

New Jersey Commissioner of Education

Final Decision

Lisa Yourman,

Petitioner,

v.

Board of Education of the Borough of Fair Lawn,
Bergen County, and Robert Barbarulo,

Respondents.

AND

Lisa Yourman,

Petitioner,

v.

Board of Education of the Borough of Fair Lawn,
Bergen County, and Elyss Frenkel,

Respondents.

Synopsis

Petitioner initiated this consolidated matter in August 2020 via two petitions of appeal challenging the respondent Board’s approval of the purchase of a vehicle for use by the superintendent of the Fair Lawn Public School District (District). Petitioner alleged that respondents Ronald Barbarulo and Elyss Frenkel, then President and Vice President of the Board, violated certain school laws and regulations in connection with providing the superintendent with a new SUV for his personal use, absent approval of the full Board at a public meeting. The Board contended that the petition is moot as the superintendent relinquished the vehicle and is no longer employed by the District. The two petitions were consolidated in 2023 after unsuccessful settlement negotiations between the parties; cross motions for summary decision were then filed by the parties.

The ALJ found, *inter alia*, that: most of petitioner’s complaints dealt with the past purchase and assignment of a vehicle to the superintendent, along with alleged past infractions of the recordkeeping required by *N.J.A.C.* 6A:23A-6.11 and -6.12; since the former superintendent and business administrator are no longer employed in the District, the appeal is now moot. Accordingly, the ALJ granted the Board’s motion for summary decision and dismissed the petition.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, but reminded the Board that it must comply with all aspects of *N.J.A.C.* 6A:23A-6.12 in the future.

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.

207-24

OAL Dkt. Nos. EDU 00251-21, 00252-21 (consolidated)
Agency Dkt. Nos. 186-8/20, 187-8/20

New Jersey Commissioner of Education
Final Decision

Lisa Yourman,

Petitioner,

v.

Board of Education of the Borough of
Fair Lawn, Bergen County, and
Ronald Barbarulo,

Respondents.

AND

Lisa Yourman,

Petitioner,

v.

Board of Education of the Borough of
Fair Lawn, Bergen County, and Elyss Frenkel,

Respondents.

The record of this consolidated 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.

In August 2020, petitioner initiated this consolidated matter via the filing of two

petitions of appeal with the Office of Controversies and Disputes. The petitions alleged that respondents Ronald Barbarulo and Elyss Frenkel, then President and Vice President of the Fair Lawn Board of Education, violated certain school laws and regulations in connection with providing Board Superintendent Nicholas Norcia with a new Ford Explorer SUV valued at \$29,979.70 for his personal use absent approval of the full Board at a public meeting.

In particular, petitioner alleged that respondents violated *N.J.A.C.* 6A:23A-6.12(b), (b)(1), and (h) (“District board of education vehicle assignment and use policy”); *N.J.A.C.* 6A:23A-3.1(a) and (e)(14) (“Review of employment contracts for superintendents, assistant superintendents, and school business administrators”); *N.J.S.A.* 18A:7-8(j) (Executive County Superintendent approval of board employment contracts); and *N.J.S.A.* 18A:19-4 (Audit of claims against boards of education). She further alleged that respondents violated the Code of Ethics for School Board Members, specifically *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e).

The Board moved to dismiss the petitions for lack of jurisdiction, asserting that the School Ethics Commission was the proper venue to adjudicate the matters against Barbarulo and Frenkel. In addition, the Board argued that petitioner failed to name the Board of Education—an indispensable party—as a respondent in each action. Before the matter was transmitted to the OAL, petitioner filed a reply to the Board’s motion along with a proposed amended petition wherein she removed the allegations pertaining to the Code of Ethics for School Board Members. She also added two new respondents, Board Superintendent Nicholas Norcia, and Business Administrator Brooke Bartley. In the proposed amended petition, petitioner alleged that respondents violated *N.J.A.C.* 6A:23A-6.12(b), (b)(1), (b)(2), (e), and (h) and requested the following relief:

- 1) Mr. Norcia should reimburse the district for the full amount the Fair Lawn Board of Education paid for the SUV vehicle and take personal ownership.
- 2) Ms. Bartley should reimburse the District for the cost of insuring the vehicle during the time period the Fair Lawn Board of Education owned the vehicle.
- 3) In addition, going forward, the District should approve all vehicle purchases and all purchases over \$10,000 at open public meetings before they take possession of the purchase.
- 4) In addition to the regular audits required by Law that is done yearly, there should be a mandated two-year audit (July 1, 2018-June 30, 2020) by the County Superintendent's office and/or by the Office of Fiscal Accountability and Compliance and continue this process for the next 5 school calendar years.

