

**New Jersey Commissioner of Education
Final Decision**

Ingrid Fullerton,

Petitioner,

v.

Board of Education of the Borough of East Newark,
Hudson County,

Respondent.

Synopsis

Pro-se petitioner was a non-tenured teacher employed by the respondent Board for the 2022-23 school year pursuant to an employment agreement. Petitioner was terminated via a letter dated September 22, 2022 which relieved her of her duties immediately and indicated that she would be on leave with pay for the 60-day period. The following day another letter from the Superintendent informed petitioner that her termination had been reexamined based upon recent conduct and that the immediate termination was for cause and without pay. Petitioner filed an appeal on October 18, 2022, challenging her termination. She claimed, *inter alia*, that the Board's actions: violated the 60-day notice of termination, defamed her character, and wrongfully terminated her under New Jersey's Family and Medical Leave Act. The Board filed a motion for summary decision.

The ALJ found that the petition does not arise out of the New Jersey school laws; therefore, the Commissioner lacks jurisdiction pursuant to *N.J.S.A. 18A:6-9*, and the respondent Board's motion for summary decision could not be addressed. Accordingly, the ALJ took no further action and dismissed the petition.

Upon review, the Commissioner found that the most relevant statute cited by petitioner in her exceptions is *N.J.S.A. 18A:6-30.1*, which provides that "[w]hen the dismissal of any teaching staff member before the expiration of his contract with the board of education shall be decided, upon appeal, to have been without good cause, he shall be entitled to compensation for the full term of the contract . . .", and that the petitioner appears to argue that the Board improperly terminated her while she was using a sick day and before she had any observations. The Commissioner concurred with the ALJ that the petition did not reference any New Jersey school laws, and the Commissioner therefore lacks jurisdiction over the claims alleged in the petition. However, affording broad latitude to the petitioner as a *pro se* litigant, the Commissioner determined that the matter should be remanded to the OAL for consideration of petitioner's argument under *N.J.S.A. 18A:6-30.1*.

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.

96-23

OAL Dkt. No. EDU 09468-22

Agency Dkt. No. 279-10/22

New Jersey Commissioner of Education

Decision

Ingrid Fullerton,

Petitioner,

v.

Board of Education of the Borough of
East Newark, Hudson County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by the petitioner pursuant to *N.J.A.C. 1:1-18.4*. The Board did not file a reply.

In this matter, petitioner challenges her termination by the East Newark Board of Education (Board). Petitioner was a non-tenured teacher who was employed by the Board for the 2022-23 school year pursuant to an employment agreement. In a letter dated September 22, 2022, the Superintendent provided petitioner with a 60-day notice of termination, relieved her of her duties, and placed her on administrative leave with pay. The following day, the Superintendent informed petitioner that due to inappropriate and harassing text messages, she was instead recommending immediate termination for cause. Petitioner filed the instant petition of appeal, making claims that the Board: violated the 60-day

termination notice in her contract; defamed her character; and wrongfully terminated her under the New Jersey Family and Medical Leave Act (FMLA). Further, petitioner contended that the Board's actions violated the 4th and 5th amendments of the U.S. Constitution.

The Administrative Law Judge (ALJ) found that the petition does not arise out of the New Jersey school laws, and therefore the Commissioner lacks jurisdiction, pursuant to *N.J.S.A. 18A:6-9*. As such, the ALJ dismissed the petition.

In her exceptions, petitioner cites to various education statutes to support her contention that this matter involves New Jersey school law and falls under the Commissioner's jurisdiction. The most relevant statute cited by petitioner is *N.J.S.A. 18A:6-30.1*, which provides that "[w]hen the dismissal of any teaching staff member before the expiration of his contract with the board of education shall be decided, upon appeal, to have been without good cause, he shall be entitled to compensation for the full term of the contract . . ." Petitioner appears to argue that the Board improperly terminated her while she was using a sick day and before she had any observations.¹

Upon review, the Commissioner agrees with the Administrative Law Judge that the petition did not reference any New Jersey school laws, and the Commissioner therefore lacks jurisdiction over the claims alleged in the petition. Nevertheless, affording latitude to petitioner as a *pro se* litigant, the Commissioner finds this matter should be remanded for consideration of petitioner's argument under *N.J.S.A. 18A:6-30.1*.

¹ Petitioner also argues that *N.J.S.A. 34:11D-4* prohibits employers from taking retaliatory action when an employee uses sick leave. The Commissioner notes that the statute does not fall under the Commissioner's jurisdiction.

Accordingly, the Initial Decision of the OAL is remanded for further proceedings consistent with this decision.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 30, 2023

Date of Mailing: March 31, 2023

² 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

MOTION TO DISMISS

OAL DKT. NO. EDU 09468-22

AGY REF NO. 279-10/22

INGRID FULLERTON,

Petitioner,

v.

**BOARD OF EDUCATION OF THE BOROUGH OF
EAST NEWARK, HUDSON COUNTY,**

Respondent

Ingrid Fullerton, petitioner, pro se

Frances Febres, Esq., for respondent (Cleary, Giacobbe, Alfieri & Jacobs,
attorneys)

Record Closed: December 15, 2023

Decided: January 5, 2023

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Ingrid Fullerton filed a pro se Petition of Appeal, dated October 18, 2022, challenging her termination of employment with the Respondent District, and seeking Emergent Relief. The Office of Controversies and Disputes in the New Jersey

Department of Education (DOE) transferred the matter to the Office of Administrative Law (OAL), where it was filed on October 19, 2022.

