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| BOARD OF EDUCATION OF THE | : | |
| BOROUGH OF NEW MILFORD, | : | |
| BERGEN COUNTY, | : | COMMISSIONER OF EDUCATION |
| | : | |
| PETITIONER, | : | DECISION |
| | : | |
| V. | : | |
| | : | |
| NEW JERSEY STATE DEPARTMENT OF | : | |
| EDUCATION, | : | |
| | : | |
| RESPONDENT. | : | |
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SYNOPSIS

The issue presented herein is whether the New Milford Board of Education (Board) – which operates a K-12 school district in Bergen County – was permitted to include in the 2013-2014 employment contract for its Superintendent a provision for the Board to pay for long-term care insurance for the Superintendent and his spouse. The petitioning Board challenged the respondent Bergen County Interim Executive County Superintendent’s (ECS) disapproval of such a provision, which the Board eliminated while specifically retaining its right to a review of the ECS decision. Respondent contended that the contract was reviewed by the ECS pursuant to *N.J.S.A. 18A:7-8(j)*, using the standards provided in *N.J.A.C. 6A:23A-3.1*, and that the ECS’s decision to disallow the provision in question is entitled to deference. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: as preliminary issue, although the Legislature charged ECSs with the responsibility to review and approve superintendents’ contracts, an ECS decision is not a final agency action, and the issuance of a final decision is reserved for the Commissioner; long-term care insurance, although not classic “health care insurance”, is nevertheless a form of supplemental health insurance; pursuant to *N.J.A.C. 6A:23A-3.1(e)(6)*, no contract shall include benefits that supplement or duplicate benefits that are otherwise available to an employee; since the Superintendent is covered by a group health insurance policy, long-term care insurance cannot be offered as it is a form of supplemental health care insurance and prohibited under *N.J.A.C. 6A:23A-3.1(e)(6)*. The ALJ concluded that the ECS correctly determined to disallow the inclusion of long-term care insurance in the Superintendent’s employment contract for 2013-2014. Accordingly, the ALJ denied the Board’s motion for summary decision, granted the respondent’s motion for summary decision, and dismissed the petition.

Upon comprehensive review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision as the final decision in this matter. The petition was dismissed.

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| 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. |
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OAL DKT. NO. EDU 17163-13
AGENCY DKT. NO. 260-10/13

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and respondent’s reply thereto – submitted in accordance with the requirements of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in reaching his determination herein.

In this matter, the New Milford Board of Education (Board) challenges the determination of Scott Rixford, Interim Executive County Superintendent (ECS) for Bergen County, disapproving a provision contained in the Board’s proposed employment contract with its Superintendent of Schools, Michael Polizzi, for the period of July 1, 2013 through June 30, 2018. The provision in question would require the Board to maintain a long-term care insurance policy for the Superintendent and his spouse in an amount up to \$9,000 annually. Rixford disapproved the provision, finding it to be inconsistent with the Fiscal Accountability, Efficiency and Budgeting Procedures, *N.J.A.C. 6A:23A-1.1 et seq.* (Accountability Regulations)

At the outset of his Initial Decision, the Administrative Law Judge (ALJ) addressed the appropriate standard of review applicable to Rixford’s decision. Respondent

argued that, since the Legislature had expressly delegated authority to the ECS to review and pass upon the acceptability of superintendent contracts, Rixford's decision is entitled to "substantial deference." The ALJ rejected respondent's argument, concluding instead that, although the Legislature charged the ECS with the responsibility to review and approve superintendents' contracts, nothing in the legislation dictates that the Commissioner defer to the ECS's decision. Rather, as the agency head, the Commissioner is "free to decide the matter as [he] understands the applicable facts and law to require." (Initial Decision at 5)

On the merits, the ALJ granted summary judgment in favor of respondent, upholding Rixford's decision to disapprove the long-term care insurance provision. Petitioner had argued that Rixford's decision should be overturned – and the long-term care provision should be approved – because 1) the provision is not expressly prohibited by the regulations, 2) long-term care insurance is similar to disability benefits, which are approved by the Department, and 3) long-term care insurance is contained as a line-item on a document that was developed by the Department to assist ECS review of proposed contracts. The ALJ rejected each of petitioner's contentions, concluding that long-term care insurance is a form of health insurance and that, since Polizzi already receives health care benefits, long-term care insurance represents a form of supplemental health insurance that is prohibited by the plain wording of *N.J.A.C. 6A:23A-3.1(e)(6)*. Accordingly, the ALJ upheld Rixford's decision as an appropriate application of his supervisory duties under the regulations.

The parties' submissions on exception essentially replicate the briefs submitted to the ALJ in support of their respective cross-motions for summary decision, below. The Commissioner finds that the arguments advanced therein were fully considered and addressed by the ALJ in his Initial Decision. Accordingly, they will not be revisited in depth here.

Upon his full review, the Commissioner concurs with the ALJ's determinations. As a threshold matter, the Commissioner agrees with the ALJ that, when there is a challenge to a determination by the ECS respecting a superintendent's contract, the Commissioner is not legally mandated to give deference to the ECS but instead independently determines if the finding was legally appropriate. Review of a decision by the ECS is not akin to appellate review of a final agency decision such that an arbitrary, capricious or unreasonable standard of review would be applicable. Nor has the Commissioner determined to otherwise limit the scope of his review of such determinations. Indeed, where the scope of review of a subordinate office or division has been so limited, it has been done by regulation, i.e. appeals from decisions of the State Board of Examiners, School Ethics Commission and the New Jersey State Interscholastic Athletic Association.

The Commissioner is also in accord with the ALJ's conclusions that long-term care insurance is a form of health insurance and that *N.J.A.C. 6A:23A-3.1(e)(6)*, therefore, precludes approval of the proposed long-term care insurance provision. In pertinent part, *N.J.A.C. 6A:23A-3.1(e)(6)* provides:

No contract shall include benefits that supplement or duplicate benefits that are otherwise available to the employee by operation of law, an existing group plan, or other means[.]

The Commissioner is satisfied – for the reasons expressed in the Initial Decision – that long-term care insurance is appropriately classified as a form of health insurance. Further, it is undisputed that Polizzi receives health care benefits through a group plan. As the ALJ aptly noted, “[t]he plain wording of (e)(6) is that, if one receives a benefit from the employer through an existing group plan, no benefit that supplements that benefit is permitted. Thus, if health insurance is provided through a group plan, some form of additional or supplemental health insurance is not

authorized. As long-term care is, effectively, a form of supplemental health care, it cannot be offered since Polizzi already receives health care benefits.” (Initial Decision at 20)

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the within petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 14, 2014

Date of Mailing: October 15, 2014

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*).