

T.R. and T.R., on behalf of minor child, E.R., :  
PETITIONERS, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
BRIDGEWATER-RARITAN REGIONAL :  
SCHOOL DISTRICT, SOMERSET :  
COUNTY, :  
RESPONDENT. :  
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SYNOPSIS

The petitioning parents challenged the determination of the respondent Board that conduct that was directed at their daughter, E.R., by a fellow student during the 2011-12 school year did not constitute a violation of the New Jersey Anti-Bullying Bill of Rights. At a public hearing on August 28, 2012, the Board reaffirmed its determination that the conduct in question did not constitute bullying or retaliation (HIB), and subsequently sent petitioners a letter informing them of this final decision. Petitioners received this letter sometime between August 29 and September 1, 2012. The within petition was filed on November 27, 2012, and perfected on December 6, 2012. Respondent Board filed a motion for summary decision, contending that the petition was late-filed pursuant to *N.J.A.C. 6A:3-1.3(i)*.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioners’ appeal was filed ninety-one days after the statutory period for the filing of petitions set forth in *N.J.A.C. 6A:3-1.3(i)*, and is therefore time-barred; even assuming that the statutory period did not start to run until September 1, 2012, the facts in this matter mirror the facts in *DeMario v New Jersey State Board of Examiners*, Commissioner’s Decision No. 198-12, decided May 11, 2012, wherein the petitioner did not perfect his appeal for three months after the ninety day limit had passed; in the case at bar, petitioners did not perfect their submission until December 6, 2012; petitioners offered no justification for the delay in filing; and there is no basis to relax the rule under the circumstances of this matter. Accordingly, the ALJ concluded that the respondent Board’s motion to dismiss must be granted as petitioners “clearly and plainly violated the ninety day rule”.

Upon review, the Commissioner rejected the ALJ’s determination that the petition was late filed, finding that the triggering event for the 90-day timeline arose on August 31, 2012 when the petitioners received the letter denying their appeal of the HIB determination, and the facts in this matter do no mirror *DeMario, supra*; the case is therefore not relevant to a determination of timeliness in the instant matter. Accordingly, the Commissioner rejected the Initial Decision and remanded the matter to the OAL for a hearing on the merits.

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| <p>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.</p> |
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July 22, 2013

OAL DKT. NO. EDU 66-13  
AGENCY DKT. NO. 355-12/12

T.R. and T.R., on behalf of minor child, E.R., :  
PETITIONERS, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
BRIDGEWATER-RARITAN REGIONAL :  
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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioners and the Board of Education's (Board) reply thereto.

The petitioners take exception to the Administrative Law Judge's (ALJ) determination that the petition of appeal was filed outside the 90-day statute of limitation period. The petitioners maintain that they received the Board's letter denying their challenge to the Board's Harassment, Intimidation and Bullying (HIB) determination on August 31, 2012, and on November 27, 2012 they filed a petition with the Commissioner challenging the Board's action before the expiration of the 90-day period. The petitioners further state that after they received a letter from the Department of Education (Department) indicating that there were various deficiencies in the petition that needed to be cured, they promptly addressed those deficiencies and returned the information to the Department on December 6, 2012.

In its exceptions, the petitioners contend that the ALJ erred by finding that the 90-day period began to run on August 28, 2012, when the Board voted on the petitioners' challenge to the HIB determination during the public meeting. The petitioners maintain that they were not present during the Board's vote and, as a result, it was not until they actually received the Board's

final decision on the HIB investigation – on August 31, 2013 – that the 90-day period began to run. Additionally, the petitioners contend that they could not have received notice of the Board’s decision at the August 28, 2012 board meeting because there were several matters being voted on by the Board and – since names were not used by the Board – the petitioners did not have the ability to receive the required notification. The petitioners stress that *N.J.A.C. 6A:3-1.3(i)* states that a petition must be filed no later than the 90<sup>th</sup> day from the **receipt** of the notice of a final order.

The petitioners also contend that the ALJ improperly compared this case to *DeMario v New Jersey State Board of Examiners*, Commissioner’s Decision No. 198-12, decided May 11, 2012, because in that case after the initial filing was deemed incomplete it took the petitioner three months to cure the deficiencies. Here, the petitioners stress that as soon as they received the letter from the Department indicating that they needed to cure certain deficiencies, they promptly completed the required paperwork in less than 48 hours. Finally, the petitioners contend that although they believe the petition was timely filed, if the Commissioner determined that the petition was out of time, the 90-day rule should be relaxed due to the safety and well being of the minor and the Board’s repeated and continual acts of noncompliance with the HIB statute.

In reply, the Board urges the adoption of the Initial Decision dismissing the petition as untimely, arguing that the petitioners’ exceptions fail to establish supporting reasons sufficient to merit reversal or modification. First, the Board maintains that the petitioners had the opportunity to receive immediate notice of the Board’s decision at the August 28, 2012 meeting but they voluntarily decided to forego that opportunity. As a result, the 90-day period began to run on August 28, 2012 – not when the petitioners received written notice of the Board’s decision.

