

DAVID HERRON, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
TOWNSHIP OF MONTCLAIR, :
ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

The petitioner, a Montclair Township resident and taxpayer, challenged the respondent Board's implementation of a two-year strategic plan that includes quarterly testing of students to measure their readiness for college and careers. Petitioner asserted, *inter alia*, that a component of the plan, which would exempt from quarterly testing those students enrolled in advanced placement (AP) classes, is discriminatory in that less than 10% of AP students are African-American. The petitioner contended that he is an advocate for students in Montclair public schools, and has successfully intervened on behalf of a number of these students. Petitioner claimed no other relationship to the public schools, aside from his status as a concerned citizen of Montclair. The Board filed a motion to dismiss, in which it argued that petitioner lacks standing to bring his claims.

The ALJ found that: *N.J.S.A. 18A:12-2* governs this dispute, as the New Jersey Supreme Court has held that *N.J.S.A. 18A:12-2* imposes ongoing qualifications for membership on a board of education, and the provisions of the subsequently-enacted School Ethics Act do not supersede *N.J.S.A. 18A:12-2*; regardless of whether respondent is an owner or employee of Westwood Truck Center, an impermissible conflict of interest existed under the regulations; however, the disqualifying conflict of interest was cured, and thereby mooted, when the contract with Westwood Truck Center terminated on June 30, 2013; and after that date, no conflict of interest existed. Accordingly, because the contract has been terminated, the ALJ concluded that the respondent is not required to forfeit his seat on the Board.

The Commissioner concurred with the ALJ's findings and conclusion, and adopted the Initial Decision as the final decision in this matter.

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.

DAVID HERRON, :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
 :
 V. : DECISION
 :
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF MONTCLAIR, :
 ESSEX COUNTY, :
 :
 RESPONDENT. :

The petitioner in this case seeks to challenge respondent’s decision to administer quarterly assessments designed to measure its students’ readiness for college and careers, but to exempt from the testing those students who are taking advanced placement (AP) courses. In petitioner’s view the exemption disparately and unfairly impacts African-American children since – according to petitioner – the majority of Montclair’s AP students are white. The question before the Commissioner, however, is whether petitioner has standing to proceed with an action against respondent. The conclusion of the Administrative Law Judge who heard the matter in the Office of Administrative Law (OAL) was that petitioner does not have such standing. Upon review of the record and Initial Decision of the OAL,¹ the Commissioner concurs.

It appears undisputed that petitioner does not currently have children in respondent’s schools, and will therefore suffer no direct personal harm or inconvenience from the actions which respondent has decided to undertake. Further, while petitioner is a resident and taxpayer in Montclair, he has alleged no personal financial ramifications from respondent’s

¹ Neither party filed exceptions to the Initial Decision.

testing plan. Thus, petitioner does not qualify as an “interested person” under the regulations governing disputes before the Commissioner, *see, N.J.A.C. 6A:3-1.2*.

Nor does petitioner meet the established criteria for “standing.” As referenced in the Initial Decision, standing is a threshold justiciability determination about whether a litigant is entitled to bring an action before a court or other tribunal. *Stubaus v. Whitman*, 339 N.J. Super. 38, 47 (App. Div., 2001). In order to have standing, a party must be in a position adverse to other parties, have a palpable stake in the outcome of the litigation, and be likely to suffer harm in the event of an unfavorable decision. *Ibid.*

Petitioner offers, as a basis for a determination that he has standing, his efforts over the years to advocate for various Montclair students who have experienced academic or disciplinary problems, or have sought accommodations. These advocacy efforts are commendable, but they do not add up to the concrete, personal stake in respondent’s current actions which standing contemplates. Further, no Montclair student or parent has joined petitioner in the prosecution of the instant matter. Thus, there are no parties in this case with concrete interests adverse to the actions which respondent has proposed, and to which petitioner objects.²

² Although the courts have allowed litigants to assert the rights of third parties, they have only done so in limited situations. For example, when a plaintiff suffers direct impairment of constitutional rights, that plaintiff may also assert the rights of third parties who find it difficult to bring their own claims. *Trombetta v. Atlantic City*, 181 N.J. Super. 203, 222, 436 A.2d 1349 (Law. Div. 1981), *aff’d*, 187 N.J. Super. 351, 54 A.2d 900 (App. Div.1982). A plaintiff may also raise the constitutional rights of a third party when the third party’s rights are likely to be diluted or adversely affected unless they are raised by a plaintiff holding a confidential relationship with the third party. *In re Estate of Neuwirth*, 155 N.J. Super. 410, 419, 382 A.2d 972 (Probate Div.1978). Finally, a non-profit organization has been permitted to sue on behalf of its injured members. *In re Association of Trial Lawyers of America*, 228 N.J. Super. 180, 186, 549 A.2d 446 (App. Div.), *certif. denied*, 113 N.J. 660, 552 A.2d 180 (1988). But here, petitioner has not suffered any direct injury; does not hold a confidential relationship with Montclair students and their parents – who could bring a petition on their own if they chose; and is not a non-profit organization.

In sum, the Commissioner adopts the Initial Decision of the OAL, which found that petitioner lacks the standing to maintain this action against respondent. Accordingly, respondent's motion to dismiss the petition is granted.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 2, 2014

Date of Mailing: June 4, 2014

³ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).