

injury, in which case the petition shall be filed within 90 days of receipt of notice of the district board of education's action, or of the action of the district board of education's agent, which has the effect of denying such benefits.

(j) When the State of New Jersey Department of Education or one of its agents, or the State Board of Examiners or other entity located within the Department, is named as a party, proof of service to the Attorney General of the State of New Jersey is required. A petitioner shall direct such service to Department of Law and Public Safety, Division of Law, PO Box 112, Trenton, New Jersey 08625-0112, Attention: Education Section. When another agency of the State of New Jersey is named as a party, service on the Attorney General is also required, and a petitioner shall effect service as set forth in this section, but to the attention of the appropriate section of the Division of Law.

Amended by R.1986 d.157, effective May 5, 1986.
See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted old text and substituted new.

Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Amended to provide for the filing of two copies of a petition in order to conform to OAL rules which require the transmittal of two copies of any petition; described what documentation may prove that service has been accomplished and when there must be proof of service to Attorney General.

Amended by R.2000 d.137, effective April 3, 2000.
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Amended by R.2005 d.109, effective April 4, 2005.
See: 36 N.J.R. 5032(a), 37 N.J.R. 1051(b).

Rewrote the section.

Amended by R.2006 d.245, effective July 3, 2006.
See: 38 N.J.R. 1495(a), 38 N.J.R. 2796(b).

Rewrote (c) and (i).

Amended by R.2006 d.315, effective September 5, 2006.
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (e)1, amended the second N.J.A.C. reference.

Law Review and Journal Commentaries

Education—Limitation of Actions—Tenure. Judith Nallin, 136 N.J.L.J. 81 (1994).

Education—Public Employees—Teachers. Steven P. Bann, 133 N.J.L.J. 65 (1993).

Case Notes

New Jersey limitations for disputing individualized education plan did not bar reimbursement claim. *Bernardsville Bd. of Educ. v. J.H.*, C.A.3 (N.J.)1994, 7 A.D.D. 911, 42 F.3d 149, rehearing and rehearing in banc denied.

New Jersey limitations for disputing individualized education plan did not bar reimbursement claim. *Bernardsville Bd. of Educ. v. J.H.*, D.N.J.1993, 817 F.Supp. 14.

Parents of handicapped student did not waive right to reimbursement by placing student in private school and failing to initiate review. *Bernardsville Bd. of Educ. v. J.H.*, D.N.J.1993, 817 F.Supp. 14.

Consideration by Commissioner of constitutionality of public employer's practice of crediting employee's credit union and annuity plans was not untimely under rule requiring that declaratory judgment action be filed within 90 days from receipt of final order. *Board of Educ. of Tp. of Neptune v. Neptune Tp. Educ. Ass'n*, 293 N.J.Super. 1, 679 A.2d 669 (A.D.1996).

Resolution not to rehire principal was final action of the board, requiring appeal within 90 days; letter to principal in August was merely response to her attorney's letter. *Nissman v. Board of Educ. of Tp. of Long Beach Island, Ocean County*, 272 N.J.Super. 373, 640 A.2d 293 (A.D.1994), certification denied 137 N.J. 315, 645 A.2d 142.

Principal informed by school board in April of her third year that she would not be rehired was required to file challenge within 90 days. *Nissman v. Board of Educ. of Tp. of Long Beach Island, Ocean County*, 272 N.J.Super. 373, 640 A.2d 293 (A.D.1994), certification denied 137 N.J. 315, 645 A.2d 142.

Regulation focusing on date of employer's wrongful act as accrual date rather than date consequences are felt by the employee, was not arbitrary or capricious. *Nissman v. Board of Educ. of Tp. of Long Beach Island, Ocean County*, 272 N.J.Super. 373, 640 A.2d 293 (A.D.1994), certification denied 137 N.J. 315, 645 A.2d 142.

