

New Jersey Commissioner of Education
Final Decision

A.B., on behalf of minor child, L.B.,

Petitioner,

v.

Board of Education of the Township of Pittsgrove,
Salem 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 petitioner's appeal was not timely pursuant to *N.J.A.C. 6A:3-1.3(i)*.

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

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 29, 2025
Date of Mailing: January 29, 2025

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

MOTION TO DISMISS

OAL DKT. NO. EDU 04613-2024

AGENCY DKT. NO. 42-2/24

A.B. ON BEHALF OF MINOR CHILD, L.B.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF PITTSBGROVE, SALEM
COUNTY,**

Respondent.

Joshua L. Weiner, Esq., for petitioner, A.B. o/b/o L.B. (Lindabury, McCormick,
Estabrook & Cooper, P.C., attorneys)

Sanmathi Dev, Esq. and **Geoffrey N. Stark**, Esq., for respondent, Board of
Education of the Township of Pittsgrove, Salem County (Capehart and
Scatchard, attorneys)

BEFORE **REBECCA C. LAFFERTY**, ALJ:

Record Closed: August 15, 2024

Decided: November 13, 2024

STATEMENT OF THE CASE

The petitioner, A.B. (petitioner or A.B), filed a Pro Se Petition of Appeal (Petition) with the New Jersey Commissioner of Education, Office of Disputes and Controversies (Department) challenging the Pittsgrove Township Board of Education's (respondent or Board) finding that her child, L.B., violated the Board's harassment, intimidation, and bullying (HIB) policy. After sending a detailed letter of appeal, dated January 19, 2024, to the Department, which was stamped received on January 24, 2024, A.B. filed the Petition which was ultimately deemed filed by the Department on February 26, 2024, twenty-eight days after the ninety-day filing deadline of January 29, 2024. The respondent filed a Motion to Dismiss in lieu of an Answer based upon N.J.A.C. 6A:3-1.3(i). Was the Petition timely filed? No. N.J.A.C. 6A:3-1.3(i) provides that the Petition was required to be filed no later than ninety days from the date of the receipt of the notice of the action taken by the Board, which in this case was January 29, 2024, and exceptional circumstances do not exist to relax the ninety-day deadline.

PROCEDURAL HISTORY

Following a HIB investigation and a hearing before the Board, the petitioner's son, L.B., was found to have violated the Board's HIB policy. By letter, dated October 23, 2023, the petitioner was notified of the respondent's decision. The petitioner sent a detailed letter of appeal to the Department, dated January 19, 2024, which was stamped received on January 24, 2024. After receiving an email from the Department, dated February 7, 2024, the petitioner filed the Petition which was ultimately deemed filed by the Department on February 26, 2024. On or about March 29, 2024, the respondent filed a Motion to Dismiss the Petition of Appeal (Motion) in lieu of an Answer in accordance with N.J.A.C. 6A:3-1.5(g).

On April 1, 2024, the matter was transmitted by the New Jersey Department of Education, Office of Controversies and Disputes, to the Office of Administrative Law (OAL) where it was filed as a contested case pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

The petitioner retained counsel, pre-hearing conferences were held, and a briefing schedule was established. Petitioner's counsel filed a brief in opposition to the Motion on June 21, 2024. Counsel for the respondent filed a reply brief on July 1, 2024. Oral argument on the Motion to Dismiss was held on August 15, 2024, at which time the record closed. A request for an extension for filing the Initial Decision in this matter was requested and granted, extending the date for filing the Initial Decision to November 14, 2024.

DISCUSSION AND FINDINGS OF FACT

The parties do not dispute the underlying facts in this case, and therefore, I **FIND** the following as **UNDISPUTED FACTS**:

In or around May 2023, a HIB investigation involving student, L.B., commenced. By letter dated July 21, 2023, A.B., L.B.'s mother, was notified of the results of the investigation. (PET035 - PET036.)¹ By letter dated, September 15, 2023, L.B. requested a hearing before the Board. (PET045 - PET046.) A hearing was held on October 19, 2023, at the Board's regular meeting. By letter, dated October 23, 2023, L.B. was notified of the Board's determination that A.B. had violated the Board's HIB policy. (PET057 - PET058.) A handwritten notation on the October 23, 2023 letter indicates that L.B. received the October 23, 2023 letter on October 31, 2023.² (PET057 - PET058.) The October 23, 2023 letter also provides as follows:

¹ For the sake of simplicity, this Tribunal will utilize the Bates numbers assigned to certain documents by counsel for the respondent. These documents are attached as Exhibits A and B to respondent's Certification of Counsel.

