

New Jersey Commissioner of Education
Final Decision

Margaret Bennett,

Petitioner,

v.

Judith Sullivan, Tom Bogdansky, Doreen
Mariani, Marianna Emmolo, and Kim Ansh,

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' reply thereto, have been reviewed and considered.

Petitioner—a parent, taxpayer, and community member—alleges that respondents, majority members of the Ramapo Indian Hills Regional High School Board of Education (Board), violated various Board policies, regulations, and laws when conducting Board business. She claims that their actions, mainly pertaining to making certain motions and voting on them, have harmed the school district. The allegations involve the Board's amendment of its legal services policy, and a motion to pause the district's Energy Savings Improvement Program, without first consulting the Board Superintendent; voting against hiring a substitute teacher; rejecting purchase orders from a certain appliance store; obstruction of harassment, intimidation, and bullying (HIB) investigations through Board votes; and obstruction of proper recording of Board

minutes. The most recent amended petition dated March 29, 2023, states that petitioner is seeking “strong sanctions and injunctive measures” against respondents for their actions.

Respondents moved to dismiss the petition for numerous reasons, including that petitioner lacks standing. The Administrative Law Judge (ALJ) granted respondents’ motion upon determining that petitioner lacks standing. The ALJ concluded that petitioner failed to demonstrate she was harmed or affected by respondents’ actions in a direct and meaningful way. Additionally, citing *N.J.A.C. 6A:3-1.2*, the ALJ concluded that petitioner failed to establish that she is an “interested person” who would be “substantially, specifically, and directly affected by the outcome of this matter.” The ALJ further concluded that while petitioner claimed that respondents’ actions could bring about lawsuits involving the district and harm children, she failed to provide support for those claims.

In her exceptions, petitioner maintains that she has standing as a taxpayer because taxpayers bear the financial consequences of respondents’ actions. Alternatively, she argues that even if she lacks standing, the Commissioner should nonetheless make a formal statement, issue a reprimand, or make recommendations to hold respondents accountable. In reply, respondents contend that petitioner’s exceptions fail to provide a legal basis to refute the ALJ’s conclusion that she lacks standing. They argue that petitioner’s status as a taxpayer is insufficient to confer standing in a matter before the Commissioner because she has not alleged some form of particularized harm unique to her and distinct from her general concerns as a community member. They also assert that petitioner’s exceptions are procedurally defective because they do not conform with *N.J.A.C. 1:1-18.4*.

Upon review, the Commissioner concurs with the ALJ that petitioner lacks standing and does not qualify as an “interested person” under *N.J.A.C. 6A:3-1.2*. “Restrictions on standing apply to those who initiate administrative proceedings before the Commissioner.” *Cantatore v. Bd. of Educ. of Carlstadt-East Rutherford Reg’l High Sch. Dist., Bergen Cnty.*, OAL Dkt. No. 05498-22, Initial Decision at 9, *adopted*, Commissioner Decision No. 153-23 (May 25, 2023). To pursue a controversy or dispute arising under the school laws, a person must be an “interested person” as defined by *N.J.A.C. 6A:3-1.2*. *Ibid.*

N.J.A.C. 6A:3-1.2 defines “interested person” as “a person who will be substantially, specifically, and directly affected by the outcome of a controversy before the Commissioner.” The record fails to establish that petitioner has children who are currently attending school in the Ramapo Indian Hills Regional High School District. Thus, she will “suffer no direct personal harm or inconvenience from the actions” respondents took. *Herron v. Bd. of Educ. of Montclair*, Commissioner Decision No. 233-14 at 2 (June 2, 2014). Furthermore, while she is a resident and taxpayer, she “has alleged no personal financial ramifications” from respondents’ actions. *Ibid.* Instead, she alleged that respondents’ actions could bring about lawsuits involving the district and harm children. Accordingly, she does not qualify as an “interested person” under *N.J.A.C. 6A:3-1.2*. *See also Stubaus v. Whitman*, 339 *N.J. Super.* 38, 47-48 (App. Div. 2001) (explaining that standing to sue requires an adverse position, a personal stake in the outcome, and the “substantial likelihood” of suffering some harm in the event of an unfavorable decision).

The Commissioner further finds and concludes that, even assuming petitioner had established standing, the remedies she seeks in her petition—“strong sanctions and injunctive measures”—are not specifically available to her under the school laws and regulations upon

which she 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 at 3 (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 Initial Decision is adopted as the final decision in this matter, respondents’ motion is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 9, 2024
Date of Mailing: December 11, 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

SUMMARY DECISION

OAL DKT. NO. EDU 00881-23

AGENCY DKT. NO. 12-1/23

MARGARET BENNETT,

Petitioner,

v.

