

New Jersey Commissioner of Education
Final Decision

Patricia E. McRae,

Petitioner,

v.

Elizabeth Board of Education, Union County and
Elizabethport Presbyterian Center,

Respondents.

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 the reply filed by respondent Elizabeth Board of Education (Board) have been reviewed and considered.¹ Respondent Elizabethport Presbyterian Center (Center) did not file a reply to petitioner's exceptions.

Petitioner is the Director of Early Childhood Education for the Center. She is not employed by the Board, and although the Board provides certain funding to the Center, the Board does not pay petitioner directly and is not involved in the Center's employment decisions. In Spring 2025, the Center advised petitioner that it would be decreasing her salary from \$100,968 to \$59,150 for the upcoming school year² because the Board had reduced the number of

¹ The Commissioner did not consider petitioner's additional submissions because they are not permitted by *N.J.A.C. 1:1-18.4*.

² Petitioner continued to receive her \$100,968 salary for the remainder of the 2024-2025 school year.

classrooms allotted to the Center from six to three.³ Petitioner's 2025-2026 salary was set in accordance with the Director's Salary Scale,⁴ which is based on the employee's education and experience, as well as the number of classrooms the employee oversees.

On May 8, 2025, petitioner requested that the Center supplement her \$59,150 salary by \$25,000. On May 12, 2025, following a formal vote, the Center denied petitioner's request due to lack of funds. The Center offered petitioner a teaching position with a higher salary, but petitioner opted to continue as Director for the 2025-2026 school year. In November 2025, the Center increased petitioner's salary to approximately \$77,500. However, in December 2025, following another budget cut, the Center reduced petitioner's salary to approximately \$65,000.

On February 12, 2026, petitioner filed the appeal in this matter and alleged that she was not provided the proper salary for the 2025-2026 school year considering her education and experience. The Board filed a motion to dismiss, claiming that petitioner was not an employee of the Board and that the petition of appeal was untimely. The Center also filed a motion to dismiss, claiming that petitioner failed to state a lawful basis for relief and that the petition of appeal was untimely. The Center argued that petitioner accepted the Director position for the 2025-2026 school year at the reduced salary in Spring 2025, and she began receiving the reduced salary in September 2025. Thus, her petition of appeal should have been filed no later than December 2025 to comply with the 90-day appeal timeframe.

³ The reduction in the number of allotted classrooms was based on a reduction in the number of students that were attending the Center's programs.

⁴ The Board provides the Salary Scale in accordance with guidelines from the New Jersey Department of Education.

Following review of the record and oral argument, the Administrative Law Judge (ALJ) granted the motions to dismiss the appeal. Initially, the ALJ concluded that because petitioner was not an employee of the Board, any claims against it must be dismissed. The ALJ also concluded that the petition was untimely filed because petitioner was notified of the Center's final decision regarding her salary for the 2025-2026 school year on May 12, 2025, and thus should have filed her appeal within 90 days of that date. The ALJ rejected petitioner's argument that there was a continuing violation, because the November and December 2025 salary adjustments did not decrease petitioner's salary below the \$59,150 threshold set forth in the Director's Salary Scale. The ALJ further found that the issue raised does not involve an important and novel constitutional question or a matter of public interest that would warrant relaxation of the 90-day timeframe for filing.

In her exceptions, petitioner argues that the ALJ should have considered the changes to her salary that occurred after May 12, 2025, when determining the date her claim accrued for purposes of the 90-day filing requirement. She references numerous email communications between her and staff from the Center and the Board between September 2025 and December 2025 wherein her salary situation continued to be discussed. Per petitioner, those emails establish that the May 12, 2025, decision was not a final decision regarding her salary. Furthermore, she argues that her salary was not actually reduced until September 2025, and that the Center continued to adjust it in November and December 2025. For these reasons, the

determination she received in May 2025 was not the Center’s final decision and did not start the 90-day limitation period for the filing of an appeal.⁵

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter. 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). 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 than the 90th day from the date of receipt of the notice of a final . . . action by the district board of education.” “Adequate notice must be 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.” *Kaprow*, 131 N.J. at 587. Notice that is “unofficial and informal,” if otherwise adequate, can trigger the 90-day limitation period. *Id.* at 588. The 90-day limitation period “represents a fair and reasonably-necessary requirement for the proper and efficient resolution of disputes under the school laws.” *Id.* 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.*

