

New Jersey Commissioner of Education

Final Decision

Michael Fidler,

Petitioner,

v.

Board of Education of the Eastern Camden County
Regional School District, Camden County, William J.
McGroarty, III, and Robert Cloutier,

Respondents.

Synopsis

Petitioner, whose daughters attended Eastern Camden Regional High School and played on the Eastern Girls Soccer Team (Team) at the time of the events at issue here, filed an amended petition seeking declaratory relief pursuant to what he alleged was respondent’s conversion of funds intended as donations to benefit the Team in contravention of *N.J.A.C. 6A:23A-16.12(b)*. Respondent McGroarty served as head coach of the Team and was also a teacher at the high school, and at times solicited donations from petitioner and others through various fundraising efforts on behalf of the Team. In 2021, petitioner submitted the first of several Open Public Records Act requests to confirm that donations solicited by McGroarty were being managed properly. The responses led petitioner to believe that McGroarty was inappropriately depositing the funds into a personal bank account instead of one maintained by the high school or board. McGroarty filed a motion to dismiss in lieu of an answer, contending that petitioner’s attempt to compel disciplinary action against him under the guise of a request for declaratory relief was procedurally improper. McGroarty further contended that petitioner lacked standing. Petitioner opposed the motion to dismiss and sought to amend his petition for a second time, explaining that his second amended petition would separate, into different counts, the declaratory relief he sought from the consequential relief he sought.

The ALJ found, *inter alia*, that: pursuant to *N.J.A.C. 6A:3-2.1(a)*, a request for a declaratory ruling may not seek consequential relief, and each of petitioner’s requests for relief were clearly consequential in nature and exceeded what was permitted by the rule; the amended petition was procedurally defective and should be dismissed; petitioner failed to provide valid legal support for his motion to amend, and the amendment he sought failed to comport with limitations on the amendment of pleadings set forth at *N.J.A.C. 1:1-6.2(a)* or in relevant case law. Accordingly, the ALJ granted the Board’s motion and dismissed petitioner’s appeal with prejudice.

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.

65-24
OAL Dkt. No. EDU 04726-22
Agency Dkt. No. 86-4/22

New Jersey Commissioner of Education
Final Decision

Michael Fidler,

Petitioner,

v.

Board of Education of the Eastern Camden
County Regional School District, Camden County,
William J. McGroarty, III, and Robert Cloutier,

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 the reply thereto of respondent William J. McGroarty, III, (McGroarty) have been reviewed and considered.¹

This matter arises from an amended petition of appeal filed May 17, 2022, with the Department of Education's Office of Controversies and Disputes. By way of background, petitioner has two daughters who attended Eastern Camden Regional High School (ECRHS) in respondent Board's school district when the petition was filed, and they played on the girls' soccer team. Petitioner made numerous financial donations to the team. Respondent McGroarty coached the

¹ Petitioner's sur-reply, and respondent McGroarty's opposition to the sur-reply, were not considered as such submissions are not permitted under *N.J.A.C. 1:1-18.4*.

girls' soccer team at ECRHS and taught at the school. Respondent Cloutier was the Board's Superintendent.²

In the amended petition, petitioner alleged that McGroarty was mishandling donations he collected for the girls' soccer team by, among other things, depositing the funds into a personal bank account. Petitioner further alleged that he notified Cloutier about the issue and that an internal investigation ensued. However, according to petitioner, McGroarty was neither reprimanded nor suffered any other consequences for his misconduct and continued to coach and teach at ECRHS.

Unsatisfied with the outcome of the investigation, petitioner's amended petition specifically sought "declaratory relief from the Commissioner pursuant to *N.J.A.D.C.* [sic] 6A:3-2.1 in an appropriate Order as follows":

- A. Directing the High School and the Board to engage a neutral third party, preferably a certified public accountant, to thoroughly investigate McGroarty's handling of student activity funds to determine the full extent of his misconduct, which currently remains unknown;
- B. Determining and declaring that, based on the evidence adduced thus far, McGroarty violated *N.J.A.D.C.* [sic] 6A:23A-16.12(b) and Policy No. 6660 by opening and maintaining an unauthorized Account that McGroarty used to deposit and disburse monies directly related to the Team and McGroarty's personal camps;
- C. Advising Cloutier to submit tenure charges to the Board to determine "whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary" pursuant to *N.J.S.A.* 18A:6-11;

² While this matter was pending at the OAL, petitioner's daughters transferred to a different high school outside of respondent Board's district and McGroarty retired from his teaching position. However, according to petitioner, McGroarty is still coaching the girls' soccer team.

