

TOWNSHIP OF HOWELL, MAYOR :
OF HOWELL AND COUNCIL OF :
THE TOWNSHIP OF HOWELL, :
MONMOUTH COUNTY, :
:
PETITIONERS, : COMMISSIONER OF EDUCATION
:
V. : DECISION
:
BOARD OF EDUCATION OF THE :
FREEHOLD REGIONAL SCHOOL :
DISTRICT, AND JAMES WASSER, :
SUPERINTENDENT OF SCHOOLS, :
MONMOUTH COUNTY, :
:
RESPONDENTS. :
_____ :

SYNOPSIS

Petitioner sought a determination by the Commissioner declaring null and void the establishment by respondent Board of revised school attendance boundaries which took effect in September 2006. Petitioners alleged that the school district has been arbitrary and capricious in their establishment of attendance areas; that attendance areas were not determined in accordance with standards set forth in the district's policy; and because the attendance plan has resulted in an arbitrary and inefficient transportation operation and plan. Respondent Board filed motion to dismiss the petition for lack of standing and for failure to comply with the 90-day rule. Petitioners filed a motion to amend the petition to include additional parties who are parents and students within the school district.

The ALJ identified standing as the threshold issue in this matter, and found that Howell Township – and the Mayor in his official capacity – lack standing to challenge the respondent's school attendance boundaries. Further, the ALJ found that: petitioners' appeal of the current Board policy on attendance – adopted in May of 2004 – and the Student Attendance Plan for 2006-2007 – approved by the Board in September of 2005 – were filed out of time; petitioners have presented no evidence to justify relaxation of the 90-day rule in this case; and petitioners' February 2006 challenge to a November 2005 revision of the Student Attendance Plan for 2006-2007 should be dismissed as moot. The ALJ denied petitioners' motion to amend the petition to include additional petitioners, and dismissed the appeal.

The Commissioner adopted the Initial Decision and dismissed the Petition of Appeal.

<p>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.</p>

OAL DKT. NO. EDU 2427-06
AGENCY DKT. NO. 79-3/06

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have petitioners' exceptions and respondents' reply, both duly filed in accordance with *N.J.A.C.* 1:1-18.4 following extensions granted pursuant to *N.J.A.C.* 1:1-18.8.

In their exceptions, petitioners urge the Commissioner to reject the conclusions of the Administrative Law Judge (ALJ), reiterating their prior arguments that: they have standing to pursue this matter; their petition is not time-barred; and their motion to amend the petition by adding new parties should have been granted. Petitioners renew their contention that they are themselves citizens and taxpayers; that they have in their official capacity a *parens patriae* interest in protecting the general public; and that they – together with the parents and students who sought to be added to the petition – were prepared to present evidence of negative educational impact on

students and neighborhoods as well as detrimental impact on taxpayers. (Petitioners' Exceptions at 4-6) They further repeat that the 90-day rule – which in the ALJ's view barred both the initial petition and the attempted addition of new parties – must be relaxed where its strict application would effectively insulate from Commissioner review the adoption, implementation or continuation of a policy that implicates students' constitutional right to a thorough and efficient education, and constitutes a matter of fundamental concern to the public.¹ (*Id.* at 2-4, 6).

In reply, respondents urge adoption of the Initial Decision in its entirety, likewise renewing their prior arguments before the ALJ. Specifically, respondents counter that the 90-day rule should not be relaxed in this instance due to the nature of the matter in dispute, the absence of unusual or compelling circumstances justifying petitioners' late filing, and the prejudice that would inure to the district if it were forced to litigate at this point in time (Respondents' Reply at 2-4). They again contend that petitioners should not be allowed to amend their petition to add new parties, citing the resulting prejudice to the district; the fact that the proposed parties and their claims could and should have been identified long ago; and the lack of specificity in the proposed parties' supporting certifications so as to demonstrate the requisite standing (*Id.* at 6-8). Finally, they reiterate that petitioners lack standing to pursue this matter – and hence to claim entitlement to a plenary hearing – because: they have alleged no actual or

¹ During the course of their discussion, petitioners also object to the ALJ's dismissal of their challenge to the revised 2006-07 attendance plan as moot, contending that the revised plan *did* affect school attendance and the ALJ should not have ruled as he did based solely on exhibits submitted with the Motion to Dismiss. (Petitioners' Exceptions at 3-4)

imminent harm to the Township of Howell or its Mayor² or Council; they have demonstrated no right to pursue the interests of third parties, the arguments they raise to this effect having already been rejected in *Carteret, supra*, and *Stubaus, supra*; and their claims are far too speculative, conjectural and unsubstantiated to establish the detrimental impact judicially required to confer standing.³ (*Id.* at 8-11)

Upon careful review and consideration, the Commissioner concurs with the ALJ that this matter must be dismissed. Like the ALJ – for the reasons expressed in the Initial Decision – the Commissioner finds that the named petitioners lack standing to pursue the matter, and cannot now attempt to cure this deficiency by adding new petitioners who – even assuming the requisite standing – could and should have brought their claims long ago. The Commissioner further agrees with the ALJ – for the reasons stated and in the interest of prudence in the event of a reversal on appeal on the question of standing – that the petition is filed well out of time, with no relaxation of the filing deadline warranted, as to all aspects of the 2006-07 attendance plan other than the limited revision adopted on November 21, 2005; and that petitioners’ challenge to that revision, although timely, is moot because no meaningful relief could result from it even if petitioners were to prevail. Finally, the Commissioner concurs that, in light of these holdings, it is unnecessary to reach respondents’ motion to dismiss the petition with respect to claims against the district superintendent.

² Respondents note that the petition was brought by the Mayor in his official capacity and contains no allegation of harm to him as an individual taxpayer, urging that he not be allowed to infer such a claim at this point in proceedings. (Respondents’ Reply at 9)

³ In reply to petitioners’ statements regarding the ALJ’s dismissal of their challenge to the revised 2006-07 attendance plan as moot, respondents point out that none of the students named in the certifications submitted in support of petitioners’ motion to amend the petition are affected by the narrow revision to the 2006-07 attendance plan adopted on November 21, 2005, so that petitioners have additionally not alleged any facts in support of their claim. (Respondents’ Reply at 4-5)

Accordingly, for the reasons well and fully expressed therein, the Initial Decision of the OAL is adopted as the final decision in this matter, and the Petition of Appeal is dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: December 5, 2006

Date of Mailing: December 5, 2006

⁴ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*