

## New Jersey Commissioner of Education

### Final Decision

Robert Walden,

Petitioner,

v.

Board of Education of the Township of  
North Bergen, Hudson County, and New Jersey  
Department of Education, Hudson County Office  
of Education,

Respondents.

### Synopsis

Petitioner, a homeowner and taxpayer in North Bergen, objected to the continued placement of trailers on Green Acres parkland to provide accommodations for preschool students in the Township of North Bergen. Petitioner is an active user of Braddock Park, a portion of which has been used since 2001 to house the North Bergen Preschool Program in trailers. Since petitioner moved to North Bergen in or about 2013, he has filed complaints with the Township, Hudson County, the North Bergen Board of Education (BOE), the NJ Department of Education (NJDOE), and the NJ Department of Environmental Protection (NJDEP), all related to the preschool program's use of allegedly unsafe trailers in the park. Petitioner seeks, *inter alia*, to have NJDOE rescind its approval of the use of the temporary classroom units and requests that NJDOE officials meet with the BOE to expedite movement of the preschool program to North Bergen's elementary schools as called for in the District's long-range plan. The respondents filed motions for summary decision, arguing that the matter was filed out of time and failed to state a claim upon which relief may be granted by the Commissioner. These motions were denied, and the Administrative Law Judge (ALJ) requested that the parties submit legal arguments on the jurisdiction and standing of the Office of Administrative Law (OAL) to address the issues raised in the petition.

The ALJ found, *inter alia*, that: the OAL is without jurisdiction to address this matter at this time, especially in the absence of action by the NJDEP; petitioner lacks standing to commence this action against the NJDOE; the matter is not ripe for resolution without the determination of the NJDEP on the application for diversion of the Green Acres parkland; the New Jersey Constitution requires this matter to proceed in Superior Court; the Commissioner of Education does not have jurisdiction to hear this matter because, though a board of education is involved, the controversy does not arise solely under the school laws; the primary issue here is the diversion of Green Acre parkland; because this issue does not implicate the NJDOE's special expertise, the matter must be dismissed so that it may be decided in the appropriate forum. Accordingly, the ALJ dismissed the petition for lack of jurisdiction.

Upon review, the Commissioner adopted the Initial Decision of the OAL with modification to note that the petitioner in this matter has failed to state a claim upon which relief may be granted by the Commissioner. Accordingly, the Initial Decision of the OAL was adopted and the petition was dismissed.

<p>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.</p>
---

**New Jersey Commissioner of Education**  
**Final Decision**

Robert Walden,

Petitioner,

v.

Board of Education of the Township  
North Bergen, Hudson County, and  
New Jersey Department of Education,  
Hudson County Office of Education,

Respondents.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter, as modified. The Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner lacks sufficient interest in the outcome of this matter to establish standing as he will not be affected by it in a direct and meaningful way. *Cantatore v. Bd. of Educ. of Carlstadt-East Rutherford Reg'l High Sch. Dist., Bergen Cnty.*, OAL Dkt. No. 05498-22, Initial Decision at 7-9, *adopted*, Commissioner Decision No. 153-23 (May 25, 2023).

The Commissioner further finds and concludes that, even assuming petitioner had established standing, the four specific remedies he seeks in his petition are not available to him under the school laws and regulations upon which he relies. While the Commissioner has

jurisdiction to hear disputes arising under school laws and regulations, in this instance petitioner has failed to state a claim upon which relief may be granted by the Commissioner. *See Cardillo v. Bd. of Educ. of Paterson, Passaic Cnty.*, Commissioner Decision No. 192-24 (May 15, 2024) (holding that a petition must be dismissed for failure to state a claim “if it has failed to articulate a legal basis entitling [petitioner] to relief”).

Accordingly, the petition of appeal is hereby dismissed for the reasons stated herein.<sup>1</sup>

IT IS SO ORDERED.<sup>2</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 24, 2024  
Date of Mailing: June 26, 2024

---

<sup>1</sup> As it is unnecessary to do so, the Commissioner declines to adopt the ALJ’s conclusions that the New Jersey Constitution and judicial efficiency require this matter to proceed, if at all, in the Superior Court, and that the matter is not ripe for resolution.

