

**New Jersey Commissioner of Education**

**Final Decision**

Janet Van Syckle,

Petitioner,

v.

Board of Education of the West Essex Regional  
School District, Essex County,

Respondent.

**Synopsis**

Petitioner, who retired in 2019 after eleven years of service as a guidance counselor in the West Essex Regional School District, contended that the respondent Board is required under *N.J.S.A. 18A:16-18* to offer her – as a retiree – the option to maintain health insurance coverage through the school district’s health insurance plan, at petitioner’s own expense in accordance with *N.J.S.A. 18A:16-19*. The Board denied that petitioner is entitled to continue her health insurance coverage in retirement through the school district’s health insurance plan and sought dismissal of the petition.

The ALJ found, *inter alia*, that: the collective bargaining agreement between the Board and the West Essex Education Association did not contain any provision for health insurance coverage for retirees; the Board did not participate in the State Employee Health Benefits Plan and instead provided employee health insurance coverage through a contract with Horizon Blue Cross/Blue Shield of New Jersey (Horizon); and the Horizon contract does not provide for coverage for retirees. Accordingly, the ALJ concluded that the Board is not in violation of *N.J.S.A. 18A:16-18* and was not required to offer the petitioner continued health insurance coverage in retirement. Accordingly, the ALJ granted the Board’s motion to dismiss.

Upon review, the Commissioner concurred with the ALJ that the Board was not required to offer petitioner continued health insurance coverage following her retirement. In so deciding, the Commissioner found, *inter alia*, that because *N.J.S.A. 18A:16-16* makes retiree coverage an option, rather than a requirement, the Board properly exercised its discretion to enter into a contract that did not provide for retiree coverage. With no provision in the contract for retiree health insurance coverage, the Board was not required to offer such insurance to petitioner, and thus did not violate *N.J.S.A. 18A:16-18*. Accordingly, 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.

128-22

OAL Dkt. No. EDU 07317-19

Agency Dkt. No. 86-4/19

**New Jersey Commissioner of Education**

**Final Decision**

Janet Van Syckle,

Petitioner,

v.

Board of Education of the West Essex Regional  
School District, Essex County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered.

Petitioner, a retired guidance counselor, sought an order requiring the Board to offer her the option to maintain health insurance coverage through the district's health insurance plan. The Administrative Law Judge (ALJ) found that the collective bargaining agreement between the Board and the West Essex Education Association did not contain any provision for health insurance coverage for retirees. The ALJ also found that the Board did not participate in the State Employee Health Benefits Plan, but instead provided health insurance coverage through a contract with Horizon Blue Cross/Blue Shield of New Jersey (Horizon), and the contract did not provide for coverage for retirees. Accordingly, the ALJ concluded that the Board was not required to offer petitioner continued coverage.

In her exceptions, which reiterate arguments made below, petitioner argues that the Board is required by *N.J.S.A. 18A:16-18* and *N.J.S.A. 18A:16-19* to provide for continued health insurance coverage after retirement of any school employee, at the employee's own expense. According to petitioner, the fact that the Horizon contract does not provide for retiree coverage is irrelevant because the statutes require the Board to offer her retiree coverage.

Upon review, the Commissioner concurs with the ALJ that the Board was not required to offer petitioner continued coverage following her retirement. *N.J.S.A. 18A:16-18* provides, "The continuance of coverage after retirement of any employee shall be provided at such rates and under the conditions as shall be prescribed in the contract subject, however, to the requirements set forth in [*N.J.S.A. 18A:16-19*]." *N.J.S.A. 18A:16-19* requires retirees to pay the entire cost of coverage and caps the cost at no more than 25% greater than the cost the individual would pay if actively employed.<sup>1</sup> Petitioner interprets these provisions to mean that the Board must enter into a contract that provides for retiree coverage, as long as the employee covers the cost. However, petitioner disregards *N.J.S.A. 18A:16-16*, which provides that insurance coverage "shall cease . . . upon cessation of active full-time employment . . . subject to such provision as may be made in any contract made by the local board of education . . . for continuance of coverage after retirement." (emphasis added). The plain language of this provision demonstrates that health insurance coverage is not provided to retirees unless a board of education contracts for such coverage. If the Commissioner accepted the petitioner's interpretation of *N.J.S.A. 18A:16-18* and held that boards of education are required to provide

