

**New Jersey Commissioner of Education**

**Final Decision**

L.R. and S.R., on behalf of minor child, U.R.,

Petitioners,

v.

Board of Education of the Village of  
Ridgewood, Bergen County,

Respondent.

**Synopsis**

Petitioners contended that the Board of Education of the Village of Ridgewood (Board) improperly failed to perform a harassment, intimidation, and bullying (HIB) investigation concerning an alleged May 9, 2019 incident which allegedly targeted U.R. while she was enrolled as a student in Ridgewood schools. The petitioners filed the within appeal on March 9, 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 ALJ found, *inter alia*, that: there is no genuine issue as to any material fact here, and the case is ripe for summary decision; pursuant to *N.J.S.A. 18A:37-15b(6)(d)*, after an initial investigation and preliminary determination of a HIB complaint, a parent or guardian may request a hearing before a school board, which must be heard within ten days of the request; in responding to an HIB complaint, a board of education must issue a written decision affirming, rejecting, or modifying a superintendent's decision, which the parents/guardians then have ninety days to appeal to the Commissioner of Education, *N.J.S.A. 18A:37-15b(6)(e)*; here, the school principal advised petitioners by letter dated June 11, 2019 that a preliminary determination had been made regarding their complaint, and that no HIB conduct was found to have taken place; petitioners never requested a hearing before the Board, and then filed their March 9, 2020 appeal with the Commissioner based solely upon the principal's preliminary determination; the petition was filed almost nine months after that determination, and approximately six months after the period to appeal that determination had expired under *N.J.A.C. 6A:3-1.3(i)*. The ALJ concluded that the petition was time-barred; accordingly, summary decision was granted in favor of the Board.

Upon review, 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.

December 15, 2020

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

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Petitioners,

v.

Board of Education of the Village of  
Ridgewood, Bergen County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

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.

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>1</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 15, 2020  
Date of Mailing: December 15, 2020

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<sup>1</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**

**SUMMARY DECISION**

OAL DKT. NO. EDU 05502-20

AGENCY DKT. NO. 71-3/20

**L.R. AND S.R. ON BEHALF OF  
MINOR CHILD, U.R.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE VILLAGE  
OF RIDGEWOOD, BERGEN COUNTY,**

Respondent.

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**L.R.** and **S.R.**, petitioners, pro se

**Jeffrey R. Merlino**, Esq., for respondent (Sciarillo, Cornell, Merlino, McKeever & Osborne, attorneys)

Record Closed: September 28, 2020

Decided: November 5, 2020

BEFORE **SARAH H. SURGENT, ALJ**:

**STATEMENT OF THE CASE**

Petitioners L.R. and S.R., on behalf of their minor child, U.R. (petitioners), contend that the Board of Education of the Village of Ridgewood, Bergen County (Board)

*New Jersey is an Equal Opportunity Employer*

improperly failed to perform a harassment, intimidation, and bullying (HIB) investigation concerning an alleged May 9, 2019 incident<sup>1</sup> where U.R. was the alleged target of such alleged conduct while enrolled as a student at the Benjamin Franklin Middle School (BFMS). The Board maintains that the petition was untimely filed and should be dismissed pursuant to N.J.A.C. 6A:3-1.3(i).

### **PROCEDURAL HISTORY**

The petition of appeal was filed with the Commissioner of Education on March 9, 2020. It was transmitted to the Office of Administrative Law (OAL) on March 26, 2020, to be heard as a contested case. On September 2, 2020, the Board filed a motion for summary decision, pursuant to N.J.A.C. 1:1-12.5. On September 28, 2020, petitioners filed a voluminous brief and appendix and a supplemental brief and appendix in opposition to the motion, with no responding affidavits, contrary to N.J.A.C. 1:1-12.5(b). The record closed on September 28, 2020.

### **FACTUAL DISCUSSION AND FINDINGS**

Although petitioners assert an unsupported claim that an unnamed worker at the New Jersey Division on Civil Rights (DCR) advised them they could file their petition out of time, contrary to N.J.A.C. 6A:3-1.3(i), the salient facts are undisputed. I therefore **FIND**:

U.R. is a former student of BFMS. U.R. was absent from BFMS for medical reasons from May 9, 2019, until June 21, 2019, the end of the school year. On May 10, 2019, petitioners emailed BFMS school personnel and reported that another student had mimicked a physical disorder of U.R.'s on a Snapchat video which was viewed off

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<sup>1</sup> Petitioners' pro se petition of appeal and brief also contain complaints of prior alleged bullying incidents dating back to the 2016–2017 school year, along with a litany of complaints about the conduct of other persons and organizations which are not before this tribunal, and are therefore not addressed.

school property on U.R.'s cell phone. According to petitioners' Petition of Appeal narrative, U.R.'s father, not U.R. herself, claimed to have seen the alleged video on May 9, 2019.

However, petitioners' brief and appendix Exhibit #33 state that U.R. and her father watched the video together. On May 11, 2019, petitioners filed a complaint about the alleged incident with the police.