JUDITH SULLIVAN, TOM BOGDANSKY,

DOREEN MARIANI, MARIANNA

EMMOLO, AND KIM ANSH,

Respondents.

Margaret Bennett, petitioner, pro se

Kerri A. Wright, Esq., for respondents (Porzio, Bromberg & Newman, attorneys)

Record Closed: September 1, 2024

Decided: September 30, 2024

BEFORE **JOANN LaSALA CANDIDO**, ALAJ:

STATEMENT OF THE CASE

Respondents, the majority members of the Ramapo Indian Hills Regional School District Board of Education (Judith Sullivan, Tom Bogdansk, Doreen Mariani, Marianna

Emmolo, and Kim Ansh), filed a Motion to Dismiss petitioner's (Margaret Bennett) Amended Petition dated January 25, 2023, which sought emergent relief and alleged various violations/misconduct by the respondents in their positions as members of the Ramapo Indian Hills Regional Board of Education, although it did not name the Board itself as a party. Chief among the issues discussed here is whether petitioner has standing to bring this action.

PROCEDURAL HISTORY

The matter was transmitted to the New Jersey Office of Administrative Law on January 27, 2023, as an emergent matter, 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 -23. The emergent relief sought was solely on the January 5, 2023, hearing vote by respondent Sullivan to not renew the contract for Fogarty and Hara's law firm to act as Board counsel. Petitioner sought the injunctive relief in the form of removing respondent Sullivan's "yes" vote and replacing her vote with recusal for apparent conflict of interest. The petitioner requested that the remainder of her petition be considered by the Commissioner on a non-emergent basis.

The emergent relief was denied by Administrative Law Judge Jude-Anthony Tiscornia on February 7, 2023, and upheld by Commissioner of the Department of Education on March 7, 2023. The Commissioner found the existing petition sufficient to allow proceedings regarding those issues to proceed.

Petitioner filed the amended petition on April 5, 2023. Respondents filed this motion to dismiss the amended petition on May 11, 2023.

Petitioner filed her opposition on May 19, 2023. Respondents filed their supplemental submission on June 2, 2023. Petitioner filed her response to the supplemental submission on June 13, 2023. Administrative Law Judge Jude-Anthony Tiscornia was appointed to the Hudson County Superior Court, and the matter was transferred to the undersigned on or about September 1, 2024.

ARGUMENTS OF THE PARTIES

By way of background, petitioner's amended petition alleges that statutory/code provisions¹ were violated when respondent Ansh motioned to amend Board Policy 0174 regarding legal services without consulting the superintendent beforehand. She claims that changes made to the Board Policy imposed risk to the District and "obstruct[ed] the operation of the district, impede[d] the Superintendent, Business Administrator, and other administrators such as the Director of Special Education, from doing what they are certificated to do which includes the Superintendent's ability to administer the schools."

Amended Petition 2. She further alleges that the respondents violated Board Policy 0131, which only allows for first reading policy amendments when there is an emergency, and Board Policy 1210 regarding board–superintendent relations due to there not being consultation with the superintendent prior to board policies being revised. Petitioner avers that a violation of Board Policy 0146 by overstepping their authority as board members improperly paused an Energy Savings Improvement Plan that had been approved previously, which imposed a financial burden on the District.

Petitioner further asserts that respondents violated Board Policy 0164, violating Robert's Rules, and that the Board's actions with regard to HIB resolutions contravened the Anti-Bullying Bill of Rights Act as well as N.J.A.C. 6A:16-7.1, sending the District down the path of litigation.

Petitioner also claims that the respondents obstructed the recording of minutes at Board meetings and violated Board Policy 4125 by voting against hiring a specific substitute teacher. She alleges obstruction of N.J.S.A. 18A:27-4.1 as well. Lastly, petitioner requests an injunction to avoid the respondents violating Board Policy 6450, which addresses choice of vendor.²

¹ Petitioner references N.J.A.C. 6A:23-5.2, N.J.S.A. 18A:11-1, and N.J.S.A. 18A:17-20. It appears that N.J.A.C. 6A:23-5.2 is a former version of the code.

² Petitioner refers to this as Count 9, but it is the second Count 9 listed, and therefore the undersigned will refer to it as Count 10.

Respondents argue that this matter should be dismissed based upon the following. First, respondents argue that the petitioner has failed to advance a cause of action. Second, respondents argue that the petition should be dismissed for the petitioner not having standing. As respondents state:

Petitioner is merely a resident of one of the towns served by the Board, but she has neither alleged any distinct injury or harm to herself or her interests, nor can the relief that she seeks be remedied by the Commissioner. Instead, the amended petition seeks to punish Respondents for their participation in Board action affecting the District, rather than Petitioner herself.

[Respondents' Motion 9.]

