

T.N., on behalf of minor child, L.C., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF TRUSTEES OF THE : DECISION
ETHICAL COMMUNITY CHARTER :
SCHOOL, HUDSON COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner challenged the respondent Board’s practices for identifying, investigating, and resolving allegations of harassment, intimidation and bullying (HIB) at the Ethical Community Charter School. Petitioner had filed a grievance seeking improvement in these practices, after which her claims were investigated by the Board. The Board communicated the findings of that investigation to the petitioner on July 15, 2015. Petitioner filed her appeal on October 27, 2015. The Board filed a motion to dismiss in lieu of an answer, based upon the failure of the petitioner to file an appeal within ninety days pursuant to *N.J.A.C. 6A:3-1.3(i)*.

The ALJ found, *inter alia*, that: the petitioner filed her appeal on October 27, 2015, 105 days after notice of the Board’s decision; in order to relax the ninety-day rule, the circumstances must be exceptional or the reason compelling, pursuant to *N.J.A.C. 6A:3-1.16*; there is no basis herein by which the petitioner is entitled to relax the ninety-day rule. The ALJ concluded that petitioner is barred by *N.J.A.C. 6A:3-1.3(i)* from bringing her appeal out of time. Accordingly, the petition was dismissed.

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

OAL DKT. NO. EDU 18839-15
AGENCY DKT. NO. 350-11/15

T.N., on behalf of minor child, L.C., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF TRUSTEES OF THE : DECISION
ETHICAL COMMUNITY CHARTER :
SCHOOL, HUDSON COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner concurs with the Administrative Law Judge's determination that the petition of appeal was time barred under *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 dismissed.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 18, 2017

Date of Mailing: July 19, 2017

¹ 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).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 18839-15

AGENCY DKT. NO. 350-11/15

T.N. ON BEHALF OF L.C.,

Petitioners,

v.

BOARD OF TRUSTEES OF THE ETHICAL

COMMUNITY CHARTER SCHOOL,

HUDSON COUNTY,

Respondent.

T.N., petitioner, pro se

Thomas O. Johnson, Esq., for respondent (Porzio, Bromberg & Newman,
attorneys)

Record Closed: May 1, 2017

Decided: June 9, 2017

BEFORE **MICHAEL ANTONIEWICZ**, ALJ:

STATEMENT OF THE CASE

Petitioner, T.N. on behalf of L.C., filed a grievance with the respondent Board of Trustees of the Ethical Community Charter School (Board) on June 8, 2015.

Respondent acknowledged receipt of the grievance and an investigation was conducted by the respondent regarding the allegations contained therein. After the completion of the investigation, the respondent gave notice of the findings of that investigation to the petitioner, T.N., on July 15, 2015.

PROCEDURAL HISTORY

On October 27, 2015, the petitioner filed a petition before the Commissioner of Education regarding the decision. Respondent raises grounds for the dismissal of the petition herein based upon a failure of the petitioner to file a petition within ninety days of the action of Ethical, N.J.A.C. 6A:3-1.3(4)(i) via a motion to dismiss in lieu of an answer. Respondent maintains that it processes applications based upon a procedure authorized under N.J.A.C. 6A:19-2.3(b). The only submission made by the petitioner was submitted on February 29, 2016, and no additional submissions were made by the petitioner despite requests for same.

The New Jersey State Department of Education, Bureau of Controversies and Disputes, transmitted the matter to the Office of Administrative Law (OAL) pursuant to N.J.A.C. 1:1-8.2 where it was filed on November 24, 2015, and assigned to Administrative Law Judge Tiffany Williams. Thereafter, Judge Williams resigned and the case was reassigned to the undersigned. The respondent moved for a dismissal based on a motion to dismiss in lieu of an answer. Petitioner opposed said motion based on previously submitted documents.

DISCUSSION

Initially, I note that petitioner provided no certification or affidavit in opposition to the respondent's motion in this matter or no follow up reply to the respondent's motion. For this record, the undersigned will rely on respondent's motion for dismissal and the submission by the petitioner T.N. without any certification or affidavit. The petitioner stated that she was going to file opposition paperwork, after a telephone conference; however, no such submission was ever filed by the petitioner. I will rely extensively on

the fully briefed motion submitted by the respondent, along with a supporting certification.

