

#181-16 (OAL Decision: Not yet available online)

NEWARK TEACHERS UNION LOCAL 481 AFT, :  
AFL-CIO, :

PETITIONER, :

V. :

STATE-OPERATED SCHOOL DISTRICT OF :  
THE CITY OF NEWARK, ESSEX COUNTY, :

COMMISSIONER OF EDUCATION

RESPONDENT, :

DECISION

AND :

IN THE MATTER OF ORLEANA SIMPSON, :  
ET. AL, NEWARK PUBLIC SCHOOL DISTRICT. :

SYNOPSIS

This consolidated case arises out of the July 1, 2013 layoff of 136 Newark Public School (District) employees, including all 46 of the District’s attendance officers. Before the Commissioner is the petition of the Newark Teachers’ Union alleging that the District violated *N.J.S.A. 18A:38-25 to -33* when it abolished the position of attendance officer; in the other matter, individual employees filed an appeal with the Civil Service Commission (CSC), claiming the layoff from their full-time positions was in bad faith. The respondent District contended that the layoff was undertaken for economic reasons, and did not violate the education laws because the role of the attendance officers had been transferred to school-based “Student Support Teams” (SST). The cases were consolidated for hearing in the Office of Administrative (OAL), with the Commissioner having predominant interest over the education law issues, and the CSC having jurisdiction over the remaining issues.

The ALJ found, *inter alia*, that: instead of appointing attendance officers as mandated by *N.J.S.A. 18A:38-32*, the District abolished that position and created the SST – comprised of a principal or vice principal, social worker, guidance counselor, parent coordinator, school resource officer, nurse, and two teachers, whose duties on the SST are voluntary and in addition to their primary role at each school; the SST does not warn children, parents or guardians of persistent absences, as required by *N.J.S.A. 18A:38-29*, nor do members of the SST – except for the school resource officer – have authority to make an arrest; moreover, without attendance officers, no District employee is designated to look for truant students, in violation of *N.J.S.A. 18A:38-28*. Accordingly, the ALJ determined that the District is in violation of *N.J.S.A. 18A:38-28*, *N.J.S.A. 18A:38-29*, and *N.J.S.A. 18A:38-32*, and therefore ordered the layoff of the attendance officers reversed.

Upon full review and consideration, the Commissioner found, *inter alia*, that: a school district is permitted to designate a team – rather than individuals – to serve as attendance officers; in Newark, the SST now performs the duties and responsibilities of the attendance officer; the purpose of *N.J.S.A. 18A:38-29* and the entire statute is to promote attendance, and the District’s use of new technology to notify parents and guardians of attendance issues and truancy advances this cause. The Commissioner concluded that the District did not violate *N.J.S.A. 18A:38-28*, *N.J.S.A. 18A:38-29* or *N.J.S.A. 18A:38-32* when it laid-off 46 attendance officers and created school-based SSTs to carry out the functions previously performed by the school attendance officers. Accordingly, the Initial Decision of the OAL was rejected. The remaining aspects of the case were transferred to the Civil Service Commission for determination.

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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NEWARK PUBLIC SCHOOL DISTRICT. :  
\_\_\_\_\_ :

This consolidated case stems from a layoff of approximately 136 employees by the Newark School District (District), including 46 attendance officers.<sup>1</sup> In the first action, the individual employees (petitioners) filed a layoff appeal with the Civil Service Commission (CSC) challenging whether the layoff from their full-time positions was in good faith. In the second action, the Newark Teachers Union (NTU) filed a petition of appeal with the Commissioner, alleging that the District violated education laws when it abolished the position of attendance officer. On February 5, 2015, the petitions were consolidated for hearing before the Office of Administrative Law (OAL), with the Commissioner having the predominant interest over the education law issue and CSC having jurisdiction to determine any remaining issues. Thereafter, hearings in this matter were held on June 10 and September 9, 2015.

With respect to the education issue, the Administrative Law Judge (ALJ) determined that the District was in violation of *N.J.S.A. 18A:38-28*, *N.J.S.A. 18A:38-29*, and *N.J.S.A. 18A:38-32* when it abolished the attendance officer position. Specifically, the ALJ found that instead of appointing

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<sup>1</sup> It is undisputed that the positions of attendance counselor and attendance officer are synonymous. For consistency and ease of reference, the Commissioner will refer to the position as attendance officer.

attendance officers – pursuant to *N.J.S.A. 18A:38-32* – the District created a student support team (SST) comprised of the principal or vice principal, social worker, guidance counselor, parent coordinator, school resource officer, nurse, and two teachers. The ALJ also found that the SST does not warn children, parents or guardians of persistent absences, as required by *N.J.S.A. 18A:38-29*, nor do any members of the SST – except for the school resource officer – have authority to make an arrest. Further, the ALJ determined that without attendance officers, no District employee looks for truant students, in violation of *N.J.S.A. 18A:38-28*. Accordingly, the ALJ reversed the layoff of the attendance officers.

