

#84-12 (OAL Decision: Not yet available online)

DIANE BACHER, :  
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 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 BOARD OF EDUCATION OF THE : DECISION  
 TOWNSHIP OF MANSFIELD, :  
 BURLINGTON COUNTY, :  
 :  
 RESPONDENT. :

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SYNOPSIS

Petitioner, the Superintendent of Schools in Mansfield Township, sought a determination that she was reappointed by operation of law to the position of Superintendent for the period from July 1, 2011 to July 1, 2015 at her current salary of \$146,192, as a consequence of the respondent Board's failure to provide her with one year's notice of non-renewal pursuant to *N.J.S.A. 18A:17-20.1*. Respondent contends that petitioner's salary as of July 1, 2011 was correctly adjusted pursuant to revised regulations that became effective in February 2011 which limit the maximum salary for superintendents in public districts according to the number of students enrolled in the school district. Both parties filed motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for summary decision; the salary cap regulations in effect since February 2011 were within the Commissioner's authority to adopt; the petitioner was employed pursuant to a four-year contract that commenced July 1, 2007, and was set to expire on June 30, 2011; the terms of the initial contract required the Board to provide petitioner with written notice no later than one year in advance of the termination date if it elected not to re-appoint her; as no notice was provided, petitioner was deemed reappointed for another four-year term on July 1, 2011; the Board's reduction of petitioner's salary beginning July 1, 2011 was not in violation of her tenure rights, as – pursuant to *N.J.A.C. 6A:23A-3.1(c)* and *N.J.S.A. 18A:7-8(j)* – her reappointment contract was not enforceable until the Board submitted the contract for review and approval by the Executive County Superintendent (ECS); in March 2011, the ECS instructed the Board to reduce petitioner's salary from \$146,192 to \$135,000 for the 2011-2012 school year pursuant to the revised regulations, and the Board so notified petitioner of the forthcoming change in May 2011; and, pursuant to *N.J.A.C. 6A:23A-1.2*, the applicable maximum salary for petitioner during the 2011-2012 school year is \$135,000. Accordingly, the ALJ granted the respondent Board's cross motion for summary decision, and ordered the parties to draft a contract with a maximum salary of \$135,000 for the current school year, with the maximum rising to \$145,000 for the year beginning July 1, 2012, based on applicable enrollment numbers.

Upon careful and independent review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter for the reasons stated therein.

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.

March 5, 2012

OAL DKT. NO. EDU 7777-11  
AGENCY DKT. NO. 155-6/11

DIANE BACHER, :  
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions and the Board's reply thereto – submitted in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in making his determination herein.

Petitioner's exceptions in essence recast and reiterate her arguments advanced before the Administrative Law Judge (ALJ) below. As it is determined that such arguments were considered and addressed by the in ALJ in her Initial Decision, further elaboration on them here is unnecessary.

Upon full review and consideration, the Commissioner agrees that summary decision is appropriately granted to the Board as he concurs with the ALJ – for the reasons detailed in her decision – that: 1) the Commissioner had the authority to place a cap on Superintendents' salaries (Initial Decision p. 6-8); 2) the Board did not violate petitioner's contractual tenure rights by reducing her salary effective July 1, 2011 (Initial Decision p. 8-11;

and 3) petitioner's applicable maximum salary as of July 1, 2011 was \$135,000 and for the fiscal year beginning July 1, 2012 her applicable maximum salary will be \$145,000.<sup>1</sup>

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter for the reasons well stated therein. It is hereby ORDERED that the parties draft a contract for petitioner with a maximum salary of \$135,000 for the July 1, 2011 to June 30, 2012 fiscal year and a maximum salary of \$145,000 for the period July 1, 2012 to June 30, 2015, and submit it for review and approval by the Executive County Superintendent in compliance with *N.J.A.C. 6A:23A-3.1*.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 5, 2012

Date of Mailing: March 6, 2012

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<sup>1</sup> Student enrollment in the District as of May 10, 2011 was 719 students. As of October 15, 2011 the District's student enrollment was 760 students. (*See N.J.A.C. 6A:23A-1.2*, "Maximum salary amount")

<sup>2</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*).