

**New Jersey Commissioner of Education**  
**Final Decision**

Friends of Team Charter School, Inc.,

Petitioner,

v.

Board of Education of the City of Newark,  
Essex County,

Respondent.

**Synopsis**

This matter involves a challenge by the petitioner to the respondent Board's attempt to exercise its right of reversion regarding the Maple Avenue School – one of several properties that were transferred from the respondent Board to the Newark Housing Authority (NHA) under the terms of a 2016 site disposition and development agreement (Agreement) in which the NHA agreed to convey the buildings to third parties for the benefit of the Board and the City of Newark. Petitioner purchased Maple Avenue School from a third party in March 2020 and is developing it as a public charter school. In April 2020, the Board filed suit in Superior Court against the NHA, seeking to exercise its right to reversion based on the argument that NHA had failed to complete a site project and that the property was not being used for one of the Agreement's permitted uses. Petitioner subsequently filed the within matter, alleging that the Board was not authorized to file the Superior Court complaint and had failed to comply with facilities regulations.

The ALJ found, *inter alia*, that: the issues for determination herein are whether this matter arises under the school laws and whether the appeal was timely filed; the fact that school buildings were sold by the Board to NHA does not make the purpose of the Agreement a school facility project; under *N.J.A.C 6A:3-1.3(i)*, a petitioner shall file a petition no later than the 90<sup>th</sup> day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency that is the subject of the case; petitioner herein was put on notice of the Superior Court action when it was served with the amended complaint on May 4, 2020. The ALJ concluded that the Agreement is not a school facilities project and therefore this matter does not arise under the school laws; further, the petition of appeal was untimely because petitioner filed its appeal in April 2021, which was not within ninety days of becoming aware of the Superior Court complaint in May 2020. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

Upon independent review of the record, the Commissioner denied the Board's motion for summary decision and remanded the matter to the OAL for further proceedings. In so doing, the Commissioner found, *inter alia*, that: the petition was timely; the ALJ overlooked the specific school laws which petitioner alleges the Board has violated; and the ALJ erred in concluding, as a matter of summary decision, that this matter is not a school facilities project.

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.

258-21

OAL Dkt. No. EDU 04320-21

Agency Dkt. No. 55-4/21

**New Jersey Commissioner of Education**

**Final Decision**

Friends of Team Charter School, Inc.,

Petitioner,

v.

Board of Education of the City of  
Newark, Essex County,

Respondent.

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

This matter involves the transfer of twelve school buildings from the Board to the Newark Housing Authority (NHA), pursuant to a 2016 site disposition and development agreement (Agreement) in which the NHA agreed to convey the buildings to third parties for the benefit of the Board and the City of Newark. The Agreement provided that any sites conveyed to the NHA would be subject to a right of reversion, which the Board could exercise if the NHA had not developed a site project or demonstrable plans for a site within three years of the Agreement. The NHA sold one of the sites – the Maple Avenue School – to a third party in 2017, and that party sold the property to petitioner, which is developing the property as a public charter school.

On April 6, 2020, the Board filed a complaint against the NHA in Superior Court, seeking to enforce its rights to reversion of the Maple Avenue School property on the grounds that a site project had not been completed and the property was not being used for one of the Agreement's permitted uses. Petitioner was served with an amended complaint, adding petitioner as a defendant, on May 4, 2020. In December 2020, petitioner's motion to dismiss was denied by the Superior Court.

On January 21, 2021, petitioner filed Open Public Records Act (OPRA) requests with the Board, seeking Board resolutions authorizing the filing of the Superior Court complaint. The Board responded on March 5, 2021, indicating that no such documents were maintained. Petitioner made a second OPRA request on April 7, 2021, seeking facilities applications to the Department of Education (DOE). The Board responded on April 21, 2021, indicating that no such applications exist.

On April 13, 2021, petitioner filed the petition of appeal in this matter, alleging that the Board was not authorized to file the Superior Court complaint and had failed to comply with facilities regulations. The ALJ granted the Board's motion for summary decision, concluding that the Agreement is not a school facilities project and that the petition of appeal was untimely because petitioner did not file within ninety days of becoming aware of the Superior Court complaint in May 2020.

