

New Jersey Commissioner of Education
Final Decision

O.W. and L.W., on behalf of minor child, A.W.,

Petitioners,

v.

Board of Education of the Township of North
Bergen, Hudson County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by the petitioner pursuant to *N.J.A.C. 1:1-18.4*, and the North Bergen Board of Education's (Board) reply thereto, have been reviewed and considered.

In this matter, petitioners challenge the July 20, 2023 harassment, intimidation, and bullying (HIB) determination made by the Board. Petitioners, through their attorney, filed the petition of appeal on October 10, 2023. That same day, the Office of Controversies and Disputes (C&D), which processes petitions on behalf of the Commissioner, emailed petitioners' attorney to inform him that the petition was deficient because it failed to include a verification, as required by *N.J.A.C. 6A:3-1.4*, and proof of service, as required by *N.J.A.C. 6A:3-1.3(a)*. On October 26, 2023, petitioners, through their attorney, filed an amended petition. That same day, C&D emailed petitioner's attorney to inform him that the amended petition had been received, but that it remained deficient because it still lacked a verification and proof of service.

Petitioner's attorney replied to C&D's email on October 27, 2024, attaching a petition with the required verification. However, the petition still did not include proof of service, and C&D responded to petitioners' attorney on the same day to ask that it be provided so that the petition could be processed. When the proof of service was not provided, C&D sent a deficiency notice to petitioners' attorney by mail on November 15, 2023, indicating that if proof of service was not provided by December 14, 2023, the matter would be deemed withdrawn and no further action would be taken. Proof of service was not received, and the matter was closed.

On September 10, 2024, petitioners' attorney emailed C&D to inquire about the status of the matter, and he was advised that it had been closed. On October 11, 2024, petitioners, through their attorney, filed a "Petition for Reinstatement/Open."

Following the Board's motion to dismiss, the Administrative Law Judge (ALJ) concluded that the petition of appeal was untimely pursuant to *N.J.A.C. 6A:3-1.3(i)*. The ALJ found that while petitioners attempted to file the petition within 90 days, it was never deemed filed because it was procedurally deficient. The ALJ noted that clear instructions were provided by C&D regarding the nature of the deficiency, how it was to be cured, and the deadline for doing so. Petitioners nonetheless failed to cure the deficiency, and the only excuse they provided was that it was inadvertently not cured. Finally, the ALJ found that the circumstances did not warrant relaxation of the filing deadline. Accordingly, the ALJ granted the Board's motion to dismiss the petition.

In their exceptions, petitioners argue that New Jersey courts are averse to dismissing cases on procedural grounds and prefer to decide cases on the merits, such that the ALJ should have denied the Board's motion to dismiss and reinstated the HIB complaint. Petitioners contend that there would be no prejudice to the Board in allowing the matter to continue.

In reply, the Board urges the Commissioner to adopt the Initial Decision in its entirety and to dismiss the petition of appeal as untimely.

Upon review, the Commissioner concurs with the ALJ that the petition of appeal was untimely. The Commissioner notes that 90 days from petitioners' July 20, 2023 receipt of the Board's decision was October 18, 2023. Petitioners' original submission on October 10, 2023 was deficient, and the petition was therefore not filed on that date. The petition did not include the verification required by *N.J.A.C. 6A:3-1.4*, and same was not provided until October 27, 2023, outside the 90-day deadline. Petitioners' counsel provided no explanation for the delay in providing the verification, despite C&D sending him an email stating that it was required more than a week before the expiration of the deadline.

Furthermore, *N.J.A.C. 6A:3-1.3* requires that a petitioner must file proof of service along with the petition and supporting materials. In the absence of proof of service, a petition is not filed. There is no dispute that petitioners failed to provide proof of service with their original petition, or even with the amended petition or the amended petition with verification that were subsequently filed. The petition was filed by petitioners' counsel, who should have been well aware of the regulatory requirements; proof of service is not a requirement unique to the Department of Education or the administrative dispute resolution process. Moreover, petitioners' attorney offers no reasonable explanation for his failure to respond to communications from C&D regarding the deficiency.

