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OAL Dkt. Nos. EDU 12266-23, 12267-23, and 12268-23 (Consolidated)

Agency Dkt. Nos. 273-10/23, 274-10/23, and 275-10/23

New Jersey Commissioner of Education

Final Decision

G.A. and C.A., on behalf of Z.A.,

Petitioners,

v.

Rutgers Academy Day School, Middlesex
County,

Respondent.

AND

G.A. and C.A., on behalf of Z.A.,

Petitioners,

v.

Montgomery Academy, Somerset County,

Respondent.

AND

G.A. and C.A., on behalf of Z.A.,

Petitioners,

v.

Board of Education of the Bridgewater-Raritan
Regional School District, Somerset 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 respondents' replies thereto, have been reviewed and considered.

In this matter, petitioners G.A. and C.A. contend that the diploma issued to their child, Z.A., by respondent Bridgewater-Raritan Regional School District Board of Education (Board), in concert with respondents Rutgers Academy Day School and Montgomery Academy, was fraudulent. Following motions to dismiss filed by respondents, the Administrative Law Judge (ALJ) concluded that petitioners lacked standing to bring this action on Z.A.'s behalf, because Z.A. is over the age of eighteen, and no legal authority confers standing on the members of an individual's "Supported Decision-Making Team" to pursue litigation on behalf of a disabled adult. The ALJ further found that the petitions were untimely pursuant to *N.J.A.C. 6A:3-1.3(i)*. The ALJ noted that petitioners alleged fraud related to Z.A.'s diploma in other litigation at the OAL on February 2, 2023 and May 19, 2023, but the petitions in this matter were not filed until October 9, 2023, more than 90 days later. Accordingly, the ALJ granted respondents' motions to dismiss.

In their exceptions, petitioners provide a list of instances in which their requests for accommodations under the Americans with Disabilities Act (ADA) were allegedly denied by the OAL. Petitioners take issue with statements by the Board's counsel during the proceedings. Petitioners assert that the ADA affords them the right to advocate on Z.A.'s behalf. Petitioners also argue that parents may represent their children's interests in special education disputes without an attorney, and that the special education laws and general education laws are so intertwined that they should be permitted to petition on Z.A.'s behalf in this matter, even though it is not a special education matter. With regard to the statute of limitations, petitioners contend

that they only became fully aware of the fraud at the end of July 2023, after receiving records provided by the Board and Montgomery Academy, and that their petition was filed within 90 days of that time.

Respondents filed separate responses to petitioner's exceptions, which make similar arguments and which are therefore summarized here collectively. Respondents argue that petitioners failed to specify the factual findings or legal conclusions to which they take exception; respondents also indicate that petitioners' exceptions include information that was not part of the record below or referenced in the Initial Decision. Respondents contend that the ADA accommodations afforded to petitioners, which included nearly one year to prepare their opposition to respondents' motions to dismiss, were more than reasonable. Respondents argue that the ALJ correctly decided that petitioners did not have standing, as Z.A. was already an adult at the commencement of the proceedings, this case is not a special education due process proceeding, and no legal authority confers standing on a Supported Decision-Making Team. Furthermore, according to respondents, petitioners were not entitled to serve as Z.A.'s advocates. Finally, respondents argue that the petitions were untimely because petitioners were aware of the subject matter of their claims since 2018 and specifically alleged falsification of Z.A.'s transcripts in February 2023, and their pursuit of those claims in a special education due process proceeding does not toll the 90-day period for filing a petition of appeal with the Commissioner. Respondents further note that even accepting petitioners' argument that they recently acquired additional evidence to prove their allegations, the discovery rule does not toll the limitations

period until all necessary evidence has been acquired; instead, it starts running once the party is aware of facts that would alert a reasonable person to the possibility of a claim.¹

Upon review, the Commissioner concurs with the ALJ that the petition of appeal is untimely pursuant to *N.J.A.C. 6A:3-1.3(i)*. The 90-day period to file an appeal to the Commissioner begins when the affected individuals have received adequate notice. In order for the notice to be adequate, the individuals must have been alerted to the existence of facts which give rise to a cause of action. *Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 N.J. 572, 586-587 (1993). The record reflects that a copy of Z.A.'s diploma and an unofficial copy of his transcript were sent to him in June 2020. The transcript lists all of the courses taken and grades received by Z.A. If the information on the transcript was inaccurate, petitioners should have been aware of it at that time.