The record of this matter and the Initial Decision of the OAL have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the District, and the replies thereto filed by the NTU and petitioners. In its exceptions, the District argues that the ALJ erroneously found that it violated education laws when it eliminated the position of attendance officer.<sup>2</sup> Specifically, the District takes exception to the ALJ’s finding that no one in the District is looking for truant students. (District’s Exceptions at 4-6) The District contends that there is credible evidence in the record to support the finding that it carries out its statutory duty to monitor and locate truant students – without the title of attendance officer – through the power school system of records, which sends out warning notices to parents and/or schedules meetings when a student is absent for certain periods of time.

The District also argues that Abdul Rahman Saleem’s testimony did not provide a credible account of his job duties as an attendance officer, and that the ALJ should not have relied upon it. (*Id.* at 6) Instead, the District argues that the ALJ should have relied upon the testimony of Eric Ingold,

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<sup>2</sup> The District also argues that the Commissioner does not have jurisdiction to review this matter as the CSC has sole jurisdiction. The Commissioner has jurisdiction over all controversies and disputes arising under the school laws of this State. *N.J.S.A. 18A:6-9*. Accordingly, the Commissioner has jurisdiction over the issue of whether the District’s layoff of its attendance officers violated *N.J.S.A. 18A:38-28*, *N.J.S.A. 18A:38-29*, or *N.J.S.A. 18A:38-32*, as this claim arises under the State’s education statute.

The District further contends that it did not act in bad faith when it eliminated the position of attendance officer. While the Commissioner has jurisdiction over the education issue, only the CSC has jurisdiction over whether the layoff of the attendance officers was in bad faith, as that issue does not arise under the State’s school laws. *N.J.S.A. 18A:6-9*. As this issue will be transferred to the CSC following the Commissioner’s decision, the Commissioner will not address the District’s arguments with respect to whether the District acted in good faith.

the District’s Executive Director for Safety and Security, who testified as to the efforts made by security guards, rapid response and school resource officers to combat truancy. (*Ibid.*)

The District contends that while *N.J.S.A.* 18A:38-32 allows it to “designate” persons to serve as attendance officers, the word “designate” should have a broad interpretation. (*Id.* at 7) “The discrepancy between the use of the word ‘designated’ and ‘appointment’ further implies that the legislature permits the District to identify employees to perform the statutory duties of an attendance officer” – without requiring the specific creation of an attendance officer position. (*Ibid.*)

The District notes that *N.J.S.A.* 18A:38-28 does not prohibit the District from laying-off attendance officers, but rather “provides guidance” for those assigned as attendance officers. (*Id.* at 8) Accordingly, the District argues that it did not violate *N.J.S.A.* 18A:38-28 when it laid off the attendance officers – a decision that was approved by the Civil Service Commission. (*Ibid.*)

The District also challenged the timeliness of the petition of appeal. (*Id.* at 12-13) Specifically, the District argues that the petition was filed with the Commissioner nearly one month beyond the 90-day filing deadline and that the ALJ erred in relaxing the 90-day rule.<sup>3</sup> (*Ibid.*)

In reply, the NTU contends that the ALJ correctly found the District in violation of the education statutes when it abolished the position of attendance officer. (NTU’s Reply at 6) The NTU argues that by applying principles of statutory interpretation, it is clear that an attendance officer must be a separate position with certain job responsibilities. (*Id.* at 6-11) The NTU points out that the intent of the statute is to ensure that children attend school. (*Id.* at 6-7) As such, *N.J.S.A.* 18A:38-32 requires that school districts “*shall* appoint a suitable number of qualified persons to be designated as attendance officers and fix their compensation.” (Emphasis added) (*Id.* at 8) The NTU contends that the language is “crystal clear” that attendance officers are required. (*Ibid.*) Further, *N.J.S.A.* 18A:38-27 and

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<sup>3</sup> The ALJ found that because the issues raised in the NTU’s petition of appeal involve matters of significant public interest, a relaxation of the 90-day filing deadline was warranted under *N.J.A.C.* 6A:3-1.16. Further, the ALJ noted that the District failed to raise timeliness as an affirmative defense (with the exception of the generic affirmative defense that NTU failed to state a claim), nor did it raise the issue before the ALJ in any of the court proceedings – including in the oral argument on the predominant interest motion – prior to the closing submissions. Considering the circumstances – the importance of attendance and the fact that the District did not address this issue with the court until after two days of hearing had concluded – a relaxation of the rules is warranted, and the Commissioner will consider the instant appeal. *See N.J.A.C.* 6A:3-1.16.