² The parties agree that October 31, 2023, is the date of the issuance of the Board's decision.

Should you wish to appeal the Board's decision, you may appeal to the New Jersey Commissioner of Education, in accordance with N.J.A.C. 6A:3, Controversies and Disputes, no later than 90 days after issuance of the Board's decision

. . .

(PET057 – PET 058.)

On January 19, 2024, L.B. sent a detailed letter of appeal to the Department, which was stamped received on January 24, 2024. (PET004 – PET013; and Ex. A to Certification of Joshua L. Weiner, Esq.) The Board was not served with this letter of appeal.

On February 7, 2024, L.B. received an email from the Department, which states, in part:

We have received your letter dated January 19, 2024. If you would like to appeal a harassment, intimidation, and bullying determination, you may do so through the contested case process as provided in the Administrative Procedure Act and its implementing rules.

In order to initiate a contested case before the Commissioner, a petitioner must comply with the rules set forth in N.J.A.C. 6A:3. These rules require you to submit a petition of appeal that is described in N.J.A.C. 6A:3-1.4. I have attached a pro se petition of appeal that you may fill out and return to this office. You must give a copy of the petition and any supporting documentation to the board of education and you must provide this office with proof that you did so.

(Ex. B to Certification of Joshua L. Weiner, Esq.)

After receiving the February 7, 2024 email from the Department, L.B. filed the Petition which was ultimately deemed filed by the Department on February 26, 2024. (Exs. A and B to Certification of Counsel.) The Petition itself is dated February 7, 2024, but the attached Proof of Service indicating that the Board was served, is dated February 20, 2024. (PET001 – PET002.)

The parties agree that ninety-day deadline in this case is January 29, 2024.

DISCUSSION AND CONCLUSIONS OF LAW

The respondent filed the Motion based on the timeliness of the petitioner's appeal, specifically that the appeal to the Department was filed outside of the ninety-day filing deadline pursuant to N.J.A.C. 6A:3-1.3(i), which in this case was January 29, 2024. The issue to be decided on appeal is whether the circumstances justify the relaxation of the ninety-day filing deadline for the appeal of the respondent's HIB decision.

The respondent's position is that the petitioner's January 19, 2024 letter did not constitute a Petition of Appeal under N.J.A.C. 6A:3-1.3 because it was lacking several key components required by the regulations, including, a signed verification of the truthfulness of the allegations and proof of service on the opposing party. Additionally, the respondent asserts that its argument is bolstered by the fact that the Department sent an email to petitioner on February 7, 2024, in which it set forth the process to file an appeal, thus not recognizing the January 19, 2024 letter as a Petition of Appeal. Respondent further argues that the caselaw is clear and that the ninety-day deadline has been strictly construed by the Commissioner of Education and the New Jersey courts and no exceptional circumstances exist to justify relaxation of the ninety-day rule in this case.

The petitioner's position is that the ninety-day rule should be relaxed in this case for several reasons. First, the petitioner, as a pro se litigant, attempted to comply with the regulations by filing the letter of appeal five days prior to the ninety-day deadline. Second, the Department did not advise the petitioner that her January 19, 2024 letter was insufficient to serve as a Petition of Appeal until after the ninety-day deadline passed making it impossible for her to comply with the ninety-day deadline. Third, the petitioner was led to believe that she could cure the deficiencies of her letter of appeal by filing a Petition of Appeal that complied with the regulations because the February 7, 2024 email from the Department did not mention that the ninety-day deadline had passed or mention any time requirements at all. Lastly, the public policy considerations behind the ninety-

day rule are not affected in a case like this where the petitioner does not seek monetary relief and where the imposition of the rule would result in an injustice.

