

286-26
OAL Dkt. No. EDU 04052-26
Agency Dkt. No. 047-02-26

New Jersey Commissioner of Education
Final Decision

Deborah Boyle,

Petitioner,

v.

South Plainfield Board of Education, Middlesex
County,

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 that petitioner's appeal was untimely pursuant to *N.J.A.C. 6A:3-1.3(i)*.

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

IT IS SO ORDERED.¹



COMMISSIONER OF EDUCATION

Date of Decision: August 6, 2026
Date of Mailing: August 6, 2026

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

DISMISSAL

OAL DKT. NO. EDU 04052-26

AGENCY DKT. NO. 047-02-26

DEBORAH BOYLE,

Petitioner,

v.

**SOUTH PLAINFIELD BOARD OF
EDUCATION,**

Respondent.

Frank G. Capece, Esq., for petitioner (Garrubbo & Capece, PC, attorneys)

Joseph L. Roselle, Esq., for respondent (Schenck, Price, Smith & King, LLP,
attorneys)

Record Closed: May 14, 2026

Decided: June 8, 2026

BEFORE **MAMTA PATEL**, ALJ:

STATEMENT OF THE CASE

On September 16, 2022, petitioner, then a member of the South Plainfield Board of Education (the Board), was informed by Board counsel that her legal fees for defending

against ethics charges would not be reimbursed. On February 11, 2026, 1,244 days later, Boyle filed an appeal with the Commissioner. Is the appeal time-barred? Yes. Absent exceptional circumstances, appeals must be filed no later than the 90th day after a board's final action. N.J.A.C. 6A:3-1.3(i).

PROCEDURAL HISTORY

On August 23, 2022, Pio Pennisi, Thomas Cassio, Jim Giannakis, Keith Both, Divon Pender, John Farinella, and William Seesselberg, all members of the Board, filed a four-count complaint with the New Jersey School Ethics Commission (SEC) against Boyle.

On October 17, 2022, the SEC transmitted the case to the Office of Administrative Law (OAL), where it was filed on October 24, 2022, as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23 (OAL docket number EEC 09539-22).

On September 7, 2022, Frank G. Capece, Esq., Boyle's counsel, sent a letter to Joseph L. Roselle, Esq., the Board's counsel, demanding that the Board reimburse Boyle for the fees she would incur in defending against the ethics complaint.

On September 16, 2022, in Roselle's absence, Marc H. Zitomer, Esq., Roselle's partner, responded to and denied Boyle's request.

On February 11, 2026, Boyle filed a pro se petition of appeal with the Commissioner of Education (Commissioner) against the Board, which was transmitted to the OAL on March 4, 2026, where it was filed as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

On March 4, 2026, the Board filed a motion to dismiss in lieu of an answer under N.J.A.C. 6A:3-1.5(g). On March 31, 2026, Capece filed a notice of appearance on behalf of Boyle and an initial response to the motion. On April 14, 2026, I held a status

conference, during which Boyle requested time to file a more thorough response to the Board's motion. I granted Boyle's request and set a briefing schedule.

On May 14, 2026, I received the Board's response brief and closed the record. The motion is now ripe for decision.

FINDINGS OF FACT

Based on the certification of Alex Benanti, the Board's business administrator and secretary, and my assessment of its credibility, together with the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following **FACTS**:

1. During the 2021–2022 school year, Boyle served as a board member. Boyle's term ended at the Board's 2023 reorganization meeting.
2. On August 10, 2021, Robert C. Diehl ("principal Diehl"), formerly a principal in the South Plainfield School District, filed a lawsuit in the New Jersey Superior Court against the Board and superintendent Dr. Noreen Tansey Lishak.
3. The Board was represented by Roshan Shah, Esq., and John Regina, Esq., of Anderson & Shah, LLC.
4. Diehl was represented by his son, Robert A. Diehl, Esq. ("A. Diehl"), of the firm Bittiger, Elias, Triolo, & Diehl, P.C.
5. By letter dated June 23, 2022, A. Diehl notified Regina that principal Diehl received a hand-delivered package of documents from Boyle at principal Diehl's home. (Ex. A.)

6. It is unclear whether A. Diehl returned the documents to Regina or provided a copy for Regina to review. Regardless, Regina received a copy of the documents that Boyle delivered to principal Diehl.
7. Upon review, Regina discovered that the documents delivered to principal Diehl included confidential attorney-client communications among the Board attorneys, the former Board president, and Boyle, as well as a workplace investigation report that the investigator had transmitted only to the Board attorney and Boyle.
8. On August 23, 2022, several Board members and administrators filed a complaint with the SEC, alleging that Boyle violated the School Board Ethics Act (the Act). (Ex. B.)
9. On September 7, 2022, Capece, Boyle's counsel, sent a letter to Roselle, the Board's counsel, demanding that the Board reimburse Boyle for the fees she would incur in defending against the ethics complaint.
10. On September 16, 2022, Roselle's partner, Zitomer, denied Boyle's request for counsel fees because the SEC complaint against Boyle was based on the finding that her actions were not on behalf of the Board or for school business, and therefore her conduct was private. (Ex. C.)
11. On October 17, 2022, the SEC transmitted the case to the OAL, where it was assigned to the Honorable Mary Ann Bogan, administrative law judge.
12. On November 21, 2022, Boyle filed an amended Verified Complaint and a Motion for Order to Show Cause, captioned Deborah Boyle v. South Plainfield Board of Education and Alex Benanti, Business Administrator, in the New Jersey Superior Court, Law Division, Docket No. MID L 005666-

22, seeking indemnification. (Ex. D.) Subsequently, the Board counsel filed a Motion to Dismiss.

