Commissioner affirmed the decision of the ALJ with clarification. While agreeing that infusion of district-wide or school-wide goals into action and activity plans choices developed by teachers in collaboration with their supervisors does not circumscribe the role of the teacher, the Commissioner nevertheless underscored that such goals may not substitute for, nor act to foreclose, the individual aspect of such plans. Additionally, the Commissioner clarified that the Board’s failure to specifically include district responsibilities in PIPs does not necessarily invalidate the current PIP format. Rather, the Commissioner determined that such responsibilities must be explicitly stated within the PIP document, rather than being considered implicit in the nature of particular goals or objectives.

OAL DKT. NO. EDU 9575-99
AGENCY DKT. NO. 245-8/99

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions and reply arguments were filed by petitioner and the Board in accordance with *N.J.A.C.* 1:1-18.4.

Petitioner contends that the ALJ erred in finding that the Professional Improvement Plans (PIPs) of the staff members in this matter were developed by supervisors and teaching staff members based on the individual staff member’s areas of strengths and areas needing improvement, simply because staff members could add objectives to those that were pre-chosen on a school and/or department-wide basis and those submitted on lists from their administrators. (Petitioner’s Exceptions at 13) In this connection, petitioner asserts, “[n]othing in the regulations provides for a PIP, defined as arising from the individual staff member’s need ‘to correct deficiencies or to continue professional growth’, as the appropriate place to include school-wide or grade-wide objectives.” (*Ibid.*) Petitioner continues, “*Passaic* [supra] does not stand for the proposition that PIPs that are not based on the individual staff members [sic]

strengths and areas needing improvement are acceptable if the staff member can add individualized PIPs. (*Id.* at 14)

In support of its position, petitioner underscores that a review of the PIPs from the Pearl R. Miller School (Exhibit J-1), the Stoneybrook School (Exhibit J-4) and the Special Education Department (J-2) shows that the teaching staff members uniformly followed the form dictated by the principal. (*Id.* at 15) Additionally, in the Kiel School (Exhibit J-3), notwithstanding the principal's claim that everyone had the right to choose his/her own objectives, the teachers' PIPs followed the same format and contained the same items identified by the principal. (*Ibid.*) Petitioner thus concludes:

A PIP is not a documents [sic] in which an administrator includes anything the administrator would like the staff member to do, whether district-wide, school-wide or department or grade-wise [sic], or individually based; it is a document solely for individual goals based on areas of strength and areas in which improvement is needed. (*Id.* at 17)

In reply, the Board notes that no one from the Kinnelon Education Association testified in this matter; not a single member alleged that his/her ability to participate in the preparation of PIPs was inhibited. By contrast, the three principals of the elementary schools in question provided un rebutted testimony that each of the supervisors met individually with staff members and collaborated on the development of the PIPs. (Board's Reply at 1) The Board further observes that petitioner's entire argument rests on the assumption that, because a specific goal was included in a PIP, the teacher was forced to include that goal in his/her plan. However, the evidence in this matter, the Board avers, is to the contrary. (*Id.* at 2) No teacher testified that a goal was placed in his/her PIP without consent; indeed, each of the supervisors involved in the preparation of the PIPs testified that no teacher was forced to include any particular objective. (*Ibid.*) Additionally, the Board argues that, although many of the indicators of success were

uniform, the objectives and activities contained in the PIPs were specific to the individual teacher's subject level and grade assignment. (*Ibid.*) Thus, the Board concludes:

In the absence of any testimony that that an individual teaching staff member was forced to take on additional activities or responsibilities the Administrative Law Judge properly concluded that the inclusion of such school-wide activities and responsibilities in a Professional Improvement Plan was the result of a collaborative effort between the teaching staff member and his/her supervisor. (*Id.* at 3)

As to the Board's exceptions to the Initial Decision, the Board objects to the ALJ's finding that the format of its PIPs is inconsistent with applicable regulations because it does not "specifically delineate the responsibilities of the School District for the implementation of the PIPs." (Board's Exceptions at 1) This finding, the Board contends, not only conflicts with the unrefuted evidence in this matter, but with the Commissioner's own directive (issued in April 2000 to all Chief School Administrators) with respect to developing PIPs to comply with continuing professional development requirements. (*Ibid.*) The Board asserts that the ALJ's decision in this regard would compel a revision to its PIP form, which was developed as a collaborative effort by a committee of parents, teaching staff members and school administrators, and has been implemented, without objection, for six years. (*Id.* at 2) The Board continues:

