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OAL Dkt. No. EDU 12760-23
Agency Dkt. No. 266-10/23

New Jersey Commissioner of Education
Final Decision

Robbinsville Education Association and Danielle
Saddock,

Petitioners,

v.

Board of Education of the Township of
Robbinsville, Mercer County,

Respondent.

The record of this matter, the recommended Order on Motion to Dismiss in Part issued by the Office of Administrative Law (OAL), the exceptions filed by petitioners Robbinsville Education Association (REA) and Danielle Saddock pursuant to *N.J.A.C. 1:1-18.4*, and the Robbinsville Board of Education's (Board) reply thereto, have been reviewed and considered.

Petitioners challenge the Board's use of private vendors Educere and Michigan Virtual to provide virtual instruction in the subjects of Italian and Physics during the 2023-2024 school year.¹ According to the petition, the Board passed resolutions to contract with Educere and Michigan Virtual for virtual instruction in Italian 2, Italian 3, Italian 4 Honors or Advanced

¹ In August 2024, this matter was consolidated with *Tiffany Strauss v. Board of Education of the Township of Robbinsville, Mercer County*, Agency Docket Number 239-9/23, OAL Docket Number EDU 10708-23 (Strauss). Strauss challenges the Board's employment of non-certified athletic trainers. On February 5, 2025, the matters were severed following the Administrative Law Judge's decision to dismiss the Saddock petition.

Placement, and Advanced Placement Physics. Petitioners assert that the instructors have failed to comply with various statutory requirements imposed on New Jersey teachers and that the contracts are not authorized by the Legislature.

Specifically, the petition alleges that the online instructors provided by Educere and Michigan Virtual: (1) do not hold New Jersey teaching certificates or endorsements as required by *N.J.S.A. 18A:26-2 et seq.* (Counts I and II); (2) have not undergone criminal history checks as required by *N.J.S.A. 18A:6-7.1* (Counts III and IV); (3) were not individually appointed by a majority vote of the full Board pursuant to *N.J.S.A. 18A:27-1* (Counts V and VI); (4) will not be evaluated by district supervisors pursuant to *N.J.S.A. 18A:27-3.1* and *N.J.S.A. 18A:6-117 et seq.* (Counts VII and VIII); (5) are not residents of New Jersey as required by *N.J.S.A. 52:14-7* (Counts IX and X); and (6) do not teach classes in-person as required by *N.J.S.A. 18A:7F-9* (repeated in all Counts). The petition further alleges in Count XI that the Board lacked legislative authority to contract with private entities for the provision of educational services.

The Board filed a motion to dismiss, contending that petitioners had not advanced a viable cause of action because the Board's contracts with Educere and Michigan Virtual for virtual instruction did not violate any law, regulation, or district policy and are in fact authorized by "Option Two" as defined by *N.J.A.C. 6A:8-5.1(a)(2)*. Option Two learning experiences are "individualized student learning opportunities that meet or exceeded the NJSLs, such as independent study, online learning, or structured learning experiences." *Camden Voc. Ed. Ass'n v. Bd. of Educ. of Camden Cnty. Tech. Sch., Camden Co.*, Commissioner Decision No. 213-22, at 1 (Aug. 19, 2022). The Board asserts that graduation requirements may be satisfied in whole or in part through Option Two, which permits online learning in all New Jersey Student Learning

Standards (NJSL) areas. The Board maintains that it “has properly exercised its rights under Option Two,” and that the petition fails to allege that the Board’s use of Option Two violates New Jersey education laws and regulations and simply ignores Option Two altogether. The Board adds that its use of Option Two was necessitated by the fact that it has been unable to fill open part-time Italian and Physics positions with in-person teachers, and that the Option Two regulation itself gives it authority to contract with private entities for educational services.

