

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2549-03T5

DOMINIC J. MAGNOLO and
THERESA MAGNOLO, individually
and on behalf of their
daughter ALEXANDRA MAGNOLO,

Plaintiffs - Respondents,

v.

BOARD OF EDUCATION OF
TOWNSHIP OF WASHINGTON
(MERCER COUNTY),

Defendant - Appellant.

Argued: November 8, 2004 - Decided: **APR 20 2005**

Before Judges Rodríguez and Hoens.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, L-3004-03.

Matthew J. Giacobbe argued the cause for
appellant (Scarinci & Hollenbeck, attorneys;
Mr. Giacobbe of counsel; Steven W. Kleinman,
on the brief).

Respondents did not file a timely brief.

John J. Burns, Assistant Counsel, argued the
cause for amicus curiae New Jersey School
Boards Association (Cynthia J. Jahn, General
Counsel/Assistant Executive Director; Mr.
Burns, on the brief).

PER CURIAM

This is a challenge by the Washington Township Board of Education in Mercer County (Board) to the Law Division's exercise of jurisdiction in a case arising under the School Ethics Act, N.J.S.A. 18A:12-21 to -34 (Act), and to the judicial finding of an ethical conflict by a Board member. We affirm.

The facts are undisputed. The New Jersey Interdistrict Public School Choice Program allows students from one school district to enroll in designated schools in other districts. N.J.S.A. 18A:36B-1 to -13. The Board has participated in this program since the 2000/2001 school year. Each year since the inception of its participation, the Board adopted resolutions restricting the number of students who may participate in the program to a number equal to two percent of each grade's enrollment consistent with N.J.S.A. 18A:36B-8b(1) and (2). The Board adopted such resolutions even though the statute permits an increase of this restriction to ten percent of the students enrolled per grade level. N.J.S.A. 18A:36B-8b(3). The Board did not operate a high school at that time, therefore the Choice Program applied only to grades K to 8.¹ However, beginning with the 2004/2005 academic year, the Board had planned to operate a high school within Washington Township.

¹ High school students from this district attended Lawrence Township High School. The Board paid their tuition.

In September 2003, the Board once again adopted the two percent cap. Based on eighth grade enrollment at that time, only three eighth graders could apply for enrollment in the Choice Program. The Board declined to adopt a sibling policy exempting from the cap Choice Program applicants who had brothers or sisters already enrolled in the program. The Board reached a unanimous vote to institute the cap and the no sibling exemption policy. Two weeks after the vote, Board Member Carol Boyne submitted a notice of intent to file an application for the Choice Program on behalf of her daughter. Boyne's daughter desired to attend Allentown High School. Boyne withdrew this notice several weeks later.

At the next Board meeting, Dominic and Theresa Magnolo (plaintiffs), asked the Board to reconsider the sibling exemption policy. One of their daughters already was attending Allentown High School. Because their younger daughter now was seeking to enroll in Allentown, plaintiffs were urging that the Board exempt her from the two percent cap. At this meeting, the parents of at least five other students seeking enrollment in Allentown High School who already had siblings enrolled in the school, pressed the Board to adopt a sibling exemption.

The Board heard public comment from the parents, discussed the issue, but declined to vote on the matter. Instead, the

Board's attorney contacted the Commissioner of Education to determine whether the Board could exempt students with enrolled siblings from the two percent cap.

The Commissioner, in her response, indicated that no mechanism existed for exempting students from the cap set by the Board. However, the Board could pass a new resolution increasing the cap percentage to six percent thereby allowing the five students to enroll. At the next Board meeting, the Board decided not to raise the cap nor adopt a sibling exemption policy.

Plaintiffs filed an action in lieu of prerogative writs seeking to declare void ab initio any action taken by the Board on these issues. Plaintiffs alleged that since 2000, the Board had not enforced the two-percent cap. However, for the first time, the Board announced its intention to enforce it for the 2004 school year. Thus, plaintiffs challenged such intention as arbitrary and capricious. Plaintiffs also alleged that Boyne had a conflict of interest pursuant to the Act, because her child would benefit from the lack of a sibling exemption policy. Plaintiffs alleged that at least five of those who had filed an intention to attend Allentown High School had enrolled siblings. Plaintiffs argue that the no sibling exemption somehow benefited Boyne's daughter's chances of enrollment.

Following a hearing, Judge Linda A. Feinberg ordered the Board to hold another meeting and reconsider the resolution without the participation of any parent seeking to enroll a child in the program. The Board moved the court unsuccessfully for reconsideration. The Board held an emergency meeting, during which Boyne abstained in any discussion or vote. The Board's decision remained the same.