Petitioner’s exceptions are unavailing. The ALJ considered and rejected petitioner’s position that the Center’s decision regarding her salary was not finalized in May 2025. As of May 12, 2025, when the Center denied petitioner’s request for supplementation of the \$59,150 salary

⁵ In response to petitioner’s exceptions, the Board highlights the fact that petitioner is not challenging the ALJ’s conclusion that she has failed to state a claim upon which relief can be granted as to the Board. Consequently, the Board asserts that there is no reason for the Commissioner to disturb that part of the Initial Decision. The Commissioner agrees.

for the 2025-2026 school year due to lack of funds, petitioner had adequate notice to inform her that her salary would decrease substantially in September 2025 when the new school year began. As the ALJ explained, the Center's good faith attempts to find ways to increase petitioner's salary after September 2025 despite the budget shortfalls do not change the fact that she was on notice of the decrease for the 2025-2026 school year in May 2025. Even assuming the 90-day limitation period did not begin to run until petitioner actually received a reduced paycheck in September 2025, her February 2026 petition of appeal would still be deemed untimely.

Finally, the Commissioner agrees with the ALJ that the issue raised does not involve an important and novel constitutional question or a significant matter of public interest that warrants relaxation of the 90-day filing timeframe. *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).

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.⁶


COMMISSIONER OF EDUCATION

Date of Decision: September 3, 2026
Date of Mailing: September 4, 2026

⁶ 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 04834-26

AGENCY DKT. NO. 053-02-26

PATRICIA E. MCRAE,

Petitioner,

v.

**ELIZABETH BOARD OF EDUCATION AND
ELIZABETHPORT PRESBYTERIAN CENTER,**

Respondents.

Patricia E. McRae, (pro-se)

Thomas J. Eicher, Board President, for respondent, Elizabethport Presbyterian Center, pursuant to N.J.A.C. 1:1-5.4(a)5

Brian J. Kane, Esq., for respondent, Elizabeth Board of Education (La Corte, Bundy, Varady & Kinsella, attorneys)

Record Closed: May 19, 2026

Decided: June 18, 2026

BEFORE **BINDI MERCHANT**, ALJ:

STATEMENT OF THE CASE

Petitioner filed a petition of appeal of her salary with the Department of Education on February 12, 2026, more than five (5) months after being notified that the Director position would be at a reduced salary. Is the petition time-barred? Yes. Petitioner filed her petition more than ninety days after the receipt of notice for the allegedly objectionable employment decision. N.J.A.C. 6A:3-1.3(i).

PROCEDURAL HISTORY

On February 12, 2026, petitioner filed an appeal with the New Jersey Department of Education, alleging that she was denied salary parity mandated by N.J.A.C. 6A:13A based on a verbal claim that she is in a non-teaching position. Petitioner alleges that she was never paid at a Master's level salary despite being listed in the Tier 4 category pay scale. Petitioner is requesting the following relief: (1) recognition of her Master's degree for salary purposes; (2) retroactive back pay to September 2025; and (3) correct placement on the salary scale moving forward.

On February 20, 2026, the Board of Education of the City of Elizabeth ("respondent BOE") filed a Motion to Dismiss in lieu of an answer on the basis that petitioner failed to state a claim for which relief can be granted, pursuant to R. 4:6-2(e). On March 20, 2026, respondent Elizabethport ("respondent Elizabethport" or "Center") filed its separate Motion to Dismiss in lieu of an answer on the basis that petitioner's claims are time-barred, pursuant to N.J.A.C. 6A:3-1.3(i). On April 24, 2026, petitioner filed Opposition. On April 28, 2026, respondent BOE filed its reply, and on May 4, 2026, respondent Elizabethport filed its reply.

