

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NOS. A-6295-10T4  
A-6302-10T4

IN RE NEWARK QSAC APPEAL.

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Argued June 4, 2013 – Decided July 8, 2013

Before Judges Yannotti, Harris and Hayden.

On appeal from a decision of the New Jersey Department of Education dated.

Clifford G. Stewart argued the cause for appellants Newark Advisory Board and the Coalition for Effective Newark Public Schools (The Law Office of C. Gregory Stewart, attorneys in A-6302-10; Education Law Center, attorneys in A-6295-10; David G. Sciarra and Theresa S. Luhm, on the brief).

Michael C. Walters, Assistant Attorney General, argued the cause for respondent New Jersey Commissioner of Education (Jeffrey S. Chiesa, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Angela L. Velez, Deputy Attorney General, on the brief).

PER CURIAM

The Newark Public Schools Advisory Board (NPSAB) and the Coalition for Effective Newark Public Schools (CENPS) appeal from a final determination of the Commissioner of the New Jersey

Department of Education, refusing to recommend partial withdrawal of the State's intervention in the Newark school district in the areas of fiscal management, personnel and governance.<sup>1</sup> We affirm in part, and dismiss in part.

I.

In 1995, the State Board of Education (State Board), acting pursuant to the then-applicable provisions of the Public School Education Act of 1975 (PSEA), L. 1975, c. 212, as amended by L. 1987, c. 398, authorized the removal of Newark's local board of education and the creation of a State-operated school district, based on its determination that the district was not providing its students with a thorough and efficient system of education. Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 110 (App. Div. 1995).

In 2005, legislation was enacted, which amended the PSEA and established the Quality Single Accountability Continuum (QSAC), thereby altering the manner in which the State evaluated the thoroughness and efficiency of all public schools in the State. L. 2005, c. 235, amending N.J.S.A. 18A:7A-10. Under the QSAC statute, the Commissioner is required to evaluate all

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<sup>1</sup> The NPSAB, which consists of nine members, was created pursuant to N.J.S.A. 18A:7A-49(c), following State intervention in the Newark school district. CENPS is said to be comprised of various local organizations and Newark residents.

public school districts in five areas of district "effectiveness," specifically instruction and program, personnel, fiscal management, operations and governance. N.J.S.A. 18A:7A-10.

This review is undertaken every three years. N.J.S.A. 18A:7A-11; N.J.A.C. 6A:30-3.1(a). The Commissioner also may conduct interim reviews of the district's progress in meeting quality performance indicators. N.J.S.A. 18A:7A-11; N.J.A.C. 6A:30-5.6(b).

A district that achieves a score of "80 percent to 100 percent of the quality performance indicators in each of the five key components of school district effectiveness" is considered to be a high performing district that is providing a thorough and efficient system of education. N.J.S.A. 18A:7A-14(a). A district that satisfies 50 percent to 79 percent of the quality performance indicators in any of the five areas of evaluation must develop and implement an improvement plan to address any areas of deficiency. N.J.S.A. 18A:7A-14(b). The Commissioner is required to evaluate the district's progress in implementing the plan every six months. Ibid.

A district that satisfies less than 50 percent of the quality performance indicators in four or fewer of the five key components of school district effectiveness is required to

develop and implement an improvement plan and may be subject to partial State intervention. N.J.S.A. 18A:7A-14(c). In addition, a district that has satisfied less than 50 percent of the quality performance indicators in all five components of school district effectiveness may be subject to full State intervention. N.J.S.A. 18A:7A-14(e)(1).

Where, as here, a district has been subject to State intervention, the Commissioner considers the district's success in implementing the improvement plan in determining whether to withdraw from intervention in one of more areas of intervention. N.J.S.A. 18A:7A-14(c)(7). "If the district has successfully implemented the improvement plan and achieved sufficient progress in satisfying the performance indicators in one or more areas under intervention, the State shall withdraw from intervention in the district in those areas[.]" N.J.S.A. 18A:7A-15(d).

In 2007, the State evaluated Newark's performance in light of the quality performance indicators developed by the Department. N.J.A.C. 6A:30 (Appendix A). Newark achieved a score of 39 percent in instruction and program, 66 percent in fiscal management, 86 percent in operations, 32 percent in personnel, and 56 percent in governance. Based on that review, the Commissioner recommended that the State withdraw from

intervention in the operations component of school district effectiveness. The State Board accepted the recommendation.

