

New Jersey Commissioner of Education
Final Decision

Debra Venedam,

Petitioner,

v.

Board of Education of the Township of
Marlboro, Monmouth County,

Respondent.

Synopsis

Petitioner – a taxpayer in the respondent’s school district – alleged that the Board violated its stated policy regarding the filling of Board vacancies when it failed to vote in public session on a vacancy in December 2018. The Board contended that its actions in filling the vacancy in question were at all times in compliance with its Bylaw #143 and *N.J.S.A.* 18A:12-15, and filed a motion to dismiss in lieu of an answer.

The ALJ found, *inter alia*, that: the issue for determination here is whether the Board’s motion to dismiss should be granted, or whether petitioner is entitled to an evidentiary hearing to show that the Board vacancy was improperly filled; petitioner failed to show that she standing to bring this matter, as she had no specific personal and concrete stake in the outcome of the Board vote; petitioner named individual Board members in her petition, but failed to name the Board as a whole as a party to this matter; petitioner did not allege any violations of Title 18A by the Board, nor did she demand any remedy or relief under Title 18A; and the respondent Board appears to have fully complied with its Bylaw #143, which contains the Board’s policy regarding the filling of vacancies. The ALJ concluded that the Board was in compliance with bylaw #143 and petitioner failed to show that there was any genuine issue of material fact herein. Accordingly, the ALJ granted the Board’s motion to dismiss the petition.

Upon review, the Commissioner concurred with the ALJ that the Board complied with its policy regarding the filling of Board vacancies, and therefore the petition must be dismissed. However, the Commissioner disagreed with the remaining findings of the ALJ, specifically on the issues of standing, the naming of indispensable parties to the case, and jurisdiction, as the petitioner did allege a violation of New Jersey school laws. Accordingly, the Initial Decision of the OAL was adopted as modified herein, and 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.

September 19, 2019

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

In this matter, petitioner – a taxpayer in respondent’s district – alleges that the Board violated its stated policy regarding the filling of Board vacancies when it failed to vote in public session on a vacancy in December 2018. Regarding board vacancies, the Board’s “District Policy #143: Board Member Election and Appointment,” states: “In considering candidates who have expressed an interest in the vacancy, the Board of Education will interview interested candidates in public. Deliberation may occur in executive session, but the board must vote to appoint a candidate to a vacancy in public session so that the public can see the decision making process.” In this case, the Board interviewed five candidates for the vacant position in public session on December 18, 2018. The Board then deliberated on the candidates’ qualifications in an executive session, during which the Board determined that none of the five candidates were qualified to fill the vacancy. Accordingly, no vote to fill the vacant seat

occurred during the public session that followed the executive meeting; rather, a motion was made, seconded, and unanimously approved to re-advertise the vacancy. Petitioner contends that the executive session deliberations were in fact a Board vote on the vacancy, which should have occurred in a public session pursuant to Policy #143.

Upon review, the Commissioner agrees with the Administrative Law Judge (ALJ) that the Board complied with its policy because it interviewed interested candidates in public and deliberated in executive session, as permitted in the bylaws. The Board did not vote on candidates in executive session, but rather decided not to vote on any of the five candidates, as none of them were qualified for the position. Thereafter, the Board advertised the position again, conducted interviews of additional candidates at the next Board meeting – in January 2019 – and voted on the resulting nominee in a public session as required by the relevant Board policy. As the ALJ stated, “The plain meaning of bylaw #0143 was that, if a Board chose to nominate a candidate, the final vote on the candidate was to take place in public session.” (Initial Decision at 6) Since the Board fully complied with its policy regarding the filling of Board vacancies, the Commissioner agrees that the within petition must be dismissed.

The Commissioner disagrees, however, with the remaining findings of the ALJ – specifically, on the issues of standing, the naming of indispensable parties to the case, and petitioner’s alleged failure to demand any remedy or relief under New Jersey’s school laws. Petitioner does in fact have standing as a taxpayer to challenge the application of a school policy, given New Jersey’s “venerable liberal application of standing criteria, . . . particularly in taxpayer suits and the like[.]” *Ridgewood Education Association, et al. v. Ridgewood Board of*

Education, 284 N.J. Super. 427, 431 (App. Div. 1995) (internal citations omitted).¹ Additionally, petitioner did not fail to name an indispensable party. Pursuant to *N.J.A.C.* 6A:3-1.16, the Department of Education has traditionally provided leniency, where appropriate, when considering the pleadings of *pro se* litigants. Accordingly, when the within petition named each member of the Board individually, rather than the Board as a whole, the Office of Controversies and Disputes adjusted the filing to indicate that the petition was against the Board, as this was petitioner's clear intent. The petition was transmitted to the OAL with the corrected caption, indicating that the respondent was the Marlboro Township Board of Education. Finally, the Commissioner does have jurisdiction over this matter as the petition alleged a violation of Board policy, which clearly falls under the school laws. *N.J.S.A.* 18A:6-9.

Accordingly, the Initial Decision of the OAL is adopted – as modified herein – as the final decision in this matter. The petition is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: September 19, 2019
Date of Mailing: September 23, 2019

¹ The ALJ cited the State Board's decision in *Ridgewood*, 94 N.J.A.R. 2d (EDU) 137 (1993), for the proposition that a taxpayer does not have standing absent a public and private interest that is detrimentally impacted. However, the State Board's decision was subsequently reversed by the Appellate Division.

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, c. 36 (*N.J.S.A.* 18A:6-9.1).