

New Jersey Commissioner of Education

Final Decision

Denise Davis,

Petitioner,

v.

Board of Education of the City of Newark,

Essex County,

Respondent.

Synopsis

The petitioner was hired as a custodian by the respondent Board's school district and commenced working on January 19, 2021. Her employment was terminated at the end of her 90-day working test period, on April 19, 2021. Petitioner filed the within appeal of her termination with the Commissioner on July 23, 2023. The Board filed a motion to dismiss on the basis that the Department of Education does not have jurisdiction over this termination, which should have been filed with the Civil Service Commission (CSC).

The ALJ found, *inter alia*, that: the Department of Education does not have jurisdiction over this matter, and the case must be dismissed as a matter of law; the petitioner conceded that she filed the dispute with the wrong State agency and agrees with the Board that her petition should have been filed with the CSC; the petitioner sought to have the case deemed to have been filed with the CSC, but there is no authority to do so; further, the petitioner received a letter from the Board giving her proper notice that, pursuant to *N.J.A.C. 4A:2-4.2*, an appeal of her termination needed to be filed with the CSC within twenty days of written notice of termination. Accordingly, the ALJ granted the Board's motion to dismiss.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions and adopted the Initial Decision as the final decision in this matter. In so doing, the Commissioner noted that the petitioner both failed to allege any violation of the school laws in her appeal and filed her petition beyond the statutory time limit for the filing of appeals with either the CSC or the Commissioner. Accordingly, the petition of appeal 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.

340-23
OAL Dkt. No. 06963-21
Agency Dkt. No. 110-7/21

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

Petitioner was employed by the Board as a custodian beginning on January 19, 2021. She was terminated on April 19, 2021, at the end of her 90-day working test period. Petitioner filed her petition of appeal on July 23, 2023. The Administrative Law Judge (ALJ) granted respondent's motion to dismiss, concluding that the Commissioner does not have jurisdiction over this matter, which should have been filed with the Civil Service Commission (CSC). The ALJ found that there was no authority to grant petitioner's request that the matter be deemed to have been filed with the CSC.

In her exceptions, the petitioner acknowledges that the CSC, not the Commissioner, has exclusive jurisdiction over this type of appeal. Petitioner argues that she is not legally savvy and

that her mistake in filing her petition with the Commissioner rather than the CSC should not result in dismissal, because if she had filed with the CSC, that agency would have transmitted the case to the OAL. Accordingly, the petitioner requests that the matter be transferred to the CSC.

In reply, the Board argues that the ALJ appropriately dismissed the case and urges the Commissioner to adopt the Initial Decision.

Upon review, the Commissioner concurs with the ALJ that the petition must be dismissed. It is clear – and petitioner concedes – that the CSC has exclusive jurisdiction over this type of appeal. Furthermore, the Commissioner’s authority pursuant to *N.J.S.A. 18A:6-9* is limited to controversies and disputes arising under the school laws, but petitioner has not alleged any violation of *N.J.S.A. 18A:1-1 et seq.* or *N.J.A.C. 6A:1-1.1 et seq.* Finally, the petitioner points to no legal authority allowing the Commissioner to transfer the case to another state agency such as the CSC, and the Commissioner has previously declined to do so in similar circumstances. See *Brianna Butts v. Bd. of Educ. of the City of Newark, Essex Co.*, Commissioner Decision No. 74-22 (decided Apr. 14, 2022). In further support of this conclusion, the Commissioner notes that *N.J.A.C. 4A:2-4.1* provides that an employee terminated at the end of a working test period has twenty days to request a hearing before the CSC, and the record reflects that petitioner did not meet that deadline.

Additionally, even if the petitioner had alleged a violation of the school laws, her appeal to the Commissioner was untimely pursuant to *N.J.A.C. 6A:3-1.3(i)*, which requires all petitions to be filed within 90 days of the decision being contested. The petitioner was terminated on

April 19, 2021, and 90 days thereafter was July 20, 2021; however, petitioner did not file her petition until July 23, 2021, making it untimely.

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

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 20, 2023

Date of Mailing: November 22, 2023

¹ 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 ON
MOTION TO DISMISS

OAL DKT. NO. EDU 06963-21

AGENCY DKT. NO. 110-7/21

DENISE DAVIS,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF
NEWARK, ESSEX COUNTY,**

Respondent.

Arnold Shep Cohen, Esq., for petitioner Denise Davis (Oxford Cohen, attorneys)

Bernard Mercado, Esq., for respondent City of Newark Board of Education (Office
of General Counsel, attorneys)

Record Closed: October 12, 2023

Decided: October 16, 2023

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE

Petitioner, Denise Davis (Davis or petitioner) appeals her termination by the City of Newark Board of Education (Board or respondent) on April 19, 2021, at the end of her 90-day working test period (WTP). She had been hired as a custodian worker by the Board and commenced her employment on January 19, 2021.