[Amended Petition, p. 7.]

Thereafter, the Board filed correspondence with the Office of Controversies and Disputes objecting to petitioner's attempt to amend the petitions without seeking leave to do so pursuant to *N.J.A.C. 6A:3-1.7(a)*. The Board expressed that it did not consent to the amendments and maintained that the petitions should be dismissed. Without adjudicating the Board's motion to dismiss, the Office of Controversies and Disputes transmitted the matters to the OAL and added the Board to the caption.¹

In August 2023, following an extended period of discovery and settlement negotiations between the parties, the Administrative Law Judge (ALJ) granted the Board's motion to consolidate the two related matters. The parties cross-moved for summary decision.² In sum,

¹ The Board did not object to being named as a respondent in either matter. See Respondent's Letter Brief in Support of Cross-Motion for Summary Decision/Dismissal dated August 25, 2023, at 10 ("Although the Board has not formally been joined as a party, the Office of Controversies and Disputes appropriately added the Board of Education as a named respondent in transmitting the controversy to the OAL.").

² It does not appear that the Board's initial motion to dismiss the petition was ever ruled upon by the ALJ.

petitioner argued that respondents failed to comply with *N.J.A.C. 6A:23A* fiscal regulations and its own Board policy and regulation 7650 in connection with the purchase and permissible use of the SUV assigned to Norcia. Specifically, she claimed that the Board did not approve the purchase or assignment of the vehicle to Norcia at a public meeting until after she filed an ethics complaint, despite the fact that he had already been using the vehicle for months; that Norcia misused the vehicle for personal travel; that Norcia did not maintain accurate mileage logs; and that the regulations only allow for a sedan to be purchased, not an SUV.

In response, the Board argued that the consolidated matter should be dismissed as moot because Norcia ceased using the vehicle effective July 27, 2021, and neither he nor Bartley are working in the district any longer. It further argued that the matter should be dismissed for failure to state a claim upon which relief can be granted. However, the Board acknowledged that: (1) it assigned the SUV to Norcia on March 16, 2020; (2) “A public vote was never taken to provide the Superintendent a car benefit”; (3) “A public vote was not taken in March 2020 to approve the purchase of the vehicle, but was later placed on the public agenda and approved on November 19, 2020”; and (4) it produced mileage logs it possessed for Norcia’s use of the vehicle covering the time periods from July 17, 2020 to September 25, 2020 and April 20, 2021 to June 12, 2021. Respondent’s Letter Brief in Support of Cross-Motion for Summary Decision/Dismissal dated August 25, 2023, at 3-4.

As explained in an Initial Decision issued April 18, 2024, the ALJ granted the Board’s motion for summary decision on mootness grounds, denied petitioner’s motion for summary decision, and dismissed the consolidated matter. Referring to the relief petitioner requested in her proposed amended petition, the ALJ reasoned that because Norcia ceased all use of the

vehicle in question effective July 27, 2021, and because Norcia and Bartley were no longer employed by the district, “no relief can be granted” as to Norcia and Bartley individually “and, thus, the matter is no longer actionable.” Initial Decision, at 4. As for petitioner’s requests for relief against the Board concerning advanced approval of purchases over \$10,000 and for additional audits to take place, the ALJ reasoned that “any corrective action sought to be imposed upon or against the Board, itself, is not available relief for the petitioner, as the undersigned does not have the authority to impose any such change in Board procedure or practice under *N.J.A.C.* 6A:23A-6.11 and -6.12, respectively.” *Ibid.* The ALJ did not specifically address petitioner’s allegations regarding the involvement of Barbarulo or Frenkel.

