

68-22

OAL Dkt. No. EDU 07594-2021

Agency Dkt. No. 123-8/21

New Jersey Commissioner of Education

Final Decision

C.B., on behalf of minor children,
A.J.B. and J.B.,

Petitioner,

v.

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

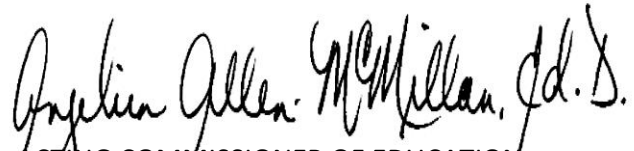
Respondent.

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

The petition in this matter is the seventh filed by petitioner concerning her minor children. Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the allegations made in the current petition have all been raised in previous petitions that were dismissed by the Commissioner. The Commissioner further concurs with the ALJ, for the reasons thoroughly detailed in the Initial Decision, that petitioner's claims are barred by the doctrine of *res judicata* and/or are untimely pursuant to *N.J.A.C. 6A:3-1.3(i)*. Furthermore, to the extent that any claims not barred for those reasons have been raised, they are so vague as to fail to state a claim upon which relief can be granted.

Accordingly, the Board's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ANGELINA ALLEN-McMILLAN, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 12, 2022
Date of Mailing: April 12, 2022

¹ 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

ORDER OF DISMISSAL

OAL DKT. NO. EDU 07594-2021

AGENCY DKT. NO. 123-8/21

**C.B. ON BEHALF OF MINOR CHILDREN,
A.J.B. AND J.B.**

Petitioner,

v.

**CITY OF NEWARK BOARD OF
EDUCATION, ESSEX COUNTY,**
Respondent.

C.B., pro se

Bernard Mercado, Esq. for respondent (Senior Associate Counsel, Office of the
General Counsel, Newark Public Schools)

Record Closed: March 15, 2022

Decided: March 17, 2022

BEFORE: **MATTHEW G. MILLER, ALJ**

STATEMENT OF THE CASE

Petitioner, C.B., the parent of minor children A.J.B. and J.B., has filed a petition concerning access policies to Newark public schools, registration protocols at Central High School (where A.J.B. formerly¹ attended) and what appears to be the alleged misclassification of J.B. and for said misclassification to be removed from his transcript.

PROCEDURAL HISTORY

By letter dated August 3, 2021, Petitioner contacted the Commissioner of the Department of Education, asking that multiple matters “be review(ed)”. This request was marked “Filed” by the Commissioner on August 11, 2021 and Respondent filed an Answer with the Commissioner on August 30, 2021. The Department transmitted this matter to the Office of Administrative Law (OAL) on September 7, 2021, for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

An initial conference was ultimately held on October 29, 2021, which was followed by a second conference on December 10, 2021, after which Respondent filed a Motion to Dismiss. Following a conference on March 3, 2022, the record was held open briefly for the supplying of additional materials and was ultimately closed on March 15, 2022.

FACTUAL BACKGROUND

C.B. OAL Filing History

This matter is the seventh petition filed by C.B. concerning J.B. and/or A.J.B.

1. **C.B. o/b/o minor child, J.B. v. City of Newark BOE, Essex Co./Weaver, Deborah; Montes, Kishanda; Duke Jackson Kathy and Spring, Sakinah (EDU 10368-2018)**. This matter was transmitted to the OAL on or about June 12, 2018 and concerned a demand that J.B. be promoted to 8th grade which arose out of September, 2017 meetings with Lincoln School

¹ While this issue is not raised in this motion, the Court understands that A.J.B. is currently enrolled at West Side High School in Newark and not at Newark Central.

officials. This petition was voluntarily withdrawn by C.B. on or about September 28, 2018. **(Exhibits R-A and R-B)**

2. **C.B. o/b/o minor child, J.B. v. City of Newark BOE, Essex County (EDU 14526-2018)**. This matter was transmitted on an emergent basis to the OAL on October 4, 2018 and concerned a request to remove false and/or sensitive information from J.B.'s school records, that he be issued a diploma and from his middle school and that he be placed in the 10th grade. This petition was voluntarily withdrawn by C.B. on October 3, 2018.² **(Exhibits R-C and R-D)**

