

203-26  
OAL Dkt. No. EDU 03629-26  
Agency Dkt. No. 021-01-26

**New Jersey Commissioner of Education**  
**Final Decision**

Alberto Deleon,

Petitioner,

v.

New Jersey Department of Education, State  
Board of Examiners,

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) that petitioner's claims must be dismissed pursuant to the 90-day rule because the petition was not filed within 90 days of respondent's decision to block his application for a School Social Worker certificate. *N.J.A.C. 6A:3-1.3(i); Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 N.J. 572, 582 (1993). Moreover, petitioner has not offered any compelling reason that would warrant relaxation of the 90-day limitation period, and none can be gleaned from the record. Because the matter is untimely, the Commissioner need not rule upon the merits of the dispute.<sup>1</sup>

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<sup>1</sup> However, the Commissioner notes for purposes of clarity that in reviewing the merits of the dispute, the ALJ mistakenly applied the incorrect standard of review. It is important to recognize that a decision by the Board of Examiners (Board) blocking an application for a certificate is not entitled to the arbitrary, capricious, or unreasonable standard of review afforded to appeals filed under *N.J.A.C. 6A:4*. The appropriate standard of review of Board decisions in matters filed under *N.J.A.C. 6A:3* is whether the

Accordingly, the Initial Decision, as modified, is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>2</sup>



COMMISSIONER OF EDUCATION

Date of Decision: June 10, 2026  
Date of Mailing: June 10, 2026

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decision is consistent with applicable statutory and regulatory provisions. See *Nimczyk v. Dep't of Educ., State Bd. of Exam'rs*, Commissioner Decision No. 98-22 (May 16, 2022) and *Travisano v. Dept. of Educ., State Bd. of Exam'rs*, Commissioner Decision No. 190-22 (August 8, 2022) (both comprehensively detailing the appropriate standard of review to be applied in matters filed against the Board pursuant to *N.J.A.C. 6A:3*).

<sup>2</sup> 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 03629-26

AGENCY DKT NO. 021-01-26

**ALBERTO DELEON,**

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF  
EDUCATION, STATE BOARD OF  
EXAMINERS,**

Respondent.

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**Alberto Deleon**, petitioner, pro se

**Natalie K. Dennis**, Deputy Attorney General, for respondent (Jennifer Davenport,  
Attorney General of New Jersey, attorney)

Record Closed: April 13, 2026

Decided: April 22, 2026

BEFORE **BINDI MERCHANT**, ALJ:

**STATEMENT OF THE CASE**

Alberto Deleon, petitioner, who was convicted of burglary and petit theft and subsequently Driving Under the Influence in 2002 in Florida, applied for a school social

worker certificate with the New Jersey Department of Education (DOE), Office of Recruitment, Preparation and Certification (respondent). The respondent blocked petitioner's application upon review of his criminal background. Must Deleon be permitted to receive a school social worker certificate by DOE? No. The DOE can block an application based on criminal history for conduct unbecoming. N.J.S.A 18A:6-7.1 and N.J.A.C. 6A:9B-4.1.

### **PROCEDURAL HISTORY**

On July 18, 2024, petitioner applied for a School Social Worker certificate with the respondent.

On July 2, 2025, the Board of Examiners (Board) notified petitioner that they were blocking his application. On August 28, 2025, petitioner contacted the Board to request an appeal to which they responded that he would have to file an appeal with DOE, Office of Controversies and Disputes (OCD). On January 28, 2026, petitioner filed an appeal with OCD. On January 29, 2026, OCD acknowledged receipt of the petition. On February 27, 2026, in lieu of an answer, respondent filed a motion to dismiss.

On March 2, 2026, the bureau transmitted this case to the Office of Administrative Law as a 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.

On March 18, 2026, I held an initial pre-hearing conference and established a briefing schedule for the motion to dismiss. On March 30, 2026, petitioner filed opposition. On April 8, 2026, respondent filed a reply. Oral argument was heard on April 13, 2026, and the record was closed.

### **FINDINGS OF FACT**

Based on the documents submitted and oral arguments on the motion to dismiss, I **FIND** the following as **FACT** for purposes of this motion:

In 2002, petitioner was convicted of burglary and petit theft in Florida. He received a sentence of four years' probation and 50 hours of community service. Subsequently, also in 2002, petitioner was convicted of Driving Under the Influence (DUI) and received another sentence consisting of probation and community service.

On July 18, 2024, petitioner applied for a school social worker certification. Upon reviewing the application, respondent requested additional information. On July 24, 2024, petitioner provided a statement and supporting documentation.

On September 19, 2024, and May 22, 2025, the Board, at its meetings, reviewed petitioner's application. On May 22, 2025, the Board voted to block petitioner's application. On June 26, 2025, the Board voted to adopt its formal written decision to block petitioner's application. On July 2, 2025, the board sent petitioner a letter decision to block petitioner's application.

On August 28, 2025, petitioner reached out to the Board to appeal the decision. That same day, the Board provided written instructions on how appeals are handled. The Board provided a link and phone numbers to OCD so that petitioner could file his appeal.

On January 28, 2026, petitioner filed his appeal with the Commissioner.

