

## New Jersey Commissioner of Education

### Final Decision

Board of Education of the Borough of Kinnelon,  
Morris County,

Petitioner,

v.

Karen D’Amico,

Respondent.

### Synopsis

The petitioning Board contended that respondent – a member of the Kinnelon Board of Education – violated *N.J.S.A. 18A:12-2*, which mandates that no one may serve on a board of education if they have a direct or indirect interest in a claim against the board on which he/she sits. The Board argued that respondent is disqualified from serving as a member because of a special education due process petition that her husband filed against the Board, asserting that their child was being denied educational services for the 2020-2021 school year and seeking reimbursement for the cost of the child’s attendance at a private school. Also at issue is a letter sent by respondent to the Board on August 13, 2021, notifying the Board of her intent to unilaterally place her child in a private school and reserving the right to seek reimbursement for the costs of that placement if the dispute between the parties over the child’s services was not resolved amicably within 10 days. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there is no genuine issue as to any material fact here, and the matter is ripe for summary decision; the pivotal issue in this case is whether respondent, who is indisputably a Board member, is in violation of *N.J.S.A. 18A:12-2* through her interest either directly or indirectly in a claim against the Board; when the instant due process petition was filed, respondent was in violation of *N.J.S.A. 18A:12-2*, as even without her name on the petition, respondent nevertheless had an interest in a claim against the Board; however, one hour after electronically filing the petition in February 2021, the respondent and her husband requested that their petition be disregarded, without additional explanation. The ALJ concluded that respondent was in violation of *N.J.S.A. 18A:12-2* when the due process petition involving her child was filed against the Board, but the withdrawal of that petition one hour after filing remedied the violation; further, the 10-day letter did not violate *N.J.S.A. 18A:12-2*. Accordingly, the ALJ granted respondent’s motion for summary decision and denied the Board’s motion for summary decision.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ that respondent violated *N.J.S.A. 18A:12-2* by filing the due process petition, but that the violation was remedied when the petition was later withdrawn. However, the Commissioner found that by sending the 10 day letter, respondent asserted a claim against the Board that has the potential to disqualify her from serving as a Board member. Being unable to conclude on the present record whether there is currently a substantial conflict between the parties, the Commissioner remanded the matter to the OAL for additional fact finding.

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.

307-21

OAL Dkt. No. EDU 04830-21

Agency Dkt. No. 43-3/21

## New Jersey Commissioner of Education

### Final Decision

Board of Education of the Borough of  
Kinnelon, Morris County,

Petitioner,

v.

Karen D'Amico,

Respondent.

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

In this matter, the Board contends that respondent, who is a member of the Board, has a direct or indirect interest in a substantial financial claim against the Board in violation of *N.J.S.A. 18A:12-2* and is therefore disqualified from serving as a member of the Board. The Board's claim arises from a special education due process petition that respondent<sup>1</sup> filed against the Board, in which respondent asserted that her child was being denied educational services by the Board for the 2020-2021 school year and sought reimbursement of costs of the child's attendance at a private school. Also at issue is a letter sent by respondent to the Board

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<sup>1</sup> The due process petition omitted respondent's name and was ostensibly filed solely by her spouse. However, as respondent's interests – both parental and financial – would also be served by the relief sought in the petition, the Commissioner concludes that it is appropriate to treat the petition as if it was also filed by respondent.

on August 13, 2021, in which respondent notified the Board of her intent to unilaterally place her child in a private school and reserved the right to seek reimbursement for the costs of that placement if the dispute between the parties over the child's services was not resolved amicably within 10 days (10-day letter). Following cross-motions for summary decision, the Administrative Law Judge (ALJ) concluded that respondent was in violation of *N.J.S.A. 18A:12-2* when the due process petition involving her child was filed against the Board, but the withdrawal of that petition one hour after filing remedied the violation. The ALJ further concluded that the 10-day letter did not violate *N.J.S.A. 18A:12-2*. Accordingly, the ALJ granted respondent's motion for summary decision and denied the Board's motion for summary decision.