On February 5, 2025, the Administrative Law Judge (ALJ) granted the Board’s motion to dismiss upon concluding that: (1) Option Two permits individualized learning opportunities that include online learning; (2) Option Two learning opportunities need not be facilitated by certified teachers; and (3) boards of education are authorized by *N.J.S.A. 18A:11-1(d)* to perform all acts consistent with law that are necessary for conduct of the public schools, which impliedly includes entering into contracts with private vendors to provide Option Two individualized learning opportunities to students. The ALJ did not specifically address petitioners’ claims made in Counts III, IV, V, VI, VII, VIII, IX, or X, other than to conclude that “Option Two does not conflict with Title 18A or Title 6A of the New Jersey Administrative Code.” Order at 7.

Because the ALJ’s disposition of the Board’s motion completely concludes the instant matter, the Commissioner shall treat the recommended Order as an Initial Decision for OAL Docket Number EDU 12760-23 only. See *N.J.A.C. 1:1-12.7* (“Disposition of motions which completely conclude a case shall be by initial decision.”).

In their exceptions, petitioners seek reversal of the ALJ’s recommended Order. They contend that the ALJ improperly converted the Board’s motion to dismiss into a motion for summary judgment when it accepted non-authenticated documents as true and dispositive of

the issues in the case without allowing additional discovery. They argue that they are entitled to discovery regarding, but not limited to, the licensing held by the individuals teaching the courses and the curriculum being used. In addition, they assert that there is no evidence to support the conclusion that the courses at issue are individualized student learning opportunities envisioned under the Option Two regulation. They maintain that Option Two is not applicable to this case and that, even if it is, the Board has not offered evidence to establish that the virtual instruction complies with Option Two requirements, *e.g.*, that the courses meet or exceed NJSLS. Finally, they argue that there is no statutory authority for subcontracting core courses to virtual instructors when the district supposedly cannot secure staff.

In response, the Board argues that its provision of online Italian and Physics courses via private vendors to high school students is lawful. It contends that the ALJ did not convert the motion to dismiss into a motion for summary decision because she was permitted to consider documents submitted by the Board that are matters of public record (Board policy, Board meeting minutes, district employment opportunity postings, and New Jersey Department of Education applicant approvals). Furthermore, the Board asserts that petitioners' argument that the Option Two regulation is not at issue is disingenuous because the alleged violations of Title 18 claimed by petitioners are expressly permitted under the Option Two regulation. It argues that a motion to dismiss cannot be denied based upon the possibility that discovery may establish the requisite claim, and that petitioners have failed to set forth sufficient facts to state a claim that the classes at issue are not the type of individualized learning opportunity envisioned by Option Two. In fact, the petitioner does not even mention Option Two, let alone contain any facts to support a contention that the Board violated Option Two.

Upon review, the Commissioner adopts the ALJ's Initial Decision in part and rejects it in part as explained herein. Petitions are subject to dismissal by the Commissioner "on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true." *N.J.A.C. 6A:3-1.10*; *Jonathan Wadley v. N.J. Dep't of Educ., Office of Student Prot.*, OAL Dkt. No. EDU 09223-22, Initial Decision at 4-5 (Mar. 10, 2023), *adopted*, Commissioner Decision No. 110-23 (Apr. 11, 2023) (assessing respondent's motion to dismiss pursuant to *N.J.A.C. 6A:3-1.10* under the standards used by courts when analyzing *Rule 4:6-2* motions). Motions to dismiss for failure to state a claim "must be evaluated in light of the legal sufficiency of the facts alleged" in the petition. *Sickles v. Cabot Corp.*, 379 *N.J. Super.* 100, 106 (App. Div. 2005) (quoting *Donato v. Moldow*, 374 *N.J. Super.* 475, 482 (App. Div. 2005)). If "the complaint states no basis for relief and . . . discovery would not provide one, dismissal of the complaint is appropriate." *County of Warren v. State*, 409 *N.J. Super.* 495, 503 (App. Div. 2009).