Thereafter, the Department continued to monitor the district's progress, through interim performance reviews. The January 2009 review resulted in the following scores: 50 percent in instruction and program, 94 percent in fiscal management, 87 percent in operations, 79 percent in personnel, and 75 percent in governance. The March 2010 scores were: 49 percent in instruction and program, 90 percent in fiscal management, 58 percent in operations, 42 percent in personnel, and 56 percent in governance.

In June 2011, the Department conducted its comprehensive, three-year review of the district. The 2011 review resulted in the following scores in the key components of school district effectiveness: 64 percent in instruction and program, 93 percent in fiscal management, 83 percent in operations, 94 percent in personnel, and 89 percent in governance.

By letter dated July 15, 2011, the Commissioner informed the district that he was not prepared to recommend the initiation of withdrawal of intervention in the remaining areas of State intervention. In his letter, the Commissioner stated that "much work remains" for the district to ensure that every student receive "a high quality education."

The Commissioner noted that the district's self-reported graduation rate for 2009-2010 was 55 percent, which was "far below" the 80 percent graduation rate set by the QSAC process. The Commissioner additionally noted that the district's graduation rate was "overstated." He wrote:

Among students who start ninth grade in Newark, less than 30% graduated as a result of passing the High School [Proficiency] Assessment (HSPA), the standard exam for determining student achievement in reading, writing, and mathematics as specified in the New Jersey Core Curriculum Content Standards. Currently, 57.5% of the district's students are below proficiency in language arts literacy (LAL) and 51.8% are below proficiency in math. These are unacceptably low.

The Commissioner also wrote that Newark's public schools were not serving its students at the levels they deserve. He noted that forty-five of the district's seventy-five schools were in need of improvement under applicable federal criteria. At eight high schools, more than half of the students scored below proficiency in LAL, math or both areas of learning. In addition, at forty-one elementary schools, more than half of the students were below proficiency in LAL, math, or both.

The Commissioner additionally stated that personnel procedures and operations continued to inhibit student performance and effective management of the district. He wrote:

Many of the [twenty-one] new principals in 2010-11 were appointed at a late date, and thus had little time to prepare for the upcoming school year. These principals, who are frequently placed in low performing schools, do not receive appropriate preparation or mentorship. A number of critical administrative positions at the district and school level remained vacant all year.

The Commissioner pointed out that the district reported a teacher absence rate of over 7 percent, and there was a high staff mobility at certain schools. He stated, "One ramification of these human resource challenges is that several schools opened in 2010 without accurate schedules or clear communication to students and teachers."

The Commissioner also noted that in order to recommend withdrawal of State intervention, he had to consider whether the results of the district's evaluation sufficiently demonstrated sustained and substantial progress and whether it had adequate programs, policies and personnel in place and in operation to ensure that the progress will be sustained. The Commissioner concluded that, based on his review, he was not prepared to recommend that any partial withdrawal of intervention be initiated.

The NPSAB and the CENPS thereafter filed notices of appeal. We entered an order dated January 27, 2012, consolidating the appeal. In July 2012, the Commissioner filed a motion to dismiss

the appeal, arguing that appellants lacked standing to pursue the matter, and the July 2012 review of the district rendered the appeal moot. We denied the motion.

## II.

The NPSAB and the CENPS contend that the Commissioner erred by refusing to recommend withdrawal of partial State intervention in the areas of governance, fiscal management and personnel of the district.

We note initially that, at oral argument of the appeal, the Assistant Attorney General stated that the Commissioner had determined to initiate the process for partial withdrawal of State intervention in the fiscal management of the district. Thereafter, by letter dated June 4, 2013, the Assistant Attorney General advised the court that upon development of an appropriate transition plan, the Commissioner will recommend to the State Board that the process for withdrawal of State intervention in the area of fiscal management be initiated.

Accordingly, appellants' challenge to the Commissioner's refusal to recommend withdrawal of State intervention in the area of fiscal management is moot. We therefore consider whether the Commissioner erred by refusing to recommend withdrawal of State intervention in the areas of governance and personnel.