In its exceptions, the Board argues that *N.J.S.A. 18A:12-2* does not require a board member to file or participate in pending litigation to have a conflict, but only that there is a likelihood of litigation, particularly when a claim includes a request for specific monetary relief. The Board contends that respondent's withdrawal of the due process petition is immaterial and cannot cure her conflict of interest. The Board further points to a history of petitions filed by respondent as demonstrating a likelihood of litigation, as well as her actual interest in a claim against the Board.<sup>2</sup>

In reply, respondent argues that she does not have a disqualifying conflict of interest because she does not have a pending claim against the Board, which distinguishes her

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<sup>2</sup> These other petitions were filed prior to respondent's election to the Board and resolved by respondent's withdrawal with prejudice at the OAL, and therefore they do not create a conflict in violation of *N.J.S.A. 18A:12-2*. The Commissioner does not find the Board's argument that a history of filings demonstrates a likelihood of future litigation to be persuasive. Whether a conflict between a board member and a board is substantial enough to warrant removal must be considered on a case-by-case basis, with an analysis of the dispute at issue at the time.

circumstances from those at issue in the cases cited by the Board. Respondent contends that her withdrawal of the due process petition demonstrates that litigation between the parties is unlikely.

Upon review, the Commissioner concurs with the ALJ that by filing a due process petition seeking monetary relief from the Board, respondent violated *N.J.S.A. 18A:12-2*, and that the violation was remedied when the petition was withdrawn one hour later.<sup>3</sup>

However, the Commissioner disagrees that the 10-day letter cannot be a “claim” against the Board because no due process petition was filed relative to the letter. The Commissioner has previously held that a Notice of Tort Claim filed against a board of education constitutes a claim. *Bd. of Educ. of the Borough of Berlin, Camden Cty. v. Charlotte Lee*, Commissioner Decision No. 238-02 (June 14, 2002). In that matter, the Commissioner affirmed the Initial Decision, in which the ALJ noted that a “notice of tort claim is not merely an inchoate claim that may be pursued at some future date, but represents an actual claim against a public entity which may be subject to settlement and, failing that, may be the subject of a future court action against the public entity.” *Bd. of Educ. of the Borough of Berlin, Camden Cty. v. Charlotte Lee*, EDU 6050-01 (Apr. 29, 2002). Just as the law requires a Notice of Tort Claim to be filed prior to commencing legal action against a public entity, the law also requires parents seeking reimbursement from a board of education for a unilateral placement to send a 10-day letter. *N.J.A.C. 6A:14-2.10*. Such reimbursement is obtainable through litigation at the OAL. *Ibid*. By sending the letter, respondent has asserted a claim against the Board that has the potential to disqualify her from serving as a Board member.

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<sup>3</sup> Given the fact-specific nature of the type of conflict analysis at issue in this matter, the Commissioner finds the extremely short time frame significant.

However, the Commissioner is mindful of the findings of the New Jersey Supreme Court concerning disputes about special education services for the children of board of education members. In *Bd. of Educ. of City of Sea Isle City v. Kennedy*, 196 N.J. 1 (2008), the Court concluded that a board member should not be removed from office merely because she advanced a claim against the board involving her or her immediate family member's interest. *Id.* at 17-18. The Court recognized that disagreements between parents of special education students and the board of education may require effort to resolve, and multiple meetings or even mediation following the filing of a due process hearing request may not always be the type of conflict that requires removal. *Id.* at 21-22. The Court instructed the Commissioner to examine the nature of the dispute to determine "when a conflict over a child's educational program becomes so substantial that removal from office is required." *Id.* at 22. Finally, the Court concluded that when a due process claim includes a specific request for monetary relief, a substantial conflict has occurred, and removal is appropriate. *Ibid.*

The Commissioner is unable to conclude, based on the current record, whether there is currently a substantial conflict between the parties. The 10-day letter indicates that respondent will unilaterally place her child in a private school if the matter is not resolved, but there is no further information regarding whether a resolution occurred. If a resolution did occur, then the dispute may not be substantial enough to warrant respondent's removal from the board. If a resolution did not occur, and respondent followed through with the unilateral placement, respondent has a claim for monetary relief against the Board that precludes her continued service as a board member.

Accordingly, this matter is remanded for further fact-finding regarding the current state of the dispute between the parties identified in the August 13, 2021 10-day letter sent by respondent to the Board.

