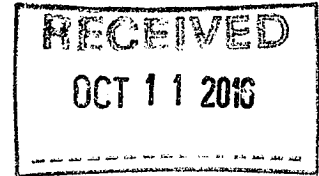




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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October 6, 2016

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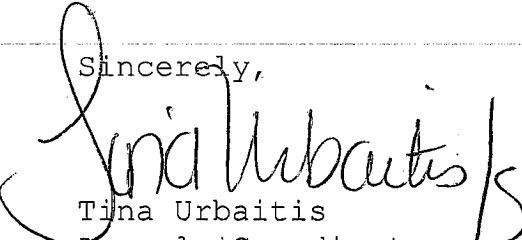
Re: Appeal No. 20481 / Decision No. 16977

Dear Sir/Madam:

Enclosed is a copy of the decision of the Commissioner of Education in the above-referenced appeal.

In a case where the decision must be filed with the school district clerk, a duplicate original is being provided to the district's counsel for that purpose.

Sincerely,


Tina Urbaitis
Appeals Coordinator

Enclosure



No.16977

The University of the State of New York
The State Education Department
Before the Commissioner

Appeal of LANCE HARDY from action of
the Board of Education of the City
School District of the City of
Poughkeepsie regarding an election.

Shaw, Perelson, May & Lambert, LLP, attorneys for
respondent, Beth L. Sims, Esq., of counsel

Petitioner, an unsuccessful candidate for election to
the Board of Education of the City School District of the
City of Poughkeepsie ("respondent" or "board"), appeals
certain actions of the board regarding the election. The
appeal must be dismissed.

The election took place on May 17, 2016. Candidate
Randall Johnson ("Johnson") defeated petitioner for an open
position on the board. This appeal ensued. Petitioner's
request for interim relief, in the form of removal of
Johnson and a stay of the voting results and of Johnson's
"induction," was denied on July 19, 2016.

Petitioner asserts impropriety in respondent's receipt
and consideration of absentee ballots on the day of the
election. Specifically, petitioner asserts that both the
on-site election inspector and a board member improperly
submitted absentee ballots. Petitioner also complains of
an exchange which occurred at a May 17, 2016 board meeting
following the closing of the polls where, after being asked
if the absentee ballots were counted, the district clerk
replied that "some were counted" and stated that she would
not elaborate based on the advice of her attorney.
Petitioner further alleges that a list of absentee ballots,
which the district provided to him after the election,
contains numerous discrepancies and inconsistencies. As

relief, petitioner requests that I conduct a "thorough examination" of the election, including personal interviews and examination of the absentee ballots.

Respondent requests that I dismiss the appeal in its entirety and contends that petitioner has failed to meet his burden to prove that it acted improperly during the May 17, 2016 election. Respondent further contends that the appeal should be dismissed due to: (1) lack of standing; (2) mootness; (3) failure to join necessary parties, including Johnson; and (4) lack of jurisdiction, to the extent petitioner seeks relief under the Freedom of Information Law or criminal prosecution.

Initially, I note that the petition includes copies of newspaper articles. It is well-settled that newspaper articles do not constitute evidence of the truth of the statements contained therein (Appeal of McFeeley, 53 Ed Dept Rep, Decision No. 16,598; Appeal of Parris, 51 *id.*, Decision No. 16,261). Therefore, I have not considered such articles for the veracity of their content.

To the extent petitioner alleges that respondent did not adhere to the requirements of the Freedom of Information Law ("FOIL"), I note that section 89 of the Public Officers Law vests exclusive jurisdiction over complaints alleging FOIL violations in the Supreme Court of the State of New York and alleged violations thereof may not be adjudicated in an appeal to the Commissioner (Appeal of Olka, 48 Ed Dept Rep 10, Decision No. 15,776; Application of Gentile, 47 *id.* 438, Decision No. 15,747; Appeal of T.K., 47 *id.* 234, Decision No. 15,679). Therefore, I have no jurisdiction to address the FOIL allegations raised in this appeal.

