

OAL DKT. NO. EDU 6720-05 (http://lawlibrary.rutgers.edu/oal/html/initial/edu06720-05_1.html)
AGENCY DKT. NO. 198-8/05

BEDMINSTER EDUCATION ASSOCIATION,	:	
	:	COMMISSIONER OF EDUCATION
PETITIONER,	:	
	:	DECISION
V.	:	
	:	
BOARD OF EDUCATION OF THE TOWNSHIP OF BEDMINSTER, SOMERSET COUNTY,	:	
	:	
RESPONDENT.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions from the petitioning Education Association (Association) and the reply of the respondent Board of Education (Board), both filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4.

In its exceptions, the Association concurs with the Administrative Law Judge's (ALJ) finding that a "substantial likelihood of some harm" to the Association's current or prospective membership is all that is needed to confer standing upon the Association in this matter; it contends, however, that the ALJ erred in his subsequent analysis by confusing standing with likelihood of success on the merits. (Petitioner's Exceptions at 4) The Association argues that it did, in fact, adequately plead that some harm would come to its membership as a result of the Board's promulgation of professional development procedures which do not conform to the provisions of applicable rule, specifically: "a limitation or constraint against the role of the individual teaching staff members in developing professional improvement plans which are

supposed to be individualized to each particular teaching staff member to correct individual deficiencies or address individual areas of professional growth,” thus impeding individual staff members from “setting their own individual goals, seeking their supervisor’s input with regard to those goals and assisting (*sic*) their own proficiency levels.” (*Id.* At 5-6) At this early point in the litigation, according to the Association, it need not have proven that its claim would ultimately be successful on the merits; to the contrary, even if the Board’s motion to dismiss *were* based upon failure to state a claim or cause of action – which it was not – the Association’s allegations were sufficient to suggest a cause of action. Thus, the Association urges, the ALJ should have accorded it every reasonable inference and permitted it to engage in discovery and present proofs, including testimony from adversely affected teachers. (*Id.* At 5-6)

In reply, the Board reiterates that “a cognizable grievance by one or more affected employees remains a necessary condition precedent” to any dispute of this type, and that the Association has nowhere alleged that “the formulation of professional development plans based on a set of consistent standards determined by the [Board], in its discretion, has prevented any individuals from asserting their statutory rights and/or entitlements under the regulation at issue.” (Board’s Reply at 3-4) The Board contends that the ALJ was entirely correct in sparing the parties the time and expense of litigating a non-justiciable claim, and in recognizing that the Association must first plead facts sufficient to initiate and maintain an action before the court in order to have the opportunity later to prove them. (*Id.* at 5-6) Urging the Commissioner to disregard the “inapposite” case law referenced by petitioner in its discussion of dismissal for failure to state a claim, the Board contends that a party cannot attain standing “vicariously through

unnamed potential witnesses” or based upon facts beyond those alleged in the complaint; thus, the ALJ properly held the Association to lack standing because its petition “failed to allege any actual harm to any individual teachers, nor any potential harm to it as an entity” as a result of the Board’s action. (*Id.* at 6-8) Finally, the Board objects to the Association’s “eleventh-hour” use of exceptions as a means of introducing factual assertions not pled in the underlying petition, “to-wit, that staff were directed to complete the contested forms on their own over summer break, and that ‘numerous teaching staff members expressed concern about the validity’ of the contested plans.” (*Id.* at 8-9)

Upon review, the Commissioner concurs with the ALJ that, based upon the standard articulated in *Ridgewood, supra* (Initial Decision at 5-6), the Association is not entitled to pursue this matter as pled. Contrary to the Association’s assertions on exception, the ALJ did not dismiss its appeal because the petition failed to state a cause of action, but rather because its facts and allegations did not support a finding – essential to a threshold determination of justiciability – that, if true, such facts and allegations constituted actual or imminent (rather than speculative) harm to the Association or its membership. The Commissioner further notes that the Petition fails to establish the “interest” required to maintain a contested case pursuant to *N.J.A.C.* 6A:3-1.2, since bare assertions of violation of rule and generalized contentions that the disputed forms act solely by their existence to inhibit the mutual development of individual professional improvement plans, are simply not enough to establish that the Association or any of its members will be “substantially, specifically and directly affected by the outcome” of a determination by the Commissioner.

Accordingly, for the reasons expressed therein as clarified above, the Initial Decision of the OAL is adopted as the final decision in this matter and the Petition of Appeal is dismissed. The Commissioner stresses, however, that such dismissal is without prejudice to the Association's right to timely pursue allegations that actual harm has accrued, or is accruing, to itself or its member(s) as a result of the Board's use of the form disputed herein.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 16, 2006

Date of Mailing: June 16, 2006

* This decision 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.*