

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).

Petition challenging a decision of a charter school's board of trustees terminating his employment as a school business administrator was timely filed as it was filed within the 90 day period described in N.J.A.C. 6A:3-1.3(i). Since the administrator received actual notice of the determination on June 17, 2011, the 90-day period began to run on June 18, 2011, which was the next succeeding day per N.J.A.C. 6A:3-1.2, the filing of the petition on September 15, 2011 was timely because that was the 90th day after June 18. *Jones v. Bd. of Trs. of the Barack Obama Green Charter High School*, OAL Dkt. No. EDU 13722-11, 2013 N.J. AGEN LEXIS 41, Initial Decision (February 27, 2013).

Initial Decision (2009 N.J. AGEN LEXIS 578) adopted, which found that the 90-day limitations period ran from the time petitioner began receiving paychecks at his regular teacher salary instead of his requested supervisory salary, regardless of whether petitioner received a formal decision from the school board regarding his request to be paid at a supervisory rate; each time petitioner received a paycheck over the past 17 years, the board clearly communicated to him that it had determined to continue to pay him at the teacher's salary level and each paycheck served as adequate notice, sufficient to inform him that he was not being paid at a supervisory salary level. *DeGennaro v. Bd. of Educ. of Hoboken*, OAL Dkt. No. EDU 5630-09, 2009 N.J. AGEN LEXIS 1013, Final Decision (October 6, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 578) adopted, which found that there was no reason to relax the 90-day limitations period on a petitioner's request for a salary adjustment to reflect the fact that he was in a supervisory position because while the Commissioner has the discretion to relax the rule, this extraordinary relief has been 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; petitioner's claim had no import or significance beyond his personal employment relationship with the school board, making a relaxation of the rule unwarranted. *DeGennaro v. Bd. of Educ. of Hoboken*, OAL Dkt. No. EDU 5630-09, 2009 N.J. AGEN LEXIS 1013, Final Decision (October 6, 2009).

Nontenured teacher who received a letter of termination on April 25, 2008, but did not file his appeal until September 4, 2008, failed to timely file, even if the limitation period began on May 2, 2008, when the teacher made his request for an informal hearing, because 125 days would have elapsed before he filed his petition. At the latest, the limitation period would have begun on June 2, 2008, when the 30-day response period expired with no communication from the District, but by that date the teacher would have known that the District had failed to comply with what he contended was its statutory obligation (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 132). *Lachenauer v. State-Operated School Dist. of Newark*, OAL Dkt. No. EDU 11820-08, 2009 N.J. AGEN LEXIS 652, Final Decision (March 18, 2009).

Petitioner's appeal was untimely because the 90-day filing period commenced when the board notified her on June 23, 2006 that her son would be transferred to another school and her appeal was not filed with the Commissioner until May 8, 2008; neither petitioner's attempts to contact the principal nor her attempts to request her son's school records were sufficient to put the respondent on notice that petitioner was contesting her son's transfer (adopting 2008 N.J. AGEN LEXIS 993). *D.Q. ex rel. S.Q. v. State Operated School Dist. of Newark*, OAL Dkt. No. EDU 7544-08, 2009 N.J. AGEN LEXIS 640, Final Decision (January 21, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 968) adopted, which found that a teacher was not given the military service credit to which he was entitled for purposes of placement on the salary guide at the time of his hiring and that his request for an adjustment of salary was not time-barred by the 90-day limitation period in N.J.A.C. 6A:3-1.3(i) because the limitation did not apply to N.J.S.A. 18A:29-11, which awarded veterans for their service and which had no functional relationship to teaching — it was a statutory entitlement. *Neeley v. Bd. of Educ. of Franklin*, OAL Dkt. No. EDU 6434-06, 2009 N.J. AGEN LEXIS 636, Final Decision (January 5, 2009).

Non-tenured kindergarten teacher did not waive his right to a hearing in the OAL by failing to ask the board for a written statement of reasons for the nonrenewal and declining to make an informal appearance before the board; while a non-tenured employee had the opportunity to appear informally before the employing board, there was no requirement that he do so. *Korba v. Bd. of Educ. of Clinton*, OAL Dkt. No. EDU 6494-07, 2008 N.J. AGEN LEXIS 1421, Final Decision (December 15, 2008).