<sup>2</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**  
**DISMISSING PETITION FOR**  
**LACK OF STANDING AND**  
**JURISDICTION**

OAL DKT. NO. EDU 03856-23

AGENCY DKT. NO. 5-1/23

**ROBERT WALDEN,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP  
OF NORTH BERGEN, HUDSON COUNTY,  
AND NEW JERSEY DEPARTMENT OF  
EDUCATION, HUDSON COUNTY OFFICE  
OF EDUCATION**

Respondents.

---

**Renée Steinhagen, Esq.**, for petitioner (New Jersey Appleseed Public Interest Law  
Center of New Jersey, attorneys)

**Kevin Hanly, Esq.**, for respondent Board of Education of the Township of North  
Bergen, Hudson County (Kevin Hanly, Esq., attorney)

**Amna T. Toor**, Deputy Attorney General, for respondent New Jersey Department  
of Education (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: March 25, 2024

Decided: May 29, 2024

BEFORE **JOSEPH A. ASCIONE**, ALJ (Ret., on recall):**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

This matter involves petitioner Robert Walden's objection to the continued placement of trailers on Green Acres parkland to provide accommodations for preschool students in the Township of North Bergen. Petitioner is a homeowner, taxpayer, and voter in North Bergen. (Walden Cert. at ¶¶ 1, 20.) He is an active user of Braddock Park, a portion of which has been diverted to house the North Bergen Preschool Program in trailers. (*Id.* at ¶ 2.) The placement of the trailers dates back to 2001. Petitioner moved to North Bergen in or about 2013. Petitioner has filed several complaints with the Township, Hudson County, the North Bergen BOE, the State DOE, and the Department of Environmental Protection, about the preschool program's use of allegedly unsafe trailers in the park. (*Id.* at ¶ 7.) He has written several editorials about the alleged unsafe nature of the trailers, some of which were published. (*Id.* at ¶ 10.) He alleged in his certification, "Around 2021, I organized a group of local residents into the 'Save Braddock Park—Safe Schools' committee, an unincorporated member organization, dedicating [*sic*] to advocating for the removal of the trailers from Braddock Park and the proper integration of the preschool program into the Township's elementary schools and/or in a new facility." (*Id.* at ¶ 11.) Petitioner also runs a Facebook page for this group. (*Id.* at ¶ 13.)

Petitioner's reliefs sought are as follows:

1. Petitioner requests that the NJ DOE rescind its current approval and not grant further approvals to North Bergen to operate its old and unsafe Preschool [Temporary Classroom Units] based on the violation of N.J.A.C. 6A:26-3.13(g).
2. Petitioner requests that officials of NJ DOE meet with [the North Bergen] BOE to find a way to place all of North Bergen's preschoolers into the District's elementary schools

as North Bergen stated it would do, in its 2018 Long Range Facilities Plan. . . .

3. Petitioner requests NJ DOE to discipline . . . an employee of the NJ DOE Hudson County.

4. Petitioner requests NJ DOE to discipline . . . an employee of the North Bergen BOE.

Petitioner seeks a factual finding that North Bergen cannot house a temporary educational facility for more than five years. Petitioner's primary objection is the diversion of parkland, specifically Braddock Park, for the use of temporary educational facilities for prekindergarten students. The New Jersey Department of Environmental Protection is not a party to this matter. Petitioner is not an employee of the North Bergen Board of Education, nor does he have a student attending pre-kindergarten at the complained-of facilities, nor is he a parent or guardian of any student in the North Bergen school district.

On May 2, 2023, this matter was transmitted to the Office of Administrative Law (OAL) for determination 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. Specifically, the forwarding document states, "Petitioner challenges Respondent's [sic] actions regarding the use of temporary classroom units."

Motions were originally filed by respondents for summary disposition based upon the action being out of time and failure to advance a cause of action. Those motions were denied in a letter order of August 29, 2023. The matter was assigned to the undersigned on November 14, 2023. Upon review of the petition, motions, and prior order, on January 5, 2024, the undersigned requested that the parties submit legal arguments on the jurisdiction and standing of the Office of Administrative Law to address the issues raised in this petition. Those submissions were made by February 29, 2024.