PROCEDURAL HISTORY

On July 23, 2021, petitioner filed her Petition of Appeal with the Commissioner of Education. On August 17, 2021, this matter was transmitted by the Department of Education, Bureau of Controversies and Disputes, to the Office of Administrative Law (OAL) where it was filed as a contested matter pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The matter was assigned to the undersigned on August 20, 2021. I convened a series of telephonic case management conferences, several of which petitioner failed to participate in. Petitioner then advised that she was seeking representation either with an attorney or through the union.

On November 9, 2021, we were informed that petitioner had obtained counsel with Oxfeld Cohen, P.C. It was also suggested that counsel consult with his client to see if she would consider a voluntary withdrawal in light of the jurisdictional issues asserted by the Deputy Attorney General. Months passed without any communications notwithstanding regular requests for a status update from my chambers. Finally, in the spring of this year, we convened a case management conference, at which time a briefing schedule was established on the jurisdictional questions.

On July 14, 2023, the Board filed a Notice of Motion for Dismissal on the merits of petitioner's appeal on the basis that the Department of Education does not have jurisdiction over this termination, which should have been filed with the Civil Service Commission. After several reminders and then warnings to counsel, petitioner filed its response to the motion on October 12, 2023. The matter is now ripe for determination. For the reasons set forth herein, I hold that the respondent's Motion to Dismiss must be granted with prejudice.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

On a motion to dismiss, the legal standard to be applied is whether the moving party is entitled to relief as a matter of law even granting the factual pleadings alleged in the petition the presumption of truth. Printing Mart-Morristown v. Sharp Elecs. Corp., 116

N.J. 739 (1989). Here, petitioner concedes that she filed the dispute with the wrong State agency and agrees with the Board that her petition should have been filed with the Civil Service Commission.

Insofar as there is no dispute that the Department of Education does not have jurisdiction over this matter, this case must be dismissed as a matter of law. While petitioner seeks to have the undersigned merely deem the case as having been filed under the Civil Service Commission, there is no authority for such to take place. The OAL is a forum of limited jurisdiction derived specifically in each case by the matter and issues transmitted by a State agency head over to it for hearing as a contested dispute. In fact, it is a first principal of administrative law that --

The Office of Administrative Law shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the Office of Administrative Law or as otherwise authorized by law, except as provided by N.J.A.C. 1:1-17. The Office of Administrative Law shall not receive, hear or consider any pleadings, motion papers, or documents of any kind relating to any matter until it has acquired jurisdiction over that matter; . . .

[N.J.A.C. 1:1-3.2.]

Furthermore, it is the head of each such agency that determines whether to retain a case for in-house determination or transmit a dispute to the OAL for hearing, as well as which asserted issues the Administrative Law Judge is granted jurisdiction to determine.

It is the agency head who determines initially whether a case is contested and, if so, whether the case should be sent to the OAL for an adjudicatory hearing to be conducted by an administrative law judge. See N.J.A.C. 1:1-2.2(a) (OAL jurisdiction limited to cases submitted to it by the agency head after agency head determines that the case is contested and appropriate for a hearing).

In re Appeal of Certain Sections of Uniform Administrative Procedure Rules, 90 N.J. 85, 105 (1982)

This case is virtually identical to that of Butts v. Bd. of Education of the City of Newark 2022 N.J. AGEN LEXIS 365, *5, Initial Decision (March 2, 2022), aff'd by Final Decision (April 14, 2022), and I **CONCLUDE** that the result shall be identical.

Furthermore, petitioner received a letter from the Board stating that if she wanted to appeal her termination, the appeal had to be filed with the Civil Service Commission within twenty days. Pursuant to N.J.A.C. 4A:2-4.2: "An appeal shall be made in writing to the Civil Service Commission no later than 20 days from the employee's receipt of written notification from the appointing authority of the termination from service." The Board provided proper notice but petitioner did not file until July 23, 2023, ninety (90) days after that notice. I **CONCLUDE** that petitioner failed to file her appeal within twenty days with either agency, which is another jurisdictional basis for dismissing her appeal.

ORDER

Accordingly, and for the reasons articulated above, it is **ORDERED** that the motion of respondent Newark Board of Education for an Order Granting Dismissal is hereby **GRANTED**. It is further **ORDERED** that the appeal of petitioner Denise Davis for relief from her termination during her working test period is hereby 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 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.



October 16, 2023
DATE

GAIL M. COOKSON, ALJ

Date Received at Agency:

10/16/23

Date Mailed to Parties:
id

10/16/23