D. Determining and Declaring that Fidler shall file tenure charges with the Board, in the event that Cloutier is unwilling to do so within twenty (20) days of the Commissioner's Order; and,

E. Providing for such additional relief as the Commissioner deems reasonable.

The Board and Cloutier filed an answer. McGroarty filed a motion to dismiss in lieu of answer, contending that petitioner's attempt to compel disciplinary action against him under the guise of a request for declaratory relief was procedurally improper. McGroarty also contended that petitioner lacked standing. The matter was transmitted to the OAL for further proceedings. Petitioner filed opposition to McGroarty's motion to dismiss and sought leave to amend his petition for a second time. Petitioner explained that his second amended petition would separate, into different counts, the declaratory relief he sought from the consequential relief he sought.

Following briefing, oral argument, and consideration of post-argument correspondence, the Administrative Law Judge (ALJ) granted McGroarty's motion to dismiss the amended petition and denied petitioner's request to amend his petition for a second time. The ALJ found that, pursuant to *N.J.A.C. 6A:3-2.1(a)*, a request for a declaratory ruling may not seek consequential relief, and that each of petitioner's requests for relief were clearly consequential in nature and exceeded what was permitted by the rule. Therefore, the ALJ concluded that the amended petition was procedurally defective and should be dismissed.

Additionally, the ALJ found and concluded that petitioner failed to provide valid legal support for his motion to amend, and that the amendment he sought did not comport with limitations on the amendment of pleadings set forth at *N.J.A.C. 1:1-6.2(a)* or in relevant case law. The ALJ reasoned that petitioner's request to expand the terms of his current petition neither simplified nor clarified the issues. Instead, the ALJ determined that petitioner's proposed amendment sought "to cure vulnerabilities of his first amended petition highlighted by

respondent's motion to dismiss" and that "[t]his exceeds the purpose for which motions to amend are normally treat[ed] with liberality and a light touch." Initial Decision, at 11.³

In his exceptions, which petitioner expressly limited to the ALJ's denial of his motion for leave to amend, petitioner asserts that the ALJ abused his discretion by denying the motion. He asks the Commissioner to reject the Initial Decision, grant petitioner's motion for leave to amend, and reinstate petitioner's appeal. Petitioner states that he sought leave to amend to avoid any argument that he failed to comply with the technical requirements of *N.J.A.C. 6A:3-2.1(a)(1)*. He asserts that New Jersey courts liberally permit amendments to pleadings to secure a determination of cases on their merits so long as the amendments would not violate a rule of law, prejudice a non-moving party, or be futile. He claims that the proposed amendment neither violated a rule of law nor prejudiced respondents and therefore should have been permitted.

In reply, McGroarty asserts that the ALJ appropriately denied petitioner's request to amend the petition for a second time as the request was improper and futile not only for the reasons expressed in the Initial Decision, but also because the disenrollment of petitioner's daughters from the district rendered his requests for relief moot and negated his standing to bring the action. Additionally, McGroarty claims that the Commissioner now lacks jurisdiction to adjudicate the controversy since petitioner disenrolled his daughters from the district. McGroarty also contends that granting the request to amend would clearly prejudice him because it would force him to defend against baseless claims. Accordingly, McGroarty asks the Commissioner to adopt the ALJ's Initial Decision in its entirety.

