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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1825-21**

**WILLINGBORO EDUCATION
ASSOCIATION, on behalf of
member, MICHELLE N.
REDDICK,**

Petitioner-Appellant,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF WILLINGBORO,
BURLINGTON COUNTY,**

Respondent-Respondent.

**NEW JERSEY COMMISSIONER
OF EDUCATION,**

Respondent.

Argued October 16, 2023 — Decided October 25, 2023

Before Judges Mawla, Chase, and Vinci.

On appeal from the New Jersey Commissioner of
Education, Docket No. 234-9/19.

Eric J. Riso argued the cause for appellant (Zeller & Wieliczko, LLP, attorneys; Eric J. Riso, on the briefs).

Adam S. Herman argued the cause for respondent Board of Education of the Township of Willingboro (Adams Gutierrez & Lattiboudere, LLC, attorneys; Perry L. Lattiboudere, of counsel and on the brief).

Anna T. Toor, Deputy Attorney General, argued the cause for respondent New Jersey Commissioner of Education (Matthew J. Platkin, Attorney General, attorney; Donna Arons, Assistant Attorney General, of counsel; Matthew J. Lynch, Deputy Attorney General and Anna T. Toor, on the brief).

PER CURIAM

Plaintiff Willingboro Education Association, on behalf of its member Michelle N. Reddick, appeals from a January 12, 2022 final agency decision by the New Jersey Commissioner of Education dismissing its petition of appeal for lack of jurisdiction. We affirm.

The parties are familiar with the underlying facts, which we need not repeat here. Reddick is a Black woman employed by defendant Board of Education of the Township of Willingboro. She alleged a fellow employee in a different department, also a Black woman, verbally and in writing, addressed her in a racially derogatory manner, and subjected her to a hostile work environment on several occasions.

Plaintiff filed an affirmative action complaint with the district superintendent, who assigned a school district attorney to investigate. The investigation concluded plaintiff's allegations were unsubstantiated. The superintendent concurred with the investigator's conclusions. Plaintiff appealed to the Board, which affirmed the superintendent's decision. Notably, the Board's decision advised as follows: "Pursuant to Board Regulation 1550(c)[, plaintiff] reserves the right to appeal the Board's decision to the Commissioner . . . or the New Jersey Division on Civil Rights [(DCR)]."

Plaintiff filed a verified petition of appeal asking the Commissioner to reverse the Board's decision. The Board moved to dismiss the petition and the matter was transferred to the Office of Administrative Law (OAL) for a hearing. An Administrative Law Judge (ALJ) issued an initial decision denying the motion to dismiss because a factfinder could find the incidents in plaintiff's petition were sufficient for a hostile work environment claim. However, the ALJ found the Board's ruling that plaintiff's claims were unsubstantiated was conclusory and devoid of findings to enable the ALJ or the Commissioner to review the decision and determine whether it was arbitrary or capricious. The ALJ returned the matter to the Board to make findings of fact and conclusions of law.

Plaintiff appealed to the Commissioner. It argued a remand was unnecessary and the Commissioner should overturn the Board's decision because it lacked findings of fact, conclusions of law, and was arbitrary and capricious.

The Commissioner concluded she lacked jurisdiction to hear the matter. She noted the Board's affirmative action policy could not confer jurisdiction on her because her jurisdiction is "limited to controversies and disputes that arise under the school laws of this State. N.J.S.A. 18A:6-9." Plaintiff's hostile work environment claims "ar[is]e out of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 [to -50], which does not involve New Jersey school law." Those claims fell "outside of the Commissioner's expertise, and, therefore, beyond her jurisdiction" and belonged before the DCR. The Commissioner dismissed the appeal.

On appeal, plaintiff asserts the dismissal of the case violated due process because it had no advance notice of the jurisdiction issue, which was not raised before the Board or the ALJ. Plaintiff asserts N.J.S.A. 18A:6-9 grants the Commissioner broad authority to consider and decide all disputes arising under State education law. It cites N.J.A.C. 6A:7-1.8(a), requiring district boards of education to provide equal and bias-free access for protected groups to all

categories of employment in public schools, and N.J.A.C. 6A:7-1.8(b), prohibiting boards from entering contracts that discriminate based on the status of protected groups. Plaintiff also points to N.J.A.C. 6A:7-1.5(a), which requires every board to have an affirmative action officer and N.J.A.C. 6A:7-1.10, permitting disputes arising from the application of these regulations to be brought to the Commissioner for resolution, as evidence the Commissioner had jurisdiction to hear the claims.¹

Plaintiff asserts the Commissioner should be estopped from dismissing the petition for lack of jurisdiction because the Commissioner transmitted the case to the OAL for factfinding. It urges us to exercise original jurisdiction and overturn the Board's decision.

Appellate review of an administrative agency's decision is limited. Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 9 (2009). We "defer to matters that lie within the special competence" of the administrative agency. Balagun v. N.J. Dep't of Corr., 361 N.J. Super. 199, 202 (App. Div.