On May 19, 2026, oral argument was heard, 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:

1. Petitioner is not an employee of respondent BOE.
2. Respondent BOE only implements funding for the Center. The Center does not control petitioner's salary or the pay scale.
3. Respondent Elizabethport uses the salary determined by the New Jersey Department of Education for its employees.
4. In 2024, petitioner accepted a Director position with respondent Elizabethport. Prior to accepting the position, petitioner was advised that her salary would be based on her education, experience, and on the number of classrooms.
5. For 2024-2025, petitioner was paid \$100,968 as a Tier 4 candidate with 11 or more years of experience overseeing six (6) classrooms, pursuant to the Director Salary Scale.
6. In December 2024, respondent BOE reduced respondent Elizabethport's budget based on the actual number of students that were attending the Center's programs. The number of classrooms allocated to Elizabethport by the BOE decreased from six (6) to three (3) classrooms.
7. Despite this reduction in the budget, the Center still paid petitioner her full \$100,968 salary for the remainder of the school year.
8. In the Spring of 2025, petitioner was advised that her Director salary would be decreased for the following school year based on the classroom allocation reduction.
9. Petitioner was offered a teaching position with a higher salary and instead accepted the Director at a lower salary.

10. For the 2025-2026 school year, petitioner's Director salary was \$59,150 as a Tier 4 candidate with 11 or more years of experience overseeing three (3) classrooms, pursuant to the Director Salary Scale.
11. On May 8, 2025, petitioner requested that respondent Elizabethport supplement her new decreased salary by \$25,000.
12. On May 12, 2025, following a formal vote, respondent Elizabethport denied petitioner's requested salary supplement, citing financial inability.
13. On September 20, 2025, petitioner requested written clarification from respondent Elizabethport on how her \$59,150 salary as a Tier 4 candidate was determined.
14. On September 23, 2025, respondent Elizabethport clarified that petitioner's salary was calculated using the 2025-26 Director Salary Scale and explained that the salary change resulted from the reduction in allocated classrooms.
15. In November of 2025, the Board of Directors for respondent Elizabethport approved a discretionary salary adjustment, subject to the availability of funds from the BOE budget, which raised petitioner's annual compensation to \$77,500.
16. In December 2025, the BOE again reduced its monthly payments to Elizabethport, reflecting a decrease in the number of students enrolled.
17. As a result of the December 2025 budget decrease, petitioner's discretionary salary adjustment was reduced, making her annual compensation \$65,000.
18. On February 12, 2026, petitioner filed an appeal with the New Jersey Department of Education.

CONCLUSIONS OF LAW

Under R. 4:6-2(e), a responding party may, in lieu of an answer, file a motion to dismiss for failure to state a claim upon which relief may be granted. Under N.J.A.C. 6A:3-1.5(g), a party can likewise file a motion to dismiss a petition instead of filing an answer in a dispute concerning school laws. In ruling on a R. 4:6-2(e) motion, a judge must

examine ‘the legal sufficiency of the facts alleged on the face of the complaint’ while giving the petitioner ‘the benefit of every reasonable inference of fact.’ Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignulo, Hyman, & Stahl, P.C., 237 N.J. 91, 108 (2019)). Similarly, in ruling on a motion pursuant to N.J.A.C. 6A:3-1.5(g):

The judge considers whether all the evidence together with all legitimate inferences therefrom could sustain a judgment in favor of the party opposing the motion. The judge is not concerned with weight, worth, nature or extent of the evidence. The judge must accept all the evidence supporting the party defending against the motion and accord that party the benefit of all inferences that can reasonably and legitimately be deduced therefrom. If reasonable minds could differ, the motion must be denied.

[37 New Jersey Practice, Administrative Law and Practice § 5.19, at 259-60 (Steven Lefelt, Anthony Miragliotta & Patricia Prunty) (2d ed. 2000).]

Under N.J.A.C. 6A:3-1.3(i), petitions shall 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 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 ninety-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 “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, even “unofficial and informal” notice is “sufficient to trigger the ninety-day limitations period.” Id. at 588.

The main purpose of the ninety-day limitation “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.” Kaprow, 131 N.J. at 587 (citing Ochs v. Federal Ins. Co., 90 N.J. 108, 112 (1982)). The second purpose of this limitation is “to penalize dilatoriness and serve as a measure of repose.” Farrell v. Votator Div., 62 N.J. 111, 115 (1973). “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.” Ibid.