³ Regarding the substance of petitioner's requests for relief, the ALJ found that *N.J.A.C. 6A:23A-16.12(b)*, by its plain language, applies to boards of education and not teaching staff members or coaches such as McGroarty. Furthermore, the ALJ found that petitioner could not compel the Board to file tenure charges against McGroarty as the filing of tenure charges by boards of education is governed by specific procedures set forth in the Tenure Employees Hearing Law, *N.J.S.A. 18A:6-10 to -18.1*.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter. The Commissioner concurs with the ALJ's findings and conclusion that a request for a declaratory ruling may not seek consequential relief, and that each of petitioner's requests for relief were clearly consequential in nature and exceeded what was permitted by the rule. See *N.J.A.C. 6A:3-2.1(a)(1)* ("A request for a declaratory ruling shall reflect adverse positions on the statute or rule in question by the parties in interest, may not seek consequential relief beyond a declaration as to the meaning of the statute or rule, and may not be based on underlying facts that are future, contingent, uncertain, or disputed."). Therefore, petitioner's amended petition was procedurally defective.

Additionally, the Commissioner finds and concludes that the ALJ did not abuse his discretion when he denied petitioner's motion to amend the petition for a second time. *N.J.A.C. 1:1-6.2(a)* provides that "[u]nless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice." Here, the ALJ found, and the Commissioner agrees, that amending the petition for a second time was not in the interest of efficiency or expediency as the amendment would neither simplify nor clarify the issues. Instead, the petitioner sought to expand the scope of his petition and cure deficiencies highlighted by McGroarty's motion to dismiss. The Commissioner further finds that to allow petitioner to attempt to cure deficiencies in his petition only after those deficiencies were brought to his attention by McGroarty in a motion to dismiss would prejudice McGroarty.

Moreover, the Commissioner finds that the amendment proposed by petitioner—i.e., to separate his requests for declaratory relief and consequential relief into two separate counts within a single petition—would not have cured the procedural defects which resulted in the ALJ's

recommendation to dismiss the petition. Granting the motion to amend would be futile because the regulations do not permit a petitioner to seek both declaratory relief and consequential relief in a single petition. *N.J.A.C. 6A:3-1.3(a)* provides that “[t]o initiate a contested case for the Commissioner’s determination of a controversy or dispute arising under the school laws, a petitioner shall prepare a petition of appeal conforming to the requirements of *N.J.A.C. 6A:3-1.4 . . .*” In contrast, petitions for declaratory ruling must conform to the requirements set forth at *N.J.A.C. 6A:3-2.2*, which differ from the requirements of *N.J.A.C. 6A:3-1.4*. Petitioner’s proposed hybrid petition is neither contemplated nor allowed under the controlling regulations. For these reasons, the ALJ did not abuse his discretion by denying petitioner’s motion to amend.

Accordingly, McGroarty’s motion to dismiss the petition is granted, petitioner’s request to amend the petition for a second time is denied, and the petition of appeal is hereby dismissed with prejudice.

IT IS SO ORDERED.⁴


ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024
Date of Mailing: January 25, 2024

⁴ 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 04726-22

AGENCY DKT. NO. 86-4/22

MICHAEL FIDLER,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
EASTERN CAMDEN COUNTY REGIONAL
SCHOOL DISTRICT, CAMDEN COUNTY,
WILLIAM J. MCGROARTY, III, AND
ROBERT CLOUTIER,**

Respondents.

Anthony R. Twardowski, Esq., member of the Pennsylvania Bar and **Andrew DeLuca**, Esq., member of the Pennsylvania Bar for petitioner, admitted pro hac vice pursuant to N.J.A.C. 1:1-5.2(a) for petitioner Michael Fidler (Zarwin Baum DeVito Kaplan Schaer & Toddy, P.C., Attorneys), Attorney of Record: **Bryan P. Werley**, Esq. (Zarwin Baum DeVito Kaplan Schaer & Toddy, P.C., Attorneys)

Anthony I. Padovani, Esq., for respondents, Eastern Camden County Regional School and Robert Cloutier, (Sahli and Padovani, attorneys)

Eric J. Riso, Esq. for respondent, William J. McGroarty, III, (Zeller & Wieliczko, LLP, attorneys)

Record Closed: February 23, 2023

Decided: November 21, 2023

BEFORE **ELIA A. PELIOS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner in this matter by way of amended petition seeks declaratory relief pursuant to what he alleges is respondent's conversion of funds intended as donations to benefit the Eastern Girls Soccer Team in contravention of N.J.A.C. 6A:23A-16.12(b). Respondent McGroarty filed a motion to dismiss in lieu of answer on June 1, 2022. The matter was fully briefed by counsel for the parties and oral argument was held on October 14, 2022. Post argument correspondence on the motion was exchanged and the record on motion closed on February 21, 2023.

