

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

Cathleen Cahn,

Petitioner,

v.

Board of Education of the Ramapo Indian Hills  
Regional High School District, Bergen County,

Respondent.

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

Petitioner challenges the Board's denial of her application for a substitute teacher position, alleging that she was denied employment due to her social media posts concerning the Board's operations. The Administrative Law Judge (ALJ) concluded that petitioner was not employed by the Board and was therefore not entitled to the protections related to the non-renewal of school district employment; the Board took no action to prevent petitioner's free expression; and petitioner had not shown that the Board's action was the result of a discriminatory action based upon a protected class. The ALJ also found that petitioner had not put forward facts that would allow a reasonable inference that petitioner's online activity formed

the basis for the Board's decision, and that there was nothing to objectively establish that but for petitioner's social media posts, the Board would have appointed her to the position of substitute teacher. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

In her exceptions, petitioner argues that in making its hiring decisions, the Board's decision must comport with the law, including the First Amendment. Petitioner contends that the Board's refusal to hire her in response to her First Amendment-protected activity is actionable as retaliation, such that it is irrelevant for purposes of the analysis that petitioner was not employed by the Board at the time of its action. According to petitioner, the ALJ applied the wrong standard, requiring petitioner to provide her case by a preponderance of the evidence, rather than viewing the facts in the light most favorable to her. Petitioner argues that, because the Board failed to provide any explanation for its decision, the only evidence in the record regarding its reasoning is that it was based on petitioner's social media posts, and therefore summary decision was inappropriate; for similar reasons, petitioner also contends that she should have been permitted to engage in discovery to obtain information about its reasoning from the Board.

In response, the Board argues that the ALJ properly applied the summary decision standard, which requires petitioner to provide some fact or evidence to demonstrate that a reasonable factfinder could conclude that the Board's decision not to appoint petitioner to the substitute teaching position violated her constitutional rights or was otherwise arbitrary, capricious, or unreasonable. According to the Board, the ALJ correctly found that petitioner failed to provide such evidence. The Board asserts that petitioner's arguments regarding the

existence of a genuine issue of material fact – the reason for the Board’s decision – is a completely speculative conclusion, insufficient to defeat summary decision. The Board argues that petitioner has not identified the actual speech that the alleged retaliation was based on, or any evidence that her speech was a substantial and motivating factor in the Board’s decision.

Upon review, the Commissioner concurs with the ALJ that petitioner has not demonstrated that the Board’s decision was in violation of her constitutional rights. Petitioner’s argument is premised on the assumption that, absent an explanation to the contrary for its decision, the only possible conclusion is that its decision was based on petitioner’s allegedly-protected speech. But that type of speculation is insufficient for the Commissioner to conclude that the Board’s decision was in violation of petitioner’s constitutional rights.

Nonetheless, the Commissioner is constrained to remand this matter for further factfinding. The petition of appeal alleges that the Board’s decision not to appoint petitioner to the position of substitute teacher was arbitrary, capricious, and unreasonable, in violation of *N.J.S.A. 18A:27-4.1*. When a board of education votes on a recommended appointment, it “shall not withhold its approval for arbitrary and capricious reasons.” *N.J.S.A. 18A:27-4.1(a)*. This language exactly parallels the language pertaining to non-renewals, which the Appellate Division has found to “circumscribe the board’s power to withhold approval.” *Truncellito v. Bd. of Educ. of the Twp. of Lyndhurst, Bergen Co.*, 2022 N.J. Super. Unpub. LEXIS 92, at \*8 (App. Div. Jan. 24, 2022). The statute requires the Commissioner to examine whether the Board exceeded its power to withhold approval of petitioner’s appointment. Although a board of education has wide latitude regarding its employment decisions, *Dore v. Bedminster Twp. Bd. of Ed.*, 185 N.J. Super. 447 (App. Div. 1982), the absence of any explanation whatsoever by the Board for its action here

creates a genuine issue of material fact as to what the Board's reason was, sufficient to preclude summary decision at this stage.<sup>1</sup>

Accordingly, this matter is remanded to the OAL for further proceedings consistent with this decision.

