

D.Q. on behalf of minor child S.Q., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 :
 STATE OPERATED SCHOOL : DECISION
 DISTRICT OF THE CITY OF NEWARK :
 ESSEX COUNTY. :
 _____ :

SYNOPSIS

In June 2006, at the end of her son’s sixth grade year, petitioner was notified that S.Q. would be transferred to a different school within the Newark public school system, and was given a list of eight schools to consider. Rather than select from the list provided by the district, D.Q. unilaterally enrolled S.Q. in a non-public school, asserting that all schools offered on the list were classified as schools in need of improvement. S.Q. began attending the non-public school in September 2006. On May 12, 2008, D.Q. filed the instant petition seeking, *inter alia*, reimbursement for tuition and other fees related to S.Q’s education at St. Benedict’s Preparatory School during his seventh, eighth and ninth grade years. Respondent board filed 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, *inter alia*, that: the 90-day filing period pursuant to *N.J.A.C.* 6A:3-1.3(i) commenced on June 23, 2006, when the respondent Board notified petitioner that her son would be transferred to a different school; petitioner’s actions in attempting to contact the school principal and requesting her son’s school records prior to her filing of the instant petition were not sufficient to put the respondent on notice that she was contesting her son’s transfer; and petitioner has not set forth a compelling reason to relax the 90-day rule. Accordingly, the ALJ concluded that the petition should be dismissed as untimely.

The Commissioner concurred with the ALJ that the petitioner’s appeal was untimely, and dismissed the petition.

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 21, 2009

OAL DKT. NO. EDU 7544-08
AGENCY DKT. NO. 131-5/08

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This petition – demanding reimbursement of tuition expenses for the private school education of petitioner’s minor child – was adjudicated in the Office of Administrative Law (OAL) by way of motion for summary disposition. The grounds for respondent’s motion were its contentions that 1) petitioner had failed to institute her appeal within the time allowed by *N.J.A.C. 6A:3-1.3(i)*, and 2) there is no legal authority to support petitioner’s claim that her minor child had a right to attend Mount Vernon Elementary School (MVES).

The Administrative Law Judge (ALJ) found that petitioner’s claim was time-barred, and did not address respondent’s substantive arguments. After thorough and independent review of the record and Initial Decision, the Commissioner concurs that petitioner’s appeal was untimely, rendering unnecessary an evaluation of the merits of the controversy.

Petitioner timely filed exceptions.¹ First, she alleges that the date upon which she received the district’s notice – that S.Q. could not attend MVES and that she would have to pick another school from a list provided to her – was not June 23, 2006, but rather July 7, 2006. This contention does not help petitioner, since her appeal was untimely regardless of which of the two days is used as the operative date.

Petitioner similarly asserts that the submission of her appeal was delayed because of respondent’s failure to provide her with S.Q.’s school records. This argument is also without

¹ Although represented in the OAL by an attorney, petitioner filed the exceptions *pro se*.

merit because, as the ALJ explained, even if the date petitioner allegedly received S.Q.'s school records – *i.e.*, June 18, 2007 – is used as the trigger for the regulatory limitations period for filing an appeal, her appeal was still untimely. Furthermore, her possession *vel non* of S.Q.'s school records would have had no bearing on her ability to enroll S.Q. in a public school. *See, e.g. N.J.A.C. 6A:16-7.10.*

In her exceptions petitioner also complains that the respondent district did not, within ninety days after its notice about S.Q.'s school change, resolve the matter. The Commissioner notes, however, that the ALJ correctly addressed this issue by citing authority which holds that settlement talks and other attempts at amicable resolutions of controversies are independent of the limitations period for filing appeals, and do not mitigate an appellant's duty to file a petition within 90 days of notice of a potentially detrimental action.

Finally, petitioner alleges in her exceptions that she and S.Q. were harassed by administrators in the school district. The record does not support that contention and, assuming *arguendo* that the allegation was true, it would not bear upon the untimeliness of petitioner's appeal.

The Initial Decision dismissing the petition is adopted as the final decision in this matter.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: January 21, 2009

Date of Mailing: January 21, 2009

* This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36.*