Moreover, on February 2, 2023, petitioners sent correspondence to the OAL in a related special education matter requesting corrections to Z.A.'s transcript. Exhibit E to Board's Motion to Dismiss. In that letter, petitioners allege that "[r]ecords of transcript credits, grades and listed classes were withheld from ZA and parents until after ZA was graduated." *Id.* at 5. They go on to indicate that the statute of limitations should not apply to their request because of the "obstruction" and "withholding" of information. *Id.* at 6. Even more specifically, the letter contends that "[t]ranscript records are inaccurate due to withholding of grading records of ZA

¹ The Board's exceptions also note that it argued below that petitioners had failed to state a claim on which relief could be granted, but the ALJ did not reach this issue. The Board suggests that even if the Commissioner agrees with the procedural arguments made in petitioners' exceptions, the petition should be dismissed because a 2019 settlement agreement precludes any relief against the Board. As the Commissioner determines herein that the petition should be dismissed for other reasons, the Commissioner finds that it is not necessary to reach this issue.

due to errors and fraudulent dismissal of earned grades.” *Id.* at 7. Petitioners also refer to “duress, coercion and fraud by the [local education agency] through the withholding of access to full student records, and negligence in documentation and creation of student record.” *Ibid.* Accordingly, the Commissioner finds that petitioners were aware of the facts giving rise to their claims as of February 2, 2023, making their petition of appeal due by May 3, 2023, but it was not filed until October 9, 2023 – more than six months late.

Petitioner’s pursuit of their fraud claims in the related special education matter does not absolve them of their obligation to file any claims that are within the jurisdiction of the Commissioner within 90 days. The timeliness of a complaint in another forum has no bearing upon the timeliness of a petition under *N.J.A.C. 6A:3. A.S., o/b/o minor child, P.P. v. Bd. of Educ. of the Pinelands Regional Sch. Dist., Ocean Cty.*, Commissioner Decision No. 411-09 (December 16, 2009). 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. *See, e.g., Kaprow, supra*, 131 *N.J.* at 587. As the petition of appeal in this matter was not timely, the Commissioner concurs with the ALJ that it must be dismissed.

Regarding the issue of standing, the Commissioner notes that the ALJ appears to have set a bright-line rule that a child can only authorize his parents to proceed on his behalf if the action is commenced before the child turns eighteen and a Certificate of Substitution is filed after the child’s eighteenth birthday.² The Commissioner declines to adopt such a bright-line rule. A

² While the Commissioner’s decision in another matter, *I.C.W. o/b/o minor child, J.W. v. Bd. of Educ. of the Borough of Mountain Lakes, Morris Co.*, Commissioner Decision No. 432-11 (Oct. 14, 2011), indicated that the substitution procedure could be used in a case in which a minor turned eighteen during the course

determination regarding whether a child has validly authorized his parents to proceed on his behalf is intensely fact-specific and must be viewed in light of the circumstances of each case. However, as the Commissioner has already determined that the petition of appeal in this matter was untimely and must be dismissed for that reason, the Commissioner finds that it is not necessary to engage in such a fact-specific analysis here.

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

IT IS SO ORDERED.³



COMMISSIONER OF EDUCATION

Date of Decision: March 17, 2025
Date of Mailing: March 19, 2025

of the proceedings, that decision should not be interpreted to require a contrary result in situations in which a child who is over eighteen at the time the proceedings begin seeks to authorize his parents to proceed on his behalf, as those circumstances were not addressed in that decision.

³ 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

AMENDED INITIAL DECISION
GRANTING MOTIONS TO
DISMISS
(CONSOLIDATED)

G.A. AND C.A. ON BEHALF OF Z.A.,

Petitioners,

v.

RUTGERS ACADEMY DAY SCHOOL,

MIDDLESEX COUNTY,

Respondent.

OAL DKT. NO. EDU 12266-23

AGENCY DKT. NO. 275-10/23

AND

G.A. AND C.A. ON BEHALF OF Z.A.,

Petitioners,

v.

MONTGOMERY ACADEMY,

SOMERSET COUNTY,

Respondent.

OAL DKT. NO. EDU 12267-23

AGENCY DKT. NO. 274-10/23

AND

G.A. AND C.A. ON BEHALF OF Z.A.,

Petitioners,

v.

BRIDGEWATER-RARITAN REGIONAL

OAL DKT. NO. EDU 12268-23

AGENCY DKT. NO. 273-10/23

**SCHOOL DISTRICT BOARD OF
EDUCATION, SOMERSET COUNTY,**
Respondent.

G.A. and C.A., petitioners, pro se, on behalf of Z.A.