The Commissioner further agrees with the ALJ that the circumstances do not warrant relaxation of the deadline. The purpose of the time limitation is, in part, to "serve as a measure of repose" through which a board of education can be secure, after the 90 days have elapsed,

that its decisions will not be challenged before the Commissioner. *Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 N.J. 572, 587 (1993). Furthermore, the deadline is intended 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.” *Ibid.* For these reasons, the filing deadline is strictly construed and consistently applied.

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



COMMISSIONER OF EDUCATION

Date of Decision: March 3, 2025
Date of Mailing: March 5, 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

DISMISSAL

OAL DKT. NO. EDU 15824-24

AGENCY DKT. NO. 270-10/23

O.W. AND L.W. O/B/O MINOR CHILD, A.W.,

Petitioner,

v.

TOWNSHIP OF NORTH BERGEN

BOARD OF EDUCATION, HUDON COUNTY,

Respondents.

Lawrence A. Katz, Esq., for petitioners (The Lento Law Firm, attorneys)

Jason M. Ryglicky, Esq., for respondents (Ryglicky & Gillman, P.C., attorneys)

Record Closed: December 19, 2024

Decided: January 14, 2025

BEFORE **BINDI MERCHANT**, ALJ:

STATEMENT OF THE CASE

Petitioner filed a petition of appeal with the Department of Education on October 11, 2024, over 365 days late, to reinstate a defective appeal for a harassment, Intimidation, or Bullying (HIB) determination. Is the petition time-barred? Yes. Under

N.J.A.C. 6A:3-1.3(i), a petitioner must file a petition no later than the ninetieth day from the date of receipt of notice of a board's final action.

PROCEDURAL HISTORY

On July 20, 2023, respondent provided petitioner written notice of its HIB determination. On October 10, 2023, petitioner filed an appeal with the New Jersey Department of Education, Office of Controversies and Disputes (OCD), but was advised that the filing was deficient for failing to provide a verification or certification and proof of service. On October 26, 2023, petitioner filed an amended petition with OCD. On October 27, 2023, petitioner filed the amended petition with the verification, but did not include the proof of service. On November 15, 2023, OCD again notified petitioner of the deficiency and that a corrected filing was due by December 14, 2023.

On October 11, 2024, petitioner filed an appeal with OCD as a "Petition for Reinstatement/Open." On October 31, 2024, respondent filed a motion to dismiss instead of an answer under N.J.A.C. 6A:3-1.5(g). On November 4, 2024, the bureau transmitted this 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 OAL, N.J.S.A. 52:14F-1 to -13.

On November 26, 2024, I held an initial prehearing conference and established a briefing schedule for the motion to dismiss. On December 4, 2024, petitioner filed opposition. On December 9, 2024, respondent filed a reply. Oral argument was heard on December 19, 2024, and the record was closed.

FINDINGS OF FACT

Based on the documents submitted and oral arguments on the motion to dismiss, I **FIND** the following as **FACT** for purposes of this motion:

1. On July 20, 2023, petitioner was notified that respondent affirmed the School's HIB determination and decision to punish petitioner on July 19, 2023.
2. On October 10, 2023, petitioner attempted to file a petition for appeal with OCD.
3. On October 10, 2023, OCD advised that the filing was deficient for failing to provide a verification or certification and proof of service.
4. On October 26, 2023, petitioner filed an amended petition with OCD.
5. On October 26, 2023, OCD stated that the amended petition could not be processed until the deficiencies were rectified.
6. On October 27, 2023, petitioner filed the amended petition with the verification but did not include the proof of service.
7. On October 27, 2023, OCD again reminded petitioner to provide a proof of service to process the petition
8. On November 15, 2023, petitioner received a formal deficiency notice advising that a proof of service was required and that documents were required by December 14, 2023, or the matter would be deemed withdrawn and no further action would be taken.
9. On September 10, 2024, petitioner requested an update on the status of the petition and was advised that the appeal was closed and deemed withdrawn because a proof of service had not been received as per the deficiency notice.
10. On October 11, 2024, petitioner filed an appeal with OCD, as a "Petition for Reinstatement/Open."
11. On October 31, 2024, respondent filed a motion to dismiss instead of an answer under N.J.A.C. 6A:3-1.5(g).

