

#191-07 (No OAL Decision)

T.B. and M.B. on behalf of minor child S.B., :  
PETITIONERS, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
BOROUGH OF PARK RIDGE, BERGEN :  
COUNTY, and DR. PATRICIA JOHNSON, :  
RESPONDENT. :

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SYNOPSIS

T.B. and M.B. filed a petition in April 2007 seeking reimbursement of the \$400 cost of S.B.'s 2006 summer school chemistry class which – according to petitioners – was necessitated by a chemistry teacher's unfair and discriminatory treatment of their daughter during the 2005-2006 school year, and respondent board and superintendent's failure to take corrective action. Respondent board made a motion to dismiss for violation of the 90-day requirement provided in *N.J.A.C. 6A:3-1.3(i)*.

The Commissioner found, *inter alia*, that: respondents' action – or lack thereof – which allegedly caused petitioners harm took place in May 2006 and therefore the 90-day limitations period ended in August 2006; there is no indication in the pleadings that petitioners ever brought a formal appeal of S.B.'s grade or the teacher's alleged misconduct before the respondent board; and the Commissioner has no jurisdiction to grant petitioners the relief they seek. Accordingly, 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.
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May 24, 2007

T.B. and M.B. on behalf of minor child S.B., :  
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According to the petition in this matter, petitioners' minor child, S.B., had been doing poorly in chemistry during the 2005-2006 school year, and petitioners had requested an audience with the teacher and a guidance counselor in May 2006. Petitioners did not accept the teacher's representation – made at the conference – that he had given S.B. extra help. To the contrary, they accepted S.B.'s assertions that the teacher had been treating her unfairly. In the petition they further alleged that the guidance counselor had promised – at the above referenced meeting – to provide S.B. with tutoring, but never followed through on the promise.

Petitioners also contended in the petition that the principal of S.B.'s school and the respondent superintendent of schools had improperly failed to investigate “the unequal and discriminatory treatment of [S.B. ] by Mr. Deutsch” and take “corrective action.” The allegation of discriminatory treatment rested upon S.B.'s assertion that the teacher did not like her and ridiculed her when she gave wrong answers.

S.B. failed chemistry, and petitioners consequently enrolled her in a summer chemistry course, which necessitated rescheduling of the family's 2006 summer vacation. Petitioners alleged in the petition that they had made telephone calls to the school beginning in May 2006 but that the “school gave no attention to our complaint and seemed to dismiss it

outright.” They contend further that they had “tried to get the attention of the Board of Education; however, they [sic] just gave us a run around and asked us to write another letter to the Superintendent to no avail.”

The relief demanded in the petition, which was filed on April 2, 2007, was the reimbursement of the \$400 cost for S.B.’s summer class which, according to petitioners, had been necessitated by the chemistry teacher’s behavior and “the appalling response by the Park Ridge School.”

Respondent answered on May 1, 2007, by way of a brief motion to dismiss the petition for untimeliness. On May 2, 2007 the Bureau of Controversies and Disputes (the Bureau) wrote to petitioners asking them to address respondent’s motion, and also to identify the legal basis for their request for consequential damages.

Petitioners’ response was received by the Bureau on May 10, 2007. As to the issue of timeliness, they contended that their petition had been filed within the 90-day period required by *N.J.A.C. 6A:3-1.3(i)* because it had been filed 73 days after “the final ruling of the board of education.” The “final ruling” to which petitioners referred is a letter dated January 19, 2007, from respondent Superintendent Patricia Johnson. In the letter Johnson stated, in pertinent part:

After our last conversation I apprised the Board of Education at the January 8<sup>th</sup> meeting of your concerns and displeasure concerning your daughter’s experience in chemistry during the last school year and your assertion that the teacher, the school and the district did not meet their responsibilities. I further indicated to the Board your belief that you should be compensated \$400 due to the expenses incurred in placing your daughter in summer school (summer 2006), along with the inconvenience revolving around her attendance during the summer months.

The Board of Education requested that I respond for them. It is not the practice of the Board to compensate parents for summer school expenses. In doing so they would be creating a precedent that is questionable at best.

Respondents pointed out in their motion papers that the action the petitioners challenge is actually the district's decision – in May 2006 – not to investigate or correct the alleged mistreatment of S.B. by her chemistry teacher.<sup>1</sup> Accordingly, counting from the end of May 2006, petitioners ran out of time for filing an appeal at the end of August 2006. Nonetheless they did not file an appeal to the Commissioner until April 2007, at least ten months after the alleged offending action. Thus, respondents ask that the petition be dismissed with prejudice for untimeliness.

The Commissioner agrees. The district action, or lack thereof, which allegedly caused petitioners harm took place in May 2006, and the 90-day limitations period set forth in *N.J.A.C. 6A:3-1.3(i)* consequently ended in August. Even if the date upon which the district issued S.B. a failing grade were used as the beginning of the period of limitations, the petitioner's time to file an appeal would have expired long before April 2, 2007, the date of their petition.

Furthermore, there is no indication in the pleadings that petitioners had ever brought a formal appeal of S.B.'s grade, or the teacher's alleged misconduct, before the respondent board of education. Thus, the letter dated January 19, 2007 – conveying the board's informal response to petitioners' concerns, which petitioners had expressed verbally to respondent Johnson at some point before January 8, 2007, and Johnson had conveyed to the board on January 8, 2007 – does not constitute an intervening “final ruling of the board of education.”<sup>2</sup>

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<sup>1</sup> According to petitioners, such an investigation and, perhaps, corrective action, would have prevented S.B.'s failing grade in chemistry and, in turn, the need for petitioners to pay \$400 for summer school.

<sup>2</sup> The Commissioner rejects petitioners' request that respondents' answer be dismissed. The first acknowledgment letter sent out by the Bureau of Controversies and Disputes on April 2, 2007, was inadvertently not sent to all parties. An amended acknowledgment letter was distributed on April 30, 2007, and respondents' motion to dismiss was filed one day later, on May 1, 2007.

In response to the Bureau's request for the identification of a legal basis for their demand for consequential damages, petitioners simply reiterated their factual allegations and assumptions. No legal basis was provided to show that the Commissioner has the authority to award such damages and, indeed, the Commissioner has previously found to the contrary. *See, e.g., John Scott and Charles Yarnell v. Board of Education of the City of Trenton, Mercer County, and Board of Education of the Mercer County Vocational and Technical School District, Mercer County, and James Pupalaikis, Augustine Spagnola and Edward Schmidt v. Board of Education of the City of Trenton, Mercer County and Board of Education of the Mercer County Vocational Technical School District, Mercer County*, OAL DKT. NOS. EDU 10333-96 and EDU 6748-97 (Consolidated), decided by the Commissioner on September 30, 2002, p. 3-4, modified on other grounds by the State Board of Education, June 2, 2004. Therefore, even absent a timeliness problem, the Commissioner would have no jurisdiction to grant petitioners the relief they seek.

For the reasons set forth above, the petition is dismissed.<sup>3</sup>

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: May 24, 2007

Date of Mailing: May 24, 2007

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<sup>3</sup> This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*