Alternatively, the Board asserts that even if the date when the petitioners received the decision on August 31, 2012 began the 90-day time frame, the petition was still not filed on or before November 29, 2012 in compliance with *N.J.A.C. 6A:3-1.3(i)*. The Board contends that the petitioners misinterpreted the letter from the Department that stated if the necessary filings were

timely submitted, November 27, 2012 would be deemed the filing date. The Board argues that this letter did not toll or suspend the limitations period and the petitioners were still obligated to provide all the necessary information by November 29, 2012. The Board maintains that by attempting to file their incomplete petition within two days of the deadline, petitioners voluntarily assumed the risk that it might fail to comply with the requirements of *N.J.A.C. 6A:3-1.1*, and that the 90-days might expire before they were able to correct the deficiencies. Finally, the Board argues that the 90-day rule should not be relaxed in this case because the petitioners have failed to present any circumstances that might justify a finding that strictly adhering to the 90-day rule would result in injustice.

Upon a comprehensive review of this matter, the Commissioner rejects the ALJ's determination that the petition of appeal was time barred under *N.J.A.C. 6A:3-1.3(i)*. Pursuant to *N.J.A.C. 6A:3-1.3(i)*, a petition must be filed "no later than the 90<sup>th</sup> day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party or agency, which is the subject of the requested contested case hearing." Guidance as to what constitutes notice sufficient to trigger the running of this regulatory provision was provided by the Supreme Court in *Kaprow v. Board of Education of Berkeley Tp.*, 131 *N.J.* 572 (1993). In *Kaprow, supra*, the Court found that adequate notice of a final order is one which is "sufficient to inform an individual of some fact that he or she has a right to know and that the communicating party has a duty to communicate." *Kaprow* at 587. The Court also examined the underlying purpose of the limitations period and the concept of adequate notice, stating:

the notice requirement should effectuate concerns for individual justice by not triggering the limitations period until the [affected persons] have been alerted to the existence of facts that may equate in law with [their] cause of action... At the same time, [the notice] should further considerations of repose by establishing an objective event to trigger the limitations period in order "to enable the proper and efficient administration of the affairs of government." *Id.*

With these tenants in mind, the Commissioner finds that the triggering event for the 90-day filing timeline arose on August 31, 2012 when the petitioners received the Board's letter denying their appeal of the HIB determination. The Commissioner is not persuaded that the board meeting on August 28, 2012, where the petitioners' claims relating to the HIB investigation were voted on by the Board, is the trigger date for the 90-day rule. The petitioners were not in attendance at the meeting when the Board voted on their HIB challenge, and thus they did not receive final notice of the Board's decision until they received the Board's letter on August 31, 2012.<sup>1</sup> Further, the date that the petitioners received the Board's letter stating its final decision on the HIB determination satisfies the goal of an objective triggering event contemplated by *Kaprow, supra*. As a result, in order to comply with *N.J.A.C. 6A:3-1.3(i)*, a petition of appeal challenging the Board's decision was required to be filed by November 29, 2012.

It is undisputed that the petitioners filed their original papers with the Department on November 27, 2012. There were certain deficiencies with the petition, and as a result the petitioners were sent a letter from the Department – dated November 29, 2012 – outlining the additional information that needed to be provided. Additionally, the letter stated, “[i]f the necessary filings are timely submitted, November 27, 2012 will be deemed the filing date of the appeal.” The Department timely received the additional information from the petitioners on December 6, 2012. Therefore, the Commissioner finds that the filing date of the petition of appeal is November 27, 2012 and it was within the 90-day period required under *N.J.A.C. 6A:3-1.3(i)*.

Moreover, contrary to the ALJ's determination, the Commissioner finds that the facts in this case do not mirror the facts in *DeMario, supra*, where the petition of appeal was found to be untimely under *N.J.A.C. 6A:3-1.3(i)*. In that case, the petitioner received a similar letter from the Department indicating that his March 2, 2010 petition – that was filed eight days before the 90-day

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<sup>1</sup> The Commissioner does not deem it necessary for purposes of the 90-day rule to evaluate whether or not the petitioners were obligated to stay at the August 28, 2012 board meeting to ascertain the outcome of the board's vote.

deadline – contained certain deficiencies. The petitioner was advised that if the additional information was timely filed, the date of the original submission would be deemed the filing date. The petitioner then waited approximately three months – until June 7, 2010 – to submit a perfected petition. Unquestionably, there is a significant difference between curing the deficiencies in a few days – like the petitioners did in this case – as opposed to waiting three months. As a result, the holding in *DeMario, supra*, is not relevant to a determination of timeliness in the case at bar.

Accordingly, the Initial Decision is rejected, and this matter is hereby remanded to the OAL for a hearing on the merits.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: July 22, 2013

Date of Mailing: July 22, 2013

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<sup>2</sup> Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.