## **FACTS**

The parties submitted their positions. The following facts are not disputed among the parties. Accordingly, I **FIND AS FACT** the following:

1. The initial trailers were installed sometime in 2001 on lands leased to the North Bergen Board of Education from the County of Hudson, known as Bruin Stadium, in Braddock Park.
2. Mr. Walden, the petitioner, is a resident of North Bergen, New Jersey. When he moved to North Bergen in 2013, the trailers were already in place.
3. The petitioner is not a parent or guardian of any child attending school in North Bergen.
4. The petitioner is not an employee of the North Bergen Board of Education.
5. The petitioner is not attending the complained-of facilities himself.
6. The petitioner alleges his damages to be his use and enjoyment of Braddock Park.
7. The petitioner alleges that his damages are the potential injuries to which the students who attend the facilities may be subject.
8. The petitioner seeks to have the Commissioner of Education discipline the superintendents of the North Bergen Board of Education and the Hudson County Board of Education for violations of N.J.A.C. 6A:26-3.13(g) and N.J.A.C. 6A:26-8.1.
9. North Bergen and the Hudson County Board of Education have a pending application for a diversion of Green Acres parkland for the continued use of the trailer facilities.

10. Whether the diversion is granted or not, the New Jersey Department of Environmental Protection is an interested party in the resolution of this matter.

11. The petitioner has not distinguished himself from being a mere intermeddler or merely an interloper in the deliberative processes of the North Bergen and Hudson County boards of education.

### **LEGAL DISCUSSION**

“To exercise jurisdiction over a dispute, an administrative agency must have specific legislative authority.” Dolan v. Centuolo, Nos. A-2470-10T4, A-2710-10T4, at \*11 (App. Div. July 9, 2012), <https://njlaw.rutgers.edu/collections/courts/appellate/a2710-10.opn.html> (citing Archway Programs, Inc. v. Pemberton Twp. Bd. of Educ., 352 N.J. Super. 420, 426 (App. Div. 2002)). Pursuant to N.J.S.A. 18A:6-9, the Commissioner of Education

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 commissioner.

[Emphasis added.]

“Our courts have long recognized the sweep of the Commissioner’s reviewing powers . . . .” Bd. of Educ. of E. Brunswick v. Twp. Council of E. Brunswick, 48 N.J. 94, 101 (1966). However, “the sweep of the Department’s interest and the Commissioner’s jurisdiction does not extend to all matters involving boards of education.” Archway, 352 N.J. Super. at 424–25. “Where the controversy does not arise under the school laws, it is outside the Commissioner’s jurisdiction even though it may pertain to school personnel.” E. Brunswick, 48 N.J. at 102.

Although the matter involves a municipal and a county board of education, the dispute also involves the diversion of Green Acres parkland. The pending application for a diversion by the respondents makes the matter not ripe for a separate resolution.

Petitioner argues that the Commissioner has jurisdiction over the matter because “[t]he within dispute is a case in controversy arising under the school laws, (N.J.S.A. 18A:6-9 et seq.).” Pet’r’s Br. at 8. However, petitioner ignores the provisions of N.J.A.C. 6A:26-8.1(v), which contemplate that temporary facilities may continue for more than an initial term and extensions. Petitioner also fails to address the absence of the New Jersey Department of Environmental Protection in this matter. The denial of the application for diversion or its granting has a significant bearing on the respondents’ future actions. That issue does not implicate the Department of Education’s special expertise. It is for this reason that the matter should be decided in Superior Court, where it was originally filed.

The jurisdictional concept of standing requires that “a particular litigant must have sufficient interest in the subject of the litigation so that a genuine clash between opposing viewpoints will be presented.” U.K. & G.K. ex rel. D.K. v. Clifton Bd. of Educ., 1992 N.J. AGEN LEXIS 5134, \*8–9 (Oct. 14, 1992) (citing Kenwood v. Montclair Bd. of Educ., EDU 8858-81, initial decision (Apr. 23, 1982), adopted, Comm’r (June 14, 1982)), aff’d, Comm’r (Nov. 20, 1992). To establish standing, a litigant must show 1) that he has “a sufficient stake in the outcome of the proceedings,” and 2) that his position is “truly adverse to the opposing party.” Id. at \*10 (citing Home Builders League of So. Jersey v. Berlin Twp., 81 N.J. 127, 132 (1979)). New Jersey courts and administrative agencies have been generous when recognizing standing and have liberally allowed individuals even with only “tangential interest to assert a claim.” Id. at 9. Nevertheless, courts have declined to entertain proceedings brought by parties “who are mere intermeddlers’ or ‘merely interlopers or strangers to the dispute.’” Ibid. (citing Crescent Park Tenants Ass’n v. Reality Equities Corp., 58 N.J. 98, 107 (1971)).