In its exceptions, petitioner argues that it did not – and could not have – become aware that the Board had not authorized the filing of the Superior Court complaint or submitted facilities applications to the DOE until it received the Board's response to its OPRA requests. Petitioner therefore contends that the Board's OPRA response provided the notice to petitioner that triggered the 90-day limitations period, and the petition of appeal was timely because it was filed within 90 days of that date. Petitioner also claims that, because the Board is seeking to acquire

property through the Superior Court lawsuit, it constitutes a school facilities project, and that the Board has failed to comply with school facilities regulations. Finally, petitioner argues that there are disputed issues of material fact, particularly regarding the Board's intentions for the property, that preclude summary decision.

In reply, the Board argues that the action triggering the 90-day limitations period was service of the amended Superior Court complaint on petitioner. The Board notes that the OPRA requests were not filed until January 15, 2021, 256 days after petitioner was on notice of the Superior Court complaint, and that the Board's meeting minutes were publicly available on its website in time for petitioner to investigate and file a timely petition of appeal. The Board also contends that the Commissioner lacks jurisdiction over this matter because a lawsuit does not constitute a school facilities project. Finally, the Board argues that summary decision was appropriate because the Board's potential future plans for the property are immaterial and the Board will comply with any applicable school facilities regulations if and when it undertakes such projects.

Upon review, the Commissioner disagrees with the ALJ that the petition was untimely. Pursuant to *N.J.A.C. 6A:3-1.3(d)*, the 90-day period for appeal to the Commissioner begins when the affected individuals have received adequate notice. In order for the notice to be adequate, the individuals must have been alerted to the existence of facts which give rise to a cause of action. *Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 N.J. 572, 586-587 (1993). By characterizing the subject of the case as the filing of the Superior Court complaint, and focusing on the date of service on petitioner, the ALJ overlooked the specific school laws which petitioner alleges the Board has violated: failure to authorize the complaint, and failure to comply with school facilities regulations.

Regarding the alleged failure to authorize the complaint, while the Board points out in briefing that its meeting minutes were publicly available on its website, no evidence has

been presented to demonstrate that fact.<sup>11</sup> Moreover, due to the onset of the Covid-19 pandemic shortly before the Superior Court complaint was filed, minutes reflecting the Board's actions were broad and vague, and it is not unreasonable for petitioner to have been uncertain about whether the complaint was authorized by the Board, particularly when the complaint itself indicates it was filed by the Board. Additionally, payment for legal services for the Superior Court litigation is presumably ongoing, and if petitioner is correct that those payments are being made in violation of school laws, each one could give rise to a new cause of action.

Regarding the alleged violation of facilities regulations, the Commissioner can discern no way for petitioner or any member of the public to know, without an OPRA request, that the Board had not filed paperwork with the DOE related to school facilities projects. Additionally, the Board's failure to file paperwork – if petitioner is correct that such filing is required – is an ongoing failure.

It was not until the receipt of the Board's responses to the OPRA requests that petitioner had the information that led it to believe that the complaint had not been authorized and that the Board had violated facilities regulations. As the petition of appeal was filed within 90 days of those responses, the Commissioner concludes that it was timely.

The Commissioner further finds that the ALJ erred in concluding, as a matter of summary decision, that this matter is not a school facilities project. The ALJ noted that the purpose of the Agreement is not a school facility project solely because the properties sold were school buildings. However, this finding mischaracterizes the issue. While the Agreement itself is not a school facilities project, the Board's pursuit of litigation to exercise the right of reversion contained in the Agreement could constitute land acquisition and/or a school facilities project,


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<sup>11</sup> Petitioner has also indicated in briefing that the Board's minutes reveal that the Board did not take any action regarding the property. However, this statement contains no indication of when those minutes were posted and demonstrates only that they were posted at the time of briefing.

subject to applicable statutes and regulations. At minimum, petitioner has raised sufficient issues of material fact to preclude summary decision on this topic.

The Commissioner does not reach the issues of jurisdiction, standing, or whether the Board has violated any school laws, as the record is insufficient at this stage to reach any such conclusions. Accordingly, the Board's motion for summary decision is denied. The matter is remanded for further proceedings consistent with this decision.

IT IS SO ORDERED.

  
ANGELINA ALLEN McMILLAN, J.D.S.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 19, 2021  
Date of Mailing: October 19, 2021



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

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT.NO. EDU 04320-21

AGENCY DKT. NO. 55-4/21

**FRIENDS OF TEAM CHARTER SCHOOL, INC,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF**

**NEWARK, ESSEX COUNTY,**

Respondent.

