

C.G. and R.G., on behalf of minor child, R.M.G., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF BRICK, OCEAN COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

C.G. and R.G. filed a petition in March 2005 seeking reconsideration of their son’s grade of 84 in his second quarter 9th grade Honors English class (2003-2004 school year), and amended their petition in May 2005 to include reconsideration of R.M.G.’s grade of 86 in his third quarter 10th grade AP History class (2004-2005 school year). Respondent Board made a motion to dismiss for violation of the 90-day requirement provided in *N.J.A.C. 6A:3-1.3(i)*.

The ALJ found that: the petition was filed far beyond the 90-day limitation period in regard to the claim involving the 2003-2004 school year; petitioners’ explanation for the delay in filing does not justify a relaxation or tolling of the regulation; and petitioners were unable to meet their burden in proving that R.M.G.’s third quarter AP History grade in the 2004-2005 school year was assigned in an arbitrary, capricious or unreasonable manner. Accordingly, the ALJ ordered that the petition be dismissed.

Upon a thorough and independent review of the record, the Commissioner concurs with the determinations of the ALJ, and adopts the Initial Decision as the final decision in this 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.

March 24, 2006

OAL DKT. NO. EDU 2375-05
AGENCY DKT. NO. 66-3/05

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MINOR CHILD, R.M.G.,	:	
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PETITIONERS,	:	
	:	DECISION
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TOWNSHIP OF BRICK,	:	
OCEAN COUNTY,	:	
	:	
RESPONDENT.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions filed by petitioners pursuant to *N.J.A.C. 1:1-18.4*. A reply to petitioners' exceptions was untimely filed by the Board of Education (Board)¹ and is not considered herein.

In their exceptions, petitioners contend that the Administrative Law Judge (ALJ) erred in finding that relaxation of the 90-day rule was not warranted in their case. Petitioners argue that they first contacted the Department of Education well within 90 days of the action from which they appeal, but were "sent away" and told to contact the County Superintendent. They further claim that throughout numerous subsequent communications, they were led to believe that they should seek relief informally and were at no time told about any time limitation for filing a formal petition. Petitioners reiterate the personal circumstances behind their delay in filing subsequent to September 9, 2004, contending that they never slept on their rights because

¹ The reply, in response to exceptions filed on February 27, 2006, was incorporated into the Board's response (filed March 17, 2006) to the Department's advisement of the Commissioner's intent to take official notice of a document submitted with petitioners' exceptions. See note 4 below.

even during that time they continued to contact State representatives, legal advisors and the press in an effort to help their son. (Petitioners' Exceptions at 1-2)

Petitioners also except to the ALJ's finding that their son's sophomore AP History grade was properly determined and should be upheld. They reiterate their objection to class participation – and consequently class attendance – being a determining factor in such grading, contending that: such reliance is inherently unfair to students who are legitimately absent; the district has no consistent policy on this issue; and other students have been treated differently than their son. (Petitioners' Exceptions at 3-5)²

Upon careful and independent review, the Commissioner has determined to adopt the findings and conclusions of the ALJ. Even if petitioners are accorded every inference and the County Superintendent's September 9, 2004 letter is deemed the triggering event for calculating the 90-day filing period, petitioners filed their appeal well beyond the allotted time frame and the personal reasons they advance for this delay do not suffice to warrant relaxation of the rule pursuant to *N.J.A.C. 6A:3-1.16* – particularly when weighed against the rule's salutary purpose of discouraging dilatoriness and providing a measure of repose in the conduct of school affairs.³ *Farrell v. Votator Division of Chemtron Corp.*, 62 N.J. 111, 115 (1973); *Ochs v. Federal Ins. Co.*, 90 N.J. 108, 112 (1982); *Kaprow v. Berkeley Township Bd. Of Educ.*, 131 N.J. 572, 588 (1993). See also *Carol Unangst v. Board of Education of the Township of Fredon, Sussex County*, decided by the Commissioner May 1, 2003 (a showing of emotional

² Petitioners also reiterated their arguments on the merits of their claim regarding R.G.'s English grade; however, given the decision, *infra*, with respect to the timeliness of this claim, the Commissioner does not summarize that portion of petitioners' exceptions herein.

