

New Jersey Commissioner of Education**Final Decision**

School Hero,

Petitioner,

v.

Board of Education of the Camden County
Educational Services Commission, Camden County,
and Patrick Madden, Business Administrator,

Respondent.

Synopsis

Petitioning school bus company, School Hero, filed an appeal on December 18, 2023 alleging that the respondent Board and Madden violated the School Ethics Act (Act) by failing to comply with Chapter 39 of Title 18A of the New Jersey Statutes, as well as with certain regulatory provisions contained in Chapter 27 of Title 6A of the New Jersey Administrative Code, when they prohibited School Hero from placing bids with the Board, removing the company from the quote notification list and failing to provide School Hero with bid specifications. Respondents contended that the petition should be dismissed with prejudice as untimely pursuant to *N.J.A.C. 6A:3-1.3(i)*.

The ALJ found, *inter alia*, that: the process for filing a petition of appeal with the Department of Education is described in *N.J.A.C. 6A:3-1.3*, which includes the limitation that a petition must be filed no later than the 90th day from the date of receipt of notice of a final order or ruling that is the subject of the contested case; it is undisputed that petitioner received an email notice on July 18, 2023 that the Board would not accept any bids from School Hero; the company subsequently filed the within petition on December 18, 2023, which was two months beyond the deadline for initiating a contested case before the Commissioner in this matter; there is no basis to relax the 90 day statute of limitations; petitioner's argument that the Board violated the Act, and because of those allegations the statute of limitations is 180 days rather than 90 days, is without merit. Accordingly, the ALJ granted the Board's motion to dismiss the petition.

Upon review, the Commissioner 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. The respondents' motion to dismiss 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.

434-24
OAL Dkt. No. 03039-24
Agency Dkt. No. 346-12/23

**New Jersey Commissioner of Education
Final Decision**

School Hero,

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v.

Board of Education of the Camden
County Educational Services Commission,
Camden County, and Patrick Madden,
Business Administrator,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) — for the reasons presented in the Initial Decision — that School Hero’s petition is time-barred pursuant to *N.J.A.C. 6A:3-1.3(i)*. In addition, the Commissioner agrees with the ALJ’s conclusion that the 180-day filing limit provided under the School Ethics Act does not apply in the instant matter.

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

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 21, 2024
Date of Mailing: November 22, 2024

¹ 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 GRANTING

MOTION TO DISMISS

OAL DKT. NO. EDU 03039-24

AGENCY DKT. NO. 346-12/23

SCHOOL HERO,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
CAMDEN COUNTY EDUCATIONAL
SERVICES COMMISSION, CAMDEN
COUNTY, AND PATRICK MADDEN,
BUSINESS ADMINISTRATOR.**

Respondents.

Elizabeth J. Hampton, Esq., and Dennis M. Tuohy, Jr., Esq., for petitioner (Fox
Rothschild, LLP, attorneys)

Sanmathi Dev, Esq., for respondent (Capehart Scatchard, P.A., attorneys)

Record Closed: September 10, 2024

Decided: October 10, 2024

BEFORE **KIMBERLEY M. WILSON, ALJ:**

STATEMENT OF THE CASE

Petitioner School Hero filed a petition with the Commissioner of the New Jersey Department of Education (DOE), alleging that respondents Board of Education of the Camden County Educational Services Commission (Board) and Patrick Madden (Madden), Business Administrator, violated the School Ethics Act (Act) when they failed to abide by certain statutes and regulations. The Board and Madden filed a motion to dismiss in lieu of an answer.¹

PROCEDURAL HISTORY

On or around December 18, 2024, School Hero filed its petition with the DOE. On or around March 1, 2024, the Board and Madden filed a motion to dismiss in lieu of an answer. On March 4, 2024, the matter was transmitted to the Office of Administrative Law, for a hearing as a contested case. N.J.S.A. 54:14B-1 to -15 and N.J.S.A. 14F-1 to -23.

After a status conference on May 15, 2024, School Hero filed their opposition to the motion on or around June 5, 2024. The Board and Madden filed their reply papers on or around June 17, 2024, and oral argument was heard on September 10, 2024.

