

DR. H. BENJAMIN WILLIAMS, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE CITY OF : DECISION
 ATLANTIC CITY, AND THERESA BEBEE
 THOMAS, PRESIDENT OF THE ATLANTIC :
 CITY BOARD OF EDUCATION, ATLANTIC :
 COUNTY, INDIVIDUALLY AND JOINTLY, :

RESPONDENTS. :

SYNOPSIS

Petitioner, former Superintendent of Schools, sought payment of his salary for the period between the effective date of his resignation pursuant to a settlement agreement with the Board and the date of the Commissioner's approval of the settlement approximately three weeks later. The Board opposed payment of salary for the period after the effective date of petitioner's resignation.

The ALJ determined that the settlement agreement between the parties is a binding contract and that, although petitioner would have been entitled to collect his salary until the Commissioner issued a determination in his tenure case, the settlement agreement set a different date through which petitioner would be paid a salary by the Board. Because the Commissioner approved the terms of the settlement agreement, the ALJ concluded that petitioner is bound by the terms of the agreement, including the date through which he is entitled to a salary.

The Commissioner initially agreed with petitioner that the terms of the settlement agreement should not have been effectuated by the Board before the Commissioner approved the terms of the settlement. However, the Commissioner also agreed with the ALJ that while petitioner may be technically correct that he was entitled to receive the payment of his full salary until the Commissioner made a determination on the tenure charges, it is clear that after the Commissioner's approval of the settlement, the Board would have been entitled to a credit for an overpayment of salary to petitioner under the terms of the settlement agreement. Consequently, the Commissioner adopted the determination of the ALJ that petitioner was only entitled to payment of his salary through December 31, 1999, per the terms of the settlement agreement between the parties.

OAL DKT. NO. EDU 04032-00
AGENCY DKT. NO. 123-4/00

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The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon review of the record in this matter, the Commissioner initially notes his agreement with petitioner's position that the settlement terms in the tenure matter against him should not have been effectuated before the Commissioner issued a final decision. In that decision, the parties were cautioned against the effectuation of settlement terms prior to the approval of a settlement by the Commissioner. At page 8 of the final decision, the Commissioner specifically stated that

the terms of the settlement appear to have been effectuated prior to the Commissioner's approval. He, therefore, reminds the parties that they acted at their peril in so doing and cautions them and other litigants whose controverted matters have been duly transmitted to the OAL against effectuation of any settlement prior to its submission to, and approval by, the Commissioner pursuant to *N.J.A.C. 1:1-19.1*. (In the Matter of the Tenure Hearing of Dr. H. Benjamin Williams, decided by the Commissioner of Education January 24, 2000, slip opinion at 8)

Furthermore, the Commissioner finds meritless any suggestion by the Board that it was justified in carrying out terms of the settlement prior to final disposition of the tenure matter because “any delay in processing the administration of [the tenure] matter is not the fault of the respondents and is irrelevant to its form and effect.” (Initial Decision at 5) The papers which are incorporated as part of the controverted settlement agreement indicate that the signature process documenting the parties’ acceptance of the settlement agreement was not completed until the signatures for the Board were submitted to the OAL on December 21, 1999. The Administrative Law Judge (ALJ) issued the Initial Decision on December 30, 1999. The case file was transferred to the Commissioner by the OAL on January 6, 2000 and the final decision was issued on January 24, 2000. By law, the ALJ and the Commissioner *each* had 45 days within which to issue a decision. Even with the Board’s anticipation that review of the tenure matter would be expedited, the Board *should not have effectuated any of the settlement terms* until the Commissioner’s decision was issued, and in so doing, it acted at its own peril, as indicated by the litigation of the instant matter.

Nonetheless, upon careful and independent review of the record, the Commissioner agrees with and adopts the ALJ’s recommendation that the instant matter be dismissed because he fully concurs with the ALJ’s conclusion that:

Petitioner may be technically correct that he was entitled to receive the payment of his full salary until the Commissioner made a determination on the tenure charges. However, it is also clear that after the Commissioner’s approval of the settlement, *the [Board] would have been entitled to a credit for an overpayment of salary to petitioner* under the terms of the settlement agreement since his resignation was to be effective as of December 31, [1999].*** (emphasis supplied) (Initial Decision at 8)

Accordingly, for the reasons stated in the Initial Decision, as amplified herein, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 26, 2001

Date of Mailing: February 27, 2001

* This decision, as the Commissioner's final determination, 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.