235-18

DEANA FRAYNE,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH OF HIGHLAND PARK, MIDDLESEX COUNTY, ISRAEL SOTO, AND KELLY WYSOCZANSKI,	:	DECISION
RESPONDENTS.	:	

SYNOPSIS

Petitioner contended that the respondent Board violated her tenure rights under *N.J.S.A.* 18A:28-5 when her position was terminated in June 2015. Petitioner stated that she understood that she was tenured in the respondent's school district – based on time served in a tenure-track position – when she was presented with a proposed settlement agreement on June 24, 2015 that stated she was not a tenured employee; petitioner refused to sign the settlement, and was terminated thereafter. This case was originally filed in the Superior Court on June 20, 2016, after which the Board moved for a change of venue. The case was forwarded to the Commissioner of Education and filed on December 14, 2016. The Board filed a motion for summary decision, contending that the case was untimely filed; alternatively, the Board argued that petitioner did not work in any tenurable position for the requisite three years and one day, and therefore has no claim to tenure.

The ALJ found, *inter alia*, that: there are no material facts in dispute here, and the matter is ripe for summary decision; where a Board informs a teacher that she is being terminated without the Board invoking the statutory process for removing tenure, the Board is – by its very conduct – telling the teacher that it does not recognize that the teacher has tenure protection, and that it can therefore terminate her without utilizing the tenure removal process; once a teacher is adequately aware that the Board has taken such a position – contrary to any claim or belief that the teacher may have had regarding her tenure status – the teacher has knowledge that the Board is acting contrary to her understanding of her legal status; such knowledge constitutes notice for the purpose of triggering the 90 day limitation period for the filing of an appeal of the Board's determination; in the instant case, petitioner was well aware by July 20, 2015 – at the very latest – that the Board had terminated her as a non-tenured employee; petitioner failed to file her appeal within 90 days as required under *N.J.A.C.* 6A:3-1.3(i); petitioner's filing of a complaint in Superior Court did not act to toll the 90 day filing period; and given the undisputed material facts in this case, no application of the doctrine of equitable estoppel is warranted. Accordingly, the ALJ granted the Board's motion for summary decision, and dismissed the petition.

Upon review, and finding the petitioner's exceptions to be unpersuasive, the Commissioner concurred with the ALJ that the petition was filed outside of the 90-day limitation period set forth in *N.J.A.C.* 6A:3-1.3(i), and that the doctrine of equitable estoppel is not applicable to this case. Accordingly, the Initial Decision of the OAL was adopted as the final decision, and the petition was dismissed.

August 9, 2018

OAL DKT. NO. EDU 19081-16
AGENCY DKT. NO. 316-12/16

DEANA FRAYNE,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH OF HIGHLAND PARK, MIDDLESEX COUNTY, ISRAEL SOTO, AND KELLY WYSOCZANSKI,	:	DECISION
RESPONDENTS.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed, along with petitioner's exceptions – filed pursuant to *N.J.A.C.* 1:1-18.4 – and Board's reply thereto.

In this matter, petitioner alleges that the Board violated her tenure rights when she was terminated in 2015. The Administrative Law Judge (ALJ) concluded that the petition is barred by the 90-day filing period, set forth in *N.J.A.C.* 6A:3-1.3(i). Specifically, petitioner was presented with a proposed settlement agreement on June 24, 2015, which stated that she was not a tenured employee. After refusing to sign the agreement, she was notified of her termination on June 25, 2015. Thereafter, on July 20, 2015, the Board officially adopted a resolution terminating petitioner. Approximately one year later, on June 20, 2016, petitioner initiated an action in the Superior Court against the Board, which was transferred to the Commissioner and filed on December 14, 2016.

In her exceptions, petitioner argues that the ALJ erred in finding that the petition is barred by the 90-day limitation period. Petitioner contends that, contrary to the Board's

assertion, there is no documentation that demonstrates that she was aware that she was not a tenured employee before June 25, 2015 – when she was notified of her termination after being presented with a settlement agreement indicating that she was not tenured. Petitioner argues that although she refused to sign the agreement with the Board, she did not believe she had a right to a tenure appeal based on the Board's failure to acknowledge her as tenured. However, petitioner points out that the Board later certified that it never advised her that she was not tenured, effectively contradicting its position that petitioner was on notice as of June 24, 2015 of her non-tenured status. Petitioner argues that this matter is not time-barred due to the doctrine of equitable estoppel because petitioner relied on the Board's misrepresentation that she never achieved tenure.

