

## New Jersey Commissioner of Education

### Decision

Askiaa Nash,

Petitioner,

v.

Board of Education of the City of Newark,  
Essex County, and Roger Leon, Superintendent,

Respondent.

### Synopsis

Petitioner filed an application for emergent relief seeking reinstatement to his former position as Educational Media Specialist with the Newark Board of Education (Board), a position from which petitioner was terminated in 2001. Petitioner filed two previous petitions appealing the Board's denial of his application for reinstatement, in 2013 and 2016; both cases were dismissed, the first as untimely and due to his lack of tenure, and the second based on the doctrines of *res judicata* and *collateral estoppel*. The 2013 decision was also upheld by the Appellate Division.

In the instant case, the ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; petitioner appeared at a hearing via Zoom on January 10, 2022 and agreed to an adjournment until January 14, 2022, at which time petitioner failed to appear; petitioner's current argument is again based on the Board's failure to reinstate him to the Educational Media Specialist position he held from 1993 to 2001, when he was terminated after charges of sexual assault against two students were brought against him; in the instant case, petitioner argued that he has a property claim to his former position and now argues that he was improperly terminated from his position without a hearing. The ALJ determined that petitioner's claims in the instant matter – even if based on new arguments not made previously – are still barred by the principles of *res judicata* and *collateral estoppel*. Accordingly, the ALJ granted summary decision in favor of the Board and dismissed the petition with prejudice.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this case. In so determining, the Commissioner noted that the issue of whether petitioner is entitled to reinstatement has been fully litigated and petitioner cannot attempt to re-litigate that issue by making arguments that he failed to make previously. The Commissioner also found that the petition was untimely. Accordingly, the matter was dismissed with prejudice.

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.

44-22

OAL Dkt. No. EDU 00115-22

Agency Dkt. No. 238-12/21

## New Jersey Commissioner of Education

### Final Decision

Askiaa Nash,

Petitioner,

v.

Board of Education of the City of Newark,  
Essex County, and Roger Leon,  
Superintendent,

Respondents.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, along with petitioner's exceptions – filed pursuant to *N.J.A.C. 1:1-18.4* – and the Board's reply thereto.

This matter was opened as a petition and motion for emergent relief filed by petitioner, who is seeking reinstatement as an Educational Media Specialist by the Newark Board of Education (Board). Petitioner worked for the Board from 1993 to 2001, when his employment was terminated following an investigation by the Division of Youth and Family Services into allegations that petitioner sexually assaulted two students. Criminal charges regarding the same incident were also filed in 2001, and petitioner was convicted in 2002 and sentenced to 22 years of incarceration. In 2013, petitioner's criminal conviction was reversed by the New Jersey Supreme Court and the indictment was dismissed. Petitioner filed a petition against the Board in 2013, seeking reinstatement to his former position. The 2013 petition was

dismissed as untimely, but the Administrative Law Judge in that case also found that petitioner was not entitled to reinstatement, as he had not earned tenure. *Askiaa Nash v. State-Operated School District of the City of Newark, Essex County*, Commissioner's Decision No. 424-13, decided November 25, 2013. That decision was affirmed by the Appellate Division in 2015. Petitioner filed another petition against the Board in 2016, again seeking reinstatement. The petition was dismissed based on the doctrines of *res judicata* and *collateral estoppel*. *Askiaa Nash v. State-Operated School District of the City of Newark, Essex County*, Commissioner's Decision No. 207-17, decided July 27, 2017 (Nash 2017). Petitioner filed the instant petition and motion for emergent relief in 2021, again seeking reinstatement. Petitioner now argues that as a non-tenured employee, he was improperly terminated in violation of his due process rights as he was not given a statement of reasons for his termination; was not provided with notice of nonrenewal; and was not given the opportunity to challenge allegations at a *Donaldson* hearing; further, petitioner alleged that the Board breached the collective bargaining agreement.

In an Initial Decision, the Administrative Law Judge (ALJ) noted that petitioner had not appeared for the emergent relief argument<sup>1</sup>, but also granted the Board's motion for summary decision and dismissed the petition. The ALJ found that, even if petitioner's claim is based on arguments not made in his previous petitions, they are barred by the same principles of *res judicata* and *collateral estoppel* as in *Nash 2017*, and he cannot continue to bring the same claim by advancing new arguments he failed to make in prior years.

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<sup>1</sup> Petitioner appeared via Zoom for an emergent hearing on January 10, 2022, but the parties adjourned the matter to January 14, 2022, at which time petitioner did not appear, despite efforts by the ALJ to contact him that morning by phone and email.

