

MICHAEL GRANDE, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF MANCHESTER, :
 OCEAN COUNTY, :
 :
 RESPONDENT. :
 :
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SYNOPSIS

Petitioner, nontenured Spanish teacher, challenged the Board's decision not to renew his contract. Petitioner alleged that this decision was based upon his disabling medical condition, violating his rights under the New Jersey Law against Discrimination (NJLAD). The Board acknowledged that it did not renew him because of his poor attendance record both before and after his medical leave of absence.

The ALJ noted that petitioner's claim of disability had no impact on the superintendent's decision and that the superintendent had no medical documentation as to the nature of petitioner's illness or disability. The ALJ found petitioner's supervisor also recommended nonrenewal because of his absences, his failure to report absences and his inability to manage disruptive students. The ALJ found that petitioner's poor attendance record during his entire three years of employment was sufficient factual basis to justify the Board's decision to nonrenew. Moreover, the ALJ found that decision did not constitute a violation of constitutional or legislatively conferred rights. Also, as stated in *Dore*, local boards are afforded considerable discretion in employing teaching staff members. The ALJ granted the Board's motion to dismiss. Petition was dismissed.

The Commissioner modified the Initial Decision and granted the Board's motion to dismiss as to petitioner's claim that the Board's nonrenewal decision was arbitrary, capricious and unreasonable. The Commissioner, however, denied the Board's motion to dismiss as to petitioner's claim that the Board's nonrenewal constituted a violation of his rights under the NJLAD. The Commissioner remanded the matter to the OAL for proceedings solely on the latter claim.

<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. Petitioner’s exceptions and the Board’s reply thereto were duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4.

Petitioner’s exceptions initially contend that the Administrative Law Judge (ALJ) misapplied the standard of review in this matter. That is, although the ALJ cites to *Dore*, *Guerrero and Wise*, *supra*, and acknowledges that these cases allow a nontenured teaching staff member to challenge a board’s decision to terminate him based upon a claim that he was deprived of his constitutional or legislatively conferred rights, petitioner contends that the ALJ erroneously ignores his viable claim. In this regard, petitioner argues,

The Petition filed in this matter alleges that the Board’s decision not to renew Petitioner’s contract of employment was arbitrary, capricious and unreasonable and that it was in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. (hereinafter “NJLAD”), because the decision was based upon Petitioner’s medical condition. As such, it is beyond dispute that, if Petitioner’s allegations are proved to be true, the Board’s termination of his employment would indeed constitute a violation of his rights under the NJLAD. Therefore, Judge Martone’s

decision to grant Respondent's Motion to Dismiss is in direct contravention of well-settled case law allowing a nontenured teacher to challenge a board of education's decision to terminate his employment based upon a violation of his legislatively-conferred rights. (Petitioner's Exceptions at 2)

Petitioner affirms that respondent's Motion to Dismiss is, in effect, comparable to a motion to dismiss for failure to state a claim upon which relief may be granted, pursuant to New Jersey Court Rule 4:6-2(e). "As stated by the Court in *Printing Mart v. Sharp Electronics*, 116 N.J. 739, 746 (1989), in ruling on such a motion, the complaint must be searched in depth and with liberality to determine if a cause of action can be gleaned even from an obscure statement, particularly if further discovery is taken. Every reasonable inference is therefore accorded to the plaintiff and the motion is granted **only in rare instances** and ordinarily without prejudice.***" (emphasis in text) (*Id.* at 3)

Further, petitioner asserts that the ALJ improperly rejected his argument that Respondent's Motion to Dismiss should be characterized as a Motion for Summary Judgment. In the absence of specific agency rules on point, petitioner contends that the ALJ *could* properly proceed in accordance with R. 4:6-2 which permits a motion to dismiss to be treated as a motion for summary judgment where "matters outside the pleading are presented to and not excluded by the court***." (*Id.* at 4, citing to R. 4:6-2) Here, as petitioner notes, respondent presented to the OAL two certifications with attachments, which were "clearly outside the pleading***," and, therefore, the motion should have been treated as one for summary judgment. (*Id.* at 4) Petitioner insists that he has demonstrated the existence of material facts that are in dispute and, therefore, as a matter of law, the motion should not have been granted.

In reply, the Board argues that the ALJ correctly distinguished its Motion to Dismiss from a summary judgment motion and properly applied the standard of review.

