188-19

New Jersey Commissioner of Education

Final Decision

Christine Skurbe,

Petitioner,

v.

Board of Education of the Township of Monroe, Middlesex County; Kathleen Kolupanowich, Board President; Steven Riback, Board Vice President; and Jill DeMaio, Board Member,

Respondents.

Synopsis

Petitioner – formerly the vice president of the Monroe Township Middle School Parent Teacher Organization (MTMS PTO), a parent organization that hosts fundraising activities for the benefit of students and staff – founded a second parent organization in 2018, the Monroe Township Middle School Parent Staff Association (MTMS PSA), of which she is president. A majority of members of the respondent Board voted to recognize the MTMS PSA at a meeting on August 22, 2018. Petitioner, however, believed that dissenting Board members would hold a second vote to revoke MTMS PSA's status as an organization over alleged violation of certain Board policies. A petition for due process was filed by petitioner in February 2019, in which she requested that the Commissioner investigate board members for allegedly retaliatory conduct and declare that the Board cannot revoke MTMS PSA's status. The Board filed a motion to dismiss for failure to state a claim upon which relief can be granted, asserting that the Commissioner does not have jurisdiction in this matter.

The ALJ found, *inter alia*, that: the Commissioner has jurisdiction to "hear and determine….all controversies and disputes arising under the school laws," *N.J.S.A.* 18A:6-9; in this role, the Commissioner adjudicates disputes and can review certain final decisions of a board of education to determine if it acted in and "arbitrary, capricious, or unreasonable manner"; the Commissioner does not have investigative powers, but rather has the power to review final rulings or actions of a board of education; as the Board in this matter has not moved to revoke the MTMS PSA's status as a parent organization, the issues raised by petitioner herein are not yet suitable for consideration by the Commissioner. Accordingly, the ALJ granted the Board's motion to dismiss the petition.

Upon review, the Commissioner concurred with the findings and conclusion of the ALJ, for the reasons thoroughly expressed in the Initial Decision. According, the Initial Decision of the OAL was adopted as the final decision in this matter. The petition was dismissed.

July 22, 2019

OAL Dkt. No. EDU 05352-19
Agency Dkt. No. 35-2/19

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon such review, the Commissioner agrees with the Administrative Law Judge – for the reasons thoroughly expressed in the Initial Decision – that this matter is not ripe for review. 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.[1]

COMMISSIONER OF EDUCATION

Date of Decision: July 22, 2019
Date of Mailing: July 22, 2019

[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).

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION ON
SUMMARY DECISION
OAL DKT. NO. EDU 5352-19
AGENCY DKT. NO. 35-2/19

CHRISTINE SKURBE,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF MONROE, MIDDLESEX COUNTY; KATHLEEN KOLUPANOWICH, BOARD PRESIDENT; STEVEN RIBACK, BOARD VICE PRESIDENT; AND JILL DE MAIO, BOARD MEMBER,
Respondents.

Christine Skurbe, petitioner, pro se

Robert M. Tosti, Esquire, for respondents (Purcell, Mulcahy, Hawkins, & Flanagan, LLC, attorneys)

Record Closed: June 11, 2019 Decided: June 27, 2019

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Prior to the 2018 school year in the Monroe Township Middle School, there was one-parent organization that hosted fundraising activities for the benefit of the students and its staff. It was the Monroe Township Middle School Parent Teacher Organization (MTMS PTO). Petitioner Christine Skurbe (Skurbe or petitioner) served as its vice president before founding her own organization, Parent Staff Association (MTMS PSA), of which she is the president. Respondent refused to recognize the MTMS PSA and requested to revoke its status as an organization because it violated some of the Board policies.

Skurbe argues her organization has not violated the relevant Board policies, and as such, there is not a valid basis for board members to consider revoking its Class I status. She alleges, therefore, that their discussions were "clearly retaliation," and asks that the matter be "looked into," "investigated," and "stopped."

On February 15, 2019, petitioner filed a petition for due process with the Office of Controversies and Disputes of the New Jersey Department of Education requesting that the Commissioner: (1) investigate board members for allegedly retaliatory conduct; and (2) declare that the Board cannot, consistent with its own policies, revoke the organization's Class I status. On April 18, 2019, the complaint was transmitted to the Office of Administrative Law for disposition.