In his exceptions, petitioner argues that the ALJ erred because he is not challenging the tenure determination that was previously decided by the Appellate Division but was instead arguing that he was entitled to a fair termination process as a non-tenured employee. He alleges that the termination process was arbitrary, capricious and unreasonable because the procedures for non-renewing his employment contract, set forth in *N.J.S.A. 18A:27-4.1(b)* and *N.J.S.A. 18A:27-10*, were not followed and he was not given the opportunity to present his position to the Board. As such, petitioner contends that his statutory and constitutional rights were violated.<sup>2</sup> Accordingly, petitioner urges the Commissioner to reject the Initial Decision.

In reply, the Board argues that the ALJ properly dismissed the emergent application and granted summary decision in favor of the Board. The Board contends that the petition was filed outside the 90-day limitation period set forth in *N.J.A.C. 6A:3-1.3* because it was filed 20 years after his termination. Additionally, the Board maintains that this is the third petition filed by petitioner seeking reinstatement, so it is also barred by the doctrines of *res judicata* and *collateral estoppel*, as the issues have already been decided. As such, the Board submits that the Initial Decision should be adopted.

Upon review, the Commissioner finds at the outset that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia*, 90 *N.J.* 126 (1982), and codified at *N.J.A.C. 6A:3-1.6*. Petitioner did not appear for the emergent argument and fails to demonstrate any of the prongs of the *Crowe* test to warrant emergent relief. Further, the Commissioner agrees with the ALJ that summary decision should

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<sup>2</sup> Petitioner appears to argue that the ALJ's statement that he attempted to call petitioner for the Zoom hearing is untrue, and that petitioner actually called chambers in an attempt to be a part of the Zoom meeting.

be granted in favor of the Board. The Commissioner concurs with the ALJ that this matter is barred by the doctrines of *res judicata* and *collateral estoppel* as it is the third petition filed against the Board seeking reinstatement. The Commissioner does not find petitioner's exceptions to be persuasive. Although petitioner contends that he is advancing new arguments based on improper termination as a non-tenured employee, the Commissioner notes that the issue of whether petitioner is entitled to reinstatement to his position with the Board has been fully litigated and petitioner cannot attempt to re-litigate that issue by making arguments that he failed to make previously. Finally, the Commissioner finds that this matter is also barred by the 90-day statute of limitations set forth in *N.J.A.C. 6A:3-1.3*. It has been 20 years since petitioner's termination, 9 years since his conviction was vacated, 6 years since the Appellate Division decision in this matter, and 4 years since a decision was issued on petitioner's second petition. As such, the Commissioner agrees with the ALJ that the petition should be dismissed with prejudice.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition is hereby dismissed with prejudice.

IT IS SO ORDERED.<sup>3</sup>

  
ANGELINA ALLEN McMILLAN, Jd.D.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 4, 2022

Date of Mailing: March 4, 2022

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<sup>3</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. EDU 00115-22

AGENCY DKT. NO. 238-12/21

**ASKIAA NASH,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE  
CITY OF NEWARK, ESSEX COUNTY AND  
LEON ROGER, SUPERINTENDENT,**

Respondent.

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**Askiaa Nash**, pro se petitioner

**Adam S. Herman**, Esq., for respondent (Adams, Gutierrez & Lattiboudere, LLC)

Record Closed: January 14, 2022

Decided: January 18, 2022

BEFORE **ERNEST M. BONGIOVANNI**, ALJ:

Petitioner (Nash) makes this emergent application seeking reinstatement to the position of Educational Media Specialist with the Board of Education of the City of Newark, Essex County (Board/respondent). For the following reasons, I dismiss the emergent application and grant summary decision in favor of the Board.

On January 5, 2022, this matter was transmitted to the Office of Administrative Law (OAL) for emergent relief. On January 10, 2022, a hearing on this application via Zoom, began. Petitioner who had only been served with opposition papers filed by respondent earlier that day, agreed that he could use additional time to supplement his filing, and accordingly the hearing was adjourned to 9:30 a.m., January 14, 2022, again via Zoom. Petitioner failed to appear for the hearing, and despite efforts that morning to reach him by phone (a voicemail rather than Nash answered the phone) and email (his email had an automated reply saying it was full and could not receive any additional emails), Nash could not be contacted. Further, Nash, had not filed any supplemental material for consideration between January 10 and 14, and Nash has made no effort to contact the OAL since. Accordingly, respondent asked for a dismissal of the application for Nash's failure to appear. Respondent also filed a responsive pleading which seeks summary decision of the action based on numerous grounds.

