

New Jersey Commissioner of Education
Final Decision

A.M.-V. and D.V. on behalf of minor child, M.V.

Petitioners,

v.

Board of Education of the Borough of
Hasbrouck Heights, Bergen County,

Respondent.

Synopsis

Pro se petitioners alleged that the respondent Board violated its Policy 2260, Affirmative Action Program for School and Classroom Practices, by failing to respond to petitioners' complaint within 45 calendar days. Policy 2260 governs the equal and bias-free access for all students to school facilities, courses, activities and services regardless of race, creed, color, national origin, etc. Petitioners' Affirmative Action complaint alleged that the Board was not responsive to emails and had instituted a communication protocol to temporarily block petitioners' emails, but did not allege any act by the District that is applicable or relevant to District Policy 2260. The Board filed a motion to dismiss in lieu of an answer to the petition.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact in dispute in this case, and the matter is ripe for summary decision; the issue here is whether the Board violated its Policy 2260, Affirmative Action Program for School and Classroom Practices; the Affirmative Action complaint does not allege an actual violation of the District's Affirmative Action Policy, but instead alleges that the Board did not render its decision on the petitioners' appeal within the forty-five day time frame found in the policy; however, the language found in the policy states that the Board will render a written decision no later than forty-five calendar days after the appeal is filed, or the date the hearing was held, whichever occurred later; as the Board's written decision in this matter was issued on the same day as the Board hearing, it was filed well within forty-five days from the date of the hearing; further, the petitioners' complaint did not allege an actual violation of Policy 2260; rather, petitioners were upset with the manner and speed with which their voluminous emails and telephone calls to District staff were answered, and with the communication protocol itself, which was put into place due to the excessive and aggressive nature of petitioners' communications with District staff; nothing in Policy 2260 would prevent the District from imposing a communication protocol unless the protocol was based on one or more of the protected characteristics enumerated in the Policy; the communication protocol imposed on petitioners was not, however, put in place because of any protected characteristic, nor do petitioners allege that it was. The ALJ granted the Board's motion for summary decision and ordered the petitioners' appeal dismissed with prejudice.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this case, and the petition was dismissed with prejudice.

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.

January 23, 2020

New Jersey Commissioner of Education
Final Decision

A.M.-V. and D.V., on behalf of minor child, M.V.,

Petitioners,

v.

Board of Education of the Borough of Hasbrouck
Heights, Bergen 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.

Upon such review, the Commissioner agrees with the Administrative Law Judge that the Board did not violate Board Policy 2260 “Affirmative Action Program for School and Classroom Practices” in instituting a communication protocol limiting communications between petitioners and District employees. The protocol was not based on any protected characteristic of petitioners – such as race, gender, or socioeconomic status – and was instead put into place due to the excessive and aggressive nature of petitioners’ communications with District staff. Additionally, the Board’s written decision was timely rendered in accordance with Board Policy 2260, as it is dated the same day as the Board hearing.

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

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2020
Date of Mailing: January 24, 2020

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36 (N.J.S.A 18A:6-9.1)*.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 14556-19

AGENCY DKT. NO. 237-9/19

A.M-V. AND D.V. ON BEHALF OF M.V.,

Petitioners,

v.

**BOARD OF EDUCATION OF THE BOROUGH
OF HASBROUCK HEIGHTS, BERGEN COUNTY,**

Respondents.

A.M-V. and D.V., parents of M.V., Petitioners, pro se

Jessica Kleen, Esq., for Respondent (Machado Law Group attorneys)

Record Closed: December 10, 2019

Decided: December 19, 2019

BEFORE: **THOMAS R. BETANCOURT, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners filed a pro se Petition of Appeal, dated September 10, 2019, with New Jersey Department of Education, Office of Controversies and Disputes, alleging that Respondent violated its Affirmative Action Policy.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on October 10, 2019, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A prehearing conference was held on October 29, 2019, and a prehearing order, dated October 31, 2019, was entered by the undersigned.

