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 this matter on remand, *pro se* petitioner filed an appeal in July 2019 on behalf of R.B., alleging that his daughter's religious practices prevented her from competing academically with her classmates and that the respondent Board failed to make accommodations for those religious practices, in violation of Board policy. Further, petitioner alleged his daughter's guidance counselor made a statement to R.B. that constituted a violation of the Anti-Bullying Bill of Rights Act (ABRA), and that the respondent Board failed to investigate these allegations, in violation of the Act. The Board filed a motion to dismiss in lieu of an answer. Following transmittal of the matter to the OAL, an Initial Decision was issued in November 2019, dismissing the petition as untimely pursuant to *N.J.A.C.* 6A:3-1.3(i). In December 2019, the Commissioner determined that the record did not contain sufficient information to render a decision, and the matter was remanded to the OAL for supplementation of the record.

On remand, the ALJ found, *inter alia*, that: there are no genuine issues of material fact here, and the matter is ripe for summary decision; R.B. graduated in 2018 and is now a full-time college student; the incidents at issue here occurred during the 2016-17 school year; petitioner submitted complaints in October 2017 regarding R.B.'s grades which were based on alleged conflicts with religious practices and lack of religious accommodation, and were not HIB complaints; the Board granted in part and denied in part the grade appeals in a November 2017 final decision; in July 2018, petitioner attempted to recast his grade appeals as HIB complaints, claiming that he had referenced harassment in the grade appeals; petitioner alleged that R.B.'s guidance counselor had harassed her when he asked, "What's more important to you, your religion or your schoolwork?"; the Superintendent however informed petitioner by letter dated August 6, 2018 that the complaint of harassment against the guidance counselor was found not to be an HIB complaint; petitioner's appeal was not filed until July 16, 2019. The ALJ concluded that the petition was untimely pursuant to *N.J.A.C.* 6A:3-1.3(i); accordingly, the Board's motion for summary decision was granted and the petition was dismissed.

Upon review, the Commissioner, *inter alia*, concurred with the findings and conclusions of the ALJ in this matter, and found petitioner's exceptions to be unpersuasive. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter and the petition was dismissed.

150-21

OAL Dkt. No. EDU 18002-19
(EDU 10790-19 ON REMAND)
Agency Dkt. No. 169-7/19

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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 and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by the petitioner pursuant to *N.J.A.C.* 1:1-18.4. The Board's reply was untimely and will not be considered.

In July 2019, petitioning parent filed an appeal alleging that his daughter's religious practices prevented her from competing academically with her classmates and that the respondent Board failed to make accommodations for those religious practices, in violation of Board policy. Further, petitioner alleged his daughter's guidance counselor made a statement to R.B. that constituted a violation of the Anti-Bullying Bill of Rights Act (ABRA), and that the respondent Board failed to investigate these allegations, in violation of the Act. Following transmittal of the matter to the OAL, an Initial Decision was issued in November 2019, dismissing the petition as untimely pursuant to *N.J.A.C.* 6A:3-1.3(i). In December 2019, the Commissioner determined that the record did not contain sufficient information to render a decision, and the matter was remanded to the OAL for supplementation of the record.

On remand, the Administrative Law Judge (ALJ) found that the two complaints petitioner submitted to the district in October 2017 were appeals regarding his daughter's grades – based on alleged conflicts with religious practices and a lack of religious accommodations – and not HIB complaints. The Board issued a final decision on the grade appeals on November 10, 2017. The ALJ found that eight months later, in July 2018, petitioner attempted to recast his grade appeals to the Board as HIB complaints, claiming he had referenced harassment in the grade appeals. Petitioner alleged that R.B.'s guidance counselor had harassed her the prior year when he asked, "What's more important to you, your religion or your schoolwork?" By letter dated August 6, 2018, the Superintendent informed petitioner that the complaint of harassment against the guidance counselor was determined not to be an HIB complaint, but the counselor was nevertheless removed from working with R.B. On August 20, 2018, the Superintendent reiterated that the complaint regarding the guidance counselor was determined not to be an HIB complaint; rather, it was investigated in accordance with the school's affirmative action policies and procedures.

The ALJ found that the August 6, 2018 letter was notice of the final action regarding the HIB complaint. The ALJ concluded that, as the petition challenging the district's handling of the HIB complaint was not filed until July 2019, it was filed outside the 90-day limitations period set forth in *N.J.A.C.* 6A:3-1.3(i). The ALJ also found that petitioner's correspondence with district officials following this final notice – including the Board attorney's April 16, 2019 letter stating that petitioner's complaints were not subject to HIB policies as they were never reported as such – did not toll the statute of limitations. As such, the ALJ dismissed the petition as out of time.

