

PATRICIA CHIODI, :

PETITIONER, :

v. :

JASON EITNER, SUPERINTENDENT, WATERFORD :

TOWNSHIP SCHOOL DISTRICT, CAMDEN COUNTY, :

RESPONDENT, :

AND :

DEBORAH BORRELLI, :

PETITIONER, : COMMISSIONER OF EDUCATION

v. :

JASON EITNER, SUPERINTENDENT, WATERFORD : DECISION

TOWNSHIP SCHOOL DISTRICT, CAMDEN COUNTY, :

RESPONDENT, :

AND :

DANIEL BITTNER, :

PETITIONER, :

v. :

JASON EITNER, SUPERINTENDENT, WATERFORD :

TOWNSHIP SCHOOL DISTRICT, CAMDEN COUNTY, :

RESPONDENT, :

SYNOPSIS

Petitioners – three teachers in the Waterford Township school district – sought to have Superintendent Jason Eitner’s certificate revoked for unbecoming conduct, alleging that Eitner had engaged in conduct ranging from age discrimination, to invasion of privacy, to violation of school policies prohibiting harassment, intimidation and bullying. The respondent filed a motion to dismiss, arguing that petitioners failed to set forth a legal basis for which relief can be granted under New Jersey’s school laws.

The ALJ found, *inter alia*, that: petitioners herein do not allege a cause of action against respondent under the school laws; any action to remove school administrators must be brought under the tenure provisions of Title 18A:6-10; moreover, an action against a school administrator for conduct related to their position must be brought via a grievance and then an appeal from the grievance; and petitioners have not exhausted this remedy. The ALJ concluded that the instant matter presents no cause of action under the school laws of New Jersey. Accordingly, the respondent’s motion to dismiss was granted.

Upon review, the Commissioner concurred with the ALJ that the Commissioner lacks jurisdiction here, and adopted the Initial Decision as the final decision in this matter. The Commissioner noted that, pursuant to *N.J.S.A.* 18A:6-38 and *N.J.A.C.* 6A:9B-4.5, an administrator’s certificate may only be revoked or suspended by the State Board of Examiners. The petition was dismissed.

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.

OAL DKT. NOS. EDU 13721-16, EDU 13722-16 and EDU 13723-16 (consolidated)
AGENCY DKT. NOS. 216-8/16, 2/17-8/16 and 218-8/16

PATRICIA CHIODI, :

PETITIONER, :

v. :

JASON EITNER, SUPERINTENDENT, :
WATERFORD TOWNSHIP SCHOOL DISTRICT, :
CAMDEN COUNTY, :

RESPONDENT, :

AND :

DEBORAH BORRELLI, :

PETITIONER, :

COMMISSIONER OF EDUCATION

v. :

DECISION

JASON EITNER, SUPERINTENDENT, :
WATERFORD TOWNSHIP SCHOOL DISTRICT, :
CAMDEN COUNTY, :

RESPONDENT, :

AND :

DANIEL BITTNER, :

PETITIONER, :

v. :

JASON EITNER, SUPERINTENDENT, :
WATERFORD TOWNSHIP SCHOOL DISTRICT, :
CAMDEN COUNTY, :

RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, along with petitioners' exceptions – filed pursuant to *N.J.A.C. 1:1-18.4* – and the respondent's reply thereto.

In their exceptions, petitioners argue that the Administrative Law Judge (ALJ) failed to reference that petitioners had filed grievances – including a Harassment, Intimidation, and Bullying (HIB) complaint – and still had not received the results of the Board's investigations. Accordingly, petitioners dispute the ALJ's finding that no HIB complaint was filed. Further, petitioners contend that the matter should be held in abeyance pending a final determination by the Board on the grievances that were filed. Additionally, petitioners argue that the ALJ erred in concluding that the Commissioner does not have jurisdiction over personnel matters filed by individuals, and instead maintain that the matter touches upon school law.

