

**New Jersey Commissioner of Education**  
**Final Decision**

H.D. and D.D., on behalf of minor child, L.D.,

Petitioners,

v.

Board of Education of the Borough of  
Woodcliff Lake, Bergen County,

Respondent.

**Synopsis**

Petitioners appealed the respondent Board’s determination that their minor child, L.D., committed an act of harassment, intimidation and bullying (HIB) in violation of New Jersey’s Anti-Bullying Bill of Rights Act (Act), *N.J.S.A.* 18A:37-13 *et seq.* The Board’s HIB determination stemmed from an incident in January 2020 wherein L.D. was accused of making a racial comment toward a fellow fifth grader. An administrative hearing was requested by an attorney for the petitioners, and held on March 5, 2020. Thereafter, on March 6, 2020, the Board’s written decision upholding the finding of HIB was delivered to petitioners. The within petition of appeal was not filed until July 2020. The Board filed a motion for summary decision, arguing that the petition is time-barred pursuant to *N.J.A.C.* 6A:3-1.2(i), which requires petitions to be filed no later than 90 days from the date of receipt of the action that is the subject of the case. The petitioners opposed the motion.

The ALJ found, *inter alia*, that: there is no genuine issue as to any material fact here, and the case is ripe for summary decision; under *N.J.A.C.* 6A:3-1.3(i), a petitioner shall file a petition 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 that is the subject of the case; and petitioners’ argument that the timeframe in this matter must be relaxed given the exceptional circumstances of the COVID-19 epidemic is without merit. Accordingly, the ALJ concluded that petitioners did not file a timely appeal of the Board’s HIB decision, and consequently declined to address the substantive issues in this case.

Upon an independent review – and finding petitioners’ exceptions to be unconvincing – the Commissioner concurred with the ALJ’s determinations and adopted the Initial Decision of the OAL as the final decision in this case. The petition was dismissed.

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.

November 2, 2020

**New Jersey Commissioner of Education**  
**Final Decision**

H.D. and D.D., on behalf of minor child,  
L.D.,

Petitioners,

v.

Board of Education of the Borough of  
Woodcliff Lake, 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 Board have been reviewed and considered.

This matter involves a harassment, intimidation, and bullying (HIB) complaint made by another student against petitioners' minor child, L.D. The Administrative Law Judge (ALJ) granted the Board's motion to dismiss on the basis that that the petition was untimely because it was filed more than 90 days after the Board's decision finding that L.D. had committed an act of HIB.

In their exceptions, petitioners argue that their attorney was not served with a copy of the Board's decision. Petitioners include a certification stating that due to the COVID-19 pandemic, they were delayed in sending a copy of the Board's decision to their attorney until April 3, 2020. Petitioners also contend that the 90-day timeline should be relaxed in the interest of justice, because the case raises constitutional issues that should be evaluated on the merits.

In reply, the Board argues that it had no knowledge that petitioners were represented by counsel, as they appeared at the Board hearing the day before the decision was issued without

counsel and indicated that they had elected to proceed without counsel. The Board also asserts that there is no evidence to support relaxing the 90-day timeline.<sup>1</sup>

Upon review, the Commissioner concurs with the ALJ that the petition is time-barred pursuant to *N.J.A.C. 6A:3-1.2(i)*, which requires petitions to be filed no later than 90 days from the date of receipt of the action that is the subject of the case. The Board's decision was issued on March 6, 2020, and the petition of appeal was not filed until July 2, 2020. The Anti-Bullying Bill of Rights Act does not require that the Board's decision be served on counsel for the parents of the students at issue. Furthermore, while the Commissioner recognizes the difficulties many individuals have faced due to the COVID-19 pandemic and understands that petitioners may have been delayed in sending a copy of the decision to their attorney as a result, petitioners admit that they forwarded the decision to their attorney on April 3, 2020, two months before the 90-day timeline expired on June 4, 2020.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition is hereby dismissed.

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

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 2, 2020  
Date of Mailing: November 6, 2020

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<sup>1</sup> The Board's reply also includes substantive arguments regarding the HIB decision. As the Commissioner has determined to dismiss this matter for failure to timely file, he does not reach the substantive HIB issues alluded to in petitioner's exceptions and more explicitly argued in the Board's reply.

<sup>2</sup> 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**

**DISMISSAL**

OAL DKT. NO. EDU 06602-20  
AGENCY DKT. NO. 153-7/20

**H.D. & D.D. ON BEHALF OF L.D.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE BOROUGH  
OF WOODCLIF LAKE, BERGEN COUNTY,**

Respondents.

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**Phoung Dao**, Esq. for petitioners

**Jeffrey R. Merlino**, Esq., for respondent Borough of Woodcliff Lake (Sciarrillo,  
Cornell, Merlino, McKeever & Osborne, LLC)

Record Closed: September 10, 2020

Decided: September 17, 2020

BEFORE **KIMBERLY A. MOSS**, ALJ:

Petitioner challenges the Borough of Woodcliff Lakes Board of Education's (Board or respondent) determination that minor child L.D. committed an act of Harassment, Intimidation and Bullying (HIB).

