

#162-15 (OAL Decision: Not yet available online)

JENNIFER JORDAN :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 NORTH HUNTERDON-VOORHEES :
 REGIONAL HIGH SCHOOL DISTRICT, :
 HUNTERDON COUNTY, RICHARD BERGACS, :
 MICHAEL HUGHES, CHARLES SHADOW :
 AND PATRICIA RALEIGH, :
 :
 RESPONDENTS. :
 _____ :

SYNOPSIS

Petitioner – a non-tenured guidance counselor formerly employed by the respondent Board – appealed the non-renewal of her contract following her notification via hand-delivered letter dated May 8, 2014 that the Superintendent would recommend against her renewal for the 2014-2015 school year. The petition was filed on August 11, 2014. In lieu of an answer, the Board filed a motion to dismiss the petitioner’s complaint, asserting that the appeal was time-barred pursuant to *N.J.A.C.* 6A:3-1.3(i). The petitioner asserted that the May 8, 2014 letter was a Rice notice of the recommendation to the Board for formal action, and not a final action within the meaning of *N.J.A.C.* 6A:3-1.3(i). The petitioner further contended that the Superintendent’s recommendation at the May 13, 2014 Board meeting was the final action in this matter, and therefore the within petition was timely filed.

The ALJ found, *inter alia*, that: 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 90th day from the date of receipt of the notice of a final order or ruling; pursuant to *N.J.S.A.* 18A:27-4.1(b), a non-tenured employee who is not recommended for renewal by the superintendent is considered non-renewed without any action by the board of education; in this matter, the Board took no action with regard to petitioner’s non-renewal at the May 13, 2014 meeting or thereafter; case law has consistently determined that the ninety-day limitations period commences with the first written notice. The ALJ concluded that the within petition was not timely filed pursuant to *N.J.A.C.* 6A:3-1.3(i), and the petitioner has not set forth any compelling reason to relax the timely filing requirement. Accordingly, the ALJ granted the Board’s motion for summary decision, denied petitioner’s cross-motion, and dismissed the petition.

Upon careful review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter for the reasons stated therein, and dismissed the petition.

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.

OAL DKT. NO. EDU 11825-14
AGENCY DKT. NO. 218-8/14

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL), along with the parties' exceptions filed in accordance with *N.J.A.C.* 1:1-18.4, have been carefully reviewed.

In her exceptions, petitioner reiterates and recasts the arguments she advanced at the OAL, which do not warrant additional discussion here. In its reply exceptions, respondents maintain that – as a threshold issue – petitioner's appeal was untimely filed and therefore should be dismissed.

Upon full consideration of the record, the Commissioner concurs with the Administrative Law Judge that the instant petition is appropriately dismissed because it was filed outside the 90-day limitation period set forth in *N.J.A.C.* 6A:3-1.3(i). The Commissioner likewise concurs that petitioner has failed to set forth any compelling reason to relax the timely filing requirement.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter for the reasons stated therein, respondents' motion for summary decision is granted, petitioner's cross-motion is denied, and the petition of appeal is hereby dismissed.¹

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: May 20, 2015

Date of Mailing: May 20, 2015

¹ Because petitioner's claim is barred on procedural grounds, the Commissioner notes that no opinion on the merits of the appeal is herein expressed or should be inferred.

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*).