IT IS SO ORDERED.<sup>4</sup>

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

Date of Decision: December 2, 2021  
Date of Mailing: December 3, 2021

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<sup>4</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 04830-21

AGENCY DKT. NO. 43-3/21

**BOARD OF EDUCATION OF THE BOROUGH  
OF KINNELON, MORRIS COUNTY,**

Petitioner,

v.

**KAREN D'AMICO,**

Respondent.

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**Jarrid H. Kantor, Esq.,** for petitioner (Antonelli Kantor, attorneys)

**Hillary D. Freeman, Esq.,** for respondent (Freeman Law Offices, attorneys)

Record Closed: August 26, 2021

Decided: October 19, 2021

BEFORE **KELLY J. KIRK, ALJ:**

**STATEMENT OF THE CASE**

Petitioner, Kinnelon Board of Education (Board or KBOE) requests, inter alia, that the Commissioner of Education construe the provisions of N.J.S.A. 18A:12-2 and determine and declare that Board Member Karen D'Amico has "a direct or indirect interest

in a substantial financial claim” against the Board and is disqualified from serving as a member of the Board as a result of said financial claims, pursuant to N.J.S.A. 18A:12-2.

### **PROCEDURAL HISTORY**

On or about April 13, 2021, the Board filed with the New Jersey Department of Education an amended Verified Petition for a Declaratory Ruling Pursuant to N.J.A.C. 6A:3-2.1 (Verified Petition).<sup>1</sup> On or about May 4, 2021, respondent filed an answer to the Verified Petition, which includes an affirmative defense that the Verified Petition “fails to state a claim upon which relief may be granted against Respondent.”

By letter dated June 1, 2021, the Acting Commissioner of Education notified the parties as follows:

I have reviewed the petition for declaratory ruling in the above-captioned matter, together with the respondent's answer. Upon such review I have determined to exercise my discretion to decline the request pursuant to *N.J.S.A. 52:14B-8* and *N.J.A.C. 6A:3-2.1(a)1*, and instead direct that the matter shall proceed as a petition of appeal pursuant to *N.J.A.C. 6A:3-1.1 et seq.*

Accordingly, petitioner's request for a declaratory ruling is declined and this matter shall be transmitted to the Office of Administrative Law.

The Department of Education (Department) transmitted the case to the Office of Administrative Law (OAL) where it was filed on June 11, 2021. The transmittal noted that “Petitioner filed motion for summary decision following filing of answer (hard copy to follow due to size),” but the hard copy of the motion was not transmitted. On June 30, 2021, petitioner submitted a copy of the motion directly to the OAL, consisting of a statement of material facts and brief. On July 29, 2021, respondent filed a response/cross-motion for summary decision, consisting of a brief. Petitioner filed a reply letter brief on August 20,

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<sup>1</sup> Per Mr. Kantor's April 12, 2021, letter to the Department of Education, it was amended to incorporate additional redactions and to remove the Board's request for attorneys' fees.



2021. On August 25, 2021, petitioner supplemented its filing with a letter and attachment. On August 26, 2021, respondent replied thereto by way of an email.

### **DECLARATORY RULING**

The Verified Petition identifies the parties and contains a statement of facts reflecting "Actual and Threatened Litigation filed by D'Amicos *Prior* to D'Amico Being Sworn In as a Member of the KBOE" and "Actual and Threatened Litigation filed by D'Amicos *Subsequent* to D'Amico Being Sworn In as a Member of the KBOE," and two counts. Count One is as follows:

24. Petitioner Kinnelon Board of Education repeats and re-alleges each of the forgoing paragraphs of this Verified Petition as if set forth at length herein.

25. N.J.S.A. 18A:12-2 mandates that no board member may serve who has a direct or indirect interest in a claim against the board of education on which he/she sits.

26. Each of the Due Process Petitions filed by the D'Amicos requested the following monetary relief: 1) an order finding the D'Amicos are entitled to tuition reimbursement for D.D.'s private school education; 2) an Order directing the District to reimburse the D'Amicos for all costs and expenses incurred as the result of required educational services for D.D., including but not limited transportation [sic] and tutoring services; and 3) reserved the right to seek reimbursement of attorneys' and expert fees and costs, as well as other relief.