First, the Commissioner adopts the ALJ's recommendation regarding the dismissal of Counts IX and X of the petition, but for different reasons than those stated in the Order. Counts IX and X allege that the virtual instructors are not residents of New Jersey in violation of *N.J.S.A. 52:14-7*, the New Jersey First Act. Even assuming this is true, the Commissioner lacks jurisdiction to decide that claim because *N.J.S.A. 52:14-7* is not a school law, and the Commissioner's jurisdiction extends only to controversies and disputes arising under the school laws. *N.J.S.A. 18A:6-9*; *Hinfey v. Matawan Reg'l Bd. of Educ.*, 77 *N.J.* 514, 525 (1978). *See also N.J.S.A. 52:14-7(d)* (explaining that complaints filed pursuant to the New Jersey First Act shall be brought in the Superior Court of New Jersey); *Kratovil v. Angelson*, 473 *N.J. Super.* 484 (Law Div. Aug. 3, 2020). Thus, Counts IX and X of the petition are dismissed.

Second, with respect to petitioners' remaining claims, the Commissioner rejects the ALJ's recommendation to dismiss them because discovery has not taken place and further factual development is necessary in light of the issues presented. The ALJ's presumption that the Option Two regulation definitively applies to this matter – and that petitioners' claims therefore cannot survive a motion to dismiss – is premature. *N.J.A.C. 6A:8-5.1(a)(2)*, the Option Two regulation, requires boards of education to “establish a process to approve individualized student learning opportunities that meet or exceed the NJSLS” and that are “based on student interest and career goals as reflected in the Personalized Student Learning Plans.” Moreover, “[g]roup programs based upon specific instructional objectives aimed at meeting or exceeding the NJSLS shall be permitted under this section and shall be approved in the same manner as other approved courses.” *N.J.A.C. 6A:8-5.1(a)(2)(i)(3)*.

While the Commissioner has previously held in *Camden, supra*, that Option Two does not necessarily require that student learning opportunities be facilitated by certified teachers, there is no basis in the record to find that the Option Two regulation is applicable to the Italian and Physics virtual instruction at issue in this case. For instance, in *Camden*, which was adjudicated following a contested hearing and did not involve virtual instruction, the Commissioner found that “the Board approved the teaching of financial literacy through the use of Option 2.” *Camden*, at 1. Here, while the Board claims in its motion to dismiss that Option Two applies, nothing in the limited record before the Commissioner reflects that the Board approved the teaching of Italian and Physics through Option Two as either an individualized student learning opportunity or a group program under *N.J.A.C. 6A:8-5.1(a)(2)*. Additionally, there is no evidence that the instruction offered by Educere and Michigan Virtual meets or exceeds the NJSLS as required by

Option Two. The Board's reliance upon Option Two in support of its motion to dismiss the statutory violations alleged in the petition at this early, pre-discovery stage of the proceedings is unavailing. *See generally DeGraff v. Bd. of Educ. of Twp. of Belleville*, Commissioner Decision No. 5-20R, at 3 (Feb. 4, 2020) ("[T]he choice of whether to utilize Option II belongs to the student, not the district.").

Accordingly, the ALJ's recommendation to dismiss Counts IX and V is adopted, but for different reasons than those stated in the recommended Order. However, the ALJ's recommendation to dismiss the remaining Counts in the petition is rejected. The matter is remanded to the OAL for further proceedings so that discovery may take place regarding the applicability of Option Two, and those proceedings shall continue in whatever manner the parties and the ALJ deem necessary to fully conclude the dispute.

IT IS SO ORDERED.


COMMISSIONER OF EDUCATION

Date of Decision: March 17, 2025
Date of Mailing: March 19, 2025



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON MOTION
TO DISMISS IN PART
(CONSOLIDATED)

TIFFANY STRAUSS,

Petitioner,

v.

TOWNSHIP OF ROBBINSVILLE

BOARD OF EDUCATION,

MERCER COUNTY,

Respondent.

OAL DKT. NO. EDU 10708-23

AGENCY DKT. NO. 239-9/23

and

ROBBINSVILLE EDUCATION ASSOCIATION

AND DANIELLE SADDOCK,

Petitioners,

v.

TOWNSHIP OF ROBBINSVILLE

BOARD OF EDUCATION,

MERCER COUNTY,

Respondent.