IT IS SO ORDERED.



COMMISSIONER OF EDUCATION

Date of Decision: June 12, 2025

Date of Mailing: June 12, 2025

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<sup>1</sup> The Commissioner notes that the ALJ indicated in his Order denying petitioner's motion to compel discovery that the specific reasoning of the five Board members who did not vote in favor of employing petitioner may be obtained by subpoena of those Board members, but that he suspected that the deliberative process privilege would preclude that discovery. The Commissioner declines to determine, at this stage, whether the deliberative process privilege protects any information petitioner may seek to elicit from Board members or any other witnesses.



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

**INITIAL DECISION**

**GRANTING RESPONDENT'S**

**SUMMARY DISPOSITION MOTION**

OAL DKT. NO. EDU 05928-23

AGENCY DKT. NO. 125-5/23

**CATHLEEN CAHN,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE  
RAMAPO INDIAN HILLS REGIONAL  
HIGH SCHOOL DISTRICT, BERGEN  
COUNTY,**

Respondent.

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**Edward A. Cridge, Esq.,** for petitioner (Mellk Cridge, attorneys)

**Matthew J. Giacobbe, and Anthony G. LoBrace, Esqs.,** for respondent (Cleary, Giacobbe, Alferi, Jacobs, attorneys)

BEFORE **JOSEPH A. ASCIONE**, ALJ (Ret., on recall):

Record Closed: February 10, 2025

Decided: March 12, 2025

## **STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On May 4, 2023, petitioner filed a Verified Petition of Appeal with the Commissioner of Education. On July 5, 2023, the New Jersey State Department of Education, Bureau of Controversies and Disputes, transmitted the matter to the Office of Administrative Law (OAL), pursuant to N.J.A.C. 1:1-8.2. On August 16, 2024, petitioner filed a motion to compel complete and specific answers to interrogatories of respondent, on the basis that the answers were non-responsive. The Board filed answering papers and brief on September 6, 2024, and petitioner filed a reply brief on September 11, 2024. The OAL heard oral argument on October 4, 2024. Petitioner's motion was denied on October 10, 2024. On December 16, 2024, Respondent filed a motion for summary disposition. On January 15, 2025, Petitioner filed answering papers. On January 29, 2025, respondent filed reply papers. Oral argument was held on February 10, 2025, and the record closed on February 10, 2025.

## **FACTUAL DISCUSSION**

Petitioner possess teaching certificates for Elementary School and Handicapped (Verified Petition Paragraph 1). On or about January 26, 2023, petitioner submitted an application for employment, as a substitute teacher, with the respondent, pursuant to a request posted by respondent. On March 13, 2023, at the Board's meeting, Dr. Riu Dionisio, the Board Superintendent, recommended the appointment of petitioner to the position of substitute teacher. The matter was tabled at that meeting, but considered at the March 27, 2023, meeting, where the appointment did not receive sufficient votes for approval. The petitioner is not an employee of the Board, nor was she at the time of the submission of the application for consideration. The petition maintains she was denied employment due to the Board's influence from petitioner's speech published on social media, specifically Facebook®, addressed to the operation of the Board. Petitioner maintains the Board violated the 1<sup>st</sup> and 14<sup>th</sup> Amendments to the United States Constitution, the New Jersey Constitution, Article 1, Paragraph 6, and the New Jersey Civil Rights Act, N.J.S.A. 10:6.1 et. seq.

Respondent proffers, the petitioner is not an employee of the Board, the respondent here is the Board, not its individual members, and the deliberative process privilege generally exempts public officials from being required to explain their reason for voting for or against any action. Petitioner here did not receive an affirmative vote of a majority of the members of the Board to be offered a position as a substitute teacher.