The relief sought by petitioner is a declaratory ruling:

A. Directing the High School and the Board to engage a neutral third party, preferably a certified public accountant, to thoroughly investigate McGroarty's handling of student activity funds to determine the full extent of his misconduct, which currently remains unknown;

B. Determining and declaring that, based on the evidence adduced thus far, McGroarty violated N.J.A.C. 6A:23A16.12(b) and Policy No. 6660 by opening and maintaining an unauthorized Account that McGroarty used to deposit and disburse monies directly related to the Team and McGroarty's personal camps;

C. Advising Cloutier to submit tenure charges to the Board to determine "whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary" pursuant to N.J.S.A. 18A:6-11;

D. Determining and Declaring that Fidler shall file tenure charges with the Board, in the event that Cloutier is unwilling to do so within twenty (20) days of the Commissioner's Order; and,

E. Providing for such additional relief as the Commissioner deems reasonable.

In moving to dismiss, respondent argues that the amended petition must be dismissed because petitioner lacks standing and because petitioner's attempt to compel disciplinary action against Mr. McGroarty under the guise of a request for declaratory relief is improper. In opposition, petitioner argues that he has set forth a valid basis upon which the commissioner can grant request for declaratory relief and that he has standing.

FACTUAL DISCUSSION

Although the motion at hand can be decided largely on procedural grounds, in the interest of context a summation of relevant facts alleged by petitioner follows.

Petitioner is an adult whose daughters attended Eastern Camden Regional High School at the time of the events described and were members of the High School Girls Soccer Team. Respondent McGroarty served as the head coach of the team and was also a teacher at the high school. McGroarty at times solicited donations from petitioner and others through various fundraising efforts on behalf of the team.

In November of 2021, petitioner submitted the first of several Open Public Records Act ("OPRA") requests to the high school and the board to confirm that the donations solicited by McGroarty were being handled properly. The responses led petitioner to believe that McGroarty was inappropriately depositing the funds into a personal bank account instead of one maintained by the high school or board.

On or about December 7, 2021, petitioner sent a letter to the District's superintendent, Robert Cloutier, requesting a meeting to discuss petitioner's concerns. Such meeting occurred on January 6, 2022. Cloutier indicated that he would assign an internal investigative team to look into the matter. A follow-up meeting was held with petitioner on January 31, 2022, to provide an update and during which petitioner identified additional issues he felt needed to be addressed, which he summarized in a letter a few days later, on February 2, 2022. A report was issued on February 3, 2022, by the committee which appeared to confirm petitioner's assertions but did not identify any

consequence for respondent McGroarty. Petitioner expressed his dissatisfaction in a February 16, 2022, letter.

After no further action, to his knowledge, was taken by the Board, petitioner sought relief from the Commissioner to direct the high school and the board to conduct a further investigation into McGroarty's alleged misconduct, and that they hold McGroarty accountable for same, specifically, by way of a declaratory order:

A. Directing the High School and the Board to engage a neutral third party, preferably a certified public accountant, to thoroughly investigate McGroarty's handling of student activity funds to determine the full extent of his misconduct, which currently remains unknown;

B. Determining and declaring that, based on the evidence adduced thus far, McGroarty violated N.J.A.C. 6A:23A16.12(b) and Policy No. 6660 by opening and maintaining an unauthorized Account that McGroarty used to deposit and disburse monies directly related to the Team and McGroarty's personal camps;

C. Advising Cloutier to submit tenure charges to the Board to determine "whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary" pursuant to N.J.S.A. 18A:6-11;

D. Determining and Declaring that Fidler shall file tenure charges with the Board, in the event that Cloutier is unwilling to do so within twenty (20) days of the Commissioner's Order; and,

E. Providing for such additional relief as the Commissioner deems reasonable.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision is appropriate if the papers and discovery which have been filed, together with the affidavits, 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. Summary decision is "substantially the same" as a motion for summary judgment under Rule 4:46-2. Contini v. Bd. of Educ., 286 N.J. Super. 106, 121,

(App. Div. 1995), certif. denied, 145 N.J. 372 (1996). The court must first determine “whether the competent evidential material presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). If there is no genuine issue of material fact, the court must decide whether the agency's application of the law was correct. Contini, 286 N.J. Super. 106, 122. In administrative proceedings, as in the courts, it is “the movant’s burden to exclude any reasonable doubt as to the existence of any genuine issue of material fact.” Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 74 (1954). Thus, “[a]ll inferences of doubt are drawn against the movant in favor of the opponent of the motion. the papers supporting the motion are closely scrutinized and the opposing papers indulgently treated.” Id. at 75.

