61-23

New Jersey Commissioner of Education

Final Decision

P.V. , on behalf of minor child, T.S.,

Petitioner,

v.

Board of Education of the Township of Verona, Essex County,

Respondent.

Synopsis

Petitioner filed the within appeal on June 6, 2022, challenging the discipline imposed by the respondent Board upon her minor son, T.S., for making an inappropriate remark in class on February 19, 2020, during his freshman year at Verona High School. T.S. received a one-day in-school suspension, a one-day Saturday suspension, and the loss of cell phone privileges for multiple days following the incident. The petitioner maintains that the discipline imposed upon T.S. by the Board was based on an incorrect infraction level as detailed in the school's Student Guidebook, and that this discipline later impacted his ability to join the National Honor Society. The Board filed a motion to dismiss, which was converted to a motion for summary decision.

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 was aware of the discipline imposed and voiced her disagreement with the infraction level and penalty assessed when it occurred, yet the instant petition was not filed until more than two years later; petitioner does not present exceptional circumstances or a compelling reason to warrant relaxation of the ninety-day rule; and her petition was filed well beyond the required time frame. The ALJ concluded that the appeal was clearly filed out of time. 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.

61-23
OAL Dkt. No. EDU 05685-22
Agency Dkt. No. 141-6/22

New Jersey Commissioner of Education

Final Decision

P.V., on behalf of minor child, T.S.,

Petitioner,

v.

Board of Education of the Township of Verona, Essex 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.

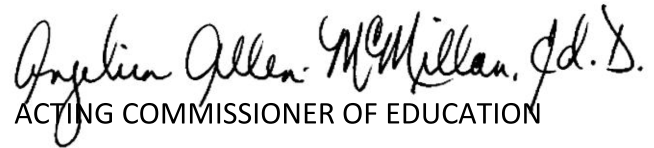
Petitioner filed the instant petition on June 6, 2022 challenging the discipline imposed on her son by the Board for making an inappropriate remark in class on February 19, 2020. The Administrative Law Judge (ALJ) found that the petition should be dismissed as it was filed outside the 90-day limitation 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.[1]

Upon review, the Commissioner concurs with the ALJ that this matter was filed more than two years after the discipline was imposed and is therefore 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.

[1] Petitioner filed a prior emergent matter to compel her son's admission to the National Honor Society as he was precluded from joining based on his disciplinary infraction; the emergent matter was dismissed. The ALJ found that this matter was not barred by the doctrine of collateral estoppel because an analysis on the limitations period was not conducted.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons stated therein, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED. [2]



ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 7, 2023
Date of Mailing: March 9, 2023

[2] 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 05685-22

AGENCY DKT. NO. 141-6/22

P.V. ON BEHALF OF T.S.,

Petitioners,

v.

TOWNSHIP OF VERONA, BOARD OF EDUCATION,

Respondent.

P.V. on behalf of **T.S.,** appearing pro se

Gabrielle Pettineo, Esq., for respondent (Kenney, Gross, Kovats & Parton, attorneys)

Record Closed: January 26, 2023 Decided: January 31, 2023

BEFORE **NANCI G. STOKES**, ALJ:

STATEMENT OF THE CASE

On June 6, 2022, petitioner challenged respondent's discipline imposed on her minor child, T.S., on February 19, 2020, for an incident in school. Is the claim time-

barred? Yes. Under N.J.A.C. 6A:3-1.3(d), absent exceptional circumstances, a petitioner must file an appeal "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]." Ibid.; N.J.A.C. 6A:3-1.1.6

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PROCEDURAL HISTORY

On June 6, 2022, petitioner filed a Petition with the Commissioner of the Department of Education (Commissioner) contesting discipline entered by respondent against her minor son while a freshman at Verona High School (Verona). Petitioner maintains that Verona imposed discipline against T.S. for the incorrect infraction level under the high school's Student Guidebook, and this discipline later impacted his ability to join the National Honor Society.

In response to the petition, Verona filed a Motion to Dismiss in place of an Answer on July 6, 2022, asserting that P.V. had another pending case challenging T.S.'s denial of entry into the National Honor Society, resolved by an Order on Emergent relief dated May 23, 2022, denying petitioner's request. Respondent's motion maintained that transfer to the Office of Administrative Law (OAL) was unnecessary because the doctrine of collateral estoppel applied as the proceeding explored the same discipline in the earlier case under OAL DKT. NO. EDU 03920-22. Respondent also asserted that the case is duplicative and precluded by N.J.A.C. 6A:3-1.4(c), requiring petitioner to certify there are no pending related matters.