Each of these witnesses testified that the current forms used in Kinnelon do provide the responsibilities of the School District for implementing the Professional Improvement Plans. Witnesses testified that all teaching staff members are required to obtain approval for all workshops, courses and training. Where noted in the PIP, the Principal or Supervisor would be responsible for reviewing and approving the courses or training program recommended or selected by the teaching staff member. Many of the professional improvement plans require that the PIP be documented through a portfolio. The principals testified that they are actively involved in the development and review of the portfolios prepared by the teachers.

Further, the principals testified that they are involved in reviewing new curriculums and/or units of study initiated by teachers and included as part of their PIP goals or activities. It is also noteworthy that there was no testimony that even one teaching staff member ever questioned who was responsible for implementing the goals and objectives set forth in a PIP. In fact, each of the school district officials who testified stated that it was clearly understood between the teacher and the Principal or Supervisor what the responsibilities are of the teaching staff member and the principal or supervisor.*** (*Id.* at 2-3)

In response to the Board's exceptions, petitioner counters that "[n]othing argued by the Respondent contradicts the fact that the regulations require that each PIP must specifically include the responsibility of the District for implementing the PIP, and the fact that such an area is nowhere included in the District's form." (Petitioner's Reply at 1) According to petitioner, the Commissioner has confirmed this requirement in *Passaic Education Association*, decided by the Commissioner April 26, 1999, Decision No. 126-99, which decision constitutes an administrative ruling, unlike the memorandum from the Commissioner of Education cited by the Board. (*Id.* at 2) Thus, since the PIP forms used in the Pearl R. Miller School, the Special Education Department, the Kiel School and the Stoneybrook School do not contain an area in which the District's responsibility is set forth, petitioner maintains that the District has failed to conform to the requirements of *N.J.A.C.* 6:3-4.1 through *N.J.A.C.* 6:3-4.3 and to the requirements of *Passaic*.

Upon careful and independent review of the record in this matter, which did not include a transcript of the hearing conducted at the OAL, the Commissioner determines to affirm the Initial Decision, with clarification, as set forth below.

Initially, the Commissioner concurs with the ALJ's finding that "the inclusion of school-wide or grade-wide goals in addition to other choices which are made in collaboration between the teacher and the supervisor does not unduly circumscribe the role of the teacher" in

developing his/her PIP. (Initial Decision at 6) Based on the Board's unrefuted testimony, petitioner has not proven that teachers in the Pearl R. Miller School, the Special Education Department, the Kiel School and the Stoneybrook School are improperly restricted in the development of their individual PIP by predetermined topics and goals for their professional improvement. In this connection, the Commissioner stresses that recognition of school or district-wide goals in the development of a PIP is certainly not prohibited; indeed, such recognition may well shape perceptions of deficiency, or desirable professional development, with regard to individual staff members. However, while school or district-wide goals and objectives may be infused into a PIP through their relationship to individually developed action and activity plans, they may not be substituted for these, nor serve to foreclose other aspects of need and development. *See N.J.A.C. 6:3-4.3(h)3.*

With respect to the ALJ's finding that the format used by the Board is in violation of the pertinent regulations for developing professional improvement plans because "it does not specifically provide for a delineation of the District's responsibilities" (Initial Decision at 7), the Commissioner clarifies that this finding need not necessarily be read to invalidate the PIP format currently used by the Board, but, rather, to direct that such district responsibilities for implementing the PIP be *explicitly stated within the document* (*see N.J.A.C. 6:3-4.3(h)3*), rather than implicit in the nature of the particular goal or objective, or "assumed" by virtue of the supervisor's signature on the PIP. (*Ibid.*) As directed by *Passaic*, "[a]ll professional improvement plans shall contain the responsibilities of the school district for the implementation thereof." *Passaic, supra*, Slip Opinion at 8.¹

¹ For example, utilizing the Board's current form, the "activities" section might include both individual and district responsibilities relative to each goal.

Accordingly, the Initial Decision is affirmed, as clarified above, for the reasons expressed therein.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: May 18, 2001

Date of Mailing: May 18, 2001

² This decision, as the Commissioner's final determination, 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.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.