

New Jersey Commissioner of Education

Final Decision

Mercer County Special Services Educational and
Therapeutic Association,

Petitioners,

v.

Board of Education of the Mercer County Special
Services School District, Mercer County, and
Board of Education of the City of Trenton,
Mercer County,

Respondent.

Synopsis

The petitioner – the Mercer County Special Services Education and Therapeutic Association (Association) – represents the interests of its member paraprofessionals who are employed by the respondent Board of Education of the Mercer County Special Services School District (MCSSSD) as individual aides for special education students sent to MCSSSD by the respondent Board of Education of the City of Trenton (Trenton). The petitioner alleged that layoffs of Association members by MCSSSD and Trenton during and as a result of the COVID-19 pandemic violated the New Jersey School Law, *N.J.S.A.* 18A:1-1 et. seq., and its accompanying regulations, *N.J.A.C.* 6A:1-1 et. seq. The Association filed its appeal with the Commissioner, arguing that the layoffs violated respondents’ obligations to provide a free, appropriate public education (FAPE) to all students. The respondents filed motions to dismiss for lack of standing and jurisdiction.

The ALJ found, *inter alia*, that: the Association does not have standing to bring a claim seeking to enforce the rights of special education students under the Individuals with Disabilities Education Act (IDEA); further, neither the school laws nor the contract between MCSSSD and Trenton provide a basis for standing in this case; the Commissioner does not have jurisdiction here; the Association’s members have no statutory or regulatory claim to their jobs, and though they may have a claim under their employment contracts with MCSSSD, the Commissioner has no jurisdiction over contractual disputes. Accordingly, the ALJ granted the respondents’ motions to dismiss.

Upon review, the Commissioner concurred with the ALJ, for the reasons thoroughly expressed in the Initial Decision, that the Association lacks standing in this case and the Commissioner does not have jurisdiction over special education matters, which are under the sole purview of the Office of Special Education. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was 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.

New Jersey Commissioner of Education

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Board of Education of the Mercer County
Special Services School District, Mercer
County, and Board of Education of the City
of Trenton, Mercer County,

Respondents.

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 respondents' replies thereto have been reviewed and considered.

The Mercer County Special Services Educational and Therapeutic Association (Association) represents the interests of its member paraprofessionals, who are employed by the Mercer County Special Services School District (MCSSSD) as individual aides for special education students sent to MCSSSD by the Trenton Board of Education (Trenton), at Trenton's expense. In October 2020, Trenton notified MCSSSD that it would no longer pay for the cost of individual aides who were working with students remotely due to the COVID-19 pandemic. Approximately twenty-seven individual aides were laid off between October 11, 2020 and November 9, 2020, when they were reinstated. The Association appealed to the Commissioner, arguing that the layoffs violated respondents' obligations to provide a free, appropriate public education (FAPE) to all students. The Administrative Law Judge (ALJ) granted respondents' motions to dismiss, finding that the

Association does not have standing to bring a claim seeking to enforce the rights of special education students under the Individuals with Disabilities Education Act (IDEA), nor did the school laws or the contract between MCSSSD and Trenton provide a basis for standing. For similar reasons, the ALJ concluded that the Commissioner does not have jurisdiction in this matter. The ALJ further found that the Association's members have no statutory or regulatory claim to their jobs, and while they may have a claim under their employment contracts with MCSSSD, the Commissioner has no jurisdiction over contractual disputes.¹

In its exceptions, the Association argues that by failing to follow students' Individualized Education Programs (IEPs), respondents violated the school laws, independent of whether they also violated the IDEA. According to the Association, the fact that the individual aides were laid off and lost pay makes this matter a controversy that is properly before the Commissioner. The Association contends that this matter does not require the Commissioner to make a substantive determination regarding whether individual students were provided with a FAPE or whether their educational needs were being met, but rather only requires a comparison of the student IEPs to the services that were actually provided, with the issue being whether the IEPs were followed.

In their replies, Trenton and MCSSSD reiterate arguments regarding standing and jurisdiction previously made in their motions to dismiss, and urge the Commissioner to affirm the Initial Decision.