Petitioner's attempts, the Board contends, to "cloud the issue" by alleging that there is a dispute as to the number of days that he was absent must fail. The Board avers that the ALJ's determination was based on attendance figures that are not disputed and were not related to any alleged disability. (Board's Reply at 2) In this connection, the Board underscores that teacher absenteeism adversely impacts the education of its students and has been held to be sufficient grounds for nonrenewal of a teacher. (*Ibid.*) Finally, the Board notes that "Petitioner does not allege he ever pursued a claim of disability during his employment with the Respondent, nor does Petitioner allege he sought any accommodation based upon a disability." (*Id.* at 3) The Board urges, therefore, that petitioner failed, as a matter of law, to meet his burden under *Dore, supra*, since "the undisputed attendance record, absent Petitioner's medical leave, alleges no constitutional constraint and provides ample evidence of the Board's decision." (*Ibid.*)

Upon careful and independent review of the record, the Commissioner determines to modify the Initial Decision, for the reasons set forth herein. Initially, the Commissioner underscores that this matter is before him pursuant to the Board's Motion to Dismiss the Petition of Appeal, which was filed in lieu of the Board's Answer. As such, the Commissioner recognizes that it is within his authority

to treat a motion to dismiss on the ground that "no sufficient cause for determination has been advanced" as encompassing not only a claim that the petition on its face fails to set forth a basis for relief, but also that petitioners have failed to provide any factual support for the general allegations of their petition. *Sloan ex rel. Sloan v. Klagholtz*, 342 *N.J. Super.* 385, 394 (App. Div. 2001).

The issue before the Commissioner, then, is the adequacy of petitioner's pleadings.

Petitioner's substantive grounds to contest the Board's nonrenewal are limited. In this regard, the State Board of Education has affirmed that:

[W]here, ***, a non-tenured teacher challenges a board's decision not to reemploy him on the grounds that the reasons provided by the board are not supported by the facts, **he is entitled to litigate that question only if the facts he alleges, if true, would constitute a violation of constitutional or legislatively conferred rights.***** (emphasis added). *Guerriero v. Board of Education of the Borough of Glen Rock*, decided by the State Board of Education, February 5, 1986, Slip Opinion at 5 *aff'd*, Docket #A-3316-85T6 (App. Div. 1986)

Therefore, even accepting as true petitioner's factual allegations for the purpose of this motion, to the extent he contends, as set forth in Count I, that the Board's decision not to renew his contract of employment was arbitrary, capricious and unreasonable, the Commissioner finds that, pursuant to *Dore, Guerriero and Wise, supra*, he is *not* entitled to litigate such a claim. However, to the extent petitioner alleges facts which, if true, would constitute a violation of the New Jersey Law Against Discrimination, *N.J.S.A. 10:5-1 et seq.*, as set forth in Count II of the Petition of Appeal, pursuant to the aforementioned case law, petitioner may contest his nonrenewal.¹ The Commissioner so finds, notwithstanding that the factual allegations brought by petitioner to support his disability claim are scant, since he is mindful of the Court's liberal approach to determining the adequacy of a pleading. See, *Printing Mart, supra* at 746.²

¹ In this connection, although the Superintendent certifies that he has "no medical documentation as to the nature of Petitioner's illness and/or disability," and that petitioner's current claim of disability had no impact on the Superintendent's nonrenewal decision, (Board's Brief in Support of Motion to Dismiss; Certification of William E. DeFeo, Ed.D., Superintendent of Schools at 3), petitioner *specifically* disputes the Superintendent's contentions. (Petitioner's Counterstatement of Facts and Procedural History at 6; Certification of Michael W. Grande at 2-3) Additionally, as the ALJ noted, "Principal Walling did not dispute petitioner's allegation that he was apprised of petitioner's disabling condition by a third party***." (Initial Decision at 11) Neither does the Board deny petitioner's assertion that, "[a]t the April 30, 2003 Board Meeting, the Board's attorney verbally advised [his] attorney *** that the Board decided not to offer [him] a contract for the 2003-2004 school year because of [petitioner's] 'excessive absenteeism and for medical reasons.'" (Certification of Michael W. Grande at 2; Initial Decision at 11)

² The Commissioner notes that even if the within motion were considered as one for summary decision, the result would be the same. That is, assuming all facts alleged by petitioner to be true for the purpose of such a motion, petitioner, in his certification, set forth facts sufficient to show that there is a genuine issue as to whether the Board's nonrenewal decision was unlawfully based on his alleged disability. See, *N.J.A.C. 1:1-12.5*.

Accordingly, the Initial Decision is modified, as set forth herein. The Board's Motion to Dismiss is granted as to petitioner's claim that the Board's nonrenewal decision was arbitrary, capricious and unreasonable; however, the Board's Motion to Dismiss is denied as to petitioner's claim that the Board's nonrenewal constituted a violation of his rights under the NJLAD. This matter is remanded to the OAL for proceedings *solely* on the latter claim.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: February 23, 2004

Date of Mailing: February 25, 2004

³ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*