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<sup>1</sup> *N.J.S.A. 18A:16-19* also allows a board to assume the entire cost of coverage for an employee who retires after 25 years of service, a provision that is not applicable here because petitioner had not reached 25 years of service at the time of her retirement.

retiree coverage, the portion of *N.J.S.A. 18A:16-16* providing that a board may contract for retiree coverage would be rendered void – an outcome that is inconsistent with standard principles of statutory interpretation. On the other hand, the ALJ’s interpretation allows for the statutes to be harmonized. A board of education may contract for retiree coverage (*N.J.S.A. 18A:16-16*); when it does so, the conditions of the coverage are governed by the terms of the board’s contract with the insurance company (*N.J.S.A. 18A:16-18*), as long as the cost to the retiree does not exceed 25% more than the cost if actively employed (*N.J.S.A. 18A:16-19*).

While petitioner cites to *Miller v. Bd. of Educ. of the Southern Regional High School*, 95 N.J.A.R. 2d (EDU) 253, State Board of Education, June 7, 1995, for the proposition that *N.J.S.A. 18A:16-18* expressly provides for the continuation of coverage after retirement of any employee, the Commissioner does not find this argument persuasive. The issue presented in *Miller* concerned the timing of a teacher’s retirement, which became effective on the day after the teacher’s employment with the district was terminated due to a reduction in force. The State Board of Education concluded that the teacher did not have to retire prior to her final contractual day of employment in order to be eligible for retiree coverage. In doing so, the State Board of Education stated, “*N.J.S.A. 18A:16-18* expressly provides for ‘the continuance of coverage after retirement of any employee . . .’” Petitioner’s reading of the case would end there. However, the next sentence states, “There are no restrictions or qualifications placed on ‘retirement.’” This language demonstrates that the State Board was analyzing the portion of the statute relevant to its determination of whether the teacher qualified as a retiree of the district, not making a blanket statement requiring all boards to provide coverage for all retirees, as petitioner contends. Moreover, *N.J.S.A. 18A:16-18* was applicable to the analysis in *Miller*

because the district had a contract that provided for retiree coverage.<sup>2</sup> Here, there is no such contract, and the Commissioner declines to extend the holding in *Miller* under those circumstances.

Because *N.J.S.A.18A:16-16* makes retiree coverage an option, rather than a requirement, the Board properly exercised its discretion to enter into a contract that did not provide for retiree coverage. With no provision in the contract for retiree coverage, the Board was not required to offer petitioner retiree coverage and did not violate *N.J.S.A. 18A:16-18*. Accordingly, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>3</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 23, 2022  
Date of Mailing: June 23, 2022

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<sup>2</sup> The decisions in *Miller* identify terms in the district’s collective bargaining agreement allowing retirees to continue coverage. While the “contract” referred to in *N.J.S.A. 18A:16-16* and *N.J.S.A. 18A:16-18* is the contract between the district and its health insurance provider, not the collective bargaining agreement, the Commissioner presumes that the district met its obligation under the collective bargaining agreement to provide for such coverage by entering into a health insurance contract offering that option, as there was no argument that the district had failed to meet that obligation or that the health insurance contract precluded coverage for retirees.

<sup>3</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. EDU 07317-19

AGENCY DKT. NO. 86-4/19

**JANET VAN SYCKLE,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE WEST  
ESSEX REGIONAL SCHOOL DISTRICT,  
ESSEX COUNTY,**

Respondent.

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**Jason E. Sokolowski, Esq.,** for petitioner (Zazzali, Fagella, Nowack, Kleinbaum  
& Friedman, attorneys)

**Eric L. Harrison,<sup>1</sup> Esq.,** for respondent (Methfessel & Werbel, attorneys)

Record Closed: November 22, 2021

Decided: March 30, 2022

BEFORE **KELLY J. KIRK, ALJ:**

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<sup>1</sup> Brent R. Polhman, Esq. (Methfessel & Werbel, attorneys) appeared on the first hearing date.