Upon review, the Commissioner concurs with the ALJ, for the reasons thoroughly detailed in the Initial Decision, that the Association does not have standing and that the Commissioner does not have jurisdiction over this matter.² As the Association itself acknowledges in its exceptions, this matter requires a comparison of student IEPs to the services that were actually

¹ The ALJ did not reach the issue of whether the Association's claims were moot in light of new agreements entered into by MCSSSD and Trenton.

² The Commissioner does not reach respondents' arguments that the matter is moot.

provided, and the issue is whether the IEPs have been followed. Resolving matters involving the provision of special education services is one of the functions of the dispute resolution process of the Department of Education's Office of Special Education (OSE). *N.J.A.C.* 6A:14-2.7; *N.J.A.C.* 6A:14-9.2. Moreover, while the Association characterizes its claim as one made pursuant to *N.J.S.A.* 18A:6-30 of the school laws, which provides remedies for employees who are "illegally dismissed," it is clear that this, too, is actually a special education issue, because the only provisions cited by the Association for the alleged illegality of the layoff are special education regulations. In the absence of any claim arising under the school laws, the Commissioner has no jurisdiction to adjudicate a claim that respondents failed to follow student IEPs, because such review falls exclusively within the purview of the OSE. See *Long Beach Island Educ. Ass'n v. Bd. of Educ. of the Long Beach Island Consolidated Sch. Dist.*, Commissioner Decision No. 330-09 (decided October 13, 2009); *Trenton Educ. Ass'n v. Bd. of Educ. of the City of Trenton, Mercer Cty.*, Commissioner Decision No. 283-20 (decided December 14, 2020).

Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.³



ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 23, 2021
Date of Mailing: April 27, 2021

³ 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

GRANTING MOTIONS TO DISMISS

OAL DOCKET NO. EDU 10956-20

AGENCY REF. NO. 212-10/20

**MERCER COUNTY SPECIAL
SERVICES EDUCATIONAL
AND THERAPEUTIC ASSOCIATION,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE
MERCER COUNTY SPECIAL SERVICES
SCHOOL DISTRICT, MERCER COUNTY,
AND BOARD OF EDUCATION OF
THE CITY OF TRENTON, MERCER COUNTY,**

Respondents.

Edward A. Cridge, Esq., for petitioner (Mellk O'Neil, attorneys)

Walter R. Bliss, Jr., Esq., for respondent, Board of Education of the Mercer County
Special Services School District, Mercer County (Law Offices of Walter R. Bliss,
Jr., attorneys)

Elesia L. James, Assistant General Counsel, for respondent, Board of Education of
the City of Trenton, Mercer County (James Rolle, Jr., General Counsel)

Record Closed: February 18, 2021

Decided: March 9, 2021

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF CASE

Petitioner Mercer County Special Services Education and Therapeutic Association (Association) alleges that the layoffs of Association members during and as a result of the COVID-19 emergency by respondents, Board of Education of the Mercer County Special Services School District, Mercer County (MCSSSD), and Board of Education of the City of Trenton, Mercer County (Trenton), violated the New Jersey School Law, N.J.S.A. 18A:1-1 et. seq., and its accompanying regulations, N.J.A.C. 6A:1-1 et. seq.

PROCEDURAL HISTORY

On October 1, 2020, the Association filed a petition with the Commissioner of the New Jersey Department of Education pursuant to N.J.S.A 18A:6-9. On November 20, 2020, respondents filed motions to dismiss in lieu of answers. These motions were not decided by the Commissioner and were transmitted with the petition on November 24, 2020, to the Office of Administrative Law (OAL) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

By letter dated January 19, 2021, a briefing schedule was issued and on February 8, 2021, the Association responded to the motions to dismiss. On February 18, 2021, MCSSD and Trenton submitted reply briefs and the motions are now ripe for review.

FACTUAL DISCUSSION AND FINDINGS

Respondents' motions were filed in accordance with N.J.A.C. 6A:3-1.5(g), which permits the filing of a motion to dismiss in lieu of an answer. The New Jersey Supreme Court explained that the analysis required when considering a motion to dismiss is "whether a cause

of action is suggested by the facts.” Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988) (citations omitted). Further:

Because the matter arises on defendants’ motion to dismiss, [the court must] accept as true the facts alleged in the complaint. . . . Plaintiffs are entitled to every reasonable inference in their favor. A reviewing court must ‘search the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim. . . .’