In reply, the Board argues that petitioner incorrectly stated the Board's position. Instead, the Board maintains that it argued that petitioner knew as of July 20, 2015 – the date the Board voted to terminate petitioner – that she was not tenured, thus starting the 90-day limitation period. It was the ALJ who found that petitioner was on notice of her non-tenured status by June 25, 2015, when she was notified of her termination. The Board points out that petitioner filed her civil suit long after the expiration of the 90-day period following either date. In response to petitioner's argument regarding the lack of a single document stating that petitioner is not tenured, the Board argues that there is no statutory requirement that a teaching staff member be notified in writing that she does not have tenure in order to trigger the 90-day limitation period. As such, the ALJ properly found that the Board effectively informed petitioner that she did not have tenure through its conduct in terminating her without initiating tenure proceedings.

Upon review, the Commissioner concurs with the ALJ that the instant petition is appropriately dismissed because it was filed outside the 90-day limitation period set forth in

N.J.A.C. 6A:3-1.3(i). The Commissioner does not find petitioner's exceptions to be persuasive. The Commissioner agrees with the ALJ that petitioner was aware by July 20, 2015 – at the very latest – that the Board had terminated her without filing tenure charges, and thus treated her as a teacher who does not have tenure protection. The Commissioner is also in accord with the ALJ that the doctrine of equitable estoppel is not applicable to this matter. Finally, the Commissioner agrees with the ALJ that the filing of a complaint in Superior Court does not toll the 90-day filing period, even though the filing of the complaint occurred nearly a year after petitioner was terminated, well after the 90-day period. As such, according to *N.J.A.C.* 6A:3-1.3(i), petitioner had 90 days from July 20, 2015 to file a petition of appeal, and failed to do so until this matter was transferred to the Commissioner by the Superior Court and opened on December 14, 2016.

Accordingly, the Initial Decision is adopted as the final decision in this matter, for the reasons stated therein. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.[*]

COMMISSIONER OF EDUCATION

Date of Decision: August 9, 2018

Date of Mailing: August 9, 2018

[*] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DEANA FRAYNE,
Petitioner,
v.
BOARD OF EDUCATION OF THE BOROUGH OF HIGHLAND PARK, MIDDLESEX COUNTY, ISRAEL SOTO AND KELLY WYSOCZANSKI,
Respondents.

OAL DKT. NO. EDU 19081-16
AGENCY DKT. NO. 316-12/16

Samuel J. Halpern, Esq., for petitioner

Erick L. Harrison, Esq., for respondents (Methfessel & Werbel, attorneys)

Record Closed: June 12, 2018 Decided: June 26, 2018

BEFORE **JEFF S. MASIN**, ALJ (Ret., on recall):

Deana Frayne filed a petition with the Commissioner of Education on December 14, 2016. In her petition, Ms. Frayne contended that the Highland Park Board of Education violated her tenure rights under N.J.S.A. 18A:28-5, when the Board terminated her position in 2015. The Commissioner of Education transferred the contested case to the New Jersey Office of Administrative Law (OAL) on December 19, 2016. On September 27, 2017, the respondents moved for summary decision, seeking dismissal of the petition under N.J.A.C. 1:1-12.5. On January 9, 2018, counsel for Ms.

Frayne advised the administrative judge assigned to the case, Hon. Leslie Celentano, that he delayed in responding due to family medical issues, and that he would shortly be seeking some discovery. On May 12, 2018, counsel advised Judge Celentano that he had received answers to discovery requests which he was still reviewing. He also supplied an affidavit from Ms. Frayne in opposition to the motion for summary decision. Subsequent to receipt of this letter, counsel filed several other letters with Judge Celentano concerning the issues respecting the motion. Due to Judge Celentano's crowded calendar, the motion was transferred to this administrative law judge, sitting on recall, for purposes of disposition of the motion.

