

New Jersey Commissioner of Education

Final Decision

R.G., on behalf of minor child, R.G.,

Petitioner,

v.

Board of Education of the Township of
Florence, Burlington County,

Respondent.

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

Petitioner filed the instant petition on or after November 5, 2022, challenging the Board's May 11, 2022, denial of his request to expunge his son's records concerning speech and language assessments that petitioner contends were incorrectly administered and scored. The Administrative Law Judge (ALJ) found that the petition should be dismissed as it was filed outside the 90-day limitation period set forth in *N.J.A.C. 6A:3-1.3(i)*. The ALJ also found that the circumstances do not warrant relaxation of the filing timeframe.

Upon review, the Commissioner concurs with the ALJ that this matter was filed more than 90 days after the Board denied petitioner's request to expunge his son's student records. As such, the Commissioner agrees with the ALJ that this matter is barred by the 90-day statute

of limitations set forth in *N.J.A.C. 6A:3-1.3(i)*. The Commissioner further agrees that relaxation of the limitations period is not warranted.

Accordingly, the Initial Decision of the OAL 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: April 11, 2023

Date of Mailing: April 12, 2023

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

MOTION TO DISMISS

OAL DKT. NO. EDU 10557-22

AGENCY DKT. NO. 310-11/22

R.G. ON BEHALF OF MINOR CHILD, R.G.,

Petitioner,

v.

**TOWNSHIP OF FLORENCE BOARD
OF EDUCATION, BURLINGTON COUNTY,**

Respondent.

R.G., petitioner, pro se

Sanmathi Dev, Esq. and **Joseph F. Betley**, Esq., for respondent (Capehart & Scatchard, P.A., attorneys)

Record Closed: January 10, 2023

Decided: March 10, 2023

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner R.G. appealed the denial, by respondent Board of Education of the Township of Florence, Burlington County (Board), of his request for the expungement of

records, pursuant to N.J.S.A. 6A:32-7.7(a)1. The Board filed a motion to dismiss based upon the failure of petitioner to file his petition within ninety days, pursuant to N.J.A.C. 6A: 3-3.1(i).

PROCEDURAL HISTORY

On or about November 5, 2022, petitioner filed a petition with the Commissioner of the Department of Education (Commissioner), in which he appeals the Board's denial of his expungement request. On November 18, 2022, respondent filed a motion to dismiss in lieu of an answer. Petitioner filed an opposition brief on November 19, 2022, and respondent filed a reply brief on November 23, 2022. The matter was transmitted to the Office of Administrative Law (OAL) November 22, 2022. During a January 9, 2023, prehearing conference, it was determined that the reply brief was not submitted to the OAL along with the petition, the motion to dismiss and the opposition brief. Respondent submitted its reply brief to the OAL on January 10, 2023. The record for the motion closed that day.

FACTUAL DISCUSSION

The following, taken from the petition and documents appended to the petition, are treated as undisputed for the purpose of this motion.¹ I therefore **FIND** the following as **FACT**:

On or about November 5, 2022, petitioner R.G. filed a petition with the Commissioner, in which he seeks the expungement of records concerning his son. The records concern speech and language assessments that petitioner contends were incorrectly administered and scored. He described the purported errors in his petition. Petition at ¶¶1–5.

¹ Because the matter arises on defendants' motion to dismiss, [the court must] accept as true the facts alleged in the complaint. . . . Plaintiffs are entitled to every reasonable inference in their favor." Craig v. Suburban Cablevision, Inc., 140 N.J. 623, 625-26 (1995) (citations omitted); see also Maeker v. Ross, 219 N.J. 565, 569 (2014).

