

New Jersey Commissioner of Education

Decision

Courtney Hambrecht,

Petitioner,

v.

Board of Education of the City of Atlantic City,
Atlantic County,

Respondent.

Synopsis

Petitioner – formerly employed as a lifeguard in the respondent Board’s school district – sought summary decision requiring the respondent Board to correct her personnel file to reflect her voluntary resignation as of January 29, 2019 and remove any references to a termination of her employment. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; petitioner argued that her resignation was effective on January 29, 2019 as she submitted her letter of resignation, the Superintendent recommended her resignation, and the Board approved the resignation; consequently, the Board’s subsequent action to rescind its acceptance of her resignation was not valid because her employment relationship had already ended; further, without a recommendation of termination from the Superintendent, the Board had no authority to terminate her; the Board contended that it acted immediately after learning of compelling reasons to rescind its acceptance of petitioner’s resignation and terminated her employment the same day; therefore, the Board opines that petitioner’s personnel file correctly reflects that the Board terminated her; however, pursuant to *N.J.S.A.* 18A:27-4.1(a), a personnel action to remove an employee may only be taken upon the recommendation of the Superintendent; in this case, the Superintendent accepted petitioner’s letter of resignation and there is no evidence to show that the Superintendent made a subsequent recommendation to terminate petitioner based on new information. The ALJ concluded that petitioner’s resignation was effective January 29, 2019. Accordingly, the ALJ granted petitioner’s motion for summary decision, denied the Board’s cross motion, and ordered the Board to correct petitioner’s personnel file to reflect her resignation.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusion, and adopted the Initial Decision as the final decision in this matter. The Board was ordered to correct petitioner’s personnel file to indicate that she resigned effective January 29, 2019.

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.

December 17, 2019

New Jersey Commissioner of Education
Final Decision

Courtney Hambrecht,

Petitioner,

v.

Board of Education of the City of Atlantic City,
Atlantic County,

Respondent.

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.

In this matter, petitioner – a lifeguard for the Board – was on duty during a near-fatal drowning incident on January 14, 2019. After an attorney for the family informed the Board of potential legal action, petitioner submitted her letter of resignation on January 29, 2019. Approximately five hours later at the Board’s scheduled meeting that evening, the Superintendent recommended acceptance of petitioner’s resignation, and the Board voted to accept it. Thereafter, the Board went into executive session and, upon emerging, voted to rescind its earlier approval of petitioner’s resignation and terminate petitioner instead. Petitioner filed the within appeal challenging her termination.

Pursuant *N.J.S.A.* 18A:27-4.1(a),¹ a personnel action to remove an employee may only be taken upon the recommendation of the Superintendent. The Administrative Law Judge (ALJ) found that the Superintendent recommended the acceptance of petitioner’s resignation,

¹ The ALJ inadvertently cited this statute as *N.J.S.A.* 18A:24.4.1(a) in several places in the Initial Decision. It is clear that the correct statute is *N.J.S.A.* 18A:27-4.1(a).

and there is no evidence in the record that the Superintendent made a new recommendation during executive session. The ALJ also noted that the Board was aware of the incident and the potential for litigation before it voted to accept petitioner's resignation. As such, petitioner's personnel files should be corrected to reflect that she resigned from her position on January 29, 2019.

Upon review, the Commissioner agrees with the ALJ that petitioner's resignation was accepted by the Board following the Superintendent's recommendation, in accordance with *N.J.S.A.* 18A:27-4.1(a). Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons expressed therein. The Board shall correct petitioner's personnel files to indicate that she resigned from her position of employment on January 29, 2019.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: December 17, 2019
Date of Mailing: December 18, 2019

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

SUMMARY DECISION

OAL DKT. NO. EDU 05627-19

AGENCY DKT. NO. 83-4/19

COURTNEY HAMBRECHT,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
CITY OF ATLANTIC CITY, ATLANTIC
COUNTY,**

Respondent.

Michael A. Armstrong, Esq., appearing for petitioner (Michael A. Armstrong & Associates, LLC, attorneys)

Tracy L. Riley, Esq., appearing for respondent (Riley & Riley, attorneys)

Record Closed: November 6, 2019

Decided: November 6, 2019

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

The petitioner Courtney Hambrecht (Hambrecht) seeks summary decision requiring respondent, Board of Education of the City of Atlantic City (Board), to correct

her personnel file and any other files to reflect her voluntary resignation as of January 29, 2019, and remove any and all references to a termination from employment.

The Board seeks summary decision upholding its decision to terminate Hambrecht effective January 29, 2019.