Before proceeding to a consideration of the merits of the motion, some history. According to Ms. Frayne's affidavit, she was terminated on June 24, 2015. The documents submitted by respondents' counsel indicate that prior to that date, the Board had concerns about Ms. Frayne's attendance and other actions that it believed violated Board policy. On June 20, 2016, Ms. Frayne filed a Complaint in the Superior Court of New Jersey, Middlesex County-Law Division, in which she made allegations against the Board of Education and several of its employees.[1] She contended that the Board acted against her in violation of her tenure rights, her constitutionally protected property rights, her civil rights, in violation of the New Jersey Conscientious Employee Protection Act (CEPA), The New Jersey Civil Rights Act, her contractual rights, and in willful and wanton disregard of her rights. She sought reinstatement to her position, compensatory and punitive damages, back pay, and various other relief. The Board filed an answer to the Complaint on September 8, 2016. It then moved for a change of venue. On November 18, 2018, Hon. Travis L. Francis, A.J.S.C., signed an Order transferring the case to the Commissioner of Education. The Order stated that the matter was transferred "for a determination as to whether plaintiff earned tenure and, tenure, for all due process claims as directly relevant to plaintiff's tenured status." The Order stayed the Superior Court proceedings "pending the Commissioner's determination of plaintiff's tenure status." Following Judge Francis's Order, counsel for Ms. Frayne sent a copy of

[1] The Superior Court Complaint was filed on her behalf by prior counsel. On May 12, 2017, Hon. Arthur Bergman, J.S.C., signed an Order granting prior counsel's motion to be relieved. Her current counsel noted in his letter to Judge Celentano of January 9, 2018, that he was in the process of reviewing the file he had obtained from prior counsel.

the Order and the Superior Court file to the Commissioner on December 12, 2016. It was received and filed by the Office of Controversies and Disputes on December 14, 2016.

The Board moves for summary decision on two bases. Summary decision may be granted where the record before the forum establishes that the material facts relevant to the disputed issue are not in genuine dispute, and those facts, when viewed in light of the applicable law and standard of proof, with all reasonable inferences given to the party opposing the motion, demonstrate that no reasonable finder of fact could find in favor of the party opposing the motion. N.J.A.C. 1:1-12.5; Brill v. The Guardian Life Insurance Company of America, et al., 142 N.J. 520 (1995). The first ground for the is that the petitioner filed her complaint with the Commissioner more than ninety days following the date upon which the Board acted in terminating her position. Her petition was therefore out-of-time and in violation of the applicable statute of limitations. Alternatively, the Board contends that Ms. Frayne did not work in any tenurable position for the requisite three years and one day and therefore has no claim to tenure.

The Board's first position is based upon the requirements of N.J.A.C. 6A:3-1.3 (a) and (l). This regulation states that "(a) to initiate a contested case for the Commissioner's determination of a controversy or dispute arising under the school laws, (l) [t]he petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of final order, ruling or other action by district Board of Education . . . ." This regulatory period of limitation has been approved by the New Jersey Supreme Court as a means of providing "a measure of repose, an essential element in the proper and efficient administration of the school laws." Kaprow v. Berkeley Township Bd. Of Educ., 131 N.J. 572, 582 (1993). The limitation period is jurisdictional, meaning that if it is violated the Commissioner has no jurisdiction to determine the merits of the petition, with extremely limited exceptions for matters of constitutional significance or of widespread public interest. The regulation has been widely applied for many years. The ninety-day period begins to run as of the date when the "plaintiff learns, or reasonably should learn, the existence of that state of facts which equate in law with a cause of action." Kaprow, at 587.

In her affidavit, the petitioner advises that she believed that she had tenure, given her employment with respondent for three years and one day in a tenure-track position. However, on June 24, 2015, she was presented with a proposed "Agreement and Mutual Release" by the Board. This document stated that she was "not a tenured employee of the Board pursuant to the requirements for obtaining same as set forth in the 'Teacher Effectiveness and Accountability for the Children of New Jersey' Act.'" She refused to sign the Release and was terminated "the next day", that is, June 25, 2015. While the documents presented by the Board indicate that the Board's official actions to terminate Frayne occurred somewhat after June 24 and 25, it is clear enough that at least by June 24 the Board had told its employee it did not accept that she was tenured.[2] Thus, by her own admission, it is clear that at the very latest, Ms. Frayne knew as of June 24, 2015, that the Board denied that she had attained tenure and that as of June 25, when she claims to have been terminated, that the Board had not only advised in writing of its position that she did not have tenure, but then officially acted in a manner wholly inconsistent with any tenure that she might claim to have in the District. She was thus clearly on notice as of June 24-25 that she and the Board had different understandings as to her right to any tenure protection. Given this, the ninety-day period in which she could file a petition with the Commissioner seeking to have the issue of her tenure status determined by the Commissioner certainly ran from, at the latest, June 25, 2015, or to be generous, from July 20, when the Board adopted a resolution terminating her. As noted, the first reference of the controversy to the Commissioner was made when the Board's counsel forwarded Judge Francis's Order and the Superior Court file on December 12, 2016, asking that the matter be filed and assigned a case number and a briefing schedule. This date is, of course, long after the expiration of the ninety days that followed after June 25, 2015, or July 20, 2015. Indeed, it is almost exactly seventeen to eighteen months after these dates and fourteen to fifteen months after the expiration of the ninety-day filing deadline. In fact, the Superior Court civil suit in which Ms. Frayne first sought a determination of her right to the