3. **C.B. o/b/o minor child, J.B. v. Board of Education of the City of Newark, Essex County (EDU 04507-2019), aff'd Commissioner of Education (February 20, 2020)**. This matter was transmitted to the OAL on April 1, 2019 and concerned a complaint that J.B. was wrongfully retained in 7th grade in 2017-18. In a January 16, 2020 decision, Ernest M. Bongiovanni, A.L.J. found that;
 - a. The petition was time barred since it was filed in violation of the ninety day appellate time limitation of N.J.A.C. 6A:3-1.3(i).
 - b. The claims made in the petition were moot, since they concerned J.B.'s retention in the 7th grade in 2017-18 and he was now in the 9th grade in the 2019-20 school year.
 - c. The balance of the claims were "at best a jumble of vague ideas and notions", which, even if they were cognizable, would be time barred as well.

The Initial Decision was adopted by the Commissioner of Education in a Final Decision dated February 20, 2020, ruling that the claims were time barred. **(Exhibits R-E and R-F)**

4. **C.B. o/b/o minor child, J.B. v. City of Newark Board of Education (EDU 17293-2019), aff'd, Commissioner of Education (October 19, 2020)**. This matter was transmitted to the OAL on December 9, 2019 and concerned a complaint regarding access to the Lincoln Elementary School, the promotion policy "put in place by the district regarding 8 grade graduation" and the district's suspension policy. In a September 2, 2020 decision, Thomas Betancourt, A.L.J. dismissed the petition as being time barred by N.J.A.C. 6A:3-1.3(i). The Initial

² While the dates may be confusing, it appears as if the Petition was actually filed on October 1 and withdrawn on October 3.

Decision was adopted by the Commissioner of Education in an October 19, 2020 Final Decision. **(Exhibits R-G and R-H)**

5. **C.B. o/b/o minor child, A.J.B. v. City of Newark Board of Education, Essex County (EDU 10179-2020), aff'd, Commissioner of Education (June 15, 2021)**. This matter was transmitted to the OAL on October 6, 2020 and concerned a complaint regarding the online process of enrolling A.J.B. at Central High School. In an April 21, 2021 decision, Margaret M. Monaco, A.L.J. dismissed the petition as moot, since A.J.B. was now enrolled in Central and there was no ongoing dispute. The Initial Decision was adopted by the Commissioner of Education in a June 15, 2021 Final Decision. **(Exhibits R-I and R-J)**

6. **C.B. o/b/o minor child, J.B. v. BOE of the City of Newark (EDU 04337-2021)**. This matter was transmitted to the OAL in March, 2021 and concerned multiple complaints regarding J.B.'s registration and treatment at what appears to be Newark Vocational High School in October, 2020 and February, 2021. Per an August 11, 2021 letter from Judge Monaco, this matter was withdrawn by C.B. via letter dated July 3, 2021. **(Exhibits R-K and R-L)**

7. **C.B. o/b/o minor children, A.J.B. and J.B. v. City of Newark BOE, Essex County (EDU 07594-2021) (current case)**. As noted above, this matter was transmitted to the OAL on September 7, 2021 and concerns three issues; 1. the access issues raised in EDU 17293-2019; 2. the enrollment issues raised in EDU 10179-2020, and; 3. the "fraudulent faisfying (sic)³ mis()classification on J.B." with a request that "this matter to be removed from (his) school transcript record", which appear to be the same issues raised in EDU 10368-2018. **(Exhibit C-1)**

Current Petition

In her current petition, C.B. specifically relates the access issues back to her earlier petition ["(t)his matter relates to the 2018-2019 petition"]. She also specifically relates the enrollment issue to an earlier petition [(t)hese...matter() relates to the 2020-2021 petition]". **(Exhibit C-1)**.

³ I believe that this word is meant to be "falsifying".

While she does not relate the “misclassification” aspect of the petition back to the 2018 filing, the issues raised are identical.