The New Jersey Supreme Court in Brill, 142 N.J. 520, 539-40 (1995), requires the nonmovant to raise a factual issue substantial enough to sustain a reasonable conclusion in the nonmovant’s favor if a hearing were held. If the evidence, along with reasonable inferences, could sustain a judgment in favor of the nonmovant the motion must be denied.

The Commissioner of Education “has primary jurisdiction to hear and determine all controversies arising under the school laws.” Bower v. Bd. Educ. of East Orange, 149 N.J. 416, 420 (1997); see N.J.S.A. 18A:6-9. However, “[w]here the controversy does not arise under the school laws, it is outside the Commissioner’s jurisdiction even though it may pertain to school personnel.” Bd. of Educ. of East Brunswick v. Twp. Council of East Brunswick, 48 N.J. 94, 102 (1966).

“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), <<http://njlaw.rutgers.edu/collections/courts/>> (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 . . .

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

In bringing the present motion to dismiss in lieu of an answer, respondent argues that the relief sought by petitioner is unavailable as petitioner seeks a declaratory ruling and does not meet the essential criteria to obtain such a decision from the Commissioner.

N.J.A.C. 6A:3-2.1(a) provides that:

any interested person(s) may petition the Commissioner for a declaratory ruling with respect to rights, responsibilities, and status arising from any statute or rule within the jurisdiction of the Commissioner. The determination to entertain such petitions for declaratory ruling shall be within the sole discretion of the Commissioner. If such request is granted, the matter shall proceed in accordance with this chapter as they pertain to petitions. A declaratory ruling shall be binding upon the Commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

However, this section is qualified by N.J.A.C. 6A:3-2.1(a)1, which provides that “[a] request for a declaratory ruling shall reflect adverse positions on the statute or rule in question by the parties in interest, may not seek consequential relief beyond a declaration as to the meaning of the statute or rule, and may not be based on underlying facts that are future, contingent, uncertain, or disputed.”

It is undisputed, and I **FIND**, that petitioner's amended petition seeks an order:

A. Directing the High School and the Board to engage a neutral third party, preferably a certified public accountant, to thoroughly investigate McGroarty's handling of student activity funds to determine the full extent of his misconduct, which currently remains unknown;

B. Determining and declaring that, based on the evidence adduced thus far, McGroarty violated N.J.A.C. 6A:23A16.12(b) and Policy No. 6660 by opening and maintaining an unauthorized Account that McGroarty used to deposit and disburse monies directly related to the Team and McGroarty's personal camps;

C. Advising Cloutier to submit tenure charges to the Board to determine "whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary" pursuant to N.J.S.A. 18A:6-11;

D. Determining and Declaring that Fidler shall file tenure charges with the Board, in the event that Cloutier is unwilling to do so within twenty (20) days of the Commissioner's Order; and,

E. Providing for such additional relief as the Commissioner deems reasonable.

As also noted above, a request for a declaratory ruling may not seek consequential relief beyond a declaration as to the meaning of a statute or rule. Here, clearly, each aspect of the relief sought for the declaratory ruling is consequential in nature and goes beyond seeking a declaration as to the meaning of the statute. The petitioner seeks an order forcing the board to engage a party to conduct an investigation and to declare that respondent McGroarty violated policy and regulation. The petitioner further seeks that the order advises the superintendent of the district to bring tenure charges against respondent McGroarty, and in the absence of such action to permit petitioner to do so.

Each of these requests is clearly consequential in nature, and clearly goes beyond what is contemplated by the rules governing declaratory relief. Accordingly, I

CONCLUDE that the request for declaratory relief is inappropriate and that the amended petition must be **DISMISSED**.

