

SB #28-98

IN THE MATTER OF THE GRANT OF :  
THE CHARTER SCHOOL APPLICATIONS:  
OF THE INTERNATIONAL CHARTER : STATE BOARD OF EDUCATION  
SCHOOL OF TRENTON AND THE :  
GRANVILLE CHARTER SCHOOL, : DECISION  
MERCER COUNTY. :

---

Decided by the Commissioner of Education, January 21, 1998

For the Appellant, Jessica G. de Konick, Esq.

For the Respondent, Melissa A. Benford, pro se and William Granville, pro se

For the Participant Commissioner of Education, John K. Worthington, Deputy  
Attorney General (Peter Verniero, Attorney General of New Jersey)

By letter dated January 21, 1998, the Commissioner of Education granted contingent approval to applications submitted by the International Charter School of Trenton and the Granville Charter School to obtain charters to operate charter schools pursuant to the Charter School Program Act of 1995, N.J.S.A. 18A:36A-1 et seq. On February 24, 1998, the Board of Education of the City of Trenton (hereinafter "Board" or "Trenton Board") filed a notice of appeal from both of those decisions to the State Board of Education. Since its notice was filed more than 30 days after the filing date of the Commissioner's decision, the Board also filed a motion for leave to file a late

appeal. In its motion, the Board maintained that it had not received formal notification of the Commissioner's decisions. The Board also related that it had authorized the filing of an appeal on February 23, the deadline for filing a notice of appeal from those decisions.

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 the Trenton Board failed to comply is of such significance that we deny the motion and 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 granting contingent approval to the two charter schools at issue was rendered on January 21, 1998 and mailed to the charter schools on that date. A copy of both letters was also sent to the president of the Trenton Board and the district superintendent. Accordingly, pursuant to N.J.A.C. 6:2-1.4, the decision appealed from was deemed filed on January 24, 1998, 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); N.J.A.C. 6:2-1.4(a), as computed under N.J.A.C. 6:2-1.4(b), the Board was required to file its notice of appeal to the State Board on or before February 23, 1998. As previously indicated, the Board's notice of appeal was not filed until February 24.

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. We reject the Board's contention that it had not received formal notification of the Commissioner's decisions granting contingent approval to the proposed schools. The Board's Business Administrator/Board Secretary acknowledged in a certification filed with the Board's motion that "[o]n or about January 21, 1998" he had received a copy of the Commissioner's January 21 letters, which provided notice of the Commissioner's decisions. Nor is it of any moment that the Board authorized the filing of an appeal on February 23. It is undisputed that the Board did not actually file its appeal until February 24.

Accordingly, we deny the Trenton Board's motion for leave to file a late notice of appeal and dismiss the appeal in this matter for failure to file notice thereof within the statutory time limit as computed under the applicable regulations.<sup>1</sup>

April 1, 1998

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

---

<sup>1</sup> While we note that counsel for the Edison Project, the "successful bidder for the contract on the Granville Charter School," sought to "enter an appearance" as counsel of record for the Granville Charter School in this appeal, in view of our decision today, we need not consider whether such appearance would be appropriate.