### **FINDINGS OF FACT**

As a result of the certifications and documentary evidence provided, I **FIND** the following **FACTS**:

1. The petitioner is not and was never an employee of the respondent prior to the incident in question.
2. On January 26, 2023, the petitioner applied for a substitute teaching position for the 2022-2023 school year at respondent. See Verified Petition Paragraph 4.
3. The then superintendent, Dr. Rui Dionisio, recommended the petitioner for the position. See Verified Petition Paragraph 5.
4. Prior to respondent's vote on the consideration of appointment of petitioner, various members of the public expressed concern about the appointment of petitioner. See Petitioner's Interrogatories responses Cahn 007, 011, 013.
5. Respondent's duties include consideration of public input.
6. On March 27, 2023, a majority of the members of respondent voted against consideration of hiring petitioner for the position of substitute teacher. See minutes of respondent's March 27, 2023 meeting.
7. The petitioner alleges that submissions by the public in opposition to consideration of the petitioner to the position of substitute teacher which

contained excerpts of online posts by petitioner resulted in a violation of her freedom of expression.

8. The excerpt reflects petitioner's opinion regarding the actions of the public at respondent's meetings. Specifically, related to the public's mis-impression that a member of the respondent has any obligation to respond to a public comment. This in no way can be characterized as a criticism of the respondent or its members and does not support any claim of petitioner.
9. The second excerpt reflects petitioner's comment as, "(o)ur school board has been hijacked by an uninformed majority." While critical of a school board, it is insufficient to qualify as language which rises to a "substantial and motivating factor" in the adverse decision made.
10. There is no showing that the action of the Board was motivated by an impermissible motivation, ie. protected class -- age, race, national origin, religion, etc.
11. The petitioner exercised her freedom of expression.
12. The petitioner has failed to show any violation of a constitutional right.
13. A potential employee has no cause of action for a failure to hire, when as here there is no claim or showing the petitioner is a member of a protected class.
14. Respondent is within its rights to reject the application of a potential employee based upon negative public input.
15. Respondent is within its rights to reject the application of a potential employee based upon public observation of online content which it may deem undesirable to its operation of a school system.

16. Respondent's action can in no way be deemed arbitrary, capricious, or unreasonable.

### **LEGAL DISCUSSION**

Under N.J.A.C. 1:1-12.5, “[a] party may move for summary decision upon all or any of the substantive issues in a contested case.” N.J.A.C. 1:1-12.5(a). Summary decision may be granted if “[t]he 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.” N.J.A.C. 1:1-12.5(b). And “[w]hen a motion for summary decision is made and 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.” Ibid.

In making this determination, a judge is to consider “[w]hether the competent evidential materials presented, when viewed in a light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 523 (1995). The relevant inquiry is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. Id. at 536 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986).

In this situation, the petitioner is not a public employee, accordingly non-renewal protections are not applicable here. The petitioner does not allege any protected class rather she claims entitlement for a position she did not receive. She maintains that because she expressed her opinion in social media, her 1<sup>st</sup> Amendment and New Jersey Constitutional rights were denied because she had been denied potential employment as a substitute teacher. Petitioner has only offered submissions of excerpts from negative public comments regarding her potential appointment. She has failed to identify the protected speech she maintains supports her claim. She has offered no evidence of these facts. She attempted to obtain these facts from one or