Still, the Commissioner declined to address respondent's motion to dismiss and transmitted this case to the OAL. On July 11, 2022, the OAL filed the contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On September 23, 2022, respondent filed a motion to dismiss that I converted to a motion for summary decision to consider facts and evidence outside of the pleadings. Significantly, Verona's motion included a certification with exhibits. I requested a copy of the transcript of the argument on the emergent application under OAL DKT. NO. EDU 03920-22 before the Hon. Julio Morejon, A.L.J., given his discussion of the disputed suspension in his Order. See N.J.A.C. 1:1-14.6(p). On September 24, 2022, petitioner filed her opposition to the motion. On October 24, 2022, respondent objected to converting the motion to a motion for summary decision.

On December 7, 2022, the OAL received the transcript, and I permitted petitioner additional time to respond. However, petitioner resubmitted her same opposition. On December 19, 2022, respondent replied to petitioner's opposition. On January 3, 2023, I requested additional information from Verona, which I received on January 26, 2023, and closed the record.[1]

FINDINGS OF FACT

Based on the documents submitted in support of and in opposition to the motion for summary decision, when viewed in the light most favorable to the non-moving party, I **FIND** the following as **FACT** for purposes of this motion only:

T.S. was a ninth-grade student in attendance at Verona during the 2019-20 school year.

On February 19, 2020, T.S. received a one-day in-school suspension, a one-day Saturday suspension, and the loss of cell phone privileges for multiple days due to his role in an incident in his Spanish class. Before class, T.S.'s Spanish teacher was collecting student cell phones, as was her procedure at the time. T.S. jokingly told his classmates that they should "all say the teacher touched us" so they would not need to

[1] Both parties noted the Student Guidebook in their motion papers, but none provided a certified copy from the 2019-2020 school year. Thus, I requested a certified copy.

turn in their phones. See Transcript, p. 12, 6-8. The teacher heard what T.S. said and sent T.S. to the assistant principal's office.

The assistant principal spoke with T.S. and P.V. on February 19, 2020, discussing the incident and the discipline imposed. That same day, the assistant principal also talked to the Spanish teacher. P.V. voiced her disagreement with the suspension imposed, believing the penalty was excessive under Verona's Student Guidebook. More pointedly, P.V. asserted that the Student Guidebook supported a level two infraction rather than a level three infraction, which warranted lesser consequences. See Transcript, p. 14, 6-10. That same day, the assistant principal sent a letter documenting the conference and explaining the discipline. The letter also advises the parent to contact the guidance counselor or the assistant principal with any questions, concerns, or beliefs about a discrepancy.

The Board of Education policies are readily available on the District's website. Notably, Verona's principal forwards an electronic email to all parents at the start of each school year, including 2019-20, containing links to the Verona Student Handbook (Guidebook), which includes the Student Code of Conduct. The Code of Conduct states that a student or parent has the right to a hearing and can appeal discipline decisions under the Code of Conduct.

T.S. served his suspensions without incident.

On April 22, 2022, P.V. filed a Petition of Appeal with the Commissioner because Verona failed to admit her minor son, T.S., into the National Honor Society (NHS) due to his suspension in February 2020. On April 29, 2022, Verona formally denied T.S.'s NHS admission, noting that T.S.'s "student conduct record is inconsistent with the character requirements of the NHS." The denial instructed T.S. to reapply next year and recommended that he use the time between now and then to amplify his candidacy. Further, the letter advised T.S. that he could request a meeting for clarification of the

denial and advocate for himself. Neither P.V. nor T.S. requested a meeting with NHS's faculty council.

On May 16, 2022, petitioner converted her petition under OAL DKT. NO. EDU 03920-22 to an application for emergent relief under N.J.A.C. 6A-31.6. On May 23, 2022, following oral argument and submissions from both parties, the Hon. Julio Morejon, A.L.J., denied the emergent relief because the proofs failed to establish the necessary elements to grant emergency relief under N.J.A.C. 6A:3-1.6(b), and Crowe v. DeGioia, 90 N.J. 126 (1982).

Judge Morejon also stated that "the issue of suspension of the student is moot as petitioner admits that she did not file a timely appeal with the Department of Education under N.J.A.C. 6a:3-1.3(i)." See Exhibit C, p. 7. On July 8, 2022, the Acting Commissioner of Education upheld the denial of emergent relief and concluded no underlying issues remained, thereby dismissing the case.

