

383-02L

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Dear Counsel:

Upon review of the papers filed in the matter entitled *Mary Lou Margadonna v. Board of Education of the Township of Wall, Monmouth County, Wall Township, et al.*, Agency Dkt. No. 225-7/02,¹ I have determined, for the reasons set forth below, to dismiss the Petition of Appeal for failure to set forth a claim for which relief can be granted.

The Petition of Appeal asserts that petitioner, a nontenured teacher, was nonrenewed for the 2002-2003 school year. Petitioner requested and received a statement of reasons for her nonrenewal on May 2, 2002 and, on June 11, 2002, was provided an opportunity to appear before the Board of Education. Petitioner contends, however, that pursuant to *Rice v. Union Cty. Reg. High School District*, 155 N.J. Super. 64 (App. Div. 1977), she was also entitled to a “public hearing” before the Board and, absent this hearing, was denied her due process. (Petitioner’s Letter Brief, October 16, 2002 at 1, 2)

¹ It is noted that although the Township of Wall is named as a respondent, petitioner raises no allegations against the Township. The Township takes the position that it was improperly named in this matter and does not intend to participate in any proceedings related thereto. (McLaughlin Letter, August 26, 2002)

Additionally, petitioner argues that the performance reviews upon which the Board relied that suggested areas in need of improvement “were wholly inconsistent with previous reviews, and the subsequent recommendation to terminate [was] based upon the personal motivations of some named defendants and not upon the performance of Mrs. Margadonna.” (Petition of Appeal at 3)

The Board acknowledges its decision not to renew petitioner’s contract for the 2002-2003 school year, and notes that she was provided a statement of reasons in accordance with *N.J.S.A.* 18A:27-3.2 and an opportunity for an informal appearance before the Board, as required by *N.J.S.A.* 18A:27-4.1. As to any further process, the Board asserts that petitioner has “misconstrued the statutory rights and mechanisms afforded to nontenured, nonrenewed teaching staff members, in making that request.” (Board’s Answer at 4) Specifically, the Board argues that *Rice, supra*, does not entitle petitioner to a public “appellate” hearing with respect to her nonrenewal. (Board’s Letter Brief at 3) Arising under the Open Public Meetings Act, the Board notes that *Rice*

stands for the proposition that 1) public employees have the right to prior notice when their public employer intends to discuss their employment status at a meeting of that public body; and 2) pursuant to the “Personnel Exception” to the Open Public Meetings Act, *N.J.S.A.* 10:4-12(b)(8), the affected employee has the right, prior to the meeting at issue, to waive his or her privacy with regard to such discussions, and insist that the public body discuss his or her employment during the public portion of the meeting.*** (*Id.* at 3)

By way of separate, affirmative defenses, the Board contends, *inter alia*, that the Petition of Appeal fails to state a claim upon which relief can be granted, and the petition must be dismissed, since the Board has complied with all applicable New Jersey law with regard to the nonrenewal of nontenured teachers. (Board’s Answer at 4.)

Upon review, I initially underscore that petitioner does not dispute that she was provided a statement of reasons and an opportunity for an informal appearance before the Board, as required by law. *N.J.S.A.* 18A:27-3.2; *N.J.S.A.* 18A:27-4.1. Petitioner’s request for a “*Rice*” hearing was made on June 18, 2002, one week after her informal appearance before the Board. (Petition of Appeal at Exhibit I) I agree with the Board, however, that *Rice, supra*, does not entitle petitioner to the hearing she seeks. The State Board of Education has determined that

a non-tenured teacher does not have any protected interest in continued employment under the United States Constitution and, therefore, no right to due process under the Fourteenth Amendment. *Board of Regents of State Colleges et al. v. Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972). Nor do such teachers have a right to due process under the New Jersey Constitution. [*Donaldson v. Bd. of Ed. of No. Wildwood*, 65 N.J. 236 (1974).] *Lydia Anderson v. State-operated School District of the City of Newark, Essex County*, State Board decision February 7, 2001, slip. op. at 2.

Indeed, although permitted to make an informal appearance before the board to attempt to convince the members of the board to offer her employment, a nonrenewed teacher is not even entitled to a vote by that board on her renewal. *Angelo Velasquez v. Board of Education of the Borough of Brielle, Monmouth County*, State Board decision August 6, 1997, slip op. at 6, 7.

I further find that petitioner's substantive grounds to contest the Board's nonrenewal are limited. In this regard, the State Board of Education has affirmed that:

[A] district board has virtually unlimited discretion in hiring or renewing non-tenured teachers. *Dore v. Bedminster Twp. Bd. of Ed.*, 185 N.J. Super. 447 (App. Div. 1982). “[A]bsent constitutional constraints or legislation affecting the tenure rights of teachers, local boards of education have an almost complete right to terminate the services of a teacher who has no tenure and is regarded as undesirable by the local board.” *Id.* at 456. **Thus, where a non-tenured teacher challenges a district board's decision to terminate his employment on the grounds that the reasons provided by the board are not supported by the facts, he is entitled to litigate that question only if the facts he alleges, if true, would constitute a violation of constitutional or legislatively-conferred rights.** *Guerriero v. Board of Education of the Borough of Glen Rock*, decided by the State Board of Education, February 5, 1986, *aff'd*, Docket #A-3316-85T6 (App. Div. 1986). (emphasis added) *Cordell Wise v. Board of Education of the City of Trenton*, State Board decision January 3, 2001, slip. op. at 1, 2.

Here, however, petitioner makes no claim that she was deprived of a constitutional or statutory right. Therefore, even assuming the allegations in the Petition of Appeal are true, I find that petitioner fails to state a claim upon which relief can be granted.

Accordingly, pursuant to my authority under *N.J.A.C.* 6A:3-1.10, the Petition of Appeal is dismissed.²

Sincerely,

William L. Librera, Ed.D.
Commissioner

c: Board Secretary
County Superintendent

² This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.