## **STATEMENT OF THE CASE**

Petitioner Janet Van Syckle seeks, *inter alia*, an order requiring respondent Board of Education of the West Essex Regional School District, Essex County, to offer her, as a retiree, the option to maintain health-insurance coverage through the District's health-insurance plan.

## **PROCEDURAL HISTORY**

On April 29, 2019, petitioner filed with the New Jersey Department of Education (Department) a Petition of Appeal (Petition) requesting that the Commissioner enter an order: directing respondent to rescind its present policy of not offering retirees the option to remain in the school district's health-insurance plan at retirement and receive continued health insurance at retirees' own expense; ordering that respondent must comply with the requirements of N.J.S.A. 18A:16-18 by offering petitioner, as retiree, the option to maintain health-insurance coverage through the school district's health-insurance plan at petitioner's own expense at rates in accordance with N.J.S.A. 18A:16-19; providing petitioner with all benefits and emoluments, and making petitioner whole for all benefits and monies lost as the result of respondent's improper actions; and for all such other relief as the Commissioner deems appropriate. On May 17, 2019, respondent filed its answer to the Petition.

The Department transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the rules of procedure established by the Department of Education to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17. The case was filed at the Office of Administrative Law (OAL) on May 29, 2019.

Initially, the parties agreed to submit a joint stipulation of facts and cross-motions for summary decision, but the parties were unable to jointly stipulate to all facts and a hearing was scheduled for March 25, 2020. The March 25, 2020, hearing date was

adjourned and rescheduled for November 4, 2020. On October 20, 2020, the parties submitted a joint stipulation of facts in advance of the hearing. The hearing was held on November 4, 2020, and post-hearing briefs were to be submitted by the parties. On February 12, 2021, respondent filed a post-hearing brief, but petitioner filed a motion for summary decision. Thereafter, on February 26, 2021, petitioner filed a letter brief in opposition to respondent's post-hearing brief, and in further support of petitioner's motion for summary decision. A telephone conference was held regarding the submissions and respondent objected to the filing of a motion for summary decision after the hearing. The motion for summary decision was not accepted post-hearing, but because the motion relied upon petitioner's certification, petitioner was afforded an opportunity to present testimony at an additional hearing date. The hearing was held on August 18, 2021. The record closed on November 22, 2021, upon receipt of petitioner's post-hearing brief, as respondent opted to rely upon its February 12, 2021, brief.

### **FACTUAL DISCUSSION**

#### Stipulated Facts

Based upon review of the Joint Stipulation of Undisputed Material Facts (J-1) submitted by the parties, I **FIND** the following undisputed **FACTS**:

Van Syckle began her employment with the West Essex Regional School District (District) Board of Education (Board) on February 1, 2008. Van Syckle was employed continuously as a guidance counselor by the Board for the next eleven years. Van Syckle resigned for purposes of retirement effective March 1, 2019. At the time of her retirement, Van Syckle had eleven years of service with the Board. To be eligible for enrollment in the school employee health benefits program (SEHBP) retiree group the retiree must have twenty-five years or more of credited service. At the time of her retirement, Van Syckle was eligible to continue medical insurance through the COBRA program and she elected to do so. Petitioner's COBRA coverage ran through August 2020. The Board rejected Van Syckle's request to purchase medical insurance through the Board following the expiration of her COBRA coverage.



## Additional Facts

Janet Van Syckle testified on her own behalf. Melissa Kida testified on behalf of respondent. Having had an opportunity to consider the evidence and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following additional **FACTS**:

The Agreement between the Board of Education of the West Essex Regional School District and the West Essex Education Association 2017–2018 2018–2019 2019–2020 (Agreement) reflects that the Board has an obligation pursuant to N.J.S.A. 34:13A to negotiate with the West Essex Education Association (Association) as the representative of the employees with respect to the terms and conditions of employment, and that the Board recognizes the Association as the exclusive and sole representative for collective negotiation concerning grievances and terms and conditions of employment. (R-2.)

Article 11, "Salary Provisions," Section E, provides, in part, that the Board shall provide health-care insurance protection as designated:

1. The New Jersey School Employees' Health Benefits Plan.  
.....
3. The Board reserves the right to elect participation in any other health care insurance program, provided that the level of benefit is equal to or greater than the existing level of benefits. . . .