13. On January 20, 2023, the Honorable Michael A. Toto, A.J.S.C., granted the defendants' Motion to Dismiss. In his decision, Judge Toto stated, in relevant parts, that "the Law Division is without jurisdiction to hear the present matter and . . . the matter must proceed before the Office of Administrative Law," and denied Boyle's Order to Show Cause. (Ex. E.)
14. Boyle did not appeal Judge Toto's decision.
15. On August 29, 2025, Judge Bogan issued an Initial Decision in Pio Pennisi, Thomas Cassio, Jim Giannakis, Keith Both, Divon Pender, John Farinella, and William Seesselberg, Board Members, and Noreen Tansey Lishank, Superintendent v. Deborah Boyle, South Plainfield Board of Education, Middlesex County, OAL Dkt. No. EEC 09539-22. Judge Bogan determined that Boyle improperly sent principal Diehl confidential attorney-client communications of the Board and confidential personnel information related to a civil suit he had filed against the Board, actions that were not within the scope of her position as a Board member and violated the Act, N.J.S.A. 18A:12-24.1(c), (e), (g), and (i), and issued a penalty of reprimand. (Ex. F.)
16. On November 25, 2025, the SEC issued its Final Decision, adopting Judge Bogan's findings of fact and legal conclusions, but modifying the penalty from a reprimand to a censure. (Ex. G.)
17. On January 16, 2026, the Commissioner issued a Final Decision concurring with the penalty recommended by the SEC and censured Boyle for violating the Act. (Ex. H.)

18. Boyle was not assigned or asked to act on behalf of the Board to send documents to principal Diehl.

CONCLUSIONS OF LAW

In deciding a motion to dismiss for failure to state a claim, the legal standard to be applied is whether the moving party is entitled to relief as a matter of law because the basis of a cause of action cannot be gleaned from the complaint, even after an in-depth and liberal search. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989).

Statute of Limitations

N.J.A.C. 6A:3-1.3(i) requires that appeals to the Commission of Education be filed “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.” 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 v. Bd. 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 interpret and consistently enforce 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 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. 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 586–87. Notably, a petitioner need not receive official, formal notification that they may have a valid claim to start the 90-day clock. Id. at 588.

N.J.A.C. 6A:3-1.16 allows the relaxation of the 90-day rule in exceptional circumstances or for other compelling reasons. Boyle did not provide any compelling reason for extending the 90-day rule.

N.J.A.C. 6A:3-1.3(i) requires that an appeal to the Commissioner be filed by the ninetieth day after the Board's final decision. Here, the clock started on September 16, 2022, when the Board's counsel sent Boyle's counsel a letter denying Boyle's request for reimbursement of legal fees incurred in defending against ethics charges filed by other Board members. Boyle filed her appeal on February 11, 2026, 1,244 days later, well beyond the 90-day time limit, without any showing of good cause. Based on my findings of fact and the discussion of law, I **CONCLUDE** that Boyle is time-barred from seeking reimbursement for her legal fees.

Boyle's Conduct Ineligible for Indemnification

N.J.S.A. 18A:12-20 provides for indemnification and reimbursement of counsel fees for any act or omission arising out of and during the performance of a member's duties on the Board. The statute further provides that if a criminal or quasi-criminal action results in a favorable outcome, the Board shall reimburse the member for all costs of defending the action, including reasonable counsel fees and expenses, as well as any costs of appeal.

In this case, as I found above, Boyle was not assigned to respond to the litigation or to any discovery request filed by principal Diehl against the Board and former superintendent Tansey. The Board was represented by the law firm Anderson & Shah, LLC. Boyle sent principal Diehl documents she was not authorized to send on the Board's behalf, including confidential communications among the Board counsel, the former Board president, and Boyle, as well as materials from a workplace investigation. Boyle's conduct did not arise out of or occur in the course of her duties as a Board member.

Based on my findings of fact and the discussion of law, I **CONCLUDE** that Boyle is not entitled to reimbursement of counsel fees under N.J.S.A. 18A:12-20.

Based on the foregoing, in accordance with Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989), I **CONCLUDE** that the Board is entitled to prevail as a matter of law because there is no dispute that Boyle's petition of appeal is well beyond the 90-day time limitation and that her conduct was not consistent with her duties as a Board member.

ORDER

For the reasons set forth above, I **ORDER** that South Plainfield Board of Education's motion to dismiss is **GRANTED**, and Boyle's petition of appeal 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 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 under 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 or by mail to the **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.

June 8, 2026

Date



MAMTA PATEL, ALJ

Date Received at Agency:

Date Mailed to Parties:

MP/jm

APPENDIX

Witnesses

For Petitioner:

None

For Respondent:

Certification of Alex Benanti, Business Administrator/Board Secretary

Exhibits

For Petitioner:

None

For Respondent:

- R-A Letter from A. Diehl, Esq., to John Regina, Esq., dated June 23, 2022
- R-B School Ethics Act Complaint filed with the School Ethics Commission
- R-C Letter from Zitomer, Esq., to Capece, dated September 16, 2022
- R-D Motion for Order to Show Cause, filed with the Superior Court of New Jersey
- R-E Order by Hon. Michael A. Toto, A.J.S.C., dated January 20, 2023
- R-F Initial Decision by Mary Ann Bogan, ALJ, EEC 09539-22, dated August 29, 2025
- R-G School Ethics Commission's decision dated November 25, 2025
- R-H Commissioner of Education's Final Decision dated January 16, 2026