In reply, respondent contends that while petitioners argue that they have not received the investigation reports regarding grievances that they filed, they indicated in their Opposition to the Motions to Dismiss that they were “not seeking any determination by this court regarding any obligation Respondent Eitner would have to furnish the results of an affirmative action investigation” and that they would seek relief from the Board outside of this litigation. (Respondent's Reply Exceptions, at 3). Additionally, respondent argues that the ALJ properly found that the Commissioner does not have jurisdiction over these matters because they do not arise under school law. Instead, respondent points out that issues involving the revocation or suspension of administrative certificates falls under the jurisdiction of the State Board of Examiners and such a proceeding cannot be initiated by individual employees. Finally, respondent argues that the matter should not be held in abeyance until a final determination is made by the Board on the personnel matters, because the doctrine of exhaustion requires petitioners to exhaust their administrative remedies prior to filing a petition.

Upon review, the Commissioner¹ concurs with the ALJ that the Commissioner does not have jurisdiction over these matters, as they do not arise out of the school laws of this State. *N.J.S.A.* 18A:6-9. Indeed, the authority to revoke or suspend the certificates of teachers or administrators lies exclusively with the State Board of Examiners. *N.J.S.A.* 18A:6-38; *N.J.A.C.* 6A:9B-4.5. Further, the Commissioner notes that – although petitioners allege in their Opposition to the Motions to Dismiss that the HIB statute is implicated in this matter – the matter herein does not involve HIB. This case is not an appeal of an HIB determination, nor would an HIB allegation be appropriate in this circumstance as the statute does not contemplate HIB complaints from school employees – only students. *See N.J.S.A.* 18A:37-13 *et seq.* The Commissioner does not find petitioners’ exceptions to be persuasive. Although petitioners indicate that they seek the results of affirmative action complaints filed with the Board and not considered by the ALJ in her decision, such exception is irrelevant. Petitioners have made clear in their submissions that the Board is not a party to this matter, nor do they seek the results of the investigation from Respondent Eitner.

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

IT IS SO ORDERED.²

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: March 30, 2017

Date of Mailing: March 30, 2017

¹ This matter has been delegated to the undersigned Deputy Commissioner, pursuant to *N.J.S.A.* 18A:4-34.

² 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).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION GRANTING
MOTION FOR SUMMARY DECISION

OAL DKT. NO. EDU 13721-16

AGENCY NO. 216-8/16

PATRICIA CHIODI,

Petitioner,

v.

JASON EITNER SUPERINTENDENT
WATERFORD TOWNSHIP SCHOOL DISTRICT,
CAMDEN COUNTY,

Respondent,
AND

DEBORAH BORRELLI,

Petitioner,

v.

JASON EITNER SUPERINTENDENT
WATERFORD TOWNSHIP SCHOOL DISTRICT,
CAMDEN COUNTY,

Respondent,
AND

DANIEL BITTNER,

Petitioner,

v.

JASON EITNER SUPERINTENDENT
WATERFORD TOWNSHIP SCHOOL DISTRICT,
CAMDEN COUNTY,

Respondent.

OAL DKT NO. EDU 13722-16

AGENCY DKT. NO. 217-8/16

OAL DKT NO. EDU 13723-16

AGENCY DKT. NO. 217-8/16

CONSOLIDATED

Saul J. Steinberg, Esq., for petitioners (Zucker Steinberg & Wixted, P.A., attorneys)

Andrew W. Li, Esq., for respondents (Parker McCay, P.A., attorneys)

Record Closed: January 12, 2017

Decided: February 13, 2017

BEFORE **SARAH G. CROWLEY**, ALJ:

PROCEDURAL HISTORY

Petitioners filed a verified petition on August 15, 2016, seeking to have the respondent's superintendent's certificate revoked for conduct unbecoming. The conduct ranges from allegations of sexual harassment, age discrimination and bullying. The respondent filed a Motion to Dismiss in lieu of an answer on September 6, 2016. The Director of the Bureau of Controversies and Disputes of the New Jersey Department of Education transmitted the matters to the Office of Administrative Law (OAL), where they were filed for hearing as a contested case on September 8, 2016. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. These matters were consolidated by Order dated November 16, 2016. Petitioners filed opposition to the Motion to Dismiss on December 23, 2016, and respondents filed a reply brief on January 12, 2017.

