

**New Jersey Commissioner of Education**

**Final Decision**

Boonton Education Association and  
Robert Davis,

Petitioner,

v.

Board of Education of the Town of Boonton,  
Morris County,

Respondent.

**Synopsis**

Petitioner alleged that the respondent Board failed to provide an employee health plan equivalent to the New Jersey Educators Health Plan (NJEHP), in violation of *N.J.S.A. 18A:16-13.2*. The Board argued that the Commissioner lacks jurisdiction over the subject matter of the within appeal, which respondent contends falls under health benefits laws, not the school laws. The Board filed a motion to dismiss.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A. 18A:6-9*, the Commissioner has jurisdiction to hear and determine all controversies and disputes arising under the school laws; the Commissioner's jurisdiction is limited to reviewing whether the Board's health plan design comports with the elements of the NJEHP as described in *N.J.S.A. 18A:16-13.2(f)*; the NJEHP statute does not set forth the age limit on dependent coverage as part of the plan design; and any terms not referenced in the NJEHP statute fall outside the Commissioner's jurisdiction. Accordingly, the ALJ granted the Board's motion to dismiss.

Upon review, the Commissioner reversed the Initial Decision and remanded the matter to the OAL for further proceedings. In so doing, the Commissioner, *inter alia*, disagreed with the ALJ that the petition should be dismissed for lack of jurisdiction and found instead that *N.J.S.A. 18A:16-13.2* provides that a board of education shall offer a health plan that is the equivalent of the NJEHP, and that a determination regarding whether a board of education has done so falls squarely within the Commissioner's jurisdiction; as the record thus far is limited to the jurisdictional issue raised in the motion to dismiss, the Commissioner was unable to reach a decision regarding the merits of whether the Board's health plan is equivalent to the NJEHP. Accordingly, the matter was remanded for further proceedings consistent with this decision.

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.

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OAL Dkt. No. EDU 04105-21

Agency Dkt. No. 45-3/21

## New Jersey Commissioner of Education

### Final Decision

Boonton Education Association and  
Robert Davis,

Petitioners,

v.

Board of Education of the Town of Boonton,  
Morris County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner pursuant to *N.J.A.C. 1:1-18.4*, and the Board's reply thereto, have been reviewed and considered.

Petitioner alleges that the Board failed to provide a health plan equivalent to the New Jersey Educators Health Plan (NJEHP), in violation of *N.J.S.A. 18A:16-13.2*. Specifically, petitioner contends that while the NJEHP permits dependents to remain covered until the end of the calendar year in which they turn 26 years old, the Board's plan terminates coverage at the end of the month in which a dependent turns 26. The Administrative Law Judge (ALJ) concluded that the Commissioner's jurisdiction is limited to reviewing whether the Board's health plan design comports with the elements of the NJEHP as described in *N.J.S.A. 52:14-17.46.13(f)* (NJEHP statute). The ALJ found that the NJEHP statute does not set forth the age limit on dependent coverage as part of the plan design and concluded that any terms not

referenced in the NJEHP statute fall outside the Commissioner's jurisdiction. Accordingly, the ALJ granted the Board's motion to dismiss.

In its exceptions, petitioner argues that resolving this dispute requires an interpretation of *N.J.S.A. 18A:16-13.2* to determine whether the Board's health plan comports with the NJEHP. Therefore, according to petitioner, the dispute arises under the school laws, not insurance law, and the Commissioner has jurisdiction to decide the merits of the case.

In reply, the Board argues that the Commissioner lacks jurisdiction to decide what benefit levels should be in a health plan that is designed to mirror a plan created by another State agency. The Board contends that the ALJ correctly concluded that because the issue of dependent coverage is not one of the statutorily-prescribed elements of the NJEHP, the dispute would necessitate a comparison of the plans and implicate areas outside of the school laws.

Upon review, the Commissioner disagrees with the ALJ that the petition should be dismissed for lack of jurisdiction. *N.J.S.A. 18A:16-13.2* provides that a board of education shall offer a health plan that is the equivalent of the NJEHP. A determination regarding whether a board of education has done so falls squarely within the Commissioner's jurisdiction. P.L. 2020, Chapter 44, outlines requirements for plans offered by employers who participate in the School Employees' Health Benefits Program (SEHBP), which is under the purview of the School Employees' Health Benefits Plan Design Committee or the State Treasurer, through the Division of Pensions and Benefits. These requirements are therefore codified as *N.J.S.A. 52:17.46.13* through 16. However, none of these provisions require boards of education to offer equivalent plans if they do not participate in the SEHBP. Instead, non-participating boards are required to offer an equivalent plan based on *N.J.S.A. 18A:16-13.2*, an education statute. Under the

standard principles of statutory construction, the Commissioner presumes that the Legislature intended this distinction when it enacted P.L. 2020, Chapter 44. Therefore, the Commissioner concludes that jurisdiction over whether a non-participating board's plan is equivalent to the NJEHP lies with the Commissioner.