In her exceptions, petitioner argues that the ALJ failed to adequately address all remedies she requested in her initial filing, including that Barbarulo and Frenkel be publicly censured. She further contends that the ALJ failed to acknowledge the involvement of Barbarulo and Frenkel, and failed to address her claims regarding Norcia’s falsification of government records. She also asserts that the Initial Decision “sets a troubling precedent by seemingly allowing business administrators, superintendents, and/or board members to allocate taxpayer funds in contravention of the law without facing any consequences, provided they simply leave their positions,” petitioner’s exceptions, at 1, and reiterates the arguments she asserted before the ALJ that were considered and rejected.

In reply, the Board argues that the ALJ’s Initial Decision granting its motion for summary decision on mootness grounds should be adopted. It asserts that petitioner’s arguments regarding the conduct of former Board members are not properly before the Commissioner because jurisdiction over these allegations lies with the School Ethics Commission. As for her

claims regarding the Board's past noncompliance with fiscal accountability regulations at *N.J.A.C. 6A:23A*, the Board emphasizes that it ratified the purchase of the vehicle in November 2020, Norcia surrendered the vehicle in July 2021, and both he and Bartley are no longer employed in the district. Accordingly, the Board maintains that there is no longer any relief that could be granted by the Commissioner, other than a declaratory ruling admonishing the Board to comply with the regulations in the future. The Board also argues that petitioner's remaining exceptions simply restate the arguments expressed in her submissions to the ALJ that were already considered.

Upon review, the Commissioner adopts the ALJ's Initial Decision as the final decision in this matter. At the outset, a procedural issue must be addressed. Although petitioner never formally moved to amend her original petition, she submitted a proposed amended petition in response to the Board's motion to dismiss. Because the ALJ's Initial Decision references the relief sought in the proposed amended petition and the newly named respondents (Norcia and Bartley), it appears that the ALJ allowed petitioner to amend her pleadings pursuant to *N.J.A.C. 1:1-6.2*. In her amended petition, petitioner removed the allegations pertaining to the Code of Ethics for School Board Members in recognition of the fact that those allegations fell within the jurisdiction of the School Ethics Commission. Accordingly, the Commissioner finds that the ALJ did not err by failing to adequately address allegations contained in her initial petitions against Barbarulo and Frenkel. Her request that they be publicly censured is for the School Ethics Commission to determine.

As for petitioner's assertion that the ALJ should have addressed her claims regarding Norcia's falsification of mileage and travel logs for the vehicle, the ALJ correctly determined

that the regulation upon which petitioner relies—*N.J.A.C. 6A:23A-6.12*—does not allow the Commissioner to provide the remedy petitioner is seeking, i.e., for Norcia to reimburse the district for the cost of the vehicle. Thus, even assuming Norcia failed to maintain accurate vehicle use logs in accordance with *N.J.A.C. 6A:23A-6.12(e)*, the remedy petitioner seeks against Norcia personally is unavailable. Similarly, even assuming as petitioner alleges that Barbarulo, Frenkel and Bartley were involved with the purchase of the SUV and assignment of same to Norcia, the remedies petitioner seeks against them personally are unavailable under *N.J.A.C. 6A:23A-6.12*. Finally, the Commissioner concurs with the ALJ that the remedies petitioner seeks against the Board—i.e., advanced approval of all purchases over \$10,000 at a public meeting and additional audits—are likewise unavailable under the regulatory scheme upon which petitioner relies. That said, the Commissioner reminds the Board that, going forward, it must comply with all aspects of *N.J.A.C. 6A:23A-6.12*, District board of education vehicle assignment and use policy, in a timely manner.

Accordingly, the Board’s motion for summary decision is granted, petitioner’s motion for summary decision is denied, and the consolidated matter is hereby dismissed.

IT IS SO ORDERED.³



ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 30, 2024
Date of Mailing: May 31, 2024

³ 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

LISA YOURMAN,

Petitioner,

v.

