

EDU #9604-03
C # 514-04
SB # 17-05

A.B., on behalf of minor children, :
K.B. AND A.B., :
 : STATE BOARD OF EDUCATION
 PETITIONER-APPELLANT, :
 : DECISION ON MOTION
V. :
 :
BOARD OF EDUCATION OF THE BOROUGH :
OF MADISON, MORRIS COUNTY, :
 :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, December 21, 2004

For the Petitioner-Appellant, Lowenstein Sandler, P.C. (Elizabeth Rogers Hall, Esq., of Counsel)

For the Respondent-Respondent, Porzio, Bromberg & Newman, P.C. (Vito Gagliardi, Jr., Esq., of Counsel)

The appellant, A.B., filed a petition of appeal with the Commissioner of Education challenging the Madison Board's determination that her children were not entitled to a free public education in the district or in out-of-district educational facilities paid for by the Board. The Board sought reimbursement in the amount of \$253,730.29 for educational services provided to the appellant's two children. On December 21, 2004, the Commissioner adopted the findings and conclusions of the Administrative Law Judge ("ALJ") and dismissed the petition. The Commissioner agreed with the ALJ that the appellant had fallen "very short" of meeting her burden of demonstrating that she was domiciled in Madison during the period at issue and that her testimony that she was

homeless “lacked proof and credibility.” Initial Decision, slip op. at 10. Consequently, the Commissioner directed the appellant to reimburse the Madison Board for tuition in the amount of \$253,730.29 for the out-of-district specialized educational placement for her two children.

On April 13, 2005, the appellant filed a motion with the State Board of Education for leave to file an appeal nunc pro tunc. The appellant contends that she had made several efforts to secure pro bono counsel to represent her in this matter but that she had not been successful until after the deadline for filing an appeal.

Pursuant to N.J.S.A. 18A:6-28, appeals to the State Board of Education 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 was rendered on December 21, 2004 and mailed on that date. Accordingly, pursuant to N.J.A.C. 6A:4-1.4, the decision appealed from was deemed filed on December 24, 2004, 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 her notice of appeal to the State Board on or before January 24, 2005. As previously indicated, the appellant's motion for leave to file an appeal nunc pro tunc was filed on April 13, 2005, two-and-a-half months 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. Contrary to the appellant's contention, we conclude that she has not shown good cause for the delay in filing an appeal. Although the appellant states in an affidavit filed with her motion that she first became aware that she had failed to appeal

the Commissioner's decision when she met with two attorneys on March 17, 2005 and that prior to that time she believed that she had "taken all of the necessary steps to preserve [her] rights in this matter," she does not recount any specific action she had taken which reasonably might have led her to believe that she had filed an appeal. Rather, she relates only that she had spent the months following the Commissioner's decision seeking pro bono counsel to represent her. We emphasize in that regard that the Commissioner's decision expressly informed the appellant that "[t]his decision may be appealed to the State Board of Education pursuant to N.J.S.A. 18A:6-27 et seq. and N.J.A.C. 6A:4-1.1 et seq." Commissioner's Decision, slip op. at 2, n.2.

Accordingly, we deny the appellant's motion for leave to file an appeal nunc pro tunc.¹

Ronald K. Butcher abstained.

June 1, 2005

Date of mailing _____

¹ We note that we have not considered the Madison Board's brief in response to the appellant's motion since it was not filed in a timely manner. N.J.A.C. 6A:4-1.18(e). As a result, it is not necessary to address or determine the appellant's request for leave to file a reply to the Board's brief. N.J.A.C. 6A:4-1.18(g).

In addition, we remind counsel for the appellant of the requirement that briefs and other papers strictly preserve the anonymity of minors who are parties or witnesses. N.J.A.C. 6A:4-1.13(f); N.J.A.C. 6A:4-1.16(c). Although counsel did use initials in her brief to identify the children involved in this matter, she did not use initials to identify their mother, the appellant, thereby revealing the children's last name. In addition, the children's full names are used in the appellant's affidavit filed with the motion. We caution counsel that, while we have not found it necessary to do so in this instance, failing to preserve the anonymity of a minor may result in the suppression of briefs and other documents filed with the State Board. N.J.A.C. 6A:4-1.16(c).