27. Each of the D'Amicos' 10-Day letters sent to the KBOE further place the KBOE on notice that the D'Amicos intended to see reimbursement of all costs associated with D.D.'s placement in a private school for the 2018-19, 2019-20, and 2020-21 school years.

28. Karen D'Amico has previously and continues to have a direct or indirect substantial financial interest in her claims against the KBOE for reimbursement of the costs paid by the D'Amicos for D.D.'s attendance at a private school for the stated school years, anticipated to exceed \$30,000 per school year.

29. The D'Amico's [sic] have given no indication that they are abandoning their 2020-2021 claims with prejudice and the KBOE has been placed on statutory notice of said claims.

WHEREFORE, the Petitioner, Kinnelon Board of Education, respectfully prays that the Commissioner shall construe the provisions of N.J.S.A. 18A:12-2 and determine and declare the following: (a) Respondent Karen D'Amico has a direct or indirect interest in a substantial financial claim against the Kinnelon Board of Education; (b) Respondent is disqualified from serving as a member of the Kinnelon Board of Education, as a result of said financial claims, pursuant to N.J.S.A. 18A:12-2; (c) Awarding Petitioner any other relief as may be just, proper and equitable.

Count Two is as follows:

30. Petitioner Kinnelon Board of Education repeats and re-alleges each of the forgoing paragraphs of this Verified Petition as if set forth at length herein.

31. The D'Amicos have filed three separate Due Process Petitions against the Kinnelon Board of Education since August of 2019.

32. The D'Amicos' claims arising out of the 2020-21 school year on behalf of D.D. currently remain unresolved.

33. The D'Amicos' [sic] continue to pursue the claim that D.D. is being denied required educational services for the 2020-21 school year.

34. No agreement between the Kinnelon Board of Education and the D'Amicos has been reached with respect to the claims asserted on behalf of D.D. in connection with the provision of educational services since D.D.'s removal from the District in 2018.

35. As of this date, Respondent has not abandoned any of the previously noticed claims for the 2020-21 school year, with prejudice.

36. It is likely that resolution of said claims will require protracted litigation.

37. Pursuant to N.J.S.A. 18A:12-2, Karen D'Amico's direct or indirect interest in said unresolved claims constitute a substantial interest in claims against the Kinnelon Board of Education.

38. Said interest disqualifies Respondent from serving as a member of the Kinnelon Board of Education.

WHEREFORE, the Petitioner, Kinnelon Board of Education, respectfully prays that the Commissioner shall construe the provisions of N.J.S.A. 18A:12-2 and determine and declare the following: (a) Respondent Karen D'Amico has a direct or

indirect interest in a substantial financial claim against the Kinnelon Board of Education; (b) Respondent is disqualified from serving as a member of the Kinnelon Board of Education, as a result of said financial claims, pursuant to N.J.S.A. 18A:12-2; (c) Awarding Petitioner any other relief as may be just, proper and equitable.

As set forth above, both counts seek "that the Commissioner shall construe the provisions of N.J.S.A. 18A:12-2 and determine and declare" that D'Amico has a direct or indirect interest "in a substantial financial claim" against the Board and that she is disqualified from serving as a member of the Board.

N.J.A.C. 6A:3-2.1 governs petitions for a declaratory ruling as follows:

(a) Pursuant to N.J.S.A. 52:14B-8<sup>2</sup>, any interested person(s) may petition the Commissioner for a declaratory ruling with respect to rights, responsibilities, and status arising from any statute or rule within the jurisdiction of the Commissioner. The determination to entertain such petitions for declaratory ruling shall be within the sole discretion of the Commissioner. If such request is granted, the matter shall proceed in accordance with this chapter as they pertain to petitions. A declaratory ruling shall be binding upon the Commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

1. A request for a declaratory ruling shall reflect adverse positions on the statute or rule in question by the parties in interest, may not seek consequential relief beyond a declaration as to the meaning of the statute or rule, and may not be based on underlying facts that are future, contingent, uncertain, or disputed.