**BOROUGH OF FAIR LAWN BOARD OF
EDUCATION, BERGEN COUNTY, AND
RONALD BARBARULO,**

Respondents.

OAL DKT. NO. EDU 00251-21

AGENCY DKT. NO. 186-08/20

(CONSOLIDATED)

LISA YOURMAN,

Petitioner,

v.

**BOROUGH OF FAIR LAWN BOARD OF
EDUCATION, BERGEN COUNTY, AND
ELYSS FRENKEL,**

Respondents.

OAL DKT. NO. EDU 00252-21

AGENCY DKT. NO. 187-08/20

Lisa Yourman, petitioner, pro se

Paul H. Green, Esq., for respondents (Schenck, Price, Smith & King, LLP, attorneys)

Record Closed: March 18, 2024

Decided: April 18, 2024

BEFORE JUDE-ANTHONY TISCORNIA, ALJ:

STATEMENT OF THE CASE

Petitioner Lisa Yourman (Yourman) challenges the Fair Lawn Board of Education's (Board's) approval of a personal vehicle for the superintendent of the Fair Lawn Public School District (District). On motion, the Board argues that the petition is moot, as the superintendent relinquished the vehicle and both the superintendent and the Board's business administrator subsequently sought employment at another district.

ISSUE

Is the petition moot? Yes. The matter should be dismissed.

PROCEDURAL HISTORY

Yourman filed two separate petitions with the Commissioner of the New Jersey Department of Education (Department/Agency) on August 31, 2020. One petition was docketed by the Agency as 186-08/20 and transmitted as a contested case to the Office of Administrative Law (OAL), where it was filed on December 15, 2020, and thereafter docketed as EDU 00251-21. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. This matter was captioned on the OAL transmittal as "Lisa Yourman v. Board of Education of the Borough of Fair Lawn, Bergen County, and Ronald Barbarulo." The other petition was docketed by the Agency as 187-08/20 and transmitted as a contested case to the OAL, where it was filed on December 15, 2020, and thereafter docketed as EDU 00252-21. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. This second matter was captioned on the OAL transmittal as "Lisa Yourman v. Board of Education of the Borough of Fair Lawn, Bergen County, and Elyss Frenkel." Both matters essentially alleged the same facts, and differed only in that each named a different individual Board member in the caption.

The matters were assigned to the undersigned in January 2021. From the outset, Yourman made repeated discovery demands for copies of mileage and maintenance logs for the subject vehicle from the District, to which the District continually maintained that

all such records that were available to the District had been provided to Yourman. Aside from this discovery issue, both parties expressed a willingness to settle both matters from the outset. After approximately one year of negotiations, a draft settlement agreement was circulated, but never consummated. Continued attempts were made to make minor alterations to the language to make the document amenable to the parties, but no amicable resolution could be achieved.

On August 25, 2023, Yourman moved for summary decision. The Board responded with opposition to same, along with a cross-motion for summary decision, on October 16, 2023. On December 7, 2023, the parties notified the undersigned that they wished to file a motion for consolidation to be considered prior to consideration of the motion for summary decision. The Board sent a motion to consolidate the two matters, which was received by the undersigned on March 14, 2024. On Friday, March 15, 2024, Yourman asked the undersigned if she could have until Monday, March 18, 2024, to respond to the motion to consolidate. On March 18, 2024, the undersigned received via e-mail from Yourman copies of the original complaints she filed and the transmittals she received from the Department, along with corresponding e-mails regarding the filings, and minutes from a School Ethics Commission meeting, dated January 26, 2021.

MOTION TO CONSOLIDATE

While each transmittal names a separate individual board member in the caption, each petition also names the Board as a whole. Thus, I **FIND** that the identities of the parties in each of the matters are duplicative to the extent that consolidation is warranted. As the underlying petitions each seem to allege the same facts, and seek essentially the same remedy, I **FIND** that the nature of all the questions of fact and law are the same. Further, to the extent that common questions of fact and law are involved, I **FIND** that it would be proper, in the interest of saving time and expense, and in preventing duplication and inconsistency of outcome, to consolidate the two matters. Based on the foregoing, I **CONCLUDE** that consolidation of EDU 00251-21 and EDU 00252-21 is warranted under N.J.A.C. 1:1-17.3, and the matters are, hereby, **CONSOLIDATED**.