Restrictions on standing also apply to those who initiate administrative proceedings before the Commissioner. For such proceedings, the Commissioner has clarified through regulation as well as case law that only an “interested person,” one who “will be substantially, specifically, and directly affected by the outcome of [the] controversy,” may initiate such proceedings. N.J.A.C. 6A:3-1.2; Bedminster Educ. Ass’n v. Bedminster Twp. Bd. of Educ., EDU 6720-05, final decision (June 16, 2006),

<https://njlaw.rutgers.edu/collections/oal/final/edu6720-05.pdf>; U.K. & G.K., 1992 N.J. AGEN LEXIS 5134 at \*10–11.<sup>1</sup> Consequently, petitioners must show that they will “be affected by the outcome in a direct and meaningful way” before they may proceed in a contested case. U.K. & G.K., 1992 N.J. AGEN LEXIS 5134 at \*11; see also Kenwood.

Petitioners have lacked standing when challenging the disciplinary action imposed on a student whom the petitioner did not have custody of (but was a student who harmed the child of the petitioner), U.K. & G.K.; the quality of education received by students in a school the petitioner’s child no longer attended, Lobis v. Maple Shade Bd. of Educ., EDU 3630-79, initial decision (June 11, 1980), adopted, Comm’r (Aug. 11, 1980), aff’d, St. Bd. (Nov. 5, 1980); a high school attendance policy after the petitioner’s child graduated, G.G. v. New Providence Bd. of Educ., 1975 S.L.D. 502; or when the petitioner had no children in the district public schools, Kenwood. However, petitioners have been determined “interested” when challenging the validity of board actions in the hiring of a superintendent in a district where they pay taxes and where their children attend the public schools, Salette v. Randolph Twp. Bd. of Educ., EDU 2126-83, initial decision (Nov. 28, 1983), adopted, Comm’r (Jan. 1, 1984).

Taxpayers do have standing to bring suit in several instances. See Loigman v. Twp. Comm. of Middletown, 297 N.J. Super. 287, 296 (App. Div. 1997) (discussing instances where a taxpayer does have standing). However, a taxpayer does not have standing to compel expenditures of public funds, as such would “cripple the government’s ability to function properly.” Ibid. A “taxpayer lacks standing for what on the state or county government level would be the equivalent of an executive branch responsibility.” Id. at 298.

---

<sup>1</sup> The term “interested person” is defined at N.J.A.C. 6A:3-1.2 but is not used in N.J.A.C. 6A:3-1.3 with regard to who may initiate a contested case. However, the term is used in N.J.A.C. 6A:3-2.1 with regard to who may petition for a declaratory ruling. Although the term appears in N.J.A.C. 6A:3-2.1 and not N.J.A.C. 6A:3-1.2, the term has been applied to determine whether a person has standing in a dispute and controversy under the education laws as far back as 1979. See Ricciardelli v. Kittrels, EDU 1894-79, initial decision (Sept. 26, 1979), adopted, Comm’r (Nov. 16, 1979) (ruling that non-taxpayer with no child in district schools had no standing to bring dispute over validity and legality of board’s action because it did not meet definition of “interested person”). This application has been continued until the present day, as revealed in the cases cited throughout this discussion. See also McKenna & MacMurren v. Bd. of Educ. of the Andover Reg’l High Sch. Dist., 2011 N.J. AGEN LEXIS 648, n.7.

Here, petitioner has failed to demonstrate that he will be “substantially, specifically, and directly affected by the outcome of [this] controversy.” See N.J.A.C. 6A:3-1.2. He does not have children in this preschool program. He is not specifically affected by the trailers being present in Braddock Park, as all parkgoers and taxpayers are affected by their presence. The only interest petitioner has demonstrated in the instant case is that this is a social issue he cares about and that he is a taxpayer in North Bergen. This is not enough to amount to standing.

It is commendable that petitioner is attempting to obtain “remedial action on behalf of the North Bergen public, including its predominantly low-income, minority pre-school children.” Pet’r’s Br. at n.1. However, “the ability of taxpayers to challenge governmental action is not unlimited. Taxpayers may not assert the constitutional rights of another. . . . There must be a substantial likelihood the plaintiff will experience some harm if the court returns an unfavorable decision.” Loigman, 297 N.J. Super. at 295. Without the threat of some harm that is specific to petitioner, rather than harm that faces the entirety of the North Bergen public, petitioner has no stake in the outcome of the proceedings. As such, petitioner cannot initiate the proceeding in the instant matter, as he is not an interested party.

