

New Jersey Commissioner of Education**Final Decision**

Magdoulén A. Sawires,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

Synopsis

On June 4, 2024, petitioner appealed the determination of the respondent Elizabeth Board of Education (Board) denying the renewal of her employment contract for the 2022-2023 school year. Petitioner had been employed as a non-tenured teacher by the Board for six months, from January 3, 2022 to June 30, 2022. The Board filed a motion to dismiss for failure to timely file the petition pursuant to *N.J.A.C. 6A:3-1.3(i)*.

The ALJ found, *inter alia*, that: it is undisputed that petitioner received a notice of non-renewal on or about May 13, 2022; more than two years later, the petitioner filed the within appeal seeking the reversal of the Board's decision not to renew her contract, as well as compensation and reinstatement to employment; in her opposition to the Board's motion to dismiss, petitioner conceded that she did not appeal the Board's non-renewal action but instead filed an action in Superior Court which was dismissed; only after her appeal of that dismissal was denied did petitioner file this appeal; pursuant to *N.J.A.C. 6A:3-1.3(i)* and existing caselaw, the 90-day rule began to run when petitioner received notice of her non-renewal on or about May 13, 2022; and neither the filing of her complaint with the Superior Court nor her appeal with the Appellate Division tolls the ninety-day timeline imposed by *N.J.A.C. 6A:3-1.3(i)*. 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 conclusion and adopted the Initial Decision of the Office of Administrative Law as the final decision in this matter. In so doing, the Commissioner determined that there was no compelling constitutional reason in this case to warrant the relaxation of the 90-day rule. The Board's motion was granted, and the 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.

359-24
OAL Dkt. No. EDU 08315-24
Agency Dkt. No. 176-6/24

New Jersey Commissioner of Education
Final Decision

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Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

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

The threshold procedural issue in this case is whether the petition should be dismissed pursuant to the 90-day rule, *N.J.A.C. 6A:3-1.3(i)*. *Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 N.J. 572, 582 (1993). Petitioner challenges respondent's decision not to renew her employment contract for the 2022-2023 school year. She received a notice of nonrenewal from respondent on May 13, 2022, and last worked for respondent as a nontenured teacher in late June 2022. She filed her petition of appeal on June 4, 2024, more than two years after having received the notice of nonrenewal.

The Administrative Law Judge (ALJ) concluded that, pursuant to *N.J.A.C. 6A:3-1.3(i)* and existing case law, her petition was untimely filed because the time to appeal began to run when

petitioner received notice of the nonrenewal on May 13, 2022. The ALJ further concluded that neither the filing of a lawsuit in the Superior Court nor an appeal to the Appellate Division tolls the 90-day time period to file a petition. The ALJ also concluded that even assuming petitioner did not fully understand that she was no longer employed by respondent until September 2022 (although this new contention is contradicted by the allegations contained in her petition) and that was the date from which the filing period began, the petition she filed in June 2024 is nonetheless untimely.

In her exceptions, petitioner does not challenge the ALJ's factual findings. Rather, she reiterates the arguments she made before the ALJ and appears to assert that because she filed her petition within sixty days of having received an Appellate Division decision directing her to do so,¹ the merits of her case should be considered. However, she does not cite any legal authority to support her position.

In its reply, respondent asserts that petitioner's exceptions are procedurally defective as they do not specify what facts or legal conclusions that petitioner takes exception to. Respondent claims that petitioner's exceptions merely reiterate the arguments that were already considered by the ALJ.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter. The Commissioner concurs with the ALJ's factual findings and conclusion that the petition was untimely filed. *N.J.A.C. 6A:3-1.3(i)* mandates that petitions shall be filed "no later

¹ While the Appellate Division's decision indicated that petitioner failed to exhaust her administrative remedies through the Department of Education, it did not direct petitioner to file a petition with the Commissioner or suggest in any way that such a petition would be timely. *Sawires v. Elizabeth Bd. of Educ.*, 2024 N.J. Super. Unpub. LEXIS 1006 (App. Div. June 3, 2024).

than the 90th day from the date of receipt of the notice of a final . . . action by the district board of education.” The 90-day limitation period “represents a fair and reasonably-necessary requirement for the proper and efficient resolution of disputes under the school laws.” *Kaprow*, 131 N.J. at 582. It “provides a measure of repose” and “gives school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after ninety days.” *Ibid*.