The scope of our review of final decisions of administrative decisions is limited. We may not disturb an administrative decision unless it has been shown to be arbitrary, capricious or unreasonable. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997) (citing In re Warren, 117 N.J. 295, 296 (1989)). We can only intervene "'in those rare circumstances in which an agency action is clearly inconsistent with its statutory mission or with other State policy.'" Ibid. (quoting George Harms Constr. v. N.J. Tpk. Auth., 137 N.J. 8, 27 (1994)).

Thus, the scope of our review is limited to the following inquiries:

- (1) whether the agency's decision offends the State or Federal Constitution;
- (2) whether the agency's action violates express or implied legislative policies;
- (3) whether the record contains substantial evidence to support the findings on which the agency based its action; and
- (4) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Id. at 211.]

The NPSAB and the CENPS argue that N.J.S.A. 18A:7A-15(d) requires the Commissioner to recommend the withdrawal of State intervention because the district scored more than 80 percent in

the areas of governance and personnel in the 2011 QSAC evaluations. Appellants contend that, under the QSAC statutes, the Commissioner had no discretion to refuse to initiate withdrawal of State intervention in these areas. We do not agree.

Our goal in interpreting a statute is to determine the Legislature's intent, and generally, "the best indicator of that intent is the statutory language." DiProspero v. Penn, 183 N.J. 477, 492 (2005) (citing Frugis v. Bracigliano, 177 N.J. 250, 280 (2003)). "We ascribe to the statutory words their ordinary meaning and significance[.]" Ibid. (citing Lane v. Holderman, 23 N.J. 304, 313 (1957)).

As we have explained, the QSAC statutes require the Commissioner to evaluate each public school district in five key areas of school district effectiveness. N.J.S.A. 18A:7A-10(a). N.J.S.A. 18A:7A-15(d) provides that "[i]f the district has successfully implemented the improvement plan and achieved sufficient progress in satisfying the performance indicators in one or more areas under intervention, the State shall withdraw from intervention in those areas[.]"

We are satisfied that the Commissioner retains broad discretion in determining whether to recommend withdrawal of State intervention in any area of QSAC evaluation. N.J.S.A.

18A:7A-15(d) does not require the Commissioner to recommend withdrawal of State intervention merely because a district may have achieved a score of 80 percent or greater in a key area of effectiveness in a three-year comprehensive review.

Under the plain language of N.J.S.A. 18A:7A-15(d), the Commissioner is only required to initiate withdrawal of State intervention in an area of school district effectiveness if he determines that the district has successfully implemented the improvement plan and has made sufficient progress in meeting the relevant quality performance indicators. The Commissioner retains broad discretion in making those findings.

Moreover, under the applicable administrative regulations, when deciding whether to initiate partial or full withdrawal of State intervention, the Commissioner considers:

1. Evidence of sustained and substantial progress by the public school district, demonstrated by the public school district having satisfied 80 to 100 percent of the weighted quality performance indicators in one or more of the components of school district effectiveness under State intervention, as shown by the comprehensive reviews, six month reviews by the Department and/or other appropriate evidence; and
2. Substantial evidence that the public school district has adequate programs, policies and personnel in place and in operation to ensure that the demonstrated progress, with respect to the components of school district effectiveness under intervention, will be sustained.

[N.J.A.C. 6A:30-7.1(b).]

The Commissioner has broad discretion in making these critical factual determinations, as well.

Appellants contend, however, that a statement by a former Commissioner supports their interpretation of N.J.S.A. 18A:7A-15(d). In testimony before the Assembly Education Committee concerning the proposed QSAC legislation, then-Commissioner William Librera stated that the Department was "looking to return to local control those aspects that the three State takeover districts have demonstrated . . . they can handle and handle well, . . . "

This statement does not directly address the question raised by this appeal, which is whether the Commissioner has the discretion to determine whether to recommend withdrawal of State intervention when a district has achieved a score of 80 percent or greater in a QSAC evaluation. The relevant statute requires the Commissioner to find that the district has successfully implemented its improvement plan and has achieved sufficient progress in satisfying the relevant quality performance indicators for the area under State intervention. N.J.S.A. 18A:7A-15(d). As we have explained, the Commissioner has discretion to make those findings.

Appellants additionally argue that the Commissioner's July 15, 2011 decision is inconsistent with previous agency determinations. They note that in 2007, recommendations were made to withdraw State intervention from operations in the Newark district, and from governance and fiscal management in the Jersey City district.