Although the ALJ correctly found that dependent coverage is not provided for in the NJEHP plan description in the NJEHP statute, the lack of any such provision does not go to the procedural question of jurisdiction, but rather to the substantive question of whether a plan that differs from the NJEHP regarding dependent coverage satisfies the requirements of *N.J.S.A. 18A:16-13.2*. As the record thus far is limited to the jurisdictional issue raised in the motion to dismiss, the Commissioner is unable to reach a decision regarding the merits of whether the Board's health plan is equivalent to the NJEHP.

Accordingly, the Initial Decision is reversed, and the matter is hereby remanded to the OAL for further proceedings consistent with this opinion.

IT IS SO ORDERED.<sup>1</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 29, 2021  
Date of Mailing: November 30, 2021

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<sup>1</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**DISMISSAL**

OAL DKT. NO. EDU 04105-21

AGENCY DKT. NO. 45-3/21

**BOONTON EDUCATION ASSOCIATION**

**AND ROBERT DAVIS,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE**

**TOWN OF BOONTON, MORRIS COUNTY,**

Respondent.

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**Richard A. Friedman, Esq.,** for petitioners (Zazzali, Fagella, Nowack, Kleinbaum  
& Friedman, attorneys)

**James L. Plosia, Jr., Esq.,** for respondent (Plosia Cohen, attorneys)

Record Closed: August 2, 2021

Decided: October 14, 2021

**BEFORE KELLY J. KIRK, ALJ:**

**STATEMENT OF THE CASE**

Petitioners, Boonton Education Association and Robert Davis, allege that respondent Board of Education of the Town of Boonton, Morris County, violated N.J.S.A. 18A:16-13.2 by failing to offer a plan equivalent to the New Jersey Educators Health Plan.

**PROCEDURAL HISTORY**

On March 25, 2021, petitioners Boonton Education Association (Association) and Robert Davis filed with the New Jersey Department of Education (Department) a Petition of Appeal (Petition) requesting that the Commissioner enter an order: declaring that respondent Board of Education of the Town of Boonton, Morris County (Board), is in violation of N.J.S.A. 18A:16-13.2(a)(1) and (2) by failing to provide a plan equivalent to the New Jersey Educators Health Plan (NJEHP); compelling the Board to provide a plan equivalent to the NJEHP, inclusive of eligibility terms that permit dependents to remain covered until the end of the relevant calendar year, to be effective January 1, 2021, in accordance with school laws; and compelling the Board to financially reimburse any affected Association members for any benefits or payment lost due to the Board's actions. On March 26, 2021, petitioners filed with the Department a letter amendment to Count One, paragraph 1 of the Petition and a corrected Exhibit A. The Commissioner acknowledged receipt of the Petition on March 23, 2021, and the letter amendment on April 13, 2021.

On May 5, 2021, respondent filed a motion to dismiss in lieu of answer for lack of jurisdiction. The Department transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the rules of procedure established by the Department of Education to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17. The case was filed at the Office of Administrative Law (OAL) on May 7, 2021.

On July 16, 2021, petitioners filed a brief in opposition to the motion to dismiss. On August 2, 2021, respondent filed a reply brief.

**MOTION TO DISMISS**

Where a party seeks an order of a judge, the party must apply by motion. N.J.A.C. 1:1-1.12(a). Although a motion to dismiss is not specifically referenced in the Uniform Administrative Procedure Rules ("UAPR"), a respondent is not precluded from filing a motion to dismiss in lieu of an answer to a petition, provided that such motion is filed within the time allotted for the filing of an answer. N.J.A.C. 6A:3-1.5(g). Further, per N.J.A.C. 1:1-1.3(a), in the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible. In this regard, Rule 4:6-2 states, in part: Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint, counterclaim, cross-claim, or third-party complaint shall be asserted in the answer thereto, except that the following defenses, unless otherwise provided by R. 4:6-3, may at the option of the pleader be made by motion, with briefs: (a) lack of jurisdiction over the subject matter, (b) lack of jurisdiction over the person, (c) insufficiency of process, (d) insufficiency of service of process, (e) failure to state a claim upon which relief can be granted, and (f) failure to join a party without whom the action cannot proceed, as provided by R. 4:28-1.

Respondent's motion to dismiss argues that the Commissioner of the Department of Education (Commissioner) lacks jurisdiction over the subject matter of the Petition because the claims do not rest on school laws, but rather on health benefits laws, and that the Petition requires the Commissioner to "interpret a health insurance law and/or determine the District's negotiations obligations as overseen by the Public Employment Relations Committee ("PERC") and its governing laws." Conversely, petitioners argue that a petition should not be dismissed where a cause of action is suggested by the facts and that the Commissioner has jurisdiction over the subject matter of the Petition.