FACTS

The following **FACTS** are not disputed, and I **FIND**:

1. The Ethical Community Charter School in Hudson County is a charter school established pursuant to N.J.S.A. 18A:36A-1.
2. Petitioner is a parent and a student enrolled in the Ethical School and filed a grievance seeking improvement in the practices for identifying, investigating, and resolving HIB allegations at the Ethical School.
3. Respondent investigated the claims of the petitioner and communicated its final decision to the petitioner on July 15, 2015.
4. Petitioner filed a Petition of Appeal on October 27, 2015

ADDITIONAL FACTS FOUND

Based upon the review of respondent's certification and moving papers, including excerpts of the certified answers to interrogatories, and the request for hearing, I **FIND** the following as additional **FACTS**:

5. Petitioner's submission stated that she filed a grievance that was not about the bullying investigation.
6. L.C. is a gender non-conforming student at the respondent school with allegations of bullying other student from March 2014 until the end of the school year.

7. The allegations of bullying include hitting L.C. and telling L.C. that he was a “freak, gay and had no friends.”
8. After the investigation, the respondent found that the incident between L.C. and the other student was a back-and-forth situation and L.C. was required to apologize to the other student.
9. T.N., L.C.’s mother, had difficulty with the manner in which the HIB investigation was conducted.
10. As a basis to the above, T.N. requested that the respondent open another investigation.

LEGAL DISCUSSION

A motion to dismiss the petitioners’ appeal is a well-recognized procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute and the application to that set of material facts of the applicable law and standard of proof lead to a determination of the case without the necessity of a hearing at which evidence and testimony need be taken. The procedure is equally applicable in judicial and executive-branch administrative cases. N.J.A.C. 1:1-12.5.

Petitioner acknowledged that the petition was received from the respondent on July 15, 2015. Based on the document submitted by the respondent, the petitioner clearly filed the petition on October 27, 2015, 105 days after notice of the decision.

There is no basis for which the petitioner is entitled to relax or otherwise not apply the ninety-day rule. In order to relax the ninety-day rule the circumstances must be exceptional or the reason must be compelling. N.J.A.C. 6A:3-1.16. Respondent cites Kaprow v. Board of Education of Berkeley Township, 131 N.J. 572,590 (1993) in support of their position that the petitioner has failed to file the petition within ninety days. The adequate notice to trigger the ninety-day statute of limitations is from the day

the petitioner learns of the existence of facts that would enable one to file a timely claim. Ibid. The Kaprow Court stated that “[t]he limitation period gives school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after ninety days.” Id. at 582. This limitation is put in place in order “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” and “to penalize dilatoriness and serve as a measure of repose by giving security and stability to human affairs.” Ibid. In addition, the Kaprow Court found that “unofficial or informal notice is sufficient to trigger the ninety-day limitations period.” Id. at 588.

The Commissioner of Education promulgated N.J.A.C. 6A:3-1.3(4)(i), as requiring a petition be brought within ninety days of notice of the action. T.N. did not do that here. Furthermore, T.N. did not substantiate any exceptional or compelling reasons for the failure to file.

The ninety-day rule must be strictly applied and has been strictly followed by the Commissioner of Education. Markalin v. Bd. of Educ. of the Twp. of Neptune, 92 N.J.A.R.2d (EDU) 406. In addition, New Jersey courts have strictly construed the ninety-day requirement. Riely v. Bd. of Educ. of Hunterdon Central Reg’l High Sch. Dist., 173 N.J. Super. 109 (App. Div. 1980). As argued by the respondent and supported by caselaw, this ninety-day rule represents a fair and necessary requirement for the proper and efficient resolution of disputes under the school laws and expresses a public policy of giving school districts the security of knowing that decisions regarding the administrative operations of the school district cannot be challenged after the time period. Kaprow, supra, 131 N.J. at 582.

In this case, the evidence clearly confirms that the petitioner was given notice of the respondent’s findings as to their grievance on July 15, 2015. The evidence also confirms that the petitioner filed the appeal on October 27, 2015, which exceeds the ninety-day rule as the October date is 105 days from the date of the respondent’s decision.

CONCLUSION

I **CONCLUDE** petitioner is barred by N.J.A.C. 6A:3-1.3(4)(i), from bringing this petition out of time. I **CONCLUDE** petitioner has failed to demonstrate that she is entitled to a waiver of the time period of N.J.A.C. 6A:3-1.3(4)(i).

ORDER

It is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED**, and petitioner's petition is **DISMISSED** and **DENIED** in all respects. This Initial Decision disposes of all issues in controversy in this matter.

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **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 **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 9, 2017
DATE



MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

APPENDIX

For Petitioner:

Opposition to respondent's motion, dated February 22, 2016

For Respondent:

Motion to Dismiss In Lieu of An Answer with support certification and documentation,
dated November 23, 2015

Reply submission in support of motion, dated March 11, 2016