The essence of Nash's current application is based on the Board's failure to reinstate him, upon his request, to a position he held as a, Educational Media Specialist from 1993 to 2000, when his employment was terminated after charges were brought of sexual assault of two students. While petitioner was convicted of those charges and sentenced to twenty-two years imprisonment, that conviction was overturned by the New Jersey Supreme Court and in 2013, the Essex County Prosecutor's Office dropped all charges. Soon thereafter, Nash sought reinstatement to his position as Media Specialist, the same application and remedy he seeks today. This application was the subject matter of a Summary Decision granted to respondent by Order of the Honorable Ellen S. Bass. ALJ. Aslkaa Nash v. State-Operated School District of the City of Newark, Docket Number, EDU 08449-13. (Initial Decision (November 25, 2013) adopted Comm'r (February 2014) <http://www.camlawrutgers.edu/library/oal>. (hereinafter referred to as "Nash, 2013")

In that matter, Judge Bass found that Nash's application was time barred. Judge Bass found that the time for filing appeals before the Commissioner of Education is 90 (ninety) days "from the date of receipt of the notice of a final order ruling or other action by the district Board of Education". N.J.A.C. 6A:3-1.3 (i). The Board had terminated Nash effective June 22, 2001, and Nash had filed his appeal 13 years later, and thus his

application was time barred. Judge Bass also determined Nash was not a tenured employee. Judge Bass' decision was affirmed by the Appellate Division on October 16, 2015 (DKT #A-2473-13T4).

In 2017, Nash made the same application for reinstatement, in a petition transmitted to the OAL and heard on motion for summary decision by the Honorable Jude Tiscornia, ALJ. Judge Tiscornia dismissed the petition by Summary Decision. *Askiaa Nash v. State-Operated School District of the City of Newark*, OAL Docket Number EDU 01563-17 (June 14, 2017) (hereinafter "Nash 2017"). Judge Tiscornia found that Nash's claim was barred both by the common law *res judicata* doctrine that provides that "a cause of action between parties that has been finally determined on the merit by a tribunal cannot be litigated by those parties or their privies in a new proceeding." Nash 2017, page 4, citing *Velasquez v Franz*, 123 N.J. 498, 505 (1991.) Judge Tiscornia also found that Nash cannot bring the same claim again based on the doctrine of collateral estoppel. Nash, 2017, pp 4-5, citing *Winters v. N. Hudson Reg'l Fire and Rescue*, 212 N.J. 67, 85 (2012), which defined collateral estoppel as applying when:

(1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

As stated by Judge Tiscornia in Nash, 2017, (page 5), in this case, I find that, once again, in this case, the "facts and arguments presented are the same as those contemplated by Judge Bass in her decision."

Here, Nash argues that he has a property claim to the position of Media Specialist from which he was terminated in 2001. He claims it was a violation of his due process guarantees of "property rights" and "free speech rights" to terminate him from his position without first holding a hearing. As noted by respondent, it has already been determined by Judge Bass, the Commissioner of Education, and the New Jersey Appellate Division that there was no denial of tenure rights. Even had Nash been wrongfully denied a so-



called Donaldson hearing, that claim needed to be raised in 2001. Furthermore, his current claim, even if based on new arguments not made in 2001, 2013 or 2017, are barred by the same principles noted in Nash 2017, namely res judicata and collateral estoppel. Petitioner is not entitled to bring the same claim year in and year out simply by advancing new arguments he failed to make years ago. The paucity of such arguments may be part of the reason why Nash failed to appear on the Emergent application which he sought. It should be noted that this instant claim borders on abuse of process, not only because it is the same action made years too late in 2013 and 2017 but also because he seeks “emergent” review of a termination that took place more than 21 years ago.

The record discloses that there is no way relief sought by Nash could or should be granted by the OAL, and that, given the clear record already established, no further hearing can possibly be warranted. Nash’s 2022 claim is the same as those made in 2013 and again in 2017, and must be dismissed, as a matter of law. R:4-6.2.

### **ORDER**

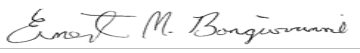
Based upon all of the foregoing, I **FIND** that Summary Decision in favor of the Board is **GRANTED** and that this matter should be and is hereby Ordered to be **DISMISSED WITH PREJUDICE**

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 (45) 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 (13) 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, P.O. 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 18, 2022  
DATE

  
ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency: January 18, 2022

Date Mailed to Parties: January 18, 2022  
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