[2] The Board sent Ms. Frayne a Rice notice on July 13, 2015, advising that it would consider a personnel matter involving her at its meeting on July 20, 2015. Minutes of the July 20 meeting include a motion to accept the recommendation of the Superintendent to rescind the Board's prior action with respect to Frayne's employment contract for the 2015-16 school year and to terminate her, effective August 23, 2015.

position as a supposedly tenured employee was filed on June 20, 2016, nearly one year after she claims to have been terminated, and thus, were it legally significant, nearly nine months after the expiration of the ninety-day filing deadline. But the case law has long recognized that filing a challenge to Board action in a forum other than the Commissioner's, even if that filing be within ninety days, does not excuse the failure of the challenger to file with the Commissioner within the ninety-day period subsequent to the challenger being adequately noticed of the challenged Board conduct. The issue was addressed in 2009 in Semprevivo v. Board of Education of the Pinelands Regional School District, Initial Decision (December 8, 2009), adopted, Comm'r (January 15, 2010), http://njlaw.rutgers.edu/collections/oal/, where the petitioner had filed a Tort Claims notice in Superior Court and had not filed with the Commissioner within the ninety days after notice of the Board's action.

> The case law has long recognized that the fact that other proceedings may have been initiated elsewhere does not affect the 90-day time period to file with the Commissioner. In Medeiros v. Jersey City School District, 97 N.J.A.R.2d (EDU) 276, the petitioner had a claim before the worker's compensation court for an alleged work-related injury. The ALJ held that the petitioner should not have waited for his worker's compensation claim to be determined before filing a petition with the Commissioner for a violation of the school laws. Citing the opinion in Verneret v. Elizabeth Bd. of Educ., 92 N.J.A.R.2d (EDU) 191, modified in part and aff'd in part, 95 N.J.A.R.2d (EDU) 134, the ALJ held that "even if an alleged work-related injury also is the subject of a worker's compensation petition, a school law claim . . . still must be filed within 90 days." Medeiros, supra, 97 N.J.A.R.2d(EDU) at 277; see also Riely v. Hunterdon Cent. High Sch. Bd. of Educ., 173 N.J. Super. 109, 113 (App. Div. 1980) (stating that the respondent "gambled" on a favorable arbitration award and after losing in arbitration tried to seek relief with the Commissioner in an untimely manner); Bernards Township Bd. of Educ. v. Bernards Township Educ. Ass'n, 79 N.J. 311, 326 (1979) (holding that a teacher who proceeds to arbitration is not thereby relieved from compliance with the 90-day requirements of N.J.A.C. 6A:3-1.3); Hoffman v. Hillsborough Township Bd. of Educ., 96 N.J.A.R.2d (EDU) 943, 946 (stating, "[t]here is no reason why [the petitioner] could not have timely filed a petition of appeal with the Commissioner of Education even while pursuing other avenues" of relief). [Z.G. on behalf of minor child, V.G., v. Board of Education of the Township of Livingston, Essex County, EDU 5459-04, Initial Decision,

(September 20, 2004) <http://lawlibrary.rutgers.edu/oal/search.html>].

While the filing of the Superior Court Complaint is thus legally irrelevant to the question of whether the petitioner acted within the limitations period imposed by the regulation and enforced by the long-standing case law, it is noted that to the extent the ninety-day rule is intended to provide repose for public school districts, the filing of the Superior Court action in June 2016, coming nearly one year after the termination date as described by petitioner, hardly fits with the stated purpose of the ninety-day rule. Thus, it could well be that even if a Superior Court filing within ninety days of adequate notice either satisfied the ninety-day rule or tolled its effect, the filing of the Superior Court action here could not satisfy the stated purpose of the regulation.