During the oral argument on May 20, 2022, before Judge Morejon, petitioner confirmed that Verona informed her of the incident with her son and suspension when it happened. See Transcript, p. 14, lines 2-10. Petitioner spoke with the assistant principal "constantly" about the February 19, 2020, events and suspension, disputing the infraction level and discipline. See Transcript, p. 14, lines 6-10,19 through p. 15, line 9. P.V. also "guessed" that she could have gone to the Board of Education about the suspension. See Transcript, p. 15, lines 22-23 and p. 20, lines 17-23. Yet, P.V. took no further action regarding the suspension until 2022, maintaining that no one told her she could appeal the discipline. Instead, P.V. became aware of the discipline's significance once Verona denied T.S.'s admission to NHS.

DISCUSSION AND CONCLUSIONS OF LAW

Summary-Decision Standard

It is well settled that when facts beyond the initial pleadings are relied on in determining the motion, the motion to dismiss is converted to a motion for summary decision. Jersey City Educ. Ass'n v. City of Jersey City, 316 N.J. Super. 245, 253-54 (App. Div. 1998); see e.g. Price v. Bd. of Educ. of Twp. of Washington, EDU 6121-07, Initial Decision, (December 7, 2007), adopted Comm'r (January 24, 2008) http://njlaw.rutgers.edu/collections/oal/search.html (ALJ converted the motion to dismiss to a motion for summary judgment); see also K.L. & K.L. o/b/o minor children C.L. & M.L. v. Kinnelon Bd. of Educ., EDU 1191-08 and EDU 1192-08 (consolidated), Initial Decision, (April 24, 2008), http://njlaw.rutgers.edu/collections/oal/search.html., adopted Comm'r (July 22, 2008) http://www.state.nj.us/education/legal/index.html (where judge, sua sponte, converted the board's motion to dismiss to a motion for summary decision). Here, respondent attached a certification and several exhibits with its motion papers. Respondent also relies upon materials from the earlier case involving the parties. Thus, I **CONCLUDE** respondent's motion is appropriately considered a motion for summary decision.

A party may move for summary decision upon all or any substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). A party must make the motion a party makes with briefs, with or without affidavits. When the filed papers and discovery, together with any affidavits, show that no genuine issue of material fact exists and that the moving party is entitled to prevail as a matter of law, the judge may grant the motion. N.J.A.C. 1:1-12.5(b). When a party makes such a motion providing that support, an adverse party, to prevail, must submit an affidavit setting forth specific facts showing that a genuine issue of material fact exists that can only be determined in an evidentiary proceeding. Ibid.

Even though a statute calls for a “hearing,” where a motion for summary decision is made and supported by documentary evidence and where the objector submits no

evidence to demonstrate that a genuine issue of material fact exists, the motion procedure constitutes the hearing, and no trial-type hearing is necessary. Contini v. Newark Bd. of Educ., 286 N.J. Super. 106, 120–21 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996).

To determine whether a genuine issue of material fact exists that precludes summary judgment, 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 demonstrate that the moving party is entitled to a judgment as a matter of law. Brill v. Guardian Life Ins., 142 N.J. 520, 540 (1995).

Moreover, even if the non-movant comes forward with some evidence, the court must grant summary judgment if the evidence is "so one-sided that [the movant] must prevail as a matter of law." Ibid. at 536 (citation omitted). If the non-moving party's evidence is "merely colorable or is not significantly probative," the judge should not deny summary judgment. Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998).

In this case, no genuine issue exists as to the material facts. The only questions are whether the doctrine of collateral estoppel bars petitioner's claim or whether petitioner timely filed her petition disputing T.S.'s discipline under N.J.A.C. 6A:3-1.3(d). More pointedly, no genuine issue exists that petitioner filed a prior case involving the same punishment, now dismissed, and that she did not file the current action within ninety days of the discipline notification. Since these facts are clear and undisputed, I **CONCLUDE** that this case is ripe for summary decision.

Collateral Estoppel

The doctrine of collateral estoppel, or "issue preclusion," is an equitable principle that arises when an issue of fact or law is fully litigated and determined by a final judgement. The earlier determination can preclude future litigation when the party asserting the bar shows that: (1) the issue to be precluded is identical to the issue

decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding. Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521 (2006) (quoting In re Estate of Dawson, 130 N.J. 1, 20-21 (1994) (quotation marks omitted).

Undeniably, Judge Morejon addressed the discipline issue between the parties, took sworn statements about the events on February 19, 2020, and rendered a decision upheld by the Acting Commissioner. However, exceptions to issue preclusion exist warranting new determinations because of "differences in the quality or extensiveness of the procedures followed in the two courts" or when "the issue is one of law and . . . an intervening change in the applicable legal context or . . . inequitable administration of the laws" requires consideration. Id. at 25. (citing the Restatement (Second) of Judgements § 28 (1982).

