

SB #11-01

IN THE MATTER OF THE DENIAL OF :  
THE CHARTER SCHOOL APPLICATION : STATE BOARD OF EDUCATION  
OF THE IBRAHIM CHARTER SCHOOL, : DECISION  
PASSAIC COUNTY. :

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Decided by the Commissioner of Education, January 11, 2001

For the Appellant, Dr. Syed Mohd. Tariq Shuaib, pro se

By letter dated January 11, 2001, the Commissioner of Education notified the proposed Ibrahim Charter School that he had denied its application to operate a charter school in the 2001-2002 academic year.

On February 28, 2001, Dr. Syed Mohd. Tariq Shuaib (hereinafter "appellant"), a "representative" of the proposed school, filed a notice of appeal with the State Board of Education from the Commissioner's determination. By letter dated March 7, the Director of the State Board Appeals Office ("Director") acknowledged receipt of the notice of appeal and advised the appellant that his notice was deficient in that he had failed to attach a copy of the decision being appealed or a certification evidencing that he had served the notice of appeal on all interested parties. He was given until March 19 to correct these deficiencies.

On March 20, 2001, the appellant filed a brief in support of his appeal, along with a copy of the Commissioner's January 11 letter decision denying the proposed school's application and a certification of service of the notice of appeal and brief.

On April 19, the Commissioner filed a motion to participate in the appeal, along with a substantive brief in response to the appellant's appeal brief. In that brief, the Deputy Attorney General ("DAG") representing the Commissioner argued that the Commissioner had acted within his authority in denying the proposed school's application. She also contended that the appellant's notice of appeal had not been filed in a timely manner.

By letter dated May 7, 2001, the Director notified the appellant that review of the papers filed in this matter indicated that the notice of appeal had been filed beyond the thirty-day statutory time limitation set forth in N.J.S.A. 18A:6-28. She advised him that the matter was being referred to the Legal Committee of the State Board for consideration of the effect of his failure to file a timely notice of appeal. He was further informed that he could submit an affidavit setting forth the circumstances of his late filing by May 18.

By letter dated May 7 and faxed on that date, the appellant submitted a letter in response to the substantive brief filed with the Commissioner's motion to participate. In an apparent reference to the Commissioner's contention that the appeal was untimely, the appellant expresses his "hope" that the DAG "is not looking at the previous application..." which the proposed school had submitted for the 2000-2001 academic year. He also states in that regard: "I believe the letter dated 1/11/01 appealing to the commissioner of education triggers the appeals process. Therefore, DAG, Kathleen Asher [sic] argument that it was not filed timely is vague." This represents the only

reference made by the appellant to the issue of the timeliness of his appeal. He has not filed an affidavit or otherwise provided an explanation for his late filing.

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. 6A:4-1.5(a). In contrast to the period for filing petitions to the Commissioner of Education, see N.J.A.C. 6A:3-1.3(d); N.J.A.C. 6A:3-1.16, 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).

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 the 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. See also In the Matter

of the Grant of the Charter School Application of the International Charter School of Trenton, etc., Docket #A-004932-97T1 (App. Div. 1998) (the Court, upon reconsideration, upheld the State Board's dismissal of an appeal filed one day late).

In the instant case, the Commissioner's decision to deny the proposed charter school's application was issued on January 11, 2001 and mailed to the appellant on that date. Accordingly, pursuant to N.J.A.C. 6A:4-1.4, the decision appealed from was deemed filed on January 14, 2001, three days after it was mailed. Therefore, as mandated by N.J.S.A. 18A:6-28, see N.J.A.C. 6A:4-1.3(a); N.J.A.C. 6A:4-1.4(a), as computed under N.J.A.C. 6A:4-1.4(c), the appellant was required to file his notice of appeal with the State Board on or before February 13, 2001. As previously indicated, the appellant's notice of appeal was not filed until February 28, more than two weeks after the statutory deadline.

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 instance. The appellant has provided no explanation for his late filing, despite being given the opportunity to do so, and we find nothing in the record that would justify such enlargement. We stress in that regard that our determination with regard to the timeliness of the appellant's notice of appeal is based entirely on the proposed school's application for the 2001-2002 year and the Commissioner's letter decision of January 11, 2001 denying that application.

Accordingly, we dismiss the appeal in this matter for failure to file notice thereof within the statutory time limit as computed under the applicable regulations. In so

doing, we deny the Commissioner's motion to participate as unnecessary under the circumstances.

June 6, 2001

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