In lieu of an answer, Monroe Township Board of Education (Monroe or respondents) filed a motion to dismiss the petition, for "failure to state a claim upon which relief can be granted." (R. 4:6-2(e).) They argue that even accepting the alleged facts as true, the Commissioner does not have jurisdiction to grant the requested relief. The question is whether the Commissioner of Education has jurisdiction to investigate a board of education and declare if it would violate its own policies if it voted in a certain way on a hypothetical matter.

FACTUAL DISCUSSION

The following facts are not in dispute and as such **I FIND AS FACT** that parent organizations host fundraising activities for the benefit of a school's students and its staff. In Monroe Township Middle School, before 2018, there was one such organization, the Parent Teacher Organization (MTMS PTO). Petitioner Christine Skurbe served as its vice president before founding her own organization, Parent Staff Association (MTMS PSA), of which she is the president. Her organization submitted the necessary paperwork to the Monroe Board of Education and asked that it be recognized and granted Class I user status. In August 2018, the Board considered that request.

District Policy 9210 governs the Board's relationship with parent organizations. It promises that the Board "will encourage and support" such organizations "whose objectives are to promote the educational interests of district pupils." District employees are thus required to treat "representatives of recognized parent organizations" "as interested friends of the schools and as supporters of public education." The Board, however, "reserves the right to withdraw recognition from any parent organization whose actions are inimical to the interests of the pupils of the district."

Organizations and individuals that wish to use school facilities are designated as either Class I or Class II users. The Class I status comes with certain benefits. District Regulation 7510 provides that, as between the two classes, "Class I users will be given priority for the use of school facilities." Class I users also do not need to pay a "fee or charge for custodial and service (fuel, water, and electricity) costs," whereas Class II users must do so. Regulation 7510 lists the eligible Class I users, including Parent Teacher Organizations and Parent Teacher Associations.

On this subject, the Board was not of one mind. The Board's President, Kathleen Kolupanowich, took the position that it should not grant MTMS PSA Class I status because there should be only one parent organization in the school. (Ms. Skurbe later filed an ethics complaint against Ms. Kolupanowich, which was dismissed by the School

Ethics Commission on December 19, 2018.) Other members, including Ken Chiarella, disagreed. He argued that because the organization met the definition of a Class I user under Regulation 7510, it should be designated as such. The number of parent organizations, he submitted, is the principal's concern, not the Board's.

On August 22, 2018, a five-member majority voted to recognize MTMS PSA and grant it Class I user status. Three members voted against the motion and one abstained. Months later, at its January 26, 2019 meeting, Ms. Skurbe alleges that two of the dissenting members expressed their desire to hold a second vote. The Board's president and vice president, she claims, "made it clear that they are looking for the Board to take another vote to take away Class I status" because its fundraising success had adversely affected the other parent organization's success.

Believing that such a vote was imminent, Ms. Skurbe filed a Petition of Appeal with the Commissioner of Education on February 15, 2019, naming the Board and the three dissenting members as respondents. On this record, the Board has not voted to revoke the organization's Class I status.

LEGAL DISCUSSION

In her petition, Skurbe maintains that her organization has not violated the relevant Board policies, and as such, there is not a valid basis for board members to consider revoking its Class I status. She alleges, therefore, that their discussions were "clearly retaliation," and asks that the matter be "looked into," "investigated," and "stopped." Again, liberally construed, the petition requests that the Commissioner: (1) investigate board members for allegedly retaliatory conduct; and (2) declare that the Board cannot, consistent with its own policies, revoke the organization's Class I status.

However, even accepting all the alleged facts as true, the Commissioner does not have jurisdiction to grant the requested relief and as such, the petition should be dismissed in full.

The Commissioner has jurisdiction to "hear and determine" "all controversies and disputes arising under the school laws." N.J.S.A. 18A:6-9. In this role, the Commissioner adjudicates disputes. The Commissioner can, among other things, review certain final actions of a board of education to determine if it acted in an "arbitrary, capricious, or unreasonable manner."

But the power to adjudicate does not include the power to investigate. The Office of Controversies and Disputes, within the Department of Education, is not an investigative agency, and the Legislature has not granted the Commissioner investigatory powers. For this reason, the Commissioner cannot investigate individual board members for allegedly retaliatory conduct. Neither can the Commissioner declare that the Board would violate its own policies if it revoked the organization's Class I status.

