

204-01

BOARD OF EDUCATION OF NORTHERN :
HIGHLANDS REGIONAL HIGH SCHOOL :
DISTRICT, BERGEN COUNTY, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE DEPARTMENT OF : DECISION
EDUCATION AND MICHAEL AZZARA, :
ASSISTANT COMMISSIONER, :

RESPONDENTS, :

V. :

RUSSELL A. PEPE AND KATHLEEN PEPE, :

INTERVENOR-RESPONDENTS. :

SYNOPSIS

Petitioner challenged the determination of the Assistant Commissioner that the Department would not review its application to install lighting on its athletic field, which was based on his determination that athletic field lighting does not affect educational adequacy and that the Department only reviews and approves capital projects of school districts relating to educational adequacy.

The ALJ concluded that the Commissioner does not have jurisdiction over an issue merely because it relates to a school. The ALJ noted that athletic field lighting for nighttime use is not an issue of educational adequacy and, therefore, the Department is not required to review the issue pursuant to the provisions of *N.J.A.C. 6:22-1.1*; instead, it is an issue for the municipal planning board to decide and the planning board herein previously rejected the Regional Board's application for 70-foot-high towers, a decision upheld by the Law Division and then affirmed by the Appellate Division. Even though the Court stated that a school board has a choice between applying to either the Department of Education or the municipal planning board, the ALJ did not accord this statement any weight since this is not supported by regulation and the Regional Board already made its choice of the planning board. It may not have a "second bite of the apple." The ALJ ordered respondents' motion for summary decision granted and the petition dismissed.

The Commissioner adopted the findings and determination in the Initial Decision as his own. The Commissioner clarified that the determining factor in triggering a Department review is not whether some nexus exists between proposed nighttime lighting and the District's educational program, but whether the Department review is required pursuant to *N.J.A.C. 6:22-1.11*. Motion for summary decision was granted and the petition was dismissed.

July 2, 2001

OAL DKT. NO. EDU 5492-00
AGENCY DKT. NO. 141-5/00

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The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Pursuant to the requirements of *N.J.A.C.* 1:1-18.4(a), petitioner's exceptions were untimely filed.¹

Upon review of the record and Initial Decision, the Commissioner agrees with and adopts as his own the findings and conclusions of the Administrative Law Judge (ALJ) that the issue of school athletic field lighting for nighttime use is not an issue which must, pursuant to the provisions of *N.J.A.C.* 6:22-1.1, be the subject of review for educational adequacy by the respondent Department of Education (Department), and that even if the dicta found in the

¹ *N.J.A.C.* 1:1-18.4(a) requires that exceptions be filed within thirteen (13) days of the date the Initial Decision is mailed to the parties by the OAL. The Initial Decision was mailed to the parties by the OAL on May 21, 2001. Therefore, exceptions were due at the latest on June 4, 2001 because the thirteenth day, June 3, fell on a Sunday. In the instant matter, petitioner's exceptions were dated June 5, 2001, mailed on June 8, 2001, and filed with the Commissioner on June 12, 2001.

unreported Appellate Division decision in *Northern Highlands Regional High School Sports Association, supra*, was correct, petitioner has already made its choice -- the municipal planning board which rejected the application for the controverted athletic field lighting .

In affirming the Initial Decision, however, the Commissioner wishes to clarify that portion of the Initial Decision which states that “schools implement their curricula only during the day, and that is true even for physical activities. Therefore, athletic field lighting, which would be used only at night, would not benefit the school curriculum in any way.” (Initial Decision at 6) The Commissioner finds this statement inaccurate in that there are some nontraditional curricula offerings/educational programs which districts across the State implement in the evening, such as “Twilight” or “Sunset” schools, and/or at night, such as adult high schools. Additionally, there are some extracurricular activities which occur after the regular school day and at night. Nonetheless, this does not mean that the Department must, pursuant to *N.J.A.C. 6:22-1.1*, conduct a review of a district’s proposal for outdoor lighting of a school athletic field for *educational adequacy merely* because an extracurricular activity, such as sports or interscholastic athletic events, may have some nexus to a district’s physical education program. In other words, the determining factor in triggering a Department review is *not* whether some nexus exists between proposed nighttime lighting and the district’s educational program, but whether Department review is required pursuant to *N.J.A.C. 6:22-1.1*.

Accordingly, for the reasons set forth in the Initial Decision, as clarified herein,

respondent's Motion for Summary Decision is granted and the Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: July 2, 2001

Date of Mailing: July 2, 2001

² 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.