

J.G. on behalf of minor child, C.G., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
GALLOWAY COMMUNITY CHARTER : DECISION
SCHOOL, ATLANTIC COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner sought an order from the Commissioner to compel respondent charter school to expunge certain records from her son's school file. Respondent contended that petitioner's appeal was time-barred, having been filed on June 29, 2007, well beyond 90 days after the August 2006 letter which informed the petitioner that respondent had refused her request for expungement.

The ALJ found that: C.G.'s statements, included in the records that petitioner seeks to expunge, demonstrate conduct of such character as to constitute a continuing danger to the physical well-being of other pupils, pursuant to *N.J.S.A. 18A:37-2*; petitioner provided no evidence that respondent either acted in bad faith or did not act reasonably when compiling C.G.'s student records, nor does petitioner assert that these incidents did not occur; and petitioner should have filed her request for expungement of C.G.'s records within 90 days of August 21, 2006, but waited approximately eleven months to do so. Accordingly, the ALJ concluded that the appeal is time barred pursuant to *N.J.A.C. 6A:3-1.3(i)*, denied the petitioner's motion for partial summary decision, and dismissed the petition.

The Commissioner concurred with the ALJ that the petition is properly dismissed for failure to meet the 90 day rule, and denied petitioner's motion for partial summary decision.

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.

January 11, 2008

OAL DKT. NO. EDU 6122-07
AGENCY DKT. NO. 185-7/07

J.G. on behalf of minor child, C.G., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
GALLOWAY COMMUNITY CHARTER : DECISION
SCHOOL, ATLANTIC COUNTY, :
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This matter comes before the Commissioner by way of a “Motion for Partial Summary Disposition,” wherein petitioner, J.G., requested that most of her minor child’s (C.G.) disciplinary record be expunged. The Commissioner has reviewed the record, the Initial Decision of the Office of Administrative Law (OAL), and the parties’ exceptions and reply exceptions, and concurs with the Administrative Law Judge (ALJ) that petitioner’s appeal was not timely filed.

While C.G. was in seventh grade, he was disciplined for inappropriate behavior towards other students. Incident reports regarding the discipline, and other undated and unsigned writings describing the behavior, were put into his student file. The appeal before the Commissioner does not challenge the discipline itself, but rather demands removal of the documents describing C.G.’s behavior.

As outlined in the respondent’s brief – the better part of which was set forth in the Initial Decision – petitioner was provided with a copy of C.G.’s file, including the portions reflecting disciplinary matters, on or about July 19, 2006. She wrote to respondent on August 21, 2006, appealing “its decision to keep certain records in [C.G.’s] files.” (Exhibit E of

“Respondent’s Brief in Opposition to Petitioner’s Motion for Partial Summary Disposition.”) Respondent declined to change its position and petitioner eventually filed a petition of appeal to the Commissioner on June 29, 2007.

The respondent urged, and the ALJ agreed, that petitioner should have filed her appeal to the Commissioner concerning the records within 90 days of August 21, 2006, the date of the letter that indicated that respondent had refused petitioner’s request for expungement of the materials in C.G.’s file. The Commissioner notes, however, that on October 4, 2006, the parties executed a “Consent Order,” which was included in the record of this matter.¹ The Consent Order delineated a schedule for evaluations of C.G. after which a meeting was to take place to develop an Individual Education Program (IEP) for him; the last paragraph of the order provided that the petitioner reserved “all rights to future action with respect to any program, placement, and record issues.” (Emphasis added.) Petitioner argues that the Consent Order extended the limitations period for filing an appeal concerning C.G.’s records.

The Commissioner finds that it is not unreasonable to regard the limitations period as having been consensually extended for the time period required for the terms of the “Consent Order” to be effectuated. However, the facts show that those terms – *i.e.*, completion of evaluations and the scheduling of an IEP meeting – appear to have been accomplished before March 28, 2007, when C.G. returned to school. Thus, even if the Commissioner deemed the appeal deadline to have been deferred until after the agreed upon evaluations were completed and an IEP meeting was held, the petition was still not timely filed.

Pursuant to *N.J.A.C.* 6A:3-1.3(i), petitioners are required to file their appeals within 90-days of the action about which they complain. This limitations period was established many years ago to ensure a measure of repose in education matters. *Kaprow v. Board of Educ.*

¹ The “Order” does not appear to have been signed by the ALJ.

of Berkeley Tp., 255 N.J. Super. 76, 86 (App. Div. 1992). It has been the subject of many appeals to the courts, which have explained that an agency's construction of such a statute over a period of years without legislative interference is to be given great weight as reflecting conformity with legislative intent. Nor has the Legislature expressed any disagreement with the Commissioner's and State Board of Education's construction of the regulation. *Id.* at 87.

The general language in the last paragraph of the Consent Order cannot serve as a proper basis upon which to indefinitely defer the filing before the Commissioner of petitioner's claims. Accordingly, the Commissioner denies petitioner's motion for partial summary decision and dismisses the petition for untimeliness.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: January 11, 2008

Date of Mailing: January 11, 2008

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.*