

CALAIS SCHOOL, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE : DECISION

DEPARTMENT OF EDUCATION, :

OFFICE OF SCHOOL FINANCE, :

RESPONDENT. :

SYNOPSIS

Petitioner – a private school for students with disabilities – appealed the final determination of the respondent – the Office of School Finance (OSF) – to disallow the salaries and fringe benefits of two Calais School (Calais) employees for the 2007-2008 school year, which determination was issued by letter dated January 9, 2015. OSF contended that, based on an audit of financial statements submitted by Calais, the salary and fringe benefits for the two employees at issue were non-allowable costs because the individuals lack proper certifications; therefore, these costs would not be reimbursed. The Calais School filed its petition of appeal on June 17, 2015. Respondent OSF filed a motion to dismiss the petition as untimely.

The ALJ found, *inter alia*, that: the OSF issued a written determination denying reimbursement of the salary and fringe benefits for the two employees at issue in April 2013; Calais filed a timely appeal from the findings of the April 2013 letter in June 2013; OSF subsequently issued its final decision in the matter via a letter dated January 9, 2015; pursuant to *N.J.A.C. 6A:3-1.3(i)*, an appeal before the Commissioner must be filed no more than ninety (90) days from receipt of notice of a final ruling; the instant appeal was filed on June 17, 2015, which is one hundred fifty-nine (159) days after petitioner’s receipt of the OSF’s final decision, or sixty-nine (69) days beyond the expiration date for the filing of an appeal in the instant matter; petitioner’s argument that the January 2015 final determination letter was not legitimate as it was not written by an agency or agency head is without merit; petitioner’s contention that the ninety-day rule should be relaxed because Calais’ legal counsel sent the 2015 final determination to the email of the school’s former business manager – who had been terminated in 2013 – is also without merit; Calais bears the responsibility for its failure to take due care to transfer the business manager’s workload to someone else who was competent to do the work; and petitioner’s attempt to apply the “square corners” doctrine is without merit as petitioner offers no proof that OSF consciously delayed the disposition of this matter to gain an “unfair litigational advantage”. The ALJ concluded that petitioner’s appeal was untimely pursuant to *N.J.A.C. 6A:3-1.3(i)*, and ordered the petition dismissed.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision of the OAL as the final decision in this matter for the reasons expressed therein.

<p>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.</p>
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OAL DKT. NO. EDU 12782-15  
AGENCY DKT. NO. 130-6/15

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The record and Initial Decision of the Office of Administrative Law (OAL), along with petitioner’s exceptions and respondent’s reply thereto – filed in accordance with *N.J.A.C.* 1:1-18.4 – have been carefully reviewed.

Having determined that the instant Petition of Appeal was filed 69 days after expiration of the 90-day filing deadline mandated by *N.J.A.C.* 6A:3-1.3(i), the Administrative Law Judge (ALJ) granted respondent’s motion to dismiss the petition as untimely and declined to relax the timely filing requirement set forth in the regulation.

In its exceptions, petitioner argues that *N.J.A.C.* 6A:3-1.3(i) is inapplicable because “it was far from clear” that Director Dehmer’s written determination represented final agency action. (Petitioner’s Exceptions at 2-3) Petitioner also asserts that the “square corners” doctrine should excuse petitioner’s delay in filing its appeal, or that – even if said doctrine is inapposite – relaxation of the 90-day rule is appropriate under the circumstances. (*Id.* at 3)

Conversely, respondent supports the ALJ’s determination that *N.J.A.C.* 6A:3-1.3(i) is applicable, and that no compelling reason exists to relax the 90-day rule. (Respondent’s

reply at 2-3) As to the “square corners” doctrine, respondent maintains it is inapplicable since petitioner failed to demonstrate that the Department “delayed concluding its investigation into the non-allowable costs” at issue in this case “to gain an advantage over the petitioner.” (*Id* at 3).

Upon review, the Commissioner finds petitioner’s exceptions to be without merit. First, the concluding paragraph of Director Dehmer’s January 9, 2015 written determination provides “unmistakable notice of its finality” – thereby activating the 90-day timeframe cited in *N.J.A.C. 6A:3-1.3(i)* for the filing of a timely petition of appeal:

The above shall be considered the final review of this matter. Please notify the school that in order to certify its rate for the 2007-2008 school year, OSF requires submission of a revised audited financial statement to account for the above-detailed non-allowable costs. OSF will follow up with the School directly within thirty-five (35) days from the date of this letter, should it not receive the necessary revisions. (Petition of Appeal, exhibit C, at 3)

*In re CAFRA Permit No. 87-0959-5*, 152 *N.J.* 287, 299 (1997). Second, the ALJ correctly declined to apply the “square corners” doctrine because the record contains no proof that respondent sought to gain an “unfair litigational advantage” by delaying its investigation. *See CBS Outdoor, Inc. v. Borough of Lebanon Planning Bd.*, 414 *N.J. Super.* 563, 586-587 (App. Div. 2010); (Initial Decision at 6) Finally, the Commissioner finds that petitioner has not presented any compelling reason or exceptional circumstance which would warrant relaxation of the timely filing requirement.

Upon full consideration of the record and the parties’ submissions, the Commissioner concurs with the ALJ 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)*.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter for the reasons stated therein, and respondent's motion to dismiss the petition is granted.

IT IS SO ORDERED.<sup>1</sup>

COMMISSIONER OF EDUCATION

Date of Decision: March 1, 2016

Date of Mailing: March 1, 2016

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<sup>1</sup> This final determination of the Commissioner 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)* and applicable court rules.