(b) Except that the format of the petition shall be as set forth in this subchapter, the rules pertaining to filing, service

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<sup>2</sup> Subject to the provisions of section 4(b) and 4(e) of chapter 20, laws of 1944, as amended and supplemented (C. 52:17A-4b and 4e), an agency upon the request of any interested person may in its discretion make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency. A declaratory ruling shall bind the agency and all parties to the proceedings on the state of facts alleged. Full opportunity for hearing shall be afforded to the interested parties. Such ruling shall be deemed a final decision or action subject to review in the Appellate Division of the Superior Court. Nothing herein shall affect the right or practice of every agency in its sole discretion to render advisory opinions. N.J.S.A. 52:14B-8.

and answer of petitions as set forth in this chapter shall apply to petitions for declaratory ruling.

The Verified Petition does not "reflect adverse positions on the statute or rule in question by the parties in interest," and it seeks "consequential relief beyond a declaration as to the meaning of the statute or rule" in contravention of N.J.A.C. 6A:3-2.1. Accordingly, I **CONCLUDE** that the Verified Petition was not properly filed as a request for a declaratory ruling. Further, the transmittal reflects that the "Commissioner declined petitioner's request for a declaratory ruling and is transmitting as a contested case." Specifically, the Acting Commissioner stated that she determined to "decline the request pursuant to N.J.S.A. 52:14B-8 and N.J.A.C. 6A:3-2.1(a)1, and instead direct that the matter shall proceed as a petition of appeal pursuant to N.J.A.C. 6A:3-1.1 et seq. Issuance of a declaratory ruling by an agency is discretionary. N.J.A.C. 6A:3-2.1(a). N.J.S.A. 52:14B-8. See also United Sav. Bank v. State, 360 N.J. Super. 520, 524 (App. Div. 2003). Although Petitioner relies upon Board of Educ. of City of Sea Isle City v. Kennedy, 196 N.J. 1 (2008), it is noted that the opinion states that the "Commissioner transferred the Board's request for declaratory relief," and Footnote 3 reflects "[a]t the request of the Board, the ALJ agreed to issue first a decision on the declaratory relief petition." Board of Educ. of City of Sea Isle City v. Kennedy, 196 N.J. 1, 9-10 (2008).

In view of the foregoing, I **CONCLUDE** that the request for a declaratory ruling is **DENIED** and that this matter is limited to the merits of the contested case.

#### **MOTION FOR SUMMARY DECISION**

Per the Verified Petition, petitioner seeks a determination that D'Amico "has a direct or indirect interest in a substantial financial claim" against the Board and that she be disqualified from serving as a member of the Board pursuant to N.J.S.A. 18A:12-2. However, the Preliminary Statement in petitioner's Brief states:

The issue before the Commissioner is straightforward: the undisputed facts establish that Respondent, Karen D'Amico ("Respondent" or "D'Amico") filed and threatened to file

multiple Due Process Petitions, seeking monetary relief, thereby creating a disqualifying conflict of interest under the School Ethics Act ("SEA"), N.J.S.A. 18A:12-2. The Respondent clearly has an interest in a claim against the Kinnelon Board or [sic] Education ("Petitioner" or "KBOE") and demonstrated a likelihood of 'protracted and intractable litigation' between the Respondent and the Petitioner, which constitutes a disqualifying conflict of interest under the SEA. As a result of said statutory conflict and pursuant to the School Ethics Act, it is necessary that Respondent resign her position at the KBOE. Accordingly, the KBOE's Motion for Summary Decision should be granted as there are no issues of material fact in dispute and the Petitioner is entitled to summary decision as a matter of law.

Additionally, the Procedural History in petitioner's Brief states: "Petitioner filed a verified petition seeking a declaratory ruling for the removal of Respondent from the KBOE based on a conflict of interest."

Although petitioner argues "a disqualifying conflict of interest under the School Ethics Act ("SEA"), N.J.S.A. 18A:12-2," this statute does not fall under the School Ethics Act, N.J.S.A. 18A:12-21 to -34, and the matter was transmitted to the OAL by the Department of Education Office of Controversies and Disputes, not the School Ethics Commission.

