

New Jersey Commissioner of Education
Final Decision

C.B., on behalf of minor child, J.B.,

Petitioner,

v.

Board of Education of the City of Newark,
Essex County,

Respondent.

Synopsis

Pro se petitioner challenged the Board’s visitor identification policy, promotion policy, and suspension policy. The matter was transmitted to the Office of Administrative Law and filed on December 9, 2019. The respondent Board subsequently filed a motion for summary decision, contending that the within petition is time-barred under the 90-day rule, *N.J.A.C.* 6A:3-1.2(i) and should be dismissed; there was no response to the motion from the petitioner.

The ALJ found, *inter alia*, that: there is no genuine issue as to any material fact here, and the case is ripe for summary decision; under *N.J.A.C.* 6A:3-1.3(i), a petitioner shall 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 case; and it is undisputed that petitioner was aware of the Board’s promotion, visitor identification and suspension policies well in excess of ninety days prior to the filing of the instant matter. Accordingly, the ALJ granted the Board’s motion for summary decision and dismissed the petition with prejudice.

Upon an independent review of the record of this matter and the ALJ’s recommended decision, the Commissioner concurred with the ALJ’s determinations and adopted the Initial Decision of the OAL as the final decision in this case. The petition was dismissed with prejudice.

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.

New Jersey Commissioner of Education
Decision

C.B., on behalf of minor child, J.B,

Petitioner,

v.

Board of Education of the City of Newark,
Essex County,

Respondent.

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

Petitioner challenges the Board's visitor identification policy, promotion policy, and suspension policy. The Administrative Law Judge (ALJ) found that the petition was filed outside of the 90-day filing deadline, set forth in *N.J.A.C.* 6A:3-1.3(i), because petitioner was aware of the relevant Board policies well in excess of 90 days before filing the instant matter. Accordingly, the ALJ dismissed the petition.¹

Upon review, the Commissioner agrees with the ALJ that this matter is out of time. Petitioner's dispute with the visitor identification policy stems from an incident in November 2018, in which the school security guard asked for petitioner's identification.

¹ Petitioner did not file a response to the Board's motion for summary decision, so the facts set forth in the Board's motion were deemed to be undisputed.

Regarding the promotion policy, petitioner had previously challenged the Board's decision not to promote her son to the eighth grade for the 2017-18 school year in petitions filed in July 2018 and February 2019, which were dismissed as untimely. *C.B., on behalf of minor child, J.B. v. Board of Education of the City of Newark, Essex County*, Commissioner's Decision No. 69-20, dated February 20, 2020. Finally, with respect to the suspension policy, petitioner's son had been suspended multiple times in December 2018. As such, the petition, which was received on November 4, 2019, was filed well outside of the 90-day limitations period. In her exceptions, petitioner argues that she was entitled to a hearing on the merits. The Commissioner notes that petitioner did not oppose the motion for summary decision and finds that this matter was appropriately dismissed as it was filed out of time.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition is hereby dismissed with prejudice.

IT IS SO ORDERED. ²

INTERIM COMMISSIONER OF EDUCATION

Date of Decision: October 19, 2020
Date of Mailing: October 20, 2020

² 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 17293-19

AGENCY DKT. NO. 291-11/19

C.B. ON BEHALF OF J.B.,

Petitioner,

vs.

**CITY OF NEWARK BOARD OF
EDUCATION,**

Respondent.

C.B., parent of **J.B.**, Petitioner pro se

Bernard Mercado, Esq., Senior Associate Counsel, for respondent Newark
Board of Education

Record Closed: September 1, 2020

Decided: September 2, 2020

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner challenged the respondent board of education's visitor identification policy, promotion policy and suspension policy. The contested matter was transferred to the Office of Administrative Law (OAL), where it was filed on December 9, 2019.

A prehearing conference was held on January 22, 2020, and a prehearing Order was entered by the undersigned on the same date.

Respondent filed a motion for summary decision, dated July 24, 2020, and filed July 27, 2020 with the OAL. Petitioner filed no response thereto. The time within which to file a response has expired. Respondent then filed a letter brief, dated August 28, 2020, and filed September 1, 2020 with the OAL.