*N.J.S.A.* 18A:38-29 delineate certain job responsibilities and requirements for attendance officers, which the District seeks to “dilute . . . by implying that the District can designate individuals to assume the statutory duties.” (*Id.* at 9)

The NTU additionally points out that the testimony of the District’s own witnesses – Nadiyah Sa’id, Vanessa Rodriguez, and Eric Ingold – proves that the District does not have any employees who go into the community to look for truant students, the members of the SST are volunteers, and the District no longer uses buses to pick up truants. (*Id.* at 12-13)

Similar to that of the NTU, petitioners’ reply to the District’s exceptions also emphasizes that the ALJ’s findings are supported by the weight of the evidence, and demonstrates that no one in Newark Public Schools presently serves as an attendance officer or performs the core functions of that role. (Petitioners’ Reply at 8-11) Specifically, the District’s own witness – Nadiyah Sa’id – confirmed that no one holds the attendance officer title, no one replaced the truancy team who formerly went into the community searching for truants, and the current SST consists of school-based volunteers who have other responsibilities besides attendance. (*Id.* at 8-10) Similarly, Vanessa Rodriguez and Eric Ingold testified that no one in the district was designated as an attendance officer. (*Id.* at 10-11) Eric Ingold further testified that the District no longer utilizes a bus with attendance officers who patrol the streets to combat truancy, but instead relies on the Newark Police Department to identify and pick up truants. (*Ibid.*) As such, petitioners dispute the District’s argument that the ALJ only relied on the unsupported testimony of Abdual Rahman Saleem. (*Id.* at 17)

Petitioners contend that the ALJ correctly concluded that the District violated education statutes by failing to have anyone in the statutorily-mandated attendance officer position. (*Id.* at 13-19) Petitioners point out that the reason the statute requires attendance officers is part of a larger statutory scheme to enforce compulsory education. (*Id.* at 13) Additionally, petitioners assert that the District attempted to distribute the job duties of the attendance officer to members of the SST, but that the SST does not perform the core duties of the attendance officer, *ie.*, “going out into the community and utilizing . . . police powers to actually locate and return truant students to school.” (*Id.* at 15-16)

Upon review, the Commissioner agrees with the District that the layoff of the 46 attendance officers did not violate *N.J.S.A. 18A:38-28*, *N.J.S.A. 18A:38-29*, or *N.J.S.A. 18A:38-32*. Specifically, when evaluating a statute, the Commissioner must consider the Legislature’s intent by considering the plain language of the statute. *State v. Munafo*, 222 *N.J.* 480, 488 (2015). When *N.J.S.A. 18A:38-25* to *-35* is read as a whole, it is clear that the purpose of enacting this legislation was to compel children to attend school. Specifically, *N.J.S.A. 18A:38-25* states that parents or guardians of school-aged children “shall cause such child regularly to attend the public schools of the district or a day school in which there is given instruction equivalent to that provided in the public schools[.]” To achieve that end, districts are required to designate attendance officers. *N.J.S.A. 18A:38-32* provides that “[f]or the purpose of enforcing the provisions of this article, the board of education of each school district . . . shall appoint a suitable number of qualified persons to be designated as attendance officers, and shall fix their compensation.”

Considering its plain language, the statute does not require the employment of individual employees to serve solely in the role of attendance officer, but rather that the district “designate” attendance offices to enforce the provisions of the statute. Designating a team to perform the core duties outlined in the statute is acceptable, provided that the ultimate goal of encouraging student attendance at school is achieved – regardless of whether the team members have additional job duties and responsibilities. See *Ann Quinlan v. Board of Education of the Township of North Bergen*, 73 *N.J. Super.* 40, 47-48 (App. Div. 1962) (permitting a school clerk to serve in the role and perform the duties of both clerk and attendance officer).