This matter is not justiciable. The Commissioner does not "render advisory opinions or function in the abstract." Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 107 (1971); Milano v. Franklin Twp. Bd. of Educ., EDU 6797-06, Final Decision (July 24, 2008), https://njlaw.rutgers.edu/collections/oal/.

Respondents argue that petitioner lacks standing. In New Jersey, a litigant has standing if her "concern with the subject matter evidenced a sufficient stake and real adverseness." Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 107 (1971). The antecedent question, however, is whether this matter is ripe. If it is not, then no person has standing to pursue it; in this way, these justiciability doctrines overlap. See Trombetta v. Mayor & Comm'rs of City of Atlantic City, 181 N.J. 203, 223 (Law Div. 1981), aff'd, 187 N.J. Super. 351 (App. Div. 1982) ("The standing question bears close affinity to questions of ripeness, that is, whether the harm asserted has matured sufficiently to warrant judicial intervention.").

The "ripeness" doctrine "protects against deciding issues before they are necessary." Brodie v. Saddle Brook Twp. Bd. of Educ., 93 N.J.A.R. 2d (EDU) 694. The two relevant factors are "the fitness of the issues for judicial decision and the hardship

to the parties of withholding court consideration." ibid (quoting Abbott Laboratories v. Gardner, 387 U.S. 136, 149 (1967.) Legal issues are suitable for resolution if "the ruling or action complained of is final." Ibid (citing Abbott Laboratories, 387 U.S. at 149).

In Brodie, 93 N.J.A.R. 2d (EDU) 694, a resident challenged the Board's decision to close a school before the Department of Education had approved the closure. The ALJ and Commissioner agreed that because the challenged action was not final, the claim was not ripe for review. "Each time a public entity, or official, determines to pursue a course of conduct," the ALJ observed, it "does not immediately give rise to a litigable issue." "Only after the approval has been given is a 'school law dispute' ripe."

In this case, the Board has not voted to revoke the organization's Class I status. If it chooses to do so, at that time, Ms. Skurbe would be aggrieved by a final action of the Board and could properly challenge it. Before then, however, she has not suffered any harm and the matter is not ripe for review because the Commissioner's decision would amount to an "advisory opinion."

Respondents offer two additional arguments for dismissal. Both lack merit and neither needs to be addressed if the case is dismissed on ripeness grounds.

First, respondents cite Jordan v. Bd. of Educ., No. A-4420-14T1, 2017 N.J. Super. Unpub. LEXIS 1865 (App. Div. July 21, 2017), for the proposition that "there is no authority that would require a Board to be bound by its own policies."

That case involved the Board's decision not to renew the contract of a non-tenured guidance counselor. Id. at *1-2. It provided notice of that decision after the date required by its policy but before the date required by the relevant statute. Id. at *10-11. In an unpublished opinion, the court noted that fact without further comment. Ibid ("While the Board failed to comply with its own policy providing notice of re-employment by April 24, the Board's action remained in compliance with N.J.S.A. 18A:27-10, as plaintiff received notice prior to May 15.").

Thus, if Jordan stands for anything, it is for the modest proposition that a Board's failure to follow its policies may be excused if it otherwise complies with statutory mandates. It does not stand for the more sweeping proposition, however, that a Board may ignore its policies without consequence.

Second, respondents argue that the petition is untimely under N.J.A.C. 6A:3-1.3(i). Known as the "ninety-day" rule, it provides that a petition must be filed "no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the requested contested case hearing."

Respondents contend that all the claims raised in the petition relate to the Board's meeting on August 22, 2018. Measured from that date, the petition—filed on February 15, 2019—would be untimely. But petitioner is not challenging any action taken at that meeting, and for good reason: The Board voted to recognize her organization and grant it Class I status, which is exactly what she requested.

Her claim instead relates to the January 26, 2019, meeting where certain members discussed holding another vote to revoke the organization's Class I status. The problem with this claim is not that its untimely. It is instead that the Board did not take any final action that would even trigger the ninety days to file under N.J.A.C. 6A:3-1.3(i). That, as previously explained, is a ripeness problem.

I FIND AS FACT that there are no genuine issues of material fact requiring a hearing. For the foregoing reasons, **I CONLUDE** Monroe's motion to Dismiss is **GRANTED**.

Having **CONCLUDED** that respondent Board's motion to dismiss is **GRANTED**. It is hereby **ORDERED** that the petitioner's appeal be **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.

June 27, 2019
DATE

DEAN J. BUONO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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