PROCEDURAL HISTORY

On April 26, 2019, the petitioner filed a notice of motion for emergent relief that was denied by Order dated May 10, 2019. Petitioner advised this tribunal that she intended to continue to pursue her claim through a due process hearing. On August 9, 2019, petitioner filed a motion for summary decision and a supporting certification of counsel with supporting exhibits³. By letter dated August 23, 2019, petitioner supplemented her statement of undisputed material facts by including respondent's answers to request for admissions. On September 3, 2019, respondent filed its opposition and cross-motion to dismiss. On September 13, 2019, petitioner filed her response to respondent's cross-motion and her reply to respondent's opposition. On October 22, 2019, respondent supplemented its cross motion with petitioner's answers to its request for admissions.

ISSUE

Both parties are seeking summary decision. Petitioner maintains that her resignation was effective on January 29, 2019, because she submitted her letter of resignation, the Superintendent of Schools recommended her resignation, and the Board approved the recommendation. (P-1, Exhibits 2 and 3.) Consequently, the Board's subsequent action to rescind its acceptance of her resignation must fail because her employment relationship had ended and without a recommendation of termination by the superintendent, the Board had no authority to terminate her.

³ Petitioner is also seeking to compel discovery as alternative relief. The parties agreed that the motion for summary decision would be decided first on its own merits without consideration of the alternative relief request.

Respondent maintains that although the Board voted to accept Hambrecht's resignation during the public session of the meeting, the information divulged during the closed session provided compelling reasons to overturn that vote. The Board acted immediately to rescind its acceptance and voted to terminate her employment. Therefore, respondent's personnel file pertaining to petitioner correctly shows that the Board terminated her employment.

STATEMENT OF FACTS

The following facts taken directly from the admissions in the moving papers of both parties are undisputed, and I **FIND** them to be the **FACTS** of the case:

1. Hambrecht received and signed an offer of employment to work as a lifeguard for the Board on June 15, 2019, with employment to commence on September 1, 2019. (P-1, Exhibit 1.)

2. On January 14, 2019, a near fatal drowning incident occurred involving a student attending gym class at the pool located in the Atlantic City High School facility. (R-1, Exhibit A.)

3. On January 21, 2019, the attorney for the parents of the student sent a letter to the Atlantic City High School and the Board informing them of the student's intention to pursue a potential claim against the entities and individuals involved pending an investigation of the near fatal drowning incident. Id.

4. On January 29, 2019, Hambrecht submitted her letter of resignation to the Office of the Superintendent where it was stamped received at 1:17 p.m. (P-1, Exhibit 2.)

5. The Board held its regularly scheduled meeting on January 29, 2019, at 6:00 p.m. (P-1, Exhibit 3.)

6. As reflected in the minutes from the January 29, 2019, Board meeting, Barry S. Caldwell, Superintendent of Schools recommended the acceptance of Hambrecht's resignation from her position as lifeguard at the Atlantic City High School, effective January 29, 2019. Id.

7. As further reflected in the minutes from the January 29, 2019, Board meeting, the Board moved to approve Caldwell's recommendation of Hambrecht's resignation and voted to accept it. Id.

8. At approximately 6:27 p.m. on January 29, 2019, the Board went into executive session. Id.

9. The Board emerged from executive session two hours later, and after a motion, voted to rescind its earlier approval of Hambrecht's resignation. Id.

10. Following the vote to rescind, the Board by motion, voted to terminate Hambrecht's employment. Id.

11. By letter dated January 30, 2019, Diane M. Saunders, Director of Human Resources for the Atlantic City School District, sent Hambrecht a letter notifying her that at the January 29, 2019, regular board meeting, the Board voted to terminate her employment effective January 29, 2019. (P-1, Exhibit 4.)

LEGAL ANALYSIS AND CONCLUSION

Both parties contend that there are no disputed facts requiring a hearing, and that the matter is appropriate for summary decision.

Summary decision may be granted when "the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). The rule further provides that an adverse party must

respond by affidavit setting forth specific facts showing that there is a genuine issue which can only be determined at an evidentiary hearing. Ibid. The rule is patterned on the New Jersey Supreme Court's rules concerning summary judgment. The New Jersey Supreme Court has explained that when deciding a motion for summary judgment under R. 4:46-2:

A determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, 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 Am., 142 N.J. 520, 540 (1995).]

Here, I **CONCLUDE** that there are no material facts in dispute and the matter is appropriate for summary decision.

In support of its motion, petitioner relies on N.J.S.A. 18A:27-4.1(a) which provides that a board of education can only remove an employee upon the recommendation of the chief school administrator. Hambrecht maintains that Superintendent Caldwell recommended her resignation as reflected in the minutes of the January 29, 2019, Board meeting. After the Board voted to approve her resignation, Hambrecht's employment ended at that moment.

