

EDU # 6674-02
C # 400-05
EDU #10118-05
C # 264-06
SB # 36-06

T.F.S. AND C.S., :
on behalf of minor child, J.R.S., :
 :
PETITIONERS-APPELLANTS, : STATE BOARD OF EDUCATION
V. :
 : DECISION
BOARD OF EDUCATION OF THE :
TOWNSHIP OF SOUTH BRUNSWICK, :
MIDDLESEX COUNTY, AND DR. SAMUEL :
STEWART, SUPERINTENDENT, :
RESPONDENTS-RESPONDENTS. :

Remanded by the Acting Commissioner of Education, November 2, 2005

Decided by the Acting Commissioner of Education, August 4, 2006

Decision on motion by the Commissioner of Education, October 30, 2006

Decision on motion by the State Board of Education, January 3, 2007

Decision on motion by the State Board of Education, April 4, 2007

For the Petitioners-Appellants, T.F.S. and C.S., pro se

For the Respondents-Respondents, Parker McCay, P.A. (John E. Collins,
Esq., of Counsel)

In a decision issued on August 4, 2006, the Acting Commissioner of Education¹ dismissed the petition filed by T.F.S. and C.S., the appellants herein, who challenged the decision by the South Brunswick Board denying their request to provide

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

transportation for their children. The appellants, who lived approximately one mile from school, claimed that the walking route to school was not safe. Appellants then filed an appeal to the State Board of Education.

After the appeal was filed it was acknowledged by letter dated September 6, 2006 from the Director of State Board Appeals. In that letter, appellants were also instructed to serve a copy of the entire notice of appeal on the attorney for the school district, and to provide the State Board new copies of the decisions below, as the Acting Commissioner's decision contained hand-written notes and the decision of the Administrative Law Judge was missing pages and other pages were out of order.

Appellants then submitted an appeal brief that included photographs that were not part of the record of the proceedings below. Appellants were informed of this by letter dated September 21, 2006 from the Director of State Board Appeals, and notified that they must file a motion to supplement the record on appeal in order to seek to include the photographs attached to their brief in the record on appeal. The matter was placed into abeyance at that time in order to allow appellants to file such a motion or remove the photographs from their brief, and to correct additional deficiencies in their brief, including a failure to provide proof that the entire notice of appeal was served on the attorney for the school district and appellant's failure to submit the correct number of copies of the decisions below.

After additional discussions and correspondence between the Office of State Board Appeals and appellants with respect to the above deficiencies, appellants were again informed by letter of October 10, 2006 from the Director of State Board Appeals that they must file a motion to supplement the record on appeal in order to request that

the State Board consider including additional photographs in the record on appeal. The letter also informed appellants that they must file a motion to settle the record on appeal with the Commissioner of Education in order seek to include tape recordings of the proceedings in the Office of Administrative Law in the record on appeal, which appellants did on October 25, 2006. Appellants were given to October 20, 2006 to correct the deficiencies in their notice of appeal and appeal brief detailed above and were informed that no further extensions would be provided. Finally, appellants were informed that the appeal would be dismissed if the deficiencies in the notice of appeal and appeal brief were not corrected.

By letter of October 25, 2006, the Director of State Board Appeals acknowledged that appellants had corrected the deficiencies in the notice of appeal and appeal brief, and that the State Board had received appellants' motion to settle the record on appeal filed with the Commissioner of Education and a notice of motion to supplement the record on appeal filed with the State Board. The matter was placed into abeyance pending issuance of decisions with respect to both motions. On January 2, 2007, the respondent board of education filed opposition to the motion to supplement the record.

On October 30, 2006, the Commissioner of Education issued a letter decision denying appellants' motion to settle the record on appeal, noting that, while appellants may order copies of the tape recordings of the proceedings in the Office of Administrative Law, such recordings are unofficial and not part of the record of the case and cannot properly be considered when reviewing and deciding the appeal. On January 3, 2007, the State Board issued a decision denying appellants' motion to supplement the record on appeal with additional photographs.

By letter dated January 11, 2007, the Chairperson of the Legal Committee informed appellants that, because both of their motions had been decided, the matter was no longer in abeyance and the briefing schedule was reinstated. Subsequently, appellants, by letter of January 25, 2007, requested clarification of the State Board's January 3, 2007 decision and asserted that the Commissioner's October 30, 2006 decision on the motion to settle the record was contrary to law. By letter dated January 30, 2007 the Acting Director of State Board Appeals informed appellants that the State Board's January 3, 2007 decision did not allow them to include the proffered photographs in the record on appeal because submission of additional photographs at that stage of the appeal would deny the respondent the ability to cross examination to test the authenticity and relevance of the photographs. Appellants were also informed in the January 30, 2007 letter that, if they wished to contest the Commissioner's decision on their motion to settle the record on appeal, they must file a motion with the State Board.