Petitioner argues that respondent has violated several provisions, including N.J.A.C. 7:36-25.2<sup>2</sup> (an environmental regulation under the Green Acres Program), as well as N.J.A.C. 6A:26-8.1<sup>3</sup> and N.J.A.C. 6A:26-3.13(g),<sup>4</sup> sections of the Educational Facilities and Construction Financing Act (EFCFA).

---

<sup>2</sup> “[A] local government unit shall not divert to a use other than recreation and conservation purposes or dispose of any funded or unfunded parkland unless the local government unit obtains prior approval from the Commissioner and the State House Commission in accordance with N.J.A.C. 7:36-26. The diversion or disposal of funded or unfunded parkland by a local government unit without the approval of the Commissioner and the State House Commission is void and of no legal effect.” N.J.A.C. 7:36-25.2(a). This allegation will not be further considered, as respondents North Bergen Board of Education and NJ Department of Education do not have any relation to or authority around environmental issues.”

<sup>3</sup> This provision outlines that temporary classroom units (TCUs) must be annually inspected. It also outlines what conditions must be met for these TCUs to be used. N.J.A.C. 6A:26-8.1.

<sup>4</sup> “A temporary facility may be approved by the Division for a term of two years, with three annual renewals if the school district, or the Development Authority on behalf of the school district, demonstrates satisfactory progress toward the provision of permanent facilities. No such approval shall remain in effect or be eligible for renewal unless the executive county superintendent determines in consultation with the Division and upon inspection of the temporary facility that:

1. The temporary facility meets the educational—adequacy and temporary—facility standards

The EFCFA was “adopted to ensure that the educational facilities in the State are safe, healthy, and educationally adequate to support the delivery of the thorough and efficient education to which all students are entitled.” N.J.A.C. 6A:26-1.1. It is important to note that “powers expressly granted to an administrative agency should be liberally construed so that the agency can fulfill the Legislature’s purpose, and that an agency’s express authority is augmented by such incidental authority as may be reasonably necessary or appropriate to effectuate the expressly delegated authority.” Bd. of Educ. of Upper Freehold Reg’l Sch. Dist. v. State Health Benefits Com’n, 314 N.J. Super. 486, 492 (App. Div. 1998) (quoting In re Solid Waste Utility Customer Lists, 106 N.J. 508, 516 (1987) (citations omitted)).

Respondents argue that the OAL does not have jurisdiction over the instant case.

The Office of Administrative Law (OAL) acquires jurisdiction over a matter under the EFCFA “only after it has been determined to be a contested case by an agency head and has been filed with the [OAL] or as otherwise authorized by law.” N.J.A.C. 1:1-3.2(a). The case has been transmitted to the OAL, so at issue is only whether this case is a “contested case.”

A contested case refers to “an adversary proceeding . . . in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing.” N.J.A.C. 1:1-2.1; see also N.J.A.C. 6A:3-1.2. Contested cases “are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people.” N.J.A.C. 1:1-2.1. To

---

as specified in this chapter;

2. The school district or approved private school for the disabled demonstrates through the LRFP or other plan, in the case of the approved private school for the disabled, that students housed in the temporary facility will be housed in permanent school facilities; and

3. The temporary facility meets N.J.A.C. 5:23 requirements for a certificate of occupancy for “E” (educational) group use.”

[N.J.A.C. 6A:26-3.13(g).]

determine if a dispute is a contested case, three questions must be answered affirmatively. “First, is a hearing required by statute or constitutional provision; second, will the hearing result in an adjudication concerning rights, duties, obligations, privileges, benefits or other legal relations; and third, does the hearing involve specific parties rather than a large segment of the public?” Upper Freehold Reg’l Sch. Dist., 314 N.J. Super. at 494 (citation omitted).

The answer to the first question is unclear, but likely in the negative. Under N.J.A.C. 6A:3-1.11, “[u]pon the filing of the petition and answer(s) in a contested case, where the Commissioner does not determine to dismiss the matter . . . , the Commissioner may either retain the matter for hearing directly and individually . . . or transmit the matter for hearing before the OAL.” Thus, a hearing is required if certain requirements are met, including if the case is a contested case. However, to determine if a case is a contested case, one of the determinative questions is whether a hearing is required. This is a circular analysis.

