

New Jersey Commissioner of Education

Final Decision

S.U. and G.L. on behalf of minor child, M.D.U.,

Petitioners,

v.

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

Respondent.

Synopsis

The petitioners appealed a final determination by the respondent Board to deny their son entry into the school district's enrichment program for gifted students. By email dated January 25, 2022, the superintendent of schools notified petitioners that the Board had affirmed the school district's determination that their son was not eligible for the enrichment program. Petitioners emailed their petition of appeal to the Office of Controversies and Disputes (Office) at 5:58 p.m. on April 25, 2022, after the close of business on the 90th day following notification of the Board's final determination. The Board filed a motion to dismiss the petition as untimely pursuant to *N.J.A.C.* 6A:3-1.2 and 6A:3-1.3(i), which provides that petitions shall be filed "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."

The ALJ found, *inter alia*, that: the substantive facts are largely immaterial in this case, which can be decided on procedural grounds; the 90-day rule is a reasonable procedural requirement that is meant to be strictly construed, petitioners' arguments were unpersuasive, and they offered no compelling reason to relax the 90-day rule; and the case must be dismissed as a matter of law. The ALJ concluded that the petitioners' appeal is out of time. Accordingly, the Board's motion to dismiss was granted.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ's findings and conclusions, and—finding the petitioners' exceptions to be unpersuasive—adopted the Initial Decision as the final decision in this matter. Accordingly, the petition of appeal 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.

358-23

OAL Dkt. No. EDU 03889-22

Agency Dkt. No. 91-4/22

New Jersey Commissioner of Education

Final Decision

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Petitioners,

v.

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

Respondent.

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

By email dated January 25, 2022, the Board notified petitioners of its decision to deny their minor child entry into the Southampton Township Enrichment Program (STEP) for the 2021-22 school year. Petitioners emailed their petition of appeal to the Office of Controversies and Disputes (Office) at 5:58 p.m. on April 25, 2022, after the close of business on the 90th day following notification of the Board's determination. The Office deemed the petition filed on the following day, April 26, 2022, pursuant to the definition of "day" found in *N.J.A.C. 6A:3-1.2*, which states that "[f]ilings received after the close of business (4:15 P.M.) shall be deemed filed on the next business day."

The Board moved to dismiss the petition as untimely pursuant to *N.J.A.C. 6A:3-1.2* and *6A:3-1.3(i)*, which provides that petitions shall be filed “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.”

The Administrative Law Judge (ALJ) granted the Board’s motion to dismiss the petition upon concluding that it was filed one day late. Citing relevant case law, the ALJ explained that the 90-day rule is a reasonable procedural requirement that is to be strictly construed. Moreover, the ALJ found that petitioners did not offer a compelling reason for the 90-day rule to be relaxed. The ALJ considered and rejected as unpersuasive petitioners’ arguments that: (1) the Board’s motion did not contain proof of service and should be dismissed; (2) the definition of “day” at *N.J.A.C. 6A:3-1.2* is inapplicable; (3) dismissal of the petition would be unduly harsh because it was received so soon after the filing deadline; and (4) the 90-day rule should be relaxed because the appeal involves a matter of significant public interest.

In their exceptions, petitioners reiterate the arguments they made before the ALJ. Additionally, they contend that the ALJ should have considered the fact that the OAL relaxed its procedural requirements during the COVID-19 pandemic, and that the Board sent petitioners notice of its decision at 5:04 P.M. on January 25, 2022—after the 4:15 P.M. close of business cited in the Department’s regulations. Furthermore, petitioners contend that case law cited by the ALJ regarding the 90-day rule is “beyond inapposite,” and that the ALJ should have considered New Jersey Court Rule 1:1-2, which states that the Superior Court may relax its rules if adherence thereto would result in an injustice.

In its reply, the Board argues overall that the Commissioner should adopt the ALJ's Initial Decision and asserts that petitioners' exceptions simply restate unpersuasive arguments made below and rejected by the ALJ.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter. The Commissioner concurs with the ALJ that the instant petition is appropriately dismissed because it was filed outside the 90-day limitation period set forth in *N.J.A.C. 6A:3-1.3(i)*. The Commissioner agrees with the ALJ that there is no compelling reason to relax the 90-day limitation period in this case. The Commissioner also finds that the ALJ properly rejected as unpersuasive petitioners' arguments regarding procedural deficiencies in the Board's motion, the inapplicability of the definition of "day" at *N.J.A.C. 6A:3-1.2*, and in favor of relaxation of the 90-day rule to avoid undue harshness or because the petition involved a matter of significant public interest.