CONCLUSIONS OF LAW

Under N.J.A.C. 6A:3-1.5(g), a party can file a motion to dismiss a petition instead of filing an answer in a dispute concerning school laws. This regulation cited is analogous to a motion to dismiss a complaint for failure to state a claim upon which relief can be granted under R. 4:6-2(e). Under a R. 4:6-2(e) motion, the court is required to "search

the complaint in depth and with liberality [determine] whether the fundament of a cause of action may be gleaned even from an obscure statement of claim.” Valantas v. Colgate-Palmolive Co.; 109 N.J. 189, 192 (1988) quoting Di Cristofaro v. Laurel Grove Mem’l Park, 43 N.J. Super. 244, 252 (App. Div. 1957).

N.J.A.C. 6A:3-1.3(i) holds that petitions shall be filed “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.” The ninety-day limitation period “represents a fair and reasonably necessary requirement for the proper and efficient resolution of disputes under the school laws.” Kaprow v. Board of Educ. of Berkeley Twp., 131 N.J. 572, 582 (1993). It “provides a measure of repose” and “gives school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after ninety days.” Ibid.

Courts strictly construe and consistently apply the 90-day limitation period. Kaprow, 131 N.J. at 588-89; Nissman v. Bd. of Educ., 272 N.J. Super 373, 380-81, (App. Div. 1994); Riely v. Bd. of Educ., 173 N.J. Super. 109, 112-14, (App. Div. 1980). This period begins to run when the petitioner “learn[s] from the Local Board the existence of that state of facts that would enable him to file a timely claim.” Kaprow, 131 N.J. at 588-89. Indeed, the “notice of a final order, ruling or other action” is “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.” Id. at 587. Notably, a petitioner need not receive official and formal notification that they may have a valid claim to begin the 90 days. Id. at 588. Moreover, the ninety-day period starts when a petitioner is made aware of the facts to permit them to file a timely complaint.

The purpose of the ninety-day limitation, as discussed in Kaprow, 131 N.J. 586-87, “is 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.” Ochs v. Federal Ins. Co., 90 N.J. 108, 112, 447 A.2d 163 (1982). “The second purpose is ‘to penalize dilatoriness and serve as a measure of repose’ by giving security and stability to human affairs. Ibid. (quoting Farrell v. Votator Div., 62 N.J. 111, 115, 299 A.2d 394 (1973)).” Like this case, “when a plaintiff knows or has reason to know

that he has a cause of action against an identifiable defendant and voluntarily sleeps on his rights so long as to permit the customary period of limitations to expire, the pertinent considerations of individual justice as well as the broader considerations of repose, coincide to bar his action.” Farrell, supra, 62 N.J. at 115.

In this case, petitioner attempted to file the appeal with the ninety-day requirement under N.J.A.C. 6A:3-1.3(i). However, it was never deemed filed by OCD because it was procedurally deficient. OCD provided petitioner with a formal deficiency notice. The notice clearly stated the deficiency and how it was to be cured. The notice also expressly stated that the appeal would be deemed withdrawn if the deficiency was not cured by December 14, 2023. Yet petitioner failed to cure by the specified date. Over a year later, on October 11, 2024, petitioner filed a Petition for Reinstatement and/or to Open the petition originally filed on October 10, 2023. The only excuse petitioner provides for the late petition is that the deficiency was inadvertently not cured.

Since 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 that warrants a relaxation of the limitation period, I **CONCLUDE** that petitioner filed his petition in violation of the ninety-day statute of limitations under N.J.A.C. 6A:3-1.3(i), and that this case must be dismissed.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the Board’s motion to dismiss is **GRANTED** and that this case is **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.



January 14, 2025

DATE

BINDI MERCHANT, ALJ

Date Received at Agency:

January 14, 2025

Date Mailed to Parties:

January 14, 2025

am

APPENDIX

Exhibits

For Petitioner:

None

For Respondent:

None