

JAMES F. TAYLOR, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF HARDYSTON, SUSSEX COUNTY, :
 :
 RESPONDENT. :
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SYNOPSIS

Petitioner — a former principal terminated through a reduction in force (RIF) in 1996 — contends that the terms of respondent’s 2004 offer of reemployment were deliberately unacceptable so as to circumvent petitioner’s tenure and seniority rights; he seeks reinstatement to the position of principal or appointment to the position of assistant superintendent, retroactive to July 1, 2004, with annual salary and emoluments consistent with the statewide salary ranges for those positions. Respondent filed a motion for summary decision, alleging that the petition was barred by the 90-day limitation of *N.J.A.C. 6A:3-1.3(d)*.

The ALJ found, *inter alia*, that: the matter was ripe for summary decision as there are no genuine issues of material fact; the letter dated July 15, 2004 provided adequate notice to petitioner that the Board did not intend to alter the terms of the reemployment contract; the 90-day period therefore began on July 15, 2004, and ended on October 13, 2004, making the petitioner’s October 20, 2004 filing untimely; petitioner’s claims to tenure and seniority rights for two other positions – assistant superintendent for curriculum and instruction, and supervisor of curriculum and instruction – are also time barred; and there are no compelling or exceptional circumstances to warrant relaxation or waiver of the 90-day rule. The Initial Decision of the OAL granted the respondent’s motion for summary decision, and dismissed the petition.

The Commissioner adopts the ALJ’s decision, and dismisses the petition. In so determining, the Commissioner notes her concurrence with the ALJ’s reasoning except for the ALJ’s reliance on *Drapczuk v. Board of Education of the Township of Winfield, Union County*, as the Commissioner rejected the Initial Decision in that matter, holding that the underlying issue was not whether a letter constituted “sufficient notice” in accord with *Kaprow, supra*, but whether the Board did, in fact, make a lawful determination of nonrenewal as required by *N.J.S.A. 18A:17-20.1*.

<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 have been reviewed. No exceptions were filed by the parties.

Upon a careful and independent review of the record in this matter, the Commissioner concurs with the administrative law judge's (ALJ's) determination to grant the Hardyston Township Board of Education's (Board's) motion for summary decision in that there are no material facts in dispute and the Board is entitled to prevail as a matter of law. See *N.J.A.C. 1:1-12.5(b)* and *Contini, supra*. In this regard, with respect to petitioner's claim to the principal's position at Hardyston Middle School, the Commissioner agrees with the ALJ's conclusion that the Board's letter of July 15, 2004 provided final and adequate notice to petitioner that the Board did not intend to alter the terms of the re-employment contract offered to him so as to trigger the 90-day rule for filing an appeal to the Commissioner set forth at *N.J.A.C. 6A:3-1.3(d)*. Since the within petition was filed on October 20, 2004, after the 90-day deadline, the Commissioner concurs that petitioner's appeal petition was untimely filed.

In so determining, however, the Commissioner notes that the ALJ in this matter relied, in part, on the ALJ's conclusion in the matter of *Drapczuk v. Board of Education of the*

Township of Winfield, Union County, decided by the Commissioner May 20, 2005, in which the ALJ concluded that Drapczuk's petition was untimely because he did not file his appeal within 90 days of receipt of a letter from the president and vice-president informing him that the board did not intend to renew his contract. However, the Commissioner in *Drapczuk* rejected the ALJ's conclusion, finding, instead, that petitioner's appeal *was* timely filed. The Commissioner reasoned that, notwithstanding petitioner's receipt of an April 24, 2001 letter from the president and vice-president of the board informing him that the board did not intend to renew his contract, the earliest date that petitioner could have asserted a viable claim that his chief school administrator's contract was renewed by operation of *N.J.S.A. 18A:17-20.1* was July 1, 2001 because the board could have acted at any time prior to and including June 30, 2001 to correct any alleged deficiencies in its notification or determination of nonrenewal. (The Commissioner emphasized in that matter that the underlying issue was not whether the April 24 letter constituted "sufficient notice" in accord with *Kaprow, supra*, but whether the board did, in fact, make a lawful determination of nonrenewal as required by *N.J.S.A. 18A:17-20.1*.) *Drapczuk*, slip op. at 2-3. The State Board affirmed the Commissioner's decision in *Drapczuk* on October 19, 2005.

Notwithstanding the Commissioner's rejection of the ALJ's misplaced reliance on *Drapczuk* in this matter, the Commissioner agrees with the ALJ's analysis and ultimate conclusion that petitioner in this instance received adequate and final notice of the Board's determination that it did not intend to alter terms of the reemployment contract it was offering to him in its letter dated July 15, 2004, and that such notice was consistent with the Supreme Court's determination in *Kaprow, supra*, which established that the 90-day period begins when a petitioner learns of facts that would enable him to file a timely claim. *Kaprow, supra*, at 588-89.

In that petitioner did not file his appeal within 90 days from the Board's July 15, 2004 notification, the Commissioner finds that his appeal is time-barred.

Likewise, the Commissioner concurs that petitioner had actual knowledge of a possible claim to the position of Assistant Superintendent for Curriculum and Instruction no later than January 5, 2004, and to the position of Supervisor of Curriculum and Instruction — by his own admission — “no earlier than May 2004.” In that the petition in this matter was not filed until October 20, 2004, petitioner clearly filed his claims for these positions after the 90-day period set forth at *N.J.A.C.* 6A:3-1.3(d).

Moreover, the Commissioner does not find that the factual circumstances set forth in petitioner's pleadings constitute grounds for relaxation of the 90-day rule. No constitutional issues are involved in petitioner's claims, nor does the petition present issues of significant public interest beyond the parties. On the contrary, the Commissioner herein determines — as did the Commissioner in *LeMee v. Board of Education of the Village of Ridgewood*, 1990 *S.L.D.* 663, 673 — that the greater public interest lies with the enforcement of the 90-day rule and the dismissal of petitioner's appeal as untimely.

Accordingly, with the exception of the reliance on the *Drapczuk* decision noted above, the Initial Decision of the ALJ is adopted for the reasons expressed therein.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 27, 2005

Date of Mailing: October 27, 2005

* 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.*