³ Contrary to the suggestion of the ALJ that this matter should not have been transmitted to the OAL because petitioners' claim was untimely on its face (Initial Decision at 4), petitioners were entitled – given the representations made in their petition – to present facts and argument as to why relaxation was warranted under the circumstances or why the 90-day rule did not apply.

stress alone, without the showing of circumstances amounting to genuine incapacity, is not enough to toll the time limit for appeal) and *W.V. & L.V., on behalf of minor children C.V. & C.H.V. v. Board of Education of the Township of Montville, Morris County*, decided by the Commissioner February 21, 2006, citing *M.N. and E.Y. on behalf of minor child K.N. v. State-Operated School District of the City of Jersey City, Hudson County, et al.*, decided by the Commissioner July 21, 2004 (attempts to resolve a claim through negotiation 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).

Moreover, petitioners cannot excuse their failure to abide by the 90-day rule by claiming that no one they contacted within the Department specifically told them about a time limitation. Initially, this argument overlooks the general presumption that appellants are charged with knowledge of the law and are not excused from its requirements by claims of ignorance. *Matter of Kovalsky*, 195 *N.J. Super.* 91, 98 (App. Div. 1984). Additionally, it is clear from C.G.'s email to the Department,⁴ to which Exhibit R-6 is in response, that C.G. was aware of the existence of rules for the filing of an appeal to the Commissioner at least as early as June 8, 2004.⁵ Finally, this matter does not present a circumstance where a *pro se* petitioner sent a letter to the Department specifically seeking to appeal a local board decision but suffered a delay in receiving information on how to file properly, *cf., J.M. and D.M., on behalf of minor*

⁴ This document was submitted by petitioners with their exceptions in violation of *N.J.A.C.* 1:1-18.4; however, because it is a public record pursuant to the Open Public Records Act, *N.J.S.A.* 47:1A-1 et seq., the Commissioner took official notice of it as necessary for proper assessment of the Department's response within the context of the issues raised in the case. Upon opportunity for party objection pursuant to *N.J.A.C.* 1:1-15.2(c), neither petitioners nor the Board objected to such notice being taken.

⁵ In their comments in response to the advisement of intention to take official notice referenced in Note 4 above, the Board offered a new document as evidence that petitioner C.G. had knowledge of the process for filing a Petition of Appeal at an even earlier date; petitioners objected to this document, contending that it was submitted in violation of *N.J.A.C.* 1:1-18.4 and that the Board was attempting to attack C.G.'s character by portraying her as "manipulative." Because the proffered document is unnecessary to reach a decision in this matter, the Commissioner declines to take notice of it.

child, J.L.M., v. Board of Education of the City of Summit, Union County, decided by the State Board of Education November 3, 1999; to the contrary, in this instance, both petitioners' communications and their actions consistently reflect a desire to have their issues addressed through alternative means notwithstanding their awareness of the administrative hearing process.⁶

With respect to R.G.'s history grade, the Commissioner finds that petitioners' have offered nothing that would enable her to disturb the fact-finding or credibility assessments of the ALJ. *N.J.S.A. 52:14B-10(c); In re Morrison*, 216 *N.J. Super.* 143, 158 (App. Div. 1987). Consequently, the Commissioner must concur with the ALJ's conclusion that the manner in which R.G.'s grade was awarded was within the lawful discretion of the board and was not arbitrary, unreasonable or otherwise improper.⁷

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL is adopted as the final decision in this matter, and the Petition of Appeal is dismissed.

IT IS SO ORDERED.⁸

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 24, 2006

Date of Mailing: March 24, 2006

⁶ In this regard, the Commissioner notes that petitioners were not "sent away" by the Department, but were provided with an alternative means of addressing their concerns in light of C.G.'s stated reluctance to file a Petition of Appeal. (Exhibit R-6, expanded version; see note 4 above)

⁷ In their exceptions on this issue, petitioners reference the Board's recent denial of their "504" and "IEP" requests and contend that their son is effectively being penalized for his medical condition (Petitioners' Exceptions at 4). Such claims, however, are beyond the scope of a contested case before the Commissioner, whose jurisdiction does not extend to requests for accommodation or special education programming based on medical needs. (Indeed, petitioners were advised at the time they filed their petition that their claim in this forum would not extend to such matters, which fell within the purview of the Office of Special Education Programs to which petitioners were directed for assistance. See Acknowledgement Notice dated March 9, 2005.)

⁸ 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.*