The answer to the second question is clearly in the affirmative. Respondent North Bergen Board of Education is currently using trailers, “temporary classroom units” (TCUs) to house their preschool program. See Resp’t’s Br. at 2. A hearing leading to the determination as to whether respondent has violated N.J.A.C. 6A:26-3.13(g) by using TCUs will impact the duties and obligations of respondent to provide permanent classrooms.

The answer to the third question is in the negative. Respondent North Bergen and Board of Education and Hudson County are specific parties, and their rights and obligations would be determined by the outcome of this proceeding. However, petitioner states in his brief that he is seeking “remedial action on behalf of the North Bergen public, including its predominantly low-income, minority pre-school children.” Pet’r’s. Br. at n.1. Compelling respondent Board of Education to act would not confer benefits onto petitioner, but rather the North Bergen public at large. This is not a specific party.

As one of these questions was not answered in the affirmative, the OAL does not have jurisdiction over this matter.

The absence of a decision by the New Jersey Department of Environmental Protection on the respondents' application for a diversion makes the matter not ripe for action at this time. The New Jersey Department of Environmental Protection is an indispensable party to the within action to resolve all of the issues raised by the petitioner.

Petitioner argues that the New Jersey Constitution, article VI, section 5 paragraph 4, provides, "Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court . . . ." Yet, petitioner filed a complaint with the Department of Education, arguing that exhaustion of administrative remedies will be required. Petitioner fails to recognize the limited jurisdiction of the Office of Administrative Law; it is up to a Superior Court judge to direct the resolution of this matter, allowing for the New Jersey Department of Environmental Protection to conclude its determination and then direct any necessary fact finding by the Department of Education if necessary.

The initial placement of the facilities may have proceeded without applying for a diversion under the Green Acres program. The diversion application has been made and is pending with the Department of Environmental Protection. If the diversion is granted, permanent facilities can be built at the present location. If the Department of Environmental Protection denies the diversion, then the Township of North Bergen will be compelled to relocate the temporary facilities. The actions of the petitioner are expenses the taxpayers of North Bergen and the County, with no foreseeable resolution pending the resolution of the Department of Environmental Protection. There is no question that a citizen cannot compel the discipline of civil service employees. This tribunal sees no wrongdoing.

## **CONCLUSION**

I **CONCLUDE** that the Office of Administrative Law is without jurisdiction to address this matter at this time, especially in the absence of action by the New Jersey Department of Environmental Protection.

I **CONCLUDE** that the petitioner lacks standing to commence this action with the Department of Education.

I **CONCLUDE** that the matter is not ripe for resolution without the determination of the New Jersey Department of Environmental Protection on the application for a diversion of the Green Acres parkland.

I **CONCLUDE** that the New Jersey Constitution requires that this action proceed in the Superior Court.

I **CONCLUDE** that in the interest of judicial efficiency this matter should be prosecuted, if at all, in the Superior Court.

I **CONCLUDE** that the Commissioner does not have jurisdiction to hear this dispute. Although the matter involves a board of education, the controversy does not arise only under the school laws. Rather, the primary issue is the diversion of Green Acres parkland. Because this does not implicate the Department of Education's special expertise, the matter must be dismissed so that it may be decided in the appropriate forum.

## **ORDER**

Based upon the foregoing, it is **ORDERED** that the petition be **DISMISSED** for lack of jurisdiction.

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**. Exceptions may be filed by email to [ControversiesDisputesFilings@doe.nj.gov](mailto:ControversiesDisputesFilings@doe.nj.gov) or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

May 29, 2024

DATE



**JOSEPH A. ASCIONE**, ALJ (Ret., on recall)

Date Received at Agency:

May 29, 2024

Date Mailed to Parties:

May 29, 2024

/jaa/cc/mph

## **APPENDIX**

### **LIST OF EXHIBITS**

#### **For Petitioner:**

P-1 Petitioner's Letter Brief, dated 2/29/2024

P-2 Certification of Counsel with exhibits A-F, dated 2/29/2024

P-3 Certification of Robert Walden with exhibits A-B, dated 2/29/2024

#### **For Respondents:**

RNB-1 Certification of George Solter with exhibits 1-2, dated 2/27/2024

RNB-2 Memorandum of Law, dated 2/28/2024

R-NJDOE-1 New Jersey Department of Education Letter Brief, dated 3/1/2024