

#328-07 (OAL Decision: Not yet available on-line)

MIDDLETOWN EDUCATION ASSOCIATION :  
ON BEHALF OF MEREDITH MCGEE :  
AND NICOLE SANSONE, :  
 :  
PETITIONERS, :  
 :  
V. : COMMISSIONER OF EDUCATION  
 :  
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION  
OF MIDDLETOWN, MONMOUTH COUNTY, :  
 :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioner sought re-employment and tenure for two non-tenured former teaching staff members – McGee and Sansone – on grounds that their termination was not for budgetary reasons, as stated by respondent Board. Respondent claims that the petition was filed outside of the 90-day time limit imposed by *N.J.A.C. 6A:3-1.3(i)*. The parties mutually sought summary decision, providing stipulation of the facts of the matter.

The ALJ found, *inter alia*, that: the matter is appropriate for summary decision; the limitations period began on May 1, 2006, the date when the teachers learned they were losing their positions; and the teachers had the ability to question the reason for their termination through an informal hearing with the Board, but failed to request such hearing. The ALJ concluded that the petition is time-barred; granted summary decision in favor of respondent; and dismissed the petition.

Upon a full and independent review, the Commissioner concurs with the ALJ's grant of summary decision to the respondent, finding that the petition was filed well out of time. Notwithstanding the mandated dismissal of this matter on procedural grounds, the Commissioner additionally emphasized that a non-tenured teacher challenging a termination decision on the basis that the reasons provided by the Board are not supported by the facts is entitled to litigate that question only if the alleged facts – if true – would constitute a violation of constitutional or legislative-conferred rights. The Commissioner adopted the Initial Decision of the OAL as the final decision in this matter for the reasons expressed therein, and dismissed the Petition of Appeal.

<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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August 16, 2007

OAL DKT. NO. EDU 12159-06  
AGENCY DKT. NO. 437-11/06

MIDDLETOWN EDUCATION ASSOCIATION :  
ON BEHALF OF MEREDITH MCGEE :  
AND NICOLE SANSONE, :  
PETITIONERS, :  
V. : COMMISSIONER OF EDUCATION  
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners' exceptions and the Board's reply thereto – filed in accordance with *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching her determination herein.

Petitioners' exceptions are a replication of their Motion for Summary Decision filed below. As the Commissioner determines that the arguments contained therein were fully considered and resolved by the Administrative Law Judge (ALJ) in her decision, these will not be revisited here.

Upon her full and independent review, the Commissioner concurs with the ALJ that the instant petition is appropriately dismissed because it was filed well outside the 90-day limitation period set forth in *N.J.A.C.* 6A:3-1.3(i) and petitioners have failed to set forth a legal or actual basis for waiving the timely filing requirement. In so determining the Commissioner is in full accord with the ALJ's conclusion:

that the critical notice – the letter stating that the teachers would not be renewed for the coming year – was provided on May 1. That is the date they learned they were losing their positions. It was within the teachers’ ability to seek an informal hearing from the Board, and they could have argued both the budgetary issue and their own qualifications. They may not have expected to succeed, but the informal hearing mechanism does not exist to guarantee success. Therefore, I also **CONCLUDE** that the filing was made more than 90 days after the notice and was time-barred. (Initial Decision at 8)

Accordingly, the Initial Decision of the OAL is adopted for the reasons stated therein. Summary decision is granted to the Board and the Petition of Appeal is hereby dismissed.<sup>1</sup>

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

COMMISSIONER OF EDUCATION

Date of Decision: August 16, 2007

Date of Mailing: August 17, 2007

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<sup>1</sup> Notwithstanding the mandated dismissal of this matter on the procedural ground of untimeliness, the Commissioner is fully aware that a district board has virtually unlimited discretion in hiring or renewing non-tenured teachers. *Dore v. Bedminster Twp. Bd. of Ed.*, 185 *N.J. Super.* 447 (App. Div. 1982) “[A]bsent constitutional constraints or legislation affecting the tenure rights of teachers, local boards of education have an almost complete right to terminate the services of a teacher who has no tenure and is regarded as undesirable by the local board.” *Id.* at 456. As such, where a non-tenured teacher challenges a district board’s decision to terminate her employment on the grounds that the reasons provided by the board are not supported by the facts, she is entitled to litigate that question only if the facts she alleges, if true, would constitute a violation of constitutional or legislative-conferred rights. *Guerriero v. Board of Education of the Borough of Glen Rock*, decided by the State Board of Education February 5, 1986, *aff’d*. Docket #A-3316-85T6 (App. Div. 1986). To the extent petitioners allege a violation of the legislatively-conferred right to a “Donaldson hearing”, embodied in *N.J.S.A.* 18A:27-4.1(b) and *N.J.A.C.* 6A:32-4.6, any such deprivation cannot be attributed to the Board. As noted above, petitioners failed to take the necessary action – which only they could have taken – to avail themselves of that right.

<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.*