

ERNESTINE HARRIS, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 CITY OF PASSAIC, PASSAIC :
 COUNTY, :
 :
 RESPONDENT. :
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SYNOPSIS

Petitioner, tenured teaching staff member, challenged the Board's decision to freeze her salary in an effort to recoup overpayments made when she was erroneously classified.

ALJ concluded that the Board was justified in freezing petitioner's salary until the 1996-97 overpayment was recouped. ALJ concluded estoppel against the Board was not appropriate or justified and the Board was entitled to summary decision. Petition was dismissed.

Commissioner adopted findings and determination in the initial decision as his own.

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Petitioner's exceptions and the Board's reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, the Commissioner concurs that the Board is entitled to summary judgment, as a matter of law. In so finding, the Commissioner notes that petitioner does not refute that she received a copy of the Board's "sunshine" notice dated May 28, 1997, which was sent via certified mail. This letter was signed by Robert H. Holster, Superintendent of Schools. Additionally, the Petition of Appeal provides that

On May 29, 1997 each Petitioner received a letter from Henry J. Lee, Board Secretary/School Business Administrator, [indicating] that their salaries*** had been wrong. *** Petitioner Harris had allegedly received a \$1,605 overpayment. He noted that each individual had received a sunshine notice regarding possible Board action on or about June 25, 1997. (Petition of Appeal at p. 2)

The record shows that, by letter dated July 28, 1997, the Board notified petitioner that, on June 30, 1997, it took action to freeze her salary. The ALJ specifically noted that, “Petitioner did not deny receipt of any of the [May and July 1997] correspondence.” (Initial Decision at p. 6) In her exceptions, petitioner *does not deny receipt* of the July 28, 1997 letter, notwithstanding that she observes that said letter was neither sent by the Board via certified mail, return receipt requested, nor sent to the Association President. (Petitioner’s Exceptions at p. 2) As the Board argues, “***there was no affidavit or certification filed by Ernestine Harris specifically stating that she did not receive the notice dated July 28, 1997 advising her of the action taken by the Board in this matter.***” (Board’s Exceptions at p. 1) Indeed, the record shows that the only certification filed on petitioner’s behalf asserts, quite generally, that “[i]n 1997, she was informed for the first time that the Board should not have counted these courses towards her new classification.***” (emphasis added) (Certification of Randi Doner April at p. 1)

However even assuming, *arguendo*, that petitioner could prevail on the threshold issue of the timeliness of her petition, the Commissioner concurs that the Board did not act improperly by freezing her salary, under these circumstances, and petitioner cannot, therefore, prevail on the merits of her claim.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein. The Petition of Appeal is hereby dismissed.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

AUGUST 10, 1998

* This decision, as the Commissioner’s final determination in the instant matter, 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. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.