

J.M. and D.M., on behalf of minor child, :  
J.L.M., :  
 :  
 PETITIONERS, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 BOARD OF EDUCATION OF THE CITY OF : DECISION  
 SUMMIT, UNION COUNTY, :  
 :  
 RESPONDENT. :  
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SYNOPSIS

Petitioners appealed the Board's failure to bestow upon minor child Most Valuable Player awards for the 1995 and 1996 cross-country seasons, contending such action was arbitrary, capricious, unreasonable and discriminatory. Respondent Board filed a motion for summary decision pursuant to *N.J.A.C.* 1:1-12.5, asserting petitioners' petition was untimely filed pursuant to *N.J.A.C.* 6:24-1.2(c).

The ALJ found the petition was filed beyond the 90-day time limitation of *N.J.A.C.* 6:24-1.2(c) and granted the Board's motion, dismissing the petition.

The Commissioner adopted the findings and determinations of the initial decision as his own, noting that the 90-day time period, which begins to run on the date notice is received of the action taken, is mandatory, and attempts to resolve a claim through negotiation with the board do not toll the time limit for filing a petition of appeal. Relaxation of the time limit was not warranted here because the case did not present constitutional or significant public interest issues. Petition was dismissed.

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The record and initial decision issued by the Office of Administrative Law (OAL) have been reviewed. Petitioners' exceptions and the Board's reply exceptions were timely filed pursuant to the requirements of *N.J.A.C.* 1:1-18.4.

In their exceptions petitioners agree with the Administrative Law Judge (ALJ) that there are no disputed issues of fact in this matter, but they object to the ALJ's recommendation to dismiss the petition solely on the time factor. Petitioners contend, *inter alia*, that the Commissioner could have dismissed the petition as untimely but instead sent the matter to OAL. They further contend that all documentation affirms their daughter's claim that respondent's decision-making process in this matter was arbitrary, capricious, unreasonable and discriminatory and set forth their basis for why they should prevail on the merits of the matter.

Upon review of the record, the Commissioner agrees with and adopts as his own the recommended decision of the ALJ dismissing the petition because it was untimely filed

pursuant to the provisions of *N.J.A.C. 6:24-1.2 (c)*.<sup>1</sup> Numerous decisions concerning the 90-day time limit have been litigated, and the Courts have consistently held that the rule is mandatory and that the 90-day period begins to run on the date notice is received of the action taken. *Kaprow, supra*; *Riely v. Hunterdon Central High Bd. of Ed.*, 173 *N.J. Super.* 109 (App. Div. 1980); *Nissman v. Bd. of Educ. of the Twp. of Long Beach Island*, 272 *N.J. Super.* 373, 380 (App. Div.), *certif. denied* 137 *N.J.* 315 (1994). As stated by the New Jersey Supreme Court in *Kaprow, supra*, attempts to resolve a claim through negotiation with the local board of education are irrelevant. Such efforts do not negate the fact of receipt of adequate notice nor do they toll the running of the time limits for filing a petition of appeal. Furthermore, the record establishes that by letter dated October 16, 1997, Dr. Frances Lobman, Union County Superintendent of Schools, provided petitioners with a copy of *N.J.A.C. 6:24-1.1 et seq.* and explained that “[t]he procedures outlined therein are to be used for filing a petition when a person alleges that the local board of education has acted in violation of education law and the board disputes the entitlement claimed by the person.” (Petitioners’ Brief in Support of Denying Summary Decision, Document 11) That petitioners chose to write to Dr. Iliana Okum, Director, Office of Bilingual Education and Equity Issues, State Department of Education, rather than to follow the procedures for filing a petition of appeal as set forth in the copy of the regulations provided to them by Dr. Lobman does not toll the time for timely filing a petition of appeal with the Commissioner. Moreover, for the reasons well stated by the ALJ in the initial decision, the Commissioner is in full agreement with the ALJ that *Driggins, supra*, does not avail petitioners of the relief they seek.

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<sup>1</sup> The Commissioner notes for the record that transmittal of a petition to the Office of Administrative Law does not in any way signify that the petition is deemed to be timely filed pursuant to *N.J.A.C. 6:24-1.2(c)* or that a respondent is precluded from pursuing an affirmative defense of untimeliness.

Lastly, upon comprehensive review of the record, the Commissioner finds, as did the ALJ, that relaxation of the 90-day timeline is not warranted under the circumstances of the matter as it presents neither substantial constitutional issues nor issues of significant public interest. *LeMee v. Board of Education of the Village of Ridgewood*, 1990 S.L.D. 663, 672-673; *Bey v. Newark Board of Education*, 93 N.J.A.R.2d (EDU) 288.

Accordingly, the Petition of Appeal is hereby dismissed.<sup>2</sup>

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

June 1, 1999

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<sup>2</sup> This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.