Third, respondents argue that petitioner's application omitted an indispensable party—specifically, the Board. Fourth, respondents argue that petitioner's allegations of violations of board policy are not cognizable claims for the Commissioner to decide. Fifth, respondents argue that possibly all the issues in this matter are moot. And sixth, respondents argue that the petitioner has failed to allege facts that support petitioner's causes of action.

Regarding respondents' argument stating that petitioner does not have standing in this matter, petitioner argues in part that:

Petitioner is a citizen of the municipality served by the Board of Education on which Respondents are Trustees. Petitioner therefore has standing to challenge its unlawful acts. Sophisticated lawyering by Ms. Wright notwithstanding, these numerous, well-documented instances of blatant misconduct by the [Board] require reprimand by the Commissioner of Education. Further, the acts of misconduct which were reversed by subsequent corrective action of the Board are clearly capable of repetition; therefore, the Commissioner should intervene with a written ruling to guard against the repetition of such misconduct in the future.

[Petitioner's Opposition 4.]

Furthermore, petitioner states that “right now Respondents make up a mission-driven board-within-a-board blinded by ill-conceived premises that has absolutely negatively impacted taxpayers of this regional school district. Petitioner is one of those taxpayers. Petitioner has and continues to be harmed by Respondents’ actions.” Petitioner’s Opposition 4. Petitioner stresses, “More importantly Your Honor, this is about the children.” Ibid. And the petitioner argues:

Petitioner has standing to object to the detrimental actions of these Respondents. Petitioner is a taxpayer, parent, active community member. She is a watchdog, a citizen who cares. District/municipality resources are being squandered. The tab grows exponentially. There is a direct harm to Petitioner as a taxpayer who supports the high schools. Petitioner is seeking a determination that the Respondents’ actions were wrong.

[Petitioner’s Opposition 5.]

In respondents’ supplemental letter brief, respondents argue that “Petitioner cannot just file a petition because she is a taxpayer, especially when she alleges no personal ramifications being suffered—above anything imposed on every other taxpayer in the district—and when the petition is based largely on ideological differences with the direction taken by the Board.” Respondents’ Supplemental 4. Respondents state that “[w]hether an individual has standing is not a function measured against how much someone ‘cares’ about an issue.” Ibid. Respondents continue, “Instead, in order to be an interested party with standing before the Commissioner, Petitioner needs to be ‘substantially, specifically and directly affected by the outcome of a controversy before the Commissioner.’ N.J.A.C. 6A:3-1.2. She is not.” Ibid.

Furthermore, respondents state that “[s]he articulates no harm actually being visited upon her as a result of the Board actions of which she complains. And, as detailed within Respondents’ motion, and conceded within Petitioner’s opposition, Petitioner’s claims are on behalf of others.” Ibid. Respondents argue that the “[p]etitioner does not state with any specificity how she actually is harmed. She does not explain what the ‘absolute negative impacts’ are.” Ibid. Regarding her reference about the matter being about the children, respondents argue that “[p]etitioner must have standing. It must be about her, not about children.” Id. at 5.

Petitioner argues in the third person in response to the respondents' supplemental brief, "Petitioner is affected by the outcome. She is a vested community member, parent and taxpayer. She has standing." Petitioner's Response to Supplemental 2.

LEGAL ANALYSIS AND CONCLUSION

While the respondents' motion uses the term Motion to Dismiss, it should be addressed using the Motion for Summary Decision standard. As has been previously stated in an Office of Administrative Law decision in another matter, "Respondent's motion to dismiss is akin to a motion for summary decision. Summary decision is the administrative counterpart to summary judgment in the judicial arena." Bacchues v. Bd. of Trs., Police and Firemen's Ret. Sys. of N.J., 2021 N.J. AGEN LEXIS 744 (July 19, 2021).

N.J.A.C. 1:1-12.5(b) states that a Motion for Summary Decision is granted when "the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Furthermore, "When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." N.J.A.C. 1:1-12.5(b). As the Office of Administrative Law has previously stated in a special education matter, "The standard governing a motion for summary decision is substantially the same as a motion for summary judgment under Rule 4:46-2. Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 121 (App. Div. 1995) (citing Frank v. Ivy Club, 228 N.J. Super. 40, 62 (App. Div. 1988))." Middletown Twp. Bd. of Educ. v. R.A. and B.A. o/b/o H.A., 2022 N.J. AGEN LEXIS 274 (Apr. 11, 2022). Furthermore:

In deciding a motion for summary judgment, the court must determine whether the evidence presented, assumed to be true, and viewed in the light most favorable to the non-moving party is "sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party." Brill

v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995). The “judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)). In other words, the essential question is “whether the evidence presents a sufficient disagreement to require [a hearing] or whether it is so one-sided that one party must prevail as a matter of law.” Brill, 142 N.J. at 533 (citing Liberty Lobby, 477 U.S. at 250).

