

LORENZO RICHARDSON,	:	
	:	
PETITIONER,	:	
	:	
V.	:	
	:	
VIDYA GANGADIN, BOARD OF EDUCATION	:	
PRESIDENT; AND RAMON RIVERA,	:	
BOARD ATTORNEY,	:	
	:	
RESPONDENTS.	:	COMMISSIONER OF EDUCATION
	:	
AND	:	DECISION
	:	
JERSEY CITY EDUCATION ASSOCIATION, on	:	
behalf of its members, RONALD GRECO, Jr.,	:	
MONIQUE ANDREWS AND ELLEN ZADROGA,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	
	:	
BOARD OF EDUCATION OF THE CITY OF	:	
JERSEY CITY, HUDSON COUNTY AND	:	
MARCIA LYLES, SUPERINTENDENT,	:	
	:	
RESPONDENTS.	:	

SYNOPSIS

These consolidated petitions sought various forms of relief in regard to the renewal or nonrenewal of the contract of the Superintendent of the Jersey City Public Schools, Dr. Marcia Lyles. The matter involves a determination as to whether the Superintendent’s contract was renewed by operation of law in accordance with *N.J.S.A. 18A:17-20.1*. The Jersey City Education Association filed a motion for summary decision on the second petition, while motions to dismiss were filed by respondents in both consolidated matters.

The ALJ found, *inter alia*, that: these consolidated cases raised the question as to whether the parties may alter the provisions of *N.J.S.A. 18A:17-20.1* by contract; Dr. Lyles’ contract expired on June 30, 2016 and, in accordance with *N.J.S.A. 18A:17-20.1*, the Board had up until March 2, 2016 to inform her as to the nonrenewal of her contract; however, the terms of Lyle’s contract altered the date for the Board to advise her of impending renewal or nonrenewal to December 31, 2015; the effect of this contract provision was to give the outgoing Board the authority to make the determination of renewal or nonrenewal of the Superintendent’s contract prior to the successor Board taking office; further, Lyle’s contract concerning renewal or nonrenewal – which stated that “failure to notify the Superintendent by December 31, 2015 of an intention to renew will mean that an offer of renewal is not being made” – was contrary to the requirements of *N.J.S.A. 18A:17-20.1*, which provides that the superintendent is deemed reappointed for another term unless the board provides her with timely written notice that she will not be renewed. The ALJ determined that the Board failed to provide Dr. Lyles with written notice that she was not being renewed; accordingly, her contract was renewed by operation of law on March 2, 2016. The ALJ recommended that the within petitions be dismissed.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions. Accordingly, the recommended decision of the OAL was adopted as the final decision in this matter. The petition was dismissed.

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.

OAL DKT. NOS. EDU 3062-16, EDU 5307-16 (CONSOLIDATED)  
AGENCY DKT. NOS. 62-2/16, 85-3/16

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The record of this consolidated matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioners, Lorenzo Richardson and the Jersey City Education Association (JCEA), and the respective reply exceptions filed by the respondents: the Jersey City Board of Education; Dr. Marcia Lyles and Vidya Gangadin; and Ramon Rivera.

This matter involves a determination as to whether the contract of Dr. Lyles, Superintendent of the Jersey City Public Schools, was renewed by operation of law in accordance with *N.J.S.A. 18A:17-20.1*. Pursuant to *N.J.S.A. 18A:17-20.1*:

At the conclusion of the term of the initial contract or of any subsequent contract as hereinafter provided, the superintendent shall be deemed reappointed for another contracted term of the same duration as the previous contract unless either:

a. the board by contract reappoints him for a different term which term shall be not less than three nor more than five years, in which event reappointments thereafter shall be deemed for the new term unless a different term is again specified; or

**b. the board notifies the superintendent in writing that he will not be reappointed at the end of the current term,** in which event his employment shall cease at the expiration of that term, provided that such notification shall be given prior to the expiration of the first or any subsequent contract by a length of time equal to 30 days for each year in the term of the current contract. (Emphasis added)

The Administrative Law Judge determined that the Board failed to provide the Superintendent with written notice that she was not being renewed and, as a result her, contract was renewed by operation of law. In reaching this conclusion, the ALJ found that the non-renewal provision in the Superintendent's contract was contrary to the mandatory written notice requirement in *N.J.S.A. 18A:17-20.1*, and therefore void. As a result, the ALJ recommended that the petitions of appeal be dismissed.