The Commissioner further finds and concludes that the other contentions advanced by petitioners in their exceptions lack merit. The OAL's relaxation of certain procedural requirements during the COVID-19 pandemic has no bearing upon the applicability of the Department's regulations, specifically *N.J.A.C. 6A:3-1.2* and *6A:3-1.3(i)*, to this case. Moreover, the fact that the Board sent petitioners notice of its decision via email at 5:04 P.M. on January 25, 2022, in no way prejudiced them because—as the Board points out in its reply—the 90-day period did not start to run until January 26, 2022. Additionally, the case law cited by the ALJ regarding the 90-day rule, including but not limited to *Kaprow v. Board of Education of Berkeley Township*, 131 *N.J.* 572, 583 (1993), is relevant and instructive. Finally, there was no need for the ALJ to consider New Jersey Court Rule 1:1-2, which does not apply to

administrative proceedings at the OAL. *See N.J. Ct. R. 1:1-1* (explaining that “the rules in Part I are applicable to the Supreme Court, the Superior Court, the Tax Court, the surrogate’s courts, and the municipal courts”).

Accordingly, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 5, 2023

Date of Mailing: December 6, 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

OAL DKT. NO. EDU 03889-22

AGENCY DKT. NO. 91-4/22

**S.U. AND G.L. ON BEHALF OF
MINOR CHILD, M.D.U.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF SOUTHAMPTON,
BURLINGTON COUNTY,**

Respondent.

S.U., petitioner, pro se

Robert A. Muccilli, Esq., for respondent Southampton Board of Education
(Capehart Scatchard, attorneys)

Record Closed: November 29, 2022

Decided: November 2, 2023

BEFORE **ELIA A. PELIOS**, ALJ:

STATEMENT OF THE CASE

Respondent, the Southampton Board of Education (Board), moves to dismiss as untimely petitioners S.U. and G.L.'s appeal challenging the Board's decision to deny their son M.D.U. admittance into the District's enrichment program for gifted students.

PROCEDURAL HISTORY

On or about September 27, 2021, petitioners' son, M.D.U., was denied entry into the Southampton Township Enrichment Program. Petitioners filed a complaint with the Board on December 20, 2021, seeking to reverse the Board's decision. At the Board meeting convened on January 24, 2022, the Board considered petitioners' complaint challenging its determination. By email dated January 25, 2022, petitioners received notice from the superintendent of schools that the Board affirmed the administration's determination of ineligibility. Petitioners filed their petition of appeal with the Department of Education at 5:58 p.m. on April 25, 2022, ninety days after the Board's determination. On May 13, 2022, the Board moved to dismiss petitioners' petition of appeal as untimely. The matter was transmitted to the Office of Administrative Law, where it was filed on May 16, 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. A pre-hearing telephone conference was held on August 2, 2022, and an oral argument was conducted via Zoom on November 29, 2022, after which the record closed.

FACTUAL DISCUSSION

The substantive facts are largely immaterial to the matter at hand, which can be decided on procedural grounds. In the interest of thoroughness, the relevant facts are as follows.

The District uses a points-based matrix to determine eligibility for the Southampton Township Enrichment Program (STEP) based on students' scores in the following areas: staff ratings, the F&P Benchmark assessment, the Star 360 Reading and Math tests, the Otis-Lennon School Ability Test, and the Screening Assessment for Gifted Elementary

Students. Typically, only the top 10 percent of scorers are invited to participate in the program each year. Petitioners' son participated in STEP in the three years preceding the 2021–2022 school year. M.D.U. scored below the cutoff score for the 2021–2022 school year, and, consequently, was denied admittance into the program for that year.

In essence, petitioners' appeal alleges that the test scores were misapplied in the District's points-based system—that the matrix scoring system for the Star 360 Reading and Math tests is flawed because the District uses students' percentile rank (PR) scores as absolute values rather than considering the entire PR ranges generated by the tests. As a result of the District's error, M.D.U. was wrongfully excluded from STEP.