Where a teacher successfully appealed his 1999 termination and it was determined on remand on Sept. 17, 2007 that he was not entitled to back pay after 2002-03 due to the district's lack of vacant positions within his certification, the teacher's subsequent petition, filed on Dec. 14, 2007, claiming entitlement to employment based on an additional endorsement (Teacher of the Handicapped) he received in 2002 was barred by the 90-day rule of N.J.A.C. 6A:3-1.3. The 90-day period began to run upon the teacher's awareness that the board considered his entitlement to any type of employment in the district to have ended after 2002-03, which occurred at the very latest on December 8, 2006 — the filing date of the Board's brief in the prior proceeding on remand, and for the 2007-08 school year, well before the end of the 2006-07 school year; thus, his Dec. 2007 petition was barred (adopting as modified 2008 N.J. AGEN LEXIS 749). *Ziegler v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 3007-08, 2008 N.J. AGEN LEXIS 1072, Final Decision (November 5, 2008).

Under N.J.A.C. 6A:3-1.3(i), a teacher acquired tenure and her appeal of a board of education's decision non-renewing her position was not time barred after a County Superintendent issued a letter to the teacher clearly holding out the possibility that the teacher could be retained in another position and keep her benefits. Contrary to the board's position, the 90-day period did not begin to run when the teacher received notice in May 2006 that her position was being eliminated and she would have to apply for a maternity leave position; instead, the 90-day period began to run in April 2007 when the board adopted a resolution "non-renewing" the teacher effective June 30, 2007. *Taibi v. Bd. of Educ. of Union*, OAL Dkt. No. EDU 8090-07, 2008 N.J. AGEN LEXIS 1193, Final Decision (September 24, 2008).

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 which might equate in law with a cause of action." *Wilbeck v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 1360-07, 2007 N.J. AGEN LEXIS 525, Commissioner's Decision (July 9, 2007).

Ninety-day limitations period of N.J.A.C. 6A:3-1.3(i) ran from the date petitioner learned of his reassignment from the position of high school vice principal, a twelve-month position, to the position of elementary school vice principal, a ten-month position, and not from the later date when petitioner received his first paycheck of the school year and allegedly first learned that the reassignment would affect his salary increase expectancies; not only was it reasonable to charge petitioner with knowledge that elementary vice principalships are ten-month positions, but also tenured employees have no vested right in any future increases in salary. *Wilbeck v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 1360-07, 2007 N.J. AGEN LEXIS 525, Commissioner's Decision (July 9, 2007).

Teacher's receipt of notice of the Board's "final action" on the subject of her resignation at its August 16, 2005 meeting triggered the running of N.J.A.C. 6A:3-1.3(i), and consequently any challenge to the action was required to be filed before the Commissioner within 90 days of that time; neither the fact that the teacher continued in the Board's employ subsequent to its acceptance of her resignation nor the teacher's attempt to rescind her resignation by letter dated May 8, 2006 precluded application of the 90-day rule, and therefore the Petition of Appeal at issue, filed nearly 11 months after the Board's final action, was clearly out of time. *Snow v. Bd. of Educ. of Moorestown*, OAL Dkt. No. EDU 6404-06, 2007 N.J. AGEN LEXIS 312, Commissioner's Decision (April 20, 2007).

Notwithstanding that the limitations rule of N.J.A.C. 6A:3-1.3(i) is to be strictly applied, the Commissioner may relax the rule pursuant to

N.J.A.C. 6A:3-1.16 under exceptional circumstances or if there is a compelling reason to do so; such authority, however, is invoked rarely and not unless strict application of the rule would be inappropriate or unnecessary, or injustice would occur, or the Commissioner finds a substantial constitutional issue or other issue of fundamental public interest beyond that of concern only to the parties themselves. *Snow v. Bd. of Educ. of Moorestown*, OAL Dkt. No. EDU 6404-06, 2007 N.J. AGEN LEXIS 312, Commissioner's Decision (April 20, 2007).

Irrespective that untimeliness barred consideration of a teacher's petition, the teacher was not prevented from acquiring tenure, as such status is statutory in nature and attaches automatically upon the fulfillment of the requisite conditions; however, the fact that the teacher may have acquired tenure at some point during the school year had no bearing whatsoever, as the teacher had resigned from the District and had thus voluntarily relinquished any rights that otherwise might have accrued by virtue of such status. *Snow v. Bd. of Educ. of Moorestown*, OAL Dkt. No. EDU 6404-06, 2007 N.J. AGEN LEXIS 312, Commissioner's Decision (April 20, 2007).