On June 5, 2019, petitioners sent a follow-up email to BFMS's principal, citing to and quoting from the New Jersey Department of Education's Guidance for Parents on the Anti-Bullying Bill of Rights Act (ABR). Petitioners complained that no investigation had been conducted pursuant to the ABR, and that no investigation report had been rendered by BFMS or the Board. The principal replied approximately one hour later, and explained:

We have not conducted an investigation into a possible HIB in regard to the alleged incident for two reasons. First, before we conduct any HIB investigation we need to speak with the alleged victim, as we need to establish a genesis from the victim in order to investigate an allegation. [U.R.] has not attended school since before the alleged incident occurred, and we cannot complete an investigation without her input. Second, the alleged incident was reported to the police, and when we followed up with the police they indicated that you could not provide the alleged video that is the basis of the bullying claim, and that they were not pursuing the incident. When [U.R.] returns to the school environment we will ascertain the next steps to take in regard to the alleged online incident that you reported to BF[MS] and the police.

In accordance with New Jersey law the parents of the alleged bully were informed by phone of the allegation. In addition, under the code of conduct provisions at BF[MS] the alleged bully was explicitly warned not to contact [U.R.], or engage in any online discussion of [U.R.] with any other party, and that it could be considered as a continuation of a school conflict and dealt with accordingly. We have not received any word that said student has breached that directive.

Petitioners claim that after receipt of that email, they “feared having [the principal] talk to [U.R.] under any circumstances.” U.R. never returned to BFMS, and was thus never interviewed by BFMS about the alleged incident.

By letter dated June 11, 2019, the BFMS principal advised petitioners:

In regard to the report you sent to the school on 5/10/19 we have made a preliminary determination in consultation with the School Anti-Bullying Specialist (SABS) that the alleged conduct does not meet the definition of HIB under N.J.S.A. 18A:37-14 in that the conduct did not take place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in N.J.S.A. 18A:37-15.3. Moreover, there was no substantial disruption or interference with the orderly operation of the school.

Please note that if new information is acquired suggesting the allegations meet the threshold definition of HIB, it will then be referred to the [S]ABS for investigation.

In addition, please note that you may appeal the preliminary determination to the Board of Education and thereafter to the Commissioner of Education in accordance with N.J.A.C. 6A:3. A Board hearing shall be held within ten business days of receipt of the request for a Board hearing.

[(emphasis added).]

On June 27, 2019, petitioners withdrew U.R. from the Ridgewood Public School System. Petitioners did not file an appeal with the Board, and did not file the present appeal with the New Jersey Department of Education until March 9, 2020.

### **LEGAL ANALYSIS AND CONCLUSIONS**

A summary decision “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). That rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules. See R. 4:46-2; Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954).

In Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the nonmoving party. The “judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”

[Id. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)).]

In evaluating the merits of the motion, “[a]ll inferences of doubt are drawn against the movant and in favor of the opponent of the motion.” Judson, 17 N.J. at 75. However, “[w]hen a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” N.J.A.C. 1:1-12.5(b).

Having reviewed the parties’ submissions, I **CONCLUDE** that no genuine issues of material fact exist which require a plenary hearing regarding the critical issue of whether petitioners’ appeal was timely filed. This matter is therefore ripe for summary decision.

The ABR, N.J.S.A. 18A:37-13.2 et seq., was enacted “to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation and bullying of students that occur in school and off school premises.” N.J.S.A. 18A:37-13.1f. N.J.S.A. 18A:37-15 requires that each New Jersey school district “adopt a policy prohibiting harassment, intimidation or bullying on school property, at a school-sponsored function or on a school bus,” which, at a minimum shall contain itemized components including procedures for reporting and investigating alleged

HIB incidents. A school's HIB policy must also "include provisions for appropriate responses to [HIB] . . . that occurs off school grounds, in cases in which a school employee is made aware of such actions," and those responses "shall be consistent with the board of education's code of student conduct and other provisions of the board's policy on [HIB]." N.J.S.A. 18A:37-15.3. The Board has adopted such a written policy, which is available on the district's website at [https://www.ridgewood.k12.nj.us/UserFiles/Servers/Server\\_207516/File/Our%20District/Board%20of%20Education/Board%20Policies/5000/P5512.pdf](https://www.ridgewood.k12.nj.us/UserFiles/Servers/Server_207516/File/Our%20District/Board%20of%20Education/Board%20Policies/5000/P5512.pdf), pursuant to N.J.S.A. 18A:37-15b(11), and includes provisions for off-school-grounds alleged electronic communications HIB incidents, pursuant to N.J.S.A. 18A:37-15.1 and N.J.S.A. 18A:37-14.

After an initial investigation and preliminary determination of a HIB complaint, a parent or guardian may request a hearing before a school board, which must be heard within ten days of the request. N.J.S.A. 18A:37-15b(6)(d). Among the obligations of a board of education to respond to a HIB complaint, it must issue a written decision affirming, rejecting, or modifying a superintendent's decision, which the parents/guardians then have ninety days to appeal to the Commissioner of Education. N.J.S.A. 18A:37-15b(6)(e).

