

New Jersey Commissioner of Education**Final Decision**

Student One Transport,

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, Student One Transport, filed an appeal on January 7, 2024 alleging that the respondent Board and its Business Administrator violated the School Ethics Act (Act) by failing to comply with certain statutes and regulations when they barred Student One Transport from bidding on transportation routes. 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; petitioner received clear notice via email dated July 13, 2023 that the Board would not be accepting bids from Student One Transport; the company subsequently filed the within petition on January 7, 2024, which was more than 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; further, there is no merit to petitioner's argument that the Board violated the Act, which includes a statute of limitations of 180 days rather than 90 days, as there is no evidence that petitioner filed or attempted to file its petition with the School Ethics Commission. 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.

435-24
OAL Dkt. No. 03046-24
Agency Dkt. No. 3-1/24

**New Jersey Commissioner of Education
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Petitioner,

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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 Student One Transport’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 03046-24

AGENCY DKT. NO. 3-1/24

STUDENT ONE TRANSPORT,

Petitioner,

v.

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

Respondents.

Elizabeth J. Hampton, Esq., for petitioner (Fox Rothschild, LLP, attorneys)

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

Record Closed: September 10, 2024

Decided: October 10, 2024

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

STATEMENT OF THE CASE

Petitioner Student One Transport (Student One) 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 January 7, 2024, Student One 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 April 29, 2024, Student One filed its opposition to the motion on or around June 3, 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 October 19, 2022, at 11:01 a.m., Student One sent an email to Rita Carfagno (Carfagno), Transportation Supervisor for the Board, asking for a return call to respond to a question. Mansi Cert., Ex. B.
2. On or around October 20, 2022, Carfagno sent an email to Student One, stating that Routes 684 and 1711 were contracted routes and Student One

¹ Pursuant to N.J.A.C. 6A:3-1.5(g).

would be in breach of the contract if it were unable to provide the required transportation. Ibid. Student One would potentially have its bond revoked. Ibid. Carfagno also advised that Route 2040Q was a quoted route that was bound by the terms of the bid specifications. Ibid.

3. On October 31, 2022, at 11:02 a.m., Student One sent an email to Carfagno, indicating that the Board would be requoting Route 684 due to a driver issue. Ibid.
4. On October 31, 2022, at 11:15 a.m., Carfagno responded to Student One's email regarding Route 684, stating that Student One was required to send the Board official notification that it could not fulfill the terms for transportation for a contracted route effective upon a certain date. Ibid. The Board would require the specifics of the student's transportation requirements, and it would then determine whether to seek quotations for the route. Ibid. Student One would potentially be held liable for the difference between the quoted rate and the contracted per diem rate. Ibid.
5. On October 31, 2022, at 11:47 a.m., Student One responded to Carfagno by email, stating that there was no specific date for Route 684 to be discontinued. Ibid. Student One advised that its potential liability was not discussed in a conversation that morning. Ibid.
6. On November 1, 2022, at 9:39 a.m., Carfagno sent an email to Student One regarding Route 684, stating the following: "I do believe we discussed the possibility of a 'gap' between the current contracted per diem and the quoted per diem if one is received. We also discussed the need to supply any special accommodations the student is receiving, which you told me you needed to contact the driver for the information. I cannot proceed without the information." Ibid.
7. On November 1, 2022, at 9:56 a.m., Student One sent an email to Carfagno with the information she requested. Student One stated the following: "The 'gap' possibility was not discussed. The goal of the discussion is to avert

the negative outcome for the company, student and district which you have also mentioned in your previous email.” Ibid.

