

New Jersey Commissioner of Education

Final Decision

Christopher Crocco,

Petitioner,

v.

Board of Education of the Township of Cranford,
Union County,

Respondent.

Synopsis

Petitioner alleged that respondent, Board of Education of the Township of Cranford (Board), is not providing students with the mandatory curriculum in the arts "...set forth by the New Jersey Department of Education". The Board filed a motion to dismiss the petition because neither the New Jersey Department of Education nor New Jersey statutes and regulations mandate a specific curriculum for visual and performing arts. Petitioner opposed the motion to dismiss, asserting that there are State-mandated standards and curriculum for music, visual arts, dance, and theater, but provided no evidence of any mandatory curriculum.

The ALJ found, *inter alia*, that: while the State may require district boards of education to align their curriculum to assist students in achieving the skills and knowledge specified in the New Jersey Student Learning Standards (NJSLS), there is no mandatory curriculum in Music, Visual Arts, Dance or Theater in New Jersey; instead, school districts are free to design and implement programs in the arts so long as they align with the standards outlined in the NJSLS; and the rules of procedure governing petitions of appeal permit a respondent to submit a motion to dismiss in lieu of an answer "on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason." In this case, petitioner has failed to advance a cause of action because there is no State-mandated curriculum in the arts that the Board is required to offer its students, and the ALJ concluded that the petition should be dismissed. Accordingly, the ALJ granted the Board's motion and dismissed petitioner's appeal.

Upon review, the Commissioner concurred with the findings and determination of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter. 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.

188-24
OAL Dkt. No. EDU 13740-23
Agency Dkt. No. 305-11/23

New Jersey Commissioner of Education
Final Decision

Christopher Crocco,

Petitioner,

v.

Board of Education of the Township of
Cranford, Union 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 respondent Board's reply thereto, have been reviewed and considered.

This matter involves petitioner's claim that the Board is not offering the "mandatory curriculum governing Music, Visual Arts, Dance, and Theater" to its students. The Board filed a motion to dismiss the petition, asserting that neither the New Jersey Department of Education (Department) nor New Jersey statutes or regulations mandate a specific curriculum for Visual and Performing Arts. The Administrative Law Judge (ALJ) granted the Board's motion upon concluding that petitioner had not advanced a cognizable cause of action because there is no State-mandated curriculum in Visual and Performing Arts that the Board is required to offer. Rather, school districts are free to design and implement their arts curricula so long as they align with the New Jersey Student Learning Standards (NJSLs) for Visual and Performing Arts.

In his exceptions, without specifically identifying what the discrepancy is, petitioner now argues that the Board's curriculum does not align with the NJSLS for Visual and Performing Arts. He also asserts that children attending school in the district are not literate in music and fine arts. In reply, the Board reiterates that districts are given the discretion to develop curricula that will enable students to demonstrate the knowledge and skills specified in the NJSLS.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter for the reasons stated therein. The Commissioner concurs with the ALJ that petitioner did not advance a cognizable cause of action in his petition because there is no State-mandated curriculum in Visual and Performing Arts that the Board is required to offer. Although petitioner contends in his exceptions that the Board's curriculum does not align with the NJSLS for Visual and Performing Arts, vague and conclusory allegations unsupported by facts are not sufficient to withstand a motion to dismiss for failure to state a claim.

Accordingly, the Board's motion to dismiss the petition is granted.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 10, 2024

Date of Mailing: May 10, 2024

¹ 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

DISMISSING THE PETITION

OAL DKT. NO. EDU 13740-23

AGENCY DKT. 305-11/23

CHRISTOPHER CROCCO,

Petitioner,

v.

BOARD OF EDUCATION OF THE

TOWNSHIP OF CRANFORD,

UNION COUNTY,

Respondent.

Christopher Crocco, petitioner, pro se

Jennifer Osborne, Esq., for respondent (Cornell, Merlino, McKeever & Osborne,
attorneys)

Record Closed: January 22, 2024

Decided: March 4, 2024

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

Petitioner, Christopher Crocco (Crocco or petitioner), filed a petition alleging that respondent, Board of Education of the Township of Cranford (the Board or respondent) is not

providing students with mandatory curriculum in the arts. The Board filed for dismissal, asserting that petitioner advanced no cause of action, because no such State-mandated curriculum exists.

PROCEDURAL HISTORY

The petitioner filed his petition with the New Jersey Department of Education, Office of Controversies and Disputes on or around November 13, 2023. On or around December 1, 2023, the respondent filed a Motion to Dismiss in lieu of an answer. The Office of Controversies and Disputes subsequently transmitted the matter to the Office of Administrative Law (OAL), where it was filed on December 5, 2023. The petitioner filed an opposition to the Motion to Dismiss, and the respondent filed a reply, which was received by the undersigned on January 22, 2024.