As noted, after Judge Francis issued his Order, the first reference of the transfer by either party to the Commissioner appears to have been made by the Board and not by Ms. Frayne. That occurred on December 12, 2012. Even were one to consider that this reference, although made by the Board, somehow constituted a filing of the petitioner's complaint about the Board's alleged wrongdoing, that complaint was made far beyond the allowable ninety-day period after Frayne had adequate notice, by her own admission, of the position of the Board, contrary to her stated understanding, that she had achieved tenure, and of the Board's action in terminating her from her position without invoking the tenure removal procedures required by statute and regulation for the removal of tenure from a tenured employee.

In his letter of May 29, counsel for Ms. Frayne states that she "acted on the representation of the Board that she was not tenured . . . . He notes that in discovery, the Board responded to an interrogatory that asked if Ms. Frayne "was ever advised in writing that she was not deemed tenured", to which the Board answered, "No", while reserving the right to amend its answer subject to "continuing discovery and investigation." Counsel claims that this answer is "inconsistent" with the June 24, 2015 proposed Settlement Agreement, wherein the first "**WHEREAS**" clause states that she "is not a tenured employee of the Board . . . ." Counsel for Frayne adds that this "inconsistency" is "critical because Frayne acted on the Board's representation that she

was not tenured." He then writes, "Inasmuch as our position that Frayne was not tenured as of her termination date is based solely upon the Board's representation to that effect as well as the veracity of the representation, Petitioner now submits there is material factual dispute as to her tenure status," and, as a result, the motion for summary decision must be denied. In response to this letter, Board counsel wrote on May 31, seeking a conference to determine if Ms. Frayne was or was not admitting that she did not have tenure. Regardless of the answer to that question, counsel iterated the Board's position that the petition was not filed in a timely fashion and had to be dismissed on that ground. In reply, Frayne's counsel wrote on June 7. He explained that she opposed the motion on the basis of

> the misrepresentation contained in the proposed settlement agreement that Frayne was not tenured as of the date of her termination . . . That addresses Point I of Respondent's motion to dismiss with respect to Frayne's alleged failure to file for a tenure hearing within 90 days. Petitioner submits that there is a factual and legal dispute as to whether the Respondent is precluded from asserting the 90 day bar under the theory of equitable estoppel or a similar doctrine.

In her affidavit of January 27, 2018, Ms. Frayne states that she had understood that she was tenured in a tenure-track position by virtue of her three years and one day employment in that position and was advised by the proposed Settlement Agreement that the Board did not agree that she was tenured. The Board then terminated her. She states

> Had the Board in fact considered me as tenured, I would have filed my request for a tenure hearing directly with the Commissioner of Education. Given the fact that it refused to acknowledge me as such, I was advised that my only recourse was to file a wrongful termination lawsuit. That is precisely what I did.

Although counsel for Ms. Frayne does not share the details of his analysis that somehow the Board's "misrepresentation" in the proposed Settlement forms the basis for invoking the equitable doctrine of estoppel, it is hard to see how such a claim could be made as a deny the Board the ability to invoke the jurisdictional bar of the ninety-day rule. In Michael E. Hirsch, et al. v. Amper Financial Services, LLC et al., N.J. (2013), Justice LaVecchia, writing for a unanimous Court, explained that

> [e]quitable estoppel has been defined as
>
> > the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed . . . as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse . . . .
> >
> > The doctrine is designed to prevent a party's disavowal of previous conduct if such repudiation would not be responsive to the demands of justice and good conscience.
> >
> > [Heuer v. Heuer, 152 N.J. 226, 237 (1998) (internal quotation marks and citations omitted).]
> >
> > Equitable estoppel "is invoked in the interests of justice, morality and common fairness." Knorr, 178 N.J. at 178 (internal quotation marks omitted); see also Summer Cottagers' Assoc. of Cape May v. City of Cape May, 19 N.J. 493, 503-04 (1955) (noting that doctrine prevents a party "from taking a course of action that would work injustice and wrong to one who with good reason and in good faith has relied upon such conduct" (citations omitted)).
> >
> > To establish equitable estoppel, parties must prove that an opposing party "engaged in conduct, either intentionally or under circumstances that induced reliance, and that [they] acted or changed their position to their detriment." Knorr, 178 N.J. at 178 (citation omitted). In other words, equitable estoppel, unlike waiver, requires detrimental reliance. Ibid.