N.J.S.A. 18A:12-2 states:

No member of any board of education shall be interested directly or indirectly in any contract with or claim against the board, nor, in the case of local and regional school districts, shall he hold office as mayor or as a member of the governing body of a municipality, nor, in the case of county special services school districts and county vocational school districts, shall he hold office as a member of the governing body of a county.

Thus, the pivotal issue is whether D'Amico, indisputably a Board member, is in violation of N.J.S.A. 18A:12-2 by being interested directly or indirectly in any claim against the Board. The Board argues that respondent's interest in multiple claims against the

Board seeking monetary relief constitutes a disqualifying conflict of interest. Respondent denies that there exists a disqualifying conflict of interest and argues that the Verified Petition should be dismissed because D'Amico has no pending claim against the Board.

D'Amico was sworn in as a member of the Board in January 2021. Unlike the D'Amicos' prior due process petitions, the caption of the due process petition filed after January 2021 reflected only the name of respondent's husband as petitioner. A board member may not have an interest, directly or indirectly, in any claim against the board. A due process petition – a claim against the board – would require D'Amico's removal from the Board pursuant to N.J.S.A. 18A:12-2. Accordingly, I **CONCLUDE** that when the due process petition was filed, she was in violation of N.J.S.A. 18A:12-2, as even without her name on the due process petition, respondent nevertheless had an interest in a claim against the Board. That said, the Verified Petition reflects that "one (1) hour after electronically filing the February 2021, Petition, the D'Amicos requested their Petition be disregard[ed] without explanation." Since this Petition alleges only violation of N.J.S.A. 18:12-2 and not any conflict of interest or code of conduct violations under the School Ethics Act, I **CONCLUDE** that withdrawal of the due process petition remedied the violation.

Notwithstanding the foregoing, it is observed that similar to the allegations in the Verified Petition, on August 13, 2021, the D'Amicos again gave a "10-day letter," referencing the applicable regulation<sup>3</sup>. Having reviewed the "10-day letter" regulation, I **CONCLUDE** that the 10-day letter" is a "notice" that relates to reimbursement, and is not a "claim," as no due process petition has been filed relative to the letter. Accordingly, I further **CONCLUDE** that the 10-day letter is not a violation of N.J.S.A. 18A:12-2.

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision may be "rendered if 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." Further, "when a motion for summary decision is made and

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<sup>3</sup> Mindful of the redactions to the Petition, the regulation cited in the August 13, 2021, letter is not included herein.

supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." *Id.* This standard is substantially similar to that governing a civil motion under New Jersey Court Rule 4:46-2 for summary judgment. *E.S. v. Division of Medical Assistance & Health Services*, 412 N.J. Super. 340, 350 (App. Div. 2010); *Contini v. Board of Educ. of Newark*, 286 N.J. Super. 106, 121 (App. Div. 1995). In *Brill v. Guardian Life Ins. Co.*, 142 N.J. 520 (1995), the New Jersey Supreme Court set forth the standard governing a motion for summary judgment:

[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. The judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.

[*Brill*, 142 N.J. at 540 (citations omitted).]

A contested case before the Office of Administrative Law "can be summarily disposed of before an ALJ without a plenary hearing in instances where the undisputed material facts, as developed on motion or otherwise, indicate that a particular disposition is required as a matter of law." *In re Robros Recycling Corp.*, 226 N.J. Super. 343, 350 (App. Div.), certif. denied, 113 N.J. 638 (1988).

Here, there is no genuine issue as to any material fact, as the parties do not dispute that respondent filed, but thereafter withdrew a due process petition or that respondent gave a "10-day letter." Thus, I **CONCLUDE** that this matter is appropriate for summary decision. Since there exists no violation of N.J.S.A. 18A:12-2, I further **CONCLUDE** that the petitioner's motion should be denied, respondent's cross-motion should be granted, and the Verified Petition should be dismissed.

**ORDER**

It is hereby **ORDERED** that the petitioner's motion for summary decision is **DENIED**, the respondent's cross-motion for summary decision is **GRANTED**, and the Verified Petition is **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.



October 19, 2021

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DATE

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KELLY J. KIRK, ALJ

Date Received at Agency:

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*October 19, 2021*

Date Mailed to Parties:

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*October 19, 2021*

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