Under certain exceptional circumstances, the Commissioner has discretionary authority to relax the ninety-day rule, pursuant to N.J.A.C. 6A:3-1.16. See Kaprow, 131 N.J. at 590-91 (discussing Commissioner’s authority “to relax procedural rules in his discretion where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice”); see also Mauro DeGennaro v. Bd. of Educ. of the City of Hoboken, Hudson Cty. and John R. Raslowsky, Superintendent, 2009 N.J. AGEN LEXIS 578, *10-11 (noting that the “extraordinary relief” of rule relaxation is generally “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”). Relaxation of the ninety-day rule is rarely invoked. In the instant matter, there are no constitutional issues, exceptional circumstances, or public interests warranting relaxation.

Oral argument and review of the documents submitted demonstrate that petitioner is not an employee of respondent BOE. Respondent BOE argues that since petitioner is not an employee, her claims against them must be dismissed under R. 4:6-2(e). Respondent BOE is only responsible for providing funding to respondent Elizabethport. Respondent BOE does not control the specifics of petitioner’s salary, nor are they involved in hiring, firing, or payroll decisions at the Center. Considering all record evidence and extending petitioner the benefit of all inferences, no complaint can reasonably be maintained against respondent

BOE. Therefore, since petitioner is not an employee of respondent BOE, her claims must be dismissed under R. 4:6-2(e).

Regarding the timeliness of the petition, petitioner's appeal was not filed until February 2026. The ninety-day filing period for an appeal begins when the petitioner receives notice of an objectionable employment decision. Here, petitioner received notice of her new Director salary in Spring of 2025 and elected to continue in the position. Any claim petitioner had regarding her reduced salary accrued (at the latest) on May 12, 2025, with the Center's denial of her initial request to supplement the Director's salary by \$25,000. Petitioner received two (2) additional discretionary adjustments to her annual compensation in November 2025 and December 2025, neither of which changed the salary to which she was entitled pursuant to the Director Salary Scale. Petitioner was put on notice of respondent Elizabethport's final decision regarding her salary on May 12, 2025, the day her salary increase request was denied. Petitioner should have brought her appeal claim within ninety days of that date. Instead, petitioner delayed filing her appeal for more than six (6) months.

The only explanation petitioner provides for the late petition is that the 2025 adjustments to her annual compensation represent a continuing violation. This argument fails for two reasons. First, petitioner was never entitled to more than the amount described on the Director Salary Scale. Any subsequent adjustments to her annual compensation were solely an exercise of beneficence on the part of respondent Elizabethport, and said adjustments were specifically conditioned on BOE funding. Second, petitioner's argument asks this tribunal to find that the Center's actions in (1) reallocating already budgeted funds in order to supplement petitioner's salary by almost \$20,000, and (2) continuing to supplement her salary by almost \$6,000 despite a second round of BOE budget cuts, amount to ongoing salary violations. Petitioner has chosen to remain employed at an early education center that has experienced year-over-year drops in enrollment. The fact that the Center's BOE funding and petitioner's salary as Director have, consequently, fallen alongside enrollment cannot alone provide a basis for a continuing violation claim. Considering all record evidence and extending petitioner the benefit of all inferences, the instant appeal was filed well past the ninety-day limit, pursuant to N.J.A.C. 6A:3-1.16. Therefore, petitioner's appeal is properly dismissed.

Since petitioner is not an employee of respondent BOE, I **CONCLUDE** that the claims against them must be dismissed. Additionally, since this case does not involve an important and novel constitutional question or an important question of public interest beyond that of concern only to the parties themselves that warrants a relaxation of the limitation period, I **CONCLUDE** that the petition in this matter was filed in violation of the ninety-day statute of limitations under N.J.A.C. 6A:3-1.3(i), and that this case must be dismissed.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the Board's Motion to Dismiss is **GRANTED** and the Board is **DISMISSED** as a party. I **ORDER** that the Center's Motion to Dismiss is **GRANTED** and this case is **DISMISSED** in its entirety.

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.



June 18, 2026
DATE

BINDI MERCHANT, ALJ

Date Received at Agency:

June 22, 2026

Date Mailed to Parties:

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APPENDIX

EXHIBITS

For Petitioner:

None

For Respondent:

None