Appellants state that those functions were returned to local control because the districts achieved 80 percent or more in the 2007 QSAC evaluations. But here the Commissioner was not bound by decisions made by another Commissioner. Moreover, the 2007 decisions apparently were based solely on the initial QSAC evaluations, whereas the 2011 determination was based on Newark's 2011 evaluations, the district's previous evaluations, and other relevant information.

We therefore conclude that, under N.J.S.A. 18A:7A-15(d), the Commissioner is not compelled to recommend withdrawal of State intervention in any area of school district effectiveness merely because the district has achieved a score of 80 percent or more in the three-year QSAC evaluation. Rather, the Commissioner retains the discretion under the statute to determine whether the district has successfully implemented an improvement plan and made sufficient progress in achieving the relevant quality performance indicators.

Moreover, under the applicable administrative regulations, before recommending the withdrawal of State intervention in a key area of school district effectiveness, the Commissioner has the discretion to determine whether a district has shown "sustained and substantial progress" in meeting the applicable quality performance indicators, N.J.A.C. 6A:30-7.1(b)(1), and whether the district has programs, policies and personnel in place to sustain the progress that has been achieved. N.J.A.C. 6A:30-7.1(b)(2).

### III.

Appellants further argue that the Commissioner's refusal to recommend partial withdrawal of State intervention in the areas of governance and personnel is arbitrary, unreasonable and not supported by the record. Again, we disagree.

We note that factual findings of an administrative agency are binding on appeal if supported by sufficient credible evidence in the record. Clowes v. Terminix Intern., Inc., 109 N.J. 575, 587 (1988) (citing Goodman v. London Metals Exch., Inc., 86 N.J. 19, 28 (1981); Close v. Kordulak Bros., 44 N.J. 589, 599 (1965)). "[I]f substantial credible evidence supports an agency's conclusion, a court may not substitute its own judgment for the agency's even though the court might have reached a different result." Greenwood v. State Police Training

Ctr., 127 N.J. 500, 513 (1992). Moreover, an appellate court "must defer to an agency's expertise and superior knowledge of a particular field." Ibid. Such deference is particularly appropriate when reviewing a final decision of the Commissioner.

We are convinced that there is sufficient credible evidence in the record to support the Commissioner's refusal to recommend return to local control of the district's personnel and governance functions. There is no dispute as to the scores that the district has achieved in its QSAC evaluations.<sup>2</sup>

As stated previously, in the 2007 evaluation, the district achieved 32 percent in personnel and 56 percent in governance. In 2009, the district's scores were 79 percent in personnel and 75 percent in governance. In 2010, the district achieved 42 percent in personnel and 56 percent in governance. In the 2011 evaluation, the district scored 94 percent in personnel and 89 percent in governance.

Based on these fluctuating scores alone, the Commissioner could reasonably refuse to recommend withdrawal of State intervention in the areas of personnel and governance. The Commissioner could rationally find that the district had not

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<sup>2</sup> We note that, in his brief, the Commissioner relies upon the results of the district's 2012 review as support for his decision. We have not considered the results of the 2012 review because they are not part of the record on appeal from the Commissioner's 2011 decision. R. 2:5-4(a).

achieved sufficient progress in satisfying the relevant quality performance indicators. N.J.S.A. 18A:7A-15(d). The fluctuating scores also indicate that the district has not exhibited "sustained and substantial progress" in satisfying the pertinent indicators of quality performance. N.J.A.C. 6A:30-7.1(b)(1). In addition, the district's fluctuating scores indicate that whatever progress the district may have achieved in the areas of personnel and governance might not be sustained. N.J.A.C. 6A:30-7.1(b)(2).

In reaching his decision, the Commissioner additionally relied upon other facts, including the district's self-reported graduation rate, which was below the rate set by the QSAC process; the lack of proficiency of many students in LAL and math; the rate of absences for teachers; and the district's deficient personnel procedures and operations. The Commissioner reasonably determined that these deficiencies also justified continued State intervention in the areas of personnel and governance.

We have considered appellants' other contentions and conclude that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Accordingly, appellants' challenge to the Commissioner's refusal to recommend withdrawal of State intervention in the



area of fiscal management is dismissed as moot, and the Commissioner's determination refusing to recommend withdrawal of State intervention in the areas of personnel and governance is affirmed.

Affirmed in part, dismissed in part.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION