16-P-654 Appeals Court

NEW BEDFORD EDUCATORS ASSOCIATION vs. CHAIRMAN OF THE MASSACHUSETTS BOARD OF ELEMENTARY AND SECONDARY EDUCATION & others[1] (and two consolidated cases[2]).

No. 16-P-654.

Middlesex. May 4, 2017. - August 23, 2017.

Present: Trainor, Vuono, & Sullivan, JJ.

Practice, Civil, Standing, Declaratory proceeding, Action in nature of mandamus, Relief in the nature of certiorari. Administrative Law, Standing, Judicial review. Declaratory Relief. Mandamus. Board of Education. Commonwealth, Education. Education. School and School Committee. Labor, Public employment.

Civil actions commenced in the Superior Court Department on July 18, July 23, and October 21, 2014.

After consolidation, motions to dismiss were heard by Kimberly S. Budd, J.

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[1] Commissioner of the Massachusetts Department of Elementary and Secondary Education, and Massachusetts Board of Elementary and Secondary Education.

[2] Holyoke Teachers Association vs. Chairman of the Massachusetts Board of Elementary and Secondary Education & others; Boston Teachers Union vs. Chairman of the Massachusetts Board of Elementary and Secondary Education & others.

Laurie R. Houle for the plaintiffs.
Iraida J. Alvarez, Assistant Attorney General (Pierce O. Cray, Assistant Attorney General, also present) for the defendants.

VUONO, J. In these consolidated cases, we consider the propriety of actions taken by the Commissioner of the Massachusetts Department of Elementary and Secondary Education (commissioner) and by the Massachusetts Board of Elementary and Secondary Education (board) in creating and approving "turnaround plans" for chronically underperforming schools pursuant to the so-called Achievement Gap Act (Act), G. L. c. 69, § 1J. The plaintiffs, New Bedford Educators Association (NBEA), Holyoke Teachers Association (HTA), and Boston Teachers Union (BTU) (collectively, the unions), filed separate complaints, later amended, in the Superior Court against the commissioner, the board, and its chairman (collectively, the defendants), alleging that the defendants failed to satisfy the requirements of the Act with regard to four chronically underperforming schools located in New Bedford, Holyoke, and Boston.[3] The unions sought declaratory relief pursuant to G. L. c. 231A. NBEA and HTA also sought certiorari review under G. L.

[3] In their amended complaints, the unions also alleged that the defendants' actions violated provisions of the United States Constitution and the Massachusetts Declaration of Rights. The parties subsequently filed a joint stipulation of dismissal with respect to these constitutional claims. Therefore, such claims are not before us in the present appeal.

c. 249, § 4, and relief in the nature of mandamus pursuant to G. L. c. 249, § 5. The defendants moved to dismiss the unions' complaints under Mass.R.Civ.P. 12(b)(1), 365 Mass. 754 (1974), for lack of subject matter jurisdiction. Following a hearing, a judge dismissed the complaints, concluding that the unions did not have standing to challenge the turnaround plans because the unions' primary concerns were outside the area of interest protected by G. L. c. 69, § 1J, and because the defendants' statutory duty was to students, not to local teachers' unions. On appeal, the unions contend that the judge erred in dismissing their complaints solely on the basis of standing. For the reasons that follow, we affirm.

1. Statutory framework. To give context to the unions' claims, we set forth in some detail the provisions of the Act. When the Legislature enacted the Education Reform Act of 1993, it declared that a paramount goal of the Commonwealth was "to provide a public education system of sufficient quality to extend to all children . . . the opportunity to reach their full potential and to lead lives as participants in the political and social life of the commonwealth and as contributors to its economy." G. L. c. 69, § 1, as amended through St. 1993, c. 71, § 27. In furtherance of this goal, the Legislature rewrote the Act in 2010 to remedy deficiencies in underperforming and chronically underperforming schools, thereby improving student

achievement. See G. L. c. 69, § 1J, as amended through St. 2010, c. 12, § 3. The "chronically underperforming" designation is reserved for the most challenged schools, such as those in the present case, and is based on multiple indicators of school quality.[4] See G. L. c. 69, § 1J(a); 603 Code Mass. Regs. § 2.06(2) (2012). This designation can only be imposed where a school previously has been deemed "underperforming" and has failed to improve. G. L. c. 69, § 1J(a).

Once the commissioner designates a school as chronically underperforming, the commissioner is required to create a turnaround plan for the school in accordance with specific provisions of the Act.[5] See G. L. c. 69, § 1J(m); 603 Code Mass.

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[4] Indicators of school quality include "student attendance, dismissal rates and exclusion rates, promotion rates, graduation rates or the lack of demonstrated significant improvement for 2 or more consecutive years in core academic subjects, either in the aggregate or among subgroups of students, including designations based on special education, low-income, English language proficiency and racial classifications." G. L. c. 69, § 1J(a). Under the Act, "[n]ot more than 4 per cent of the total number of public schools may be designated as underperforming or chronically underperforming at any given time." Ibid.

[5] A turnaround plan shall include the following components: (1) steps to address the social service and health care needs of students and their families, including mental health and substance abuse screenings; (2) steps to improve or expand child welfare and law enforcement services in the school community; (3) steps to improve workforce development services provided to students and their families; (4) steps to address achievement gaps for English language learners, low-income students, and special education students; (5) steps to provide alternative English language learning programs for students with limited

Regs. § 2.06(6) (2012). The commissioner "shall convene a local stakeholder group of not more than 13 individuals for the purpose of soliciting recommendations on the content of such plan in order to maximize the rapid academic achievement of students." G. L. c. 69, § 1J(m). As relevant here, two members of the stakeholder group shall be the president of the local teacher's union (or a designee), and a teacher from the chronically underperforming school who is chosen by the faculty of that school.[6] Ibid. The commissioner must convene the local stakeholder group within thirty days of a school being designed as chronically underperforming, and the group must make its recommendations to the commissioner within forty-five days of its initial meeting. Ibid. The commissioner is statutorily required to give "due consideration" to the recommendations of the stakeholder group. Ibid.

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proficiency; and (6) a financial plan for the school. G. L. c. 69, § 1J(n).

[6] The other members of the local stakeholder group shall include "(1) the superintendent, or a designee; (2) the chair of the school committee, or a designee; . . . (4) an administrator from the school, who may be the principal, chosen by the superintendent; . . . (6) a parent from the school chosen by the local parent organization; (7) representatives of applicable state and local social service, health and child welfare agencies, chosen by the commissioner; (8) as appropriate, representatives of state and local workforce development agencies, chosen by the commissioner; (9) for elementary schools, a representative of an early education and care provider . . . ; and (10) a member of the community appointed by the chief executive of the city or town." G. L. c. 69, § 1J(m).

When considering such recommendations, the commissioner has broad authority under the Act to implement changes to resolve the deficiencies that have caused a school to be designated as chronically underperforming. See G. L. c. 69, § 1J(n). Among other remedial measures, and "[n]otwithstanding any general or special law to the contrary," the commissioner may expand, alter, or replace a school's curriculum and program offerings, may provide additional funds to the school from the district's budget, may expand the school day or the school year or both, may add full-day kindergarten classes if none exist, and may "establish steps to assure a continuum of high expertise teachers."[7] G. L. c. 69, § 1J(o). The commissioner also may limit, suspend, or change the provisions of any collective bargaining agreement, provided that he "shall not reduce the compensation of an administrator, teacher or staff member unless the hours of the person are proportionately reduced," and the commissioner "may require the school committee and any applicable unions to bargain in good faith for 30 days before exercising authority" under the relevant statutory provision. Ibid. In addition, after consultation with local unions, the

[7] A teacher with professional teacher status in a school declared to be chronically underperforming can be dismissed "for good cause," but "may seek review of a termination decision . . . by filing a petition for expedited arbitration with the commissioner." G. L. c. 69, § 1J(o).

commissioner may "require the principal and all administrators, teachers and staff to reapply for their positions in the school, with full discretion vested in the superintendent regarding his consideration of and decisions on rehiring based on the reapplications." Ibid. The turnaround plan shall include quantifiable annual goals to facilitate assessment of the school across numerous "measures of school performance and student success." G. L. c. 69, § 1J(n).

Within thirty days of the local stakeholder group making recommendations, the commissioner must submit a preliminary version of the turnaround plan to the stakeholder group, the superintendent, and the school committee, all of whom may propose modifications to the plan within thirty days of its submission. See G. L. c. 69, § 1J(p). The commissioner "shall consider and incorporate the modifications into the plan if the commissioner determines that inclusion of the modifications would further promote the rapid academic achievement of students at the applicable school." Ibid. The commissioner is free to alter or reject any of the proposed modifications. See ibid. Within thirty days of receiving such modifications, "the commissioner shall issue a final turnaround plan for the school and the plan shall be made publicly available." Ibid.

Within thirty days of the issuance of the final turnaround plan, the superintendent, the school committee, or the local

union may appeal to the board regarding one or more of the components of the plan, including the absence of any proposed modifications. See G. L. c. 69, § 1J(q). Based on its consideration of the challenged components, a majority of the board may vote to modify the final turnaround plan.[8] See ibid. The decision of the board regarding an appeal shall be made within thirty days and "shall be final." Ibid.

2. Factual and procedural background. We summarize the relevant facts alleged in the unions' amended complaints and supporting exhibits. See Dartmouth v. Greater New Bedford Regional Vocational Technical High Sch. Dist., 461 Mass. 366, 368 (2012). In March, 2010, the commissioner designated the Paul A. Dever Elementary School (Dever School) and the John P. Holland Elementary School (Holland School), both in Boston, as underperforming schools. The superintendent of the Boston public schools created and implemented a turnaround plan for each one. In the fall of that same year, the Morgan Full Service Community School (Morgan School) in Holyoke and the John

[8] The board may modify a final turnaround plan if it determines that "(1) such modifications would further promote the rapid academic achievement of students in the applicable school; (2) a component of the plan was included, or a modification was excluded, on the basis of demonstrably-false information or evidence; or (3) the commissioner failed to meet the requirements of [G. L. c. 69, § 1J(m)-(p), pertaining to turnaround plan development for chronically underperforming schools], inclusive." G. L. c. 69, § 1J(q).

Avery Parker Elementary School (Parker School) in New Bedford also were designated as underperforming schools. The superintendents of their respective school districts created and implemented turnaround plans. Over the next three years, improvement efforts at the four schools were unsuccessful. Consequently, on October 30, 2013, the commissioner designated all four schools as chronically underperforming and thereafter appointed a receiver for each one.

In accordance with the Act, the commissioner convened local stakeholder groups to provide recommendations regarding a new turnaround plan for each school. The commissioner also notified the school committee and the teachers union in each city that he intended to exercise his authority under G. L. c. 69, § 1J(o), to change the provisions of each school's collective bargaining agreement. In particular, the commissioner stated that each turnaround plan would include a longer school day, a longer school year, a performance-based compensation system, and new working conditions. By his letter, the commissioner required the school committee and the union in each city to bargain in good faith for thirty days in connection with these matters.

On March 7, 2014, the commissioner released a preliminary turnaround plan for each of the four schools.[9] The local

[9] NBEA and HTA alleged that the preliminary turnaround plans for their respective schools did not include an adequate

stakeholder groups for three of the schools reconvened and proposed several modifications, which were submitted to the commissioner.[10] In April, 2014, the commissioner issued a final turnaround plan for each school.[11] With the exception of the Holland School, the commissioner also provided each local stakeholder group, superintendent, and school committee with a memorandum describing the modifications he had chosen to adopt,

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financial plan, suspended the salary provisions of the collective bargaining agreement, increased working hours without a commensurate increase in compensation, and tied teachers' compensation to their scores on performance evaluations. In addition, NBEA alleged that the preliminary plan for the Parker School did not include steps to address the achievement gap for special education students, and HTA alleged that the preliminary plan for the Morgan School did not include steps to address the achievement gap for students who had limited proficiency in English. HTA also alleged that the preliminary plan suspended the grievance procedure in the collective bargaining agreement and replaced it with a "dispute resolution" procedure that gave the commissioner final decision-making authority. Finally, BTU alleged that the preliminary turnaround plan for the Dever School called for the discontinuation of a dual language program.

[10] The local stakeholder group for the Holland School did not submit to the commissioner any proposed modifications to the school's preliminary turnaround plan.

[11] NBEA and HTA alleged that the deficiencies that they had identified in the preliminary turnaround plans for the Parker School and the Morgan School, respectively, were not resolved in the final turnaround plans. See note 9, supra. BTU alleged that, in addition to discontinuing the dual language program at the Dever School, the final turnaround plans for both the Dever School and the Holland School increased working hours without a commensurate increase in compensation, imposed a new compensation model, and replaced the grievance procedure in the collective bargaining agreements with a new "dispute resolution" procedure.

and explaining why other modifications were not included in the final turnaround plans.

Each union appealed the final turnaround plan for its respective school to the board and proposed modifications to multiple provisions of the plans.[12] Shortly thereafter, the commissioner provided the board with memoranda explaining the development of the turnaround plans and addressing the perceived flaws in the unions' proposed modifications. The board considered NBEA's appeal at a special meeting held on May 19, 2014. After hearing arguments from NBEA and the commissioner, the board voted to accept some, but not all, of the union's proposed modifications. The board then posted on its Web site the modified final turnaround plan for the Parker School. The board considered the appeals from HTA and BTU at a special meeting held on June 9, 2014. After hearing arguments from the unions and the commissioner, the board voted to accept some, but not all, of the modifications proposed by HTA, and the board voted to reject all of the modifications proposed by BTU. The board posted on its Web site the modified final turnaround plan for the Morgan School. The final turnaround plans for the Dever

[12] NBEA also informed the board that several members of the local stakeholder group for the Parker School hindered the ability of other members of the group to propose modifications to the preliminary turnaround plan relating to teachers' hours and compensation.

School and the Holland School, which were not modified by the board, already had been made available to the public.

The unions then commenced the present actions in the Superior Court. In their amended complaints, NBEA and HTA alleged that the final turnaround plans for the Parker School and the Morgan School, respectively, did not comport with the requirements of G. L. c. 69, § 1J, that such turnaround plans failed to maximize the rapid academic achievement of students, that the process by which the board voted on proposed modifications to the turnaround plans was legally flawed, and that the defendants' actions were arbitrary and capricious. BTU alleged in its amended complaint that the final turnaround plan for the Dever School was statutorily deficient because it eliminated the dual language program on the basis of demonstrably false evidence, and that the final turnaround plans for both the Dever School and the Holland School were statutorily deficient because neither the new compensation system nor the new dispute resolution procedure would help to maximize the rapid academic achievement of students. The judge allowed the parties' joint motion to consolidate the three actions for purposes of pretrial case management. The judge subsequently granted the defendants' motions to dismiss the amended complaints under Mass.R.Civ.P. 12(b)(1) for lack of subject matter jurisdiction, concluding that the unions lacked

standing to properly bring their claims. This consolidated appeal ensued.

3. Discussion. "Standing is an issue of subject matter jurisdiction that is properly challenged by way of a motion to dismiss under rule 12(b)(1)." Indeck Maine Energy, LLC v. Commissioner of Energy Resources, 454 Mass. 511, 516 (2009) (Indeck). See Ginther v. Commissioner of Ins., 427 Mass. 319, 322 (1998), quoting from Tax Equity Alliance v. Commissioner of Rev., 423 Mass. 708, 715 (1996) ("[O]nly persons who have themselves suffered, or who are in danger of suffering, legal harm can compel the courts to assume the difficult and delicate duty of passing upon the validity of the acts of a coordinate branch of government"). An appellate court reviews the allowance of a motion to dismiss de novo, accepting the allegations in the complaint as true and drawing all reasonable inferences in favor of the plaintiff.[13] See Curtis v. Herb Chambers I-95, Inc., 458 Mass. 674, 676 (2011). In order to withstand a motion to dismiss, the complaint must include factual allegations sufficient "to raise a right to relief above the speculative level." Iannacchino v. Ford Motor Co., 451

[13] Under rule 12(b)(1), "the judge may consider affidavits and other matters outside the face of the complaint that are used to support the movant's claim that the court lacks subject matter jurisdiction." Ginther v. Commissioner of Ins., 427 Mass. at 322 n.6.

Mass. 623, 636 (2008), quoting from Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Where the factual allegations do not plausibly suggest an entitlement to relief, the complaint must be dismissed. See Iannacchino v. Ford Motor Co., supra.

a. Declaratory judgment. The unions contend that the judge erred in concluding that they did not have standing to seek declaratory relief with respect to the defendants' alleged failure to satisfy the requirements of G. L. c. 69, § 1J, in creating and approving the four turnaround plans. In the unions' view, the defendants' actions were arbitrary and capricious because they did not serve to promote the rapid academic achievement of students at chronically underperforming schools. The unions argue that, given the important role of teachers in the turnaround process, the defendants' failure to adopt modifications proposed by the local stakeholder groups, and the resulting flaws in the turnaround plans, harmed the teachers' interests in promoting rapid academic achievement and ensuring compliance with the Act. Moreover, the unions continue, because the Legislature gave them "stakeholder" status, the defendants owed the unions and their member teachers a duty to comport with the provisions of G. L. c. 69, § 1J, and to ensure that the turnaround plans were not deficient. Consequently, the unions assert that they have standing to seek declaratory relief. We conclude that the plain meaning of the

statute is that the duties imposed under § 1J run to the students, and, thus, the unions do not have standing.

An action for declaratory judgment under G. L. c. 231A may be brought in the Superior Court "to obtain a determination of the legality of the administrative practices and procedures of any municipal, county or state agency or official" that are alleged to be in violation of State law. G. L. c. 231A, § 2, as amended by St. 1974, c. 630, § 1. "To obtain declaratory relief in a case involving administrative action, 'a plaintiff must show that (1) there is an actual controversy; (2) he has standing; (3) necessary parties have been joined; and (4) available administrative remedies have been exhausted.'" School Comm. of Hudson v. Board of Educ., 448 Mass. 565, 579 (2007) (Hudson), quoting from Villages Dev. Co. v. Secretary of the Executive Office of Envtl. Affairs, 410 Mass. 100, 106 (1991). It is well established that "G. L. c. 231A does not provide an independent statutory basis for standing." Enos v. Secretary of Envtl. Affairs, 432 Mass. 132, 135 (2000) (Enos). Therefore, to establish standing to challenge the actions of an administrative agency or official, a plaintiff must allege "an injury within the area of concern of the statute or regulatory scheme under which the injurious action has occurred." Ibid., quoting from Massachusetts Assn. of Indep. Ins. Agents & Brokers, Inc. v. Commissioner of Ins., 373 Mass. 290, 293 (1977). See Indeck,

454 Mass. at 517. That is to say, the plaintiff's injury must come within the "zone of interests" protected by the statute. Enos, supra, quoting from Penal Insts. Commr. for Suffolk County v. Commissioner of Correction, 382 Mass. 527, 532 (1981). Moreover, it is not enough for a plaintiff to allege an injury caused by some act or omission of the defendant. See Ten Persons of the Commonwealth v. Fellsway Dev. LLC, 460 Mass. 366, 380 (2011). The plaintiff also must show that the defendant violated some duty that it owed to the plaintiff. See ibid. See also Penal Insts. Commr. for Suffolk County v. Commissioner of Correction, supra; Enos, supra.

"[S]tanding is not measured by the intensity of the litigant's interest or the fervor of [its] advocacy." Pratt v. Boston, 396 Mass. 37, 42 (1985), quoting from Valley Forge College v. Americans United for Separation of Church & State, 454 U.S. 464, 486 (1982). "In the final analysis, we must decide whether standing exists by examining several considerations, including the language of the statute in issue; the Legislature's intent and purpose in enacting the statute; the nature of the administrative scheme; decisions on standing; any adverse effects that might occur, if standing is recognized; and the availability of other, more definite, remedies to the plaintiffs." Enos, 432 Mass. at 135-136. "[W]e pay special attention to the requirement that standing usually is not

present unless the governmental official or agency can be found to owe a duty directly to the plaintiffs." Id. at 136.

Based on our review of the language and purpose of G. L. c. 69, § 1J, as well as other relevant considerations, we conclude that the Legislature did not intend to confer standing on the unions to seek judicial review of the commissioner's creation and the board's approval of turnaround plans for chronically underperforming schools. The Act is a comprehensive statutory and regulatory scheme that is designed to remediate deficiencies at such schools in order to promote and maximize the rapid academic achievement of students. See G. L. c. 69, § 1J(m)-(q), (z); 603 Code Mass. Regs. §§ 2.00 et seq. (2012). The Legislature conferred broad authority on the commissioner to create the turnaround plans through an expedited administrative process, and it gave the board final authority to approve such plans. See G. L. c. 69, § 1J(m)-(q). The Act does not contemplate delaying the implementation of the turnaround plans by conferring standing on the unions to then challenge the defendants' actions through litigation. See Hudson, 448 Mass. at 584 (local school committees did not have standing to seek declaratory relief from Board of Education decision granting school charter under G. L. c. 71, § 89, where such challenge would "necessarily distort the collaborative purpose of the process, frustrate what was intended to be a nonadversary

administrative procedure, and subvert the very purpose of the statutory scheme"). The intent of the Legislature is clear from the plain words of the statute, and we are not at liberty to deviate from the legislative mandate. See Boston Hous. Authy. v. National Conference of Firemen & Oilers, Local 3, 458 Mass. 155, 162 (2010) (where statutory language is clear and unambiguous, it is conclusive as to intent of Legislature, and we do not vary its meaning).

It goes without saying that teachers play an integral role in the turnaround process for chronically underperforming schools. First and foremost, however, the Act is concerned with giving the commissioner every available resource to maximize the rapid academic achievement of students. To that end, as we have discussed, the Legislature authorized the commissioner, among other matters, to expand the school day or school year or both; to limit, suspend, or change the provisions of any collective bargaining agreement; to require good faith bargaining for thirty days over the terms of such agreement; and to require teachers to reapply for their positions in the schools. See G. L. c. 69, § 1J(o). These statutory provisions plainly suggest that any alleged harm to the unions or their members caused by the creation and approval of the turnaround plans, including changes to the terms and conditions of employment of teachers at the affected schools, is not within the "zone of

interests" protected by the Act.[14] See Beard Motors, Inc. v. Toyota Motor Distribs., Inc., 395 Mass. 428, 431-432 (1985) (not every party claiming harm from violation of statutory scheme has standing to bring action thereunder). Regardless of any adverse consequences to the unions, the Legislature gave the commissioner wide-ranging authority to implement whatever changes the commissioner deemed necessary to effectuate the purpose of the Act. As such, it is the needs of the students attending chronically underperforming schools that are protected under the Act.[15]

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[14] General Laws c. 69, § 1J(o), provides that, notwithstanding the commissioner's authority to limit, suspend, or change the provisions of any collective bargaining agreement, the commissioner "shall not reduce the compensation of an administrator, teacher or staff member unless the hours of the person are proportionately reduced." To the extent that teachers' hours are increased as a result of the commissioner's decision to "expand the school day or school year or both," the Act does not impose on the commissioner a corresponding obligation to raise teachers' compensation. Ibid. See Commissioner of Correction v. Superior Ct. Dept. of the Trial Ct. for the County of Worcester, 446 Mass. 123, 126 (2006) ("We do not read into the statute a provision which the Legislature did not see fit to put there, nor add words that the Legislature had an option to, but chose not to include"). The fact that the Legislature did not include such an obligation in § 1J(o) strongly suggests an awareness that the turnaround process could require teachers to work longer hours for the same compensation, and approval of the same.

[15] Although we express no view on the matter, we do not foreclose the possibility that, in different circumstances, the parent of a student attending a chronically underperforming school could have standing on behalf of that student to bring an action against the defendants for an alleged failure to comply

The Legislature intended for the unions to have a specific role in the turnaround process under G. L. c. 69, § 1J. First, the commissioner was required to include the president of the local teacher's union (or a designee) and one teacher in each local stakeholder group, and he did so. See G. L. c. 69, § 1J(m). However, the inclusion of these two union representatives among the ten or eleven individuals comprising each stakeholder group did not confer any special status on the unions. See Enos, 432 Mass. at 137-139 (participation in administrative process does not automatically confer standing on party to seek judicial review of resulting decision). Second, the commissioner was required to consider the recommendations of the stakeholder group when creating the preliminary and final turnaround plans. See G. L. c. 69, § 1J(m)-(p). These recommendations were from the stakeholder group as a whole, not from any stakeholder in particular, and nothing in the Act obligated the commissioner to incorporate them into the turnaround plans. The commissioner here did consider the recommendations and modifications from the local stakeholder groups, choosing to accept some and to reject others. Lastly, within thirty days of the issuance of the final turnaround plans, the unions were statutorily authorized to appeal to the

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with the requirements of G. L. c. 69, § 1J. See Indeck, 454 Mass. at 526 n.15.

board; this right to appeal also was conferred on the superintendent and the school committee. See G. L. c. 69, § 1J(q). Although the board was obligated to review the unions' appeals, the board was not required to adopt any of the proposed modifications to the turnaround plans, and the decision of the board regarding each appeal was final. See ibid. Here, the board heard the unions' appeals at two special meetings, considered arguments made by the parties, and voted to accept some, but not all, of the unions' proposed modifications. This was all that was required. In our view, the unions have not shown that the defendants violated any duty that they owed directly to the unions.

For the foregoing reasons, we conclude that the unions do not have standing to seek declaratory relief. To rule otherwise would ignore the comprehensive authority conferred on the commissioner and the board by the Legislature, and would cause substantial delay to the turnaround process. The purpose of the Act -- to maximize the rapid academic achievement of students at chronically underperforming schools -- would be undermined. Moreover, the unions may not seek declaratory relief in the absence of a private right of action where the Legislature intended to foreclose such a remedy. See Boston Med. Center Corp. v. Secretary of the Executive Office of Health & Human Servs., 463 Mass. 447, 471 (2012); Frawley v. Police Commr. of

Cambridge, 473 Mass. 716, 724 (2016). We have no reason to believe that our conclusion regarding the unions' standing will prevent the Act from being administered properly, in accordance with the Legislature's intent.[16]

b. Relief in the nature of mandamus. NBEA and HTA contend that they are entitled to mandamus relief under G. L. c. 249, § 5, to compel the defendants to act in accordance with the provisions of G. L. c. 69, § 1J.[17]

"It is well settled that relief in the nature of mandamus is extraordinary and may be granted only to prevent a failure of justice in instances where there is no alternative remedy." Callahan v. Superior Ct., 410 Mass. 1001, 1001 (1991). "A complaint in the nature of mandamus is 'a call to a government official to perform a clear cut duty,' and the remedy is limited

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[16] The unions have alleged that they have "associational standing," on behalf of their members, to seek declaratory relief. To have associational standing, an organization must establish, among other requirements, that "its members would otherwise have standing to sue in their own right." Animal Legal Defense Fund, Inc. v. Fisheries & Wildlife Bd., 416 Mass. 635, 638 n.4 (1993), quoting from Hunt v. Washington State Apple Advertising Commn., 432 U.S. 333, 343 (1977). The reasons why the unions do not have standing are equally applicable to individual teachers. Therefore, we conclude that the unions' claims regarding associational standing are unavailing.