FACTS AND CONCLUSIONS OF LAW

Crocco filed a Petition of Appeal specifically alleging that the Board and Superintendent: “have failed to insure [sic] the mandatory curriculum governing Music, Visual Arts, Dance, and Theater. The curriculum must be taught to each grade level K-12. Teachers all across Cranford are not teaching the mandatory curriculum set forth by the New Jersey Department of Education.” Pursuant to the Petition of Appeal, Crocco asserts that the Board “should be held accountable and provide the mandatory education for every single K-12 student encompassing Music, Visual Arts, Dance and Theater under the law.” He also requests that the Department of Education investigate Cranford’s Music and Arts program, and he seeks a “formal plan and timeline” from the Superintendent and Board as to how they will “implement the required changes to bring the curriculum up to date.” Moreover, Crocco seeks “in-service and supplemental education” for Board teachers, and an “in-depth audit” of all music and fine arts teachers to hold them individually accountable “for the proper implementation of the state[-]mandated curriculum.”

Respondent filed a Motion to Dismiss because, it asserts, neither the State of New Jersey Department of Education nor New Jersey statutes and regulations mandate a

specific curriculum for visual and performing arts. This is also reflected in a certification signed by the Board's superintendent. The respondent references the New Jersey Student Learning Standards (NJSLS), which "specify expectations" in nine academic content areas, including visual and performing arts, and the New Jersey Student Learning Standards - Visual and Performing Arts (NJSLS-VPA). The Department describes the NJSLS as offering "the foundation on which districts build coherent curriculum and plan instruction," and NJSLS-VPA as being "designed to guide the delivery of arts education in the classroom." The Board asserts that while there may be standard-based guideposts in the area of the visual and performing arts, there is no mandated curriculum. The respondent also asserts that the petitioner's requested relief cannot be provided.

Petitioner filed an opposition to the motion to dismiss. He asserts that there are State-mandated standards and curriculum for music, visual arts, dance and theater, but he provided no evidence of any mandatory curriculum. In opposition to the motion, Crocco references at least three legal cases and a regulation, none of which expressly mandate curricula in the arts, as well as guidelines approved by the State Board for music education. He also recounts alleged hearsay statements by Cranford principals in which they agree that the curricula at their schools do not meet State standards for visual and performing arts.

The Board filed a reply in which it repeats its position that there is no mandated specific curriculum for the visual and performing arts in New Jersey, and that the petitioner's arguments are without merit. The Board notes that while New Jersey regulations, including N.J.A.C. 6A:8-1.1, et. seq., specify expectations in nine academic content areas, including Visual and Performing Arts, school districts maintain the discretion to determine the manner in which educational instruction is delivered, referencing N.J.A.C. 6A:8-3.1. It acknowledges that the NJSLS offer a "foundation on which districts build coherent curriculum and plan instruction," but that there is no law requiring a district to teach Visual and Performing Arts in a particular way so long as its curricula enables students to demonstrate the knowledge and skill specified in the NJSLS.

Having considered the papers submitted in support of and in opposition to the Motion to Dismiss, I **FIND as FACT** that the Petition of Appeal expressly asserts that the

Board and its teachers have failed to teach “mandatory curriculum” for Music, Visual Arts, Dance and Theater, and the petitioner seeks accountability for the Board’s alleged failure to offer and properly implement State-mandated curriculum. While New Jersey may require district boards of education to align their curriculum to assist students in achieving the skills and knowledge specified in the NJSLS, I **FIND** that there is no mandatory curriculum in Music, Visual Arts, Dance or Theater in New Jersey. Rather, school districts are free to design and implement programs in the arts so long as they align with standards outlined in the NJSLS.

The rules of procedure governing petitions of appeal filed with the New Jersey State Board of Education permit a respondent to submit a motion to dismiss in lieu of an answer “on the grounds that the petitioner has advanced no cause of action even if the petitioner’s factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.” N.J.A.C. 6A:3-1.5(g); N.J.A.C. 6A:3-1.10. Here, even accepting the petitioner’s allegations, as set forth in the Petition, as true, I **CONCLUDE** that the petitioner has advanced no cause of action because there is no State-mandated curriculum in the arts that the Board is required to offer its students. Consequently, I **CONCLUDE** that the Petition for Due Process should be dismissed.

ORDER

It is hereby **ORDERED** that the motion to dismiss filed by the Board of Education of the Township of Cranford is **GRANTED**. It is further **ORDERED** that the petition be and hereby is **DISMISSED** without prejudice.

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.

March 4, 2024
DATE


SUSANA E. GUERRERO, ALJ

Date Received at Agency: March 5, 2024

Date Mailed to Parties: _____

jb