In his exceptions, Mr. Richardson maintains that the ALJ improperly dismissed his petition of appeal. Mr. Richardson argues that the failure of Vidya Gangadin, Board President, to follow the appropriate procedures that would have enabled the Board to make a decision to renew or non-renew the Superintendent's contract was unethical and a manipulation of the law. The Initial Decision should have left it up to the majority of the full Board to decide whether to renew the contract of the Superintendent, not an individual Board member or the Board attorney. In the alternative, Mr. Richardson contends that a full hearing is necessary so all of the facts can come out and a fully informed decision can be made in this matter.

The JCEA and its named members also take exception to the ALJ's finding that their petition of appeal should likewise be dismissed. The JCEA argues that the ALJ erroneously found that the non-renewal provision in the Superintendent's contract was invalid. The JCEA contends that the statutory written notice of non-renewal referenced in *N.J.S.A. 18A:17-20.1* was provided to the Superintendent by virtue of a contract provision negotiated by her with the Board. According to the Superintendent's contract, the Board agreed "that by December 15, 2015 it shall notify the Superintendent in writing whether it desires to renew this Agreement for an additional period of time, and of the terms and conditions proposed for that period. Failure to notify the Superintendent by that date of an intention to renew will mean that an offer of renewal is not being made." The JCEA argues that the contract provision is in writing and it constitutes written notice of non-renewal if the required affirmation expression of a desire to renew is not present. The Board did not notify the Superintendent prior to December 31, 2015 that it had a desire to renew her contract.

The JCEA also argues that the ALJ incorrectly found that the non-renewal provision in the contract improperly alters the statute. The use of the written contract notice provision, which is triggered by a failure to state a desire to renew, is not inherently illegal and does not violate any term of *N.J.S.A. 18A:17-20.1*. The JCEA emphasizes that nothing in the statute specifies what form the written notice of non-renewal must take and the Commissioner has held that the failure to adopt a resolution to renew a superintendent's contract is, in and of itself, a sufficient basis to give statutory notice of non-renewal. *See, Jose Negron v. Board of Educ. of the Borough of South Plainfield, Middlesex County*, Commissioner Decision No. 137-11, decided March 28, 2011, *Aff'd Superior Court App. Div.* (December 3, 2012). Moreover, there is nothing in the statute or elsewhere that prevents the exercise of discretion by a board of

education to give more notice of potential non-renewal to the superintendent. The JCEA also notes that there could be no finding of automatic renewal of the Superintendent's contract prior to December 31, 2015 because it would be a violation of common law in that it would have been binding on a future Board which was to take office in January 2016 – well before the expiration of the Superintendent's existing contract. Finally, the JCEA states that the ALJ improperly inferred facts not in the record concerning the intentions of the Board members.

In reply, the respondents argue that the ALJ correctly dismissed the petitions of appeal because, by operation of law, the Superintendent's contract was renewed pursuant to *N.J.S.A. 18A:17-20.1*.<sup>1</sup> The respondents assert that the petitioners' exceptions are based almost entirely on a regurgitation of their previous arguments. Additionally, the JCEA illogically relied upon *Negron, supra*, for the erroneous proposition that the Board's inaction is a sufficient basis to give statutory notice of non-renewal of the Superintendent's contract. In this case, it has been admitted that there was no notice whatsoever provided to the Superintendent of the non-renewal of her contract within the statutory time frame. In contrast, in *Negron, supra*, there was no question that after the board failed to adopt the resolution for renewal, the superintendent had received written notice of non-renewal within the statutorily-prescribed time period. *Negron, supra* at 3.