N.J.A.C. 6A:3-1.3(a), Filing and service of petition of appeal, provides:

(a) To initiate a contested case for the Commissioner's determination of a controversy or dispute arising pursuant to the school laws, **a petitioner shall prepare a petition of appeal conforming to the requirements at N.J.A.C. 6A:3-1.4 and serve such petition upon each respondent, together with any supporting papers the petitioner may include with the petition. The petitioner then shall file proof of service on each respondent,** the telephone numbers and email addresses, where available, of the petitioner and each respondent, and the petition and supporting materials, if any, by emailing the documents to the email address designated by the Office of Controversies and Disputes or mailing the documents to the Commissioner c/o the Director, Office of Controversies and Disputes, New Jersey Department of Education, 100 River View Plaza, PO Box 500, Trenton, New Jersey 08625-0500. **In no case shall a petitioner submit materials to the Commissioner that have not been served upon each respondent.**

. . .

(i) 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, that is the subject of the requested contested case hearing.

(Emphasis added.)

The ninety-day rule has been recognized as a “reasonable procedural requirement” that provides litigants with a meaningful opportunity to file a petition and promotes finality in education matters. *Kaprow v. Board of Educ. of Berkeley Twp.*, 131 N.J. 572, 583 (1993). This rule has been strictly construed by the Commissioner of Education, the State Board of Education, and New Jersey courts. See *Riely v. Bd. of Educ. of Hunterdon Cent. Reg’l High Sch. Dst.*, 173 N.J. Super. 109, 113 (App. Div. 1980.)

The New Jersey Supreme Court held that there is a two-pronged public policy approach regarding the ninety-day rule. First, the ninety-day rule is meant 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.” Kaprow 131 N.J. at 587 (quoting, *Ochs v. Federal Ins. Co.*, 90 N.J. 108, 112 (1982)). Further, the ninety-day rule is intended “to penalize dilatoriness and serve as a measure of repose by giving security and stability to human affairs.” Kaprow, 131 N.J. at 587 (quoting *Farrell v. Votator Div.*, 62 N.J. 111, 115 (1973)).

Pursuant to N.J.A.C. 6A:3-1.16, any of the rules in the applicable regulations may be relaxed when “strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.” Relaxation of the ninety-day filing requirement is reserved only for situations where the party presents a substantial constitutional issue or a matter of significant public interest beyond concern only to the parties. Portee v. Bd. of Educ. of Newark, EDU 5855-93, 1994 N.J. Agen. Lexis 1363, *12–13 (February 24, 1994), aff’d, Comm’r Decision (April 14, 1994).

Among the many cases that address the ninety-day rule, there are a few cases that are particularly relevant to the instant matter. In *T.R. o/b/o E.R. v. Bridgewater-Raritan Bd. of Educ.*, Agency Docket No.: 355-12/12 (July 22, 2013), 2013 N.J. AGEN LEXIS 523, 2013 N.J. AGEN LEXIS 523, the petitioners filed their original papers with the Department on November 27, 2012, two days before the ninety-day deadline. On November 29, 2012, the last day that petitioners could timely file an appeal, the petitioners were notified that their petition was deficient, but that “[i]f the necessary filings are timely submitted, November 27, 2012 will be deemed the filing date of the appeal.” *Id.* at 7. The petitioners submitted the additional information on December 6, 2012, and the Commissioner deemed the appeal was timely filed.

In the matter of *E.G.M. o/b/o J.M. v. Bd. of Educ. of the Twp. of Mahwah*, OAL Docket No. 02119-13 (April 19, 2013), 2013 N.J. AGEN LEXIS 77, 2013 N.J. AGEN LEXIS 77, the ALJ refused to relax the ninety-day rule on a motion for summary decision where

the petitioner took three months to cure the deficiencies identified by the Department. In that matter, the petitioner filed a letter purporting to be an appeal with the Department on October 1, 2012. On October 4, 2012, the petitioner was advised that filing papers were deficient, but that “[i]f the necessary filings are timely submitted, October 1, 2012 will be deemed the filing date of the appeal.” *Id.* at 7-8. The petitioners submitted the additional information on January 8, 2013.

