

New Jersey Commissioner of Education

Final Decision

D.S., on behalf of minor child, M.S.,

Petitioner,

v.

Board of Education of the Township of Hamilton,
Mercer County,

Respondent.

Synopsis

Petitioner challenged the decision of the respondent Board to deny her application for an attendance zone waiver to change M.S.'s school assignment for the 2021–2022 school year from Hamilton High School-East, also known as Steinert High School (Steinert), to Hamilton High School-West (HHS-West). Petitioner's request for the zone waiver was filed prior to October 29, 2021. The Board notified petitioner by letter dated October 29, 2021 that her request was denied. Further, counsel for the Board notified petitioner by letter dated November 5, 2021, that an appeal of the Board's zone waiver denial must be filed with the Commissioner of Education within ninety days of the date of the final decision. Petitioner did not file her appeal of the Board's decision to deny her application for a zone waiver until March 8, 2022. The Board filed a motion for summary decision, which was opposed by the petitioner.

The ALJ found, *inter alia*, that: there is no issue of material fact in this case, and the matter is ripe for summary decision; pursuant to *N.J.A.C. 6A:3-1.3(i)*, petitioners must 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, which is the subject of the requested contested case hearing; here, the petitioner received notice of the Board's final decision to deny her request for a zone waiver on October 29, 2021, and on November 5, 2021, counsel for the Board sent a more detailed explanation of the grounds for respondent's decision; petitioner's appeal was not filed until March 8, 2022. The ALJ concluded that the appeal was filed 102 days after petitioner received final notice that her request was denied. Accordingly, the ALJ granted summary decision to the Board and dismissed the petition.

Upon a comprehensive review, the Commissioner concurred with the ALJ that this matter is time-barred by the 90-day limitations period set forth in *N.J.A.C. 6A:3-1.3(a)*. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter and the petition was dismissed as untimely.

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.

205-22+

OAL Dkt. No. EDU 02521-22

Agency Dkt. No. 37-3/22

New Jersey Commissioner of Education

Decision

D.S., on behalf of minor child, M.S.,

Petitioner,

v.

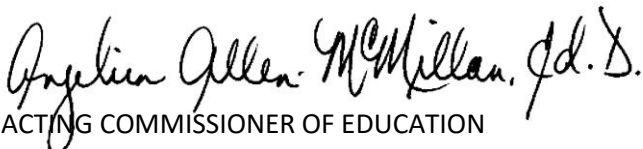
Board of Education of the Township of Hamilton,
Mercer County

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed, as have the exceptions to the Initial Decision filed by the petitioner.

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)*. Additionally, the petitioner has failed to present any exceptional circumstances that might justify a finding that strict adherence to the 90-day rule would result in injustice. *Kaprow v. Board of Education of Berkeley Tp.*, 131 *N.J.* 572, 590 (1993); *N.J.A.C. 6A:3-1.16*. Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


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

Date of Decision: August 15, 2022

Date of Mailing: August 17, 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

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 02521-22

AGENCY DKT. NO. 37-3/23

D.S. ON BEHALF OF M.S.,

Petitioner,

v.

**HAMILTON TOWNSHIP BOARD
OF EDUCATION, MERCER COUNTY,**

Respondent.

D.S., petitioner, pro se

Michael A. Pattanite, Jr., Esq., for respondent (Lenox Law Firm, attorneys)

Record Closed: June 27, 2022

Decided: July 5, 2022

BEFORE **TRICIA M. CALIGUIRE, ALJ**:

STATEMENT OF THE CASE

Petitioner D.S. on behalf of M.S. challenges the decision of respondent Hamilton Township Board of Education, Mercer County (Board) to deny her application for an attendance zone waiver to change M.S.'s school assignment for the 2021–2022 school

year from Hamilton High School-East, also known as Steinert High School (Steinert), to Hamilton High School-West (HHS-West).

PROCEDURAL HISTORY

On March 8, 2022, petitioner filed a petition of appeal with the New Jersey Department of Education (DOE), Office of Controversies and Disputes. On March 28, 2022, respondent filed a motion for summary decision in lieu of an answer.¹ The Acting Commissioner of Education did not rule on the motion but transmitted it with the petition to the Office of Administrative Law (OAL) on April 4, 2022, for hearing as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15, and N.J.S.A. 52:14F-1 to -13.

The matter was assigned to the Honorable Jeffrey N. Rabin, ALJ, and scheduled for a prehearing conference. By emails dated May 3, 2022, petitioner requested that the matter be reassigned due to an alleged conflict of interest; the matter was reassigned to the undersigned² and scheduled for a prehearing conference on May 31, 2022. During the prehearing conference, petitioner made an offer of settlement; counsel for respondent agreed to report on his client's response on or before June 13, 2022.

