

New Jersey Commissioner of Education
Final Decision

J.B. on behalf of minor child R.B.,

Petitioner,

v.

Board of Education of the Bergen County
Vocational Technical School District,
Bergen County,

Respondent.

Synopsis

In July 2019, J.B. filed a petition on behalf of his daughter, R.B., against the respondent Board, alleging, *inter alia*, that R.B.'s religious observance prevented her from competing academically with classmates, and also alleged that the Board failed to make accommodations for his daughter's religious observance in violation of Board policy; further, petitioner claimed that a 2017 response from R.B.'s guidance counselor in which he allegedly asked "what's more important to you, your religion or your schoolwork," constituted an act of harassment, intimidation, or bullying (HIB) in violation of the New Jersey Anti-Bullying Bill of Rights Act (ABRA), *N.J.S.A.* 18A:37-13 et seq. Petitioner asserted that he was notified by petitioner on August 6, 2018 that the Board did not investigate petitioner's claims under the ABRA. The Board filed a motion to dismiss in lieu of an answer, arguing, *inter alia*, that the petition was filed outside of the time limit for filing an appeal, which is set forth in *N.J.A.C.* 6A:3-1.3(i). The matter was transmitted to the OAL on August 7, 2019 as a contested case.

The ALJ found, *inter alia*, that: J.B. is the father of R.B., who is now nineteen years old and a full-time, out of state college student; the incidents that petitioner alleges violate Board policy and State law occurred during the 2016-17 school year; the date on which J.B. was notified that the Board did not investigate his HIB complaint was August 6, 2018; petitioner did not file his petition until July 16, 2019, more than a year after R.B. graduated from the school district; pursuant to *N.J.A.C.* 6A:3-1.3(i), a petitioner shall file a petition no later than the 90th day from the date of receipt of a final order, ruling, or other action by the district board of education that is the subject of the case; and petitioner's argument that negotiations with the Board after R.B.'s graduation toll the 90-day limitation period is without merit. The ALJ concluded that the case was untimely filed. Accordingly, the ALJ granted the Board's motion to dismiss the case.

Upon review, the Commissioner concluded that the record of this matter does not contain sufficient information to render a decision; accordingly, the case was remanded the case to the OAL for supplementation of the record and further proceedings consistent with the Commissioner's 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.

December 17, 2019

New Jersey Commissioner of Education
Final Decision

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Petitioner,

v.

Board of Education of the Bergen County
Vocational Technical School District,
Bergen County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner pursuant to *N.J.A.C.* 1:1-18.4, and the reply thereto by the respondent have been reviewed.

This matter involves a harassment, intimidation, and bullying (HIB) complaint made by a parent. The Administrative Law Judge (ALJ) granted the respondent's motion to dismiss on the basis that the petition was untimely, as it was filed more than 90 days after the notification to the petitioner that the Board of Education did not investigate his complaint. The ALJ further found that subsequent communications between the parties were in the nature of negotiations that did not toll the limitations period. The ALJ did not reach the other issues raised by the respondent in its motion to dismiss, including standing and mootness.

In his exceptions, petitioner argues that the final order of the board of education was not the letter dated August 6, 2018, which he characterizes as the superintendent's "initial position" concerning his allegations. He contends that an investigation occurred, at the

superintendent's direction, sometime after December 10, 2018. He states that the petition included allegations regarding incidents that took place in February and March 2019, which could not have been addressed by the August 2018 letter. Finally, he argues that he could not have filed his petition until he pursued his rights at the lower level, which included an appearance at a Board meeting on March 26, 2019 to appeal the superintendent's determination, and the Board's subsequent decision dated April 16, 2019. According to petitioner, the April 16, 2019 letter is the final order of the Board that triggered the 90-day deadline.

In reply, the Board argues that it was reasonable for the ALJ to rely on the petition, in which petitioner admitted that he was on notice on August 6, 2018 that the investigation had been completed. The Board further contends that the April 16, 2019 letter should be disregarded because it was not submitted in evidence and, even if it is considered, the letter was an attempt to resolve the petitioner's concerns through negotiation, which does not toll limitations period.

Upon review, the Commissioner concludes that the record does not contain sufficient information to render a decision. Neither the August 6, 2018 nor the April 16, 2019 letter is part of the record, and the representations made in the filings regarding the content of the letters and the identity of the parties making any decisions outlined in those letters are inconsistent and unclear. The Anti-Bullying Bill of Rights provides that a superintendent's decision shall be reported to and affirmed, rejected, or modified by the board of education, with the board's decision being appealable to the Commissioner. *N.J.S.A.* 18A:35-17. While the petitioner admits to having received the August 6, 2018 letter, the petition indicates that the letter

was sent by the superintendent, a fact that the Board does not appear to contest. Therefore, it is not clear from the current record when, if at all, the Board issued its decision.¹

Accordingly, this matter is remanded to the OAL for further proceedings consistent with this decision.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: December 17, 2019
Date of Mailing: December 18, 2019

¹ Furthermore, there are insufficient facts in the record for the Commissioner to reach a decision regarding the remaining issues raised in respondent's motion to dismiss. For example, it is unclear what violations of the Anti-Bullying Bill of Rights, if any, petitioner is asserting on his own behalf.

² 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*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 10790-19

AGENCY DKT. NO. 169-7/19

J.B. ON BEHALF OF MINOR CHILD R.B.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE BERGEN
COUNTY VOCATIONAL TECHNICAL
SCHOOL DISTRICT OF BERGEN COUNTY.**

Respondent.