In *De Mario v. Board of Examiners*, OAL Docket No. 06991-2010, (Init. Dec. April 17, 2012), Agency Docket No. 113-6/10 (May 11, 2012), 2012 N.J. AGEN LEXIS 192, 2012 N.J. AGEN LEXIS 192, the Commissioner upheld the ALJ’s determination that the petition was not timely filed. On March 1, 2010, the petitioner filed a letter purporting to be an appeal. On March 4, 2010, the Department sent the petitioner a letter advising petitioner that the filing was deficient but that “[i]f the necessary filings are timely submitted, March 2, 2010 will be deemed the filing date of the appeal.” The petitioner submitted the additional information on June 7, 2010, three months after receiving the letter from the Department.

According to the petitioner, the compelling reasons to relax the ninety-day statute of limitations is that the petitioner, acting without the assistance of counsel, timely filed an initial appeal, but the Department did not notify petitioner that her appeal was deficient until after the ninety-day deadline had passed, and the email advising of the deficiencies was silent as to when a revised appeal was to be filed or served on the respondent. Additionally, upon receipt of the email from the Department, the petitioner filled out the Petition of Appeal the same day and served the respondent approximately two weeks later just before filing the Petition.

However, this case is factually distinctive from *T.R.*, *E.G.M.*, and *De Mario*, discussed above. In all three of those cases, the petitioners were advised by the Department that their petitions were deficient, but if the deficiencies were cured in a timely manner, their matters would be deemed timely filed. The differences amongst those three cases being the amount of time that lapsed between receiving correspondence from the

Department and the time in which the petitioner cured the deficiencies. In this case, the petitioner did not receive an email from the Department that advised her that her appeal would be deemed timely filed if she cured the deficiencies in a timely manner. The email that she received simply advised her that if she wanted to file an appeal, that it must comply with N.J.A.C. 6A. This Tribunal cannot speculate as to the reason for the timing of the Department's email, nor why the Department did not send an email similar to that sent in T.R., E.G.M. and De Mario, but the fact is that it did not advise the petitioner that her appeal would be deemed timely filed if deficiencies were cured within a certain time period, so any reliance on that belief by the petitioner was misplaced.

Furthermore, there is another important factual distinction between this case and the other cases previously discussed, which is that when the petitioner filed her initial letter of appeal with the Department prior to the ninety-day deadline, she had not first served the respondent with the letter in direct contradiction of the requirement contained in N.J.A.C 6A:3-1.3(a). N.J.A.C 6A:3-1.3(a) states, "In no case shall a petitioner submit materials to the Commissioner that have not been served upon each respondent." The respondent in this case was only first notified of an appeal in this case when it was served on February 20, 2024, three weeks past the ninety-day deadline.

The fact of the matter is that the petitioner's initial filing was both procedurally and substantively deficient, no justification was given for the several week delay in serving the respondent and filing what essentially were the same exact papers with the added Petition and proof of service attached. Furthermore, the specific circumstances of this case do not present a substantial constitutional issue or a matter of significant public interest in order to justify the relaxation of the statute of limitations in N.J.A.C. 6A:3-1.3, pursuant to N.J.A.C. 6A:3-1.16; it is only of concern to the petitioner. For all of the foregoing reasons, I **CONCLUDE** that petitioner's appeal is time-barred.

ORDER

For the reasons set forth above, it is hereby **ORDERED** that respondent's Motion to Dismiss the petitioner's Petition of Appeal due to petitioner's failure to file the Petition of Appeal within the ninety-day limitation as required by N.J.A.C. 6A:3-1.3(i) is hereby **GRANTED**, and the petitioner's appeal is hereby **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. **Exceptions may be filed**

by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.



November 13, 2024

DATE

REBECCA C. LAFFERTY, ALJ

Date Received at Agency:

Date Mailed to Parties:

RCL/tat

APPENDIX

EXHIBITS

For petitioner:

Letter Brief in opposition to Motion to Dismiss Petition of Appeal, dated June 21, 2024

Certification of Joshua L. Weiner, Esq. with attached Exhibits A and B, dated June 21, 2024

For respondent:

Letter Brief in Support of Notice of Motion to Dismiss Petition of Appeal, dated March 28, 2024

Certification of Counsel with attached Exhibits A and B, dated March 28, 2024

Letter Brief, dated July 1, 2024