On June 12, 2022, petitioner received notice by electronic mail that respondent declined her offer of settlement. The parties appeared for a telephone conference on June 13, 2022;³ petitioner requested and was granted the opportunity to submit a brief in opposition to the motion for summary decision on or before June 27, 2022. With petitioner's timely submission, respondent's motion is now ripe for review.

¹ Respondent filed a motion for summary decision rather than a motion to dismiss because respondent relies on materials outside the pleadings. R. 4:6-2(e).

² On several occasions, petitioner has stated in writing that during an earlier proceeding involving these same parties, I advised her to file this appeal. That statement is not accurate. During discussions of the potential settlement of the matter docketed as EDS 05336-21, petitioner expressed her continued interest in having M.S. attend HHS-West and I asked her if she had appealed the District's decision to deny her application for a zone waiver. When she responded that she had not appealed, I noted that she was by then precluded from doing so by regulation requiring appeals within ninety days of the disputed action. During the telephone conference of May 31, 2022, petitioner agreed with my recollection of our discussion.

³ As petitioner notes, despite due notice, the firm representing respondent did not appear for this conference until contacted by petitioner at my request. See Petitioner's Supplement to Pro Se Petition (June 27, 2022), ¶ 8.

FACTUAL DISCUSSION AND FINDINGS

The following **FACTS** are not in dispute and accordingly, I **FIND**:

The Hamilton Township School District (District) operates three high schools and assigns students within the District to a specific high school based on pre-determined residential boundary lines. The District Regulation #5120 (quoted below) sets forth the criteria that the District uses to evaluate a request for permission to attend a high school outside of the applicable boundary lines.

M.S. is a seventeen-year-old female. She began the 2021–2022 school year in eleventh grade at Gateway High School in Florida. On or before November 1, 2021, M.S. moved with her mother, D.S., back to New Jersey and took up residence in Hamilton Township within the geographic zone assigned by the District to Steinert.

On or before October 29, 2021, D.S. applied to the District for an attendance zone waiver by which M.S. would attend high school at HHS-West rather than Steinert.⁴ By letter dated October 29, 2021, the District denied petitioner's application. This letter stated in pertinent part:

If you have any additional data/documentation to provide which meets the [Regulation #5120] criteria, please contact the Office of Administration. Your new information will be reviewed to determine your eligibility.

[Brief in Support of Respondent's Motion for Summary Decision (March 28, 2022), Ex. C.]

On October 29, 2021, petitioner notified respondent that M.S. would be residing at an alternative address within the zone for HHS-West. In response, James Altobello, Ed.D., Director of Secondary Education, provided petitioner with detailed instructions for registering M.S. using a third-party address rather than her parent's address.⁵ Id., Ex. E.

⁴ Neither party provided this application, but there is no dispute that it was submitted by petitioner to respondent in advance of October 29, 2021.

⁵ Respondent claims that petitioner did not submit paperwork to support the use of a third-party address. Petitioner has not provided proof of such a submission, nor has she disputed this assertion by respondent.

By letter dated November 5, 2021, counsel for the Board notified petitioner of the basis for the decision to deny her application for a zone waiver and stated that an appeal of this decision must be filed with the Commissioner of Education within ninety days of the date of the decision. *Id.*, Ex. F. Petitioner contends that staff at the DOE stated that the deadline for an appeal of a Board decision is two years after the date of the decision. Petitioner's Supplement to Pro Se Petition (June 27, 2022), ¶ 1.

Since approximately November 8, 2021, M.S. has attended eleventh grade at Steinert.

Petitioner filed her appeal of respondent's decision to deny her application for a zone waiver on March 8, 2022, 102 days after she was notified of respondent's decision.

LEGAL ANALYSIS AND CONCLUSIONS

To begin, petitioner disputes the designation of this matter by the DOE as one arising under the school laws (and therefore, bearing the OAL heading "EDU") rather than under the federal Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 to 1482 (IDEA) (which would bear the OAL heading "EDS"). Petitioner's Supplement, ¶ 2.

The Commissioner of DOE is authorized to hear and determine controversies under the school law. N.J.S.A. 18A:6-9; N.J.A.C. 6A:2-1.2. However, the State Director of the Office of Special Education (OSE) determines whether a local education agency has violated the requirements of state and federal laws regarding the provision of special education and related services. N.J.A.C. 6A:14-9.2. Petitioner argues that the decision to deny her petition to place M.S. at HHS-West results in a failure to provide M.S. with a free appropriate public education (FAPE) because Steinert does not provide M.S. with the services she is due under her IEP. Petitioner's Supplement, ¶¶ 2, 5.