Furthermore, petitioner is seeking a declaration that McGroarty violated N.J.A.C. 6A: 23A16.12(b) seems to be misplaced. That regulation provides that:

Each district board of education and charter school board of trustees shall maintain student activity funds in an interest-bearing account separate from all other funds of the district board of education or charter school board of trustees. The district board of education or charter school board of trustees shall disburse interest on this account(s) to each student activity fund in proportion to the balances on deposit for each activity.

By its plain language, this regulation places responsibility upon a board of education, requiring that they maintain the account in question. I **FIND**, pursuant to the arguments asserted and the petition filed, that the relief sought is premised upon a violation of this regulation by McGroarty. While it is no stretch to conclude that failure to utilize the account in question may not be appropriate action for an employee or teaching staff member to undertake, it is not for the teaching staff member to maintain the account; the regulation itself does not apply to teaching staff members; and, declaring that the regulation has been violated is not the appropriate way to address what is alleged. It may provide context for what is alleged but the responsibility it identifies is placed upon the Board.

N.J.A.C. 6A:23A-1.1 establishes the scope and purpose of Chapter 23 of Title 6A of the New Jersey Administrative Code. It states that:

(a) The purpose of this chapter is to assure the financial accountability of district boards of education through enhanced State monitoring, oversight, and authority, and to ensure each district board of education adopts an annual budget that provides adequate resources to meet the State Constitution's mandate for a thorough and efficient system of free public schools for all children. This chapter sets forth the roles of the Commissioner of Education and the executive county superintendent in overseeing district board of education budgeting and expenditures. The chapter also

establishes mechanisms to ensure the efficient expenditure of budgeted funds in a manner consistent with a school district's approved annual budget.

(b) Pursuant to this chapter, the Commissioner delegates to the executive county superintendent powers, tasks, and duties that further support efficiency of school district operation pursuant to N.J.S.A. 18A:7F-43 et seq., and that complement the powers, tasks, and duties set forth in N.J.S.A. 18A:7-1 et seq.

The chapter by its own language governs the roles of the Commissioner and the executive county superintendent and lays out procedures to be followed by boards in assuring its goals. It does not create a code of conduct to be followed by or grounds for a cause of action against teaching staff members. Accordingly, I again **CONCLUDE** that petitioner's amended petition must be **DISMISSED**.

Additionally, a tenured school district employee may only be dismissed or reduced in compensation for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing before the Commissioner of Education following the filing of written charges signed by the person making the charges. N.J.S.A.18A:6-10(b). The person filing such charges "may or may not be a member . . . of a board of education." Ibid.

The Tenure Employees' Hearing Law provides specific procedures for filing tenure charges. Charges must be filed in writing with the secretary of the board, along with a written statement of evidence executed under oath. N.J.S.A. 18A:6-11; N.J.A.C. 6A:3-5.1(b). The charges must be stated with specificity. N.J.A.C. 6A:3-5.1(b)(1). The board of education must provide the affected employees with copies of the charge and statement of evidence, and they must be given an opportunity to respond. N.J.S.A. 18A:6-11; N.J.A.C. 6A:3-5.1(b). After considering the charge in a private meeting, the board must determine whether there is probable cause to credit the evidence in support of the charge, and if the charge is sufficient to warrant dismissal or a reduction in salary. Ibid. If the board determines that probable cause exists to support the charge, which, if credited, is sufficient to warrant dismissal or a reduction in salary, then the charge is forwarded to the commissioner with a certificate of tenure charges. Ibid.

However, if the board does not certify the tenure charges within forty-five days after receipt of the written charge, the charge shall be dismissed “and no further proceeding or action shall be taken thereon.” N.J.S.A. 18A:6-13.