Kerri A. Wright, Esq., for respondent Rutgers Day School (Porzio, Bromberg & Newman, P.C., attorneys)

Melanie Rowan Quinn, Esq., for respondent Montgomery Academy (Malapero, Prisco, Klauber & Licata, LLP, attorneys)

David B. Rubin, Esq., for respondent Bridgewater-Raritan Regional School District Board of Education

Record Closed: October 18, 2024

Decided: November 14, 2024

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF THE CASE

Petitioners G.A. and C.A. on behalf of Z.A. seek a ruling that the high school diploma issued to Z.A. in June 2020 by respondent Bridgewater-Raritan Regional School District Board of Education (BRRSD or Board) in concert with respondents Rutgers Academy Day School (Rutgers Academy) and Montgomery Academy was fraudulent in violation of federal and state laws. In lieu of answers, all three respondents filed motions to dismiss the claims against them on the grounds that petitioners have no standing, and that the statute of limitations has passed.

PROCEDURAL HISTORY

On October 9, 2023, petitioners filed three identical petitions, one against each named respondent, with the Commissioner of the New Jersey Department of Education (DOE) pursuant to N.J.S.A. 18A:6-9.

On October 30, 2023, respondent BRRSD filed a motion to dismiss in lieu of an answer. On October 30, 2023, respondent Montgomery Academy filed a motion to dismiss in lieu of an answer, and on November 2, 2023, respondent Montgomery Academy filed a supplement to the motion to dismiss. On November 2, 2023, respondent Rutgers Academy filed a motion to dismiss in lieu of an answer. The three respondents move for dismissal on the same grounds.

These motions were not decided by the Commissioner and were transmitted with the petitions on November 6, 2023, to the Office of Administrative Law (OAL) for hearing as contested cases, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. All three matters, docketed as EDU 12266-23, EDU 12267-23, and EDU 12268-23, were assigned to me. By order dated December 8, 2023, the three matters were consolidated, and petitioners were directed to file a single response.

Proceedings in this matter were adjourned at petitioners' request for medical reasons between January and August 2024.

On October 2, 2024, petitioners filed a response in opposition to the motions to dismiss. Respondents filed reply briefs on October 15 and 18, 2024, and the motions are now ripe for review.

FACTUAL DISCUSSION AND FINDINGS

Respondents' motions were filed in accordance with N.J.A.C. 6A:3-1.5(g), which permits the filing of a motion to dismiss in lieu of an answer. The New Jersey Supreme Court explained that the analysis required when considering a motion to dismiss is "whether a cause of action is suggested by the facts." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988) (citations omitted). Further:

Because the matter arises on defendants' motion to dismiss, [the court must] accept as true the facts alleged in the complaint. . . . Plaintiffs are entitled to every reasonable inference in their favor. A reviewing court must "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim."

[Craig v. Suburban Cablevision, Inc., 140 N.J. 623, 625–26 (1995) (citations omitted); see also Maeker v. Ross, 219 N.J. 565, 569 (2014).]

A motion to dismiss should only be granted in the rarest of instances. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 772 (1989).¹ In reviewing the complaint, the question is not whether the petitioner can prove the allegations, but whether the facts alleged are sufficient to state a cause of action. Id. at 746. Accordingly, for the purposes of the motions, all facts alleged by the petition will be deemed admitted,² and I **FIND** as follows:

1. Z.A., the son of petitioners G.A. and C.A., was born in 2000, and is now twenty-four years of age.
2. At all times relevant to these matters, Z.A. resided in the Bridgewater-Raritan Regional School District (District), a public school district serving students from grades kindergarten through twelve, which is administered by the Board.
3. In 2010, Z.A. was classified as eligible for special education and related services under the eligibility category "specific learning disability."
4. Z.A. attended Rutgers Academy from January 2017 through December 2017.

¹ See also F.G. v. MacDonell, 150 N.J. 550, 556 (1997) ("If a generous reading of the allegations merely suggests a cause of action, the complaint will withstand the motion.").

² On September 30, 2024, petitioners submitted a "certification of undisputed facts," which appear generally to cite evidence that allegedly supports their claim of not receiving a hard copy of Z.A.'s diploma in July 2020, and legal arguments in opposition to the motions to dismiss. Only those facts alleged in the original petition are considered here.

5. By the terms of a settlement agreement reached between petitioners and the Board, Z.A. attended Montgomery Academy from September 2018 through June 2020.
6. Z.A. graduated from the District on June 23, 2020. In or about July 2020, the District mailed Z.A. his high school diploma and an unofficial transcript, with instructions on how to obtain an official transcript for purposes of post-secondary educational placement.
7. Petitioners contend that respondents collectively conspired to deny Z.A. a free appropriate public education, to doctor his high school transcript, and to issue him a fraudulent high school diploma. Petitioners contend that they learned that Z.A.'s high school diploma was fraudulent in 2023.

