

New Jersey Commissioner of Education

Final Decision

Patricia Wilson,

Petitioner,

v.

Board of Education of the City of Paterson,
Passaic County,
Respondent.

Synopsis

Petitioner, a non-tenured special education teacher, challenged the respondent Board’s termination of her employment following notice of her dismissal on November 20, 2023. Petitioner disputed the basis for her discharge and maintained that the District defamed her character by terminating her absent notice of improper conduct or intention to end her employment in advance of her termination. Petitioner transmitted her petition of appeal on Saturday, March 2, 2024, and the petition was filed with the New Jersey Department of Education’s Office of Controversies and Disputes on Monday, March 4, 2024. The Board filed a motion to dismiss in lieu of an answer on grounds that petitioner’s appeal was filed out of time.

The ALJ found, *inter alia*, that: under *N.J.A.C. 6A:3-1.3(d)*, a petitioner must file an appeal no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the contested case; in this matter, petitioner acknowledged she received notice of the Board’s termination decision on November 20, 2023, when she was escorted from the building; that action left no doubt about the Board’s employment determination; the ninety-day limitation period for the filing of an appeal flows from that notice and expired on February 21, 2024; petitioner’s appeal was filed on March 4, 2024 and was indisputably late; and the circumstances of this case do not warrant relaxation of the 90-day rule. Accordingly, the ALJ granted the Board’s motion to dismiss the petition.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ’s findings and conclusions and adopted the Initial Decision as the final decision in this matter. In so doing, the Commissioner noted that, to the extent that petitioner may have filed a grievance, it does not toll the 90-day limitations period. Accordingly, the Board’s motion to dismiss was granted and petition was dismissed.

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.

196-24
OAL Dkt. No. 04145-24
Agency Dkt. No. 51-3/24

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Board of Education of the City of Paterson,
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Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by the petitioner pursuant to *N.J.A.C. 1:1-18.4*, and the Board's reply thereto, have been reviewed and considered.

Petitioner was employed by the Paterson Board of Education (Board) as a special education teacher pursuant to a contract covering the time period from September 18, 2023, through June 30, 2024. Petitioner's last day of work was November 20, 2024, when she was informed by her principal that she was being terminated and was escorted from the building by school personnel. Petitioner appealed via a petition of appeal emailed on March 2, 2024, which was a Saturday; it was filed by the Office of Controversies and Disputes on March 4, 2024.

Following the Board's motion to dismiss, the Administrative Law Judge (ALJ) concluded that petitioner's appeal was due by February 21, 2024 – 90 days after her termination on November 20, 2024. The ALJ found that petitioner did not provide any excuse for her untimely

filing or any basis for relaxation of the 90-day rule. Accordingly, the ALJ granted the Board's motion to dismiss.

In her exceptions, petitioner argues that it was unfair for the ALJ to dismiss her appeal after giving her two separate hearing dates. Petitioner contends that she was not given clear direction by the PEA¹ and thought that the PEA would take further action on her behalf. Petitioner also indicates that she believes she "performed with the 90-day time at the grievance level though unknowingly."

In reply, the Board argues that petitioner had a full opportunity to respond to the Board's motion to dismiss and did not identify any procedural impropriety by the ALJ. The Board further contends that petitioner has failed to provide any explanation or excuse for her failure to timely file her petition and urges the Commissioner to adopt the Initial Decision.

Upon review, the Commissioner concurs with the ALJ that the petition of appeal was untimely pursuant to *N.J.A.C. 6A:3-1.3*. Petitioner unquestionably had notice of her termination on November 20, 2023, when she was informed of it in person and escorted from the school building. The 90-day limitations period expired on February 21, 2024, and the petition was not filed until March 4, 2024. It is petitioner's obligation to comply with the filing requirements, not her union's. Furthermore, to the extent that petitioner may have filed a grievance, it does not toll the 90-day limitations period. *Giannetta v. Bd. of Educ. of Egg Harbor*, Commissioner Decision 147-05 (April 25, 2005); *Kenny v. Bd. of Educ. of the Borough of Moonachie*, EDU 9284-17, Initial Decision (Aug. 17, 2017), *adopted*, Commissioner Decision No. 286-17 (Sept. 27, 2017). Petitioner has made no demonstration of

¹ This acronym appears to refer to the Paterson teachers' union.

circumstances that would warrant the relaxation of the timely filing requirement. Finally, the Commissioner finds that petitioner was afforded the opportunity to respond to the Board's motion to dismiss, and that her opposition was considered by the ALJ in issuing the Initial Decision, such that petitioner's argument regarding any "unfairness" is unavailing.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The Board's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²



ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 15, 2024

Date of Mailing: May 16, 2024

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. EDU 04145-24

AGENCY DKT. NO. 51-3/24

PATRICIA WILSON,

Petitioner,

v.

