

W.V. and L.V., on behalf of minor children :
C.V. and CH.V., :
PETITIONERS, :
V. : COMMISSIONER OF EDUCATION :
BOARD OF EDUCATION OF THE : DECISION :
TOWNSHIP OF MONTVILLE, MORRIS :
COUNTY, :
RESPONDENT. :

SYNOPSIS

By petition dated April 21, 2005, petitioners appealed a November 17, 2004 determination by the respondent that C.V. and Ch. V. would not receive credit for the 2003-2004 school year because of non-compliance with the attendance policy of the Board. Respondent filed a motion to dismiss the petition based on untimeliness pursuant to *N.J.A.C.* 6A:3-1.3 (i).

The ALJ found that: letters to petitioners dated November 17, 2004 advising that their children would not be promoted constituted the notice of a final action that triggered the 90-day limitations period for filing appeals to the commissioner; the absence of petitioners' child advocate at the subsequent Board hearing concerning the children's retention did not toll the limitation of action prescribed by the ninety day rule; no basis exists to warrant relaxation or waiver of the ninety day rule, as petitioners failed to appropriately identify any substantial constitutional issue or one of fundamental public interest beyond that of concern to petitioners themselves, and failed to demonstrate that strict adherence to the ninety day rule would be inappropriate, unnecessary and result in injustice, pursuant to *N.J.A.C.* 6A:3-1.16. The ALJ thus concluded that petitioners' claim was not timely filed pursuant to *N.J.A.C.* 6A:3-1.3 (i); that the circumstances do not warrant relaxation of the ninety day rule; and that the respondent's motion to dismiss the petition should be granted.

The Commissioner concurs with the ALJ for the reasons set forth in the Initial Decision, adopts the Initial Decision as the final decision in this matter and dismisses the petition for untimeliness, emphasizing that the submission date was well in excess of the 90-day allowance for appeals and that the petitioners did not offer facts that would warrant relaxation of the "90-day rule."

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.

February 21, 2006

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed.

Upon full and independent review of the record, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioners' appeal was untimely, that there were no extraordinary circumstances that would allow relaxation of the 90-day limitation period in which appeals may be filed, and that the petition of appeal should, therefore, be dismissed.

Petitioners were notified on April 27, 2004 that C.V. and Ch.V. would be retained in their respective grades in high school because, in violation of the district's attendance policy, their absences far exceeded 10% of the total days that school was in session. (Exhibits A and D of respondent's motion to dismiss the petition.) The parties stipulated that the "parents and students were provided with notice of this policy." Included in the policy is the Board of Education's right to require verification of the reasons that are offered for student absences, and to investigate the causes of prolonged absences. (Exhibit G to respondent's motion to dismiss the petition.)

Petitioners took the matter to the district superintendent, Mary Louise Malyska, who ultimately, on November 3, 2004, notified them that they had not provided sufficient information to

serve as a basis for reversing the determination of the high school principal that the children – as a result of their absences – did not qualify for promotion to the next grade. (Exhibit B to respondent’s motion to dismiss the petition.) Malyska invited petitioners to meet with the Board of Education (Board) on November 16, 2004.

After considering the facts and analyses presented by the petitioners and the district superintendent at the November 16 meeting, the Board determined that the petitioners had not provided adequate support for exemptions from the district attendance policy. By letter dated November 17, 2004, the Board president notified petitioners of this decision. (Exhibits C and E of respondent’s motion to dismiss the petition.)

Petitioners’ appeal was dated April 21, 2005 and arrived in the Bureau of Controversies and Disputes on May 2, 2005 – over five months after the Board’s action. This is well in excess of the 90-day allowance for appeals set forth in *N.J.A.C. 6A:3-1.3 (i)*. The Commissioner agrees with the ALJ that petitioners did not offer facts that would warrant relaxation of the “90-day rule.”

The Initial Decision of the OAL is adopted as the final decision in this matter. For the reasons set forth in the Initial Decision, the petition is dismissed for untimeliness.

IT IS SO ORDERED*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 21, 2006

Date of Mailing: February 22, 2006

* 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.*