There is no dispute that M.S. is eligible for special education and related services and has an individual education program (IEP) developed for her by the child study team at Steinert. Petitioner has brought several claims on behalf of M.S. under the IDEA. By her own words, however, petitioner filed this matter to appeal the decision of the District

to deny her application for a zone waiver. I **CONCLUDE** that this matter was properly transmitted by the DOE as arising under the school laws.

It is well-established that if there is no genuine issue as to any material fact, a moving party is entitled to prevail as a matter of law. Brill v. The Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995). The purpose of summary decision is to avoid unnecessary hearings and their concomitant burden on public resources. Under the Brill standard, a fact-finding hearing should be avoided “when the evidence is so one-sided that one party must prevail as a matter of law.” Brill guides as follows:

[A] determination whether there exists a ‘genuine issue’ of material fact that precludes summary judgment requires the motion judge to 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 factfinder to resolve the alleged disputed issue in favor of the non-moving party.

[Id. at 540.]

In explaining the standard to be applied in summary motion practice, the Brill Court explained:

The same standard applies to determine whether a prima facie case has been established by the party bearing the burden of proof in a trial. . . . If a case involves no material factual disputes, the court disposes of it as a matter of law by rendering judgment in favor of the moving or non-moving party.

[Id. at 536-3.7.]

As discussed above, I **CONCLUDE** that the parties raise no dispute with respect to material facts and the issue of whether petitioner’s appeal must be dismissed for being filed after the applicable statutory deadline can be decided as a matter of law.

N.J.A.C. 6A:3-1.3(i) states that to initiate a contested case for the Commissioner's determination of a controversy or dispute arising under the school laws,

[t]he 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, which is the subject of the requested contested case hearing.

The purpose of the ninety-day limitation period is "to stimulate litigants to pursue a right of action within reasonable time so that the opposing party may have a fair opportunity to defend, thus preventing the litigation of stale claims[.]" to penalize delay, and to provide some assurance that a claim will not be raised after the limitations period has passed. Kaprow v. Board of Education of Berkeley Township, 131 N.J. 572, 587 (1993) (citations omitted). With regard to the adequacy of notice, the Supreme Court explained that "notice must be sufficient to inform an individual of some fact that he or she has a right to know and that the communicating party has a duty to communicate[.]" such that the individual has the information needed to file a timely claim. Id. at 588-89 (an unofficial and informal note that Board had taken a position contrary to petitioner was sufficient to trigger the start of the ninety-day period).

Here, on October 29, 2021, the District issued a written denial to which petitioner responded multiple times the same day. On November 5, 2021, counsel for the Board sent a more detailed explanation of the grounds for respondent's decision. I **CONCLUDE** that the respondent fulfilled the notice requirement on October 29, 2021.

The regulations further provide the Commissioner with discretion to relax the limitations period "in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice." N.J.A.C. 6A:3-1.6. Case law makes clear, however, that relaxing the ninety-day rule occurs only under exceptional circumstances or if there is a compelling reason to do so. 131 N.J. at 590; Polaha v. Buena Reg'l. Sch. Dist., 212 N.J. Super. 628, 635 (App. Div. 1986) (case remanded to Commissioner to consider whether the ninety-day rule should be relaxed because the petitioner and the respondent engaged in discussions in an attempt to "agree on an acceptable position"). Here, there is no evidence that the District gave any consideration

to changing its position and permitting M.S. to enroll at HHS-West. M.S. enrolled at Steinert shortly after the zone waiver application was denied. The District provided M.S. transportation to Steinert from the date of her enrollment. M.S. completed her eleventh-grade classes at Steinert and, as petitioner noted, she has already filed a new zone waiver application for the upcoming school year.

Based on the foregoing, I **CONCLUDE** that there is no dispute that the petition was filed after the ninety-day limitation period had passed and, therefore, petitioner's appeal is time barred under applicable regulations and relevant case law.

ORDER

It is **ORDERED** that the application for summary decision of respondent Hamilton Township Board of Education is **GRANTED** and the appeal of petitioner D.S. on behalf of M.S. is **DISMISSED**.

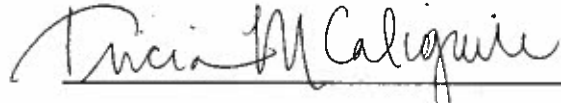
I hereby **FILE** my initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**.

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.

July 5, 2022

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

July 5, 2022

Date Mailed to Parties:

July 5, 2022 (email)

TMC/nn