**CITY OF PATERSON, BOARD OF
EDUCATION, PASSAIC COUNTY**

Respondent.

Patricia Wilson, appearing pro se

Kyle J. Trent, Esq., for respondent (Apruzze, McDermott, Mastro & Murphy,
P.C., attorneys)

Record Closed: April 8, 2024

Decided: April 10, 2024

BEFORE **NANCI G. STOKES**, ALJ:

STATEMENT OF THE CASE

On Saturday, March 2, 2024, petitioner challenged respondent's termination of her employment following notice of her dismissal on November 20, 2023. Is the claim

time-barred? Yes. Under N.J.A.C. 6A:3-1.3(d), a petitioner must file an appeal "no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the [case]." Ibid.

PROCEDURAL HISTORY

By email dated March 2, 2024, Patricia Wilson filed a Petition with the Commissioner of the Department of Education (Commissioner) contesting the Paterson Public School District's (District or Board) termination of her position as a special education teacher at school number five within the District. Wilson disputes the basis for her discharge and maintains that the District defamed her character by terminating her absent notice of improper conduct or an intention to terminate her job before it did. Further, Wilson disagrees with the principal's leadership and asserts that he was manipulative and micromanaged her.

In response to the petition, the Board filed a Motion to Dismiss in place of an Answer on March 22, 2024, arguing that Wilson filed her petition out of time. The Commissioner opted not to address respondent's motion to dismiss and transmitted this case to the OAL. On March 26, 2023, the OAL filed the contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On April, 1, 2024, this tribunal requested that petitioner submit her opposition to the motion by April 11, 2024. On April 2, 2024, Wilson supplied her opposition. On April 8, 2024, the Board replied, and I closed the record.

FINDINGS OF FACT

Based on the petition and its supporting documents, I **FIND** the following as **FACT** for purposes of this motion only:

The District employed Patricia Wilson as a special education teacher through an employment contract that Wilson executed on September 14, 2023. The District expected Wilson to commence working on September 18, 2023, and end her teaching service on June 30, 2024. The contract did not guarantee employment; either party could terminate the position.

Wilson supplied several letters of recommendation in connection with her application for employment. She has been an educator for more than forty years and has a master's degree in special education and a doctoral degree in psychology.

On October 16, 2023, the District notified Wilson that she had been on unapproved leave since October 4, 2023, and provided Wilson with a blank leave form.

On October 17, 2023, Wilson sought leave under the New Jersey Family Leave and Medical Leave Act from October 5, 2023, through October 17, 2023. The District approved her request.

On November 14, 2023, the District notified Wilson by mail that it terminated Wilson, effective November 15, 2023, for "documented instructional shortcomings witnessed by [Wilson's] principal."

Wilson supplied a note dated November 14, 2023, from a physician's office stating that Wilson could not work until November 20, 2023.

On November 20, 2023, Wilson went to work and spoke with her principal, Dr. Ventura. Dr. Ventura advised Wilson that the District was terminating her employment

because “things were not working out” and “her classroom function[ed] better when she was not there.” Dr. Ventura also told Wilson that during an official observation of her classroom, “she placed a child in danger.” Wilson disputes this assertion and seeks to reverse her termination through this petition.

Wilson’s last day of work at the District was November 20, 2023, and school personnel escorted her from the building that day.

From notification of her termination on November 20, 2023, ninety days is February 18, 2024. However, February 18, 2024, is a Saturday, making the next business day February 21, 2024, given the Presidents’ Day holiday on February 20, 2024. Yet, Wilson’s filing date was March 2, 2024. Notably, March 2, 2024, is a Saturday, and the next business day is March 4, 2024. Still, I **FIND** that Wilson filed her petition more than ninety days after receiving notification of her job termination.

Although this tribunal allowed Wilson to respond to the motion concerning the untimeliness of her petition, she does not explain or provide any excuse for her untimely filing or circumstances that precluded the prompt filing of her petition. Instead, she only reiterates that her termination requires reversal.