The allegations raised in the petition read as follows⁴;

1. This matter relates to the 2018-2019 petition (regarding) Newark Public Schools’ policies on visitor ID scanner, attendance, promotion, suspension...these matters have been dismissed without being heard.
2. These matters...relate to the 2020-2021 petition regarding NPS C.B., minor child (A.L.B). The issue is that the Newark Public School wanted (me) to register personal information online to enroll A.J.B so he can go to Central High School in Newark NJ which I disagree. This matter was dismissed without being heard.
3. This matter relates to the fraudulent, falsifying misclassification on J.B.. I am asking for this matter to be removed from (his) school transcript record.⁵

MOTION

Respondent has filed a motion for to dismiss in lieu of an answer per N.J.A.C. 1:1 *et seq.* and N.J.A.C. 6A:3-1.5(g), making a three-fold argument;

1. That the allegations contained within the subject petition “have previously already been adjudicated both by the OAL and the New Jersey Department of Education and are therefore barred by the doctrine of *res judicata*.”
2. That the petition is time barred in that Petitioner failed to comply with the ninety day time limit encoded in N.J.A.C. 6A:3-1.3(i) to appeal Respondent’s decisions.
3. That the petition fails to state a claim upon which relief can be granted.

⁴ Minor spelling and grammatical corrections have been made for clarity. The full document is attached as Exhibit C1.

⁵ While this issue is not raised in this motion, the Court understands that J.B. is no longer enrolled in the Newark school system.

The only opposition to the motion filed by C.B. consisted of a single page in which she reiterated her disagreement with Respondent's policies on attendance and identification and that they were instituted without notification to parents and asking that the information concerning J.B. be removed from his record. She also advised that she would not be bullied. No legal arguments were propounded. **(Exhibit C-2)**.

A reply brief from Respondent highlighted Petitioner's lack of legal argument and reiterated the positions espoused in its original moving papers. **(Exhibit C-3)**.

A Motion to Dismiss per N.J.A.C. 6A:3-1.5(g) is the functional equivalent of a motion to dismiss for failure to state a claim filed in civil court per N.J.Ct.R. 4:6-2(e). Graves v. State Operated Sch. Dist. of Newark & Cami Anderson, 2017 N.J. Super. Unpub. LEXIS 2417. The Court stated the standard for the granting of same;

When reviewing a Rule 4:6-2(e) motion, a court must determine the adequacy of the pleading and decide whether a cause of action is "suggested" by the facts. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). The 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, opportunity being given to amend if necessary." *Ibid.* (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)).

Id. at 7.

LEGAL ARGUMENT

Petitioner

None. At best, C.B. infers in her petition that her claims have never received a proper hearing.

Respondent

As noted above, Respondent makes two primary arguments in support of the dismissal of Petitioner's claims.

First, it argues that this petition is simply a rehash of the claims made in the first six petitions, all of which have either been withdrawn, dismissed, found to be moot or insufficiently pled so as to form a justiciable claim upon which relief can be granted. Given that, this petition should be barred in its entirety by the doctrine of *res judicata*. Citing to, amongst other cases, McNeil v. Legislative Apportionment Comm'n of State, 177 N.J. 364, cert. denied, 540 U.S. 1107 (2004) and In re Estate of Gabrellian, 372 N.J. Super. 432 (2004), it argues that since these cases involved decisions involving the same issues and the same parties, dismissal is appropriate.

Second, it argues that Petitioner failed to comply with the with the ninety day time limit encoded in N.J.A.C. 6A:3-1.3(i) to appeal the denial of her requests for relief. Citing to cases such as Riely v. Hunterdon Central Bd. of Educ., 173 N.J. Super. 109 (App. Div. 1980) and Kaprow v. Board of Educ. of Berkeley Tp., 131 N.J. 572 (1993), Respondent notes that all of the claims being pursued in the instant petition (admittedly) date back several years, with decisions such as they were, being made as far back as 2017.

Finally, Respondent argues that at least some aspects of the claims do not fall within the jurisdiction of the OAL. To the extent that vague references to ethical issues, the Anti-Bullying Act, financial damages, etc., Respondent points to the decision in C.B. o/b/o J.B. v. City of Newark BOE, Essex Co., (EDU 14526-2018), which deemed them to be non-cognizable in this forum.