Petitioner does not dispute his convictions but explained it was a mistake and has not been arrested since 2002. He explained that he went back to school and completed his associate's degree, bachelor's degree and a master's degree in social work. He is a licensed Social Worker in New Jersey and New York. Additionally, he is a Licensed Clinical Alcohol and Drug Counselor in New Jersey and a certified Social Worker in New York.

### **CONCLUSIONS OF LAW**

Under N.J.A.C. 6A:3-1.5(g), a party can file a motion to dismiss a petition instead of filing an answer in a dispute concerning school laws. This regulation cited is analogous to a motion to dismiss a complaint for failure to state a claim upon which relief can be granted under R. 4:6-2(e). Under a R. 4:6-2(e) motion, the court is required to "search

the complaint in depth and with liberality [determine] whether the fundament of a cause of action may be gleaned even from an obscure statement of claim.” Valantas v. Colgate-Palmolive Co.; 109 N.J. 189, 192 (1988) quoting Di Cristofaro v. Laurel Grove Mem’l Park, 43 N.J. Super. 244, 252 (App. Div. 1957).

N.J.A.C. 6A:3-1.3(i) holds that petitions shall be filed “no later than the 90<sup>th</sup> day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education.” The ninety-day limitation period “represents a fair and reasonably necessary requirement for the proper and efficient resolution of disputes under the school laws.” Kaprow v. Board of Educ. of Berkeley Twp., 131 N.J. 572, 582 (1993). 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.

Courts strictly construe and consistently apply the 90-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 “learns 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 90 days. Id. at 588. Moreover, the ninety-day period starts when a petitioner is made aware of the facts to permit them to file a timely complaint.

The purpose of the ninety-day limitation, as discussed in Kaprow, 131 N.J. 586-87, is to stimulate litigants to pursue a right of action within a reasonable time so that the opposing party may have a fair opportunity to defend, thus preventing the litigation of stale claims.” Ochs v. Federal Ins. Co., 90 N.J. 108, 112, 447 A.2d 163 (1982). “The second purpose is ‘to penalize dilatoriness and serve as a measure of repose’ by giving security and stability to human affairs. Ibid. (quoting Farrell v. Votator Div., 62 N.J. 111, 115, 299 A.2d 394 (1973)).” Like this case, “when a plaintiff knows or has reason to know

that he has a cause of action against an identifiable defendant and voluntarily sleeps on his rights so long as to permit the customary period of limitations to expire, the pertinent considerations of individual justice as well as the broader considerations of repose, coincide to bar his action.” Farrell, supra, 62 N.J. at 115.

In this case, petitioner was provided with the Board’s decision on July 2, 2025. Furthermore, on August 28, 2025, he received written instructions on how to file an appeal with OCD. Petitioner states that the deadline should be relaxed since he is a pro se and was not clearly guided through the appeal process. However, he was informed that appeals are made to the Commissioner of Education pursuant to the provisions of N.J.S.A. 18A:6-38.4 on July 2, 2025, and then again by letter dated August 28, 2025.

Additionally, respondent seeks to dismiss the appeal for properly deciding to block petitioner’s application based on his criminal history. The Board reviewed petitioner’s explanation of rehabilitation after his convictions, however, the decision to block was based on unbecoming conduct.

Under N.J.A.C. 6A:9B-4.1, “[n]otwithstanding that a candidate may meet requirements for certification, the [Board] may refuse to issue a certificate to the candidate if it determines, based on the record before it, that the candidate is not suitable for employment as a teaching staff member in the public schools for reasons set forth at N.J.A.C. 6A:9B-4.4. This refusal shall be known as a blocked application.” While conduct unbecoming is not defined in the statutes or regulations, it has been described as an “elastic” phrase that includes “conduct which adversely affects the morale or efficiency” of the public entity or “which has a tendency to destroy public respect for employees and confidence in the operation of services.” In re Emmons, 63 N.J. Super 136, 140 (App. Div. 1960).

Here, petitioner’s crimes, for which he was convicted of, adversely affects the morale or efficiency of a school district if he received a school social worker certificate and become employed by a school district. Furthermore, there could be a tendency to destroy confidence in public services if petitioner is awarded a certificate given his deceptive acts.

Additionally, the crime of burglary can be considered to be a *per se* unbecoming conduct in and of itself because it an explicitly enumerated conviction under N.J.S.A. 18A:6-7.1 that prohibits public schools from employing any person with that conviction.

Therefore, based on the foregoing, I **CONCLUDE** that petitioner filed his petition in violation of the ninety-day statute of limitations under N.J.A.C. 6A:3-1.3(i). I further **CONCLUDE** that the respondent's decision to block petitioner's application for unbecoming conduct was not arbitrary, capricious or unreasonable. Therefore, the appeal must be **DISMISSED**.

### **ORDER**

I **ORDER** that respondent's motion to dismiss in lieu of an answer is **GRANTED**, and the petition is **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 on 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**. Exceptions may be filed by email to [ControversiesDisputesFilings@doe.nj.gov](mailto: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.

*Bindi Merchant*

\_\_\_\_\_  
April 22, 2026  
DATE

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**BINDI MERCHANT, ALJ**

Date Received at Agency:

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Date Mailed to Parties:

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**APPENDIX**

**EXHIBITS**

**For petitioner:**

Opposition to Respondent's Motion to Dismiss

**For respondent:**

Motion to Dismiss and Reply to Petitioner's Opposition