

#440-06 (OAL Order http://lawlibrary.rutgers.edu/oal/html/initial/edu10535-06_1.html)

LAURIE COLES, KAREN JIMENEZ,	:	
LINDA LYNCH, DAVID MILLER AND	:	
TRACIE MILLER, PATRICIA MURPHY,	:	
TRACIE LUCARELLO, FRANK DALY,	:	
JANET CONWAY, MARIE LIPSITZ,	:	
TARA SMALLZE AND DARREN SMALLZE,	:	
ELIZABETH BEVAN, KELLY BOUSHAY,	:	
LENNY HARRIS, CYNTHIA CRESCENZO,	:	
LISA DOWNEY AND MARK DOWNEY,	:	
CHERYL BUTLER, RUSSEL KING AND	:	
PATRICIA KING, MICHAEL LAROCCHIO AND	:	
ROBIN LAROCCHIO AND LAURA DEPINTO,	:	
PETITIONERS,		
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY	:	DECISION
OF BAYONNE, HUDSON COUNTY,	:	
RESPONDENT.		:

SYNOPSIS

Petitioners challenged respondent Board's mandatory school uniform policy, which became effective September 25, 2006, and sought emergent relief for an order to declare the policy invalid. An emergent hearing was held on October 19, 2006. Respondent argued that petitioners cannot meet the criteria for emergent relief, and that the petition was untimely filed.

On November 2, 2006, the ALJ issued an Order on emergent relief, finding, *inter alia*, that the petitioners failed to timely file their claims under the 90-day rule, and sufficient justification was not demonstrated to relax the rule. The ALJ dismissed the petition.

The Commissioner found that the ALJ had conclusively resolved this matter on procedural grounds of untimeliness, notwithstanding that her decision was issued in the form of an Order. Therefore, the Commissioner treated this matter as an Initial Decision pursuant to N.J.A.C. 1:1-18.3, and afforded the parties 13 days from the date of notice of such to submit exceptions and reply exceptions. Petitioner's exceptions were subsequently late filed, and not considered in reaching a final decision. The Commissioner concurred with the ALJ that the petition was untimely, and accordingly adopted the decision of the OAL dismissing the matter.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 10535-06
AGENCY DKT. NO. 365-10/06

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The record of this matter – which included the audiotape of proceedings conducted at the Office of Administrative Law (OAL) on October 19, 2006 – and the Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, it was evident that the ALJ had conclusively resolved this matter on the procedural grounds of untimeliness of the petition, notwithstanding that her decision was issued in the form of an Order. Therefore, by letter dated November 21, 2006 – transmitted by facsimile and regular mail – the Director of the Bureau of Controversies and Disputes advised the parties that the Commissioner would be treating this matter as an Initial Decision, pursuant to *N.J.A.C. 1:1-18.3* and, as such, they would be afforded 13 days from the date of this letter to submit exceptions and reply exceptions – in accordance with

N.J.A.C. 1:1-18.4 – to the ALJ’s conclusion that this matter was untimely filed.¹ Petitioners’ exceptions – dated and filed by facsimile on December 5, 2006 – were untimely and, thus, are not considered herein.

Upon a comprehensive review of the record, the Commissioner concurs with the ALJ, for the reasons detailed on pages 4-7 of her decision, that this matter is appropriately dismissed as it was filed outside the 90-day limitation period set forth in *N.J.A.C.* 6A:3-1.3(d) and petitioners have provided no factual or legal justification which would warrant relaxation of this rule.

Even assuming, *arguendo*, that untimeliness had not barred consideration of the instant petition, the Commissioner agrees with the ALJ that petitioners’ request for emergent relief must be denied as they have failed to satisfy any of the requirements necessary for the granting of such extraordinary relief as set forth in *Crowe v. DeGioia*, 90 N.J. 126 (1982). She further agrees – again for the reasons set forth in the decision – that the collateral “as applied” claims of the LaRocco’s and Miller’s must also be dismissed. Finally, the Commissioner would decline to award any relief to parent D.G., as this individual is not a party to this matter.

Accordingly, the Commissioner adopts the decision of the OAL dismissing this matter as untimely pursuant to *N.J.A.C.* 6A:3-1.3(d). By copy of this decision, the Commissioner requests that any vestiges of this matter remaining at the OAL be returned to the Agency.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: December 8, 2006

Date of Mailing: December 8, 2006

¹ *N.J.A.C.* 1:1-12.6 makes no provision for the filing of exceptions or reply exceptions to an emergent relief Order.

² This decision 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.* 6A:4-1.1 *et seq.*