LAW AND ANALYSIS

Before delving into the law, we must first review the specific allegations made in this Petition. They are;

Allegation #1 - Newark Public Schools' policies on visitor ID scanner, attendance, promotion, suspension.

As detailed above, C.B. admitted that this allegation relates to the "2018-2019 petition". In reviewing the prior cases, this issue was specifically raised in C.B. o/b/o J.B. v. City of Newark Board of Education (EDU 17293-19) and was dismissed as having been filed in violation of N.J.A.C. 6A:3-1.3(i) as she had been aware of the ID policy since at least November, 2018 and the retention, promotion and suspension policies since at least May, 2017. This decision was upheld by the Commissioner of Education in an October 19, 2020 Final Decision.

In fact, the retention policy was also raised in C.B. o/b/o minor child, J.B. v. Board of Education of the City of Newark, Essex County (EDU 04507-2019) and was similarly dismissed for C.B. having failed to comply with the ninety day time limit of N.J.A.C. 6A:3-1.3(i). This decision was upheld in a February 20, 2020 Final Decision.

Allegation #2 - Newark Public Schools' policies concerning A.J.B. and the online enrollment practices of Newark Central High School.

As detailed above, C.B. admitted that this allegation relates to the "2020-2021 petition". In reviewing the prior cases, this issue was specifically raised in C.B. o/b/o A.J.B. v. BOE of the City of Newark (EDU 04337-2021) and was dismissed as moot, since he ultimately successfully enrolled at Central. That decision was adopted by the Commissioner of Education in a June 15, 2021 Final Decision.

Allegation #3 – The alleged misclassification of J.B. and a request to have same removed from his transcript.

In reviewing the prior cases, this issue was specifically raised in C.B. o/b/o J.B. v. City of Newark BOE, Essex County (EDU 14526-2018) which was voluntarily withdrawn by C.B. on October 3, 2018.

Claims concerning J.B. and his classification were also raised in C.B. o/b/o minor child, J.B. v. Board of Education of the City of Newark, Essex County (EDU 04507-2019) and was similarly dismissed for C.B. having failed to comply with the ninety day time limit of N.J.A.C. 6A:3-1.3(i) since she first became aware of his special education classification in 2012, which continued until she removed him from such classes in May or June, 2017. This decision was upheld in a February 20, 2020 Final Decision.

RES JUDICATA

The seminal New Jersey case involving the doctrines of *res judicata* and collateral estoppel is Sacharow v. Sacharow, 177 N.J. 62 (2003), which provided the following primer;

The doctrine of collateral estoppel...is 'that branch of the broader law of res judicata which bars relitigation of any issue which was actually determined in a prior action, generally between the same parties, involving a different claim or cause of action.' Woodrick v. Jack J. Burke Real Estate, Inc., 306 N.J. Super. 61, 79 (quoting State v. Gonzalez, 75 N.J. 181, 186 (1977)) certif. granted, Woodrick v. Fox & Lazo, Inc., Realtors, 153 N.J. 214, and app. dismissed, 157 N.J. 537 (1997).

Id. at 76.

As to res judicata, the Court held;

"Preclusion can occur only "[w]hen an issue of fact or law is actually litigated and determined by valid and final judgment." Hernandez v. Region Nine Housing Corp., 146 N.J. 645, 659 (1996) (citing Restatement (Second) of Judgments § 27 at 250 (1982)) (emphasis omitted); Mazzilli v. Accident & Cas. Ins. Co. of Winterthur, Switzerland, 26 N.J. 307, 334 (1958) ("[I]t is only upon such matters as were actually litigated and determined that the judgment is conclusive.") (quoting City of Paterson v. Baker, 51 N.J. Eq. 49, 53 (Ch. 1893))."

Id. at 76-77.

The Court in Hernandez v. Region Nine Housing Corp., 146 N.J. 645 (1996) addressed the issue of res judicata in somewhat more detail;

When an issue of fact or law is actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. [Restatement (Second) of Judgments § 27 at 250 (1982) (emphasis added).]