A petition challenging the Board's HIB determination was filed with the Office of Administrative Law (OAL) on July 8, 2020. Respondent filed a motion for summary

decision on September 4, 2020. Petitioner filed opposition to the motion on September 10, 2020.

### **FACTUAL DISCUSSION**

Having reviewed the supporting documents submitted by both sides I **FIND** the following to be the **FACTS** of this matter:

On January 15, 2020, L.D was a fifth-grade student in Woodcliff Lakes Public Schools. On that date a parent of one of the students complained that L.D. committed an act of HIB against the parent's daughter. L.D. was accused of making a racial comment that her daughter was a poor African. An investigation was conducted which confirmed HIB based on race/skin color. On or about January 16, 2020, petitioners were informed of the HIB investigation. On January 24, 2020, petitioners were informed the investigation determined that the incident with L.D. was an HIB incident.

On or about February 12, 2020, the law firm of Dao Law LLC sent a letter to Lauren Barbelet, Superintendent of Woodcliff Lake Public Schools that petitioners requested an administrative hearing, which was held on March 5, 2020. On or about March 6, 2020, respondent delivered the Board's written decision denying the appeal to petitioners. Petitioners were advised in the letter that they could appeal the Board's decision to the Commissioner of Education no later than ninety days after the Board's decision. Petitioner forwarded the March 6, 2020, letter from the Board denying their appeal to their attorney on April 3, 2020. Petitioners filed an appeal with the Commissioner of Education on June 29, 2020.

### **LEGAL DISCUSSION AND CONCLUSIONS**

The Commissioner has specifically addressed the time in which a petitioner must initiate a contested case for the Commissioner's determination of a controversy or dispute arising under the school laws.

N.J.A.C. 6A:3-1.3(i) requires that:

The 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, which is the subject of the requested contested case hearing.

Such a rule represents a fair and reasonably necessary requirement for the proper and efficient resolution of disputes under the school laws and falls within the scope of authority granted to the Commissioner. Kaprow v. Bd. of Educ. of Berkeley Twp., 131 N.J. 572, 582 (1993). The limitation period gives school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after ninety days. Ibid. Its purposes are to stimulate litigants to pursue a right of action within a reasonable time so that the opposing party may have a fair opportunity to defend and to penalize dilatoriness and serve as a measure of repose by giving security and stability to human affairs. Id. at 587.

The ninety-day requirement is to be strictly construed and is mandatory. Wise v. Bd. of Educ. of the City of Trenton, EDU 160-00, Comm'r (September 11, 2000), aff'd, State Bd. of Educ. (January 3, 2001), <<http://lawlibrary.rutgers.edu/oal/search.html>>. A petitioner must file a petition within ninety days from a notice of adverse action and not within ninety days of her exhaustion of other avenues and mechanisms she might have employed in seeking renewal of employment. Id. Informal attempts to resolve a dispute do not serve to toll the statute of limitations. See Kaprow supra at 588. Also, the ninety-day period for filing a petition of appeal commences when a petitioner learns of facts that would enable her to file a timely claim. Id. at 587. "Adequate notice must be 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." Ibid. (citation omitted).

N.J.A.C. 6A:3-1.13 states:

The rules in this chapter shall be considered general rules of practice to govern, expedite and effectuate the procedure before, and the actions of the Commissioner in connection with, the determination of controversies and disputes under the school laws. Where such rules do not reflect a specific statutory requirement or an underlying rule of the OAL, they may be relaxed or dispensed with by the Commissioner, in the Commissioner's discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

Respondent knew that petitioners had counsel, and respondent did not copy petitioners' counsel of its decision. However, petitioners were informed of the Board's

decision to deny their appeal on or about March 6, 2020. Petitioners informed their attorney of the Board's denial of their appeal on April 3, 2020.

Petitioner argues that N.J.A.C. 6A:3-1.3(i) (the 90-day rule) should be relaxed in accordance with N.J.A.C. 6A:3-1.16. N.J.A.C. 6A: 3-1.3(i) is to be strictly construed. It clearly states the petitioner **shall** file a petition no later than the 90th day. The fact that petitioner's attorney was not noticed by the Board is not an exceptional circumstance because petitioners were noticed by the Board on or around March 6, 2020.

Petitioner argues that the Covid 19 pandemic is an exceptional circumstance requiring the 90-day rule to be relaxed. Petitioner did not provide a certification or any information specifically as to how the pandemic affected them to cause a relaxation of the 90-day rule.

I **CONCLUDE** petitioner did not file a timely appeal of the Board's HIB decision. Since the appeal was not timely filed, I will not address the substantive portion of the motion.

### **ORDER**

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 in accordance with 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.

September 17, 2020



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DATE

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**KIMBERLY A. MOSS, ALJ**

Date Received at Agency:

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September 17, 2020

Date Mailed to Parties:

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September 17, 2020

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