

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

Lucy Ferguson,

Petitioner,

v.

Board of Education of the Township of  
Hillside, Union County,

Respondent.

**Synopsis**

Petitioner challenged her termination from the position of school custodian after eighteen (18) years of employment without the filing of tenure charges and without a hearing. Petitioner was a member of the Hillside Education Association, which served as the collective bargaining unit for janitorial and maintenance staff; the collective bargaining agreement for the period from July 1, 2021, to June 30, 2024, contained a provision stating that "(c)ustodians hired prior to July 1, 2018, following receipt of their fourth contract, after having served continuously for three (3) calendar years (36 months) shall be placed under tenure...". The petitioner filed a motion for summary decision, which was opposed by the respondent Board.

The ALJ found, *inter alia*, that: on December 23, 2023, the Board issued a one-sentence letter terminating petitioner effective December 29, 2023, without stating a reason for the termination; petitioner was a tenured employee; and the Board terminated her without filing tenure charges or holding a disciplinary hearing; and there are no material facts in dispute in this case, and the matter is ripe for summary decision. The ALJ concluded that petitioner was improperly terminated and ordered that she be reinstated to her position with back pay and benefits, retroactive to December 29, 2023.

Upon review, the Commissioner, *inter alia*, concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision of the OAL as the final decision in this matter. The Commissioner directed the Board to reinstate petitioner as a school custodian effective December 29, 2023, with back pay and benefits.

<p>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.</p>
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered.

Upon review, the Commissioner agrees with the Administrative Law Judge (ALJ) – for the reasons expressed in the Initial Decision – that petitioner was a tenured employee when the Board terminated her employment. In addition, the Commissioner concurs with the ALJ that the Board improperly terminated Petitioner without tenure charges or a disciplinary hearing.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and petitioner's motion for summary decision is granted. The Board is directed to reinstate petitioner as a school custodian effective December 29, 2023, with back pay and benefits.

IT IS SO ORDERED.<sup>1</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 15, 2024  
Date of Mailing: November 18, 2024

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<sup>1</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**

OAL DKT. NO. EDU 05247-2024

AGENCY DKT. NO. 77-3/24

**LUCY FERGUSON,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE**

**TOWNSHIP OF HILLSIDE,**

Respondent.

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**Nicholas Poberezhsky**, Esq., for petitioner (Caruso Smith Picini, attorneys)

**Raymond Hamlin**, Esq., for respondent, (Hunt, Hamlin & Ridley, attorneys)

Record Closed: September 24, 2024

Decided: October 4, 2024

BEFORE **ANDREA PERRY VILLANI**, ALJ:

**STATEMENT OF THE CASE**

Respondent, the Hillside Board of Education, summarily terminated petitioner, Lucy Ferguson, a school custodian, after eighteen years of employment without filing tenure charges and without a hearing. Can the termination stand? No. The Tenure Employees Hearing Law, which confers tenure on public school janitors, prohibits tenured employees from being terminated without a hearing.

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### **PROCEDURAL HISTORY**

On December 22, 2023, Erskin Glover, Superintendent of the Hillside Public Schools, notified Ferguson on behalf of the Hillside Board of Education that she was terminated from her position as custodian effective December 29, 2023.

On March 25, 2024, Ferguson filed a Certified Petition of Appeal with the New Jersey Department of Education.

On April 17, 2024, the New Jersey Department of Education, Office of Controversies and Disputes, transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23.

On May 17, 2024, I conducted a pre-hearing telephone conference. Counsel agreed to adjourn the conference thirty days to allow for settlement negotiations.

On June 26, 2024, I held a second pre-hearing telephone conference, but no one called in. The conference was rescheduled for July 8, 2024.

On July 8, 2024, the Board's attorney did not call in for the conference. Counsel for Ferguson stated his intention to file a motion for summary decision. I requested that he contact the Board's attorney and attempt to agree on a joint stipulation of facts.

On August 20, 2024, Ferguson filed her motion for summary decision, and counsel confirmed that he issued a proposed joint stipulation of facts to the Board's attorney, but the Board never responded.

On September 23, 2024, the Board filed opposition to the motion for summary decision. On September 24, 2024, Ferguson filed her reply, and I closed the record.

### **FINDINGS OF FACT**

Ferguson was employed by the Board as a full-time custodian and maintenance worker beginning November 28, 2005. On May 22, 2009, the Board issued a salary notification to Ferguson marked “Tenure.” (P-2.) On October 17, 2023, Ferguson was removed from her active work duties and placed on paid administrative leave. On December 22, 2023, the Board issued a one-sentence letter terminating Ferguson effective December 29, 2023. (P-3.) It did not give a reason for the termination. (P-3.)

Ferguson was a member of the Hillside Education Association (HEA), which served as the collective bargaining unit for janitorial and maintenance staff. The Controlling Collective Bargaining Agreement (CBA) for the period of July 1, 2021, to June 30, 2024, contained the following provision: “For custodian’s hired prior to July 1, 2018, following receipt of their fourth contract, after having served continuously for three (3) calendar years (36 months) shall be placed under tenure...” (P-1.)

As such, Ferguson was a tenured employee, and the Board terminated her without filing tenure charges or holding a disciplinary hearing. Although Ferguson believes the Board fired her because she had an altercation with a co-worker, the Board presented no evidence of this or a criminal indictment or even an investigation.

