

HILDA DORIS SUAREZ, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 : DECISION  
 STATE-OPERATED SCHOOL :  
 DISTRICT OF THE CITY OF JERSEY :  
 CITY, HUDSON COUNTY, :  
 :  
 RESPONDENT. :  
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SYNOPSIS

Petitioner contends that she had acquired tenure, and her “non-reemployment” by the respondent constituted an unlawful termination in violation of tenure rights. Respondent filed a motion for summary decision, seeking dismissal of the petition based on petitioner’s failure to file within the 90-day period prescribed by *N.J.A.C. 6A:3-1.3(i)*. Petitioner maintains that the filing was timely because it was within 90 days of her receipt of a second letter, dated June 24, 2004, from respondent upholding the non-renewal after a hearing that she had requested; petitioner argues that the second letter was the final action that triggered the ninety-day limitation period.

The ALJ found that respondent’s notice to petitioner — by letter dated May 7, 2004, advising her that her contract would not be renewed — was issued in accordance with *N.J.S.A. 18A:27-10*, which requires written notice of non-renewal by May 15. The ALJ therefore concluded that: the petition was not filed within the 90-day limit set forth in *N.J.A.C. 6A:3-1.3(i)*; petitioner has not advanced any argument to relax the prescribed time limit, and there does not appear to be any reason to do so. The ALJ granted respondent’s motion for summary decision and dismissed the petition.

The Commissioner adopts the Initial Decision of the OAL and dismisses the petition for untimeliness, finding that: under the applicable case law, the May 7, 2004 notice triggered the 90 day limitations period; petitioner’s claim of tenure does not change the effect of the 90-day rule; and the notice of non-renewal was not compromised by the fact that it was signed by a district associate superintendent.

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.

393-05

OAL DKT. NO. EDU 11077-04  
AGENCY DKT. NO. 287-8/04

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The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the parties’ exceptions have been independently reviewed. Upon such review, the Commissioner is constrained to adopt the Initial Decision of the administrative law judge (ALJ) dismissing the petition for untimeliness for the following reasons.

Petitioner began working in the respondent district in September 2000. Respondent contends that petitioner worked as a pool substitute during the 2000-2001 school year, while petitioner contends — and respondent does not deny — that she taught biology and pathology during the entire 2000-2001 school year, was evaluated on a regular basis, and “received all the emoluments of a regular teacher including sick leave benefits and medical insurance.” Petitioner alleges that in June 2001 she “completed the requirements of the Alternate Route Program and was issued Provisional Licenses to teach Health & Elementary Education,”

but respondent maintains that it has no copies of such certificate/endorsements in petitioner's personnel file.<sup>1</sup>

According to petitioner, in August 2001 "she took Part 1 courses at St. Peter's College, Jersey City leading to the alternate route for full certification." She was "assigned a mentor for the alternate program" in September 2001, and taught in one of respondent's high schools.

Respondent's answer contains contradictory allegations concerning the point at which petitioner commenced a tenurable position. It states in paragraph one of the First Count that petitioner was appointed to a tenurable position in September 2001, but it states in the Second Defense that petitioner was not assigned to a tenurable position until January 4, 2002.

While it is not clear from the record before us what petitioner was teaching during the 2001-2002 school year — nor what, if any, instructional certificate/endorsements she held — the petitioner and respondent agree that during the 2002-2003 school year she taught biology and physical science, and during the 2003-2004 school year she taught science classes and gave home instruction.

Petitioner contends that in January 2004 she "completed the requirements for standard certification for biological sciences and was notified that her certificate would shortly issue." She further contends that by the end of the 2003-2004 school year she held standard certification in health, elementary education, and biological sciences. Respondent professes to have no knowledge of petitioner holding such endorsements by the end of the 2003-2004 school year. In any event, by letter dated May 7, 2004, respondent notified petitioner that her contract would "not be renewed for the 2004-2005 School Year." That determination was upheld after a

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<sup>1</sup> The Commissioner notes that if the only credential petitioner held during the 2000-2001 school year was the county substitute certificate issued pursuant to *N.J.A.C. 6:11-4.5(a)*, she should not have been permitted to serve for more than 20 consecutive days in the same position. *N.J.A.C. 6:11-4.5(c)* (Now called "county substitute credential" and recodified at *N.J.A.C. 6A:9-6.5(b)*)

hearing at which petitioner appeared, and the result was communicated to petitioner by letter dated June 24, 2004.