[Craig v. Suburban Cablevision, Inc., 140 N.J. 623, 625-26 (1995) (citations omitted); see also, Maeker v. Ross, 219 N.J. 565, 569 (2014).]

A motion to dismiss should only be granted in the rarest of instances. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 772 (1989).¹ In reviewing the complaint, the question is not whether the petitioner can prove the allegations, but whether the facts alleged are sufficient to state a cause of action. Id. at 746. Accordingly, for the purposes of the motion, all facts alleged by the petition will be deemed admitted, and I **FIND** as follows:

1. The City of Trenton School District is a public school district with administrative offices at 108 North Clinton Avenue, Trenton, New Jersey.
2. MCSSSD is a receiving school district as provided at N.J.A.C. 6A:14-7.1, which provides special education (SE) and related services to students from local school districts, including Trenton.
3. The Association is a labor organization serving as the majority representative for employees of MCSSSD, including individual aides (or paraprofessionals).
4. Consistent with state and federal law, a local educational district must develop an individual education program (IEP) for each student in the district classified as eligible for SE and related services. For each SE student sent by Trenton to

¹ See also, F. G. v. MacDonell, 150 N.J. 550, 556 (1997) (“If a generous reading of the allegations merely suggests a cause of action, the complaint will withstand the motion.”).

MCSSSD, Trenton is responsible for developing his or her IEP and paying the cost of that student's education (i.e., tuition to MCSSSD).

5. The IEPs of some of the SE students sent by Trenton to MCSSSD provide for individual aides to support such students on a one-to-one basis. This service is considered an "extraordinary service" and is billed by MCSSSD to Trenton separately and paid to MCSSSD by Trenton directly.
6. During the 2019-2020 and the 2020-2021 school years, due to the COVID-19 pandemic, MCSSSD provided educational services remotely to SE students, including students from Trenton.
7. Prior to October 9, 2020, Trenton notified MCSSSD that it would no longer pay for the cost of individual aides who were working with SE students remotely. MCSSSD notified the Association that it would lay off approximately twenty-seven individual aides, all of whom are represented by the Association.
8. The layoffs of individual aides became effective October 11, 2020, continuing while all instruction was provided on a remote basis. The individual aides were reinstated effective November 9, 2020.
9. Prior to November 9, 2020, MCSSSD and Trenton reached agreement on the retention of and payment for individual aides as specified in the IEPs of SE students, whether school is conducted remotely or in-person.
10. MCSSSD and Trenton reached agreement on payment of invoices for individual aides for the period of all-remote instruction from mid-March 2020, through October 11, 2020.

11. The Association claims that the above-described action by Trenton violates Trenton's obligation to provide all SE students with a free appropriate public education (FAPE).
12. The Association claims that the above-described action by MCSSSD violates the obligation of MCSSSD to provide all SE students with a FAPE.
13. In this matter, the Association asks the Commissioner:
 - (a) for a declaration that Trenton and MCSSSD are required to follow the IEPs of SE students from Trenton;
 - (b) to direct Trenton to pay the cost of individual aides who are assigned by MCSSSD to work remotely with SE students from Trenton;
 - (c) to enjoin MCSSSD from laying off individual aides who are assigned by MCSSSD to SE students from Trenton in compliance with the IEPs of such students; and
 - (d) to direct MCSSSD to reinstate with back pay, benefits and emoluments, all individual aides who were laid off as a result of Trenton's refusal to pay the cost of individual aides who were working with SE students remotely, and to direct Trenton to reimburse MCSSSD for the resulting costs.

LEGAL ANALYSIS AND CONCLUSION

Respondents contend that the petition must be dismissed for lack of standing, as the Association lacks standing to bring claims under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. (IDEA), on behalf of any SE students, and the Association lacks standing to challenge or enforce the contract between MCSSSD and Trenton. Respondents further argue that the petition must be dismissed for lack of jurisdiction, as the Commissioner lacks jurisdiction to hear a claim based on the IDEA and/or to enforce the contract between MCSSSD and Trenton. Finally, respondents claim that the controversies raised by the petition are now moot:²

The Association responds that the motions for dismissal for lack of standing and jurisdiction must be denied as the Association does not bring this action under the IDEA but under the New Jersey School Law, N.J.S.A. 18A:1-1 et seq. (School Law), and the regulations promulgated thereto. The failure of respondents to provide individual aides to SE students as required under the IEPs of such students was a violation of the School Law, as a result of which Association members suffered compensable injury. Further, Association argues that the prospective relief requested by the Association is still available and the underlying issue is of substantial importance, capable of repetition yet evading review and therefore, not moot.