Due process rights of assistant superintendent terminated not violated by regulation containing 90-day limitation of repose on school law dispute. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

Right to reemployment by former assistant superintendent terminated as part of reduction in force was not exempt from 90-day limitation for commencing school law disputes. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

"Adequate notice" which commences running of 90-day limitation on school law disputes is that sufficient to inform individual of some fact that communicating party has duty to communicate. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

Informal notice that two positions had been filled triggered 90-day period for commencing action to assert tenure rights. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

School board was not equitably estopped from asserting 90-day limitations by its failures. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

No enlargement or relaxation of 90-day limitation period for asserting tenure claim necessary where petitions were not timely filed after receiving notice. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

Delegation of power to promulgate rule provided adequate standards. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Delegation of power to establish rules relating to hearing of controversies authorized creation of time limits. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Ninety-day limitation for initiating controversy before commissioner of schools was enforceable. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Limitation period for initiating controversy before commissioner of schools was not inapplicable. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Limitations period commenced no later than receipt of letter advising former superintendent of appointments of other persons. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Former superintendent was not entitled to discretionary waiver of limitations period. *Kaprow v. Board of Educ. of Berkeley Tp.*, 255 N.J.Super. 76, 604 A.2d 640 (A.D.1992), certification granted 130 N.J. 16, 611 A.2d 654, affirmed 131 N.J. 572, 622 A.2d 237.

Requirements for adequate notice to commence running of time to appeal to Commissioner. *Stockton v. Bd. of Ed., Trenton, Mercer Cty.*, 210 N.J.Super. 150, 509 A.2d 264 (App.Div.1986).

Petition for salary increment for time spent on sabbatical denied as filed beyond 90 day limit. *North Plainfield Education Assn. v. Bd. of Ed., North Plainfield Boro., Somerset Cty.*, 96 N.J. 587, 476 A.2d 1245 (1984).

Arbitration proceedings do not alter filing time requirement. *Riely v. Hunterdon Central High School Bd. of Ed.*, 173 N.J.Super. 109, 413 A.2d 628 (App.Div.1980).

In a dispute between sending and receiving school districts over resource room charges, the sending districts failed to file their appeal within the 90-day limitations period prescribed by N.J.A.C. 6A:3-1.3(i) because they had knowledge of the receiving district's position before the May 14, 2007 opinion letter from the Division of Finance that they claimed started the running of the period. *Bd. of Educ. of Waterford v. Bd. of Educ. of Hammonton*, OAL Dkt. Nos. EDU 6798-07 and EDU 8091-07 (CONSOLIDATED), 2008 N.J. AGEN LEXIS 261, Commissioner's Decision (March 24, 2008).

It is by now well established that a petitioner whose cause of action arises out of the nonrenewal of his or her employment must — unless facts necessary to make a claim are unknown at the time — file a petition within 90 days of the *notice of nonrenewal*, and that the running of the regulatory limitations period of N.J.A.C. 6A:3-1.3 is not tolled by the possibility that the petitioner might ultimately persuade the board to offer reemployment through statutory and regulatory mechanisms provided for this purpose. *Lygate v. Bd. of Educ. of Carteret*, OAL Dkt. No. EDU 2660-07, 2008 N.J. AGEN LEXIS 254, Commissioner's Decision (March 17, 2008).

Ninety-day filing period of N.J.A.C. 6A:3-1.3(i) did not begin to run in October 2005, when the board of education ratified a settlement agreement providing a school employee with a one-year, nontenured employment contract. The employee's claim was nevertheless time-barred because the operative date for the running of the limitations period was not November 21, 2006, when the employee's position was eliminated, but at the earlier time when the employee was notified by letter that the superintendent would recommend that the board not renew the employee's contract. *Lygate v. Bd. of Educ. of Carteret*, OAL Dkt. No. EDU 2660-07, 2008 N.J. AGEN LEXIS 254, Commissioner's Decision (March 17, 2008).

Where a ten-month teaching staff member received a letter from the Superintendent dated April 27, 2007, during the eighth month of her third academic year of service, informing her that her contract would not be renewed for the upcoming school year, yet her employment did not end until June 30, 2007, the 90-day time limitation for filing a petition under N.J.A.C. 6A:3-1.3(i) began to run from petitioner's receipt of the April 27 letter; contrary to petitioner's contention that the period ran from June 30 because she was not appealing from the nonrenewal but from the violation of her tenure status, which did not occur until she attained tenure and was terminated on June 30, the period ran from the April 27 letter because petitioner at that time learned that the board was taking action adverse to her interests (adopting and supplementing 2007 N.J. AGEN LEXIS 807, and agreeing that the case was controlled by *Nissman v. Bd. of Educ. of Long Branch*, 272 N.J. Super. 373 (App.Div. 1994)). *Salazar-Linden v. Bd. of Educ. of Holmdel*, OAL Dkt. No. EDU 8194-07, 2008 N.J. AGEN LEXIS 670, Commissioner's Decision (March 3, 2008).