Here, the ALJ correctly concluded that the 90-day limitation period began when petitioner received the May 13, 2022, nonrenewal letter. *Salazar-Linden v. Bd. of Educ. of Twp. of Holmdel, Monmouth Cnty.*, Commissioner Decision No. 99-08 at 5-6 (March 3, 2008), *aff’d*, 2009 N.J. Super. Unpub. LEXIS 2713 * (App. Div. Oct. 28, 2009); *Jordan v. Bd. of Educ. of N. Hunterdon-Voorhees Reg’l High Sch. Dist.*, OAL Dkt. No. EDU 11825-14, Initial Decision at 8-9 (March 2, 2015), *adopted*, Commissioner Decision No. 162-15 (May 20, 2015), *aff’d*, 2017 N.J. Super. Unpub. LEXIS 1865 * (App. Div. July 21, 2017). It is undisputed that petitioner received the nonrenewal letter on May 13, 2022. Therefore, she had a meaningful opportunity to file her petition within the mandatory 90-day timeframe. The filing deadline is not subject to change based upon a petitioner’s legal strategy or a decision to pursue lawsuits in a different forum; that would defeat the measure of repose to which school districts are entitled. *See, generally, Nissman v. Bd. of Educ. of Twp. of Long Beach Island, Ocean Cnty.*, 272 N.J. Super. 373, 382 (App. Div. 1994) (affirming State Board decision to dismiss petition as time barred and explaining that while petitioner may have opted not to file a petition sooner for tactical reasons, the board “was entitled to know within 90 days of its action whether its [decision] was going to be challenged”).

“While the Commissioner has the discretion to relax the [90-day] rule . . . this extraordinary relief has been reserved only for those situations where a substantial constitutional issue is presented or where a matter of significant public interest is involved, beyond that of concern only to the parties.” *Smith v. State-Operated Sch. Dist. of City of Paterson*, OAL Dkt. No. EDU 06076-14, Initial Decision at 6 (Nov. 6, 2014), *adopted*, Commissioner Decision No. 491-14 (Dec. 18, 2014). Here, petitioner’s claims are specific to her personal employment relationship with respondent. Thus, the Commissioner holds that a relaxation of the ninety-day rule is unwarranted in this case.

Accordingly, respondent’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: September 30, 2024
Date of Mailing: October 2, 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

DISMISSING THE PETITION

OAL DKT. NO. EDU 08315-24

AGENCY DKT. NO. 176-6/24

MAGDOULEN A. SAWIRES,

Petitioner,

v.

BOARD OF EDUCATION OF THE CITY

OF ELIZABETH, UNION COUNTY,

Respondent.

Magdoulén A. Sawires, petitioner, pro se

Brian J. Kane, Esq., for respondent (LaCorte, Bundy, Varady & Kinsella,
attorneys)

Record Closed: July 23, 2024

Decided: August 28, 2024

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

Petitioner Magdoulén Sawires (Petitioner or Sawires) appealed the determination by respondent Elizabeth Board of Education (Board) denying the renewal of her

employment contract. The Board moves to dismiss the Petition because it was untimely filed.

PROCEDURAL HISTORY

Petitioner filed a Petition of Appeal with the Commissioner of Education, and the Commissioner transmitted the matter to the Office of Administrative Law, where it was filed as a contested case on June 14, 2024 pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

An initial prehearing conference was held on July 10, 2024, at which time the Board requested, and was granted, leave to file a Motion to Dismiss. On July 17, 2024, the Board filed its motion.¹ On July 18, 2024, the petitioner opposed the motion, and the Board filed a reply to the opposition on or around July 23, 2024. On July 23, 2024, the petitioner submitted a sur-reply which was unauthorized, and not considered.

FINDINGS OF FACT

Upon reviewing Sawires's Petition, and the parties' submissions, I **FIND** the following as **FACT**:

Sawires was a non-tenured employee of the Board from approximately January 3, 2022 until approximately June 30, 2022.

On May 13, 2022, Sawires received from the Board a Notice of Non-Renewal, informing her that her employment contract with the Board would not be renewed for the 2022–2023 school year. She last worked for the Board in late June 2022.