DISCUSSION AND CONCLUSIONS OF LAW

A motion to dismiss under the administrative rule governing education cases, N.J.A.C. 6A:3-1.5(g), is the functional equivalent of a motion to dismiss for failure to state a claim in the New Jersey Superior Court under R. 4:6-2(e). Graves v. State Operated Sch. Dist. of Newark & Cami Anderson, 2017 N.J. Super. Unpub. LEXIS 2417. In ruling on a motion to dismiss,

The judge considers whether all the evidence together with all legitimate inferences therefrom could sustain a judgment in favor of the party opposing the motion. The judge is not concerned with weight, worth, nature, or extent of the evidence. The judge must accept all the evidence supporting

the party defending against the motion and accord that party the benefit of all inferences that can reasonably and legitimately be deduced therefrom. If reasonable minds could differ, the motion must be denied.

[37 New Jersey Practice, Administrative Law and Practice § 5.19, at 259-60 (Steven Lefelt, Anthony Miragliotta & Patricia Prunty) (2d ed. 2000)];

See also Graves, 2017 N.J. Super. Unpub. LEXIS 2417, at 7 (concluding that a court must determine the adequacy of the pleading and decide whether a cause of action is "suggested" by the facts when reviewing a Rule 4:6-2(e) motion) (internal citations omitted).

Timeliness

Under N.J.A.C. 6A:3-1.3(d), a party must file an appeal with the Commissioner of Education "no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the requested contested case hearing." This rule "provides a measure of repose, an essential element in the proper and efficient administration of the school laws," giving school districts the "security of knowing" that an aggrieved party cannot challenge its actions after ninety days. Kaprow v. Board of Educ. of Berkeley Twp., 131 N.J. 572, 582 (1993).

Courts strictly construe and consistently apply the ninety-day limitation period. Kaprow, 131 N.J. at 588-89; Nissman v. Bd. of Educ., 272 N.J. Super 373, 380-81, (App. Div. 1994); Riely v. Bd. of Educ., 173 N.J. Super. 109, 112-14, (App. Div. 1980). This period begins to run when the petitioner "learn[s] from the Local Board the existence of that state of facts that would enable him to file a timely claim." Kaprow, 131 N.J. at 588-89. Indeed, the "notice of a final order, ruling or other action" is "sufficient to inform an individual of some fact that he or she has a right to know and that the communicating party has a duty to communicate." Id. at 587. Notably, a petitioner need

not receive official and formal notification that they may have a valid claim to begin the ninety-day period. Id. at 588.

Even accepting Wilson's position that the District improperly terminated her employment, she needed to file a petition challenging that determination timely. Undeniably, Wilson acknowledges she received notice of that decision on November 20, 2023. She was escorted from the building, leaving no doubt about the District's conclusion. The ninety-day limitation flows from that notice and expires on February 21, 2024. Indeed, I found that her petition was indisputably late.

Still, the Commissioner may exercise her authority under N.J.A.C. 6A:3-1.1.6 to relax the application of the 90-day rule "where strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice." Ibid. Yet, exceptions to the ninety-day rule are only appropriate where compelling circumstances exist to justify the enlargement or relaxation of the time limit. See Kaprow, 131 N.J. at 590; DeMaio v. New Providence Bd. of Educ., 96 N.J.A.R.2d (EDU) 449, 453.

Wilson offers no circumstances, let alone compelling ones, to justify her lack of diligence here.

Further, this extraordinary relief is reserved only for situations where the party presents a substantial constitutional issue or a matter of significant public interest beyond concern only to the parties. Portee v. Bd. of Educ. of Newark, 94 N.J.A.R.2d (EDU) 381, 384; Wise v. Trenton Bd. of Educ., EDU 160-00, Initial Decision (July 25, 2000), adopted, Comm'r Decision (September 11, 2000), aff'd, St. Bd. (January 3, 2001), <http://njlaw.rutgers.edu/collections/oal/>.

Notably, petitioner's claim has only personal significance, making relaxation of the rule even less appropriate. If the Commissioner relaxed the filing timeframe for every harsh result, that action would nullify the rule's salutary public policy of encouraging prompt resolution of disputes. Pacio v. Bd. of Educ. of Lakeland Reg. High

Sch. Dist., 1989 S.L.D. 2060 (Comm'r July 29, 1989). Thus, I **CONCLUDE** that petitioner does not present exceptional circumstances or a compelling reason that warrant relaxation of the ninety-day rule and that she filed her petition beyond the required time frame.

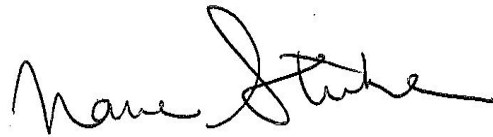
ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the Board's motion to dismiss be **GRANTED**. I further **ORDER** that the Petition of Appeal be and is hereby **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



April 10, 2024

DATE

NANCI G. STOKES, ALJ

Date Received at Agency:

April 10, 2024

Date Mailed to Parties:

April 10, 2024

ljb