

114-17 (OAL Decision: Not yet available online)

PATRICIA MCRAE, :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
STATE-OPERATED SCHOOL DISTRICT :  
OF THE CITY OF NEWARK, :  
ESSEX COUNTY, :  
RESPONDENT. :

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### SYNOPSIS

Petitioner – a non-tenured second grade teacher employed by the respondent Board through the Provisional Teacher Program Alternate Route for the 2015-2016 school year – appealed the non-renewal of her contract following notification, by letter received on or about May 11, 2016, that she would not be renewed for the 2016-2017 school year based upon her performance and conduct. Petitioner filed a petition for emergent relief on August 24, 2016, alleging that she was terminated as a result of ineffective and partially effective performance ratings. Petitioner asserted that funds were withheld from her paycheck to pay for required mentoring services that were never provided to her, and therefore her evaluations should be viewed as unfair and considered null and void. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue herein, and the matter is ripe for summary decision; petitioner had notice of the Board’s decision to non-renew her contract as of May 11, 2016; the time for filing a petition is clearly set forth at *N.J.A.C. 6A:3-1.3(i)*, which provides that a petition of appeal before the Commissioner must be filed no later than the 90<sup>th</sup> day from the date of receipt of the notice of a final order or ruling; in this case, the petitioner filed her appeal on August 24, 2016, which was 106 days after she received notice of non-renewal; and jurisdiction over whether respondent had a contractual obligation to provide mentoring services or failed to provide such services does not rest with the Commissioner or with the OAL. The ALJ concluded that the within petition was not timely filed pursuant to *N.J.A.C. 6A:3-1.3(i)*. Accordingly, the ALJ granted the Board’s motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ that the within petition was untimely filed and must be dismissed on those grounds. In so determining, the Commissioner clarified that petitioner’s allegations related to teacher mentoring services implicate New Jersey school law, as all novice teachers are required to enroll and successfully complete the respective district’s mentoring program in order to become eligible for a standard teaching certificate. *N.J.A.C. 6A:9B-8.4, 8.7*. Accordingly, the recommended decision of the OAL was adopted with modification. 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.

April 20, 2017

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the petition of appeal was time barred under *N.J.A.C.* 6A:3-1.3(i)<sup>1</sup> because, consistent with well-settled law, the ninety-day time period accrues from the employee’s receipt of the board of education’s notice of nonrenewal.<sup>2</sup> Furthermore, a *Donaldson* hearing – an “informal appearance” before the board “to permit the staff member to convince the members of the board to offer reemployment”<sup>3</sup> – does not toll the time for an employee to file a petition of appeal with the Commissioner because the *Donaldson* hearing occurs *after* the board has already made its decision to not renew the employee’s contract and has *acted* on that decision by providing notice of nonrenewal to the employee. Therefore, the day that petitioner received the notice of nonrenewal from the

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<sup>1</sup> *N.J.A.C.* 6A:3-1.3(i) provides in relevant part: “The petitioner shall file a petition no later than the 90th day from the *date of receipt of the notice of a final order, ruling or other action* by the district board of education . . . .” (emphasis added).

<sup>2</sup> *E.g.*, *Suarez v. State-Operated School District of the City of Jersey City*, OAL Dkt No. EDU 11077-04, Commissioner Decision No. 393-05 (Oct. 28, 2005); *Perkins v. Bd. of Educ. of the Twp. of Gloucester*, OAL Dkt. No. EDU 13750-15, Commissioner Decision No. 76-16, (Feb. 19, 2016); *Campbell v. Bd. of Educ. of the City of Camden*, OAL Dkt. No. EDU 480-12, Commissioner Decision No. 359-12, (Aug. 30, 2012); *Clark v. Bd. of Educ. of the Twp. of Winslow*, 2011 U.S. Dist. LEXIS 12981 (D.N.J. Feb. 9, 2011).

<sup>3</sup> *See N.J.S.A.* 18A:27-4.1.

District – May 11, 2016 – is the date from which petitioner had ninety days to file her cause of action. Additionally, requesting a statement of reasons and a *Donaldson* hearing does not provide “constructive notice” to a board that its former employee intends to file a petition of appeal with the Commissioner at a later time. There is simply no legal basis for such assertions made by the petitioner.

The Commissioner clarifies that the petitioner’s allegations related to teacher mentoring services do implicate New Jersey school law. All novice teachers – irrespective of whether they are participants in the Alternate Route Program – are required to enroll in and successfully complete the respective district’s mentoring program in order to become eligible for a standard teaching certificate. *See N.J.A.C. 6A:9B-8.4, 8.7.* Therefore, whether petitioner received proper mentoring services (or allegedly failed to take advantage of the mentoring services offered to her by the District) falls within the purview of the Commissioner. The record in this matter, however, is insufficient to consider the merits of petitioner’s allegations regarding the District’s mentoring program. More importantly, petitioner’s appeal is time barred pursuant to *N.J.A.C. 6A:3-1.3(i).*<sup>4</sup>

Accordingly, the recommended decision of the ALJ – as modified herein – is adopted as the final decision in this matter for the reasons expressed therein, and the petition is hereby dismissed with prejudice.

IT IS SO ORDERED.<sup>5</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 20, 2017

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<sup>4</sup> The record also indicates that the petitioner did not dispute the contents of her evaluations or raise her concerns about the mentoring program prior to the filing of this untimely petition.

<sup>5</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)*