### **CONCLUSIONS OF LAW**

#### **Summary Decision**

Under 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 the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b) also holds that when a motion for summary decision is made and supported, for an adverse party to prevail it must “by responding affidavit set forth specific facts” showing there is a genuine issue that can only be determined in an evidentiary proceeding.

In this case, Ferguson filed an affidavit in the form of a Certified Petition of Appeal and six exhibits supporting her position that she was employed by the Board for eighteen years and received tenure. She also established that she was terminated without tenure charges or a disciplinary hearing. In other words, her Motion was made and supported. However, the Board did not respond with an affidavit as required by N.J.A.C. 1:1-12.5(b). The Board only provided a letter brief, and that brief did not set forth any specific facts showing that there is a genuine issue for trial.

Because N.J.A.C. 1:1-12.5(b) is almost identical to R. 4:46, “Summary Judgment,” subsection (c), New Jersey courts have applied the legal standard for summary judgment to administrative proceedings. See Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 122 (App. Div. 1995). Part of the legal standard for summary judgment is that abstract doubt regarding material facts is not sufficient to defeat it. See O’Loughlin v. Nat’l Cmty. Bank, 338 N.J. Super. 592, 606-07 (App. Div. 2001). To put it another way, competent opposition to summary judgment requires “competent evidential material” beyond mere “speculation” and “fanciful arguments.” Merchs. Express Money Order Co. v. Sun Nat’l Bank, 374 N.J. Super. 556, 563 (App. Div. 2005).

In this case, the Board argues that Ferguson should produce additional evidence to “confirm” she was continually employed for eighteen years and thereby entitled to tenure. At the same time, the Board does not actually dispute that Ferguson was continually employed or that she was granted tenure. Also, as noted above, the Board has not provided any specific facts indicating that Ferguson was not tenured. For these reasons, the Board’s opposition amounts to nothing more than abstract doubt or mere speculation. Therefore, I **CONCLUDE** that there are no material facts in dispute and this case is ripe for summary decision.

#### Tenure Employees Hearing Law

N.J.S.A. 18A:17-3, “Tenure of janitorial employees,” confers tenure upon school janitors if they are not employed for a fixed term. However, janitors employed for a fixed

term may also be afforded tenure under the terms of a Collective Bargaining Agreement. Wright v. Bd. of Educ., 194 N.J. Super 181, 184-85 (App. Div. 1983). In Wright, the Appellate Division noted that N.J.S.A. 18A:17-3 “clearly affords a school district the option of deciding whether it wishes to grant tenure to a janitor” and, therefore, a collective bargaining agreement that confers tenure on a janitor employed for a fixed term is not in derogation of that statute. Id. at 184.

In this case, Ferguson received tenure under both N.J.S.A. 18A:17-3 and a Collective Bargaining Agreement (CBA). N.J.S.A. 18A:17-3 applies because Ferguson was employed by the Board for eighteen years, clearly not a fixed term. Although the Board suggests that N.J.S.A. 18A:17-3 does not apply because Ferguson was employed for a fixed term of twelve months (July 1<sup>st</sup> through June 30<sup>th</sup>) eighteen times, even if this were true, she is still entitled to tenure under Wright and the terms of the CBA. Again, the CBA confers tenure after three years of continuous employment. Although the Board questions whether Ferguson was “continuously” employed, it has provided no facts whatsoever to the contrary.

N.J.S.A. 18A:17-3 holds that a tenured janitor may only be dismissed, suspended, or reduced in compensation for misbehavior in the manner prescribed by statute. N.J.S.A. 18A:6-10 states that tenured employees may not be dismissed or reduced in compensation “except for inefficiency, incapacity, unbecoming conduct or other just cause, and then only after a hearing held pursuant to this sub-article...” Further, in Slater v. Bd. of Educ., 237 N.J. Super. 424, 426 (App. Div. 1989), the Appellate Division stated, “a tenured employee may be suspended without pay only if indicted or if tenure charges have been preferred and certified to the Commissioner of Education. In all other circumstances, a suspension must be with pay.”

In this case, Ferguson was terminated on December 29, 2023, without tenure charges or a disciplinary hearing. Similarly, there was no criminal indictment. Therefore, I **CONCLUDE** that Ferguson was improperly terminated.

**ORDER**

Based on the foregoing, I **ORDER** that Ferguson be reinstated to her position effective December 29, 2023, with back pay and benefits.

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 case. 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 becomes a final decision under N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision is 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 4, 2024

DATE

ANDREA PERRY VILLANI, ALJ

Date Received at Agency:

October 4, 2024

Date Mailed to Parties:

October 4, 2024

sej



**APPENDIX**

**DOCUMENTS RELIED ON:**

Petitioner's March 18, 2024 Certified Petition of Appeal

Exhibit P-1 Collective Bargaining Agreement

Exhibit P-2 Salary Notification

Exhibit P-3 Termination Letter

Exhibit P-4 Letter from Ferguson's Attorney

Exhibit P-5 Second Letter from Ferguson's Attorney

Exhibit P-6 Medical Bill

Petitioner's August 20, 2024 Brief

Respondent's September 23, 2024 Brief

Petitioner's September 24, 2024 Reply Brief