To the extent petitioner requests that the election results be "set aside" and seeks an investigation into allegedly illegal and/or improper conduct of the board president and a board member, the appeal must be dismissed for failure to join necessary parties. A party whose rights would be adversely affected by a determination of an appeal in favor of a petitioner is a necessary party and must be joined as such (Appeal of Murray, 48 Ed Dept Rep 517, Decision No. 15,934; Appeal of Miller, 48 *id.* 465, Decision No. 15,917; Appeal of Williams, 48 *id.* 343, Decision No. 15,879). Joinder requires that an individual

be clearly named as a respondent in the caption and served with a copy of the notice of petition and petition to inform the individual that he or she should respond to the petition and enter a defense (Appeal of Murray, 48 Ed Dept Rep 517, Decision No. 15,934; Appeal of Miller, 48 id. 465, Decision No. 15,917; Appeal of Williams, 48 id. 343, Decision No. 15,879). Section 275.8(d) of the Commissioner's regulations provides in pertinent part: "If an appeal involves the validity of a school district meeting or election ... a copy of the petition must be served upon the trustee or board of trustees or board of education as the case may be, and upon each person whose right to hold office is disputed and such person must be joined as a respondent" (emphasis added) (see Appeal of Schultz, 48 Ed Dept Rep 70, Decision No. 15,796; Appeal of Duffy, 47 id. 86, Decision No. 15,634).

Petitioner asks that the election results be "set aside." However, he failed to join Johnson, the successful candidate, as a respondent in this matter by failing to personally serve a copy of the petition on Johnson¹ or name him as a respondent. Moreover, to the extent petitioner seeks an investigation into allegedly illegal and/or improper conduct on the part of the board president and another board member, petitioner has also failed to name and serve those individuals (see Appeal of Nelson, 55 Ed Dept Rep, Decision No. 16,845). The appeal must, therefore, be dismissed for failure to join necessary parties.

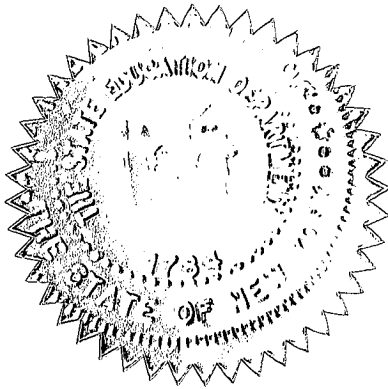
The remaining relief sought by petitioner - an investigation of his allegations - is outside the Commissioner's jurisdiction. An appeal to the Commissioner is appellate in nature and does not provide for investigations (Appeal of Huffine, 48 id. 386, Decision No. 15,893; Appeal of D.K., 48 id. 276, Decision No. 15,857). Because this is the sole remaining relief that petitioner seeks, any discussion of the merits of the appeal would be in the nature of an advisory opinion. It is well established that the Commissioner does not issue advisory opinions or declaratory rulings in an appeal pursuant to Education Law §310 (Appeal of a Student with a Disability,

¹ The record indicates that petitioner attempted to effectuate service on Johnson by mail on July 7, 2016.

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In light of this disposition, I need not address the parties' remaining contentions.

THE APPEAL IS DISMISSED.



IN WITNESS WHEREOF, I, MaryEllen Elia, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 6th day of October 2016.

MaryEllen Elia

Commissioner of Education



No.16977

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The State Education Department
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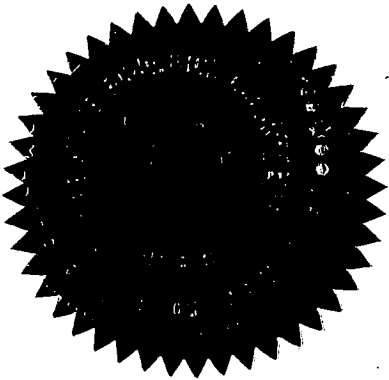
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MaryEllen Elia

Commissioner of Education