

STEPHANIE I. RYAN, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE CITY OF : DECISION
 TRENTON, MERCER COUNTY *ET AL.*, :
 :
 RESPONDENTS. :
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SYNOPSIS

Petitioner, retired teacher, alleged the Trenton Board of Education failed to follow New Jersey guidelines in its implementation of the Special Review Assessment (SRA). The Department investigated the allegations and issued a report which concluded that the allegations were without merit. In light of this report, the Board asked that the matter be dismissed.

The ALJ found that petitioner failed to meet the administrative code definition of interested person in a controversy. *N.J.A.C.* 6A:3-1.2 defines interested persons as persons who will be substantially, specifically and directly affected by the outcome of a controversy. The ALJ concluded that petitioner did not have legal standing to bring the present petition and that, even if she did, there was no relief that he might order. Petition was dismissed.

In lieu of exceptions, petitioner submitted a motion to amend her pleadings. Finding no legal authority for pleading amendment subsequent to the issuance of an initial decision and, even if such lack was not in and of itself dispositive, that interests of efficiency, expediency and the prevention of undue prejudice preclude acceptance of amendment of pleadings at such a late stage, the Commissioner denied petitioner's motion. The Commissioner adopted the findings and determination in the Initial Decision as his own. The Commissioner, however, found it appropriate that petitioner's materials be reviewed by the Special Committee he recently convened to review the SRA process statewide, since they may provide a perspective on some of the issues and problems potentially associated with that process.

October 15, 2001

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.

OAL DKT. NO. EDU 104-01
AGENCY DKT. NO. 401-11/00

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner filed no exceptions but, rather, submitted a “Request for Motion to File an ‘Amended Initial Complaint.’” In reply, the Board filed an objection to such request. Petitioner tendered a rejoinder to the Board’s responsive submission.

Preliminarily, the Commissioner determines that petitioner’s request to amend her pleadings, at this late stage in these proceedings, must be denied. It is noted that authorization for amendment of pleadings is derived from two specific rules, *N.J.A.C.* 6A:3-1.7 and *N.J.A.C.* 1:1-6.2, whose respective applicability is determined by the stage of the proceedings. First, *N.J.A.C.* 6A:3-1.7 specifies:

*Prior to the transmittal of any matter to the OAL, the Commissioner may order the amendment of any petition or answer, or any petitioner may amend the petition, and any respondent may amend the answer; provided, however, that once an answer or other responsive pleading is filed, an amendment to a petition may be made only with the consent of each adverse party or by leave of the Commissioner upon written application.***(emphasis supplied)*

Subsequent to the transmittal of a matter to the OAL, amendment of pleadings is governed by *N.J.A.C. 1:1-6.2(a)* which states:

Unless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, *an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice.* (emphasis supplied)

While both of these provisions clearly contemplate pleading revisions during the course of the proceedings of a contested case, there is no corresponding regulatory authority for amendment subsequent to an OAL hearing and the issuance of an Initial Decision. Even assuming, *arguendo*, that this absence of legal authority is not, in and of itself, dispositive, the Commissioner finds and concludes that interests of efficiency, expediency and the prevention of undue prejudice preclude a process which would essentially operate as a vehicle for all unsuccessful litigants to cure deficiencies and relitigate their cases. Consequently, petitioner's request to amend her pleadings, submitted in lieu of exceptions to the Initial Decision, is hereby denied.

Turning to the substance of the matter before him, upon careful and independent review of the record, the Commissioner concurs with the findings and conclusion of the Administrative Law Judge that the within petitioner lacks the requisite legal standing to maintain this action as a contested case.

However, notwithstanding this result, and fully recognizing that information brought to the record here remains unproven, the Commissioner of Education cannot ignore the implications of petitioner's allegations as they pertain to his concerns about the efficacy of the Special Review Assessment (SRA) methodology as an alternative means of measuring student achievement in New Jersey's public schools. At the October 3, 2001 meeting of the State Board

of Education, the Commissioner announced his formation of a Special Committee in this regard, explaining:

As we prepare to launch a new high school proficiency assessment this year, it's only appropriate that we take a long, hard look at the Special Review Assessment (SRA). While the SRA has merit, I am becoming increasingly concerned about the number of students who receive a diploma through this process. I recently convened a special committee to review the SRA process. Serving on this committee are county superintendents, teachers, district superintendents, test coordinators and high school principals. Their mission is to recommend by the end of the year a course of action that will guarantee that diplomas awarded as a result of the SRA process are as meaningful as those earned by passing the regular High School Proficiency Assessment.

In view of his broader concerns in this regard, the Commissioner finds it appropriate that petitioner's materials be reviewed by the recently convened special committee, since they may provide a perspective on some of the issues and problems potentially associated with the SRA process, thereby contributing to the committee's thinking in charting a course of action, as the Commissioner has directed, that will ensure the integrity of the SRA process statewide.

Accordingly, the Initial Decision of the OAL dismissing the instant Petition of Appeal is affirmed for the reasons stated therein, and a copy of the record of this matter will be submitted to the special committee.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: October 15, 2001

Date of Mailing: October 15, 2001

* This decision, as the Commissioner's final determination 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:2-1.1 et seq.* Commissioner decisions are deemed filed three days after the date of mailing to the parties.