J.B., petitioner, pro se

William C. Soukas, Esq., for respondent (Nowell, P.A., attorneys)

Record Closed: October 28, 2019

Decided: November 12, 2019

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

STATEMENT OF THE CASE

On August 6, 2018, respondent notified petitioner that it would not investigate his complaint for “harassment, intimidation, and bullying” (HIB) under the New Jersey Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13, et seq. On July 16, 2019, petitioner filed a petition appealing that determination. Should this case be dismissed? Yes. Under

N.J.A.C. 6A:3-1.3(i), a petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education that is the subject of the case.

PROCEDURAL HISTORY

On July 16, 2019, petitioner, J.B. filed a petition with the Department of Education, Office of Controversies and Disputes, on behalf of his daughter R.B., against respondent, the Board of Education of the Bergen County Vocational Technical School, Bergen County, New Jersey. In his petition of appeal, petitioner alleges that his daughter's religious observance prevented her from competing academically with her classmates, and that respondent failed to make an accommodation for his daughter's religious observance in violation of Board policy. Petitioner also alleges two specific instances in which an accommodation was not made for two specific assignments. Finally, petitioner alleges that the response by his daughter's guidance counselor, a Mr. Natelli, around October 11, 2017, namely, "what's more important to you, your religion or your schoolwork," constitutes a violation of the New Jersey Anti-Bullying Bill of Rights Act (ABRA), N.J.S.A. 18A:37-13, et seq., which respondent notified petitioner on August 6, 2018, that it did not investigate.

On August 5, 2019, respondent filed a motion to dismiss instead of an answer under N.J.A.C. 6A:3-1.5.

On August 7, 2019, the Office of Controversies and Disputes transmitted the case to the Office of Administrative Law as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On August 19, 2019, petitioner filed his opposition to the motion; on October 18, 2019, a prehearing telephone conference was held; and on October 28, 2019, respondent advised that it would not file a response.

Neither party requested oral argument.

FINDINGS OF FACT

Based upon the documents submitted in support of and opposition to the motion, I **FIND** the following as **FACT** for purposes of this motion to dismiss:

J.B. is the father of R.B. R.B. was born on January 16, 2000, and is now nineteen years old. R.B. is enrolled as a full-time student at the University of Pittsburgh. The incidents petitioner alleges violate Board policy and State law occurred during the 2016–17 school year, and the date on which J.B. was notified that the Board of Education did not investigate his complaint for HIB was August 6, 2018. Finally, J.B. is not a lawyer licensed to practice law in this state, and no evidence exists that R.B. authorized him to represent her in any capacity in this case.

CONCLUSIONS OF LAW

Respondent argues that this case should be dismissed for three reasons. First, respondent argues that petitioner, J.B., lacks standing because his daughter, R.B., is no longer a minor, and that the administrative rules of procedure do not allow a non-lawyer, such as J.B., to represent a litigant in this case. Second, respondent argues that the case is moot. Third, respondent argues that petitioner filed his petition out of time.

Petitioner argues in opposition that he has standing to file the petition as a parent, that he and his daughter continue to be adversely affected by the alleged incidents, and that the issues in this case are too important to be dismissed.

Under N.J.A.C. 6A:3-1.3(i), a petitioner shall file a petition no later than the 90th 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 that is the subject of the case. As case law makes clear, such a time limitation confers due process, is both meaningful

and reasonable, and provides finality in education matters, which negotiations do not toll. Kaprow v. Bd. of Educ. of Berkeley Twp., 131 N.J. 572, 583–88 (1983). As such, this time limitation has long withstood challenge. See, e.g., Nissman v. Bd. of Educ. of Long Beach Island, 272 N.J. Super. 373, 381–82 (App. Div. 1994), certif. denied, 137 N.J. 315 (1994) (where the court stated that the time limitation is not inherently arbitrary or capricious, and to rule otherwise would deprive district boards of education the security of the rule). Moreover, negotiations do not toll this time limitation. See, e.g., Giannetta et al. v. Bd. of Educ. of Egg Harbor, No. #147-05, Comm’r Decision (April 25, 2005), <https://www.nj.gov/education/legal/commissioner/> (where the Commissioner of Education explicitly stated, citing Kaprow, 131 N.J. at 588, that attempts to resolve a claim through negotiation with a board of education do not negate receipt of adequate notice or toll the running of the time limitation).

In this case, the incidents petitioner alleges violate Board policy and State law occurred during the 2016–17 school year, and the date on which J.B. was notified that the Board of Education did not investigate his complaint for HIB was August 6, 2018, but petitioner did not file his petition until July 16, 2019, more than a year after his daughter graduated from the school district. Petitioner argues that respondent’s negotiations after graduation somehow toll the 90-day time limitation, but as case law explains, such negotiations do not toll this time limitation and would otherwise thwart the purpose of the rule. Accordingly, the law required petitioner to have filed his claim on time, within 90 days from August 6, 2018, and negotiate its resolution later, not on July 16, 2019, nearly a full year later when R.B. is no longer in school. Therefore, I **CONCLUDE** that this case is out of time, that the motion to dismiss should be granted, and that this case should be dismissed.

Since I have concluded that this case is out of time and should be dismissed, I need not address the other two arguments respondent presented in support of its motion to dismiss.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the motion to dismiss is hereby **GRANTED** and that this case is hereby **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days, and unless such time limit is otherwise extended, this recommended decision shall become a final decision under N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 12, 2019

DATE



BARRY E. MOSCOWITZ, ALJ

Date Received at Agency: November 12, 2019

Date Mailed to Parties:

dr