FACTUAL DISCUSSION AND FINDINGS

I **FIND** the following as **FACT**, as it is undisputed:

1. On or around November 29, 2022, Francesca Hoke (Hoke), transportation coordinator for the Board, sent School Hero an email stating that School Hero was approved to award route 2183Q. Saleeba Cert., Ex. A. School Hero was to begin the route on December 1, 2022. Ibid.

¹ Pursuant to N.J.A.C. 6A:3-1.5(g).

2. On or around December 4, 2022, School Hero sent an email to Hoke, stating, “[t]he parent has refused to transport the children to school on Thursday and Friday as she claimed that the children are being transferred to a different school.” Ibid. In the email, School Hero sought guidance from the Board. Ibid.
3. On or around December 5, 2022, Hoke responded to School Hero’s request by email, advising School Hero to send an email to a specific email address for information from parents regarding students changing schools or addresses. Ibid.
4. On or around February 2, 2023, at 9:52 a.m.,² School Hero sent an email to Hoke, stating that route 2183Q was still running and inquiring about payment. Ibid.
5. On or around February 2, 2023, at 10:15 a.m., School Hero sent an email to Hoke, stating that it received no notice to stop the route. Ibid.
6. On around February 2, 2023, at 4:47 p.m., Hoke sent an email to School Hero, asking whether School Hero was inquiring about when payment would be sent or asking about the route. Ibid.
7. On or around February 2, 2023, at 4:53 p.m., Hoke sent an email to School Hero, stating, “[H]ow, there aren’t any students assigned since 12/7/22?” Ibid.
8. On or around February 7, 2023, Hoke sent an email to School Hero advising that the students on route 2183Q were dropped on December 7, 2022, and that the route should not have been running past that date. Ibid. Hoke also

² The February 2, 2023, emails attached to George Saleeba’s Certification, do not logically follow based on the time of the emails. I will cite to the emails based on the time listed on each email.

advised that the Board was evaluating what, if any, payment was owed. Ibid.

9. On or around July 18, 2023, at 11:00 a.m., Chad M. Sherwood, Esq. (Sherwood) sent an email to Madden confirming that School Hero received payment. Ibid. In this email, Sherwood asked whether Madden was indicating that the Board would reject all future bids from School Hero as a result of what occurred. Ibid.
10. On or around July 18, 2023, at 12:24 p.m., Madden sent an email to Sherwood stating the following: “Thank you for confirming receipt of payment. Correct, we will not accept any bid submissions or quote responses from School Hero or its owners moving forward.” Ibid.
11. On or around August 22, 2023, at 2:29 p.m., Jack Plackter, Esq. (“Plackter”), counsel for School Hero, sent an email to Robert A. Muccilli, Esq. (Muccilli), stating that the Board improperly debarred School Hero from bidding on transportation matters and requested a meeting to resolve the issue. Ibid.
12. On or around August 25, 2023, at noon, Muccilli sent an email to Plackter indicating that the Board had not debarred School Hero and that the financial issue regarding route 2183Q had been resolved. Ibid. Muccilli indicated that, as a result, a meeting was not necessary. Ibid.
13. On August 28, 2023, at 1:44 p.m., Plackter sent an email to Muccilli, indicating that School Hero had been excluded from obtaining the quote list from the Board. Ibid.
14. On August 28, 2023, at 2:57 p.m., Muccilli stated that School Hero did not “have a right to be on a ‘quote list’ but it certainly may respond to bid advertisements from the [Board] if it wished to do so.” Ibid.