In his exceptions, petitioner argues that the Board's final determination was the April 16, 2019 letter following his Board hearing, and not the August 6, 2018 letter from the Superintendent. Petitioner maintains that his petition was not out of time because he was required to pursue all avenues before appealing. Petitioner contends that it would have been premature to file a

petition before he met with the superintendent and the Board. Petitioner also argues that it is unfair that he is being held to strict deadlines when the Board could file a late motion for summary decision. Additionally, petitioner maintains that summary decision was improper as there are genuine issues of disputed fact – such as whether the guidance counselor's statement constitutes harassment and whether a reasonable accommodation was provided – and that the Board never responded to discovery requests. As such, petitioner urges the Commissioner to reject the Initial Decision.

Upon review of the record in this matter, the Commissioner agrees with the ALJ that this matter should be dismissed as untimely as it was filed outside the 90-day limitations period set forth in *N.J.A.C.* 6A:3-1.3(i). First, the Commissioner finds that the complaints filed by petitioner in October 2017 were grade appeals, and not HIB complaints. Despite the use of the word harassment, the subject matter of those complaints was a challenge to R.B.'s grades and the argument that she was not provided with an accommodation for schoolwork due to her religion. Petitioner referred to those complaints as grade appeals, not HIB complaints, and the final determination on those grade appeals was on November 10, 2017, which petitioner did not challenge. Accordingly, to the extent that petitioner makes any arguments regarding religious accommodations or R.B.'s grades, such arguments are out of time.

Petitioner contacted the school eight months later – in July 2018, after R.B. had graduated and turned 18 years old[1] – to protest that his harassment complaint against the guidance counselor was not investigated in accordance with school policy. The Commissioner finds that the Superintendent's responses on August 6 and August 20, 2018 informed petitioner that the complaints against the guidance counselor were not investigated as HIB but rather were investigated in accordance with affirmative action policies and procedures. Accordingly, petitioner received final notice in August 2018 that any potential HIB complaint petitioner purports to have submitted was not investigated as such. Subsequent communications with the Superintendent or the Board attorney –

[1] Petitioner turned 18 on January 16, 2018.

which reiterated the district's position on how petitioner's complaint regarding the guidance counselor had been handled – did not toll the statute of limitations because petitioner had already received notice of a decision. Nevertheless, the Commissioner further finds that this petition, which was filed more than a year after R.B. graduated, would be hers to pursue – and not petitioner's – as R.B. had reached the age of majority by the time of the filing. *See N.J.A.C.* 6A:3-1.3(a)(2).

The Commissioner does not find petitioner's exceptions to be persuasive. As explained above, a petition would not have been premature following the Superintendent's August 2018 notice (provided it was filed by the appropriate petitioner) because that was the date of the final determination. To the extent that petitioner finds the 90-day deadline to be unfair, the Commissioner notes that filing deadlines are established by *N.J.A.C.* 6A:3-1.3(i) and apply uniformly to all petitioners.

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

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 19, 2021
Date of Mailing: July 20, 2021

[2] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 18002-19

AGENCY DKT. NO. 169-7/19

(ON REMAND EDU 10790-19)

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

Petitioner,

v.

BOARD OF EDUCATION OF THE VOCATIONAL SCHOOLS IN THE COUNTY OF BERGEN,

Respondent.

_____

J.B., petitioner, pro se

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

Record Closed: March 26, 2021 Decided: April 19, 2021

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

STATEMENT OF THE CASE

On August 6, 2018, respondent notified petitioner that it did not investigate his grade appeals as harassment complaints under the New Jersey Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13, et seq. (ABRA). On July 16, 2019, petitioner appealed the handling of his complaints. Did petitioner file his appeal timely? No. Under N.J.A.C.

6A:3-1.3(i), a petitioner shall file a petition no later than 90 days from the date of receipt of final action about 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 Vocational Schools in the County of Bergen. In his petition of appeal, petitioner alleges that his daughter's religious practices prevented her from competing academically with her classmates, and that respondent failed to make religious accommodations for those practices in violation of Board policy. In addition, petitioner alleges at least two specific instances in which an accommodation was not made for those two assignments. Moreover, petitioner alleges that a response to his entreaties by his daughter's guidance counselor, a Mr. Natelli, constitutes a violation of the ABRA, which petitioner further alleges respondent failed to investigate in violation of the Act.