OAL DKT. NO. EDU 12760-23

AGENCY DKT. NO. 266-10/23

Richard A. Friedman, Esq., and Amory R. Blank, Esq., appearing for petitioners
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BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On September 7, 2023, petitioner Tiffany Strauss (Ms. Strauss) appealed to the New Jersey Department of Education (DOE) pursuant to N.J.A.C. 18A:6-9, challenging the Robbinsville Board of Education (Board or BOE) actions regarding the employment of athletic trainers. On October 11, 2023, the DOE transmitted this matter to the Office of Administrative Law for plenary hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The case was docketed as EDU 10708-23.

On October 2, 2023, petitioners Robbinsville Education Association (the Association) and Danielle Saddock (Ms. Saddock) appealed to the DOE pursuant to N.J.A.C. 18A:6-9, challenging the Board's use of private entities to provide instruction. The Board filed a motion to dismiss in lieu of answer. On November 16, 2023, the DOE transmitted this matter to the Office of Administrative Law for plenary hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The case was docketed as EDU 12760-23 and was assigned to the Honorable Kim Belin, ALJ. Because the undersigned had the older docket number, the matter was transferred to the undersigned for further handling on May 10, 2024.

On May 10, 2024, a motion to consolidate the cases was submitted by petitioners' counsels. I entered an Order of Consolidation on August 23, 2024. Respondent Board renewed their request to have the motion to dismiss addressed by this tribunal. The petitioners raised an issue that discovery must be completed before the motion can be considered. The parties submitted position papers regarding the discovery issue. On

November 21, 2024, I decided that discovery need not be completed before the motion can be considered. A scheduling order for the motion was completed, and thereafter the parties submitted briefs on the motion. The motion record closed on December 11, 2024.

While this matter is consolidated, the motion to dismiss is only against the Robbinsville Board of Education Association and Danielle Saddock.

FINDINGS OF FACT

Petitioners Robbinsville Education Association and Danielle Saddock bring this petition against the Robbinsville Board of Education based on the Board's decision to contract with private vendors Educere and Michigan Virtual to provide online instruction in Italian and Physics, respectively, during the 2023–2024 school year. During the 2022–2023 school year, the Italian language and Advanced Placement Physics courses were conducted in person by teaching staff assigned to Robbinsville High School. (See Petition of Appeal at ¶ 8.)

The Board asserts that the part-time teaching positions for Italian and Physics received no applicants as of the start of the 2023–2024 school year, but that the positions remained open and available to members of the Association. (See Resp't's Br. in Support of Motion to Dismiss in Lieu of Answers at 1.)

The Board passed resolutions to contract with Educere and Michigan Virtual to provide instruction in Italian 2, Italian 3, Italian 4 Honors or Advanced Placement, and Advanced Placement Physics, respectively. (See Petition of Appeal at ¶¶ 13–14, 18–19.) Petitioners assert that the Educere and Michigan Virtual contracts are not authorized by the Legislature and that the Educere and Michigan Virtual instructors fail to comply with the statutory requirements imposed on New Jersey teachers.

DISCUSSION AND CONCLUSIONS OF LAW

In education cases, the Commissioner may dismiss a petition “prior to transmittal of the pleadings to the OAL . . . on the grounds that the petitioner has advanced no cause

of action even if the petitioner's factual allegations are accepted as true." N.J.A.C. 6A:3-1.10.

If the Uniform Administrative Procedure Rules (UAPR) do not specify a certain rule, "a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible" with the purposes of the UAPR. N.J.A.C. 1:1-1.3(a). Under the Court Rules, a motion to dismiss for failure to state a claim upon which relief can be granted "may at the option of the pleader be made by motion with briefs." R. 4:6-2(e). Like N.J.A.C. 1:1-12.2, a motion to dismiss for failure to state a claim "shall be heard and determined before trial . . . unless the court for good cause" defers the claim to be heard at trial. R. 4:6-3.

In granting a motion to dismiss, the court "assume[s] that the allegations in the pleadings are true and afford[s] the pleader all reasonable inferences." Sparroween, LLC v. Township of W. Caldwell, 452 N.J. Super. 329, 339 (App. Div. 2017) (citing Seidenberg v. Summit Bank, 348 N.J. Super. 243, 249–50 (App. Div. 2002)). Granting a motion to dismiss under R. 4:6-2(e) is appropriate prior to discovery where "it is clear that the complaint states no basis for relief and that discovery would not provide one." Sparroween, 452 N.J. Super. at 339–40 (quoting J.D. ex rel. Scipio-Derrick v. Davy, 415 N.J. Super. 375, 397 (App. Div. 2010)).