[Id. at *11–12.]

Standing is an issue of central importance in every case. Without standing, an individual cannot bring a case. As the Commissioner of Education wrote in another matter:

As referenced in the Initial Decision, standing is a threshold justiciability determination about whether a litigant is entitled to bring an action before a court or other tribunal. Stubaus v. Whitman, 339 N.J. Super. 38, 47 (App. Div., 2001). In order to have standing, a party must be in a position adverse to other parties, have a palpable stake in the outcome of the litigation, and be likely to suffer harm in the event of an unfavorable decision. Ibid.

[Herron v. Montclair Bd. of Educ., 2014 N.J. AGEN LEXIS 1146, *2 (June 2, 2014).]

Administrative Law Judge Elissa Mizzone Testa wrote in a previous Board of Education matter, “Restrictions on standing apply to those who initiate administrative proceedings before the Commissioner.” Cantatore v. Carlstadt-East Rutherford Reg'l High Sch. Dist. Bd. of Educ., 2023 N.J. AGEN LEXIS 221, *9, Initial Decision (Apr. 26, 2023), adopted, Comm'r (May 25, 2023), <https://www.nj.gov/education/legal/commissioner/2023/153-23.pdf>. Furthermore, “The Commissioner has clarified through regulation as well as case law that only an ‘interested person,’ i.e., one who has standing, may initiate such proceedings. Bedminster Educ. Ass'n v. Bedminster Twp. Bd. of Educ., EDU 6720-05, Comm'r decision (June 16, 2006).” Ibid. N.J.A.C. 6A:3-1.2 defines an interested person as “a person(s) who will be

substantially, specifically, and directly affected by the outcome of a controversy before the Commissioner.” And as explained by Judge Testa:

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. ex rel D.K. v. Clifton Bd. of Educ., 93 N.J.A.R.2d (EDU) 71; Kenwood v. Montclair Bd. of Educ., EDU 8858-81, Initial Decision, (Apr. 23, 1982), adopted, Comm'r (June 14, 1982)). Thus, to have standing, a complaining party must demonstrate “some measurable amount of detrimental impact on the complaining party’s personal rights.” S.J. v. Mountain Lakes Bd. of Educ., EDU 7081-03, Initial Decision, (Oct. 7, 2003) (citing, Salorio v. Glaser, 82 N.J. 482, 491 (1998)).

A deficiency in standing is fatal to a petition such as the one at issue here. “The dismissal of cases brought by litigants who will not be effected by the outcome in a direct and meaningful way is required by this regulation.” S.J. v. Mountain Lakes Bd. of Educ., EDU 7081-03, Initial Decision, (Oct. 7, 2003) (citing, S.R. and E.D.R. o/b/o E.D.R., Jr. v. Montague Bd. of Educ., EDU 5300-03, 201 AGEN LEXIS 583 (Oct. 3, 2001)).

[Cantatore, 2023 N.J. AGEN LEXIS 221, at *10.]

Assuming arguendo that the respondents’ reasons for summary decision other than for lack of standing fail, the undersigned must grant respondents’ motion for summary decision on the basis of the petitioner lacking standing first and foremost.

Petitioner’s amended petition can be most appropriately summarized as alleging that the respondents violated Board policy or New Jersey State statutory/code provisions when the respondents were acting as members of the Board. Petitioner argues that she is a taxpayer, parent, active community member, watchdog, and a citizen who cares. This, however, does not show directly any harm toward her by the respondents’ actions, nor has she provided any information indicating that she has been affected by the respondents’ actions in a direct and meaningful way. Petitioner has made claims that the actions of the respondents could risk lawsuits to the district and harm the children, but without proof of same.

I must reiterate that standing is central to any matter before the Commissioner, just like it is in any case in any court. The petitioner does not have standing. Without standing, the petitioner's case cannot proceed. Petitioner has failed to establish that she is an interested person who would be "substantially, specifically, and directly affected by the outcome" of this proceeding. N.J.A.C. 6A:3-1.2. 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 are fatally flawed for failing to name an indispensable party or any claim of violations of Board policies or mootness. Because of the lack of standing, I **CONCLUDE** that there are no issues of material fact and Summary Decision is granted in favor of respondents.

Based upon the above, the respondents' motion for Summary Decision is **GRANTED**.

ORDER

Accordingly, it is hereby **ORDERED** that respondents' motion for Summary Decision is **GRANTED** and petitioner's amended petition be and is hereby **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to 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.



September 30, 2024

DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

September 30, 2024

Date Mailed to Parties:

September 30, 2024

ljb