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 November 12, 2019, I granted the motion to dismiss.

On December 17, 2019, the Commissioner of Education remanded the case for further fact finding.

On January 25, 2021, respondent filed a motion for summary decision; on February 5, 2021, petitioner filed his opposition; and on March 26, 2021, respondent filed its reply.

Significantly, respondent filed its motion with supporting affidavits from which further facts could be found, whereas petitioner filed his opposition with no affidavits from which genuine issues of fact could be shown.

FINDINGS OF FACT

Given the papers submitted in support of and in opposition to the motion for summary decision, I **FIND** the following as **FACT** for purposes of this motion only:

I.

A. Petitioner filed grade appeals on October 11, 2017.

On October 11, 2017, petitioner wrote a letter to respondent. It was addressed to the supervisor of academics, Michelle Pinke. In his letter, petitioner appeals a grade his daughter received in a science class from the previous school year. In the reference line, petitioner wrote, "Grade Appeal—Letter of Request—Protein Profiler Lab and Related Biotech Binder." Ostensibly, the reason for the appeal was alleged conflicts with religious practices: "Last year [my daughter] was unable to complete all school assignments for reasons that . . . relate to religious practices . . . ."

When petitioner specified, however, he also noted other conflicts: "[My daughter] missed [a] few labs in Biotech during the last semester due to conflicts between class schedule and junior meeting (March 29), PARCC exam (April 19), Jewish holidays (May 31 & June 1), and CEE college trip (June 13–15). [My daughter] managed to complete most labs, with the exception of the protein profiler lab. Since one lab was missing, the binder could not be completed." Thus, of the seven conflicts, only two were related to religious practices.

In an attachment to the letter, entitled "Conflict Between School Work and Religious Practices," petitioner wrote about other potential conflicts between his family's religious practices and respondent's school policies. Petitioner's letter is nearly two

pages long; his attachment is fully two pages long. Buried in the second page of the two-page attachment in the body of the document is the word "harassment." That is the only appearance of the word in these four pages; it is not set out in any of the headings or in any of the subject lines.

In the attachment, petitioner explains how his daughter is an Orthodox Jew who observes the Sabbath, which means she refrains from doing any schoolwork from Friday evening until Saturday evening. His argument is that this puts his daughter at a "significant disadvantage" compared to other students. He adds that she must also miss about ten school days for numerous Jewish holidays. Under the heading, "Other Jewish Students in [Bergen County Academies]," petitioner concludes that his daughter's religious practices should have been accommodated.

Meanwhile, under the subheading, "Counseling and Guidance at School," petitioner alleged that a guidance counselor, a Mr. Natelli, responded to his entreaties with the remark, "What's more important to you, your religion or your schoolwork?" This is what petitioner characterizes as harassment: "We believe that this statement by Mr. Natelli constitutes harassment." Thus, it is this word and this characterization that petitioner would later argue brings this case under the ambit of the ABRA.

On the same date, petitioner wrote another letter to respondent. It was also addressed to Pinke. In this letter, petitioner appeals another grade his daughter received in another class from the previous school year. This letter is nearly identical to the first. In the reference line, petitioner wrote, "Grade Appeal—Letter of Request—Anatomy and Physiology—Digestive Lab Assignment." Again, the reason for the appeal was alleged conflicts with religious practices: "Last year [my daughter] was unable to complete all school assignments for reasons that . . . relate to religious practices . . . ." This time, petitioner notes that his daughter handed in her binder to her guidance counselor during the last week of school, but for some reason her science teacher never graded it.

Petitioner's letter is just one page long; it does not mention the word "harassment"; and his attachment is the same document he attached to his previous letter.

Thus, no genuine issue of material fact exists that petitioner's October 11, 2017, letters were grade appeals based on alleged conflicts with religious practices and a perceived lack of religious accommodations by the high school during the previous school year.