"When facts beyond the initial pleadings are relied on in determining the motion, the motion to dismiss is converted to a motion for summary decision" under both the UAPR and the Court Rules. Thigpen v. Pub. Emps.' Ret. Sys., TYP 12347-13, Initial Decision (May 28, 2014), <https://njlaw.rutgers.edu/collections/oal/> (citing Jersey City Educ. Ass'n v. City of Jersey City, 316 N.J. Super. 245, 253–54 (App. Div. 1998)). The submission of certifications or documents in addition to the initial pleadings requires that the motion to dismiss be converted into a motion for summary decision. Jersey City Educ. Ass'n, 316 N.J. Super. at 254. However, "allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim" or that are "specifically referenced in the complaint" do not convert the motion to dismiss into a motion for summary judgment. Myska v. New Jersey Mfrs. Ins. Co., 440 N.J. Super. 458, 482 (App. Div. 2015) (quoting Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183

(2005)); see also E. Dickerson & Son, Inc. v. Ernst & Young, 361 N.J. Super. 362, 365 (App. Div. 2003).

Here, the Board submitted exhibits that it purports are “matters of public record and/or documents that form the basis of petitioner’s claims.” (See Resp’t’s Nov. 14, 2023, Br. at 7.) These exhibits are comprised of the original petition, the Board’s graduation policy, the Board’s meeting minutes and employment postings related to open Physics and Italian positions, and the Department of Education’s approvals of the “Option Two” instructors. The exhibits have been attached to the Certification of Service of the Motion to Dismiss in Lieu of an Answer (and to the motion itself in the case of the final exhibit). The facts alleged in the motion are taken entirely from the petition and from the additional exhibits. Relying on Myska, it is appropriate to proceed with this motion to dismiss using these exhibits. The motion to dismiss does not need to be converted into a motion for summary decision.

Respondent’s motion to dismiss alleges that nothing in the petition violates any law, regulation, or District policy related to Option Two learning. (See Resp’t’s Br. at 5.) N.J.A.C. 6A:8-5.1(a)(2), usually referred to as Option Two, provides as follows:

2. The 120-credit requirement set forth in (a)1 above may be met in whole or in part through program completion of a range of experiences that enable students to pursue a variety of individualized learning opportunities, as follows:

i. District boards of education shall establish a process to approve individualized student learning opportunities that meet or exceed the [New Jersey Student Learning Standards (NJSLs)].

(1) Individualized student learning opportunities in all NJSLs areas include, but are not limited to, the following:

- A. Independent study;
- B. Online learning;
- C. Study abroad programs;

D. Student exchange programs; and

E. Structured learning experiences, including, but not limited to, work-based programs, internships, apprenticeships, and service learning experiences.

(2) Individualized student learning opportunities based upon specific instructional objectives aimed at meeting or exceeding the NJSLs shall:

A. Be based on student interest and career goals as reflected in the Personalized Student Learning Plans;

B. Include demonstration of student competency;

C. Be certified for completion based on the district process adopted according to (a)2ii below; and

D. Be on file in the school district and subject to review by the Commissioner or his or her designee.

(3) Group programs based upon specific instructional objectives aimed at meeting or exceeding the NJSLs shall be permitted under this section and shall be approved in the same manner as other approved courses.

As set forth in N.J.A.C. 6A:8-5.1(a)(2), Option Two learning allows the 120 credits of learning required for graduation to be accomplished “in whole or part” through “a range of experiences that enable students to pursue a variety of individualized learning opportunities.” Such individualized learning opportunities may include online learning. N.J.A.C. 6A:8-5.1(a)(2)(i)(B). Option Two opportunities must “meet or exceed” the New Jersey Student Learning Standards. N.J.A.C. 6A:8-5.1(a)(2)(i).