Petitioner's legal argument is two-fold. Her first argument is that after her resignation, her employment ceased, and the Board could no longer take any action regarding her employment. Stated differently, the Board could not reinstate her employment to terminate her. Her second argument is that the Superintendent's recommendation of her resignation was formalized in the minutes of the January 29, 2019 Board meeting. Respondent had not submitted any competent evidential materials to show that during the closed session, the Superintendent changed his public recommendation for resignation to a recommendation of termination. Without the chief

school administrator's recommendation, the Board would be in violation of N.J.S.A. 18A:24-4.1(a) if it acted to terminate her. Therefore, whatever happened in the closed session is irrelevant to the outcome of this matter and her resignation must stand.

Respondent's argument is that it did not have ample time to evaluate the situation involving Hambrecht's resignation when it voted to approve the Superintendent's recommendation. It was not until certain information was divulged during the closed session that the Board decided to rescind its acceptance and voted to terminate Hambrecht.

This is a unique situation with little support in existing case law. However, the controlling statute, N.J.S.A. 18A:24-4.1(a), provides clear guidance. In accordance with the statute, the key figure is Superintendent Caldwell. Respondent argues that there was insufficient time for Caldwell and the Board to consider all the facts before accepting Hambrecht's resignation. This argument is not supported by the time-line of events. The incident occurred on January 14, 2019. Hambrecht provided an incident report, but no immediate action was taken against Hambrecht. (P-1, Exhibit 6.) The attorney letter, putting the District and the Board on notice of potential litigation, was dated January 21, 2019. (R-1, Exhibit A.) Hambrecht submitted her letter of resignation on the afternoon of January 29, 2019. (P-1, Exhibit 2.) The minutes of the January 29, 2019, Board meeting reflected Caldwell's recommendation of Hambrecht's resignation and the Board's vote approving same. (P-1, Exhibit 3.) While it is not known what occurred during the closed session, the January 21, 2019, letter is proof that both Caldwell and the Board were aware of possible litigation involving the incident that directly affected Hambrecht before they voted to accept her resignation. By asserting that the attorney/client privilege applies to everything that was discussed during the executive session, respondent refused to answer whether Caldwell recommended termination during the executive session. Respondent did not provide a certification from Caldwell in support of its cross-motion. Without addressing the merits of respondent's attorney/client privilege claim, respondent's decision to assert the privilege hinders its ability to effectively defend petitioner's claim. As Caldwell's recommendation is required by statute, the only recommendation in the record before me is Caldwell's recommendation to the Board to accept Hambrecht's resignation.

Respondent's equity argument falls short because it is clear from the record that the parties were aware of the incident and the potential for litigation before the Superintendent recommended resignation and the Board voted to accept the Superintendent's recommendation. Respondent did not maintain that Caldwell was totally unaware of the severity of the situation when he recommended Hambrecht's resignation to the Board.

Therefore, I **CONCLUDE** that based on the undisputed material facts and in accordance with N.J.S.A. 18A:24-4.1(a), petitioner's resignation was effective January 29, 2019, based upon the recommendation of Superintendent Caldwell and the vote of the Board.


ORDER

Petitioner's motion for summary decision is **GRANTED**. Respondent's cross-motion for summary decision is **DENIED**. In accordance with this **Order**, respondent will correct its personnel files on petitioner to reflect that she resigned her position of employment effective January 29, 2019.

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.



November 6, 2019

DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMC/tat

APPENDIX

LIST OF EXHIBITS

For petitioner:

P-1 Exhibits:

1. Offer of employment;
2. January 29, 2019, resignation letter;
3. January 29, 2019, minutes from Board meeting;
4. January 30, 2019, termination letter;
5. Discovery demands;
6. Caldwell's answers to interrogatories;
7. July 5, 2019, letter regarding deficiencies with answers to interrogatories;
8. July 16, 2019, letter requesting conference call;
9. Answers to interrogatories from Business Administrator Ricketts;
10. Cohen v. Board of Education of the Borough of Middlesex, OAL DKT. NO. EDU 6787-02; and
11. Lippincott v. Riverton Borough Board of Education, OAL DKT. NO. EDU 5062-89.

P-2 Respondent's answers to request for admissions

P-3 Exhibits:

1. Job description for superintendent

For respondent:

- R-1 Exhibit A – January 21, 2019, letter to Atlantic City High School and Board regarding January 14, 2019, incident
Exhibit B – Cutro v. Board of Education of the Township of Hazlet – State Board of Education Decision – EDU #7806-92