

New Jersey Commissioner of Education**Final Decision**

Mark Hoyt,

Petitioner,

v.

Board of Education of the Township of Union,
Union County,
Respondent.

Synopsis

Petitioner has been employed in respondent Board's school district since 2007. From 2016 until 2019, he served as principal at Battle Hill Elementary School. In July 2019, petitioner was appointed as Interim Principal of Union High School, and the Board approved payment of an \$8,000 stipend associated with the high school position. In September 2022, petitioner received notice that the Board intended to discuss the terms and conditions of his employment at a meeting scheduled for September 13, 2022. On that date, the Board conducted its meeting and elected to appoint a new high school principal, transfer petitioner to an elementary school, and eliminate the stipend payment associated with petitioner's former interim position at Union High School. Thereafter, on July 18, 2023, petitioner filed the within petition challenging the Board's removal of the \$8,000 stipend he had previously received. The Board counter claimed for summary decision and sought to have the petition dismissed with prejudice.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; under *N.J.A.C. 6A:3-1.3(d)*, a petitioner must file an appeal 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, that is the subject of the contested case; here, the removal of petitioner's stipend took place at a September 2022 meeting for which petitioner received a Rice notice; although the notice was lengthy, the papers did inform petitioner that the stipend would be discussed on September 2022; notes from that meeting became publicly available on November 22, 2022, and reflected the Board's decision to remove the stipend from petitioner's salary. Thereafter, the decrease was reflected in petitioner's income statements. Petitioner, however, failed to file his challenge to the Board's action until July 18, 2023. Accordingly, ALJ dismissed petitioner's motion for summary decision, and granted the Board's motion for summary decision with prejudice.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ's findings and conclusions and adopted the Initial Decision as the final decision in this matter. Accordingly, the Board's motion for summary decision was granted and the petition was dismissed.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

New Jersey Commissioner of Education
Final Decision

Mark Hoyt, Petitioner, v. Board of Education of the Township of Union, Union County, Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner failed to file the petition of appeal within the time period required by *N.J.A.C. 6A:3-1.3(i)*. Additionally, the Commissioner concurs with the ALJ that petitioner failed to demonstrate that the case presents a substantial constitutional issue or matter of significant public import that would justify relaxation of the 90-day filing requirement.

Accordingly, the Initial Decision is adopted as the final decision in this matter, respondent's cross-motion for summary decision is granted, petitioner's motion for summary decision is denied, and the petition of appeal is hereby dismissed as untimely.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 26, 2024
Date of Mailing: July 31, 2024

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 08533-23

AGENCY DKT. NO. 190-7/23

MARK HOYT,

Petitioner,

v.

**TOWNSHIP OF UNION
BOARD OF EDUCATION, UNION COUNTY,**

Respondent.

Andrew L. Schwartz, Esq., for petitioner (Schwartz Law Group, LLC, attorneys)

Christopher J. Buggy, Esq., for respondent (Taylor Law Group, LLC, attorneys)

Record Closed: January 8, 2024

Decided: June 28, 2024

BEFORE **WILLIAM COURTNEY, ALJ:**

PROCEDURAL HISTORY

On July 18, 2023, petitioner Mark Hoyt, who is currently the Principal of the Hannah Caldwell Elementary School initiated this action which challenges the removal by respondent Township of Union Board of Education ("Board") of an annual \$8,000.00

stipend he had been receiving while he was Principal of Union High School. The matter was transferred to the Office of Administrative Law on August 30, 2023. Upon completion of discovery, cross motions for summary decision were filed.

STATEMENT OF THE CASE

In this matter, Petitioner seeks a summary decision finding that an \$8,000 stipend he received as part of his compensation from 2019-2022 was improperly removed thereafter in violation of N.J.S.A. 18A:28-5. The Board seeks an order granting summary decision in its favor and dismissing the Petition with prejudice.

ISSUES PRESENTED

There are two issues presented in the cross motions for summary decision: (1) is the action time-barred by N.J.A.C. 6A:3-1.3, and (2) was the reduction of Petitioner's salary in violation of the tenure statute N.J.S.A. 18A:28-5.

FACTUAL SUMMARY

Petitioner began employment with the District of Union Township Public Schools on or about January 1, 2007. From 2016 until 2019, Petitioner served as the principal for Battle Hill Elementary School. On July 16, 2019, the Board approved Petitioner's appointment as the interim Principal of Union High School. The Board also approved payment of an \$8,000 stipend associated with the Union High School principal position.

On September 9, 2022, Petitioner was served with a Rice notice advising him that the Board intended to discuss the terms and conditions of his employment at a meeting on September 13, 2022. The notice was extensive but did contain information regarding the stipend.

On September 13, 2022, the Board conducted its meeting electing to appoint a new principal, transfer petitioner to an elementary school, and eliminate the stipend payment associated with petitioner's Union High School position. The minutes from September 13 meeting were approved at a second public meeting in November 2022. Thereafter, the reduction of the stipend was reflected in petitioner's paychecks. Petitioner did not initiate this action challenging the reduction in his compensation until July 18, 2023.

LEGAL ANALYSIS

Pursuant to N.J.A.C. 1:1-12.5(b), a 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." This rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules, R. 4:46-2. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection therewith, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Id. at 75. In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

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

After a thorough review of the submissions of the parties, I **FIND** that there are no disputes as to any material fact and for the reasons set forth below, I grant respondent's motion for summary decision and dismiss the petition filed by Mr. Hoyt for failing to file said petition within the time period required by N.J.A.C. 6A:3-1.3(i).