The Agreement does not reference retirement health-insurance benefits. The Contracts for Professional Employment for Van Syckle's years of employment as a guidance counselor do not reference health-insurance or retirement benefits. (R-3.)

The Horizon Blue Cross Blue Shield of New Jersey Direct Access Policy (Horizon Policy), effective November 1, 2017 (R-1), GENERAL INFORMATION, states, in part:

## When Coverage Ends

Your coverage under this Program ends when the first of these occurs:

- The end of the Benefit Month in which you cease to be eligible due to termination of your employment or any other reason.
- The date on which the Group Policy ends for the class of which you are a member.
- You fail to make, when due, any required contribution for the coverage. . . .

[R-1 at 65.]

The Horizon Policy includes various provisions for continued coverage, including, inter alia, if the member is confined as an inpatient in a facility on the date coverage ends; if the member loses his or her job or becomes ineligible due to total disability; and if the member takes a leave that qualifies under the Federal Family and Medical Leave Act. (R-1 at 65–67.)

Additionally, with respect to “Continuation of Coverage under COBRA,” the Horizon Policy states, in part:

Under federal law called the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (COBRA), you and your enrolled Dependents, and any newborn or newly adopted child may have the opportunity to continue group health care coverage which would otherwise end, if any of these events occur:

- Your death;
- Your work hours are reduced;
- Your employment ends for a reason other than gross misconduct.\*

. . . .

If you and/or your Dependents elect to continue coverage, it will be identical to the health care coverage for other members of your class. It will continue as follows:

Up to 18 months in the event of the end of your employment or a reduction in your hours. . . .

[R-1 at 67–68.]

The “covered class” applies to “All Full Time Employees,” defined as “permanent employment by an Included Employer for an average of 35 or more hours per week.” (R-1 at 25.)

By letter dated December 7, 2018, Van Syckle notified superintendent Barbara Longo of her retirement, effective March 1, 2019. (R-3.) By letter dated December 11, 2018, Longo notified Van Syckle that at its December 10, 2018, public meeting the Board voted to accept her resignation, due to retirement, as a guidance counselor assigned to West Essex Regional High School, effective March 1, 2019. (R-3.)

An email dated January 10, 2019, from Simona Pepe, District payroll and benefits coordinator, to Van Syckle, states, in pertinent part:

I attached the COBRA letter that was mailed to you with the forms you had questions about. The District does not administer the COBRA coverage. It is handled by the carriers directly therefore you are required to submit the completed forms to the address on the forms.

Melissa Kida signed the forms before they were mailed to expedite the process if COBRA coverage is elected so there is no need to return the forms to us.

[P-F.]

Van Syckle responded that she had received the letter but did not see instructions about where to mail the forms, to which Kida responded with the address information. (P-F.)

A January 14, 2019, letter (COBRA letter) from the District regarding COBRA continuation coverage and other health-coverage alternatives states, in pertinent part:

**This notice contains important information about your right to continue your health care coverage in the West Essex Regional School District (M) group insurance plan (collectively referred to as “the Plan”) as well as other health coverage alternatives that may be available to you, including coverage through the Health Insurance Marketplace at [www.HealthCare.gov](http://www.HealthCare.gov) or call 1-800-318-2596. You may be able to get coverage through the Health Insurance Marketplace that may cost less than COBRA continuation coverage.** Please read the information in this notice very carefully before you make your decision. If you choose to elect COBRA continuation coverage, you should use the election form provided later in this notice.

[P-G.]

The COBRA letter reflects that Van Syckle was getting the notice because her coverage under “the Plan” was ending on February 28, 2019, due to “end of employment.” (P-G.) The COBRA letter further reflects that COBRA coverage generally may be continued for up to a total of eighteen months. (P-G.)

An email dated January 25, 2019, from Van Syckle to Kida states, in pertinent part:

Sorry I haven't been able to reach you by phone but I wanted to follow up on our earlier conversation. I'm looking for confirmation of retiree benefits that extend beyond the 18 month Cobra period. It is my understanding that, as a retiree, I am able to purchase my current health benefits. I would appreciate the contact info for the company that will be administering my plan.

[P-F.]

