

#303-13 (OAL Decision: Not yet available online)

DALILA ROSENSTRAUCH, :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF EDUCATION OF THE CITY :  
OF PLAINFIELD, UNION COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioner challenged the respondent Board’s termination of her employment at the end of the 2011-12 school year. Petitioner had been employed in respondent’s school district as a bilingual science teacher from September 2006 until the end of the 2008-09 school year, when her contract was nonrenewed for reasons of economy; in September 2011, petitioner was appointed as a science teacher at respondent’s high school, and she served in that role until she was notified on May 11, 2012 that her contract would not be renewed for the 2012-13 school year because of performance issues. Petitioner claimed that she had acquired tenure in the district, and that the stated reasons for terminating her employment were lies. Her appeal was filed on November 20, 2012. The Board filed a motion for summary decision, contending that petitioner was not tenured, and that the appeal was untimely pursuant to *N.J.A.C. 6A:3-1.3(i)*.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for summary decision; petitioner did not meet the time requirement outlined in *N.J.S.A. 18A:28-5(b)* or (c) in order to attain tenure, and the Board took no action to grant her special tenure rights; petitioner has failed to show that the Board’s failure to renew her contract was arbitrary, capricious or unreasonable; and petitioner clearly learned or should reasonably have known on May 11, 2012 – the date of her nonrenewal notice – that her contract would not be renewed for the 2012-13 school year; accordingly, the May 11 date of her nonrenewal triggered the ninety day period for the filing of appeals. The ALJ concluded that petitioner’s appeal was filed well beyond the 90-day time frame, and granted summary decision in favor of the respondent Board. The petition was dismissed.

Upon careful and independent review, the Commissioner concurred with the ALJ that the petition must be dismissed as untimely; it was therefore unnecessary to address petitioner’s remaining claims. 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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August 30, 2013

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Before the Commissioner is a challenge by the petitioner to respondent's termination of her employment. Respondent moved in the Office of Administrative Law (OAL) for summary dismissal of the petition, and an Initial Decision was issued on June 17, 2013 granting said motion. On July 1, 2013 petitioner requested an extension of time to file exceptions, and on that date she was given until July 22, 2013 to submit same. However, as petitioner has failed to file exceptions within the time allowed, the Commissioner is constrained to now issue the within decision on the record as it stands.

Respondent's motion to dismiss the petition alleged that petitioner did not file her appeal within the 90 days allowed by *N.J.A.C. 6A:3-1.3(i)*. More specifically, petitioner was notified on May 11, 2012 that she would not be offered a contract for the 2012-z13 school year. She did not file her petition until November 14, 2012, over six months later. Petitioner argues that the 90-day period should be counted from August 23, 2012 – the day that she was notified that the respondent Board declined to reverse the non-renewal issued on May 11, 2012. However, as the ALJ explained, precedent is to the contrary. It is clearly the date of the notice of non-renewal, not the date of a Donaldson hearing, which starts the clock for an appeal to the

Commissioner. *See, e.g., Lygate v. Board of Education of Carteret*, Commissioner's Decision No. 120-08, decided March 17, 2008.

The untimeliness of petitioner's appeal makes it unnecessary to address petitioner's remaining claims. Accordingly, for the reasons discussed *infra*, summary disposition is granted in favor of respondent and the petition is dismissed.

IT IS SO ORDERED.<sup>1</sup>

COMMISSIONER OF EDUCATION

Date of Decision: August 30, 2013

Date of Mailing: August 30, 2013

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<sup>1</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).