The respondents also contend that the ALJ properly held that the language in *N.J.S.A. 18A:17-20.1* is mandatory in nature, and that the contract provision at issue impermissibly altered the Board's obligation to provide written notice of non-renewal under *N.J.S.A. 18A:17-20.1*. The ALJ's finding was not based upon any provision in the contract lengthening the time within which the Board was required to provide written notice; rather, the

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<sup>1</sup> Separate reply exceptions were submitted by the Board; Dr. Marcie Lyles and Vidya Gangadin; and Ramon Rivera. All of the reply exceptions contained the same general arguments.

language in the contract states the opposite, and reverses the Board's mandatory obligation under the statute. Thus, there was no error in the Initial Decision finding that the entirety of the contract provision which excused the Board from providing any notice whatsoever, by the deadline of December 31, 2015, was contrary to the mandatory terms of the statute and therefore void.

Upon a comprehensive review of the record, the Commissioner concurs with the ALJ's determination that Superintendent Lyles's contract was renewed by operation of law under *N.J.S.A. 18A:17-20.1* because the Board did not provide her with written notice that she was not being renewed by the statutory deadline. The Commissioner is also in accord with the ALJ's finding that the nonrenewal provision contained in the Superintendent's contract cannot be used as a substitute for the written notice that is required by *N.J.S.A. 18A:17-20.1*.

*N.J.S.A. 18A:17-20.1* establishes a mechanism whereby a superintendent is reappointed by operation of statute for another contracted term of the same duration when the Board neither reappoints – by contract – to a new term, nor provides written notice of the board's intent not to reappoint by the applicable deadlines. In this case, the Board was required to provide written notice of nonrenewal to the Superintendent by March 2, 2016 and it is undisputed that the Board did not provide such written notice.<sup>2</sup> Despite the JCEA's argument to the contrary, the non-renewal provision contained in the Superintendent's contract did not constitute the required written notice of non-renewal mandated by *N.J.S.A. 18A:17-20.1*.<sup>3</sup> Under the contract provision relied on by the JCEA, the Board's failure to notify the

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<sup>2</sup> *N.J.S.A. 18A:17-20.1* requires written notice "shall be given prior to the expiration of the first or any subsequent contract by a length of time equal to 30 days for each year in the term of the current contract." In this case it is undisputed that the notice was required to be provided to the Superintendent by March 2, 2016.

<sup>3</sup> The Commissioner also finds that the contents of the Board's agenda on January 21, 2016 and February 18, 2016 did not satisfy the notice requirement.

Superintendent by December 31, 2015 of an intention to renew her contract means that an offer of renewal is not being made. That provision is inconsistent with *N.J.S.A. 18A:17-20.1*, which requires an affirmative obligation by the Board to provide the Superintendent with written notice of nonrenewal prior to March 2, 2016. The parties were not permitted to agree to a contractual provision that effectively negated the statutory requirement of written notice by including a provision in the Superintendent's contract that was inconsistent with the type of notice mandated by *N.J.S.A. 18A:17-20.1*. See, *Rita Spiewak, et al. v. Board of Educ. of Rutherford, et al.*, 90 *N.J.* 63, 76 (1982) ("It is now well settled that public employees and employers may not agree to contractual terms that contravene a specific term or condition of employment set by a statute.")

Accordingly, the Superintendent was reappointed by operation of law for another contracted term of the same duration as the previous contract.<sup>4</sup> The Initial Decision of the OAL is adopted as the final decision in this matter and the petitions of appeal are hereby dismissed.

IT IS SO ORDERED.<sup>5</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 1, 2016

Date of Mailing: December 2, 2016

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<sup>4</sup> Since the Superintendent's contract automatically renewed by operation of law on March 2, 2016, the question of whether the board could have authorized employment action prior to December 31, 2015, which action would begin during the tenure of a new board, need not be reached.

<sup>5</sup> Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.