

JENNIFER LEWIS-GALLAGHER, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE TOWNSHIP : DECISION

OF MONROE, GLOUCESTER COUNTY, :

RESPONDENT. :

SYNOPSIS

Pro se petitioner alleged that the respondent Monroe Township Board of Education (Board) violated Board policies and the School Ethics Act, *N.J.S.A.* 18A:12-24.1, when it appointed Anthony Ayers to fill a Board vacancy following a resignation. The Board filed a motion to dismiss in lieu of an answer. Petitioner was advised of the deadline for submission of documentation or briefs in response to the Board’s motion; however, no such submissions were received from petitioner. Subsequently, petitioner failed to appear at the hearing on May 29, 2018 and offered no explanation for her non-appearance.

The ALJ found, *inter alia*, that: the issue herein is whether the Board should be granted summary decision in its favor, or whether the petitioner is entitled to an evidentiary hearing to show that the Board vacancy was filled improperly; the Board asserted that there were no material facts in dispute, and the Board’s filling of its vacancy was proper, based on the statutes, regulations and bylaws applicable to the filling of vacancies on a school board; although petitioner seemingly questioned the procedures used by the Board in filling the vacancy, she has not made any formal assertion of improprieties on the part of the Board, nor has she made any declaration to the court regarding any material fact in dispute; and petitioner failed to appear at the hearing and offered no explanation for her non-appearance. The ALJ determined that the matter was ripe for summary decision, and the Board acted properly in appointing Anthony Ayres to fills its vacancy. Accordingly, the ALJ granted the Board’s motion to dismiss.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ. Accordingly, the Initial Decision was adopted as the final decision in this matter and 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. NO. EDU 02437-18
AGENCY DKT. NO. 14-1/18

JENNIFER LEWIS-GALLAGHER, :
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 PETITIONER, :
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 V. : COMMISSIONER OF EDUCATION
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 :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon such review, the Commissioner agrees with the Administrative Law Judge that the Board did not act in an arbitrary, capricious, or unreasonable manner – or in violation of any statute, regulation, or Board policy – when it appointed Anthony Ayers to fill its Board vacancy.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons thoroughly set forth therein, and the petition is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: July 12, 2018

Date of Mailing: July 12, 2018

* 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

SUMMARY DECISION

OAL DKT. NO. EDU 2437-18

AGENCY DKT. NO. 14-1/18

JENNIFER LEWIS-GALLAGHER,

Petitioner,

v.

**TOWNSHIP OF MONROE BOARD OF
EDUCATION, GLOUCESTER COUNTY,**

Respondent.

No appearance by or on behalf of petitioner

John J. Armano, Jr., Esq., for respondent (Trimble & Armano, attorneys)

Record Closed: May 29, 2018

Decided: June 12, 2018

BEFORE **JEFFREY N. RABIN, ALJ:**

STATEMENT OF THE CASE

Petitioner has alleged that respondent, the Township of Monroe (Gloucester County) Board of Education (the Board), illegally appointed Mr. Anthony Ayres to the Board, in violation of the School Ethics Acts, N.J.S.A. 18A:12-24.1. Respondent denied said allegation and has filed a Motion to Dismiss In Lieu of an Answer.

PROCEDURAL HISTORY

On January 17, 2018, petitioner filed a complaint with the New Jersey Department of Education (DOE), alleging that the respondent-Board violated ethical statutes and Board policies in appointing Anthony Ayres to the Monroe School Board. Respondent filed a Motion to Dismiss In Lieu of an Answer with an accompanying brief on February 5, 2018. The DOE Bureau of Controversies and Disputes transmitted petitioner's claim to the Office of Administrative Law (OAL), where it was filed on February 14, 2018. N.J.S.A. 52:14B-1 to -15; N.J.S.A.52:14F-1 to -13.