New Jersey law also requires that the issue presented in the later action must be identical to the issue decided in the earlier adjudication. Morristown Trust Co. v. Thebaud, 43 N.J. Super. 209, 217, 128 A.2d 288 (Ch. Div. 1957). The Restatement adds, however, that issue preclusion cannot be invoked when:

(1) The party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action; or...(3) A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them; or...(5) There is a clear and convincing need for a new determination of the issue...because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action,...[Restatement (Second) of Judgments, (supra), § 28 at 273.]

Hernandez, 146 N.J. at 659.

In 2010, the Appellate Division reiterated the standards for the applicability of the doctrine of res judicata:

(T)he question of whether an action is barred by the doctrine of res judicata "is a question of law 'to be determined by a judge in the second proceeding after weighing the appropriate factors bearing upon the issue.'" Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173 (App. Div. 2000) (quoting Colucci v. Thomas Nicol Asphalt Co., 194 N.J. Super. 510, 518 (App. Div. 1984)). Since we are presented with a question of law, we owe the trial court's decision no deference.

Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Broadly stated, the doctrine of res judicata bars "relitigation of claims or issues that have already been adjudicated." Velasquez v. Franz, 123 N.J. 498, 505 (1991). It provides that "a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot be relitigated by those parties or their privies in a new proceeding." Ibid. The doctrine fosters "the important policy goals of 'finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness . . .'" First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 352 (2007) (quoting Hackensack v. Winner, 82 N.J. 1, 32-33 (1980)). It also "maintain[s] judicial integrity by minimizing the possibility of inconsistent decisions regarding the same matter." Velasquez v. Franz, supra, 123 N.J. at 505.

For the doctrine of res judicata to bar an action, there must be "substantially similar or identical causes of action and issues, parties, and relief sought" between the two actions, and a final judgment must have been entered in the earlier action by a court of competent jurisdiction. Culver v. Ins. Co. of N. Am., 115 N.J. 451, 460 (1989).

Selective Ins. Co. of Am. v. Capoferri, 2010 N.J. Super. Unpub. LEXIS 589 at 5-6.

Or, as put in the case of Green v. State Farm Ins., 2008 N.J. Super. Unpub. LEXIS 1513;

The preclusionary doctrine of res judicata involves elements that are all present here: common parties, common subject matters, common issues and common evidence, as well as a final judgment rendered in the first action on the merits. See Velasquez v. Franz, 123 N.J. 498, 505-06 (1991); see also Restatement of Judgments (Second) § 19 (1982). Even if a claim is not specifically raised in the first proceeding, it is precluded from being litigated in the ensuing action if there previously was a fair opportunity to have raised it. See Brunetti, supra, 68 N.J. at 587-88, see also McNeil v. Legislative Apportionment Comm'n. 177 N.J. 364, 395 (2003),

cert. denied, 540 U.S. 1107, 124 S.Ct. 1068, 157 L.Ed. 2d 893 (2004).

Green, 2008 N.J. Super. Unpub. LEXIS 1513 at 9.

As was noted in McNeil;

The doctrine of res judicata is primarily one of public policy and only secondarily of private benefit to individual litigants.... [I]ts roots lie in the principle that public policy and welfare require a definite end to litigation when each of the parties has had a full, free and untrammelled opportunity of presenting all of the facts pertinent to the controversy. The primary object of res judicata (public policy) is based upon the maxim *reipublicae ut sit finis litium* -- it concerns the commonwealth that there be a limit to litigation. [(citations omitted).] [Kugler v. Romain, 110 N.J. Super. 470, 484 (Ch. Div. 1970) (quoting Desmond v. Kramer, 96 N.J. Super. 96, 107 (Cty. Ct. 1967)(quoting Coca-Cola v. Pepsi-Cola Co., 172 A. 260 (Del. 1934))].

Id. at 399-400.

The Court in Bressman v. Gash, 131 N.J. 517 (1993) confirmed that the doctrine of res judicata should not only apply to court decisions, but also to administrative ones;

As a general rule, an adjudicative decision of an administrative agency "should be accorded the same finality that is accorded the judgment of a court." Restatement (Second) of Judgments § 83 comment b (1982) (Restatement); see Kenneth C. Davis, 4 Administrative Law Treatise § 21.9 (2d ed. 1983). [*527] Underlying the doctrine of res judicata is concern for the stability of results. Restatement, supra. The application of res judicata to adjudicative decisions of administrative agencies, like its application to judicial decisions, rests on policy considerations such as "finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness" Hackensack v. Winner, 82 N.J. 1, 32-33, 410 A.2d 1146 (1980).