LEGAL ANALYSIS AND CONCLUSION

Under the rules of procedure for the filing of petitions with the Commissioner of Education to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17, “[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, that is the subject of the requested contested case hearing.” N.J.A.C. 6A:3-1.3(i). “Day’ means . . . calendar day when the period specified is seven days or more.” N.J.A.C. 6A:3-1.2. The day of the order, ruling, or action being challenged is not included in the calculation of time periods, but the last day is counted “unless such day falls on a Saturday, Sunday or holiday, in which case the last day shall be deemed the next business day immediately following.” Ibid. In addition, “[f]ilings received after the close of business (4:15 P.M.) shall be deemed filed on the next business day.” Ibid.

The ninety-day rule has been recognized as a “*reasonable* procedural requirement” that both affords litigants a meaningful opportunity to file a petition and promotes finality in education matters. Kaprow v. Bd. of Educ. of Berkeley Twp., 131 N.J. 572, 583 (1993). This rule has been strictly construed by the Commissioner of Education, the State Board of Education, and New Jersey courts. See Riely v. Bd. of Educ. of Hunterdon Cent. Reg'l High Sch. Dist., 173 N.J. Super. 109, 113 (App. Div. 1980). While the Commissioner of Education has broad discretion to relax the rules, such authority is

rarely invoked “unless there are compelling reasons . . . or where circumstances are such that strict adherence would be inappropriate, unnecessary[,]” or unjust. DeMaio v. New Providence Bd. of Educ., 96 N.J.A.R.2d (EDU) 449, 453 (citation omitted). Circumstances potentially justifying relaxation include “[w]here a substantial constitutional issue was presented, where judicial review was sought of an informal administrative determination, and where a matter of significant public interest is involved.” Portee v. Bd. of Educ. of Newark, 94 N.J.A.R.2d (EDU) 381 (citation omitted).

The purpose of a limitation on the filing of actions is twofold. First, it serves “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.” Ochs v. Fed. Ins. Co., 90 N.J. 108, 112 (1982) (citations omitted). “The second function is to ‘penalize dilatoriness and serve as [a] measure[] of repose.’” Ibid. (quoting Farrell v. Votator Div. of Chemetron Corp., 62 N.J. 111, 115 (1975)).

Respondent argues that petitioners’ appeal is untimely. According to respondent, petitioners’ appeal, filed after the close of business ninety days after the challenged decision, is deemed to have been received the next business day, putting it beyond the ninety-day timeline.

In response, petitioners advance four main arguments. First, they argue that respondent’s motion did not contain proof of service and that the motion should be dismissed on that basis alone. Second, they argue that the definition of “day” does not apply in this case based on prefatory language contained in N.J.A.C. 6A:3-1.2 (“unless the context clearly indicates otherwise”). Third, they argue, essentially, that their appeal was received so soon after the deadline that dismissal would be unduly harsh. And finally, they argue that the ninety-day rule, if it was violated, should be relaxed because their appeal “involve[s] a matter of significant public interest—whether Respondent’s arbitrary and capricious conduct violated the Strengthening Gifted and Talented Education Act, N.J.S.A. 18A:35-34.” Petitioners maintain that their lawsuit impacts “similarly situated students that were denied enrichment.”

Petitioners' arguments are unpersuasive. Petitioners received notice of respondent's motion and were given an opportunity to respond. Under the rules, "[f]ilings received after the close of business (4:15 P.M.) shall be deemed filed on the next business day." N.J.A.C. 6A:3-1.2. This provision explicitly applies to Chapter 3 of Title 6A of the New Jersey Administrative Code, dealing with Controversies and Disputes before the Commissioner of Education. See *ibid.* Because petitioners' appeal was filed at 5:58 p.m. ninety days after the challenged action, it is deemed to have been filed on the ninety-first day. As the ninety-day rule is strictly construed, and petitioners have not offered a compelling reason why the rule should be relaxed, dismissal is appropriate. Accordingly, I **CONCLUDE** that petitioners' appeal is out of time.

ORDER

It is **ORDERED** that respondent's motion to dismiss is **GRANTED** and petitioners' appeal is **DISMISSED** with prejudice.

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 (45) 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 (13) 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.

November 2, 2023

DATE



ELIA A. PELIOS, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

/caa

APPENDIX

Witnesses

None

Exhibits

None