

C #92-97  
SB #32-97

BOARD OF EDUCATION OF THE CITY :  
OF BAYONNE, :  
 :  
PETITIONER-RESPONDENT, :  
 :  
V. : STATE BOARD OF EDUCATION  
 :  
 : DECISION  
BOARD OF SCHOOL ESTIMATE OF THE :  
CITY OF BAYONNE AND MAYOR AND :  
COUNCIL OF THE CITY OF BAYONNE, :  
HUDSON COUNTY, :  
 :  
RESPONDENTS-APPELLANTS. :  
\_\_\_\_\_ :

Decided by the Commissioner of Education, February 27, 1997

For the Petitioner-Respondent, Oury & Mizdol (Francine Del Vescovo,  
Esq., of Counsel)

For the Respondents-Appellants, John F. Coffey, II, Esq.

The Board of Education of the City of Bayonne (hereinafter "Board") filed a petition of appeal with the Commissioner of Education challenging reductions in the amount of \$2,035,500 made by the Board of School Estimate of the City of Bayonne, and the Mayor and Council of the City of Bayonne (hereinafter "appellants"), pursuant to N.J.S.A. 18A:22-17 et seq., to the Board's proposed budget for the 1996-97 school year. In a decision dated February 27, 1997, the Commissioner of Education determined to restore \$1,343,055 of the reductions effectuated by the appellants and directed a total general fund tax levy of \$42,310,692 for 1996-97.

On April 3, 1997, appellants filed a notice of appeal dated April 3 with the State Board.

By letter dated April 7, 1997, the counsel to the State Board advised appellants that their appeal had been due on April 1, thirty days from the filing date of the Commissioner's decision, and that this matter was therefore being referred to our Legal Committee for consideration of the effect of their failure to file timely notice. Appellants were given until April 15 to provide a written explanation of the reasons for their late filing.

On April 15, counsel for appellants filed an affidavit in which he explained that appellants had a "reasonable misunderstanding of the intricacies of the law," affidavit, at 4, believing that N.J.A.C. 6:2-1.4 did not require their notice of appeal to be filed until April 3.<sup>1</sup> Citing N.J.A.C. 6:2-1.4(c), counsel for appellants averred that appellants were "under the misguided impression that neither Saturday, nor Sunday counted towards the initial three day time frame [for computing the date on which the Commissioner's decision was deemed filed]. As such, they were operating under the belief that the three day time period was comprised of Friday February 28, 1997, Monday, March 3, 1997 and Tuesday March 4, 1997. In turn, they were of the belief that Wednesday March 5, 1997 was the first day of the thirty day appeal time frame and that April 3, 1997 was the last day for the filing of the appeal." Affidavit, at 4.

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<sup>1</sup> N.J.A.C. 6:2-1.4, "Computation of time," provides, in pertinent part:

(a) A decision of the Commissioner or State Board of Examiners shall be deemed filed three days after the date of mailing to the parties.

....  
(c) In computing any period of time fixed by this chapter, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

Pursuant to N.J.S.A. 18A:6-28, appeals to the State Board must be taken “within 30 days after the decision appealed from is filed.” The State Board may not grant extensions to enlarge the time specified for appeal. N.J.A.C. 6:2-1.5(a). In contrast to the period for filing petitions to the Commissioner of Education, see N.J.A.C. 6:24-1.2; N.J.A.C. 6:24-1.15, the time limit within which an appeal must be taken to the State Board is statutory, and, given the jurisdictional nature of the statutory time limit, the State Board lacks the authority to extend it. Mount Pleasant-Blythedale Union Free School District v. New Jersey Department of Education, Docket #A-2180-89T1 (App. Div. 1990), slip op. at 5. The Appellate Division has “consistently concluded” that appeals must be timely filed and that “neither an agency nor our court on appeal may expand a mandatory statutory time limitation.” In the Matter of the Special Election of the Northern Burlington County Regional School District, Docket #A-1743-95T5 (App. Div. 1996), slip op. at 3, citing Scudato v. Mascot Sav. & Loan Ass’n, 50 N.J. Super. 264 (App. Div. 1958).

We conclude that the statutory filing requirement with which appellants failed to comply is of such significance that we dismiss the appeal. In Yorke v. Board of Education of the Township of Piscataway, decided by the State Board of Education, July 6, 1988, aff’d, Docket #A-5912-87T1 (App. Div. 1989), the Court upheld the dismissal of an appeal by the State Board where it found that the notice of appeal had been filed one day late by appellant’s counsel, who alleged that he had misread or misunderstood the applicable regulations. The Court added that even if the statute could be construed to permit enlargement of the time for filing an appeal, the appellant therein had failed to establish good cause.

In this case, the Commissioner's decision was rendered on February 27, 1997 and mailed to the parties on that date.<sup>2</sup> Accordingly, pursuant to N.J.A.C. 6:2-1.4, the decision appealed from was deemed filed on March 2, 1997, three days after it was mailed. Therefore, as mandated by N.J.S.A. 18A:6-28, see N.J.A.C. 6:2-1.3(a) and N.J.A.C. 6:2-1.4, appellants were required to file their notice of appeal to the State Board on or before April 1, 1997. Appellants' notice of appeal was dated April 3, 1997 and filed on that date.

Even if N.J.S.A. 18A:6-28 can be construed to provide us with the authority to enlarge the time limit for filing an appeal, we find no substantive basis to warrant doing so in this particular instance. Appeals from final decisions of the Commissioner must be taken "within 30 days after the decision appealed from is filed." N.J.S.A. 18A:6-28. A decision of the Commissioner is "deemed filed three days after the date of mailing to the parties." N.J.A.C. 6:2-1.4(a). The sentence in N.J.A.C. 6:2-1.4(c) cited by appellants is intended merely to clarify the filing deadline for documents due on a date which falls on a Saturday, Sunday or legal holiday. In that event, the filing period runs "until the end of the next day that is not a Saturday, Sunday or legal holiday."

However, even if appellant's interpretation of the regulation was reasonable in that regard, and the filing date of the Commissioner's decision could not be deemed to be a Sunday, appellant's notice of appeal was still untimely. Thus, even if Monday, March 3 were deemed to be the filing date of the Commissioner's decision, appellant's appeal was due by April 2, one day before it was filed. Moreover, under the plain language of N.J.A.C. 6:2-1.4(c), only the last day of a computed period is not counted if

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<sup>2</sup> We note that a copy of the decision was also sent by fax to the counsel for the appellants on

it falls on a Sunday. We find nothing in that provision that could reasonably support appellant's belief that Saturday would also not be counted.<sup>3</sup> We reiterate, in addition, that counsel for appellants acknowledges that he received a copy of the Commissioner's decision on February 27, the date it was issued.

Consequently, for the reasons expressed herein, we dismiss the appeal in this matter for failure to file notice thereof within the statutory time limit as computed under the applicable regulations. See Yorke, supra.

May 7, 1997

Date of mailing \_\_\_\_\_

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February 27. Affidavit, at 2.

<sup>3</sup> Under appellant's interpretation of N.J.A.C. 6:2-1.4(c), a brief due on a date that falls on a Sunday would not have to be filed until the following Tuesday since Saturday would also be excluded in computing the time period.