

RHONDA BLAND-CARTER, :  
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 PETITIONER, :  
 :  
 V. :  
 : COMMISSIONER OF EDUCATION  
 STATE-OPERATED SCHOOL DISTRICT :  
 OF THE CITY OF NEWARK, ESSEX : DECISION  
 COUNTY, :  
 :  
 RESPONDENT. :  
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SYNOPSIS

Petitioning teacher challenged the withholding of her increment for the 1999-2000 school year. The District filed a motion to dismiss the petition because it was filed outside the prescribed 90-day period. The matter was transmitted to the OAL with instructions to first determine the threshold issue of timeliness of the petition.

After the issue was fully briefed by the parties, the ALJ determined that the petition was filed out of time, and that petitioner's argument for relaxing the requirement was unpersuasive, since she had not demonstrated that she was unable to function because of stress.

The Commissioner agreed with the ALJ that the petition was filed out of time and that the 90-day requirement should not be relaxed. The Commissioner adopted the decision of the ALJ for the reasons set forth therein and dismissed the petition.

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties filed no exceptions to the Initial Decision.

Upon careful and independent review of the record in this matter, I fully concur with the Administrative Law Judge (ALJ) that the within petition is time-barred and that relaxation of the 90-day timeline set forth in *N.J.A.C. 6A:3-1.3(d)* is not warranted under the circumstances of this case. Petitioner received notice of the District's determination to withhold her increment for the 1999-2000 school year on September 1, 1999. Petitioner filed a Petition of Appeal to the Commissioner contesting the withholding on December 8, 1999. Although the record reflects that petitioner was under stress during September and early October 1999 due to the illness and death of her father, petitioner had almost two months after the death of her father during which she could have timely filed the petition. Petitioner returned to work on October 18, 1999, and the ALJ found no evidence that petitioner's circumstances rendered her unable to function at that time.

Accordingly, I do not find that the factual circumstances set forth by petitioner constitute grounds for relaxation of the 90-day rule, and, therefore, concur with the ALJ that the

petition is time-barred because it was filed after the 90<sup>th</sup> day of the notice of the withholding of petitioner's increment. No constitutional issues are involved in this matter nor does it present issues of significant public interest beyond the parties. On the contrary, I determine, as did the Commissioner in *LeMee v. Board of Education of the Village of Ridgewood*, 1990 S.L.D. 663, 673, that the greater public interest herein lies with the enforcement of the 90-day rule.

The Initial Decision of the ALJ is, therefore, adopted for the reasons expressed therein and the petition is hereby dismissed.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: September 11, 2000

Date of Mailing: September 14, 2000

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\* This decision, as the Commissioner's final determination, 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.