The Board now appeals to us contending that: (1) the judge erred by ruling that a conflict existed; and (2) the Commissioner, who has primary jurisdiction over matters arising under school law, should have decided this matter. By our leave, the New Jersey School Board Association (NJSBA) filed a brief and participated in oral argument.² The NJSBA argued that when the judge interpreted N.J.S.A. 18A:12-24h, a section of the School Ethics Law, she erroneously ignored a School Ethics Commission Determination interpreting the relevant section of the statute.

In light of the result of the second vote (without Boyne's participation) and Boyne's withdrawal of her intention to have her daughter participate in Choice Program, we decline to address the Board's argument regarding the court's finding of an

² Magnolo v. Bd. of Educ. Township of Washington, No. M-4010-03 (App. Div. April 13, 2004).

ethical conflict of interest. The issue is moot. However, we choose to address the Board's argument that the Commissioner, not the Law Division, had sole jurisdiction to resolve this dispute.

In pertinent part, N.J.S.A. 18A:6-9 states, "[t]he commissioner 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." In this regard, the Court "'has repeatedly, reaffirmed the great breadth of the Commissioner's powers.'" Theodore v. Dover Bd. of Educ., 183 N.J. Super. 407, 413, (App. Div. 1982); (quoting, Hinfey v. Matawan Reg'l Bd. of Educ., 77 N.J. 514, 525 (1978)). Indeed, when an issue arises under school laws, a party must exhaust all administrative remedies before "such an action is ripe for adjudication by the court." Theodore, supra, 183 N.J. Super. at 412. As the court in Theodore stated, "[u]nless there are exceptional circumstances making the exhaustion of remedy doctrine inapplicable, school-law disputes do not constitute part of the cognizable judicial business of the trial courts." Id. at 413. In a case arising pursuant to school law, the appropriate administrative proceeding is before the Commissioner of Education. Ibid.

However, as Judge Feinberg correctly pointed out, the Commissioner's jurisdiction is not exclusive. As Justice Handler has noted, "when a controversy arises in the field of education, the cases tend to determine remedies by a procedural course set by N.J.S.A. 18A:6-9." Abbott v. Burke, 100 N.J. 269, 301 (1985). The Commissioner's authority may be characterized as plenary on controversies arising under the school laws. Ibid. Thus, the court is obligated to defer to the Commissioner in matters that arise under school law. Theodore, supra, 183, N.J. Super. at 414. Stated differently, parties must exhaust their administrative remedies before seeking relief in the trial court. Ibid.

There is one exception to this rule. That is, a trial court may exercise primary jurisdiction, even if the issue arises under school laws, when there is an "emergent implication of the public interest." Id. at 413. This exception is at issue in the present case.

Judge Feinberg cogently analyzed the issue as follows:

Unlike Theodore, the case at bar involves an "emergent implication of the public interest." Plaintiffs' complaint was accompanied by an order to show cause seeking temporary restraints. Additionally, the regulations imposed a timeline on the process, which in the context of the instant case demanded an immediate resolution of the dispute, something an administrative agency is most likely unable to provide.

The Board was required to provide written notification to the parents or guardians of students selected to participate in the program no later than November 25. N.J.A.C. 6A:12-4.3(c). Students intending to participate were required to submit an application to the choice school by December 5. N.J.A.C. 6A:12-4.3(d). The choice district was required to notify the parents or guardians whether the application had been accepted by January 5. N.J.A.C. 6A:12-4.3(e). The judiciary is uniquely structured to resolve disputes that require determination in such an expedited fashion.

Furthermore, the Theodore court expressly acknowledges the Law Division's jurisdiction to hear matters arising under the school law.

As we have heretofore indicated, with respect to school law controversies, particularly where a local board's decision is challenged, it is the exhaustion of remedies doctrine which requires first resort to the administrative process. The implication of that doctrine is that the court should defer exercise of its jurisdiction, not that it lacks basic and fundamental jurisdiction. Indeed, the waivability of the doctrine in exceptional situations is predicated on the court's underlying jurisdiction.

[Theodore, supra, 183 N.J. Super. at 414.]

Here, the need for emergent action by the Court is self-evident. Thus, we conclude that Judge Feinberg correctly exercised jurisdiction over the matter because it was necessary and appropriate.

Therefore, we affirm substantially for the reasons expressed by Judge Feinberg in her November 21, 2003, oral decision and her December 19, 2003, written decision.

Affirmed.

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

Jan Flynn
CLERK OF THE APPELLATE DIVISION