

NICHOLAS BROPHY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF GLOUCESTER,
CAMDEN COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – now an adult – filed an appeal in June 2011 which sought a determination that he is eligible to graduate from high school. The Board asserted that petitioner failed to attain a 92% attendance rate for the 2009-2010 school year – which was required as part of his individualized program plan – and therefore does not have enough credits to graduate. The Board filed a motion for summary decision, contending that the petition was not timely filed pursuant to *N.J.A.C. 6A:3-1.3(i)*.

The ALJ found that: there are no genuine issues of material fact, and the matter is ripe for summary judgment; petitioner was notified in July 2010 that he would not be receiving any credit for the 2009-2010 academic year because he did not meet the attendance goal set forth in his individualized program plan for 2009-2010; petitioner did not file his appeal of this determination until June 2011, eleven months after he received notification that he did not have enough credits to graduate; petitioner has failed to show that the Board’s decision was arbitrary, capricious or unreasonable; petitioner filed his appeal well beyond the ninety-day time period set forth in *N.J.A.C. 6A:3-1.3(i)*; and, therefore, the petition is time-barred. The ALJ granted the Board’s motion for summary decision, and dismissed the petition.

The Commissioner rejected the Initial Decision of the ALJ and remanded the matter to the OAL for a full hearing on the merits or other such proceedings to resolve the issues. In so determining, the Commissioner relaxed the 90-day timeframe in the interest of fundamental fairness, and found that the matter is not ripe for summary decision as there are material facts still in dispute.

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 18, 2012

OAL DKT. NO. EDU 6740-11
AGENCY DKT. NO. 150-6/11

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The Commissioner has reviewed the record of this matter and the Initial Decision of the Office of Administrative Law (OAL) on the Board's motion for summary decision. No exceptions were filed by either party as provided by *N.J.A.C.* 1:1-18.4.

Upon his considered review, the Commissioner has determined that this matter is not ripe for for summary decision since there are material facts still in dispute. Further, in the interest of fundamental fairness, he has also decided to relax the 90-day timeframe in which to file the within petition. Consequently, the Commissioner hereby rejects the Initial Decision of the Administrative Law Judge and remands the matter to the OAL for adjudication.

Accordingly, the Commissioner hereby returns the matter to the OAL for a full hearing on the merits or other such proceedings to resolve the issues.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 18, 2012

Date of Mailing: January 19, 2012

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).