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**Thomas O Johnston**, Esq. for petitioners (Johnston Law Firm LLC, attorneys)

**Matthew J. Tharney**, Esq., for respondent, (Sattiraju & Tharney, LLP,  
attorneys)

Record Closed: July 14, 2021

Decided: July 23, 2021

BEFORE **KIMBERLY A. MOSS**, ALJ:

This matter having been opened before the Office of Administrative Law by Matthew J. Tharney Esq., attorney for respondent on motion for summary decision on

May 3, 2021, in lieu of an answer to the petition. Petitioner filed opposition to the motion on June 23, 2021. Respondent filed a reply to the opposition on July 14, 2021.

### **FACTUAL DISCUSSION**

By way of background, in April 2016, Newark Board of Education (Board or NPS or respondent) entered into a site disposition and development agreement (Agreement) with the Newark Housing authority (NHA). The Board agreed to transfer twelve school buildings to NHA. NHA agreed to convey those buildings to third parties for the benefit of the Board and the City of Newark.

There is also a provision in the agreement that states Article 5.2 which states “Any sites conveyed to the NHA shall be subject to a right of reversion exercisable by NPS (Newark Public Schools) if and to the extent the NHA has not developed a site project or demonstrable plans for such site within three years from the date of execution of this agreement.

The agreement clearly states in Article 5.4(1) Site Projects that NHA shall work diligently to investigate and identify feasible housing, redevelopment and economic development opportunities at each site project.

Maple Avenue School was included in the agreement. The Board transferred title of Maple Avenue School to NHA on June 30, 2016.

Petitioner alleges that on November 16, 2017, the Board executed and delivered a second Bargain and Sale deed to the property with a covenant against Grantor’s acts which states that it has done no acts to encumber the property. Petitioner also states that an affidavit of title dated November 16, 2017, stated that the Board has not allowed any interest to be created which affects its ownership and use of the property and that there are no other legal obligations that can be asserted against the property. Petitioner did



not include the bargain and sale deed or the affidavit of title in the opposition or the petition.

On or about December 27, 2017, NHA sold the Maple Avenue School property 33 Maple Avenue Urban renewal LLC (33 Maple LLC). On March 12, 2020, 33 Maple LLC sold the property to petitioner. Petitioner is developing the property as a public school.

On April 6, 2020, the Board filed a complaint in Superior Court Chancery Division Essex County titled Newark Board of Education v. Newark Housing Authority Docket No ESX-C 67-20. The Complaint is for breach of covenant of good faith and fair dealing, tortious interference with contract, and unjust enrichment. The Board sought to enforce its rights to reversion to the Maple Avenue School on the grounds that a site project had not been completed and the property was not being used for one of the agreements permitted uses.

On April 27, 2020, an amended complaint was filed naming plaintiff as a defendant. The amended complaint was served on plaintiff on May 4, 2020. The Board filed a second amended complaint on August 31, 2020. Plaintiff filed a motion to dismiss the Superior Court Complaint on October 2, 2020. That motion was denied on December 20, 2020. Petitioner alleges that the filing of the Complaint and amended complaint were not duly authorized by the Board, because it was not listed in the Board's minutes from July 1, 2019, to January 15, 2021. Petitioner alleges that there were no resolutions authorizing the complaint. Petitioner filed this matter with the New Jersey Department of Education on or about April 13, 2021.

### **LEGAL ANALYSIS AND CONCLUSION**

Respondent seeks to summarily dismiss petitioner's claim. The rules governing motions for summary decision in an OAL matter are embodied N.J.A.C. 1:1-12.5. These provisions mirror the language of Rule 4:46-2 and the New Jersey Supreme Court's decision in Judson v. Peoples Bank and Trust Company of Westfield, 17 N.J. 67 (1954).

Under N.J.A.C. 1:1-12.5(b), the determination to grant summary judgment should be based on the papers presented as well as any affidavits, which may have been filed with the application. In order for the adverse, i.e., the non-moving party to prevail in such an application, responding affidavits must be submitted showing that there is indeed a genuine issue of fact, which can only be determined in an evidentiary proceeding. The Court in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 523 (1995), set the standard to be applied when deciding a motion for summary judgment. Therein the Court stated:

The determination whether there exists a genuine issue with respect to a material fact challenged 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.

N.J.S.A. 18a:6-9 provides:

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.