Petitioner first requested expungement of his son's records on March 30, 2022. Id. at ¶6. School district personnel denied his request, and he appealed the denial to the Board. Ibid. On May 11, 2022, he was advised by the Board that it had reviewed and denied his request. Ibid. The Board further advised that it found that all but one of the assessments at issue were properly conducted. However, having found that one assessment was inaccurately scored, it directed that an addendum concerning that assessment would be included in the student's file. Ibid. The Board further advised that petitioner's communications and the documents that he submitted in support of his expungement request would be made part of the student's educational record. Id. (referring to attached undated letter from Board Secretary Luis Valencia).

On November 18, 2022, respondent filed a motion to dismiss in lieu of an answer. It contends that petitioner's complaint is untimely, as he was required to appeal the denial of his expungement request within ninety days of the Board's denial of his request.

In opposition to the motion, petitioner does not dispute more than ninety days passed since the Board denied his expungement request. He asserts that his failure to file his complaint in a timely manner was an oversight. He noted that he is proceeding pro se; has no legal education or background and is responsible for a child who has special needs. Pet. Reply Brf. at 1. He asserted that the Commissioner should relax the filing deadline pursuant to N.J.A.C. 6A:3-1.16.

LEGAL ANALYSIS AND CONCLUSION

The analysis required when considering a motion to dismiss is "whether a cause of action is suggested by the facts." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)(citations omitted). "A reviewing 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[.]" Craig v. Suburban Cablevision, Inc., 140 N.J. at 625-26 (1995)(citations omitted). A motion to dismiss should only be granted in the rarest of instances. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 772 (1989). In reviewing the complaint, the question is not whether the petitioner can prove the allegations, but whether the facts alleged are sufficient to state a cause of action. Id.

at 746. See also F. G. v. MacDonell, 150 N.J. 550, 556 (1997) (“If a generous reading of the allegations merely suggests a cause of action, the complaint will withstand the motion.”).

N.J.A.C. 6A:32-7.7 addresses requests for expungement of student records. It provides:

(a) Student records are subject to challenge by parents and adult students on grounds of inaccuracy, irrelevancy, impermissible disclosure, inclusion of improper information, or denial of access to organizations, agencies, and persons. The parent or adult student may request:

1. Expungement of inaccurate, irrelevant, or otherwise improper information from the student record;
2. Insertion of additional data, as well as reasonable comments regarding the meaning and/or accuracy of the student record;
3. The immediate stay of disclosure pending final determination of the challenged procedure as described in this subchapter; and/or
4. Immediate access to student records for organizations, agencies, and persons denied access, pending final determination of the challenged procedure, as described in this subchapter.

(b) To request a change in the student record or to request a stay of disclosure pending final determination of the challenged procedure, a parent or adult student shall notify, in writing, the chief school administrator of the specific issues relating to the student record.

1. Within 10 school days of notification, the chief school administrator, or the chief school administrator's designee, shall notify the parent or adult student of the school district's decision. If the school district disagrees with the request, the chief school administrator, or the chief school administrator's designee, shall meet with the parent or adult student to resolve the issues set forth in the request.

2. If the matter is not satisfactorily resolved, the parent or adult student has 10 school days to appeal the school district's decision.
 2. If an appeal is made to the district board of education, the district board of education shall render a decision within 20 school days.
 3. The decision of the district board of education may be appealed to the Commissioner pursuant to N.J.S.A. 18A:6-9² and N.J.A.C. 6A:3, Controversies and Disputes. At all stages of the appeal process, the parent or adult student shall be afforded a full and fair opportunity to present evidence relevant to the issue.
 4. A record of the appeal proceedings and outcome shall be made a part of the student record with copies made available to the parent or adult student.
- (c) Appeals relating to student records of students with disabilities shall be processed in accordance with the requirements of (b) above.
- (d) Regardless of the outcome of an appeal, a parent or adult student shall be permitted to place in the student record a statement commenting upon the information in the student record or setting forth any reasons for contesting a portion of the student record, including the decision made in the appeal. The parent's or adult student's statement shall be maintained as part of the student record, as long as the contested portion of the student record is maintained. If the contested portion of the student record is disclosed to any party, the statement commenting upon the information shall also be disclosed to that party.