On January 30, 2019, Van Syckle and her husband completed the COBRA Continuation Coverage Election Form, indicating that they elected COBRA continuation

coverage under the Horizon Policy. (P-H.) Van Syckle's COBRA coverage terminated on August 31, 2020, after eighteen months.

## Testimony

Melissa Kida

Melissa Kida has been employed by the District as school business administrator/board secretary since January 2017. In that capacity she was custodian of records, and among her job duties was dealing with the medical insurance. The current medical-insurance provider for the Board is Horizon Blue Cross/Blue Shield of New Jersey (Horizon BCBS). The medical insurance provider switched from the SEHBP to a private plan with Horizon BCBS effective November 1, 2017. Horizon BCBS remains the District's medical-insurance provider, under the same terms as the initial policy. The Horizon Policy is renegotiated at a percentage increase each year, so the plan costs change but the policy remains the same.

The Agreement governs the terms and conditions of employment. The Agreement is for the 2019–2020 school year, and a successor agreement was not negotiated in time for July 1, 2020, so the terms of the Agreement carry over until a successor agreement is ratified. The 2019–2020 Agreement governed the terms and conditions of employment for members when Van Syckle retired. The Agreement does not provide for members to purchase retiree insurance through the District. The Association did not grieve the change from the SEHBP to the Horizon Policy and did not negotiate over the impact of the change. The Board just finished negotiations with the Association for a successor agreement to the Agreement and it was already ratified by the Association and was to be ratified by the Board in December 2021. During the negotiations, the Association did not raise the issues of medical-benefits eligibility for retirees not eligible for coverage through the SEHBP or employees who did not have the requisite number of years of service to be eligible for insurance through the District. There is no provision in the Horizon Policy for retirees to purchase coverage through Horizon following retirement. The Horizon Policy specifically excludes non-employees from purchasing insurance. Neither the Horizon

Policy nor any clauses therein were grieved by the Association and there was no demand to negotiate by the Association.

Kida reviewed the District's records and consulted with other employees who manage the health-insurance plans, including the human resource manager, who has been in the District for twenty-five years, and a payroll and benefits employee who has been in the District fifteen years, and confirmed that the District has never allowed any employees to purchase benefits through the District after retirement, and that no retiree made a request to purchase such benefits. Kida did not review past Board-meeting minutes.

Van Syckle contacted Kida in January 2019 to inquire whether she could purchase insurance benefits. Kida advised Van Syckle that she would investigate it, but that she was sure the Horizon Policy did not allow it and that she would be able to purchase COBRA coverage. Van Syckle consulted with the insurance broker and the Board attorney, but the Horizon Policy does not allow retirees to purchase benefits after termination/retirement. Van Syckle contacted Kida again and said that an NJEA representative advised that she could purchase coverage, but Kida advised her that she was not able to purchase retiree health benefits through the Board but could purchase COBRA coverage. The Board did not formally take any action with respect to Van Syckle's request, and there are no Board minutes relative to Van Syckle purchasing health insurance as a retiree.

There would be no cost to the District for Van Syckle to continue with the Board's health insurance if she paid the premium herself, but it is not allowed in the Horizon Policy.

Janet Van Syckle

At the time of her retirement, Van Syckle was under sixty-five years of age. Prior to her retirement she met with a union representative for a personal planning session for potential retirees and she asked about insurance. The representative told her that the law protected her and that she would absolutely be able to purchase the insurance at her own expense but would have to pay the premium, and the District could charge her 2 or

3 percent more per month to administer the plan. Van Syckle knew she would be eligible for COBRA benefits upon retirement, and at the conclusion of COBRA benefits she planned to purchase the insurance provided through the District at her own expense because the plan was comprehensive and had worked well for her and her husband.

Van Syckle spoke with Simona Pepe and Melissa Kida about maintaining health benefits as a retiree. She spoke to Kida by phone in late December or early January. She asked Kida how, when COBRA benefits expired, she could purchase the District insurance and asked who would administer that. Kida told her that she could not purchase the District insurance at her own expense, and that she would consult with the District's lawyers. Van Syckle did not hear back from Kida about the procedure to purchase the District's insurance, so she emailed Kida on February 25, 2019, to follow up. They spoke by telephone and Kida advised that per the District's attorney the opportunity to purchase the District insurance at her own expense would not be offered to her because it was not required to be offered. Prior to her retirement, Kida expressly told her she would not be able to purchase the District's insurance.