Sawires filed this Petition with the Department of Education on June 4, 2024. In her Petition, Sawires suggests that despite receiving the Notice of Non-Renewal, she

¹ While the Board technically filed a "Motion for Summary Decision," I considered this application a Motion to Dismiss since that is what was discussed at the prehearing conference, and because I only considered the pleadings in deciding this Motion.

sought to resign from the position but was told by at least one District representative not to resign, to file for unemployment, and that if the District did not find an alternative placement for her for the following school year, she would be terminated due to a reduction in force. She also seems to allege in her Petition that the District improperly failed to have her sign any document relating to her separation from the District in late June 2022. All the claims raised in the Petition relate directly to the Board's decision not to renew Sawires' employment contract for the 2022-2023 school year.

The Petition seeks: the reversal of the Board's decision not to renew her contract; compensation; and reinstatement of her work for "wrongful discharge due to inadequate training and failure to communicate expectations." Sawires asserts in the Petition that the District violated "labor and education laws by failing to provide a rationale for her discharge."

LEGAL ANALYSIS AND CONCLUSION

The Board filed a motion seeking the dismissal of the Petition because Sawires filed this Petition well beyond the ninety-day limitation period provided by N.J.A.C. 6A:3-1.3(i). The Board asserts that Sawires received a notice of non-renewal on May 13, 2022, as she states in her Petition, and that since she failed to file this appeal within ninety days of her receipt of the Board's notice, her Petition must be dismissed.

In her opposition to the Board's motion, Sawires asserts that she did not know that she "got discharged" until September 2022, although she also asserts that she was informed by the school's vice principal in June 2022 that she was being laid off. She also asserts that she was wrongfully terminated on June 26, 2022, and that the Board wrongfully denied her mentorship and a hearing relating to the non-renewal. In her opposition to the motion, Sawires concedes that she did not appeal the Board's action in 2022, but that in 2023 she filed an action in Superior Court, which was dismissed. She appealed the dismissal, and, in early June 2024, the Appellate Division denied her appeal.

Under N.J.A.C. 6A:3-1.3(i), a "petitioner shall file a petition 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, which is the subject of the requested contested case hearing.” The ninety-day period for filing a petition is to be strictly construed and those claims that are not filed in a timely manner are precluded from review. Raymond v. Bd. of Educ. of the Borough of River Edge, 94 N.J.A.R. 2d (EDU) 203, *aff’d*, 94 N.J.A.R. 2d (EDU) 431.

Here, it is undisputed that Sawires received a notice of non-renewal on or about May 13, 2022. This is reflected in the Petition. Although her Petition and opposition to the Board’s motion suggests that Sawires may have been confused whether she was non-renewed, laid-off or terminated, and while she asserts that she was wrongfully terminated or laid-off without having had the benefit of mentorship support or a formal hearing at the District, it is clear and undisputed that she was made aware in May 2022 that she would no longer be employed by the Board, and that the last time she worked for the Board was in late June 2022. I **CONCLUDE** that, pursuant to N.J.A.C. 6A:3-1.3(i) and existing caselaw, the ninety-day rule began to run when Sawires received notice of the non-renewal on or about May 13, 2022. Neither the filing of Sawires’s complaint with the Superior Court of New Jersey nor her appeal with the Appellate Division tolls the ninety-day timeline imposed by N.J.A.C. 6A:3-1.3(i). Sawires filed her Petition about two years after she received notice of non-renewal, well beyond the ninety-day limitation period.

Moreover, while Sawires’s opposition to the motion seems to also, confusingly, assert that she did not become aware that she was “discharged” by the Board until September 2022 (an assertion that is inconsistent with her Petition), any potential claim that she could have asserted concerning Board action that she became aware of in September 2022, would also be time-barred pursuant to N.J.A.C. 6A:1.3-1.3(i).

Consequently, I **CONCLUDE** that petitioner’s claims, as set forth in her Petition, are time-barred pursuant to N.J.A.C. 6A:3-1.3(i), and that the Petition should be dismissed in its entirety.

ORDER

It is hereby **ORDERED** that the respondent's Motion to Dismiss is **GRANTED**, and that the Petition of Appeal is hereby **DISMISSED**.

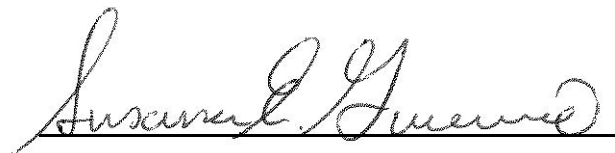
I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

August 28, 2024

DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency:

Date Mailed to Parties:

jb