B. Petitioner received notice of final action about the grade appeals on November 10, 2017.

On November 10, 2017, Pinke emailed petitioner granting in part and denying in part the grade appeals. In particular, Pinke wrote that the grade appeal for Anatomy and Physiology was denied, but that the grade appeal for Biotech was granted in part and denied in part. More specifically, the Protein Profiler Lab would be allowed to be made up with the lab report considered timely, but the rest of the notebook would still be considered late. Her email is reproduced below in its entirety:

> Dear [Mr. B.],
>
> The committee met to review the two grade appeals that you submitted on behalf of your daughter, [R.M.].
>
> For the grade appeal for Anatomy and Physiology, the committee concludes that the student had adequate time to complete and hand in the lab notebook and no additional time should be granted. The assignment was due in May and the student attempted to submit it on June 20, which was four days after the end of the trimester and one day after final grades were due for the trimester.
>
> For Biotech, there were two issues in question. The first issue is that the student's lab notebook was submitted late. The second issue is that the student missed the Protein Profiler Lab due to an absence for a field trip and then missed the make up for the lab because she met with her guidance counselor.
>
> Regarding issue one, the lateness of the lab notebook, the committee concludes that the lab notebook could have been submitted on time without the Protein Profiler Lab.
>
> Regarding issue two, the missing Protein Profiler Lab, the committee concludes that the lab notebook requires opening

> perishable reagents, which are costly. Therefore, this lab can only be done when the whole class is doing the lab. The committee concludes that the student should have one, and only one, opportunity to make up the lab on December 6, 2017, which is the next time the lab will be done in a class setting. The lab report should be completed and submitted to Mrs. Scott by December 13, 2017. The lab should not be graded late; however, the rest of the notebook is still considered late. If the lab is not submitted by December 13, 2017, the lab report should not be accepted for credit.
>
> Please let me know if you have any further questions.
>
> Thank you,
> Michelle Pinke
> Supervisor of Academics
> Bergen County Academies
>
> [Ex. E to the Certification of William Soukas, Esq., dated January 25, 2021.]

Even if Pinke was mistaken about the nature or subject of the October 11, 2017, letters, Pinke's November 10, 2017, email makes clear that she interpreted the October 11, 2017, letters as grade appeals, not as harassment complaints, and that she had concluded the matter on behalf of respondent as of November 10, 2017.

Thus, no genuine issue of material fact exists that November 10, 2017, is the date petitioner received notice of final action about his grade appeals.

C. Before petitioner filed his grade appeals, he asked respondent for advice about how to file them, and before he received notice of final action, he asked respondent about their status.

On October 4, 2017, before petitioner filed his grade appeals with Pinke, petitioner emailed Pinke to ask her about the process for grade appeals, and in response, on October 4, 2017, Pinke provided petitioner with the Board policy on grade appeals. She also advised petitioner to file his grade appeals with her by October 9, 2017. On October 8, 2017, the day before the deadline, petitioner emailed Pinke that he and his wife had previously informed respondent of their desire to file grade appeals, and that they wanted

more time to file them. Accordingly, on October 9, 2017, Pinke granted petitioner an extension to file his grade appeals.

On November 8, 2017, before petitioner received notice of final action about his grade appeals, petitioner asked Pinke, by his own admission, about the status of his grade appeals:

> Dear Mrs. Pinke,
>
> I'm following up to know the status of the grade appeals we filed.
>
> [R.B.] is in the process of applying to colleges and the result of the grade appeals impact[s] the college application process.
>
> The 30 days for making a determination will end this week, and considering that school is closed tomorrow and Friday, we would like to know the determination as soon as possible.
>
> Thank you for your cooperation.
>
> [J.B.]
>
> [Ex. E to the Certification of William Soukas, Esq., dated January 25, 2021.]

Thus, no genuine issue of material fact exists that petitioner intended to file, and respondent expected to receive, grade appeals, not harassment complaints, by October 13, 2017, and even if respondent was mistaken about the nature or subject of the October 11, 2017, letters, Pinke's November 10, 2017, email makes clear that she interpreted the October 11, 2017, letters as grade appeals, and that she had concluded the matter on behalf of respondent as of November 10, 2017.

II.

A. Petitioner recasts his grade appeals as discrimination and harassment complaints on July 5, 2018.

Nearly eight months later, 237 days to be precise, on July 5, 2018, petitioner wrote another letter to respondent. In his letter, petitioner renewed his grade appeals but recast them as "discrimination and harassment complaints." To wit, in the reference line, petitioner renamed his grade appeals, "Religious Discrimination and Harassment Complaints." Petitioner also delineated that the school "discriminated" against his daughter on the basis of her religion; that the school "did not provide her with a fair opportunity to succeed"; that her guidance counselor "harassed" her; and that his "harassment complaint" was not investigated and processed according to school policy. Moreover, petitioner included the attachment from his grade appeals, but renamed it "Complaints for Religious Discrimination and Harassment," and he added in the body what he thought the guidance counselor had said ("What's more important to you, your religion or your schoolwork?") and his belief that it constituted not only "harassment," but also "intimidation."