LEGAL DISCUSSION AND CONCLUSIONS

The petitioner alleges that that the Board should not have provided a vehicle, in this case a Ford sport utility vehicle, for the superintendent's use. The complaints filed essentially seek the following relief: 1) that the superintendent (Norcia) reimburse the school district for any period in which he used the vehicle; 2) that the business administrator (Bartley) reimburse the school district for the cost of insuring the vehicle in question; 3) that protocols be put in place so that any purchase over \$10,000 in the future only be approved during a public meeting of the Board (not in closed session); and 4) that regular audits of the superintendent's office be done by the Office of Fiscal Accountability. Thus, the prayer for relief purports to be grounded in school ethics law, generally, along with fiscal accountability/recordkeeping regulations, N.J.A.C. 6A:23A-6.11 et seq. Petitioner seeks penalties to be imposed against both the superintendent and the business administrator individually (numbers 1 and 2), as well as corrective action to be imposed against the Board going forward (numbers 3 and 4). It should be noted that there is a separate school ethics complaint, currently pending before the School Ethics Commission, that is not affected by this decision.

Regarding any relief sought against Norcia or Bartley individually, both Norcia and Bartley cease to be employed by the District, and Norcia ceased all use of the subject vehicle effective July 27, 2021. As the bulk of petitioner's complaints deal with the past purchase and assignment of a vehicle to Norcia, along with alleged past infractions of the recordkeeping required by N.J.A.C. 6A:23A-6.11 and -6.12, and since both Norcia and Bartley are no longer employed in the District, I **CONCLUDE** that the appeal is moot, as no relief can be granted, and, thus, the matter is no longer actionable. I **FURTHER CONCLUDE** that any corrective action sought to be imposed upon or against the Board, itself, is not available relief for the petitioner, as the undersigned does not have the authority to impose any such change in Board procedure or practice under N.J.A.C. 6A:23A-6.11 and -6.12, respectively.

An action is considered moot when it no longer presents a justiciable controversy, and the conflict between the parties has become merely hypothetical. In re Conroy, 190 N.J. Super. 453, 458 (App. Div. 1983). The doctrine of mootness has utility in the

administrative setting if no effective relief can be granted in a case. In re Tenure Hearing of Mujica, 2006 N.J. AGEN LEXIS 168 (March 15, 2006), adopted, 2006 N.J. AGEN LEXIS 660 (April 25, 2006) (stating also that the commissioner of the Department of Education will not decide moot cases).

The most common use of the mootness doctrine occurs in cases where changed circumstances render the relief sought impossible to grant. W. Morris Reg'l Bd. of Educ. v. A.M. & K.H., 2005 N.J. AGEN LEXIS 686 (Nov. 30, 2005). As noted above, neither Norcia nor Bartley is currently employed with the District, and, thus, I **CONCLUDE** that the circumstances have changed so as to render the relief sought by petitioner impossible to grant.

It is well-settled law in New Jersey that cases that have become moot prior to adjudication are no longer actionable. See Mujica, 2006 N.J. AGEN LEXIS 168, at *10 (citing Coviello v. Bd. of Educ. of Fair Lawn, 1993 N.J. AGEN LEXIS 1402 (March 22, 1993)). Based on the foregoing, and barring any authority which enables the undersigned to alter the Board's purchasing procedures going forward, I **CONCLUDE** that the matter at bar is no longer actionable.

CONCLUSION

For the reasons stated above, I **CONCLUDE** that petitioner's motion for summary decision should be denied, and the Board's cross-motion for summary decision dismissing the petition should be granted.

ORDER

It is, hereby, **ORDERED** that respondent Board's motion for summary decision is **GRANTED**, and petitioner Lisa Yourman's petition is **DENIED**.

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**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

April 18, 2024
DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency: 4/18/24

Date Mailed to Parties: 4/18/24

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