By letter dated June 11, 2019, the BFMS principal advised petitioners that BFMS had made a preliminary determination that no HIB conduct had taken place. Petitioners were apprised of their rights to appeal that determination to the Board, and thereafter to appeal the Board's decision to the Commissioner of Education, in accordance with "N.J.A.C. 6A:3." In this case, petitioners never requested a hearing before the Board, and filed their March 9, 2020 appeal with the Commissioner based solely upon the principal's preliminary determination, almost nine months after that determination, and approximately six months after the period to appeal that determination had expired under N.J.A.C. 6A:3-1.3(i).

I therefore **CONCLUDE** that petitioners' appeal must be dismissed as time-barred. 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) provides that "[t]he 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." N.J.A.C. 6A:3-1.3(i) (emphasis added).

That rule imposes "a fair and reasonably necessary requirement for the proper and efficient resolution of disputes under the school laws," and "[i]t falls within the scope of statutory 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: (1) "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, thus preventing the litigation of stale claims;" and (2) "to penalize dilatoriness and serve as a measure of repose by giving security and stability to human affairs." Id. at 587 (internal quotation marks omitted).

The ninety-day requirement is mandatory and is to be strictly construed. Wise v. Bd. of Educ. of City of Trenton, 2000 N.J. AGEN LEXIS 462, \*8 (July 25, 2000). Petitioners must file their petition within ninety days from the notice of adverse action, and "not within ninety days of their exhaustion of other avenues and mechanisms" they might have employed. Id. at \*8-9. "Opportunity to appear before the board of education is established to assist a petitioner in the prosecution and early resolution of a dispute and not intended to be a condition precedent to perfecting the right to administrative review." Id. at \*8. Moreover, informal attempts to resolve a dispute via emails, complaints to the police, or other means do not toll the ninety-day period of limitations. See Kaprow, 131 N.J. at 588.

The ninety-day period for filing a petition of appeal commences when petitioners learn of facts that would enable them 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. In this case, the ninety days began to run when petitioners were notified of the adverse action, regardless of whether the action was proper, when the petitioners learned of facts which would enable them to file a timely claim, as spelled out in the BFMS principal’s letter dated June 11, 2019.

Although petitioners assert that an unnamed worker at the DCR advised them that they could file their petition out of time, the record is quite to the contrary, and the DCR does not have authority to enforce the ABR, because the New Jersey Legislature has conferred that authority to the Commissioner of Education. L.W. ex rel. L.G. v. Toms River Reg’l Sch. Bd. of Educ., 381 N.J. Super. 465, 498-99 (App. Div. 2005). Here, as early as June 5, 2019, petitioners actually cited to and quoted from the New Jersey Department of Education’s Guidance for Parents on the ABR, which is available online, and contains a detailed table of contents, contents, and appendix specifying when, where, and how to appeal a HIB determination. <https://www.state.nj.us/education/students/safety/behavior/hib/ParentGuide.pdf>.

Moreover, the BFMS principal’s June 11, 2019 letter explicitly instructed petitioners that they could appeal to the Board, and thereafter to the Commissioner “in accordance with N.J.A.C. 6A:3,” which is also readily available online. <https://www.state.nj.us/education/code/current/title6a/chap3.pdf>.

I therefore **CONCLUDE** that petitioners knew or should have known of the ninetyday filing deadline, and that they missed that deadline by approximately six months. There is nothing in the record to support a conclusion that strict adherence to the ninetyday rule would be inappropriate, unnecessary, or result in injustice. This case does not involve an important and novel constitutional question, or an important question of public interest beyond that of concern only to the parties themselves, which would warrant a relaxation of the limitation period established by the Commissioner. See D.Q. o/b/o S.Q.

v. State-Operated Sch. Dist. of Newark Essex Co., 2008 N.J. AGEN LEXIS 993, \*8-9 (Dec. 5, 2008).

**ORDER**

It is therefore **ORDERED** that the Board’s motion for summary decision is hereby **GRANTED**, and the petition of appeal 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 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 086250500**, marked “Attention: Exceptions.” A copy of any exceptions must be sent to the judge and to the other parties.

\_\_\_\_\_  
November 5, 2020

DATE

  
SARAH H. SURGENT, ALJ

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_ jb

**APPENDIX**

**EXHIBITS**

**For the Judge:**

C-1 Ridgewood Board of Education HIB Policy

**For Petitioners:**

P-1 Petitioners' letter to this tribunal dated September 5, 2020

P-2 Petitioners' reply to respondent's motion

P-3 Petitioners' appendix in support of their reply

P-4 Petitioners' "Supplemental to Response of Notice of Motion for Summary Decision

**For Respondent:**

R-1 Respondent's Notice of Motion for Summary Decision and Certification of Counsel with Respondent's Supplemental Facts and Exhibits

R-2 Respondent's Brief in Support of Motion for Summary Decision