The issue is whether this matter arises under school laws. Count One of the petition states school district expenditures . . . must be approved by a school board. There is a question of fact as to whether this matter arises out of school laws.

N.J.A.C. 6A: 26-1.2 defines school facility project as:

"School facilities project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction, or capital maintenance of all or any part of a school facility or any other personal property necessary for, or ancillary to, any school facility. School facilities project includes, but is not limited to, fixtures; furnishings and equipment; site acquisition; site development; services of design professionals such as engineers and architects; construction management; legal services; financing costs; and administrative costs and expenses incurred in connection with the project. To qualify as a school facilities project, the project must be new construction to meet the housing needs of

unhoused students, or rehabilitation to keep a school facility functional for its original purpose or for a new purpose accomplished within the gross square footage of the original building. Maintenance projects intended solely to achieve the design life of a school facility and routine maintenance do not constitute school facilities projects.

In this matter, the Site Disposition and Development Agreement between the Board and NHA states the purpose of the agreement is for NPS to realize expense savings and generate revenue for capital improvement, while also increasing the tax ratables for the City and enhancing job and employment opportunities for city residents. The fact that school buildings were sold by NPS to NHA does not make the purpose of the agreement a school facility project. The agreement clearly states in Article 5.4(1) Site Projects that NHA shall work diligently to investigate and identify feasible housing, redevelopment and economic development opportunities at each site project. The Agreement also has a reversion of property to NPS "if and to the extent the NHA has not developed a site project or demonstrable plans for such site within three years from the date of execution of this agreement." The Board wants to enforce this provision in the superior court case. The Board by its Complaint in Superior court is attempting to enforce a term of the agreement with NHA.

I **CONCLUDE** that this matter is not a school facilities matter.

N.J.A.C. 6A:3-1.3(i) requires that:

The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing.

Such a rule represents a fair and reasonably necessary requirement for the proper and efficient resolution of disputes under the school laws and falls within the scope of authority granted to the Commissioner. *Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 N.J. 572, 582 (1993). The limitation period gives school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after ninety days. *Ibid.* Its purposes are to stimulate litigants to pursue a right of action within a reasonable time so that the opposing party may

have a fair opportunity to defend and to penalize dilatoriness and serve as a measure of repose by giving security and stability to human affairs. *Id.* at 587.

The ninety-day requirement is to be strictly construed and is mandatory. *Wise v. Bd. of Educ. of the City of Trenton*, EDU 160-00, Comm'r (September 11, 2000), *aff'd*, State Bd. of Educ. (January 3, 2001), <<http://lawlibrary.rutgers.edu/oal/search.html>>. A petitioner must file a petition within ninety days from a notice of adverse action and not within ninety days of her exhaustion of other avenues and mechanisms she might have employed in seeking renewal of employment. *Id.* Informal attempts to resolve a dispute do not serve to toll the statute of limitations. See *Kaprow supra* at 588. Also, the ninety-day period for filing a petition of appeal commences when a petitioner learns of facts that would enable her to file a timely claim. *Id.* at 587. "Adequate notice must be sufficient to inform an individual of some fact that he or she has a right to know and that the communicating party has a duty to communicate." *Ibid.* (citation omitted).

N.J.A.C. 6A:3-1.13 states:

The rules in this chapter shall be considered general rules of practice to govern, expedite and effectuate the procedure before, and the actions of the Commissioner in connection with, the determination of controversies and disputes under the school laws. Where such rules do not reflect a specific statutory requirement or an underlying rule of the OAL, they may be relaxed or dispensed with by the Commissioner, in the Commissioner's discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

Petitioner was put on notice of the Superior Court action when it was served with the amended complaint on May 4, 2020. Petitioner knew of the Superior Court matter and filed a motion to dismiss the superior court matter on October 2, 2020. Petitioner's belief that the Superior Court complaint was not filed does not negate the fact that petitioner was notified of the action and did not file a petition with the Department of Education within ninety days of May 4, 2020.

I **CONCLUDE** that the petition was not timely filed.

**ORDER**

Based on the foregoing, it is **ORDERED** that the Motion of the Board for summary decision is **GRANTED**. Because the petition was not filed timely, it is hereby **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.



\_\_\_\_\_  
DATE

\_\_\_\_\_  
**KIMBERLY A. MOSS, ALJ**

Date Received at Agency:

July 22, 2021

Date Mailed to Parties:

July 22, 2021

ljb