

New Jersey Commissioner of Education

Final Decision

T.H., on behalf of minor child,

Petitioner,

v.

Board of Education of the Township of Sparta,
Sussex County,

Respondent.

Synopsis

Pro se petitioner filed the within appeal in September 2020, contending that school officials at Sparta High School wrongfully searched his daughter, a minor at the time, during a sporting event on October 20, 2017. Petitioner claimed that a resulting harassment, intimidation and bullying (HIB) complaint he filed with the school district was improperly closed without a proper investigation, and his internal appeal of the HIB claim was rejected by the respondent Board in September 2019. Petitioner's daughter graduated from Sparta High School in June 2019. The Board filed a motion for summary decision contending that petitioner's appeal must be dismissed as untimely; alternatively, the Board asserted that petitioner lacks standing and failed to state a claim upon which relief can be granted.

The ALJ found, *inter alia*, that: pursuant to *N.J.A.C.* 6A:3-1.3(i), petitioners must 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; petitioner's appeal was filed as a result of an alleged search of petitioner's daughter, which was conducted in October 2017 by the District's Athletic Director; petitioner waited eight months, until June 2018, to file an HIB complaint, and did not file the within appeal until more than two years later; petitioner has offered no valid reason for the significant delay in filing; further, petitioner lacks standing to pursue a claim on behalf of his child, who is no longer a minor. The ALJ concluded that the petitioner failed to meet his burden and, accordingly, ordered the petition of appeal dismissed.

Upon a comprehensive review, the Commissioner concurred with the ALJ's findings regarding timeliness and lack of standing to bring this case on behalf of his child, who has graduated and is now an adult. Accordingly, the Board's motion for summary decision was granted and 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.

280-21

OAL Dkt. No. EDU 09769-20

Agency Dkt. No. 192-9/20

New Jersey Commissioner of Education

Final Decision

T.H., on behalf of minor child,

Petitioner,

v.

Board of Education of the Township of
Sparta, Sussex 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 Administrative Law Judge that the petition was untimely pursuant to *N.J.A.C.* 6A:3-1.3, and that petitioner lacks standing to pursue a claim on behalf of his child, who is no longer a minor. Accordingly, the Board's motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2021

Date of Mailing: November 4, 2021

¹ 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 09769-20

AGENCY DKT. NO. 192-09/20

T.H. ON BEHALF OF MINOR CHILD,

Petitioner,

v.

TOWNSHIP OF SPARTA, SUSSEX COUNTY

Respondent.

Thomas Hand, pro se, for petitioner

Marc H. Zitomer, Esq. for respondent (Schenck, Price, Smith & King, LLP,
attorneys)

BEFORE **ANDREW M. BARON**, ALJ:

Petitioner T.H. on behalf of minor child, contends that officials of Sparta High School performed an illegal search on his minor daughter at the time on October 20, 2017. As a result, petitioner filed a H.I.B. complaint which he says was improperly closed without a proper investigation. His internal appeal was rejected by the District in September 2019.

Petitioner filed a Petition of Appeal on September 9, 2020. Respondent filed an Answer to Petition of Appeal September 29, 2020. The matter was transmitted by the

Department of Education (Department) to the Office of Administrative Law (OAL), where it was filed on October 20, 2020 as a contested case.

Among other things, the District contends the appeal was untimely filed, and is moot regardless as T.H.'s daughter has long since graduated, as well as petitioner lacking standing to prosecute the matter on her behalf as she is an adult and was not joined as a party to the case. Respondent seeks a disposition of the matter through summary disposition.

Respondent brings this motion seeking disposition through summary proceedings due to untimeliness of the appeal, lack of standing, and failure to state a claim upon which relief can be granted. Petitioner's daughter graduated from respondent Sparta High School in June 2019.

Petitioner alleges that almost two years prior to graduation, in October 2017, his daughter, a student at the high school was wrongfully searched by school officials at a sporting event. Eight months after the incident, petitioner filed a H.I.B. Complaint against the District and school officials. The matter was closed without what petitioner believed to be a proper investigation, and fifteen months later, in September 2019, petitioner filed the within appeal. Among other things, the driving force behind the appeal is petitioner's allegation that the details of the search were leaked throughout the community thereby besmirching his daughter's good name.

The legal basis for filing an action against a school district is found at N.J.A.C. 6A:3-1.3 which states in part:

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

Authority to establish a time limitation for the filing of such actions is vested with the New Jersey Commissioner of Education. See: Kaprow v. Board of Education of Berkeley Township, 131 N.J.572 (1993), which stands for the principle that:

The limitation period provides a measure of repose, an essential element in the proper and efficient administration of the school laws. It stabilizes the relationship between the teachers and the administration. The limitations also gives school districts the security of knowing that the administrative decisions regarding the operation of the school cannot be challenged after 90 days. Only when a petitioner can demonstrate exceptional circumstances or compelling reasons would the Commissioner consider expanding the time to file beyond the 90 days. See also: Brunetti v. Borough of New Milford, 68 N.J. 576 (1975).

Petitioner's complaint was filed as a result of an alleged search conducted by the District's Athletic Director of petitioner's daughter on or about October 21, 2017. Petitioner waited eight months to file an H.I.B. until June 2018.

The Due Process petition was not filed until September 2020. No valid reason for the significant delay in filing has been put forward by petitioner.

As to petitioner's concerns about "leaks" about the incident within the community, there does not appear to be a basis for a cause of action in an administrative proceeding.

The Commissioner of Education only has jurisdiction over disputes that "primarily and directly" arise under school laws. See Ciambrone v. Witty Bd. of Educ of Bloomingdale, C'mmr. Dkt. No. 143-01 (May 7, 2001) quoting Hamilton Bd. of Educ. v.. Fraleigh, 93 N.J.A.R. 2d. (EDU) 538 (Cmm'r 1993).

See also: Fair Lawn Bd. of Educ. v. Mayor of Fair Lawn, 143 N.J. Super 259, (Law Div. 1976) aff'd 153 N.J. Super 480 (App. Div. 1977), which speaks to the issue of what the Commissioner of Education has jurisdiction over, and what he or she does not.

Accordingly, while petitioner may have had valid concerns in October 2017 as to what allegedly occurred, and similar concerns about discussions within the community that may have been made public, there simply does not appear to be a legal basis within the confines of Administrative Law for jurisdiction over this area of concern.

Having dealt with the issues of timeliness and lack of jurisdiction over the underlying complaint, I am also compelled here to point out that petitioner does not have standing to have the complaint heard, even if the motion was denied, and a full hearing went forward. The child in whose name petitioner brought the complaint is now and adult in her own right. She was not joined as a party, and petitioner admitted during argument that she was not informed of the proceeding.

Petitioner, no doubt is a loving father who still cares for the welfare of his daughter, and wanted to see a perceived wrong corrected. But for all of the aforementioned reasons stated herein, there is no legal basis for the matter to proceed any further.

Accordingly, I **CONCLUDE** that petitioner has failed to meet their burden and the petition of appeal should be **DISMISSED**. I further **CONCLUDE** that the Clerk should return this matter to the Department of Education.

It is **ORDERED** that this matter is **DISMISSED** and that the Clerk return this matter to the Department of Education for appropriate disposition.

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.

October 7, 2021

DATE



ANDREW M. BARON, ALJ

Date Received at Agency:

October 7, 2021

Date Mailed to Parties:

October 7, 2021