The Commissioner has jurisdiction to hear and determine "all controversies and disputes arising under the school laws," excepting those governing higher education, or under the rules of the State board or of the commissioner. N.J.S.A. 18A:6-9. Additionally, with respect to jurisdiction, the Appellate Division has stated as follows:

We begin by noting our institutional respect for the Department's subject matter interest and for the Commissioner's first-instance jurisdiction "to hear and determine . . . all controversies and disputes arising under the school laws[.]" N.J.S.A. 18A:6-9. The Commissioner's authority is plenary. See *Abbott v. Burke* (I), 100 N.J. 269, 301, 495 A.2d 376 (1985). Manifestly, however, the sweep of the Department's interest and the Commissioner's jurisdiction does not extend to all matters involving boards of education. For example, contract claims against boards do not arise under the school laws but rather from statutory or common law. See *Picogna v. Board of Educ. of Cherry Hill*, 249 N.J. Super. 332, 335, 592 A.2d 570 (App.Div.1991). Claims of the latter type are, therefore, typically and appropriately adjudicated in the courts. See *ibid.*; *South Orange-Maplewood Educ. Ass'n v. Board of Educ. of South Orange & Maplewood*, 146 N.J. Super. 457, 463, 370 A.2d 47 (App.Div.1977).

*Archway Programs, Inc. v. Pemberton Tp. Bd. of Educ.*, 352 N.J. Super. 420, 424 (App. Div. 2002).

The statute relied upon by petitioners is N.J.S.A. 18A:16-13.2, which applies to local boards of education and employers, as specified in N.J.S.A. 18A:16-13.2(k)<sup>1</sup>, who do not participate in the School Employees' Health Benefits Program (SEHBP). Any health insurance company may provide to local boards of education and to those employers defined pursuant to N.J.S.A. 52:14-17.46.2 who do not participate in the

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<sup>1</sup> N.J.S.A. 18A:16-12(k) states: This section shall also apply when health care benefits coverage is provided through an insurance fund or joint insurance fund or any other manner. This section shall apply to any employer, as that term is defined in section 32 of P.L.2007, c.103 (C.52:14-17.46.2), that is not a participating employer in the School Employees' Health Benefits Program. This section shall not apply to charter school or renaissance school employers unless they have a collective negotiations agreement with any of their employees in effect on or after the effective date [July 1, 2020] of P.L.2020, c.44.



SEHBP the equivalent of the New Jersey Educators Health Plan (NJEHP) in the SEHBP as that plan design is described in N.J.S.A. 52:14-17.46.13(f) and the Garden State Health Plan as that plan design is described in N.J.S.A. 52:14-17.46.13(d), notwithstanding the provisions of any other law, rule, or regulation, including any regulation of the New Jersey Department of Banking and Insurance, to the contrary. N.J.S.A. 18A:16-32. The term "employer" means local school district, regional school district, county vocational school district, county special services school district, jointure commission, educational services commission, State-operated school district, charter school, county college, any officer, board, or commission under the authority of the Commissioner of Education or of the State Board of Education, and any other public entity which is established pursuant to authority provided by Title 18A of the New Jersey Statutes, but excluding the State public institutions of higher education and excluding those public entities where the employer is the State of New Jersey. N.J.S.A. 52:14-17.46.2(c). Additionally, the term "dependents" means an employee's spouse, domestic partner, or partner in a civil union couple, and unmarried children under the age of 23 years who live in a regular parent/child relationship. N.J.S.A. 52:14-17.46.2(e).

Notwithstanding the provisions of any other law, rule, or regulation to the contrary, beginning January 1, 2021 and for each plan year thereafter, a board of education as an employer providing health care benefits coverage for its employees, and their dependents if any, in accordance with N.J.S.A. 18A:16-12 et seq. "shall offer to its employees, and their dependents if any, the equivalent of the [NJEHP] in the [SEHBP] as that plan design is described in N.J.S.A. 52:14-17.46.13." N.J.S.A. 18A:16-13.2(a)(1). The plans under this section shall be offered by the employer regardless of any collective negotiations agreement (CNA) between the employer and its employees in effect on the effective date [July 1, 2020] of this act, P.L.2020, c.44, that provides for enrollment in other plans offered by the employer. N.J.S.A. 18A:16-13.2(a)(2).

