

#11-10 (Not yet available online)

ROBERT SEMPREVIVO, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 PINELANDS REGIONAL SCHOOL :
 DISTRICT, OCEAN COUNTY AND :
 WILLIAM R. SUNDERMAN, :
 :
 RESPONDENTS. :
 _____ :

SYNOPSIS

Petitioner, now an adult, was a student in respondent's high school in 2006, and a member of the wrestling team. In May 2006, he filed a Tort Claim Notice against respondent, claiming that in March of 2006, he had been verbally abused and suffered emotional distress after the respondent's athletic director saw him leave the school grounds to run off weight in advance of a scheduled wrestling match in which petitioner was to participate. In April 2009, following an order by a superior court justice transferring to the Commissioner of Education those issues falling under her jurisdiction, the petitioner filed a petition with the Commissioner of Education, which was later amended to seek relief appropriate to the administrative forum. The respondents asserted that the petition was untimely pursuant to *N.J.A.C. 6A:3-1.3*.

The ALJ found that: the petitioner did not file any petition seeking relief from the Commissioner within the ninety-day period as required by *N.J.A.C. 6A:3-1.3*; the matter is moot, as the petitioner has graduated from high school and no relief can be granted that would restore his ability to participate in the 2006 wrestling match; and there are no significant public policies or any constitutional grounds which need be resolved in this matter such as to require that the Commissioner act in spite of the failure to file within ninety days and/or the mootness of the case. Accordingly, the ALJ dismissed the petition.

Upon full and independent review, the Commissioner concurred with the findings of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter.

<p>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.</p>

January 15, 2010

OAL DKT. NO. EDU 6386-09
AGENCY DKT. NO. 90-4/09

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties filed no exceptions to the Initial Decision.

Upon her full and independent review, the Commissioner concurs with the Administrative Law Judge (ALJ) – for the reasons comprehensively detailed in his decision – that this matter is appropriately dismissed because it was filed well outside the 90-day limitation period set forth in *N.J.A.C. 6A:3-1.3(d)* and is, additionally, moot. The Commissioner further agrees with the ALJ that petitioner has failed to set forth a legal or factual basis sufficient to call for her to act in this matter despite the existence of these infirmities.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: January 15, 2010

Date of Mailing: January 15, 2010

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.