STANDING

Standing is a “threshold justiciability determination whether the litigant is entitled to initiate and maintain an action before a court or other tribunal.” In re Six-Month Extension of N.J.A.C. 5:91-1, 372 N.J. Super. 61, 85 (App. Div. 2004), certif. denied, 182 N.J. 630 (2005); Stubus v. Williams, 339 N.J. Super. 38, 47 (App. Div. 2001). A lack of standing precludes a court from entertaining any of the substantive issues presented for determination. Watkins v.

² In addition, respondents contend that any claims alleged by the Association to arise under the New Jersey School Law (cited below) prior to July 3, 2020, are time-barred. Ltr. Br. of Respondent Board of Education of the City of Trenton (November 20, 2020), at 3. Petitioner did not respond to this defense, presumably because the acts complained of occurred after July 3, 2020.

Resorts Int'l Hotel and Casino, 124 N.J. 398, 418 (1991) (“A dismissal for lack of standing . . . amounts to a refusal by the court to resolve the matter.”)

To have standing to bring an administrative action, a party must have suffered a distinct injury or harm that was caused by the adverse party and that can be remedied by the administrative forum. Herron v. Bd. of Educ. of the Tsp. of Montclair, OAL Docket No. EDU 14067-13, Initial Decision, *5 (April 16, 2014), Comm. Ed. Dec. (June 2, 2014), https://njlaw.rutgers.edu/collections/oal/html/initial/edu14067-13_1.html. While New Jersey courts often take a liberal approach on this issue, standing “is not automatic and a litigant usually has no standing to assert the rights of a third party.” In re N.J.A.C. 5:91-1, 372 N.J. Super. at 85 (citations omitted); see also, Kathleen Donohue v. State-Operated Sch. Dist. of Patterson, OAL Docket Nos. EDU 08806-16 and 09476-16, Initial Decision, *17 (April 6, 2017), Comm. Ed. Dec. (May 8, 2017) (adopting decision that former teacher had no standing to assert the rights of schoolchildren to FAPE despite claims that the “administration squander[ed] resources and [failed] to adequately supervise the performance of those responsible to instruct the children”), https://njlaw.rutgers.edu/collections/oal/final/edu08806-16_1_1.pdf.

Respondents argue that petitioner attempts to raise claims on behalf of SE students under the IDEA and such claims can only be brought by the students or their parents (or legal guardians). Even a generous reading of the petition cannot avoid the conclusion that the Association is alleging violations of the IDEA, specifically that by failing to adhere to the requirements of individual aides in IEPs, respondents did not provide FAPE to the respective SE students. Among the purposes of IDEA is “to ensure that the rights of children with disabilities and parents of such children are protected.” 20 U.S.C. 1400 (d)(1)(B). New Jersey regulations make clear, however, that “a petition on behalf of a minor shall be filed by the parent or legal guardian of the minor” not by the teachers or other service providers. N.J.A.C. 6A:3-1.3 (a)(2). I **CONCLUDE** that the Association has no standing to bring a claim for an order enforcing the rights of SE students under the IDEA.

Notwithstanding the foregoing, in its response brief, the Association clarifies that it does not bring this action under the IDEA, but under the School Law. Ltr. Br. of Petitioner in

Response to Motions to Dismiss (February 3, 2021), at 4-5. Petitioner argues that the failure of respondents to follow the IEPs of SE students from Trenton was not permissible and resulted in the layoffs of Association members, triggering petitioner's right to bring suit under the following statute:

Any person holding office, position or employment in the public school system of the state, who shall be illegally dismissed or suspended therefrom, shall be entitled to compensation for the period covered by the illegal dismissal or suspension, if such dismissal or suspension shall be finally determined to have been without good cause, upon making written application therefor with the board or body by whom he was employed, within 30 days after such determination.

[N.J.S.A. 18A:6-30 (emphasis added).]