By letter from this Court dated March 28, 2018, the telephone conference scheduled for May 1, 2018, was converted to an in-person Hearing on May 2, 2018. Petitioner, a pro se litigant, was advised that any documentation or responsive briefs she wished to provide had to be filed no later than April 23, 2018. No documentation or responsive briefs were received from petitioner.

By letter dated April 26, 2018, petitioner requested a postponement of the in-person Hearing scheduled for May 2, 2018. In response, by letter dated April 30, 2018, respondent agreed to an adjournment of the May 2, 2018, Hearing, and requested that its Motion to Dismiss In Lieu of an Answer be decided by the Court on its moving papers. On May 1, 2018, this Court rescheduled the in-person Hearing to May 29, 2018.

Petitioner failed to appear at the Hearing on May 29, 2018, without explanation. Respondent-counsel was advised that the Court would decide respondent's Motion on the moving papers, and the record was closed on May 29, 2018.

FACTUAL DISCUSSION

Petitioner did not file an Answer to respondent's Motion to Dismiss In Lieu of an Answer, nor did she file a brief, Statement of Facts or sworn affidavits in response to respondent's Motion, nor did she file any documentation disputing the Statement of

Facts provided in respondent's Motion to Dismiss In Lieu of an Answer and brief. The parties had not stipulated to any Joint Statement of Facts.² Based upon the parties' submissions, and for purposes of deciding the Motion to Dismiss In Lieu of an Answer, I **FIND** the following:

1. On November 16, 2017, Ronald Coleman resigned as a board member from the Monroe Township Board of Education for health reasons. The Board unanimously moved to accept his resignation effective November 17, 2017. (Respondent Brief, Statement of Facts nos. 1 and 2 and Exhibit A.)
2. On December 16, 2017, the Board placed an advertisement in a single newspaper, the South Jersey Times, advertising a special Board meeting for December 19, 2017, at which interviews would be conducted to appoint a new member to the Board to fill the vacancy. (Respondent Brief, Statement of Facts no. 3 and Exhibit A.)
3. Seven candidates responded to the advertisement, and were interviewed for the vacancy during the Board's Executive Session at the December 19, 2017, Board meeting. Two candidates were nominated for the position: Anthony Ayres and Ms. Latasha Williams. During the roll-call vote on the Ayres nomination, a Board member questioned whether four or five votes were required to approve a candidate. The official vote was halted pending legal review by the Board's Solicitor, (respondent-counsel) John J. Armano, Jr. (Respondent Brief, Statement of Facts nos. 6 through 10.)
4. By email dated December 20, 2017, the Board Solicitor confirmed that five votes were required in order to fill a vacancy on the Board. The vote was rescheduled to the Board's previously advertised, regularly scheduled meeting of December 21, 2017. (Respondent Brief, Statement of Facts nos. 10 and 11.)

² A copy of petitioner's "Petition of Appeal" to the "Commissioner of Education of New Jersey" dated January 11, 2018, was provided to the Court. It contained a "Narrative" that was part factual summary, part allegations, part legal analysis, but primarily a list of rhetorical questions. This Narrative was taken into consideration in setting out the facts of this matter.

5. At the December 21, 2017, Board meeting, the full eight-person Board unanimously approved Ayres to fill the vacancy on the Board. As all eight members voted for the first candidate, no vote was taken on the other candidate, Latasha Williams. (Respondent Brief, Statement of Facts nos. 12 and 13.)
6. Ayres submitted information for his criminal background check on December 22, 2017. The background check was completed and approved by the New Jersey DOE on January 3, 2018, and a copy was received by the Board on January 9, 2018. (Respondent Brief, Statement of Facts nos. 14 and 19.)
7. The Board's January 4, 2018, Reorganization Meeting, where persons filling positions may be sworn in, and regular meeting of January 8, 2018, were cancelled due to inclement weather. (Respondent Brief, Statement of Facts nos. 15 through 18.)
8. Per his request, Ayres was sworn in to fill the Board vacancy on January 9, 2018, a day before the Reorganization was finally held. (Respondent Brief, Statement of Facts nos. 20 and 21.)

