

MORRIS EDUCATION ASSOCIATION AND :
HELEN KILGALLON, :
 :
 PETITIONERS, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE MORRIS : DECISION
 SCHOOL DISTRICT, MORRIS COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioning Education Association and a resident/taxpayer alleged that the Board was utilizing instructors to teach foreign languages, who do not hold valid New Jersey certificates, and that a contract with a private vendor for such instruction was unlawful. Petitioners sought acknowledgement that to contract with a private vendor was illegal and sought an order preventing such future agreements.

The ALJ determined that the Board is not utilizing any private contractors to provide foreign language instruction to its students for the 2001-02 school year and has not contested the proposition that teachers must hold valid New Jersey certifications. The ALJ, therefore, ordered the petition dismissed without prejudice as moot. The ALJ further determined that the Association's seeking of an order to prevent future agreements was tantamount to its seeking an advisory opinion to be fortified by a written order and such an opinion does not coincide with requirement that the OAL hear contested matters.

The Commissioner adopted the findings and determination in the Initial Decision as his own.

OAL DKT. NO. EDU 7250-01
AGENCY DKT. NO. 156-6/01

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners’ exceptions and the District’s reply thereto were timely filed in accordance with *N.J.A.C.* 1:1-18.4.

Petitioners’ exceptions recast and reiterate their arguments, advanced before the Administrative Law Judge (ALJ) below, as to why this matter should not be considered moot. Essentially, they again urge that even though the Board is not currently contracting with Berlitz for the provision of foreign language instruction, it will neither acknowledge that such an arrangement is prohibited nor provide assurance that the Board will not enter such a contractual arrangement in future school years. Therefore, petitioners propose that, absent a specific directive of the Commissioner prohibiting the Board from entering into contracts of this nature, it is highly likely that such a contractual arrangement will arise in the future, requiring petitioners to again petition the Commissioner for relief. (Petitioners’ Exceptions at 2-3) As such, petitioners maintain that the ALJ erred in finding this matter moot.

Alternatively, should the Commissioner deem that this matter is no longer an active controversy, petitioners request that the Commissioner render a declaratory ruling, based upon the State Board's decision in *Guttenberg Education Association v. Board of Education of the Borough of Guttenberg, Hudson County*, decided March 3, 1999 and the Commissioner's decision in *Neptune Township Education Association v. Board of Education of the Township of Neptune, Monmouth County*, decided May 22, 2000, proscribing the Board from entering into any commitment of this nature in the future.

In response, the Board submits that it is well-established that "an issue is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy. In other words, the conflict between the parties has become merely hypothetical." (citations omitted) (Board's Reply Exceptions at 2) Here, because the Board is not utilizing Berlitz to provide foreign language instruction to its students for the 2001-02 school year, the ALJ properly dismissed this matter as moot, as there was no basis upon which he could grant relief. (Board's Reply Exceptions at 3) Notwithstanding petitioners' attempt to categorize this matter as one with a strong likelihood of repetition, in actuality, petitioners do no more than "raise hypothetical arguments about potential future events***." (*Ibid.*)

The Board next urges the Commissioner to reject petitioners' attempt to secure an order prohibiting the Board from procuring services from private contractors through conversion of their petition to a petition for declaratory judgment, since petitioners have not satisfied the requirements necessary for such a ruling. It maintains that, pursuant to *N.J.S.A. 6A:3-2.1*, a petitioner may request the Commissioner to issue such a declaratory ruling with respect to rights, responsibilities, and status arising under a particular statute or regulation within the

Commissioner's jurisdictional purview. Petitioners here have advanced no statute or regulation which they claim as a foundational basis for such a ruling. Consequently, the Board avers, this request must be denied. (Board's Reply Exceptions at 4, 5)

Upon his full and independent review of the record in this matter, the Commissioner concurs with the ALJ that this matter is appropriately dismissed as moot. As to petitioners' request for declaratory relief, the Commissioner determines, pursuant to his discretionary authority under *N.J.A.C.* 6A:3-2.1, to decline to entertain such request. It is well-established that declaratory judgment "cannot be used to decide or declare rights or status of parties upon a state of facts which are future, contingent and uncertain." *Chamber of Commerce of the United States of America v. State of New Jersey*, 89 *N.J.* 131, 140 (1982). *See, also*, *N.J.A.C.* 6A:3-2.1(a)1. The settled policy of the law in this State is to refuse advisory opinions and refrain from functioning in the abstract in a declaratory judgment action. *See Wagner v. Ligham*, 37 *N.J. Super.* 430, 431 (App. Div. 1955), *citing New Jersey Turnpike Authority v. Parsons*, 3 *N.J.* 235, 240 (1949); *Friedland v. State*, 149 *N.J. Super.* 483, 495 (Law Div. 1977).

Accordingly, the Initial Decision of the OAL is affirmed for the reasons articulated therein and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: 4/19/02

Date of Mailing: 4/22/02

* 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.