The Association argues that its members were laid off as a direct result of respondents' failure to follow the requirements of certain IEPs and "neither respondent argues. . . that the paraprofessional layoffs were permissible[.]" Ltr. Br. of Pet'r, at 4. These improper layoffs were a violation of the School Law and led to cognizable injury to Association members, giving the Association standing to bring the claims here. For support, the Association cites a case involving the decision of a school board to lay off child study team (CST) members and replace them with a private entity, which was a clear violation of the statute and regulations calling for CST members to be employees of the district. Ltr. Br. of Pet'r, at 5, citing Bloomfield Ed. Assn. o/b/o Child Study Team v. Bd. of Ed. of Twp. of Bloomfield, OAL Docket No. EDU 18705-13, Comm. Ed. Dec. 410-15, https://njlaw.rutgers.edu/collections/oal/html/initial/edu18705-13_1.html.

The Bloomfield case does not support the Association's position on standing. The petitioners in Bloomfield were tenured employees of the school district, laid off by the district in an effort to save money by outsourcing their jobs. Id. at *4, *9. Besides the protections afforded them by tenure, applicable law³ prohibited the school district from replacing petitioners with an unrelated outside entity. Id. at *10-11. The "improper layoffs" in Bloomfield were found to violate two provisions of the School Law, specifically, N.J.S.A. 18A:28-5, and

³ N.J.S.A. 18A:46-5.1; N.J.A.C. 6A:14-3.1(b).

28-9. Further, the labor organization in Bloomfield brought claims on behalf of its members that the members could have brought on their own. See, Crescent Park Tenants Assoc. v. Realty Equities Corp., 58 N.J. 98, 109 (1971) (association of tenants had standing where there was no question as to “the stake and adverseness” of any individual tenant). In this matter, to find the layoffs improper would require an evaluation of whether the IDEA permitted Trenton to make changes to the respective IEPs; in other words, the layoffs would only be improper if the students’ right to FAPE was impaired as a result. As explained above, the Association has no standing to assert those rights. Even assuming that the actions of respondents vis-à-vis the SE students were not permissible under the IDEA, petitioner points to no provision in the School Law which protects its members from layoffs when a sending district changes the services provided under IEPs. To find otherwise would impair the ability of any CST to modify an IEP mid-way through a school year. I **CONCLUDE** that the School Law does not provide petitioner withstanding to challenge the actions of respondents in modifying services to SE students as required by the students’ respective IEPs.

Respondents also argue that petitioner has no standing to bring claims based on the contracts entered by and between MCSSSD and Trenton because the Association is not a party to these contracts. “The obligation of contracts is, in general, limited to the parties making them.” Aronsohn v. Mandara, 98 N.J. 92, 101, 484 A.2d 675 (1984) (citation omitted); see also, Borrello v. Elizabeth Bd. of Educ., No. A-3151-14T4, 2016 N.J. Super. Unpub. LEXIS 1915, at *13 (App. Div. Aug. 16, 2016) (court dismissed claims brought under collective bargaining agreement against individuals who were not parties to the contract). Here, the Association represents independent aides who are hired as needed by MCSSSD. Their right to employment would be found in the contracts they may have signed with MCSSSD, not in the contracts Trenton signed with MCSSSD.⁴ I **CONCLUDE** that the Association has no standing to bring a claim under the School Law to enforce the contract entered by and between respondents MCSSSD and Trenton.

⁴ Respondent MCSSSD states that “to the extent the Association is alleging a contracting claim against MCSSSD challenging the notice of layoff,” such is outside the Commissioner’s jurisdiction. Ltr. Br. of Resp’t Board, at 3. Petitioner did not respond to this argument.

JURISDICTION

Respondents contend that whether the petition is grounded in the IDEA or the School Law, the Commissioner of Education has no jurisdiction to hear this matter. Petitioner, however, contends that the Commissioner has jurisdiction over its claims under the following provision of the School Law:

Commissioner shall have jurisdiction to hear and determine, without cost to the parties, 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 commissioners.

[N.J.S.A. 18A:6-9.]

As stated above, petitioner contends that respondents' failure to comply with the IEPs of certain Trenton SE students was a violation of the IDEA and therefore, led to the illegal dismissal without good cause of Association members, which is compensable in an action brought under the School Law, N.J.S.A. 18A:6-30. Therefore, petitioner argues, the Commissioner has proper jurisdiction to hear this action. Ltr. Br. of Pet'r, at 4-5.