Per N.J.S.A. 52:14-17.46.13(f), which is specifically referenced in N.J.S.A. 18A:16-13.2, the plan design of the NJEHP shall be the following:

In Network Benefits

Coverage

Member Coinsurance: 10%, Applies Only to Emergency Transportation Care and Durable Medical Equipment

Deductible: N/A

Out-of-Pocket Maximum: \$500 Single/ \$1,000 Family (covers all in network copayments, coinsurance, and deductible)

Emergency Room Copayment: \$125 (To be Waived if Admitted)

PCP Office Visit Copayment: \$10

Specialist Office Visit Copayment \$15 Out-of-Network Benefits

Coverage

Member Coinsurance: 30% of the Out-of-Network Fee Schedule

Deductible: \$350 / \$700

Out-of-Pocket Maximum: \$2,000 Single / \$5,000 Family  
Routine Lab: Paid at Out-of-Network Benefit Level

Out-of-Network Fee Schedule: 200% of CMS - Medicare Pharmacy

Out-of-Pocket Maximum: \$1,600 Single / \$3,200 Family (Indexed Annually Pursuant to Federal Law) Generic Copayment:\$5 Retail 30 Day Supply / \$10 Mail 90 Day Supply Brand Copayment:\$10 Retail 30 Day Supply/ \$20 Mail 90 Day Supply Mandatory Generic: Member Pays Difference in Cost Between Generic and Brand, Plus Brand Copayment Formulary: Closed Formulary as contracted with the Pharmacy Benefit Manager and the School Employees' Health Benefits Commission Other

Chiropractic, Physical Therapy, and Acupuncture:

Subject to the same Out-of-Network Limits as for the State Health Benefits Program as were in effect on June 1, 2020 to

take effect as of July 1, 2020, or as soon thereafter as reasonably practicable.

Under a patient centered medical home model, there shall be no office visit copay for primary care for participants who select and commit to a patient centered medical home for primary care in accordance with plan rules and regulations.

There can be no dispute, based upon the plain language of the statute, that the Board "shall offer. . . the equivalent of the NJEHP. . . as that plan is described in N.J.S.A. 52:14-17.46.13." While a health care benefits plan must be offered, the plan itself is governed by Title 52 of the New Jersey Annotated Statutes, Chapter 14, Article 3D "State Health Benefits" – which I agree with respondent are unquestionably not "school laws" statutes. However, I disagree with respondent that this results in an absolute bar to jurisdiction. Instead, what limited jurisdiction the Commissioner has would be with respect to whether or not the plan design comports with N.J.S.A. 52:14-17.46.13, and more specifically with N.J.S.A. 52:14-17.46.13(f), as to member coinsurance; deductible; out-of-pocket maximums; emergency room, PCP and specialist copayments; out of network fee schedule and limits; and chiropractic, physical therapy and acupuncture. None of the foregoing terms of the plan design require the Commissioner "to interpret a health insurance law and/or to determine the District's negotiations obligations as overseen by the [PERC] and its governing laws." Thus, beyond the design plan elements, I agree with respondent that the Commissioner lacks jurisdiction.

Petitioners allege that the Board failed to offer an "equivalent" plan, because the NJEHP "provides for dependent coverage until the end of the calendar year in which the dependent turns 26," that "[p]rior to the open enrollment period, the District provided employees with documents stating that dependent children are covered until the end of the calendar year in which they turn 26," and that "after the open enrollment period had ended, the Board advised petitioner Robert Davis that members' dependents . . . will have their coverage terminated at the end of the month the dependent turns 26." Notably, N.J.S.A. 18A:16-13.2 requires that the Board offer the "equivalent of the [NJEHP] in the [SEHBP] as that plan design is described in N.J.S.A. 52:14-17.46.13," and does not require that it offer an "identical" plan. The Petition alleges that the Association is the

majority representative pursuant to N.J.S.A. 43:13A-1 et seq. for its bargaining unit members employed by the Board with respect to collective negotiations for the terms and conditions of employment, and there exists a collective negotiations agreement (CNA) between the Association and the Board. Respondent argues that the dispute over dependent coverage would necessitate a comparison of the health plans and implicate areas of law outside of "school law". I concur. N.J.S.A. 52:14-17.46.13(f) does not set forth the age limit on dependent coverage as part of the plan design, and generally any terms not referenced therein would fall outside the jurisdiction of the Commissioner.

In view of the foregoing, I **CONCLUDE** that because no dispute was posited relative to any of the terms of the design plan required by N.J.S.A. 18A:16-13.2, which would be the only elements for which the Commissioner could readily determine if a violation existed, the Commissioner lacks jurisdiction over the subject matter of this dispute and the Petition should be dismissed.

### **ORDER**

It is **ORDERED** that the respondent's motion to dismiss is **GRANTED** as to the Commissioner's jurisdiction over the specific subject matter of this Petition, and the Petition is **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 14, 2021



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DATE

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KELLY J. KIRK, ALJ

Date Received at Agency:

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*October 14, 2021*

Date Mailed to Parties:

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*October 14, 2021*

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