[17] Although NBEA and HTA requested mandamus relief in their amended complaints, the judge did not specifically address whether they were entitled to such relief. They again have raised this issue on appeal, and we proceed to address it. See Hingham Mut. Fire Ins. Co. v. Smith, 69 Mass. App. Ct. 1, 7 & n.9 (2007).

to requiring action on the part of the government official." Simmons v. Clerk-Magistrate of the Boston Div. of the Hous. Ct. Dept., 448 Mass. 57, 59-60 (2006), quoting from Doe v. District Attorney for the Plymouth Dist., 29 Mass. App. Ct. 671, 675 (1991). "Mandamus is not an appropriate remedy to obtain a review of the decision of public officers who have acted and to command them to act in a new and different manner." Boston Med. Center Corp. v. Secretary of the Executive Office of Health & Human Servs., 463 Mass. at 470, quoting from Harding v. Commissioner of Ins., 352 Mass. 478, 480 (1967). Like the declaratory judgment statute, the mandamus statute does not provide an independent basis for standing. See Indeck, 454 Mass. at 516. Ordinarily, for a plaintiff to have standing to bring a mandamus action, the plaintiff must allege a breach of duty owed to the plaintiff by the public defendant. See Perella v. Massachusetts Turnpike Authy., 55 Mass. App. Ct. 537, 539 (2002).

Here, NBEA and HTA have not established that they are seeking the enforcement of any nondiscretionary duties. We conclude, therefore, that NBEA and HTA do not have standing to bring an action for relief in the nature of mandamus. Further, even if they did have standing, they have not sought to compel the defendants to perform a clear cut statutory duty in the face of official inaction. Instead, NBEA and HTA have requested

mandamus relief in the hope that the commissioner and the board will be ordered to act in a new and different manner when creating and approving the turnaround plans. Mandamus is not an appropriate remedy in these circumstances.

c. Review in the nature of certiorari. Finally, NBEA and HTA contend that they are entitled to certiorari review under G. L. c. 249, § 4.[18] They argue that such review is warranted not only because have they been injured by the turnaround process and lack an alternative remedy, but also because their appeals to the board constituted quasi judicial proceedings.

A civil action in the nature of certiorari is "a limited procedure reserved for correction of substantial errors of law apparent on the record created before a judicial or quasi-judicial tribunal." Hudson, 448 Mass. at 575-576. See St. Botolph Citizens Comm., Inc. v. Boston Redev. Authy., 429 Mass. 1, 7 (1999). "To obtain certiorari review of an administrative decision, one must show '(1) a judicial or quasi-judicial proceeding; (2) a lack of all other reasonably adequate remedies; and (3) a substantial injury or injustice arising from the proceeding under review.'" Hudson, supra at 576, quoting

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[18] As with their requests for mandamus relief, NBEA and HTA requested certiorari review in their amended complaints, but the judge did not specifically address whether they were entitled to such review. See note 17, supra. They again have raised this issue on appeal, and we proceed to address it. See Hingham Mut. Fire Ins. Co. v. Smith, 69 Mass. App. Ct. at 7 & n.9.

from Warren v. Hazardous Waste Facility Site Safety Council, 392 Mass. 107, 117 (1984). In determining whether a government body acts in a quasi judicial manner, a court looks to "the form of the proceeding reasonably employed by the agency, and the extent to which that proceeding resembles judicial action." Hoffer v. Board of Registration in Med., 461 Mass. 451, 457 (2012). We consider several factors in distinguishing a quasi-judicial proceeding from one that is legislative or purely administrative: "(1) whether the proceeding is preceded by specific charges; (2) whether the proceeding involves sworn testimony by witnesses subject to cross-examination, or a party attesting to certain facts, as opposed to unsworn statements by interested persons advocating for or against a proposed new policy; (3) whether the agency conducts an investigation into the veracity of attested-to facts; (4) whether the proceeding culminates in an individualized determination of a party's entitlement to some benefit, or an individualized course of discipline, as opposed to culminating in the adoption of a rule of general applicability; and (5) whether the proceeding is followed by the adoption of formal findings of fact." Revere v. Massachusetts Gaming Commn., 476 Mass. 591, 600-601 (2017) (citations omitted).

Based on our assessment of these factors, we conclude that the board's review of the appeals submitted by NBEA and HTA did

not occur in the context of quasi judicial proceedings. Rather, the special board meetings to consider the unions' appeals were wholly administrative. That being the case, the NBEA and the HTA are not entitled to certiorari review under G. L. c. 249, § 4.

Judgment affirmed.