

#325-12 (OAL Decision: Not yet available online)

DEBRA BRUNO, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 WESTWOOD REGIONAL SCHOOL DISTRICT,
 BERGEN COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner – a tenured school psychologist – challenged the Board’s decision to transfer her from the position of school psychologist assigned to the child study team to a newly created elementary school psychologist position. Petitioner alleged that under the new position she has been assigned teaching duties that are inconsistent with her school psychologist certification, and that she is now effectively employed as an elementary school teacher. The Board contended that petitioner failed to file the petition in a timely manner, and filed a motion to dismiss.

The ALJ found that: petitioner was notified on June 22, 2011 that she would be reassigned to the newly created position of school psychologist for the 2011-2012 school year; on the same day, petitioner met with the director of elementary education and the principal of the George Elementary School, and was told about the new position and how she would implement the “second-step” curriculum; petitioner acknowledged in an email after the June 22, 2011 meeting that her new position would be of a teaching nature; although petitioner knew of her reassignment in June 2011, she did not submit her appeal until November 10, 2011, which is beyond the 90 day limitation period set forth in *N.J.A.C. 6A:3-1.3(i)*. Accordingly, the ALJ concluded that petitioner’s appeal was untimely filed, and granted the Board’s motion to dismiss the petition.

The Deputy Commissioner – to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-33* – concurred with the ALJ that this matter must be dismissed as untimely. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter.

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.

August 9, 2012

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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 – filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner¹ in reaching his determination herein.

Petitioner’s exceptions replicate her arguments advanced in her letter memorandum in opposition to the Board’s Motion for Summary Decision filed below. As it is determined that such arguments were fully considered and addressed by the Administrative Law Judge (ALJ) in his Initial Decision, they will not be revisited here.

Upon full consideration, the Commissioner concurs with the ALJ that summary decision is appropriately granted to the Board as the instant petition of appeal was filed well outside the 90-day limitation period set forth in *N.J.A.C.* 6A:3-1.3(i) and the record provides no reason whatsoever for relaxation of this rule.

¹ This matter has been delegated to the Deputy Commissioner pursuant to *N.J.S.A.* 18A:4-33.

Accordingly, the recommended decision of the OAL is adopted for the reasons clearly presented therein and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.²

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: August 9, 2012

Date of Mailing: August 10, 2012

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).