In her first count petitioner maintains that she achieved tenure in September 2003, rendering respondent's action of not rehiring her for the 2004-2005 school year a termination in violation of her alleged tenure rights. In her second count — seemingly by way of alternative argument — she contends that in the 2000-2001 school year, when she “was eligible for a ‘Letter of Eligibility’,” respondent “failed, refused and neglected to offer her a contract,” thereby taking advantage of her “and as a consequence she did not receive a ‘Letter of Eligibility’ and consequently she did not receive her emergency certificate.” This inaction on respondent's part was, according to petitioner, negligent and unlawful.

In its answer, respondent referred to the fact that emergency certificates can only be applied for and issued for certain areas of need as designated by the State.

The petition was filed on August 18, 2004, the answer was filed on September 3, 2004, and the matter was transmitted to the OAL on September 30, 2004. On May 3, 2005, respondent filed a motion to dismiss, alleging that petitioner failed to file her petition within the 90-day period prescribed by *N.J.A.C. 6A:3-1.3(i)*.

There is no dispute about the filing date of the petition, or about the fact that a petition must be filed within 90 days of “receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing.” *N.J.A.C. 6A:3-1.3 (i)*. Rather, petitioner argues that the May 7, 2004, letter to her from the Jersey City Public School Associate Superintendent advising her that the Superintendent had decided not to renew her contract, was not “notice of a final order, ruling or other action.” According to petitioner, a letter dated June 24, 2004 upholding the

non-renewal after the hearing that she had requested to ascertain the reasons for non-renewal, was the notice of a final action that triggered the ninety-day limitation period. Thus, summary judgment may be employed in this case, since the Commissioner's task is not to find facts, but rather to determine the proper application of the law to the undisputed material facts.

For the reasons set forth in the Initial Decision, the Commissioner must conclude that applicable case law does not support petitioner's position. The ninety-day period commences when a teacher knows or should know that he or she will not be offered a contract for the next year. *Nissman v. Board of Educ. of Long Beach Island*, 272 N.J. Super. 373, 379 (App. Div.) *certif. den.* 137 N.J. 315 (1994). Decisions in cases with fact patterns similar to the present case have established that it is the first notice of non-renewal — not the letter confirming non-renewal after a hearing or review — that triggers the ninety-day limitation period. *See, e.g., Pacio v. Bd. of Ed. of Lakeland Reg'l High School Dist.*, 1989 S.L.D. 2060, 2069 (the first written communication provided to a staff member of an action by the Board initiates the 90-day timeline); *Wise v. Bd. of Ed. of the City of Trenton*, decided by the Commissioner September 11, 2000, *aff'd* State Bd. January 4, 2001 (when a teaching staff member receives notice that his contract will not be renewed is when the 90-day period is initiated). *See also, LeMee v. Bd. of Ed. of the Village of Ridgewood*, 1990 S.L.D. 663, 667, wherein the Commissioner concurred that the day petitioner received notice that her contract was not renewed was the date that the 90-day timeline commenced, notwithstanding the request to appear before the board of education to try to convince that board to change its decision and offer a contract of employment.

The Commissioner does not agree with petitioner's contention in her exceptions that her claim of tenure changes the effect of the ninety-day rule. The rule does not distinguish

between the claims of tenured or non-tenured employees. A petitioner is obliged to initiate his or her challenge to an action once he or she has notice “sufficient to inform [him or her] of some fact that he or she has a right to know and that the communicating party has a duty to communicate.” *Kaprow v. Bd. of Ed. of Berkeley Tp.*, 131 N.J. 572, 587 (1993).

The Commissioner further disagrees with petitioner’s assertion that the adequacy of the May 7, 2004 notice of non-renewal was compromised by the fact that it was signed by a district associate superintendent. The notice informed petitioner of the action taken by the superintendent who, in a state-operated district, has the prerogative to make such decisions. *N.J.S.A. 18A:7A-35; N.J.S.A. 18A:7A-38*. Petitioner neither claims that the superintendent lacks such authority, nor offers legal support for the proposition that only the superintendent may issue notice of same.

Accordingly, the Commissioner adopts the ALJ’s determination that the petition in this matter must be dismissed for lack of timeliness.

IT IS SO ORDERED<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 28, 2005

Date of Mailing: October 31, 2005

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<sup>2</sup> 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.*