LEGAL ANALYSIS AND CONCLUSION

Standards for a Motion to Dismiss

The rules of procedure governing petitions of appeal filed with the Commissioner permit a respondent to submit a motion to dismiss in lieu of an answer “on the grounds that the petitioner has advanced no cause of action even if the petitioner’s factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.” N.J.A.C. 6A:3-1.5(g); N.J.A.C. 6A:3-1.10. However, these education rules do not offer any guidance on the standards by which such motions should be assessed.

The Uniform Administrative Procedure Rules (UAPR), N.J.A.C. 1:1-1.1 to -21.6, also do not address the standards for such motions. However, the UAPR, which “shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay,” state that, “[i]n the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes.” N.J.A.C. 1:1-1.3(a).

Here, the Court Rule that fills the void is R. 4:6-2, which, like N.J.A.C. 6A:3-1.5(g) and N.J.A.C. 6A:3-1.10, allows for motions for judgment on the pleadings. And since R. 4:6-2 serves the interests of time and expense and may help achieve just results, it is compatible with the UAPR's purposes, and thus it is appropriate to assess respondents' motions to dismiss in lieu of an answer under the standards used by the courts in applying R. 4:6-2.

The questions raised by the motions to dismiss are whether petitioners have standing and even if they have standing, whether the matters are barred by the applicable statute of limitations.

Standing

A party must have standing to have the "ability or entitlement to maintain an action before the court." In re Baby T., 160 N.J. 332, 340 (1999) (citation omitted). Standing is "a threshold justiciability determination whether the litigant is entitled to initiate and maintain an action before a court or other tribunal." In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super. 61, 85 (App. Div. 2004).

New Jersey courts set a relatively low threshold for standing that is more expansive than in the federal courts. Ibid. Standing is even more liberal within the State's administrative system. Steven L. Lefelt, Anthony Miragliotta, & Patricia Prunty, 37 New Jersey Practice, Administrative Law and Practice § 7.4 (Rev. 2d ed. 2000); see Osborne v. Twp. of Lakewood Bd. of Educ., EDU 6348-02, Initial Decision (May 16, 2003), modified, Comm'r (August 26, 2003), <http://njlaw.rutgers.edu/collections/oal>.

Under New Jersey education laws, when a child reaches the age of eighteen, all rights that previously belonged to the parents belong exclusively to the child. N.J.S.A. 9:17B-1, -3. If this matter had been filed before Z.A. reached the age of eighteen, then after his eighteenth birthday Z.A. would have had the option of filing a Certificate of Substitution naming his parents or of appearing at the OAL to notify me that his parents were authorized to proceed on his behalf. See J.B. on behalf of J.B. v. Bd. of Educ. of the Northern Valley Reg'l High

Sch. Dist., EDU 04618-20, Initial Decision (March 8, 2021), adopted, Comm'r (April 13, 2021), <http://njlaw.rutgers.edu/collections/oal>.

Z.A., now age twenty-four, was twenty-three in October 2023 when the petitions were filed. His parents argue that Z.A. provided a certification to the DOE naming his parents as his designated representatives and, specifically, as members of his “Supported Decision-Making Team” under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 to 12113 (ADA). Ltr. Br. of Pet’rs Opposing Motions to Dismiss (Oct. 2, 2024) (Petr’s Br.), p. 2, ¶ 2, Ex. P-4.³ Neither petitioners nor Z.A., however, cite to any legal authority that confers standing on members of such a team to pursue litigation on behalf of a disabled adult. Moreover, the term “supported decision-making team” is not defined in the ADA.⁴

Though the OAL permits litigants to appear without an attorney, petitioners are not authorized by the Court Rules or the UAPR to appear before the OAL on Z.A.’s behalf without an attorney. See N.J.A.C. 1:1-5.1, -5.4; R. 1:21-1(e). Here, petitioners rely on Opinion 57 of the New Jersey Supreme Court Committee on the Unauthorized Practice of Law, which permits non-lawyer representatives to represent children or their parents in special education matters. N.J.A.C. 1:1-5.4(b)(4)(iv). These consolidated matters were brought under the education laws and are not governed by the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 to 1482 (IDEA).⁵

For the above reasons, I **CONCLUDE** that petitioners do not have standing to bring actions under the education laws on behalf of Z.A.

