

HATIKVAH INTERNATIONAL ACADEMY :
CHARTER SCHOOL, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY DEPARTMENT OF : DECISION
EDUCATION and EVO POPOFF, :
RESPONDENTS. :

SYNOPSIS

The petitioner, Hatikvah International Academy Charter School (Hatikvah) filed an appeal and application for emergent relief from a March 5, 2014 determination of Assistant Commissioner Evo Popoff (Popoff) approving the renewal of Hatikvah’s charter, but denying its request to expand from serving elementary children in grades K-5 to providing programs for both elementary and middle school students in grades K-8. On March 5, 2014, then-Commissioner Christopher Cerf designated Popoff to act on his behalf in matters relating to the 2013-2014 charter school renewal process. Petitioner alleges that this delegation of authority was potentially inauthentic or unauthorized. Respondents filed opposition to the motion for emergent relief, and a cross-motion to dismiss the appeal on the grounds that the Office of Administrative Law (OAL) lacks jurisdiction and that a direct appeal must be filed with the Appellate Division of the Superior Court.

The ALJ found, *inter alia*, that: it is unambiguously set forth in the law that a party aggrieved by the Department’s charter determination – whether the charter school or the local board – may appeal, but the appeal must be made to the Appellate Division as set forth in *N.J.S.A. 18A:36A-4(d)*; there is no jurisdiction at the OAL over Hatikvah’s appeal or its motion for emergent relief; regarding Hatikvah’s argument that Popoff had no properly delegated authority to issue a final decision under the Charter School Law, *N.J.S.A. 18A:4-33* provides the Commissioner with legislative authorization to delegate powers, including final decision making authority; in order for Hatikvah to challenge the authenticity of the delegation of Popoff in this matter, the argument must be brought before the Appellate Division. The ALJ: concluded that the OAL has no jurisdiction to decide a charter school appeal; denied petitioner’s application for emergent relief for lack of jurisdiction; and granted the Department’s motion to dismiss the petition, but with leave by the Hatikvah to file a notice of appeal with the Appellate Division of the Superior Court within 45 days of the final agency action.

Upon a thorough and independent review, the Commissioner concurred with the determination of the ALJ that the petition and concomitant motion for emergent relief must be dismissed for lack of jurisdiction. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter. The petition and motion for emergent relief were 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.

May 13, 2014

OAL DKT. NO. EDU 03776-14
AGENCY DKT. NO. 76-3/14

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The record in this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and replies thereto of respondents and the intervenor Board, filed in accordance with *N.J.A.C.* 1:1-18.4, were fully considered by the Commissioner in making his determination herein.

This matter arises out of petitioner’s application to renew its charter for a five-year term and to expand its educational program to service students in grades six through eight. On March 5, 2014, pursuant to *N.J.S.A.* 18A:4-33, then-Commissioner Christopher Cerf designated Assistant Commissioner Evo Popoff to act on his behalf for all matters relating to the 2013-2014 charter renewal cycle. Thereafter, Assistant Commissioner Popoff issued a decision on petitioner’s application, granting renewal but denying petitioner’s expansion request.

Petitioner filed the instant petition of appeal challenging the denial of its expansion request, and subsequently moved for emergent relief. The related matters were transmitted to the Office of Administrative Law (OAL), where respondents opposed the request for emergent relief and argued that the matters should be dismissed for lack of jurisdiction. The Board of Education of the Township of East Brunswick sought leave to intervene in the matter,

which was granted by the Administrative Law Judge (ALJ), and also opposed petitioner's application for emergent relief.

In the Initial Decision, the ALJ determined that, pursuant to *N.J.S.A.* 18A:36A-4 and *N.J.A.C.* 6A:11-2.5, the exclusive forum for appeal of the Department's determination on a charter renewal application is the Appellate Division of the Superior Court. On this basis, the ALJ further determined that the OAL lacked jurisdiction to review Popoff's decision and that the petition of appeal and request for emergent relief must, therefore, be dismissed.

At the outset, the Commissioner notes that, on exception, petitioner submitted evidence that was not presented in the OAL. The submission of such supplemental evidence is specifically prohibited by *N.J.A.C.* 1:1-18.4(c) and, thus, was not considered by the Commissioner. In the remainder of petitioner's exceptions and the replies thereto submitted by respondent and the intervenor Board, the parties largely replicate their arguments advanced below. The Commissioner finds that these arguments were fully considered and appropriately addressed by the ALJ in her Initial Decision. Accordingly, they will not be revisited in depth here.

The Commissioner will, however, take this opportunity to specifically address petitioner's argument that jurisdiction is conceded upon transmittal to the OAL. Petitioner's argument is without merit. The mere act of transmitting a matter to the OAL cannot create jurisdiction where it does not otherwise exist. Rather, as correctly noted by the ALJ, jurisdiction is a non-waivable prerequisite to proceeding in the OAL. Thus, jurisdiction is a threshold matter for the ALJ's consideration in every case transmitted to the OAL. Where the ALJ correctly finds jurisdiction is lacking, the matter must be dismissed.

Here, upon his full review, the Commissioner concurs with the ALJ's determination that the petition of appeal and concomitant motion for emergent relief must be dismissed for lack of jurisdiction. To that end, *N.J.A.C.* 6A:11-2.5 specifies that decisions on charter school renewal applications are, in accordance with *N.J.S.A.* 18A:6-9.1, final agency decisions appealable to the Appellate Division of the Superior Court. Consequently, the ALJ correctly concluded that the Commissioner and the OAL lack jurisdiction to rule on the issues presented.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter, and the within petition of appeal and motion for emergent relief are hereby dismissed.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 13, 2014

Date of Mailing: May 13, 2014

¹ Pursuant to *P.L.* 2008, c. 36 (*N.J.S.A.* 18A:6-9.1), Commissioner decisions are appealable to the Superior Court, Appellate Division.