

YASMIN HERNADEZ-MANNO, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

STATE-OPERATED SCHOOL DISTRICT : DECISION

OF THE CITY OF NEWARK, :

ESSEX COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner challenged her reassignment from a supervisor position to a non-supervisory position, contending that the action violated her tenure and seniority rights. Petitioner was notified in June 2013 that her position as Central Office Supervisor in the Office of Bilingual/ESL Education would be eliminated; that she would revert to her prior position of Elementary teacher; and that she would be paid through August 2013, and then placed on a preferred eligible list for future employment with the district. Petitioner filed the within appeal in November 2013, seeking reinstatement to a supervisory position and back pay. Subsequently, in August 2014, petitioner submitted a letter resigning her position with the respondent District. The District filed a motion for summary decision, contending, *inter alia*, that the case was both untimely filed and mooted by petitioner’s resignation.

The ALJ found, *inter alia*, that: a case is moot when the determination sought cannot have any practical effect on the existing controversy; an employee who voluntarily resigns has no standing to pursue an appeal; in accordance with *N.J.A.C.* 6A:3-1.3(i), petitioner was required to file her appeal no later than 90 days from the date of receipt of final notice from the respondent that her position was to be eliminated; petitioner failed to file her appeal with the required time limit, and offered no reasons why this requirement should be relaxed; and these issues are dispositive of the case. Accordingly, the ALJ concluded that the petition must be dismissed.

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

<p>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.</p>

February 21, 2017

OAL DKT. NO. EDU 18713-13
AGENCY DKT. NO. 295-11/13

YASMIN HERNADEZ-MANNO, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF NEWARK, :
ESSEX COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner concurs with the Administrative Law Judge's (ALJ) determination that the petition of appeal was time-barred under *N.J.A.C.* 6A:3-1.3(i).¹ Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 21, 2017

Date of Mailing: February 22, 2017

¹ Although it was not necessary to reach a determination on the substance of the appeal because the petition was untimely filed, the Commissioner is also in accord with the ALJ's finding – for the reasons articulated in the Initial Decision – that the matter is moot because the petitioner voluntarily resigned from the district.

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36. (*N.J.S.A.* 18A:6-9.1).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 18713-13

AGENCY DKT. NO. 295-11/13

YASMIN HERNANDEZ-MANNO,

Petitioner,

v.

**STATE-OPERATED SCHOOL DISTRICT OF
THE CITY OF NEWARK, ESSEX COUNTY,**

Respondent.

Yasmin Hernandez-Manno, pro se

Ramon E. Rivera, Esq., Christina M. Michelson, Esq., and Shana T. Don, Esq.,
for respondent (Scarinci & Hollenbeck, attorneys)

Record Closed: January 6, 2017

Decided: January 6, 2017

BEFORE RICHARD McGILL, ALJ:

Yasmin Hernandez-Manno (“petitioner”) challenges her reassignment by the State-Operated School District of the City of Newark (“respondent” or “District”) from a supervisor to a non-supervisory position as a violation of her tenure and seniority rights. As relief, petitioner seeks reinstatement with back pay.

PROCEDURAL HISTORY

Petitioner filed her petition with the Commissioner of Education on November 29, 2013, pursuant to the Commissioner's authority under N.J.S.A. 18A:6-9 to hear and determine disputes arising under the education laws. The matter was transmitted to the Office of Administrative Law on December 27, 2013, for determination as a contested case.

On December 29, 2014, respondent filed a motion for summary decision. By letter dated January 22, 2015, respondent requested on behalf of both parties an adjournment of scheduled hearing dates. The letter advises that petitioner's attorney was seriously ill and in the hospital and requested a 30-day extension of the time for petitioner to respond to respondent's motion. Both requests were granted.

After petitioner's attorney could not be reached for a telephone status conference on March 7, 2016, the undersigned sent a letter to petitioner's attorney inquiring as to the status of his representation of petitioner. No response was received from petitioner's attorney.