A party may appeal to the Commissioner to review a board’s determination not to certify tenure charges. See, e.g., Manalapan-Englishtown Educ. Ass’n v. Bd. of Educ., 187 N.J. Super. 426 (App. Div. 1981); Carteret Educ. Ass’n v. Bd. of Educ. of Carteret, EDU 2677-07, Initial Decision, (February 14, 2008), adopted, Comm’r, (March 31, 2008) <<http://njlaw.rutgers.edu/collections/oal/>>. The Commissioner is limited to determining whether the board answered these questions in making its decision: first, whether there is probable cause sufficient to credit the evidence in support of the charge, and second, whether the charge, if credited, is sufficient to warrant dismissal or a reduction of salary. Manalapan-Englishtown, supra 187 N.J. Super. at 429. The board of education’s action is entitled to a presumption of correctness and is not subject to change unless the Commissioner determines that it acted in an arbitrary, capricious or unreasonable manner. Carteret, supra (citing Bey v. Bd. of Educ. of Newark, 93 N.J.A.R.2d (EDU) 288, 291).

In Galante, the petitioner, a teacher and high school football coach, appealed the Board’s decision to not certify tenure charges filed against a high school principal. Galante v. Bd. of Educ. of North Arlington, EDU 1149-06, Final Decision, (August 21, 2008) <<http://njlaw.rutgers.edu/collections/oal/>>. The ALJ directed the Board to certify tenure charges to the Commissioner, on grounds that the Board failed to meet the two-part Manalapan standard for consideration of tenure charges. The Commissioner agreed with the ALJ that the Board offered no support for its conclusory statements that petitioner’s charges were not creditable and did not rise to the level warranting discipline. However, the Commissioner remanded to the Board on grounds that the ALJ substituted her judgment for that of the Board. The Commissioner ordered the Board to undertake the necessary investigations and deliberations to articulate the basis for its decision.

In the present matter, petitioner is asking the commissioner to forego procedure and to substitute petitioner’s own judgment for that of the Board, or, more specifically, to

impose his will upon it – a request which clearly exceeds the role of an individual seeking to bring tenure charges or challenging a board’s decision; that of an ALJ; and, potentially, even that of the Commissioner. Petitioner is clearly dissatisfied with the District’s handling of his allegation and is asking the Commissioner to adopt and prescribe a specific set of preferred outcomes, which clearly exceed the contemplation of the law. That is not to say there isn’t an appropriate way to assert his grievance, as described above – there is. But this is not it. While asking that an investigation be conducted, he also presumes the outcome of that investigation and seeks the filing of charges. Accordingly, I **CONCLUDE** that for this additional reason, the amended petition must be **DISMISSED**.

Finally, petitioner also now seeks leave to file an additional amended petition. Motions to amend are to be granted when they “would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice,” citing N.J.A.C. 1:1-6.2(a).

There are general limitations on amending pleadings, especially when the amendment raised new or additional matters not set forth in the original petition. In A.D. and S.F. o/b/o P.F. v. Mine Hill Twp. Bd. of Educ., OAL Dkt. No. EDS 7465-07 (2007), the ALJ ruled that additional claims made in an amendment request were not proper, as the “second pleading constitute[d] an expansion” of the matter already filed. See also K.D. o/b/o E.D. v. Marlboro Twp. Bd. of Educ., OAL Dkt. No. EDS 17946-18 (June 10, 2020).

In the present matter, not only have issues not been simplified or clarified, it appears that petitioner actually seeks to expand the terms of his current petition. Or rather seeks to cure vulnerabilities of his first amended petition highlighted by respondent’s motion to dismiss. This exceeds the purpose for which motions to amend are normally treated with liberality and a light touch.

Accordingly, I **CONCLUDE** that petitioner has failed to provide valid legal support for his Motion to Amend, and that such amendment does not comport with the statutory and caselaw limitations on amendments. I further **CONCLUDE** that respondent’s Motion to again amend his petition must be **DENIED**.

None of this is to say that allegations regarding inappropriate handling of finances in the school context are to be taken lightly – they are not. Nor is it to say that such allegations could not appropriately form the basis of a tenure charge – they could. And a party may challenge the handling or lack thereof by a board in addressing such a claim. However, there are procedures and avenues by which to do so, and they simply have not been followed in the present matter.

ORDER

It is **ORDERED** that respondent's motion to dismiss is **GRANTED** and petitioner's appeal is **DISMISSED** with prejudice. It is further **ORDERED** that petitioner's motion to further amend his petition is **DENIED**.

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 (45) 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 (13) 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.

November 21, 2023 _____

DATE



ELIA A. PELIOS, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

EAP/caa