

BOARD OF EDUCATION OF THE :  
FREEHOLD REGIONAL HIGH SCHOOL :  
DISTRICT, MONMOUTH COUNTY, :  
COMMISSIONER OF EDUCATION  
PETITIONER, :  
DECISION  
V. :  
NEW JERSEY STATE COMMISSION :  
ON HIGHER EDUCATION, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioning school district named the New Jersey Commission on Higher Education (Commission) as the respondent in this matter, alleging that the Commission was responsible for actions the Board took that resulted in a pending tenure entitlement claim, captioned *Lorraine Taddei-Graef v. Board of Education of the Freehold Regional High School District, Monmouth County*, Agency Dkt. No. 19-2/09, OAL Dkt. No. EDU 2617-09. The petition seeks relief from the Commission related to that agency's determination that advanced degrees awarded from Breyer State University are not valid for use in New Jersey, and further seeks to have the Commission joined as an indispensable party and respondent in the above-captioned matter.

The ALJ found that: the issue in this matter is whether the New Jersey Commissioner of Education (Commissioner) has jurisdiction over the a petition naming the Commission as respondent; the Commissioner has jurisdiction to hear and decide all disputes arising under the school laws, except those governing higher education; the Commission has jurisdiction over higher education in New Jersey, including the use of academic degrees; the Commissioner has no jurisdiction over the validity of degrees of higher education in New Jersey, and no power to compel the Commission to submit to its jurisdiction. Accordingly, the within petition must be dismissed for the Commissioner's lack of jurisdiction. The ALJ additionally advised that the rules set forth in *N.J.A.C. 1:1-17.1 et seq.* provide a means to resolve disputes involving the jurisdiction of more than one agency, allowing for consolidation of related petitions and a determination of predominant interest.

The Commissioner adopted the Initial Decision as the final decision in this matter and dismissed the petition, with an endorsement of the ALJ's suggestion that *N.J.A.C. 1:1-17.1 et seq* may provide an appropriate mechanism for the resolution of this dispute.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>
---

OAL DKT. NO. EDU 4999-09  
AGENCY DKT. NO. 82-4/09

BOARD OF EDUCATION OF THE	:	
FREEHOLD REGIONAL HIGH SCHOOL	:	
DISTRICT, MONMOUTH COUNTY,	:	COMMISSIONER OF EDUCATION
	:	
PETITIONER,	:	DECISION
	:	
V.	:	
	:	
NEW JERSEY STATE COMMISSION	:	
ON HIGHER EDUCATION,	:	
	:	
RESPONDENT.	:	
_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions of the petitioning Board of Education (Board) and the reply of the Commission on Higher Education (Commission), both duly filed pursuant to *N.J.A.C.* 1:1-18.4.

On exception, the Board asserts that the Administrative Law Judge (ALJ) erred in concluding that the instant petition could not be entertained by the Commissioner for purposes of consolidation with a tenure entitlement claim pending against the Board.<sup>1</sup> The Board reiterates its prior arguments to the effect that: 1) the Commissioner has long been held able to hear matters that would ordinarily be outside her jurisdiction when they are directly intertwined with related school law matters; and 2) the pending tenure entitlement claim can be fully resolved only by compelling the participation of the Commission, since the Commission's directive that the petitioner in that matter cease and desist in using her advanced degree was the underlying cause of her salary dispute with the Board, and the Commission must be heard on the subject of

---

<sup>1</sup> *Lorraine Taddei-Graef v. Board of Education of the Freehold Regional High School District, Monmouth County*, Agency Dkt. No. 19-2/09, OAL Dkt. No. EDU 2617-09. See Initial Decision at 2-3.

use of degrees of higher education before the Commissioner can apply its findings in determining whether the petitioner's tenure rights were violated by the reduction in salary that followed the Commission's cease-and-desist order. (Board's Exceptions at 2-5)

In reply, the Commission asserts that the ALJ decided the matter correctly, reiterating that the Commissioner's authority over controversies and disputes does not extend to matters of higher education and rejecting the Board's arguments on exception because: 1) the fundamental dispute in this matter does not arise out of the school laws so as to give the Commissioner ancillary jurisdiction over other issues embedded within it, as occurs in cases where the Commissioner exercises jurisdiction over related matters arising within a school law dispute; and 2) the present matter is not "inextricably intertwined" with the tenure entitlement claim pending against the Board, since the Commission had no involvement in the Board's decision to reduce the salary of the petitioner in that matter, but merely advised such petitioner that she was required to cease and desist use of her title and degree from an unaccredited university. (Commission's Reply at 1- 4)

Upon review, the Commissioner concurs with the ALJ, for the reasons expressed in the Initial Decision and in the Commission's reply to the Board's exceptions, that the present petition must be dismissed because the Commissioner lacks jurisdiction over both its subject matter and its named respondent. The Commissioner further concurs that applicable rules, *N.J.A.C. 1:1-17.1 et seq.*, provide a mechanism for resolving disputes involving the jurisdiction of more than one agency – allowing for consolidation of related petitions and a determination of predominant interest, with proceedings to follow at the OAL and each agency in accordance with

such determination – and the Commissioner endorses the ALJ’s suggestion that such mechanism may be appropriate in this instance, following the filing of a petition with the Commission.<sup>2</sup>

Accordingly, for the reasons expressed therein and above, the Initial Decision of the OAL is adopted as the final decision in this matter, and the Petition of Appeal is dismissed.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: December 30, 2009

Date of Mailing: December 31, 2009

---

<sup>2</sup> Petitioner in the tenure entitlement matter (see Note 1) did not oppose the Board’s request for consolidation of that matter with the present petition. See May 29, 2009 letter from petitioner’s counsel.

<sup>3</sup> Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Appellate Division of the Superior Court.