On February 20, 2007, in addition to filing their reply brief, thus completing the briefing of the appeal, appellants also filed a motion for alternative handling of the record on appeal. In their motion appellants sought to have the State Board alter the requirements for ordering a transcript of the proceedings below from the Office of Administrative Law, either by ordering a reduction of the amount of the required deposit to be submitted with their request for transcripts or requiring that the respondent board of education share the cost of the deposit for the transcripts. The South Brunswick Board of Education submitted a response opposing the motion on February 26, 2007.

On April 4, 2007, the State Board issued a decision denying appellants' motion for alternative handling of the record of the testimony at the hearing held in the Office of Administrative Law in this matter. By letter of April 20, 2007 from the Acting Director of State Board Appeals, appellants were informed that, pursuant to their request in the motion for alternative handling of the record, the matter was being placed in abeyance for 60 days, to June 18, 2007, in order to allow appellants to obtain the transcripts of the proceedings in the Office of Administrative Law.

Subsequently, by letter of May 19, 2007, appellants' requested additional time, to October 2007, in which to order transcripts of the hearing held in the Office of Administrative Law, and that the matter remain in abeyance until that time. Appellants indicated that additional time was needed because their home would be under construction until July 31, 2007 and they would have not access to a computer to use to order the transcripts. The request was opposed by respondent. Because of the extensive delays that had already occurred to allow appellants to correct deficiencies in their notice of appeal and appeal brief, and to consider the motions to settle the record, supplement the record on appeal, and for alternate handling of the record of testimony, and also taking into consideration that the appeal was fully briefed, appellants were informed by the Acting Director of State Board Appeals in a letter dated June 20, 2007 that their request to again hold the matter in abeyance was denied by the Legal Committee and, because the transcripts had not been ordered, that the matter would proceed to review by the State Board on the basis of the record before it.

By letter dated July 3, 2007, appellants informed the Office of State Board Appeals that the transcripts of the proceedings in the Office of Administrative Law were

ordered, and requested that the matter again be placed in abeyance until the transcripts were received. This request was also opposed by respondent. By letter of July 19, 2007, the Acting Director of State Board Appeals informed the parties that the Legal Committee agreed to place the matter back into abeyance in order to allow appellants to complete their order of transcripts of the proceedings in the office of Administrative Law. Appellants were also directed to document that the transcripts were ordered, inform the Office of State Board Appeals when the transcripts were received, and to provide copies of the transcripts to the State Board after they were received.

Subsequently, on November 19, 2007, the appellants filed a motion seeking authorization of the State Board to obtain an abbreviated transcript in this matter, and to obtain said transcript from an alternate source. By letter dated November 20, 2007, the Acting Director of State Board Appeals acknowledged receipt of the motion and informed appellants that the motion was deficient in that they did not provide an affidavit in support of the motion setting forth the factual basis upon which the motion was based. See N.J.A.C. 6A:4-1.18(c). Appellants were given until December 5, 2007 to provide the affidavit and 17 copies of the letter motion to the Office of State Board Appeals.

By letter of November 30, 2007 from the Acting Director of State Board Appeals in response to a telephone call from appellants, the time to submit the affidavit and copies of the letter motion was extended to December 19, 2007. The letter also indicated that no further extensions of time would be granted. On December 19, 2007, appellants, instead of filing the required documents, filed a revised motion for a change

of transcriber with no affidavit in support of the motion to obtain an abbreviated transcript in this matter and to obtain said transcript from an alternate source.

By letter of December 24, 2007, the Acting Director of State Board Appeals acknowledged receipt of appellants' papers and informed appellants of their failure to file the affidavit and copies of their letter motion as directed in the correspondence of November 20, 2007 and November 30, 2007. Appellants were informed that the matter was being forwarded to the Legal Committee of the State Board of Education for consideration of their failure to perfect their motion.

Because appellants failed to adhere to the directive to submit an affidavit in support of their motion by December 19, 2007, and instead submitted a revised motion that failed to include the required affidavit, we dismiss appellants' motion for authorization of the State Board to obtain an abbreviated transcript in this matter, and to obtain said transcript from an alternate source, for failure to perfect in accordance with the requirements of N.J.A.C. 6A:4-1.18(c).

In addition, because the appeal has been fully briefed since February 20, 2007, but has been held in abeyance to allow appellants the opportunity to obtain transcripts of the proceedings below, which has not occurred, we are proceeding to a review of the merits of the appeal. After a thorough review of the record on appeal, we affirm the decision of the Acting Commissioner of Education for the reasons expressed therein.

February 20, 2008

Date of mailing _____