Petitioner, appearing pro se, filed the prior action to compel T.S.'s admission to NHS, not to challenge Verona's discipline. The preceding case ended when Judge Morejon concluded that the petitioner did not satisfy emergent relief requirements, a different standard. Further, Judge Morejon highlighted that NHS admission was not a right and subject to review only upon a showing that a school district's admission decision was arbitrary, capricious, or unreasonable. Still, his Order did not analyze whether the circumstances warranted relaxation of the filing timeframe for a petition disputing Verona's discipline. In other words, my review of the record below does not reveal that Judge Morejon fully addressed the timeliness of petitioner's actions under the law. Thus, I **CONCLUDE** that the doctrine of collateral estoppel is not equitably applied to bar this case.

Timeliness

Under N.J.A.C. 6A:3-1.3(d), a party must file an appeal with the Commissioner of Education “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 "provides a measure of repose, an essential element in the proper and efficient administration of the school laws," giving school districts the “security of knowing” that an aggrieved party cannot challenge its actions after ninety days. Kaprow v. Board of Educ. of Berkeley Twp., 131 N.J. 572, 582 (1993).

Courts strictly construe and consistently apply the ninety-day limitation period. Kaprow, 131 N.J. at 588-89; Nissman v. Bd. of Educ., 272 N.J. Super 373, 380-81, (App. Div. 1994); Riely v. Bd. of Educ., 173 N.J. Super. 109, 112-14, (App. Div. 1980). This period begins to run when the petitioner "learn[s] from the Local Board the existence of that state of facts that would enable him to file a timely claim." Kaprow, 131 N.J. at 588-89. Indeed, the "notice of a final order, ruling or other action" is "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." Id. at 587. Notably, a petitioner need not receive official and formal notification that they may have a valid claim to begin the ninety days. Id. at 588.

However, the Commissioner may exercise her authority under N.J.A.C. 6A:3-1.1.6 to relax the application of the ninety-day rule "where strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice." Ibid. Yet, exceptions to the ninety-day rule are only appropriate where compelling circumstances exist to justify the enlargement or relaxation of the time limit. See Kaprow, 131 N.J. at 590; DeMaio v. New Providence Bd. of Educ., 96 N.J.A.R.2d (EDU) 449, 453.

Indeed, this extraordinary relief is reserved for situations where the party presents a substantial constitutional issue or a matter of significant public interest

beyond concern only to the parties. Portee v. Bd. of Educ. of Newark, 94 N.J.A.R.2d (EDU) 381, 384; Wise v. Trenton Bd. of Educ., EDU 160-00, Initial Decision (July 25, 2000), adopted, Comm'r Decision (September 11, 2000), aff'd, St. Bd. (January 3, 2001), http://njlaw.rutgers.edu/collections/oal/.

Here, I found that petitioner was aware of the discipline imposed and voiced her disagreement with the infraction level and penalty assessed when it occurred. The ninety-day limitation flows from that notice, not when it became essential to petitioner to challenge because that discipline later impacted T.S.'s NHS admission. Further, petitioner does not dispute that her son made an inappropriate remark on February 19, 2020, or that Verona could discipline her son. Instead, she maintains that she did not know she could appeal the disputed infraction level or discipline imposed. However, the Student Code of Conduct in the Student Guidebook she discussed with the assistant principal regarding the infraction level advises of an ability to appeal. Further, the record discloses no Verona conduct that caused the petitioner to postpone filing her claim for more than two years.

Notably, petitioner's claim has only personal significance, making relaxation of the rule unwarranted. If the Commissioner relaxed the filing timeframe for every harsh result, that action would nullify the rule's salutary public policy of encouraging prompt resolution of disputes. Pacio v. Bd. of Educ. of Lakeland Reg. High Sch. Dist., 1989 S.L.D. 2060 (Comm'r July 29, 1989). Thus, I **CONCLUDE** that petitioner does not present exceptional circumstances or a compelling reason which warrant relaxation of the ninety-day rule and that she filed her petition well beyond the required time frame.

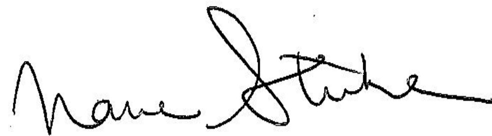
ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the Verona Township Board of Education be **GRANTED** summary decision. I further **ORDER** that petitioner's Petition of Appeal be **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.



January 31, 2023	
DATE	**NANCI G. STOKES**, ALJ
Date Received at Agency:	January 31, 2023
Date Mailed to Parties:	January 31, 2023

ljb