¹ N.J.A.C. 6A:7-1.8 to -1.10 have since been repealed. N.J.A.C. 6A:7-1.8 was repealed because "[a]ll of the existing section's prohibitions are already extensively covered by existing labor laws and rules" 55 N.J.R. 1877(a) Response to Comment 52 (September 5, 2023). N.J.A.C. 6A:7-1.10 was repealed because the provision already existed at N.J.S.A. 18A:6-9. 55 N.J.R. 569(a) Summary (April 3, 2023).

2003). "[A]n appellate court will reverse the decision of the administrative agency only if it is arbitrary, capricious or unreasonable or it is not supported by substantial credible evidence in the record as a whole." Mejia v. N.J. Dep't of Corr., 446 N.J. Super. 369, 376 (App. Div. 2016) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). The determination of "[w]hether subject matter jurisdiction exists presents a purely legal issue, . . . which we review de novo." Santiago v. N.Y. & N.J. Port Auth., 429 N.J. Super. 150, 156 (App. Div. 2012).

At the outset, we reject plaintiff's argument the Commissioner abrogated due process because N.J.A.C. 6A:3-1.10 permits the Commissioner to dismiss a petition for lack of jurisdiction only prior to transmitting a case to the OAL. The regulation provides that "[a]t any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion . . . , the Commissioner may dismiss the petition . . . for lack of jurisdiction" N.J.A.C. 6A:3-1.10. The plain language of the regulation uses the permissive "may" thereby affording the Commissioner the option to dismiss the matter. We do not interpret this language as barring the Commissioner from the ability to dismiss a matter because it has been referred to the OAL. Reading the regulation this way would

unduly circumscribe the Commissioner's authority to review the OAL's factual and legal findings. No evidence supports this interpretation of the regulation.

Moreover, it is axiomatic a court, tribunal, or administrative agency may at any time, sua sponte, dismiss a matter for lack of subject matter jurisdiction. Murray v. Comcast Corp., 457 N.J. Super. 464, 470 (App. Div. 2019). Dismissal is required if a tribunal lacks subject matter jurisdiction. R. 4:6-7; Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 4:6-7 (2023) ("[]lack of subject matter jurisdiction[] may be raised at any time, including on appeal.").

Therefore, the Commissioner was not procedurally barred from sua sponte dismissing for a lack of subject matter jurisdiction. For these reasons, we also reject plaintiff's equitable estoppel argument because the Commissioner's ability to find she lacked jurisdiction as a matter of law was not limited either by N.J.A.C. 6A:3-1.10 or the transmittal of the case to the OAL.

Substantively, N.J.S.A. 18A:6-9 affords the Commissioner jurisdiction over "all controversies and disputes arising under the school laws . . . or under the rules of the State board or of the [C]ommissioner." "The Commissioner has jurisdiction over certain disputes in the absence of an agreement . . . because it concerns major educational policy or because the issues are controlled by the

school laws." S. Orange-Maplewood Educ. Ass'n v. Bd. of Educ. of Sch. Dist. of S. Orange & Maplewood, 146 N.J. Super. 457, 462 (App. Div. 1977).

"It is . . . unquestioned that the Commissioner . . . has not only the power to decide controversies under the school law which entail invidious discrimination practices, but indeed [they] may be regarded as having an affirmative duty to do so." Hinfey v. Matawan Reg'l Bd. of Educ., 77 N.J. 514, 525 (1978) (citing Booker v. Plainfield Bd. of Educ., 45 N.J. 161, 177 (1965) (holding that Commissioner has a "responsibility . . . to make independent determinations" in school desegregation policy)).

Although the DCR and the Commissioner have somewhat concurrent jurisdiction to address discrimination in the public schools, the Commissioner's jurisdiction under the school law extends as far as "public school courses of study and curricula." Id. at 520. "[T]he Commissioner's antidiscrimination statutory authority under [Title 18A], though quite explicit in its reference to discrimination . . . is not measurably more focused upon this subject matter than is the authority of the [DCR]." Id. at 527. Indeed, we have stated the Commissioner's jurisdiction does not mean "that all cases involving school problems should be decided by the Commissioner." Jamison v. Bd. of Educ. of Rockaway Twp., 171 N.J. Super. 549, 552 (App. Div. 1979).

Where employment discrimination is alleged, jurisdiction lies with the DCR. Ibid. See Countiss v. Trenton State Coll., 77 N.J. 590 (1978) (sex discrimination in tenure-reappointment policy); Castellano v. Linden Bd. of Educ., 158 N.J. Super. 350 (App. Div. 1978), rev'd in part, 79 N.J. 407 (1979) and Gilchrist v. Haddonfield Bd. of Educ., 155 N.J. Super. 358 (App. Div. 1978) (sexually discriminatory leave policy); Decker v. Elizabeth Bd. of Educ., 153 N.J. Super. 470 (App. Div. 1977) (woman received lower salary than man for same duties); and Teaneck Bd. of Educ. v. Teaneck Tchrs. Ass'n, 94 N.J. 9, 18 (1983) (a teacher's claim of racial discrimination for not being appointed to a coaching position belongs with the DCR).

Plaintiff asserted an employment discrimination claim, which did not concern school curricula, courses, or school law. For these reasons, jurisdiction belonged in the DCR, and the petition was properly dismissed. Finally, because we have concluded the dismissal of the petition on jurisdictional grounds was correct, we do not reach plaintiff's original jurisdiction argument.

Affirmed.

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


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