While on COBRA, Van Syckle paid \$1,945.91 per month for medical insurance and approximately \$600 per month for dental insurance. When COBRA coverage terminated, she went to the marketplace and purchased Horizon Blue Cross Blue Shield OMNIA. It was a health-insurance and prescription plan, and she purchased dental insurance separately. The monthly cost for health insurance is a little more than \$1,000 per month, but the OMNIA plan has significantly higher deductibles and has a separate deductible for medical procedures. She has had three surgical procedures, so she has had to pay the additional deductible three times.

Van Syckle wants to purchase health benefits through the District for her former Horizon Policy. She is sixty-three, but when she reaches sixty-five she will go on Medicare.

## LEGAL ANALYSIS AND CONCLUSION

Any local board of education may directly or indirectly through a trust fund or otherwise enter into contracts of group life, accidental death and dismemberment, hospitalization, medical, surgical, major medical expense, minimum premium insurance policy or health and accident insurance with any insurance company or companies authorized to do business in this state. N.J.S.A. 18A:16-13. Such contract or contracts shall provide any one or more of such coverages for the employees of the local board of education and may include their dependents. Ibid. A local board of education may enter into a contract or contracts to provide drug prescription and other health care benefits, or enter into a contract or contracts to provide drug prescription and other health care benefits as may be required to implement a duly executed collective negotiations agreement, or as may be required to implement a determination by a local board of education to provide such benefit or benefits to employees not included in collective negotiations units. Ibid. The contract shall exclude from eligibility: (a) employees and dependents, active or retired, who are otherwise eligible for coverage but who, although they meet the age eligibility requirement of the Federal Medicare Program, are not covered by the complete Federal program; and (b) any class or classes of employees who are eligible for like or similar coverage under another group contract covering such class or classes of employees. N.J.S.A. 18A:16-14. Any local board of education entering into a contract pursuant to N.J.S.A.18A:16-12 et al. is authorized to pay part or all of the premiums or charges for such contracts and may appropriate out of its general funds any money necessary to pay such premiums or charges or portions thereof. N.J.S.A. 18A:16-17(a).

The coverage of any employee, and of his dependents, if any, shall cease upon the discontinuance of his employment or upon cessation of active full-time employment in the classes eligible for coverage **subject to such provision as may be made in any contract made by the local board of education** for limited continuance of coverage during disability, part-time employment, leave of absence other than leave for military service, and for continuance of coverage after retirement. N.J.S.A. 18A:16-16. The continuance of coverage after retirement of any employee shall be provided at such rates and under the conditions **as shall be prescribed in the contract** subject, however, to



the requirements set forth at N.J.S.A. 18A:16-19. N.J.S.A. 18A:16-18. The contribution required of any retired employee toward the cost of such coverage may be paid by the employee to the local board of education or in such other manner as the local board of education shall direct. Ibid.

N.J.S.A. 18A:16-19 provides as follows:

a. Except as otherwise prescribed by P.L. 1979, c. 391 (C. 18A:16-12 et seq.), retired employees shall be required to pay for the entire cost of coverage for themselves and their dependents at rates which are deemed adequate to cover the benefits, as affected by Medicare, of such retired employees and their dependents on the basis of the utilization of services which may be reasonably expected of such older age classification; provided, however, that the total rate payable by such a retired employee for himself and his dependents, for coverage under the contract and for Part B of Medicare, shall not exceed by more than 25%, the total amount that would have been required to have been paid by the employee and the local board of education for the coverage maintained had he continued in office or active employment and he and his dependents were not eligible for Medicare benefits.

b. The local board of education may, in its discretion, assume the entire cost of such coverage and pay all of the premiums for employees who have retired after 25 years or more service with the local board of education, including the premiums on their dependents, if any, under such uniform conditions as the local board of education shall prescribe, except that retired employees and dependents who are eligible for and elect at the time of retirement to take State-paid coverage under the State Health Benefits Program pursuant to paragraph (2) of subsection b. of section 7 of P.L. 1964, c. 125 (C. 52:14-17.38) shall not be eligible for employer-paid coverage under this subsection.

