

#219-12 (OAL Decision: http://lawlibrary.rutgers.edu/collections/oal/html/initial/edu10882-10_1.html)

PATERSON EDUCATION ASSOCIATION :
AND DARLENE GONZALEZ, :
 : COMMISSIONER OF EDUCATION
 PETITIONERS, :
 : DECISION
 V. :
 :
 STATE-OPERATED SCHOOL DISTRICT :
 OF THE CITY OF PATERSON, :
 PASSAIC COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioners alleged that respondent School District was in violation of its obligation to employ the proper ratio of school nurses to provide services for every preschool child in the District. Specifically, they asserted that *N.J.A.C. 6A:13A-4.5* mandates that there be one school nurse for every 300 preschool children – a ratio that the District failed to comply with. Petitioners further contended that the District had improperly sought to meet the needs of its preschool students through the use of medical assistants who cannot legally perform certain of the required tasks that a school nurse can perform. Respondent argued that petitioners do not have standing to pursue their complaint, and that such factors as finances and school nurse availability had precluded it from complying with *N.J.A.C. 6A:13A-4.5*. Petitioners submitted a motion for summary decision.

The ALJ found that: the Paterson Education Association did have standing to bring the action; there were no material facts in dispute, and the matter was ripe for summary decision; the respondent had failed to assert any legal defense to its non-compliance; and accordingly, the District was not in compliance with *N.J.A.C. 6A:13A-4.5*. The ALJ ordered the District to take all necessary steps to bring itself into compliance, and – if it was unable to have the proper ratio at the start of the 2011-2012 school year – to utilize all means necessary to achieve compliance as soon as possible by the end of that year.

The Deputy Commissioner – to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-33* – noted that, subsequent to the Initial Decision, the respondent represented by letter that it had successfully hired a sufficient number of nurses to meet the requirements of *N.J.A.C. 6A:13A-4.5*, and petitioner countered that an updated count of preschool students indicates that – notwithstanding the recently hired nurses – the required ratio of nurses to students has still not been met. Accordingly, the matter was remanded to the OAL for specific findings about the number of preschool students in respondent’s district, the number of qualified nurses employed to minister to them, and reasons why the ratio mandated by *N.J.A.C. 6A:13A-4.5* has or has not been satisfied.

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.
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May 24, 2012

OAL DKT. NO. EDU 10882-10
AGENCY DKT. NO. 316-8/10

PATERSON EDUCATION	:	
ASSOCIATION AND DARLENE	:	
GONZALEZ,	:	COMMISSIONER OF EDUCATION
PETITIONERS,	:	
	:	DECISION
V.	:	
STATE-OPERATED SCHOOL DISTRICT :	:	
OF THE CITY OF PATERSON,	:	
PASSAIC COUNTY,	:	
RESPONDENT.	:	

This controversy arose when petitioners demanded that respondent comply with *N.J.A.C. 6A:13A-4.5*, a regulation obliging boards of education to hire sufficient school nurses to effectuate 1:300 nurse-preschooler ratios in their districts. In addition to rejecting petitioners' claim of non-compliance with *N.J.A.C. 6A:13A-4.5*, respondent challenged petitioners' standing to bring the instant action.

The matter proceeded in the Office of Administrative Law (OAL) by way of a summary disposition motion. In his summary Initial Decision, the Administrative Law Judge (ALJ) found that petitioners had standing and that respondent had violated *N.J.A.C. 6A:13A-4.5* by retaining insufficient nurses to comply with the above-referenced mandated ratio.

Subsequent to the Initial Decision, by letters dated March 15, 2012 and April 3, 2012, respondent represented to the Commissioner and petitioner that it had successfully hired a sufficient number of nurses to meet the nurse-student ratio required by

N.J.A.C. 6A:13A-4.5.¹ However, petitioner represents that a detailed count of preschool students in the district reveals that, even with the newly hired nurses, a ratio of one to 300 has not been achieved.

Accordingly, the Deputy Commissioner – to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-33* – remands the matter to the OAL for specific findings about the number of preschool students in respondent’s district, the number of qualified nurses employed to minister to them, and reasons why the ratio mandated by *N.J.A.C.6A:13A-4.5* has or has not been satisfied.

IT IS SO ORDERED.²

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: May 24, 2012

Date of Mailing: May 25, 2012

¹ Respondent does not appear to challenge the ALJ’s determination regarding standing.

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*)