In addition, petitioner wrote in this letter that he had complained about the results of the grade appeals and the lack of religious accommodations a month earlier to the school principal, Russell Davis, who replaced the guidance counselor, Mr. Natelli, but allegedly responded, "If this school does not fit you, you have the choice to go to a different school," which petitioner deemed unacceptable:

> In June 2017, we met with Mr. Russell Davis, the principal at BCA. We complain[ed] about the harassment by [R.B.'s] guidance counselor. Mr. Davis agreed to replace [R.B.'s] guidance counselor; however, he did not condemn or criticize the statement made by Mr. Natelli. Mr. Davis explained to us the school provides no accommodation for religious observances.
>
> We explained that the situation our daughter was put into by the school does not allow her to practice her religion and complete her school work. Mr. Russell's response was: "If

> this school does not fit you, you have the choice to go to a different school."
>
> This statement by the principal is unacceptable.
>
> [Ex. F to the Certification of William Soukas, Esq., dated January 25, 2021.]

Petitioner continued in his letter that he disagreed with Russell's value judgment and with the school's policy regarding religious accommodations:

> We felt after this meeting with the principal that the school indeed expect[ed] that we choose to between our religion or go to a different school. It seems that Mr. Natelli's statement was not just a poor wording incident, but it actually represents the school policy. We were horrified.
>
> We also believe that, as a matter of policy, the school should accommodate students in situations when their abilities to perform [are] limited due to reasons beyond their control. Whether the limited ability is due to medical disability or due to religious observance, or other protected right, the school must make adjustments and concessions to accommodate the student and give him/her a fair and equal opportunity to succeed in school.
>
> [Ex. F to the Certification of William Soukas, Esq., dated January 25, 2021.]

Finally, petitioner cited the denial of his grade appeals as examples of this lack of religious accommodation:

> [R.B.] was unable to complete some work assignments and was later in submitting several other school assignments. For example, on one assignment, [R.B.] submitted the work late by two days and her grade was reduced by 30%. We filed a grade appeal and explained the specific situation of [R.B.], however the grade appeal committee did not put any weight for our considerations and the 30% reduction remained.
>
> On a different assignment, [R.B.] submitted her work later by two or three days, however the teacher refused to grade her work due to the lateness and the grade for that assignment was zero. We filed a grade appeal and explained the specific situation of [R.B.], however the grade appeal committee did

> not put any weight for our considerations and the grade remained at zero.
>
> [Ex. F to the Certification of William Soukas, Esq., dated January 25, 2021.]

Thus, no genuine issue of material fact exists that petitioner had not lodged a new complaint or complaints about "discrimination" or "harassment" or "intimidation" on July 5, 2018. He had simply renewed his grade appeals based on alleged conflicts with religious practices and a perceived lack of religious accommodations by the high school during the previous school year. In addition, petitioner had simply expressed his disappointment in and disagreement with the final action. Finally, petitioner voiced his objection to what he understood was school policy regarding religious accommodations.

B. Petitioner received notice of final action about the so-called discrimination and harassment complaints on August 6, 2018.

On August 6, 2018, the superintendent, Howard Lerner, responded. In his letter, Lerner explained what steps the school district had taken concerning the grade appeals, including the so-called discrimination and harassment complaints. Lerner stated that discrimination and harassment based on religion is strictly prohibited in the school district, that the school district promptly investigated the complaint, and that it removed Mr. Natelli as R.B.'s guidance counselor. More significantly for purposes of this motion, Lerner explained that the grade appeals were not considered as complaints for harassment, intimidation, or bullying (HIB), because they were more properly understood as grade appeals based on religious accommodations.

Lerner continued that he believed the school district was responsive to petitioner's concerns; that it was not true that the school district does not accommodate religious practices, because it does provide religious accommodations; and that it did so in this case. To be sure, Lerner noted that the school district provided R.B. with the opportunity to make up schoolwork during the summer of 2017, the opportunity to retake the Biotech class during the following school year, and the opportunity to spend up to fifteen hours a week in school to complete her schoolwork. If any doubt had still existed about the nature

or subject matter of petitioner's grade appeals, respondent had made its position even clearer, and in doing so, restated its final action.

Thus, no genuine issue of material fact exists that August 6, 2018, is the date petitioner received notice of final action about his so-called discrimination and harassment complaints.