Here, the District has designated the SST – as a whole – as attendance officers. The roles and responsibilities of the SST were developed through a listening tour of approximately 25 meetings in which Nadiyah Sa’id, the District’s Deputy Executive Director of College and Career Readiness, met with a variety of school employees – including principals, students, parents, attendance officers and court representatives – to develop “a new strategy for how the district would implement attendance support for

[its] students.” (Testimony of Nadiyah Sa’id, 1T at 8)<sup>4</sup> Specifically, Sa’id sought to “work with the remaining attendance staff to get a clear understanding of [the] state code on attendance, work with the existing office staff to determine how things had been functioning, the various roles that contributed to the district’s delivery of attendance support services” and to identify how the District could support all areas of attendance following the layoff of the attendance officers. (*Id.* at 9) Thereafter, the District developed the SST as part of a new attendance policy, in accordance with State attendance policy. (Initial Decision at 10-11)

The designation of the SST as attendance officers does not – in and of itself – violate *N.J.S.A.* 18A:38-32. The purpose of the SST is to monitor student attendance and combat truancy, the same function as the former attendance officers. Additionally, although *N.J.S.A.* 18A:38-32 requires that attendance officers receive compensation, there is no requirement that the position be full-time. It is undisputed from the record that the members of the SST – principal or vice principal, social worker, guidance counselor, parent coordinator, school resource officer, nurse, and two teachers – are all employees of the District and receive compensation. As such, the District is permitted to designate a team – rather than individuals – to serve as attendance officers, and an analysis of whether the SST meets the statutory responsibilities of the attendance officer is therefore necessary.

In order to ensure that children attend school, *N.J.S.A.* 18A:38-29 provides that:

The attendance officer shall examine into all violations of this article, shall warn any child violating any of the provisions of this article and the parent, guardian or other person having charge and control of the child of the consequences of the violation if persisted in, and shall notify such person in writing to cause the child to attend school within five days from the date on which notice is served, and regularly thereafter. The attendance officer shall have full police power to enforce the provisions of this article and may arrest without warrant any vagrant child or habitual truant or any child who is habitually incorrigible or who is vicious or immoral in conduct or illegally absent from school.

The record demonstrates – and the ALJ made findings of fact – that the power school clerk system sends out written notices to parents of children who are absent from school. If a student is absent for one to four

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<sup>4</sup> This citation refers to a transcript of a hearing held on June 10, 2015.

days, the power school clerk mails a warning notice to the parent, and the teacher may also call the parent to determine the reason for the student's absence. (R-5; Initial Decision at 11; Testimony of Nadiyah Sa'id, 1T at 17, 19-20) When a student is absent for five to nine days, the SST is activated and invites the parent to a meeting with the SST to develop an action plan. (R-5; Initial Decision at 11; Testimony of Nadiyah Sa'id, 1T at 21) The SST will make a verbal or written request three times before making a home visit. (*Ibid.*) Thereafter, if a student is absent for ten or more days and the parent has not responded to the intervention efforts of the SST, the SST then reaches out to the court representative. (R-5, Testimony of Nadiyah Sa'id, 1T at 22-23)

As such, the SST performs the duties and responsibilities of the attendance officer with respect to warning parents and guardians of student absences and notifies parents in writing within five days, as required by *N.J.S.A.* 18A:38-29. Further, the school resource officer – a member of the SST – is a police officer, in accordance with *N.J.S.A.* 18A:38-29. The fact that the District utilizes technology to assist with the performance of its statutorily-mandated responsibilities is of no moment. The purpose of *N.J.S.A.* 18A:38-29 and the entire statute is to promote attendance, and advancements in technology are an asset to the cause.

Finally, *N.J.S.A.* 18A:38-28 requires:

Any attendance officer who shall find any child between six and 16 years of age who is a truant from school, shall take the child and deliver him to the parent, guardian or other person having charge and control of the child, or to the teacher of the school which such child is lawfully required to attend.

Although the District used four buses to round up truant students prior to the layoff of the attendance officers, such use of buses and patrolling the streets is not required by *N.J.S.A.* 18A:38-28. Considering the plain language of the statute, attendance officers “who shall find” truant students are required to return them to school or to their home. The phrase “who shall find” does not compel districts to develop a scheme wherein attendance officers are required to canvas the streets searching for truant students. To the contrary, *N.J.S.A.* 18A:38-28 does not delineate specifically how attendance officers will find students and leaves districts with discretion on how to find students. Advancements in technology will naturally



result in new and innovative ways to locate truant students. Through the SST and the power school clerk, the District finds truant students through parent contact and involvement after the student has been absent as few as one to four times. As such, the District is in compliance with *N.J.S.A.* 18A:38-28.

Accordingly, the Initial Decision of the OAL is rejected for the reasons expressed herein. The layoff of the attendance officers does not violate *N.J.S.A.* 18A:38-28, *N.J.S.A.* 18A:38-29, or *N.J.S.A.* 18A:38-32. In accordance with the predominant interest order, the remaining aspects of the case are now transferred to the Civil Service Commission for determination.

IT IS SO ORDERED.<sup>5</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 12, 2016

Date of Mailing: May 12, 2016

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<sup>5</sup> 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).