LEGAL DISCUSSION AND CONCLUSION

The issue is whether the respondent Board should be granted a Summary Decision in its favor or whether petitioner is entitled to an evidentiary hearing to show that the Board vacancy was filled improperly.

A Summary Decision may be granted when the papers and discovery that have been filed show that there is no genuine issue as to any material fact challenged and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). "An adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid. See Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). The non-moving party has the burden "to make an affirmative

demonstration . . . that the facts are not as the movant alleges.” Spiotta v. William H. Wilson, Inc., 72 N.J. Super. 572, 581 (App.Div. 1962).

Respondent has asserted that there were no material issues of fact in dispute, and that the Board’s filling of its vacancy was proper, based on the statutes, regulations and bylaws applicable to the filling of vacancies on a school board.

While petitioner seemingly questioned the procedures used by the Board in filling its vacancy, she has not made any formal assertion of improprieties on the part of the Board. She has not made any declaration to this Court that there was any material fact in dispute. Petitioner filed no Answer, affidavit nor Statement of Facts, nor any other documentation with this Court stating that there was a genuine issue of fact to be determined via a full due process hearing. Petitioner failed to appear for the Hearing scheduled for May 29, 2018, therefore waiving her opportunity to present evidence of the existence of any genuine fact in controversy. Accordingly, petitioner has failed to meet her burden of proof as required by Spiotta.³

Further, even if petitioner’s Petition of Appeal to the Department of Education dated January 11, 2018, was to be accepted, *arguendo*, as a valid affidavit or Answer to respondent’s Motion to Dismiss In Lieu of an Answer from February 5, 2018, it failed to set out any genuine issue of material fact which might preclude the granting of respondent’s Motion. Merely claiming that there were ethical violations did not meet the burden which must be borne by the non-moving party to a motion for summary decision. Citing to N.J.S.A.18A:12-24.1(a), (d) and (g), without explaining how those statutory sections had been violated, was insufficient to establish that there was any genuine issue of material fact which would require a full due process hearing.

In her Petition of Appeal, petitioner claimed respondent violated Board policy #162 by not publishing notice of a special meeting in two newspapers. However, policy #162 does not require publication when a vote takes place at a regular Board meeting. In this case, due to legal questions raised at the special meeting, the vote approving

³ In addition to extensions of time given to petitioner to accommodate her as a pro se litigant, the Court provided her with contact information for legal assistance.

Ayres for the Board did not happen at the special meeting, but instead took place at the previously advertised, regular December meeting of the Board.

Petitioner claimed that no special accommodations were made for members of the public who were unable to attend the regularly scheduled December meeting, but provided no statutory or regulatory requirement that a board schedule votes for times convenient to every member of the public. Petitioner also claimed irregularities in the vote itself without citing any Board policy, statutes or regulations. The Board did not act improperly by not conducting a vote on the second candidate for the single vacant Board seat, because the first candidate received a unanimous, 8-0 vote in his favor. Finally, petitioner failed to prove any legal or ethical improprieties from the Board having sworn in its new member in private rather than in public.

As petitioner has failed to establish that there was any genuine issue of material fact in this matter, I **FIND** that this matter is ripe for Summary Decision, and I **CONCLUDE** that the respondent, Township of Monroe (Gloucester County) Board of Education, acted properly in appointing Anthony Ayres to fill its Board vacancy.

ORDER

I hereby **ORDER** that respondent Board's Motion to Dismiss In Lieu of an Answer is **GRANTED**. I further **ORDER** that petitioner's appeal is **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.

June 8, 2018 _____

DATE



JEFFREY N. RABIN, ALJ

Date Received at Agency:

Date Mailed to Parties:

JNR/cb

APPENDIX

EXHIBITS

For petitioner:

Petition of Appeal” to the “Commissioner of Education of New Jersey,” dated
January 11, 2018

For respondent:

Motion/Brief, dated February 2, 2018