The petition equates instructors of individualized learning opportunities under Option Two learning to “teaching staff members” employed by public schools under Title 18A of the New Jersey Statutes. However, the Commissioner of Education has already established that “Option 2 [sic] does not require that student learning opportunities be

facilitated by certified teachers.” Camden Vocational Educ. Ass’n v. Camden Cnty. Tech. Schs. Bd. of Educ., Camden Cnty., EDU 00026-18, Initial Decision (June 2, 2022), adopted, Comm’r (Aug. 19, 2022), <https://njlaw.rutgers.edu/collections/oal/>. According to the Commissioner, “the Board still bears responsibility to ensure that students are meeting or exceeding the NJSLS and demonstrating competency” under Option Two learning, but the means of instruction is not subject to the requirements of Title 18A. Camden Vocational Educ. Ass’n, Final Decision at *3, <https://njlaw.rutgers.edu/collections/oal/>. “The requirements of Option 2 [sic] are distinct from those for traditional, credit-based instruction,” and thus Option Two does not conflict with Title 18A or Title 6A of the New Jersey Administrative Code. Ibid.

Accordingly, counts I–X of the petition, which allege that the Option Two instruction in question has failed to comply with the requirements for teaching staff members in New Jersey, are without merit.

The final count of the petition, Count XI, alleges that the Legislature has not delegated any statutory authority to the Board to contract with private entities for the provision of educational services.

Under the Option Two regulation, school districts may provide independent study, online learning, study abroad or student exchange programs, and structured learning experiences such as internships or apprenticeships as individualized learning opportunities for graduation credit. N.J.A.C. 6A:8-5.1(a)(2)(i)(1)(A)–(E). The regulation specifically constructs the list to be inexhaustive using the “include, but are not limited to” language of subsection (a)(2)(i)(1). Many, if not all, of the listed opportunities would likely require some form of contract in order to be made available for students. The authorizing statutes, found in Title 18A, afford boards of education the power to “perform all acts and do all things, consistent with law and the rules of the state board, necessary for the lawful and proper conduct, equipment, and maintenance of the public schools of the district.” N.J.S.A. 18A:11-1(d). It follows that a board would likely have the implied authority under both the statute and the Option Two regulation to enter into contracts with private entities to provide individualized learning opportunities to students.

Thus, Count XI of the petition is without merit, as the Option Two regulation allows school districts flexibility to select the means by which Option Two opportunities are made available to students, and the Board acted under its authority to do so by contracting with Educere and Michigan Virtual.

CONCLUSION

Based on the foregoing, I therefore **CONCLUDE** that none of the counts alleged in the petition state a cause of action upon which relief can be granted.

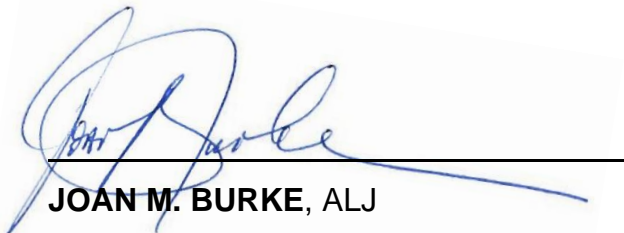
ORDER

Accordingly, and for the reasons articulated above, it is **ORDERED** that the motion of respondent Robbinsville Board of Education for an order granting dismissal of the matter titled Robbinsville Education Association and Danielle Saddock v. Robbinsville Board of Education is hereby **GRANTED**, and the Petition of Appeal is **DISMISSED**. I further **ORDER** that the matter titled Tiffany Strauss v. Board of Education of the Township of Robbinsville be scheduled for a status conference to set discovery dates and a hearing.

This order may be reviewed by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.

February 5, 2025

DATE



JOAN M. BURKE, ALJ

JMB/jm

cc: Clerk, OAL-T

APPENDIX

Exhibits

For petitioner

Petition of Appeal

Petitioner's Brief in Opposition to the Motion to Dismiss, December 5, 2024

For respondent

Brief in Support of Motion to Dismiss with Exhibits, November 14, 2023

Reply Brief, dated December 10, 2024