³ Exhibit P-4 is a copy of the certification Z.A. submitted to the DOE on January 11, 2024.

⁴ According to respondent Montgomery Academy, a “supported decision maker” is a person asked or elected “to assist a disabled individual *make their own* choices.” Reply Br. of Resp’t Montgomery Academy (Oct. 18, 2024), p. 4 (emphasis in original); see also Reply Br. of Resp’t Board (Oct. 15, 2024), p. 3. Neither respondent cites to authority but in any event, Z.A. does not use that term in his certification to the DOE.

⁵ I recognize that petitioners have brought two matters on Z.A.’s behalf against respondents under the IDEA, both of which are still pending, OAL Dkt. Nos. EDS 05385-22 and EDS 09642-23. In neither of those special education matters has the issue of standing been raised.

Statute of Limitations

In these matters, petitioners allege, generally, that they have recently learned that the diploma issued to Z.A. upon his graduation in June 2020 is fraudulent, in part because his high school transcript is not accurate in that it describes classes that he did not take, meaning he did not actually complete his graduation requirements. In the petitions, G.A. and C.A. allege substantial misconduct on the part of teachers and administrators, and state that information prompting this litigation was not made available to them until 2022 and 2023.

Under the New Jersey school laws, petitioners are required to

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. This rule shall not apply in instances where a specific statute, regulation, or court order provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.

[N.J.A.C. 6A:3-1.3.]

The statute of limitations begins to run when petitioners became “aware of facts that would alert a reasonable person” to the possibility of an actionable claim. Lapka v. Porter Hayden Co., 162 N.J. 545, 556 (2000). While it is often difficult to gauge when actual knowledge is obtained, here petitioners provided an email they sent to respondent Board on February 16, 2018, regarding alleged inaccuracies in Z.A.’s transcripts from both Montgomery Academy and Rutgers Academy. Pet’rs’ Br., Ex. P-9. In this email, G.A. writes, “It appears [the Board is] participating in the forced inaccurate graduation of [Z.A.]” Further, in much of their brief, instead of responding to the motions to dismiss, petitioners present facts and arguments as to why they should prevail on their claims, including numerous incidents in 2018, 2019, and 2020, when petitioners questioned respondents regarding alleged inaccuracies in Z.A.’s records.

In 2022, petitioners brought an action under the IDEA against respondents Board and Montgomery Academy in which they alleged that respondents failed to provide Z.A.'s student records to them (his parents) prior to his graduation. G.A. and C.A. on behalf of Z.A. v. Bridgewater-Raritan Reg'l Sch. Dist., OAL Dkt. No. EDS 05385-22. In that matter, over which I have been presiding, on February 2, 2023, petitioners moved to amend their petition on several grounds, including fraud related to Z.A.'s diploma. On May 19, 2023, they alleged in writing "active and current fraud" by respondents related to whether Z.A. met the legal requirements to graduate and claimed that Z.A. was issued a fraudulent high school diploma.

Finally, on July 13, 2023, I issued an order denying the request to amend the petition to include claims of fraud related to Z.A.'s diploma and dismissing all claims regarding access to Z.A.'s student records, inaccurate transcripts, and correction of such records, as all those claims must be brought directly to the Commissioner of Education and were not properly part of a matter brought under the IDEA.

The present consolidated matters—in which petitioners renewed most of the claims that had been dismissed—were filed on October 9, 2023. Ninety days prior to October 9, 2023, was July 8, 2023. I **CONCLUDE**, based on the statements made by petitioners in the matter docketed as EDS 05385-22, that at the very least, petitioners knew of the alleged "fraud and conspiracy" months before July 8, 2023. I **CONCLUDE** that these matters are barred by the applicable statute of limitations.

ORDER

It is hereby **ORDERED** that the motions of respondents, **Bridgewater-Raritan Regional School District Board of Education, Rutgers Academy Day School, and Montgomery Academy**, to dismiss the petitions filed by **G.A. and C.A. on behalf of Z.A.** are **GRANTED** and the petitions are **DISMISSED WITH PREJUDICE**.

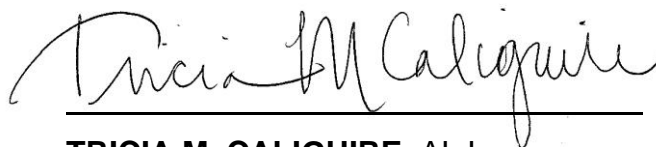
I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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 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 14, 2024

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

Date Mailed to Parties:

TMC/kl