Respondent filed a motion for summary decision in lieu of an answer to the petition of appeal with the Office of Controversies and Disputes on September 30, 2019. Pursuant to the prehearing order, Petitioners filed their reply thereto with the OAL on November 1, 2019. Respondent was given to December 10, 2019 to file any reply. No reply was filed and the record was closed on December 10, 2019.

FACTUAL DISCUSSION

1. Petitioners filed a petition alleging that the District Respondent violated District Policy 2260, Affirmative Action Program for School and Classroom Practices, by failing to respond to their complaint within 45 calendar days.
2. District Policy and Regulation 2260 governs the equal and bias-free access for all students to all school facilities, courses, programs, activities, and services, regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, gender identity or expression, religion, disability, or socioeconomic status. (Messery Cert., Ex. A)
3. Petitioners had filed an Affirmative Action Complaint with Respondent on July 11, 2019, alleging that Respondent was not responsive to emails and that Respondent had instituted a communication protocol to temporarily block Petitioners' emails. (Petitioners' reply to motion)
4. The Petition and the Affirmative Action Complaint do not allege any act by the District that is applicable or relevant to the District Policy and Regulation 2260. (Messery Cert., Ex. A)
5. The Petitioners underlying complaint concerns the District's use of a communication protocol which temporarily blocked the Petitioners' ability to email certain District staff due to the excessive and aggressive nature of Petitioners' emails to said District staff.

6. Petitioners use of email was excessive and often redundant. A review of the Petitioners' reply to the instant motion documents the extraordinary number of emails sent. (See also Gibbons Cert.)
7. Same had resulted in several teachers feeling threatened and/or harassed by the Petitioners and caused disruptions to the orderly operation of the school.
8. The Communication Protocol was only in place at the end of the 2018-2019 school year and was removed at the beginning of the 2019-2020 school year.
9. During the duration of the Communication Protocol, the Petitioners were permitted to email Dr. Helfant - the Superintendent, Ms. Messery - the Business Administrator, Ms. Gibbons - the Director of Special Education and the entire Board of Education.
10. Due to a technical issue some or all Board members may have been unintentionally blocked for a short period of time. Same was quickly resolved.
11. Petitioners could not email individual teachers during the duration of the Communication Protocol. Petitioners could communicate with the teachers through classroom programs, such as Google and Dojo, as well as by phone and in-person meetings.
12. Every phone call from the Petitioners was returned by the District within an appropriate amount of time. Although some phone calls may not have been returned on the same day, same is not required of staff, unless the call is of an urgent nature.
13. In July of 2019, the Petitioners requested an investigation regarding the Communication Protocol by filing an Affirmative Action Complaint.
14. In response, Lincoln School Principal, Mr. Colangelo, performed an investigation regarding the matter and found same not to violate the District's Affirmative Action Plan.
15. Thereafter, on or about July 22, 2019, the Petitioners requested a meeting with the Board regarding their complaint. (Messery Cert., Ex. B)
16. The following day, on or about July 23, 2019, in response to same, the District proposed a meeting between the Board and the Petitioners on July 25, 2019 at

6:15 p.m. However, on or about July 24, 2019, due to a scheduling conflict, same was rescheduled by the Board to August 29, 2019 at 4:30 p.m. (Messery Cert., Ex. C)

17. On or about July 24, 2019, the Petitioners stated that they will not be able to attend the August 29, 2019 meeting. (Messery Cert., Ex. D)
18. In response, on the same date, the District proposed for the Board to meet with the Petitioners on Thursday, September 26, 2019 at 6:15 p.m. (Messery Cert., Ex. E)
19. Petitioners responded that they are also unable to attend the September 26, 2019 meeting. (Messery Cert., Ex. F)
20. The Board was scheduled to issue a determination regarding the Petitioners' complaint at the August 29, 2019 Board meeting. However, same was postponed until the following Board meeting, on September 26, 2019, due to the unavailability of all Board members at said meeting, and in light of the Petitioners request that all Board members be present when issuing a determination. (Messery Cert., Ex. G)
21. The District, on or about September 26, 2019, as requested by the Petitioners, issued a written decision regarding the complaint filed by the Petitioners. (Messery Cert., Ex. H)
22. The Board voted to deny the appeal. (Messery Cert., Ex. H)
23. The Board determined that there is no information to suggest that the temporary Communication Protocol was put in place because of any discriminatory reason based on race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, gender identity or expression, religion, disability, or socioeconomic status. (Messery Cert., Ex. H)
24. The Board further decided that the information supports a finding that the Communication Protocol was put into place due to the excessive and aggressive nature of Petitioners emails to District staff. (Messery Cert., Ex. H)