The record closed on September 1, 2020.

FACTUAL BACKGROUND

Petitioner failed to respond to respondent's motion for summary decision. Accordingly, the facts set forth in respondent's brief in support of the motion are adopted herein as undisputed, as follows:

Petitioner, C.B., is the parent of J.B., a student who attended Lincoln School during the 2016-2017 school year.

Petitioner, in the instant petition, challenges the Board's suspension, promotion and ID policies.

Petitioner previously filed two prior petitions of appeal with the Department of Education (DOE) on or about July 19, 2018 (OAL Dkt. No. EDU 14526-18, Agency Ref. No. 251-10/18, which was eventually withdrawn, and a second petition on February 20, 2019 (OAL Dkt. No. EDU 04507-19, Agency Ref. No. 315-12/18) wherein petitioner essentially repeated the allegations from the first petition: that J.B. was wrongfully retained in the seventh grade and was not promoted for the 2017-2018 school year. The matter was then forwarded to the OAL.

A dispositive motion was filed by respondent regarding the second petition to dismiss it for being filed beyond the ninety day time limit. The ALJ granted the motion

finding that petitioner knew of the retention on September 12, 2017, even counting from the time the first petition was filed, petitioner was required to file her petition no later than December 11, 2017. Petitioner failed to timely file and was therefore out of time to do so. The ALJ went on to confirm the second petition was filed seven months after the ninety day time limit and was time barred pursuant to N.J.A.C. 6A:3-1.3(i), and that the remainder of the petition failed to state a cause of action. On February 20, 2020, the Commissioner of Education adopted the ALJ's Initial Decision and dismissed the second petition for being out of time.

During the pendency of the second petition petitioner filed a third petition, the instant matter, on November 4, 2019, broadly challenging respondent's retention and promotion policy for eighth grade students as well as respondent's visitor ID policy. Petitioner also included a reference to J.B.'s suspension from May 7, 2017. In the petition petitioner notes that J.B. was suspended "multiple times" in December 2018.

Respondent served interrogatories upon petitioner in the instant matter wherein petitioner confirmed she was aware of the point system underlying respondent's promotion and retention policy from September 2016 and February 2017, respectively. Petitioner also knew of the ID policy in November 2018.

LEGAL ANALYSIS AND CONCLUSION

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . , are

sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” *Id.* at 536 (citation omitted).

There are no disputed facts in the instant matter, petitioner having filed no response, or a request for an extension to file a response. See N.J.A.C. 1:1-12.5. Accordingly, the matter is ripe for summary decision.

N.J.A.C. 6A:3-1.3(i) states:

The petitioner shall 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.

New Jersey courts have strictly construed the ninety day requirement. See Riely v. Board of Education of Hunterdon Central Regional High School District, 173 N.J. Super. 109 (App. Div. 1980).

It is undisputed herein that petitioner was aware of the promotion, ID and suspension policies of respondent well in excess of ninety days prior to the filing of the instant matter.

Based upon the foregoing I **CONCLUDE** that Respondent’s motion for summary decision be **GRANTED**; and that the petition should be **DISMISSED** with prejudice.

ORDER

It is hereby **ORDERED** that Respondent’s motion for summary decision is **GRANTED**; and,

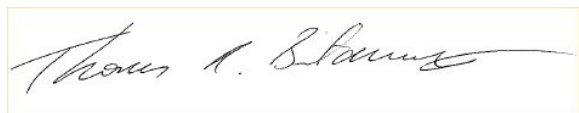
It is further **ORDERED**, that Petitioner's petition is dismissed with prejudice; and,

It is further **ORDERED** that the hearing date of September 23, 2020 is canceled.

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, PO 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.



September 2, 2020 _____

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

APPENDIX

List of Moving Papers

For Petitioner:

None

For Respondent:

Notice of Motion for Summary Decision

Brief in Support of Motion for Summary Decision

Certification of Bernard Mercado, Esq. with Exhibits A through D

Letter brief