

EDU #9024-04
C # 205-06
App. Div. #A-5876-05T5
SB # 40-06

CEREBRAL PALSY LEAGUE, INC., :
PETITIONER-APPELLANT, : STATE BOARD OF EDUCATION
V. : DECISION
NEW JERSEY DEPARTMENT :
OF EDUCATION, :
RESPONDENT-RESPONDENT. :
_____ :

Decided by the Acting Commissioner of Education, June 6, 2006

Order on motion by the Appellate Division, October 18, 2006

Order on motion by the Appellate Division, December 7, 2006

For the Petitioner-Appellant, Woehling & Freeman (Resa T. Drasin, Esq.,
of Counsel)

For the Respondent-Respondent, Melanie Brookes, Deputy Attorney
General (Stuart Rabner, Attorney General of New Jersey)

In a decision issued on June 6, 2006, the Acting Commissioner of Education¹ dismissed the petition filed by the Cerebral Palsy League, Inc. (hereinafter "appellant") challenging the determination by the Department of Education to disallow certain expenses in the final tuition rates for the 2002-03 school year for two private schools for the disabled which it operated.

¹ We note that on October 16, 2006, Acting Commissioner Lucille E. Davy was confirmed as the Commissioner of Education.

On July 20, 2006, the appellant filed an appeal from the Acting Commissioner's decision to the Appellate Division of the Superior Court. The respondent filed a motion to dismiss the appeal for failure to exhaust administrative remedies, which the Court granted on October 18, 2006. In so doing, the Court directed the State Board of Education "to treat the notice of appeal to this court as if it were a notice of appeal to the Board."

By letter dated October 25, 2006, the Director of the State Board Appeals Office notified the parties that the State Board was in receipt of the Court's Order and advised counsel for the appellant that the matter was being referred to our Legal Committee for consideration of whether the appeal was timely.

By letter dated October 30, 2006, counsel for the appellant requested that the appeal be considered timely, contending that:

...[appellant] argued to the Appellate Division that it did not believe it was required to seek additional review to the State Board prior to filing an appeal with the Appellate Division, but that if the Appellate Division were to find that [appellant] should have done so, [appellant] requested that the Appellate Division proceed in a fashion that would permit [appellant] to return to the State Board review process in a timely manner....Since [appellant] made that argument to the Appellate Division, [appellant] read the October 19 [sic] Order to direct that the State Board should treat [appellant's] appeal to the State Board as having been timely made. Recognizing that the Order does not state this explicitly, [appellant] has simultaneously filed a Motion for Reconsideration with the Appellate Division in order to determine that Court's intentions.²

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

² We note that in a decision issued on December 8, 2006, the Court denied the appellant's motion.

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(i); 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).

As the Court explained in Scudato, supra at 269: “Where a statute sets up precise time limits within which an aggrieved party may seek recourse to administrative adjudication, those limits have been held mandatory and not subject to relaxation. The agency is without power to waive them and proceed to hearing and determination notwithstanding noncompliance.” The Court in Scudato found that the fact that an application to the Commissioner of Banking and Insurance was filed only two days after the statutory deadline for such filing did not mitigate the invalidity of such action. The Court stressed that “[e]ven a minor deviation from the statutory limit in a particular case is fatal....This is not a mere technicality, but fundamental to the proper and necessary restraint of the exercise of judicial and administrative discretion. The remedy for results that either tribunal may deem unjust or unwise lies not in disregard of the statutory limitation, but in corrective legislation.” Id. at 271.

In Schaible Oil Co. v. New Jersey Dept. of Env'tl. Protection, 246 N.J. Super. 29 (App. Div. 1991), certif. denied, 126 N.J. 387 (1991), the Court stressed that “[f]irmly embedded in our law is the principle that [e]nlargement of statutory time for appeal to a state administrative agency lies solely within the power of the Legislature...and not with the agency or the courts.’ Hess Oil & Chem. Corp. v. Doremus Sport Club, 80 N.J. Super. 393, 396, 193 A.2d 868 (App. Div. 1963), certif. denied, 41 N.J. 308, 196 A.2d 530 (1964) (citations omitted). . . .”

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 matter, the Acting Commissioner’s decision was rendered on June 6, 2006 and mailed on June 7. Accordingly, pursuant to N.J.A.C. 6A:4-1.4, the decision appealed from was deemed filed on June 10, 2006, 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 a notice of appeal to the State Board on or before July 10, 2006. As

previously stated, the appellant filed a notice of appeal with the Appellate Division on July 20, 2006.

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 law is clear and unambiguous that “[a]ny party aggrieved by any determination of the Commissioner may appeal from his determination to the state board.” N.J.S.A. 18A:6-27. That appeal process is implemented in our regulations, which provide that “[f]inal decisions of the Commissioner of the Department of Education...are appealable to the State Board of Education as of right.” N.J.A.C. 6A:4-1.1(a). Moreover, the appellant was expressly informed in the Acting Commissioner’s decision 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.” Acting Commissioner’s Decision, slip op. at 2, n.2. We stress, in addition, that the Orders issued by the Appellate Division in this matter do not direct the State Board to treat the appeal as though it had been filed in a timely manner. Rather, as previously indicated, the Order of October 18, 2006 merely directs the State Board “to treat the notice of appeal as if it were a notice of appeal to the Board.”

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.

January 3, 2007

Date of mailing _____