In any case where a Board informs a teacher that she is being terminated without the Board invoking the statutory process for removing tenure, the Board is, by its very conduct, telling the teacher that it does not recognize that the teacher has tenure protection and that it can therefore terminate her without utilizing the tenure removal process. Once the teacher is adequately aware that the Board takes such a position, contrary to any claim or belief that the teacher has that she has achieved tenure and therefore is protected from removal without the use of the removal process, the teacher has knowledge that the Board is acting contrary to her understanding of her legal status. That knowledge is the key to the initiation of the ninety-day period in which the teacher can invoke the Commissioner's oversight to challenge the Board's conduct and make the Board adhere to the legal process available to it to remove the tenure held by a teacher. Here, once Frayne saw the proposed Settlement Agreement, she knew that, regardless of her understanding, the Board was stating that she was not tenured. Its

official action in July merely confirmed the Board's written statement. While the Board may have been incorrect in its view of Frayne's status as tenured or not, the Board's July 20 vote constituted the action from which Frayne could have sought relief from the Commissioner. She chose instead to file a Superior Court action long after the allowable ninety days. How a case for equitable estoppel could be made out here is at best mysterious. The Board did not misrepresent anything to Frayne that caused her to change her conduct in reliance thereupon. She thought she was tenured, the Board did not, it told her so when it acted to terminate her, and she then waited for many months before starting a Superior Court action seeking to overturn her termination and uphold her tenure. That the Board might not have ever placed in writing prior to the presentation of the proposed settlement anything that denied that Frayne was tenured or on a tenure track does not detract from the fact that it specifically told her in the proposal that she was not tenured. It did not change any position, at least as far as the record here indicates. There is no indication here that application of the ninety-day rule would thwart the interests of justice and good conscience. Frayne knew, at the very latest on July 20, that the Board did not agree that she was tenured, and she could have sought relief from the Commissioner. She did not do so in a timely fashion, as demanded by the regulation, which, as noted, the significance of which the Supreme Court has strongly supported.

I **FIND** that the material facts relevant to the question of whether the ninety-day rule bars this petitioner from seeking relief are not in genuine dispute. I **FIND** that Ms. Frayne was well aware at the very latest by July 20, 2015, that the Board terminated her without invoking the process necessary to remove tenure and was treating her as one without tenure protection. I **CONCLUDE** that Ms. Frayne failed to file her petition with the Commissioner in a timely fashion, and that it was filed outside the allowable ninety days as required by N.J.A.C. 6A:3-1.3 (a) and (l). I **CONCLUDE** that the filing of a Complaint in Superior Court did not act to toll the ninety-day filing period. I **CONCLUDE** that there is no basis here for invoking the limited exceptions to the otherwise strictly enforced limitation. Further, given the undisputed material facts, I **CONCLUDE** that no application of the doctrine of equitable estoppel is warranted. Thus, I **CONCLUDE** that given the petitioner's failure to file in a timely manner, the Commissioner has no

jurisdiction to determine the merits of her claim and the Board's motion for summary decision is **GRANTED**. The contested case 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.

June 26, 2018
DATE

JEFF S. MASIN, ALJ (Ret., on recall)

Date Received at Agency:

Date Mailed to Parties:

mph

EXHIBITS:

For petitioner:

P-1 Affidavit of Deana Frayne, January 27, 2018 with attached Exhibit A: Agreement and Mutual Release

For respondent:

R-1 Complaint Superior Court of New Jersey, Demand for Jury Trial, Designation of Trial Counsel and Demand Pursuant to Rule 1:4-8, June 20, 2016

R-2 Public Meeting, Highland Park Board of Education, May 23, 2011

R-3 Sixty-day Termination Notice, June 25, 2015

R-4 Letter to Deana Frayne from Israel Soto, Interim Superintendent, dated July 13, 2015

R-5 Public Meeting Minutes, Highland Park Board of Education, July 20, 2015

R-6 Order, Superior Court of New Jersey, November 18, 20916