C. Petitioner did not appeal the final action within the next 90 days.

On August 9, 2018, petitioner wrote another letter to Lerner. In this letter, under his subheading, "Accommodations in School on the Basis of Religious Observance," petitioner wrote that he wanted to understand better the school policy concerning religious accommodations, and under his subheading, "Handling of the Harassment Complaint," petitioner wrote that he wanted to know better how his complaint was processed. Although his daughter had already graduated from the high school and was about to enter the University of Pittsburgh for college in the fall, petitioner still wanted to continue the dialogue.

On August 20, 2018, Lerner responded to petitioner once more. In his letter, Lerner explained that whether accommodations are reasonable and proper for any given student is a fact-sensitive inquiry and is determined on a case-by-case basis. In addition, Lerner explained that petitioner's so-called discrimination and harassment complaints were investigated and processed according to the school's policy concerning affirmative action. Parenthetically, one of the purposes of the affirmative-action program is "to identify and eliminate discriminatory practices and other barriers to achieving equality and equity in educational programs." District Policy, 1140, Affirmative Action Program, August 2016. Ultimately, petitioner filed his appeal with the Commissioner of Education on July 10, 2019.

So, even if this later letter is considered final action by the school district—because Lerner further explained that petitioner's grade appeals were processed as discrimination complaints under the district's affirmative-action program—no genuine of material fact

exists that petitioner still failed to appeal that final action by the school district within the next 90 days.

Accordingly, the final section that follows merely chronicles the future dialogue between the parties.

III.

A. Petitioner continues to disagree with respondent and continues to fail to file an appeal with the Commissioner of Education.

On September 4, 2018, petitioner wrote to Lerner yet again. In his letter, petitioner repeated that he disagreed with the religious accommodations the high school provided his daughter the previous school year and with how the high school processed his so-called discrimination and harassment complaints. This letter is seven pages long. The first four and one-half pages concern his disagreement with the accommodations and why he thought they were insufficient. The final three pages concern his disagreement with the way his grade appeals were processed and why he thought they should have been processed as harassment complaints.

In fact, petitioner asserts for the first time that he filed such a discrimination and harassment complaint at a meeting on June 15, 2017.

Whether or not petitioner filed such a discrimination and harassment complaint on June 15, 2017, does not matter, because petitioner received the final action about the grade appeals on November 10, 2017, and the final action about the so-called discrimination and harassment complaints on August 6, 2018.

The legal effect of these dates notwithstanding, what is clearer is what petitioner ultimately seeks from his entreaties: disciplinary action against Mr. Natelli, a condemnation from the school or an apology from Mr. Natelli, and an investigation by the school district under the ABRA.

B. Respondent demurs that the parties will have to agree to disagree.

On September 14, 2018, Lerner responded that the parties would have to agree to disagree about the final action that respondent took about the grade appeals and the so-called discrimination and harassment complaints, but that these appeals gave respondent pause to reflect on its policy for the future:

> Dear Mr. [B.],
>
> Thank you for your 9/4/18 email. As I have explained before, I believe BCA provided or offered reasonable accommodations to your daughter for her religious observance during her time there, as required by Board Policy. It appears that your expectations and the district's understanding of its role in accommodating individual students are unlikely to align.
>
> I regret that you feel your dialogue with the school and with district administration has not addressed your concerns. Please know, however, that your engagement with the school and with me has been the catalyst for valuable in-house reflection and discussion about this issue.
>
> I am glad that your daughter is attending such an esteemed university for her undergraduate education, and I wish her much success.
>
> Sincerely,
>
> Howard Lerner, Ed.D.
> Superintendent
> Bergen County Technical Schools
>
> [Ex. K to the Certification of William Soukas, Esq., dated January 25, 2021.]

C. Petitioner recasts his grade appeals as HIB complaints.

On November 13, 2018, petitioner restarted the dialogue once again. In an email to the school district's business administrator, John Susino, petitioner, incredulously, again asks for the status of his so-called discrimination and harassment complaints. In doing so, petitioner recast his grade appeals, which he had previously recast as

discrimination and harassment complaints, as "HIB complaints." The following day, on November 14, 2018, Susino restated that respondent had processed the grade appeals as discrimination complaints:

> Dear Mr. [B.],
>
> I have received your November 13, 2018, email requesting information as to when the HIB complaint involving your daughter was reported by Dr. Lerner to the Board of Education.
>
> It is my understanding that your complaint was not originally reported as an HIB matter to school administration. As I believe Dr. Lerner previously advised you, the complaint was investigated as a discrimination matter. Therefore, your daughter's matter was handled by school administration and is not required by law to be formally reported to the Board of Education.
>
> It is also my understanding that you are meeting with Dr. Lerner on December 10, 2018, to further discuss this matter.
>
> Sincerely,
>
> John Susino
> Business Administrator/Board Secretary
> Bergen County Technical and Special Services School Districts
>
> [Ex. M to the Certification of William Soukas, Esq., dated January 25, 2021.]