Id. at 526-27.

As was argued by Respondent and detailed above, all three claims being pursued by Petitioner in this case have been substantively adjudicated previously, with the claims in the first allegation having been dismissed as being time barred in separate decisions that were both upheld by the Commissioner of Education in a Final Decision, the claims in the second allegation having been dismissed as moot in another decision upheld by the Commissioner in a Final Decision and the claims in the third allegation having been dismissed as being time barred in the yet another decision that was upheld in a Final Decision.

C.B. did not provide any legally meaningful opposition to the motion, but simply reiterated her prior positions that various actions taken by Respondent were improper.

Given the above, I **FIND** that all aspects of and claims contained in C.B.'s petition have been fully litigated previously between the parties and that there is no need or compelling reason for same to be relitigated.

Therefore, I **CONCLUDE** that all aspects of and claims contained in C.B.'s current Petition are barred by the doctrine of res judicata and must be dismissed for failure to state a claim.

STATUTE OF LIMITATIONS

In addition to being barred by the doctrine of *res judicata*, it should be noted, as it was in both C.B. o/b/o minor child, J.B. v. Board of Education of the City of Newark, Essex County (EDU 04507-2019) and C.B. o/b/o minor child, J.B. v. Board of Education of the City of Newark, Essex County (EDU 04507-2019), that the claims posited by C.B. in the instant are time barred.

The regulation concerning appeals is N.J.A.C. 6A:3-1.3(i), which reads as follows;

Filing and service of petition of appeal - 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.

(emphasis added)

This rule (along with others in this chapter of the Administrative Code) can be “relaxed or dispensed with by the Commissioner, in the Commissioner’s discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice”. N.J.A.C. 6A:3-1.16.

In exploring the case law surrounding the relaxation of the ninety day rule, it becomes very apparent, very quickly, that the courts do not look indulgently on same. One of the most oft-cited cases involving this issue is Kaprow v. Bd. of Educ. of Berkeley Twp., 131 N.J. 572 (1993). Kaprow involved the termination of a tenured assistant superintendent effective June 30, 1981. After a rather complicated series of events involving RIF⁶ rights and the “re-creation” of assistant superintendent positions year later, Kaprow filed a petition with the Commissioner on August 1, 1988 asserting a claim to one of the re-created positions. He amended that petition on December 16, 1988 to assert, for the first time, that the 1981 RIF was improper and had been made in bad faith. Id. at 576-78.

In the face of a partial victory for Kaprow in the underlying OAL case, the Commissioner dismissed the petition, finding, in part, “that the bad-faith claim was untimely instead of unsupported”. That decision was affirmed by the State Board of Education, which found that the August 1, 1988 petition “was time barred by the ninety-

⁶ Reduction in force.

day limitations period of N.J.A.C. 6:24-1.2(c)” and the Appellate Division affirmed the Board’s decision. Id. at 578.

The bar can be relaxed “when strict adherence would possibly result in an injustice.” Grompone v. State Operated Sch. Dist. Of Jersey City, 1999 N.J. AGEN LEXIS 786 (Dec. 20, 1999) at 17., app. denied, 1994 N.J. Super. Unpub. LEXIS 4, cit. Bogert v. East Orange Bd. of Educ., OAL DKT. NO. EDU 6245-82 (January 26, 1983), aff’d Commissioner of Education (March 14, 1983). See also, Morris-Union Jointure Commission v. Bd. of Ed. of South River, 92 N.J.A.R 2d (EDU) 453 (1992).

However, Morris-Union confirmed that “it is petitioner’s burden to show that it will suffer injustice if the 90-day rule is strictly enforced.” Id. at 471.