Despite petitioner's assertion that it is undisputed that the layoffs of Association members by MCSSSD were impermissible, neither respondent conceded that position.⁵ Further, to reach the conclusion that layoffs were impermissible would require an inquiry into whether a school district is obligated to provide one-on-one assistance to SE students outside the classroom during a pandemic, when the aides may or may not be able to work in close physical proximity to those SE students. This is a question that can only be resolved by application of the IDEA and then only on a case-by-case basis. Federal and state law, as stated above, permits only students and/or parents to challenge the denial of FAPE and/or to enforce IEPs. Further, as both respondents note, actions under the IDEA must be filed with the Director of the Office of Special Programs, not with the Commissioner. N.J.A.C. 6A:3-1.3(e)(2); N.J.A.C. 6A:14-9.2.

⁵ See, Ltr. Br. of Pet'r, at 4; cf. Ltr. Br. of Respondent MCSSSD in Reply to Petitioner's Response to Motion to Dismiss (February 18, 2021), at 3, and Ltr. Br. of Respondent Trenton in Reply to Petitioner's Response to Motion to Dismiss (February 18, 2021), at 3.

The Commissioner's subject matter jurisdiction is limited by statute to "controversies and disputes arising under the school laws." N.J.S.A. 18A:6-9; Balsley v. N. Hunterdon Reg'l Sch. Dist. Bd. of Educ., 117 N.J. 434, 438 (1990). It is well settled that the Commissioner does not have jurisdiction over contractual disputes, even if those disputes "pertain to school personnel," Picogna v. Bd. of Educ., Twp. of Cherry Hill, 249 N.J. Super. 332, 335 (App. Div. 1991), or involve school boards. Archway Programs, Inc. v. Pemberton Tp. Bd. of Educ., 352 N.J. Super. 420, 424-25 (App. Div. 2002) (contract claims against school boards do not arise under the school laws and are "typically and appropriately adjudicated in the courts").

Contractual disputes are generally considered to be outside the Commissioner's jurisdiction because no special expertise in school law is necessary for the interpretation of contractual language. See, Picogna, 249 N.J. Super. at 335 (no jurisdiction over contract claim of non-tenured school employee because no interpretation of school laws was required); S. Orange-Maplewood Ed. Ass'n v. Bd. of Ed. of Sch. Dist. of S. Orange & Maplewood, 146 N.J. Super. 457, 462 (App. Div. 1977) (though Board "exercised its authority under the school laws" to reach agreement with teachers' union, the dispute over "the interpretation of that agreement" should be brought in Superior Court).

In this matter, the members of the Association have no statutory or regulatory claim to their jobs under the School Law. The Association may have claims against MCSSSD as a result of the employment contracts signed with the individual members, and the relief sought by the Association – preventing MCSSSD from conducting further layoffs, and restitution of back pay, benefits and emoluments lost as a result of the alleged improper layoffs – would be based on the terms of those employment contracts. As stated above, however, such contract claims fall outside the jurisdiction of the Commissioner. I **CONCLUDE** that petitioner has failed to demonstrate that this venue has the proper jurisdiction to hear this case.

While concluding that petitioner has no standing to bring this action and the Commissioner no jurisdiction to hear it, no findings are made with respect to respondents' argument that the claims herein are moot as a result of agreements reached by

respondents after this petition was filed. Similarly, no findings are made with respect to the ability of petitioner to raise its claims in another forum.

ORDER

It is hereby **ORDERED** that the motions to dismiss of **BOARD OF EDUCATION OF THE MERCER COUNTY SPECIAL SERVICES SCHOOL DISTRICT, MERCER COUNTY**, and of the **BOARD OF EDUCATION OF THE CITY OF TRENTON, MERCER COUNTY**, are **GRANTED** and the claims brought by the petition of **MERCER COUNTY EDUCATIONAL AND THERAPEUTIC ASSOCIATION** are hereby **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 initial 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, P.O. 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.

March 9, 2021

DATE



TRICIA M. CALIGUIRE, ALJ

OAL DKT. NO. EDU 10956-20

Date Received at Agency:

Date Mailed to Parties:

TMC/nd