Immediately thereafter, on November 15, 2018, in a reply email to Susino, petitioner reasserted that his grade appeals from the previous year were not just grade appeals but also harassment complaints, and on December 10, 2018, respondent agreed to perform an administrative review as a courtesy, not according to any Board policy. To be sure, this was not a new inquiry by petitioner, and it was not a new investigation by respondent. It was an administrative review as a courtesy, and Lerner agreed to provide a response by early February 2019.

As promised, the administrative review was completed by early February 2019, which Lerner memorialized in a letter dated February 5, 2019. In his letter, Lerner wrote that after his meeting with petitioner, he assigned the head of the school district's Human Resources Department, Gary Hall, to interview staff and provide a full report. Lerner wrote that Hall interviewed ten staff members, had conversations with school administrators, and reported his findings. Based on that investigation, together with the information petitioner had provided, Lerner determined the following:

First, Lerner wrote that during R.B.'s junior year, when she was having academic difficulties in some of her classes, R.B. never asked any of her teachers to adjust her coursework or her deadlines for religious observance.

Second, Lerner wrote that the teachers in the three classes in which R.B. seemed to have particular difficulty made repeated and reasonable efforts to help R.B. keep up and catch up with her classwork.

Third, Lerner wrote that R.B.'s guidance counselor, Mr. Natelli, did not say or suggest that R.B. had to choose whether school or religion was more important to her, and that R.B. must have misunderstood what Natelli had said and what he had meant during their conversation about time management.

Fourth, Lerner wrote that he did not agree with petitioner's assertion that R.B. was unable to meet expectations, because she was able to meet expectations in all her other classes during her entire four years at the high school.

Fifth, Lerner wrote that petitioner's request for additional time at the end of R.B.'s junior year for her to complete unfinished work was properly understood as just that, a request for additional time to complete unfinished work, and not as a complaint of discrimination or harassment, intimidation, or bullying.

Sixth, Lerner wrote that petitioner's assertion that the school district has no policy for religious accommodation is a misunderstanding of what the school administration had

communicated to him. Lerner was specific. Indeed, Lerner noted that not only did the school district have such a policy, but that R.B. benefited from it:

> The Board does, in fact, have a policy . . . . I believe that the dialogue BCA administration had with you . . . illustrat[ed] how [R.B.] was offered flexibility by the teachers of the courses she struggled with throughout her junior year and then opened the door to additional flexibility for [R.B.] to complete additional missing work during the summer.
>
> [Ex. M to the Certification of William Soukas, Esq., dated January 25, 2021.]

Finally, Lerner wrote that he could not and would not change R.B.'s high-school transcript or her final grades because it would be inaccurate and misleading.

On February 21, 2019, petitioner emailed Susino that he was disappointed with the outcome of the administrative review, and that he wanted to renew his complaints before the Board. Significantly, petitioner wrote that he wanted to renew his complaints as detailed in his letter to Lerner from September 4, 2018, more than five months earlier. In addition, petitioner attached a letter detailing his disagreement with the outcome of the administrative review. On February 26, 2019, Susino emailed petitioner that the next Board meeting was scheduled for March 26, 2019.

On March 26, 2019, petitioner attended the Board meeting and addressed the Board at the end of the meeting during its public session.

After the meeting, on that same date, petitioner emailed Susino, stating that he was unable to complete his presentation, and asked to present his complaint to the "Chairman of the Board Committee."

On April 16, 2019, counsel for respondent wrote a letter to petitioner. In his letter, counsel explained that the Board had considered his position concerning his complaints about his daughter's grades, her counselor, and the administrative investigation, and that the Board had determined that the school's handling of his complaints was "prompt,

thorough, and responsive, in all respects." Counsel further explained that petitioner's request to make a presentation before the "Chairman of the Board Committee" was denied for many reasons. First, counsel explained that the complaint against Natelli was not subject to the school policy concerning harassment, intimidation, and bullying because it was never reported as such.

Second, counsel explained that a presentation to the "Chairman of the Board Committee" is not a recognized procedure.