Here, C.B. has produced no evidence or argument that she has either complied with the ninety day rule or which would justify its relaxation. For those reasons, and the reasons expressed in the prior decisions cited above, I **FIND** that C.B. failed to comply with the requirements of N.J.A.C. 6A:3-1.3(i) and I further **FIND** that she has failed to demonstrate that the enforcement of those requirements would lead to an injustice. I also **CONCLUDE** that even if the petitioner was not barred by the doctrine of res judicata, it would be dismissed due to the violation of N.J.A.C. 6A:3-1.3(i). I further **CONCLUDE** that the petitioner should be dismissed for failure to state a claim on this basis in addition to res judicata.

FAILURE TO STATE A CLAIM

While I **FIND** that all of C.B.’s claims have been addressed by both the discussions of res judicata and the appellate time bar, to the extent that any ancillary issues may not have been addressed, I **CONCLUDE** that they fail to state a claim upon which relief may be granted.

Vague allegations of disrespect, violations of the Anti-Bullying Act, financial damages, etc. are simply not cognizable in this forum. See generally, Robinson v. Union Twp. Bd. of Educ., 2020 N.J. Agen Lexis 12 (December 13, 2019).

To the extent that those allegations are made in this petition, I **FIND** that they are outside the jurisdiction of the OAL and must be brought in another forum. I therefore **FIND** that those allegations must be dismissed for failure to state a claim.

CONCLUSION

Given the totality of the evidence, I **CONCLUDE** that Petitioner's claims are barred by the doctrine of res judicata, are time-barred and/or are not cognizable in the OAL.

ORDER

Based on the foregoing, Respondent's motion to dismiss Petitioner's appeal for failure to state a claim per Rule 4:6-2(e) be and is hereby **GRANTED** and;

It is hereby **ORDERED** that judgment be **ENTERED** on behalf of respondent and that the Petitioner's appeal be and is hereby **DISMISSED**.

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.

March 17, 2022

DATE



Matthew G. Miller, ALJ

Date Received at Agency:

March 17, 2022

Date Mailed to Parties:

March 17, 2022

MGM/mm

APPENDIX

WITNESSES

For petitioner:

None

For respondent:

None

EXHIBITS

For petitioner:

None

For respondent:

- | | |
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| R-A | June 12, 2018 C.B. petition in <u>C.B. o/b/o minor child, J.B. v. City of Newark BOE, Essex Co./Weaver, Deborah; Montes, Kishanda; Duke Jackson Kathy and Spring, Sakinah</u> (EDU 10368-2018) |
| R-B | September 28, 2018 letter from Respondent to Judge Testa confirming Petitioner's withdrawal of EDU 10368-2018 |
| R-C | October, 2018 C.B. petition in <u>C.B. o/b/o minor child, J.B. v. City of Newark BOE, Essex Co.</u> (EDU 14526-2018) |
| R-D | October 23, 2018 letter from C.B. withdrawing EDU 14526-2018 |
| R-E | February, 2019 petition in <u>C.B. o/b/o minor child, J.B. v. City of Newark BOE, Essex Co.</u> (EDU 04507-2019) |
| R-F | New Jersey Department of Education's Final Decision and Judge Bongiovanni's Initial Decision in EDU 04507-2019 |

- R-G November, 2019 petition in C.B. o/b/o minor child, J.B. v. City of Newark Board of Education (EDU 17293-2019)
- R-H New Jersey Department of Education's Final Decision and Judge Betancourt's Initial Decision in EDU 17293-2019
- R-I October, 2020 C.B. petition in C.B. o/b/o minor child, A.J.B. v. City of Newark Board of Education, Essex County (EDU 10179-2020)
- R-J New Jersey Department of Education's Final Decision and Judge Monaco's Initial Decision in EDU 10179-2020
- R-K March, 2021 C.B. petition in C.B. o/b/o minor child, J.B. v. BOE of the City of Newark (EDU 04337-2021)
- R-L August 11, 2021 letter from Judge Monaco confirming C.B.'s withdrawal of EDU 04337-2021.

Court:

- C-1 September 7, 2021 Petition in C.B. o/b/o minor children, A.J.B. and J.B. v. City of Newark BOE, Essex County (EDU 07594-2021) (current case)
- C-2 February 18, 2020 Petitioner letter in opposition
- C-3 March 14, 2022 Respondent reply brief