Township board of education seeking to recoup a tuition overpayment to a special services school district should have acted to file its petition within 90 days of learning of recertified tuition rates (adopting in part, and rejecting in part 2007 N.J. AGEN LEXIS 68). *Bd. of Educ. of Twp. of Pemberton v. Bd. of Educ. of Burlington County Special Services School Dist.*, OAL Dkt. No. EDU 8568-04, 2007 N.J. AGEN LEXIS 317, Commissioner's Decision (April 12, 2007).

Initial Decision adopted, which concluded that petitioner's claim that her tenure rights were violated was time-barred under N.J.A.C. 6A:3-1.3(i), where petitioner had to have realized the district's position that she was not tenured when she received the letter notifying her of rescission due to excessive absenteeism and tardiness, as a tenured position could not be rescinded by letter; in any event, petitioner did not possess the requisite certification "in full force and effect" to achieve credit towards tenure at any time during her service as vice principal. *Clanton v. State-Operated School Dist. of Newark*, OAL Dkt. No. EDU 7092-06, 2007 N.J. AGEN LEXIS 313, Commissioner's Decision (March 12, 2007).

Where a teacher was nonrenewed and claimed to have first discovered the facts on which the petition was based during litigation against the Board, the claim under N.J.S.A. 18A:27-3.1 concerning evaluations was untimely under N.J.A.C. 6A:3-1.3(i) because, *inter alia*, petitioner must be charged with having known whether and when an observer was in his classroom and whether and when he received evaluations (adopting and supplementing 2007 N.J. AGEN LEXIS 10). *Bradford v. Bd. of Educ. of*

*Union*, OAL Dkt. No. EDU 10878-06, 2007 N.J. AGEN LEXIS 97, Commissioner's Decision (February 14, 2007), *aff'd*, SB No. 5-07, 2007 N.J. AGEN LEXIS 889 (N.J. State Bd. of Educ. June 8, 2007).

Petition for appeal must be filed within 90 days of the notice of nonrenewal, not within 90 days of the exhaustion of other avenues and mechanisms. *Bradford v. Bd. of Educ. of Union*, OAL Dkt. No. EDU 10878-06, 2007 N.J. AGEN LEXIS 97, Commissioner's Decision (February 14, 2007), *aff'd*, SB No. 5-07, 2007 N.J. AGEN LEXIS 889 (N.J. State Bd. of Educ. June 8, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 10) adopted and supplemented, which determined that neither *Kaczmarek v. N.J. Tpk. Auth.*, 77 N.J. 329 (1978) nor N.J. Ct. R. 1:13-4 applied to relax the 90-day limitations period of N.J.A.C. 6A:3-1.3(i) where a teacher, who received notice of nonrenewal dated May 1, 2001 and a final letter in June, had filed an action in Superior Court on August 17, 2001 for discrimination and retaliation and later filed an unsuccessful motion to amend to add the subject Title 18A claims; the Title 18A claims were distinct from the initial Superior Court claims and those initial claims had been within the jurisdiction of the court. *Bradford v. Bd. of Educ. of Union*, OAL Dkt. No. EDU 10878-06, 2007 N.J. AGEN LEXIS 97, Commissioner's Decision (February 14, 2007), *aff'd*, SB No. 5-07, 2007 N.J. AGEN LEXIS 889 (N.J. State Bd. of Educ. June 8, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1008) adopted, which concluded that parents' challenge to a mandatory school uniform policy was barred by the 90-day limitations period of N.J.A.C. 6A:3-1.3, which began to run when the Board adopted the policy at a public meeting in June 2006, and the fact that the policy was later amended did not alter this result; the proper standard is not when the Board's action was final, but when a petitioner had or reasonably should have had notice of the Board's action. Even assuming *arguendo* that the petition was timely, the parents failed to satisfy any of the requirements necessary for the granting of emergent relief under N.J.A.C. 6A:3-1.6. *Coles v. Bd. of Educ. of Bayonne*, OAL Dkt. No. EDU 10535-06, Commissioner's Decision (December 8, 2006), *aff'd*, SB No. 01-07, 2006 N.J. AGEN LEXIS 1085 (N.J. State Bd. of Educ. April 4, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 896) adopted, which found that petitioners' challenge to a board of education's policy filed with the Commissioner of Education on February 17, 2006 was time-barred, where the policy in its present form was revised and adopted on May 10, 2004, and had remained unchanged since that date, as was petitioners' challenge to a student attendance plan, approved by the board of education on September 12, 2005; as to petitioners' contention that even if the petition were not timely filed, this was a matter of significant