N.J.S.A. 34:13A-27(d) worked to ensure that a teaching staff member who sought arbitration in the belief that the withholding of his or her increment constituted discipline — and then had such arbitration enjoined when a dispute arose as to the nature of the withholding — would not be precluded by operation of the 90-day rule (N.J.A.C. 6A:3-

1.3(i)) from subsequent appeal to the Commissioner. *Giorgio v. Bd. of Educ. of Bridgeton*, OAL Dkt. No. EDU 8136-06, 2008 N.J. AGEN LEXIS 142, Commissioner's Decision (February 19, 2008).

Provision of N.J.S.A. 18A:38-19 specifying that tuition to be paid by a sending district shall not exceed the actual cost per pupil does not create an "entitlement," outside the scope of the 90-day rule; although a dispute between sending and receiving districts concerning alleged overcharges presented issues of timeliness, the Commissioner decided the merits given the unique circumstances and that both parties were equally to blame, and in the interest of the districts' citizens. *Bd. of Educ. of Mountainside v. Bd. of Educ. of Berkeley Heights*, OAL Dkt. No. EDU 9700-06, 2008 N.J. AGEN LEXIS 270, Commissioner's Decision (January 17, 2008).

Where a parent sought expungement of disciplinary records from her child's file, even if the provision in a Consent Order reserving to the parent "all rights to future action with respect to any program, placement, and record issues" consensually extended the 90-day limitations period of N.J.A.C. 6A:3-1.3(i) until completion of evaluations and the scheduling of an IEP meeting, the parent's appeal still was not timely filed. *J.G. ex rel. C.G. v. Galloway Community Charter School*, OAL Dkt. No. EDU 6122-07, 2008 N.J. AGEN LEXIS 260, Final Decision (January 11, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 450) adopted, which concluded that a petition was barred under the 90-day rule of N.J.A.C. 6A:3-1.3(i), where two nontenured teaching staff members received nonrenewal letters on May 1, 2006 that cited budgetary constraints, and the employees did not learn until September 1, 2006 that replacements had been hired for their positions. The 90-day period ran from May 1, 2006; in any event, local boards of education have almost unlimited discretion in terminating nontenured teachers, absent constitutional or legislative constraints, and the teachers did not exercise their right to an informal hearing under N.J.S.A. 18A:27-4.1(b) and N.J.A.C. 6A:32-4.6. *Middletown Educ. Ass'n ex rel. McGee v. Bd. of Educ. of Middletown*, OAL Dkt. No. EDU 12159-06, Commissioner's Decision (August 16, 2007).

Adequate notice requirement should effectuate concerns for individual justice by not triggering the limitations period until the tenured teachers have been alerted to the existence of facts that may equate in law with a post-RIF cause of action; at the same time, it should further considerations of repose by establishing an objective event to trigger the limitations period in order to enable the proper and efficient administration of the affairs of government. *Charapova v. Bd. of Educ. of Edison*, OAL Dkt. No. EDU 6722-05S; C NO. 224-06; SB NO. 30-06, 2006 N.J. AGEN LEXIS 1089 (August 3, 2007).

Notwithstanding that a nonrenewal letter was sent to other nontenured teaching staff members in compliance with the requirements of N.J.S.A. 18A:27-10, it triggered the 90-day filing period set forth in N.J.A.C. 6A:3-1.3(i) by providing the teacher with notice that she would not be offered employment for the following school year. *Charapova v. Bd. of Educ. of Edison*, OAL Dkt. No. EDU 6722-05S; C NO. 224-06; SB NO. 30-06, 2006 N.J. AGEN LEXIS 1089 (August 3, 2007).

N.J.A.C. 6A:3-1.3(i) applies to a petition brought by a local district board of education. *Bd. of Educ. of Barnegat v. Houser*, OAL Dkt. No. EDU 2948-07, 2007 N.J. AGEN LEXIS 895, Commissioner's Decision (July 30, 2007).

Although the 90-day rule of N.J.A.C. 6A:3-1.3(i) applied to a local district board of education's petition seeking removal of a board member under N.J.S.A. 18A:12-2 because of his wife's filing of a workers' compensation claim, dismissal of the dispute on procedural grounds would have left unaddressed a question of significant public interest, thus warranting relaxation of procedural rules pursuant to N.J.A.C. 6A:3-1.16. *Bd. of Educ. of Barnegat v. Houser*, OAL Dkt. No. EDU 2948-07, 2007 N.J. AGEN LEXIS 895, Commissioner's Decision (July 30, 2007).

The 90-day limitations period of N.J.A.C. 6A:3-1.3(i) begins to run when the petitioner has knowledge of the "existence of the state of facts