The various sections of N.J.S.A. 18A:16-12 et seq. reflect that the “contract” is the insurance policy, which in this matter is the Horizon Policy, and that the “agreement” is a collective bargaining agreement, which in this matter is the Agreement. Additionally, the various sections primarily reference “employees,” and no health-benefits rights are given to retirees beyond those set forth hereinabove except for N.J.S.A. 18A:16-19.1, which applies to the establishment of a cafeteria plan for health benefits. As such, health-

benefits coverage is available to retirees from a participating board of education with less than twenty-five years of service credit only if the board of education continues to participate with the SEHBP. In the present matter, the District does not participate with the SEHBP, and continuation health-benefits coverage is not available to Van Syckle because no such benefits appear in the contract, to wit: the Horizon Policy. Moreover, the Horizon Policy is not inconsistent with the collective-bargaining agreement, as the Agreement reflects that the Board may participate in the SEHBP, or any other health-care insurance program, and it does not provide for continuation of health-benefits coverage or even reference retiree health-insurance benefits. Van Syckle's employment contracts likewise did not provide for continuation health-insurance coverage as a retiree.

Van Syckle retired after eleven years of service, which is less than half the twenty-five years of service required for the Board—in its discretion—to assume the entire cost of coverage and pay the premiums. Petitioner relies upon Miller v. Board of Education of the Southern Regional High School District, Ocean County, 95 N.J.A.R.2d (EDU) 253 (State Board of Education, June 7, 1995). Miller was one year short of twenty-five years of service. She notified her employer that she applied for retirement and planned to continue in the employer's health-insurance plan until she was eligible for Medicare. Miller's employer advised that she was only eligible for COBRA continuation benefits for eighteen months because she was not a service retirement, but instead was terminated pursuant to a reduction in force. Miller v. Bd. of Educ. of the Southern Reg'l High Sch. Dist., Ocean Cnty., 1993 N.J. AGEN LEXIS 1132, Initial Decision at \*5–6. Miller appealed, and both the Initial Decision and the Commissioner's Final Decision dismissed her appeal because Miller had not retired prior to the expiration of her employment. Id. at \*8. Thereafter, Miller appealed to the State Board of Education. The State Board of Education reversed the decision of the Commissioner. However, Miller is distinguishable from this matter because the collective-bargaining agreement in Miller provided as follows:

Retirees may enroll in the current insurance programs at the group rates and at the individual's own expense. If, in the event a carrier will not permit such coverage for retirees, the coverage will cease, but the parties will meet to explore

alternatives, making every attempt to find a carrier who will permit such coverage for retirees.

[Id. at \*7.]

However, no such provision for coverage for retirees exists in the Agreement between the Board and the Association in this matter, and thus no such provision exists in the Horizon Policy.

In view of the foregoing, I **CONCLUDE** that respondent is not in violation of N.J.S.A. 18A:16-18 and it need not offer the petitioner continuation health-insurance coverage under the Horizon Policy as a retiree. I further **CONCLUDE** that the Petition should be dismissed.

### **ORDER**

It is hereby **ORDERED** that Van Syckle's 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.

March 30, 2022



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DATE

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**KELLY J. KIRK, ALJ**

Date Received at Agency:

March 30, 2022

Date Mailed to Parties:

March 30, 2022

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**APPENDIX**

**LIST OF WITNESSES**

For Petitioner:

Janet Van Syckle

For Respondent:

Melissa Kida

**LIST OF EXHIBITS**

Joint:

J-1 Joint Stipulation of Undisputed Material Facts

For Petitioner:

P-A (Not in Evidence)

P-B (Not in Evidence)

P-C (Not in Evidence)

P-D (Not in Evidence)

P-E (Not in Evidence)

P-F Emails

P-G January 14, 2019, COBRA Continuation Coverage letter

P-H COBRA Continuation Coverage Election Form

For Respondent:

R-1/D Horizon Blue Cross/Blue Shield of New Jersey Policy

R-2/C Agreement between Board and Association

R-3/E Personnel File (employment contracts, resignation letter, letter accepting resignation)