

475-04

OAL DKT. NO. EDU 1911-04 (http://lawlibrary.rutgers.edu/oal/html/initial/edu01911-04_1.html)
AGENCY DKT. NO. 22-1/04

DOLORES I. RABENOU,	:	
	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF	:	DECISION
THE BOROUGH OF CLIFFSIDE	:	
PARK, BERGEN COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner filed timely exceptions pursuant to the provisions of *N.J.A.C.* 1:1-18.4, to which the Board of Education (Board) duly replied. Petitioner’s further submission in response to the Board’s reply is not considered herein, since applicable rules make no provision for such submissions.

In her exceptions, Petitioner points to the finding of the Administrative Law Judge (ALJ), in the Initial Decision at 2, that petitioner requested a leave of absence for maternity purposes, and, from this, concludes that this “factual determination***resolves the matter in favor of the Petitioner.***Upon reaching this conclusion as a finding of fact, the Petitioner is now entitled to apply to the TPAF [Teachers’ Pension and Annuity Fund] to purchase credit***for purposes of her pension. In effect there need be no further proceedings since the Petitioner is now entitled to apply directly to the TPAF for the relief which she has requested. This was a finding of fact which was questioned by the TPAF and is now resolved.” (Petitioner’s Exceptions at 1-2, quotation at 2) Petitioner further opines that the above-noted finding renders moot

the subsequent conclusion that Petitioner's appeal was untimely filed, but in the alternative, reiterates her argument before the ALJ that the 90-day limitation period did not begin until October 28, 2003, when the Board denied petitioner's request to amend its minutes. Petitioner states that she "followed a logical course of action by requesting the local district to amend its erroneous conclusion which the [ALJ] has now determined to be inconsistent with the facts in this matter."***Petitioner was pursuing an administrative remedy by requesting the local district to amend its minutes as requested by the TPAF which had denied the Petitioner's request to purchase credits because***[the Board] would not correct their mistake in the minutes.***Therefore an exception to the [ALJ's] decision is in order as the Petitioner was in the process of attempting to comply with the TPAF request to seek the amendment of the local district's minutes." (*Id.* at 3-4)

In reply, the Board argues that petitioner is fixing on one finding, i.e., that she *requested* a leave (Finding No. 1), while ignoring another, i.e., that the Board *granted* a resignation (Finding No. 3). The Board notes that petitioner's request for a leave is undisputed; the issue of concern to TPAF was not what she requested, but rather what the Board granted. Moreover, the Board observes, the Initial Decision does not even address the merits of petitioner's claim, having been decided solely on the issue of untimely filing; therefore, petitioner cannot claim the ALJ's "conclusions" on the merits render the untimeliness issue moot. (Board's Reply at 2-3) In this latter regard, the Board reiterates its argument, made before the ALJ, to the effect that petitioner's cause of action is not the Board's refusal to amend its minutes, but rather the error they purportedly reflect. (*Id.* at 3-5)

Upon consideration of the record and the parties' arguments on exception, the Commissioner concurs with the ALJ that the instant matter must be dismissed as untimely filed. Although petitioner couches her complaint as an appeal from the Board's refusal to amend the minutes of its March 13, 1969 meeting, what petitioner is actually appealing, as recognized by the ALJ, is the district's underlying determination to deem her to have *resigned* by letter of that same date, and not, as she contends, merely to have arranged for a leave of absence which ultimately extended until September 30, 1971, although she did not return to the district thereafter. Clearly, petitioner had notice of the district's official characterization of her status by June or July 2003 at the latest; what she is attempting to overcome by identifying her cause of action as the Board's subsequent refusal to amend its minutes is the unfortunate fact that she did not move to dispute such characterization until she realized its impact on her ability to purchase pension credit, and then waited to file her appeal with the Commissioner until she failed in her attempts to negotiate with the Board. That such attempts do not toll the statute of limitations is by now well established. See, *Kaprow, supra*; also, *Riely v. Hunterdon Central Bd. of Educ.*, 173 N.J. Super. 109, 413 A.2d 628 (App. Div. 1980).¹

¹ The undisputed documentary record in this matter clearly demonstrates that: petitioner was provided with a copy of her district personnel record by memo from the payroll department dated May 28, 2003; in her response to Interrogatory No. 14, petitioner states that she became aware of the district's "error" on June 15, 2003; a letter from the TPAF dated June 16, 2004 clearly advised that the records provided to the TPAF indicated that petitioner was not employed during the period in question; and petitioner by her own admission received a copy of the Board minutes on July 22, 2003.

Additionally, attempting to plead this matter solely as a challenge to the Board's refusal to amend its meeting minutes would appear to raise a question of jurisdiction, since the Commissioner may hear claims arising under the Open Public Meetings Act only when they are ancillary to a primary school law dispute. *Sukin v. Northfield Board of Education*, 171 N.J. Super. 184 (App. Div. 1979), *Jenkins v. Newark Board of Education*, 166 N.J. Super. 357 (Law Div. 1979), *aff'd*, 166 N.J. Super. 300 (App. Div. 1979). However, that consideration was neither pled nor briefed herein, and need not be addressed given the Commissioner's holding on the timeliness of the Petition.

Additionally, in view of petitioner's statements on exception, the Commissioner stresses that no determination is made herein, or in the Initial Decision, regarding the merits of petitioner's underlying claim; indeed, the ALJ expressly states that her findings of fact are for purposes of deciding the Board's motion to dismiss on grounds of untimely filing, and the Board itself does not dispute petitioner's contention that, by her letter of March 13, 1969, her *intent* was to request a leave of absence, although that is not what the Board granted.

Accordingly, for the reasons expressed therein and above, the Initial Decision of the OAL dismissing the Petition of Appeal is adopted as the final decision in this matter.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: November 29, 2004

Date of Mailing: November 30, 2004

² This decision 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.*