

#99-12 (OAL Decision: Not yet available online)

JOSEPH PINSL, :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
 :
 V. :
 : DECISION
 :
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF IRVINGTON, :
 ESSEX COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner – now a tenured elementary teacher in respondent’s school district – sought back pay, leave benefits and pension credits in connection with his employment in the district prior to the issuance of his certificate of eligibility with advanced standing (CEAS) in September 2004. Petitioner accepted a teaching position beginning in September of 2003 based on a contingency employment agreement with the respondent district, with the expectation that his CEAS would be issued imminently. When it was not, the respondent Board instead employed petitioner for the 2003-04 school year as a *per diem* substitute teacher, at a rate of pay that was less than the salary included in the contingency contract he had signed. Although paid as a substitute, petitioner contends that he was in charge of his own fifth grade classroom for the entire year and treated as a regular teaching staff member, except for his rate of compensation and lack of benefits. The respondent Board asserted that petitioner received the salary and benefits to which he was entitled.

The ALJ found, *inter alia*, that: because petitioner did not receive any teaching certificate from the State of New Jersey at any time during the 2003-04 school year, he did not comply with one of the express contingency terms of his Contingency Employment Contract and the contract was therefore void; there is no legal and competent evidence that the petitioner’s principal promised that he would receive retroactive pay; petitioner admitted that he delayed asserting a right to retroactive pay and benefits until he was granted tenure; petitioner initially filed a complaint in the Superior Court in November 2009, which was dismissed; the parties agreed that the six-year statute of limitations was tolled upon the filing of petitioner’s claim in Superior Court; and the petitioner filed his complaint more than six years from the date when his cause of action for a compensation differential accrued. Accordingly, the ALJ denied petitioner’s appeal.

Upon careful and independent review, the Commissioner concurred with the ALJ that the petition must be dismissed as untimely, but noted that the applicable limitations period is not the six-year statutory period for contract disputes that would attach in Superior Court. Jurisdiction in this case lies with the Commissioner, and the applicable limitations period is 90 days, as set forth in *N.J.A.C. 6A:3-1.3(i)*. Accordingly, the petition was dismissed.

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.
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March 16, 2012

OAL DKT. NO. EDU 6363-10
AGENCY DKT. NO. 100-5/10

JOSEPH PINSL, :
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 PETITIONER, :
 : COMMISSIONER OF EDUCATION
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This controversy was brought before the Commissioner by a teacher who – due to delays in the issuance of his certificate of eligibility with advanced standing (CEAS) to teach elementary education – was hired as a substitute in his first year of employment with respondent, *i.e.* the 2003-04 school year. He was paid on a *per diem* basis and was assigned to the same fifth grade class for the entire academic year.¹ Petitioner received his CEAS at the beginning of his second year of employment with respondent and was subsequently paid the appropriate teacher salary. Five years later, in November 2009, petitioner filed suit in Superior Court seeking reimbursement of the differential between the *per diem* pay he received for the 2003-04 school year and the salary he would have earned had his CEAS been timely issued – plus ancillary benefits and pension credits. That action was transferred to the Commissioner for adjudication on or about May 18, 2010.

¹ While it does not affect the outcome of this case, the Commissioner is constrained to remind the parties that the employment of an uncertified teacher for more than 20 days in the same position in a district is a violation of *N.J.A.C.* 6A:9-6.5.

Upon review of the record² and Initial Decision of the Office of Administrative Law (OAL), to which Decision no exceptions have been filed, the Commissioner concurs with the Administrative Law Judge (ALJ) that the petition must be dismissed as untimely. However, the applicable limitations period is not the six-year statutory period for contract disputes that would attach in Superior Court. Jurisdiction over this controversy lies with the Commissioner, and the applicable limitations period is 90 days, as set forth in *N.J.A.C. 6A:3-1.3(i)*.

Accordingly, the petition is dismissed.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 16, 2012

Date of Mailing: March 16, 2012

² No hearing transcripts were provided to the Commissioner.

³ 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*)