25. Within their decision, the Board also noted that there is no legal right to email District staff, and the Board has the obligation and authority to take steps to ensure the safe and orderly operations of the schools. (Messery Cert., Ex. H)

26. The Board further found that at the time that the Petitioners were required to follow the Communication Protocol, their emails were excessive, caused disruptions to the orderly operation of the school, and were unnecessary in order for Petitioners to have access to their child and his educational programming. (Messery Cert., Ex. H)

27. A copy of the Board's decision has been provided to the Petitioners.

28. A review of both Petitioners' Affirmative Action Complaint and the Petition Petitioners do not allege an actual violation of the District's Affirmative Action policy. Rather, Petitioners are upset with the manner and speed with which their voluminous emails are answered; with the speed with which their telephone calls are answered; and, with the communication protocol initiated by the District.

29. The Board rendered its written decision of Petitioners' appeal to the Board on September 26, 2019. (Messery Cert., Ex. H)

30. Petitioners filed their appeal of the Superintendent's denial of their Affirmative Action Complaint via email on July 22, 2019. (Messery Cert., Ex. B)

31. Forty-five days from July 22, 2019 is September 5, 2019.

32. The Board's Affirmative Action Policy requires the Board to render a written decision of an appeal within forty-five days after the appeal is filed or the hearing held, whichever is later. (Messery Cert., Ex. A)

33. The hearing on the appeal was held on September 26, 2019, and the written decision on the appeal was the same date. (Messery Cert., Ex. H)

LEGAL ANALYSIS AND CONCLUSION

Standard for Summary Decision

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

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 permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536 (citation omitted).

The issue herein is whether or not the Board violated its own policy: District Policy 2260, Affirmative Action Program for School and Classroom Practices.

Neither the Affirmative Action Complaint nor the petition filed with OSEP allege an actual violation of the District’s Affirmative Action Policy, other than alleging the Board did not render its decision on Petitioners’ appeal within the forty-five day time frame found in the Policy.

While it is true the written decision was not within forty-five days from the date the appeal was filed, it was well within forty-five days from the date of the hearing. In fact, the written decision is dated the day of the hearing. This is undisputed.

District Policy 2260, Affirmative Action Program for School and Classroom Practices, at C.10 of the District Regulations states:

The Board will render a written decision no later than forty-five calendar days after the appeal was filed or the hearing held, **whichever occurred later**. Copies of the decision will be given to all parties. (emphasis added)

Further, nothing in District Policy 2260 would prevent the District from imposing a communication protocol unless said protocol was based upon race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, gender identity or expression, religion, disability, or socioeconomic status. The communication protocol imposed by the District was not put in place because of any of the above, nor do the Petitioners allege it was.

Based upon the above, I **CONCLUDE** there are no genuine issues of material facts and Respondent is entitled to prevail as a matter of law.

ORDER

It is hereby **ORDERED** that Respondent's motion for summary decision is **GRANTED**; and

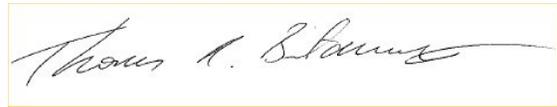
It is further **ORDERED** that Petitioners' pro se Petition of Appeal is dismissed with prejudice.

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 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.



December 19, 2019 _____

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

APPENDIX

List of Moving Papers

For Petitioner:

Response to motion for summary decision with attachments

For Respondent:

Brief in Support of Motion for Summary Decision

Certification of Jessica Kleen, Esq., with Exhibits 1 through 3

Certification of Janine Gribbin, Director of Special Services

Certification of Dina Messery, School Business Administrator, with Exhibits A through H