

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

KEVIN P. CULLEY o/b/o MINOR CHILD  
JUSTIN CULLEY,  
Complainant

v.

CUMBERLAND VALLEY SCHOOL  
DISTRICT,  
Respondent

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PHRC CASE NO. 201404590

**RECOMMENDATION OF MOTIONS EXAMINER**

**AND NOW**, this 7th day of October, 2016, upon consideration of *Cumberland Valley School District's Motion to Dismiss the Amended Complaint*, and both the PHRC Education Department's and the Complainant's responses thereto, it is hereby

**R E C O M M E N D E D**

to the full Pennsylvania Human Relations Commission, pursuant to 16 Pa. Code §42.131(c)(1), that *Cumberland Valley School District's Motion to Dismiss the Amended Complaint* be granted.

Generally, the Respondent asserts that the Complainant's complaint was not timely filed. More specifically, the Respondent observes that the present Amended Complaint addresses allegations regarding actions that occurred more than 180 days before the Complainant's Complaint was filed. Pursuant to Section 9(h) of the PHRA, to be timely, a PHRA claim must be filed within 180 days of the alleged act of discrimination.

Here, on April 10, 2015, Kevin Culley filed an informal Pennsylvania Human

Relations Commission Education Discrimination Questionnaire. This document is considered an informal PHRC Complaint. In this Questionnaire, Kevin Culley alleges that his son, Justin Culley, (hereinafter "Justin"), has a disability: crohn's disease, anemia, sleep disorder, a broken leg that has not healed properly and ADHD. The Questionnaire alleges that the Cumberland Valley School District had been made aware of Justin's disability and that on January 29, 2014, an official request was made for an accommodation of Justin's disability. The request asked that Justin, a 10<sup>th</sup> grade student, be provided with a tutor because Justin had been hospitalized in the 2012-2013 school year and in September of the 2013-2014 school year due to his crohn's disease and anemia. The Questionnaire asserts that the request for the accommodation was denied. Additionally, the Questionnaire alleges that Justin had been harassed. Specifically, the Questionnaire alleges that Justin was often questioned, accused of things he did not do, written up when he was late to class and made to carry heavy books when he weighed less than 100 pounds. The Questionnaire also alleges that Justin was expelled on April 1, 2014.

The Questionnaire further alleges that on January 17, 2014, Justin was confronted by school officials during which time he was violently shaken, thrown around and thrown to the ground. Additionally, Justin was charged with disorderly conduct and later accused of being a drug dealer. Allegedly, at a school board meeting on April 1, 2014, finding that Justin had shoved school personnel, the school board acted to expel Justin for the following school year – 2014-2015. The Questionnaire submits that the disorderly conduct charge against Justin came to trial on February 24, 2015 in the Cumberland County Court of Common Pleas and the charge was dismissed.

When the allegations of the Questionnaire were formalized into an Amended Complaint, the Amended Complaint was separated into 7 Counts: (1) alleged September 2013, failure to accommodate by failing to provide a tutor for Justin; (2) harassment on January 17, 2014, when Justin was violently shaken, thrown to the

ground and charged with disorderly conduct; (3) failure to develop an IEP for Justin; (4) Justin being expelled on April 1, 2014, for the 2014-2015 school year because of his disability; (5) being expelled on April 1, 2014, for the 2014-2015 school year in retaliation for requesting an accommodation; (6) being expelled on May 25, 2014, for the remainder of the 2013-2014 school year in retaliation for complaining of alleged harassment; and (7) being expelled on May 25, 2014 for the remainder of the 2013-2014 school year because of Justin's disability.

Here, the informal Questionnaire Complaint was received by the PHRC on April 10, 2015 and the Amended Complaint was later verified on July 1, 2015. With respect to the first allegation, to be timely, the alleged refusal to provide Justin with a tutor in September 2013, had to be filed within 180 days of that time frame. Here, a PHRC Complaint was not received until April 10, 2015, over a year and a half after the alleged act of harm. Similarly, the alleged harassment of Justin on January 17, 2014 is equally untimely. This alleged incident occurred over a year and a month before the first Complaint was filed. The fact that the disorderly conduct charge brought against Justin was not adjudicated until December 2014, does not serve to extend the 180 day filing period.

Four of the seven Counts in the Amended Complaint address Justin having been expelled both for the 2014-2015 school year and for the remainder of the 2013-2014 school year. The first of the two separate alleged acts expelling Justin occurred on April 1, 2014 and the other on May 27, 2014. Once again, both of these alleged actions occurred far more than 180 days before the present case was filed.


Finally, with respect to the alleged failure to develop an IEP for Justin, the record makes clear that after May 2014, the only contact between the School District and Justin and his Father occurred when they attended litigation proceedings together. After May 27, 2014, Justin no longer attended school in the Cumberland Valley School District. It is asserted that Justin enrolled in another school district and attended

another district's school for the 2014-2015 school year. It is also noted that during the range of alleged issues in this case, a private counsel was utilized to assert Justin's rights.

Of course, neither the initial informal Complaint Questionnaire nor the Amended Complaint were received by the PHRC within the requisite 180 day statute of limitations thereby making both filings untimely.

Because the Complainant failed to file a PHRA claim within 180 days of the alleged acts of harm, and has failed to sufficiently assert equitable reasons to toll the 180 day filing period, it is recommended that the present complaint be deemed untimely filed and, accordingly, dismissed.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

By:   
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**Carl H. Summerson**  
**Motions Examiner**

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KEVIN P. CULLEY o/b/o MINOR CHILD :  
JUSTIN CULLEY, :  
Complainant :

v. :

PHRC CASE NO. 201404590

CUMBERLAND VALLEY SCHOOL :  
DISTRICT, :  
Respondent :

ORDER

AND NOW, this 24<sup>th</sup> day of October, 2016, upon  
consideration of the Recommendation of the Motions Examiner in the above captioned  
case, it is hereby,

**ORDERED**

that the aforementioned Recommendation be and is hereby approved by the full  
Pennsylvania Human Relations Commission. Accordingly, since the Complainant failed  
to file a PHRA claim in a timely manner, this case is dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: \_\_\_\_\_

  
M. Joel Bolstein, Esquire  
Acting Chairman

Attest

  
Dr. Raquel O. Yiengst  
Vice Chairperson