Petitioner is seeking payment of sixty days pay pursuant to her employment contract.

Respondent Board filed its brief in opposition to the request for emergent relief, and the Certification of Rosaura Bagolie, on October 31, 2022.

Oral argument via Zoom was held on October 31, 2022.

The application for emergent relief was denied by Order of the undersigned dated November 1, 2022.

A prehearing conference was held on November 9, 2022, and a Prehearing Order was entered November 14, 2022.

Petitioner filed a motion for summary decision dated November 11, 2022. Respondent filed a motion to dismiss dated November 17, 2022. Petitioner filed her opposition to Respondent's motion to dismiss on December 6, 2022. Respondent filed its opposition to Petitioner's motion for summary decision on December 8, 2022; and, Petitioner filed her response thereto, also on December 8, 2022. Respondent then filed a reply to Petitioner's response on December 15, 2022.

FACTUAL BACKGROUND

Petitioner was employed with the Respondent District pursuant to an Employment Agreement for East Newark Board of Education Employees, dated June 30, 2022. Petitioner was employed as a non-tenured teacher for the 2022-2023 school year, at a salary of \$62,348.

Petitioner was terminated from her position via Notice of Determination dated October 7, 2022, with an effective date of termination of September 23, 2022.

Initially, Petitioner was terminated via letter dated October 22, 2022, from Rosaura Bagolie, the Superintendent of the District. Said letter was referenced as a 60-Day Notice of Termination. Said letter relieved Petitioner of her duties immediately, and provided that she be on Administrative Leave with pay for the sixty-day period.

Thereafter, in a letter dated September 23, 2022, Superintendent Bagolie advised Petitioner that her termination was re-examined based upon recent conduct, and the termination of employment be immediate and without pay. This letter stated the termination was for cause. The letter also served as a Riceⁱ notice.

Petitioner claimed a violation of the NJ Family and Medical Leave Act (FMLA) in her petition of appeal. Petitioner was not on leave pursuant to FMLA. (See Bagolie Cert., pg. 3, para. 11.)

LEGAL ANALYSIS AND CONCLUSION

N.J.S.A. 18A:6-9 states, in pertinent part:

The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the State board or of the commissioner. For the purposes of this Title, controversies and disputes concerning the conduct of school elections shall not be deemed to arise under the school laws.

Petitioner's petition of appeal sets forth the following claims:

1. Violation of 60 days termination notice;
2. Defamation of character;
3. Wrongful termination during FMLA leave;
4. Violation of NJ FMLA;
5. Violation of 4th Amendment to US Constitution;
6. Violation of 5th Amendment to US Constitution; and,
7. Violation of right of privacy.

Said petition also alleges interference with unemployment benefits.

None of the above noted claims fall under the jurisdiction of the Commissioner of the Department of Education. The only arguable claim that may be before the Commissioner is the contractual claim regarding Petitioner's termination.

See Picogna v. Board of Educ., 249, N.J. Super. 332, 592 A.2d 570, 1991 N.J. Super. LEXIS 229 (App.Div. 1991), Dismissal of terminated teacher's petition was proper, which sought relief from the Commissioner of Education based upon the terminated teacher's allegedly wrongful dismissal by the city board of education, and allowed the terminated teacher to adjudicate a parallel civil suit that he had commenced shortly before he filed his petition with the Commissioner, because even though the Commissioner had jurisdiction to hear and determine without cost to the parties, all controversies and disputes arising under the school laws, N.J.S.A. 18A:6-9, the contract claim of a non-tenured school employee did not arise under the school laws simply because its outcome could have later enabled him to attain tenure under the school laws; whether the terminated teacher's employment was wrongfully terminated under the contract and under the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq. was for the court, not the Commissioner, to decide.

Clearly, this matter is not a controversy or dispute arising under the school laws. The Commissioner lacks jurisdiction. Accordingly, the undersigned lacks jurisdiction.

As the instant matter is not properly before the undersigned, Petitioner's motion for summary decision cannot be addressed.

I make no findings as to the veracity of any claims set forth in the petition of appeal. I only **CONCLUDE** that the instant matter cannot be addressed in this forum due to lack of jurisdiction.

ⁱ Rice v. Union City High School Regional Board of Education, 155 N.J. Super. 64 (1977)

ORDER

It is hereby **ORDERED** that the Respondent's motion to dismiss be **GRANTED**, and that Petitioners' petition of appeal be **DISMISSED**; and,

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 5, 2023 _____

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

APPENDIX

List of Moving Papers

For Petitioner:

Motion for Summary Decision

Opposition to Motion to Dismiss

Response to Opposition to Motion for Summary Decision

For Respondent:

Motion to Dismiss

Certification of Rosaura Bagolie, Superintendent of Schools with Exhibits A through E

Opposition to Motion for Summary Decision

Reply to Opposition to Motion to Dismiss