more of the five members of the Board who did not vote to approve her appointment as a potential substitute teacher, however, petitioner did not bring her action against individual board members. The respondent is the Board. This tribunal does not accept petitioner's argument that the 1<sup>st</sup> and 14<sup>th</sup> Amendments of the United States Constitution, the New Jersey Constitution, nor the New Jersey Civil Rights Act, N.J.S.A. 10:6.1 et. seq., provide her with a valid claim when rejected for public employment based upon her freedom of expression. Petitioner presently has offered insufficient evidence to support her position that the Board's actions were based upon impermissible rationales. All of the cases put forth by petitioner involve retaliatory action taken against an employee based upon the exercise of free speech. Even in the case of Smith v. Cent. Dauphin Sch. Dist., 419 F. Supp. 2d 639 (M.D. Pa. Sept. 23, 2005), that petitioner was a teacher at Central Dauphin School District, and had previously held a position of assistant coach which was not renewed after the petitioner had reported concerns regarding an ongoing mold hazard to a State agency. Here, the petitioner exercised her right to free speech, however the respondent took no action to prevent such expression. Petitioner must recognize that the use of free speech may result in consequences. To argue that the respondent cannot consider her actions in determining whether to offer her employment has no basis in law. A public body is permitted to determine that the employment of a gadfly or opinionated individual does not support its objectives. Whether the decision in this matter was made because of the negative public input or the actual content of online postings is not relevant. There is no showing that the action was the result of a discriminatory action based upon a protected class. The current case presents insufficient evidence for a reasonable factfinder to believe a person of ordinary firmness would feel deterred from exercising free speech out of fear of merely being denied a job opportunity.

This tribunal's consideration of the line of cases dealing with retaliation for the exercise of free speech requires a finding that the speech be a substantial and motivating factor in the respondent's action. Specifically, supported by an unusually suggestive temporal proximity between the speech and the respondent's retaliatory action; a pattern of antagonism coupled with suspicious timing; or that the record evidence, taken as a whole, compels the trier of fact to infer that causation existed. See Oliver v. Roquet, 858 F.3d 180, 190 (3d Cir. 2017); Lauren W., 480 F.3d at 267. This

burden is not discharged by simply showing that the challenged governmental action happened to relate in some way to the protected speech; rather, there must be “particular facts that allow the court to reasonably infer it is the protected activity itself ... that formed the basis for the defendant’s adverse action.” Oliver, F.3d at 192. Courts must be diligent in enforcing this causation requirement so as to avoid chilling a governmental actor’s appropriate discharge of the responsibilities of their office or position. Lauren W., 480 F.3d at 267-68. Petitioner has not put forward particular facts that allow this tribunal to reasonably infer that it was petitioner’s online activity that formed the basis for the respondent’s decision. Petitioner has put forward ten (10) words she posted online that were marginally critical of the respondent and somehow draws the conclusion that it was these ten (10) words that the respondent’s decision was based upon. There is no record evidence demonstrating any sort of antagonism or hostility that arose or previously existed between the respondent and petitioner in connection with the content she posted on social media, nor is there record evidence from which an inference could be drawn that it was petitioner’s actual social media content itself that caused the respondent’s decision. Petitioner claims that, but for her Facebook® postings, the respondent would have appointed her, however, there is nothing to objectively establish that to have been the case.

The record evidence put forward by petitioner in seeking to avoid summary decision in this matter is simply insufficient to create a genuine issue of material fact that the respondent’s decision not to appoint her violated her state or federal free speech rights. Petitioner has not identified any of her own Facebook® content that the respondent’s decision was allegedly based upon. Furthermore, the Facebook® content that she has identified, through emails of others that were sent to the Board, is incomplete, without sufficient information for this tribunal to conduct a legitimate First Amendment analysis, and is not of such a quality that any plausible inference could be drawn that the respondent’s decision not to appoint petitioner was premised upon the speech identified in her discovery. Nor has petitioner identified any fact or evidence that ties the respondent’s non-appointment to the content she posted on social media.

A public body has a privilege to protect the process of deliberation. This privilege is designed to provide governmental entities with the freedom to conduct uninhibited communications so that the best decisions can be reached. See Educ. Law Ctr. ex rel Abbott v. New Jersey Dep't of Educ., 198 N.J. 274, 285 (2000); and McGee v. Twp. of East Amwell, 416 N.J. Super 602,619 (App.Div. 2010).