Third, counsel explained that further review was not warranted because of the most recent administrative investigation, which was provided as a courtesy by the superintendent, not under any Board policy:

> Please be advised that your request for further Board review of the same complaints you have already brought to the Board does not appear to be warranted in light of the administrative and Board-level reviews of the situation that have already been conducted. As a courtesy to you and in light of your continuing concerns, the Board consented to consider your complaints relating to the recent administrative investigation authorized by Dr. Lerner. The Board has now considered your complaints and found that they were addressed properly by school administration. As such, no need exists for further Board review of these matters.
>
> [Ex. M to the Certification of William Soukas, Esq., dated January 25, 2021.]

Fourth, counsel explained that since R.B. had already graduated from high school and had attained the age of majority, the Board did not believe that petitioner had standing to pursue the matter.

Finally, counsel explained once more that the superintendent had held an extensive meeting with petitioner and authorized, not in keeping with any Board policy but as a courtesy, an administrative investigation of his complaints, which resulted in the determination that the Board had handled his complaints properly.

On July 16, 2019, petitioner finally filed his appeal with the Commissioner of Education.

CONCLUSIONS OF LAW

A party may move for summary decision upon all or any of the substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). Summary decision may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that no genuine issue of material fact exists, and that the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). When motions for summary decision are made and supported, an adverse party, to prevail, must respond by affidavit setting forth specific facts showing that genuine issues of fact exist which can only be determined in an evidentiary proceeding. Ibid.

In this case, petitioner did not respond by affidavit setting forth specific facts showing that genuine issues of fact exist which can only be determined in an evidentiary proceeding. This failure notwithstanding, the record is clear. No genuine issue of material fact exists that petitioner received notice of final action on November 10, 2017, concerning his grade appeals, which were processed under Board policy concerning grade appeals, and notice of final action on August 6, 2018, concerning his so-called discrimination and harassment complaints, which were processed under Board policy concerning affirmative action. Since no genuine issue of material fact exists concerning these dates of receipt, respondent is entitled to prevail as a matter of law for the reasons stated below.

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. Kaprow v. Bd. of Educ. of Berkeley Twp., 131 N.J. 572, 583–88 (1993). 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.), 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 that petitioner argues violate Board policy and State law occurred during the 2016–17 school year. Petitioner complained about them after the close of the 2016–17 school year, and the date of receipt of final action was November 10, 2017, at the earliest, and August 6, 2018, at the latest, all of which place the current petition, which was filed on July 12, 2019, well outside the proscribed 90 days for filing such appeals. As I found above, the final action by the Board regarding the grade appeals was received on November 10, 2017, and any other decision that could have been construed as some final action about separate harassment complaints could only be said to have been received on August 6, 2018, when Lerner explained that the complaints were more properly processed as complaints about religious accommodation, or even on August 20, 2018, when Lerner further explained that they were processed as discrimination complaints under the district's policy concerning affirmative action. To underscore, these grade appeals were not HIB complaints.

Petitioner is sophisticated, and his filings are extensive. If petitioner had truly intended to file his grade appeals as HIB complaints, he would have done so, but petitioner intended to file grade appeals based on alleged conflicts with religious practices and a perceived lack of religious accommodations by the high school during the previous school year. More pointedly, if petitioner truly believed that Natelli harassed, intimidated, or bullied his daughter in violation of the ABRA, then petitioner would have filed not only his HIB complaints with respondent, but also his appeal for the failure of respondent to have investigated them under the ABRA in a timely manner. In short, petitioner did not do so because he was pursuing grade appeals, not harassment complaints, which he later recast as HIB complaints after his grade appeals were denied.

For me to conclude otherwise would mean that anytime a parent or student questions a final determination, the finality of that determination is somehow negated, and the statute of limitations is somehow reset. Such a conclusion would contravene not only case law but also common sense. It would also chill dialogue between students and schools and between parents and administrations.

This is not to say that petitioner was unreasonable in refusing to accept the outcome of his grade appeals or the way his grade appeals or so-called harassment complaints were processed; rather, it is his failure to appeal their final actions within the statute of limitations that was unreasonable.

As a result, I **CONCLUDE** that the petition of appeal in this case is outside the statute of limitations, that the motion for summary decision should be granted, and that this case should be dismissed.

Since I have concluded that this case is outside the statute of limitations and should be dismissed, I need not address the issues of standing or mootness, which respondent argues as additional reasons to dismiss this case.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the motion for summary decision is **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.

April 19, 2021
DATE

BARRY E. MOSCOWITZ, ALJ

Date Received at Agency: April 19, 2021

Date Mailed to Parties: April 19, 2021

dr