8. On November 1, 2022, at 3:13 p.m., Student One sent an email to Carfagno, stating, “The latest quotes emailed today were not received. Please email.” Ibid.
9. On November 1, 2022, at 3:56 p.m., Madden sent an email to Student One addressed to Michael, stating, “Student One is not receiving an opportunity to quote on any new routes at this time. The reason is that your company is claiming that you cannot fulfill a route that you bid on—this is a problem.” Ibid.
10. On November 1, 2022, at 5:18 p.m., Student One responded to Madden’s email of the same day as follows: “This is the first occurrence of this problem due to the current severe shortage of school bus drivers nationally. This was conveyed to [Carfagno] previously on 10/31/2022. Please advise on the reinstatement of the company to your quote list.” Ibid.
11. On July 11, 2023, at 3:12 p.m., Madden sent an email to Student One, stating the following: “The [Board] will not be accepting any bids submitted by Student One Transport LLC for the upcoming school year. If a bid is submitted or presented, it will be returned unopened.” Ibid.
12. By email on July 11, 2023, at 3:34 p.m., Student One asked Madden for a reason for the denial. Ibid.
13. On July 12, 2023, Madden sent Student One an email advising that the Board received a bid packet in the mail from Student One and that it was not opened and would be returned unopened. Ibid. According to Madden, the Board would not accept any bids from Student One “due to a negative prior experience caused by a breach of contract during the 2022–2023 school year.” Ibid.

14. On July 13, 2023, at 9:43 a.m., Student One sent an email to Madden regarding a bid. Id.; Mansi Cert., Ex. A. On the same day at 9:58 a.m., Madden sent an email to Student One stating the following: “In response to your email this morning including the attached I will restate our message from yesterday,” reiterating that it would not be accepting bids from Student One. Ibid. Attached to Madden’s email was a document titled Camden county ccesc 7-13-23 bid-compressed-compressed.pdf. Ibid.
15. On or around January 7, 2024, Student One filed its petition with the DOE. Mansi Cert., Ex. B. The DOE acknowledged receipt of the petition on January 30, 2024. Counsel Cert., Ex. A.

LEGAL ANALYSIS AND CONCLUSION

The Board and Madden argue that Student One’s petition should be dismissed with prejudice as untimely for Student One’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, Student One asserts that it satisfied the applicable statute of limitations, as the petition’s claims were brought under the Act. Resp’t’s Br. at 2–3. Finally, Student One claims that the ninety-day statute of limitations should be relaxed, as the facts here justify that result. Id. at 6.

As will be discussed further, Student One 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 to relax the statute of limitations. Last, there are no facts in this record indicating that Student One either filed or attempted to file its petition with the School Ethics Commission for review, where the applicable statute of limitations is 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. . . . 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 Long Beach Island Twp., 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.

The facts here show that as early as November 1, 2022, the Board would not allow Student One to bid on public transportation contracts. Later, in its July 13, 2023, email, Madden clearly indicated that the Board would not accept any bids from Student One, and he returned a bid that Student One submitted to the Board. These contacts from Madden and/or the Board are more than sufficient notice to Student One of adverse action against it. Student One, however, did not file its petition with the DOE until January 7, 2024, more than 179 days after the July 13, 2023, email from Madden. From the plain language of N.J.A.C. 6A:3-1.3, Student One’s petition was not timely filed, and for this reason alone, it should be barred.

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

Student One argues that the ninety-day statute of limitations should be relaxed here because the Board and Madden failed to follow state law to prevent it from bidding on transportation contracts. Pet’r’s Br. at 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 Student One, the compelling reason to relax the ninety-day statute of limitations is respondents’ failure to comply with the debarment process.

This reason, however, does not present a substantial constitutional issue or a matter of significant public interest; it is only of concern to Student One. 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 Student One's petition against the Board and Madden is time-barred.

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

Student One 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 2-3.

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 to enforce these 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 Student One filed or 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 Student One's petition. Without an actual petition filed with the School Ethics Commission, Student One 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**.

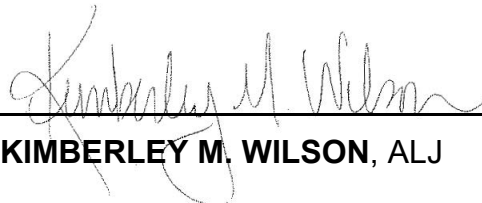
I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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 Michael Mansi in Opposition to Respondent's Motion to Dismiss, Certification of Counsel and Proof of Service, received on June 3, 2024

For respondent:

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