[Emphasis added.]

² The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the State board or of the commissioner. For the purposes of this Title, controversies and disputes concerning the conduct of school elections shall not be deemed to arise under the school laws. N.J.S.A. 18A:6-9.

N.J.A.C. 6A:3-1.3(i) requires that appeals from final decisions of district boards of education must be filed with the Commissioner within ninety days:

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.

“The ninety-day rule has been strictly followed and applied almost without exception. D.Q. o/b/o S.Q. v. Sch. Dist. of Newark, 2009 N.J. AGEN LEXIS 640 (Jan. 21, 2009). In Dreher v. Jersey City Bd. of Educ., a petition filed only two days after the ninety-day period was dismissed as untimely. 1987 S.L.D. 1706, aff’d, 1988 S.L.[D]. 2439 (State Bd. of Educ. 1988), rev’d on other grounds, A-6120-82 (App. Div. 1989), cert. denied, 117 N.J. 138 (1989).” Hendrickson v. Board of Education of the City of Rahway, Union County and Ray Lopez, Board Member, 2018 N.J. AGEN LEXIS 164, *13-14 (March 5, 2018), adopted, Comm’r, (April 13, 2018), Commissioner of Education Decision (rutgers.edu).³

Relaxation of the rule may be permissible if exceptional circumstances have been demonstrated.

The rules in this chapter shall be considered general rules of practice to govern, expedite and effectuate the procedure before, and the actions of the Commissioner in connection with, the determination of controversies and disputes under the school laws. Where such rules do not reflect a specific statutory requirement or an underlying rule of the OAL, they may 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.]

³ This decision and other unpublished and administrative decisions cited here are not binding. They are referenced because they provide relevant guidance.

However, this relief has been rarely granted.

“Such authority is rarely invoked unless strict adherence to the rule would be inappropriate, unnecessary or where injustice would occur, or where the Commissioner finds the presence of a substantial constitutional issue or other issue of fundamental public interest beyond that of concern only to the parties themselves.” [Snow v. Bd. of Educ. of the Twp. of Moorestown, 2007 N.J. AGEN LEXIS 312 (April 20, 2007).] In fact, this extraordinary relief has been reserved only for those situations where a substantial constitutional issue is presented or where a matter of significant public interest is involved, beyond that of concern only to the parties. AAA School LLC v. Passaic Cnty. Educ. Servs. Comm'n, Passaic Cnty, 2014 N.J. AGEN LEXIS 397 (June 18, 2014).

[Hendrickson v. Board of Education of the City of Rahway, Union County and Ray Lopez, Board Member, 2018 N.J. AGEN LEXIS at *13-14.]

Here, there is no dispute that petitioner received the Board’s denial of his expungement request on May 11, 2022. He served his petition appealing this decision upon school district personnel on October 31, 2022, and filed his complaint with the Commissioner on or after November 5, 2022. This is well beyond the ninety-day deadline. It is also undisputed that the Board included petitioner’s request for expungement, his communications about the request and the documents he submitted in support of his request in his son’s student file. The Board thus ensured that there is a clear record of his objection to the documents at issue. In support of his plea for relaxation of the controlling regulation, petitioner cites his pro se status and his obligations to his child. Notwithstanding these circumstances, he properly pursued his application before the school and the Board, as he detailed in his petition. For these reasons, I **CONCLUDE** that petitioner has not presented exceptional circumstances for the Commissioner to relax the ninety-day deadline.

ORDER

For the foregoing reasons, I **ORDER** that respondent's motion to dismiss the petition is **GRANTED**.

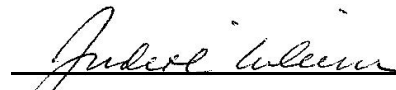
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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 10, 2023

DATE



JUDITH LIEBERMAN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JL/jm