As respondent highlights in its motion for summary decision, N.J.A.C. 6A:3-1.3(i), provides that petitioners must "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, that is the subject of the requested contested case hearing." In general, the 90-day rule is strictly construed unless the case presents a substantial constitutional issue or a matter of significant public import. Kenny v. Board of Education of the Borough of Moonachie, Bergen County, EDU 09284-14, initial decision, (Aug. 17, 2017), https://njlaw.rutgers.edu/collections/oal/html/initial/edu09284-17_1.html.

The seminal case on what constitutes adequate notice for the purpose of N.J.A.C. 6A:3-1.3(i) is Kaprow v. Board of Education of Berkeley Township, 131 N.J. 572 (1993). There, the New Jersey Supreme Court held that even though the petitioner's notice was "unofficial and informal," it was still sufficient to apprise the petitioner of the "state of facts that would enable him to file a timely claim," and therefore the 90-day limitation tolled. Id. at 588-89.

Here, the removal of petitioner's stipend took place at a September 2022 meeting for which petitioner received a Rice notice. Although admittedly a long notice, the papers did inform petitioner that the stipend would be discussed at the meeting. On November 22, 2022, the notes from said meeting became publicly available and reflected the Board's decision to remove the stipend from petitioner's salary. Thereafter, the decrease was reflected in petitioner's income statements. Petitioner, however, did not file his Petition challenging the reduction in salary until July 18, 2023.

Petitioner argues that the only mention of the stipend was "buried" within the Rice notice, and it was not clear from his pay checks that the stipend had been removed. As

a result, Petitioner concludes, he never received adequate notice to begin tolling the 90-day limitation.

Under Kaprow, petitioner's argument fails. Even though petitioner never received a document dedicated solely to informing him the stipend had been removed, it is reasonable to conclude that he was aware, or should have been aware, of the state of facts giving rise to his cause of action well before July 18, 2023. Between the Rice notice, the public minutes, and the fact that his monthly salary was actually decreased, petitioner should have known the stipend had been removed by the end of 2022. His failure to bring this action for another seven months clearly puts this case outside of the 90-day limitation period.

Petitioner cites Stockton v. Board of Education, 210 N.J. Super. 150 (App. Div. 1986), in arguing that the petition is not untimely. However, Stockton is distinguishable from the facts at hand. There, the Court held that "receipt of a salary check for less of an increase than one anticipates cannot provide notice that a decision has been made to correct an error allegedly made three years before." Id. at 157. Here, the reduction in Petitioner's paycheck over many months is only part of the Board's argument for proper notice. There was also a Rice notice and the publication of public minutes, making Stockton inapposite.

In petitioner's main argument for summary decision, he relies on N.J.S.A. 18A:28-5 ("Tenure Law") which states tenured teaching staff "shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member." Here, there is no allegation of inefficiency, incapacity or conduct unbecoming. Rather, the issue raised by petitioner is whether removal of a "stipend" qualifies as a "[reduc[tion] in compensation" which is prohibited under N.J.S.A. 18A:28-5. Petitioner's reliance on the Tenure Law, however, cannot salvage an untimely petition from dismissal. See Nissman V. Bd. of Educ., Twp. of Long Beach Island, 272 N.J. Super. 373, 381(App. Div. 1994) and Scheffler v. Bd. of Trs. Charter Sch. For Tec., 2023 N.J. Super. Unpub. LEXIS 534 (rejecting petitioner's argument that the Tenure Law

superseded the 90-day time limit to file a petition); see also Salazar-Linden, 2009 N.J. Super. Unpub. LEXIS 2713(rejecting argument that the 90-day time limit undermines tenure rights).¹

For the reasons stated, I **FIND** that petitioner failed to file his petition challenging his claimed reduction in salary within the required 90-day deadline set forth in N.J.A.C. 6A:3-1.3(i) . I Further **FIND** that petitioner has failed to provide any credible evidence that the case presents a substantial constitutional issue or is a matter of significant public import that would justify relaxation of strict 90-day filing requirement or that the Tenure Law negates its application. I, therefor, **CONCLUDE** that petitioner's motion for summary decision must be denied and respondent's motion for summary decision must be granted.

ORDER

It is **ORDERED** that:

1. Petitioners motion for summary decision is **DENIED**; and
2. Respondent's motion for summary decision is **GRANTED**.

This decision resolves all outstanding issues before this tribunal.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

¹ While R. 1:36-3 precludes a court's consideration of unpublished decisions, the OAL is not a court. See 37 New Jersey Practice, Administrative Law and Practice s.250, at Supp. p. 89, (Steven L. LeFelt) (1995) (noting that the U.A.P.R. contains no restrictions on the use of unreported Appellate Division cases and that "any authority by a court, even if contained within an unreported case, should be carefully considered by ALJs."). Further, this tribunal is unaware of any contrary authority to the case cited.

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.



June 28, 2024

DATE

WILLIAM J. COURTNEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

List of Moving Papers

Petitioner's Submissions Considered

1. Petitioner's November 14, 2023 Brief in Support of Motion for Summary Decision with Exhibits 1-18.
2. Petitioner's January 5, 2024 Brief in Further Support of Petitioner's Motion for Summary Decision and In Opposition to Respondent's Cross-Motion with Exhibits 19, 20 & 21.

Respondent's Submissions Considered

December 18, 2023 Certification of Christopher J. Buggy with attached Exhibits 1-13.