The Department of Education's position is that there is great latitude in a board's determination regarding the renewal of a teacher's contract. Such latitude should also apply by analogy to a non-employee, prospective employee. See Truncellito v. Lyndhurst Bd. of Educ., 2019 N.J. AGEN LEXIS 643 (Sept. 18, 2019), rev'd, 2019 N.J. AGEN LEXIS 1093 (Dec. 3, 2019), rev'd and remanded, 2022 N.J. Super. Unpub. LEXIS 92 (App. Div. Jan. 24, 2022). This tribunal relies on the positions stated by the Department of Education in the Truncellito matter, despite the remand by the Appellate Division. The remand dealt with the failure of the Commissioner to address the arbitrary, capricious and unreasonable finding by the ALJ. Those factors are not present here. This tribunal also relies on Hubbard v. Springfield Bd. of Educ., 80 Fed. Appx. 757 (3d Cir. 2003). The Hubbard case deals with a claim of discrimination. It places the burden of proof on the party claiming the discrimination. This tribunal seriously questions whether a potential employee's 1<sup>st</sup> Amendment speech rights automatically make a negative vote approving that individual actionable.

The challenging party bears the burden of proving that the agency action was arbitrary, capricious, and unreasonable by the preponderance of the credible evidence. J.P. & M.P. v. S. Brunswick Bd. of Educ., 2002 N.J. AGEN LEXIS 952 at \*10-12 (Dec. 17, 2002); New Jersey Soc'y for Prevention of Cruelty to Animals v. New Jersey Dep't of Agric., 196 N.J. 366, 385 (2008); In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 415, 432 (2004); New Jersey State League of Municipalities v. Dep't of Cmty. Affairs, 158 N.J. 211, 222 (1999).

Petitioner has not satisfied her burden of demonstrating that respondent acted arbitrarily, capriciously, or unreasonably by denying her a position as a substitute teacher.

### **CONCLUSION**

After hearing the arguments of petitioner and respondent and considering the documents submitted, I **CONCLUDE** that the facts do not support the petitioner's claim. Specifically, the petitioner has made a vague allegation that the actions of the respondent are arbitrary, capricious, and unreasonable. No evidence has been put forth to cast any question that the actions fall within that categorization.

### **ORDER**

It is hereby **ORDERED** that respondent's motion for summary disposition dismissing the petitioner's claim is **GRANTED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to [ControversiesDisputesFilings@doe.nj.gov](mailto: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.

March 12, 2025

DATE



**JOSEPH A. ASCIONE**, ALJ (Ret., on recall)

Date Received at Agency:

March 12, 2025

Date Sent to Parties:

March 12, 2025

**APPENDIX**

**LIST OF EXHIBITS**

**For Petitioner:**

P-1 Petitioner's Answering Brief in Opposition of Motion for Summary Decision, dated 1/14/25

Exhibit A - Verified Petition

Exhibit B - Answer to Verified Petition

Exhibit C - Petitioner's Objections, Reservations, and Responses to Interrogatories and Requests for the Production of Documents to Respondent, dated 7/12/24

Exhibit D - Cahn 001 - Cahn 013

Exhibit E - Respondent's Response to Petitioner's Request for Interrogatories and Requests for Production of Documents, dated 7/8/24

Exhibit F - Order Denying Petitioner's Discovery Motion, dated 10/10/24

**For Respondent:**

R-1 Respondent's Motion for Summary Decision, dated 12/16/24

Exhibit A - Verified Petition

Exhibit B - Petitioner's Responses to Respondent's Interrogatories and Requests for the Production of Documents, dated 7/12/24

Exhibit C - Respondent's Responses to Petitioner's Interrogatories and Requests for Production of Documents, dated 7/8/24

R-2 Respondent's Reply Brief in Further Support of Motion for Summary Decision, dated 1/29/25

Exhibit D - Respondent's Response to Petitioner's March 28, 2023 Open Public Records Act request, dated 4/7/23