15. On or around December 18, 2023, at 4:58 p.m., School Hero filed its petition with the DOE, submitted to the email address controversiesdisputesfilings@doe.nj.gov.
16. In its petition, School Hero alleges that the Board and Madden “have violated the [Act] by failing to comply with Chapter 39 of Title 18A of the New Jersey Statutes and the regulatory provisions contained in Chapter 27 of Title 6A of the New Jersey Administrative Code.” Among the statutes and regulations that the Board and Madden allegedly violated are N.J.A.C. 6A:27-9.3, N.J.S.A. 18A:39-2.1, N.J.S.A. 18A:39-5, N.J.S.A. 18A:39-11.3 and N.J.S.A. 18A:39-21.
17. According to School Hero, Madden and the Board prohibited it from placing bids with the Board without the property authority, and they discriminated against it by removing School Hero from the quote notification list and failing to provide School Hero with bid specifications. Madden and the Board also removed School Hero from the quote list and the notification list.

LEGAL ANALYSIS AND CONCLUSION

The Board and Madden argue that School Hero’s petition should be dismissed with prejudice as untimely for School Hero’s alleged failure to abide by the ninety-day statute of limitations contained in N.J.A.C. 6A:3-1.3(i). Pet’r’s Br. at 1. In opposition, School Hero argues that it satisfied the applicable statute of limitations, as the claims in the petition were brought under the Act. Resp’t’s Br. at 4. School Hero also argues that the ninety-day statute of limitations should be relaxed, as the facts here justify that result. Id. at 5.

As will be discussed at length, School Hero did not abide by the ninety-day statute of limitations found in N.J.A.C. 6A:3-1.3, and there is no basis by which the statute of limitations should be relaxed. Finally, there are no facts in this record indicating that School Hero filed or attempted to file its petition with the School Ethics Commission for review, under whose jurisdiction matters must be filed within 180 days. For these reasons, the motion to dismiss filed by the Board and Madden will be granted.

1. The applicable statute of limitations is set forth in N.J.A.C. 6A:3-1.3.

The process for filing a petition of appeal with the DOE is discussed in N.J.A.C. 6A:3-1.3, in relevant part, as follows:

- (a) To initiate a contested case for the Commissioner's determination of a controversy or dispute arising pursuant to the school laws, a petitioner shall prepare a petition of appeal conforming to the requirements at N.J.A.C. 6A:3-1.4 and serve such petition upon each respondent, together with any supporting papers the petitioner may include with the petition. The petitioner then shall file proof of service on each respondent, the telephone numbers and email addresses, where available, of the petitioner and each respondent, and the petition and supporting materials, if any, by emailing the documents to the email address designated by the Office of Controversies and Disputes or mailing the documents to the Commissioner c/o the Director, Office of Controversies and Disputes, New Jersey Department of Education, 100 River View Plaza, PO Box 500, Trenton, New Jersey 08625-0500. In no case shall a petitioner submit materials to the Commissioner that have not been served upon each respondent.

. . . .

- (i) The 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, that is the subject of the requested contested case hearing. This rule shall not apply in instances where a specific statute, regulation, or court order provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.

[Emphasis added.]

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. Bd. 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. of Twp. of Long Beach Island, 272 N.J. Super 373, 380–81 (App. Div. 1994); Riely v. Bd. of Educ. of Hunterdon Central High Sch., 173 N.J. Super. 109, 112–14 (App. Div. 1980). The limitation 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 limitation period. Id. at 588.

Here, the Board and Madden advised School Hero in writing that it would not accept any bids from it on July 18, 2023. School Hero acknowledges the July 18, 2023, email is notice of the Board and Madden’s adverse action against it. See Pet’r’s Br. at 5 (“Thus, because [School Hero’s] Complaint was filed within 180 days of the email received July 18, 2023, informing [School Hero] for the first time that [School Hero’s] bids would no longer be accepted or considered by the [Board], this Complaint is timely and there is no basis for dismissal.”) and at 6 (“Through the July 18th email, and that email correspondence alone, [the Board and Madden] notified [School Hero] that [the Board] would no longer accept any bid submissions or quote responses from [School Hero].”) All the same, School Hero did not file its petition with the DOE until December 18, 2024, 153 days later.

Based on the plain language of N.J.A.C. 6A:3-1.3, School Hero’s petition was untimely, and for this reason alone, it should be time-barred.