STATEMENT OF CASE AND UNDISPUTED FACTS

The petitioners are all employed by the Waterford Township Board of Education³ (District) and work as teachers in the District. Jason Eitner is the superintendent of the schools in the District. The petitioners have filed verified petitions seeking to have his

³ The Board of Education has not been named in this matter and the petitioners have advised that they do not seek to name the Board in this matter.

superintendent's certificate revoked on the grounds that he engaged in conduct unbecoming, age discrimination, invasion of privacy and a violation of school policies prohibiting harassment, intimidation and/or bullying. There was a grievance filed by one of the petitioners, and the superintendent issued a letter of apology in response to same. No appeal was filed with respect to the decision in that matter. In response to allegations by the petitioners of harassment and discrimination, the Board hired an attorney to do an Affirmative Action investigation. The undersigned has no details regarding this investigation or the results of same. However, counsel for the petitioner has clarified that no relief is sought with respect to that investigation and no appeal for that finding has been initiated

The respondents have filed a motion to dismiss on the grounds that the petition has failed to set forth a legal basis for which relief can be granted under the Educational Laws of the State of New Jersey. Respondent argues that the petitioners have not alleged any violations of the school laws and that there is no claim for relief under the jurisdiction of the Commission of Education. It is undisputed that no HIB complaint has been filed with respect to harassment, intimidation or bullying complaint, or for the failure of the District to have appropriate HIB policies in place. Moreover, there is no HIB finding that has been appealed. The respondents also allege that the petitioners have failed to exhaust administrative remedies through a grievance or a claim under the anti-bullying statute. The petitioners maintain that the Commissioner of Education has jurisdiction to hear disputes concerning these actions, and that they arise under the state school and education laws. However, no specific authority is provided which would give the Commissioner jurisdiction over a personnel matter filed by an individual employee or employees.

LEGAL ANALYSIS AND CONCLUSION

The issue presented here is whether the respondents are entitled to a decision dismissing the petition as a matter of law. The respondents have filed a motion to decision pursuant to N.J.A.C. 6A:3-1.10 which provides: “at any time prior to transmittal of the pleading to the OAL, in the Commissioner’s discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petitioner on the grounds that the petitioners have advanced no cause of action even if the petitioner’s factual allegations are accepted as true or for lack of jurisdiction for failure to prosecute or other good reason.” The motion was filed with the Department of Education and has been transmitted here for consideration. The basis of the motion is that the petitioners have alleged no claim under the education laws of the State of New Jersey and thus, the undersigned has no jurisdiction to hear the matter.

The allegations in the verified petitions are that the respondent has shown bias and engaged in inappropriate behavior, sexual harassment and age discrimination. The petitioners seek to have respondent’s Administrators Certificate revoked and to have him suspended from his position as Superintendent of the School District. There have been no prior proceedings regarding this matter, with the exception of an affirmative action investigation, which the petitioners did not, nor do they seek to appeal from. In addition, one of the petitioners filed a grievance against the respondent, from which relief was obtained in the form of an apology letter. No appeal was filed from that matter. Most of the allegations appear to allege HIB, or lack of appropriate policies. However, no HIB complaint was ever filed, nor do the petitioners seek relief under the HIB statute. The petitioners seek to suspend the respondent and revoke his administrator’s certificate.

Assuming that all of the petitioners’ factual allegations are true, they do not allege a cause of action under School Law against the respondent. An action to remove the administrators must be brought under the tenure provisions of Title 18A:6-10. Moreover, an action against the administrator of the school for action relating to their position in the school must be brought via a grievance and then an appeal from the

grievance. The petitioners have not exhausted this remedy, and the Commissioner of Education does not have jurisdiction to entertain grievances from individual employees in the first instance. The petitioners cite to N.J.S.A.18A:17-7, which requires superintendents to hold an appropriate certificate. However, there are no allegations that the respondent does not hold the appropriate certificate and thus, this statutory provision is inapplicable. The petitioner also cites to several tenure cases in support of the Commissioner's jurisdiction. However, this is not a tenure matter, and moreover, the undersigned does not have jurisdiction over tenure matters.

The undersigned's jurisdiction is limited to those matters falling under the Education Laws in the State of New Jersey, and assuming all facts alleged as true, I **CONCLUDE** that no cause of action under the Education Laws in the State of New Jersey. Accordingly, the respondent's motion to dismiss pursuant to N.J.A.C. 6A:3-1.10 is hereby granted.

ORDER

It is **ORDERED** that the Motion to Dismiss is hereby **GRANTED** and the petition is **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



February 13, 2017

DATE

SARAH G. CROWLEY, ALJ

Date Received at Agency:

February 13, 2017 (emailed)

Date Mailed to Parties:

/mel