By letter dated April 29, 2016, to petitioner, the undersigned requested that she clarify her representation in this matter. In a letter dated May 11, 2016, petitioner stated that she also had not been able to contact her attorney and that she was seeking new legal representation. By letter dated June 16, 2016, respondent advised that it had been contacted by two attorneys in regard to petitioner's appeal, but no appearance was entered on her behalf. By letter dated June 30, 2016, the undersigned advised that if an appearance was not entered on behalf of petitioner within 20 days of the date of the letter, the motion for summary decision would be submitted for disposition. Thereafter, no appearance was entered on behalf of petitioner, but the matter was held in abeyance to give her additional time to find legal representation. Letters were received from two attorney's advising that they did not represent petitioner.

MOTION FOR SUMMARY DECISION

A. Legal Standard

A motion for summary decision should be granted where there is no genuine issue as to any material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). The same standard is applied in the courts of this State pursuant to R. 4:46-2. Summary judgment “is designed to provide a prompt, businesslike and inexpensive method” to dispose of actions which do not present any genuine issue of material fact. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). Although the pleadings may raise a factual issue, summary judgment procedure pierces the allegations in the pleadings, where the other papers show the absence of any genuine issue of material fact. Ibid. Excessive caution which would undercut the purposes of a motion for summary judgment should be avoided. Pierce v. Ortho Pharmaceutical Corp., 84 N.J. 58, 65 (1980).

In determining whether there exists a genuine issue as to a material fact, the judge must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of America, 142 N.J., 520, 523 (1995).

B. Respondent’s Position

Respondent advances four main arguments in support of its motion. First, petitioner resigned from her position with the District, and therefore, the petition should be dismissed as moot. Second, the petition of appeal was not filed in a timely manner. Third, respondent acted in good faith in implementing a reduction in force, which resulted in the elimination of petitioner’s position. Fourth, no tenure rights exists in an “Executive Director” position, and therefore, petitioner is not entitled to claim an executive director position based on any alleged seniority rights.

C. Facts

There are no genuine issues of fact in regard to respondent's first and second arguments. During the 2012-2013 school year, petitioner was employed by respondent in the position of Central Office Supervisor in the Office of Bilingual/ESL Education. By letter dated June 21, 2013, sent by overnight delivery and PDF email, respondent advised petitioner that her current position would be eliminated and that she would revert to her prior position of Elementary Teacher. Further, her current salary would end on August 31, 2013, and she would be placed on a preferred eligible list for future employment with the District. Petitioner filed her Petition of Appeal with the Commissioner on November 27, 2013. During the following year, petitioner sent a letter dated August 5, 2014, to respondent's superintendent resigning her position with respondent effective August 25, 2014.

D. Analysis

Respondent's first argument is that the petition in this matter should be dismissed as moot because petitioner resigned from her position with the District. A case is moot when the determination sought cannot have any practical effect on the existing controversy. Greenfield v. New Jersey Dep't of Corrections, 382 N.J. Super. 254, 257-58 (App. Div. 2006).

An employee who voluntarily resigns her position has no standing to pursue an appeal. DeKenipp v. Bd. of Educ. of the Township of Wall, Monmouth County, OAL Dkt. No. EDU 07786-10, Final Decision (July 15, 2011). Here, petitioner voluntarily resigned her employment effective August 25, 2014. Petitioner can no longer pursue her appeal. Therefore, I **CONCLUDE** that the petition in this matter should be dismissed as moot.

Respondent's second argument is that the petition was not filed in a timely manner and that therefore the petition should be dismissed. In accordance with N.J.A.C. 6A:3-1.3(i), petitioner was required to file her petition no later than the 90th day from the date of receipt of the notice from respondent. Here, petitioner filed her petition well beyond ninety days after receipt of the notice. Under the circumstances, petitioner failed to file her petition within the time limit set forth in N.J.A.C. 6A:3-1.3(i). Further, petitioner has not advanced any reasons to relax this requirement pursuant to N.J.A.C.

6A:3-1.16. Therefore, I **CONCLUDE** that the petition in this matter should be dismissed because it was not filed in a timely manner.

The determinations in regard to respondent's first and second arguments are dispositive of the case. Under the circumstances, it is unnecessary to consider respondent's third and fourth arguments.

Based upon the above, I **CONCLUDE** that the petition in this matter must be dismissed. Accordingly, it is **ORDERED** that the petition in this matter be dismissed.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 6, 2017

Richard McGill

DATE

RICHARD McGILL, ALJ

Date Received at Agency:

January 6, 2017

Date Mailed to Parties:

ljb