2. There is no basis to relax the ninety-day statute of limitations in N.J.A.C. 6A:3-1.16.

School Hero argues that the ninety-day statute of limitations should be relaxed here because of the underlying injustice resulting from the Board and Madden's actions. Pet'r's Br. at 5-6.

Pursuant to N.J.A.C. 6A:3-1.16, any of the rules in the applicable regulations may be relaxed when "strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice." Relaxation of the ninety-day filing requirement 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, EDU 5855-93, 1994 N.J. Agen. Lexis 1363, *12-13 (February 24, 1994), aff'd, Comm'r Decision (April 14, 1994). According to School Hero, the matter of significant public interest is the alleged discrimination against it. Pet'r's Br. at 5-6 ("Moreover, if this matter is not heard by the OAL, [the Board and Madden's] discriminatory action will repeat itself in perpetuity against [School Hero], as they intend to wrongfully deprive [School Hero] of the bidding process year after year, without following the procedures to do so, on the impermissible basis of national origin no less.").

There is no evidence that the dispute between the Board and Madden and School Hero raises a substantial constitutional issue. While unlawful discrimination is a significant public interest, as described by School Hero, it is its own interest at stake here, rather than one beyond concern to only the parties. For these reasons, there is no basis to relax the statute of limitations in N.J.A.C. 6A:3-1.3 pursuant to N.J.A.C. 6A:3-1.16.

For the foregoing reasons, I **CONCLUDE** that School Hero's petition against the Board and Madden is time-barred.

3. The Act and its enabling legislation do not apply here.

School Hero argues in the alternative that the Board and Madden violated the Act, and because of those allegations, the statute of limitations is 180 days rather than ninety days. Pet'r's Br. at 4.

The Legislature passed the Act in 1991. See L. 1991 c. 393 § 7. In signing the Act into law, the Governor stated that the Act based the school ethics criteria on the same ethical standards for local officials—standards already incorporated in the ethics code for state employees. Office of the Governor, News Release, January 16, 1992 (<https://repo.njstatelib.org/server/api/core/bitstreams/9c9ed384-7f4c-4138-8102-1fa6d67f44d5/content>, last visited on October 4, 2024). The Legislature found and declared:

- a. In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.
- b. To ensure and preserve public confidence, school board members and local school administrators should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards among them.

[N.J.S.A. 18A:12-22]

The Act also created the School Ethics Commission specifically for the purpose of enforcing ethical standards through a procedure for reviewing complaints of ethical violations, investigating those complaints, and ultimately rendering recommendations to the Commissioner of Education as to the imposition of sanctions when violations are established. N.J.S.A. 18A:12-28; N.J.S.A. 18A:12-29. The School Ethics Commission has jurisdiction over claims arising under the Act. N.J.A.C. 6A:28-1.4.

There is no evidence in the record that School Hero attempted to file its petition with the School Ethics Commission. The only reference to the Act or the School Ethics Commission is a scant reference in School Hero's petition. Without an actual petition filed with the School Ethics Commission, School Hero cannot avail itself of the statute of

limitations allowed in the Act. For these reasons, I **CONCLUDE** that the 180-day statute of limitations in the Act does not apply here.

Based on the foregoing, I further **CONCLUDE** that the motion to dismiss filed by the Board and Madden should be **GRANTED**.

ORDER

Accordingly, I **ORDER** that the motion to dismiss filed by the Board and Madden should be and hereby is **GRANTED**.

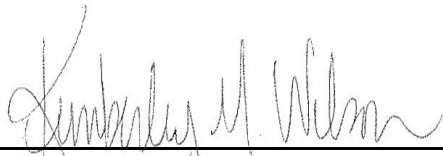
I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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 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.

October 10, 2024

DATE



KIMBERLEY M. WILSON, ALJ

Date Received at Agency:

Date Mailed to Parties:

KMW/dw

APPENDIX

Exhibits

For petitioner:

- Brief, Certification of George Saleeba in Opposition to Respondent's Motion to Dismiss, Proof of Service, received on June 5, 2024

For respondents:

- Brief, dated May 1, 2024
- Reply Brief, dated June 17, 2024