## August 27, 1998

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## Dear Parties:

Upon review of the papers filed in the matter entitled *Peter J. Lanzi v. Board of Education of the Township of Springfield, Union County, and Dr. Gary Friedland, Superintendent, Agency Dkt. No. 332-7/97*, I have determined to grant respondents' motion to dismiss the Petition of Appeal as untimely, pursuant to *N.J.A.C.* 6:24-1.2(c).

On July 15, 1998, petitioner filed a complaint before me, said complaint having been transferred to me for determination by Order of the Superior Court of New Jersey, Union County. By letter dated July 16, 1998, petitioner was informed that the complaint would be deemed a Petition of Appeal.<sup>1</sup>

By way of background, the parties agree that from 1939 until June 30, 1997, high school students who resided in the respondent Board's Township were educated by the Union County Regional High School District No. 1 (hereinafter, "the Regional District"). However, pursuant to *N.J.S.A.* 18A:13-51 *et seq.*, the Regional District was determined to be dissolved on June 30, 1997. Consequently, on July 1, 1997, the respondent Board, formerly a K-8 district, became a K-12 district.

Petitioner avers that, effective July 1, 1979, he was hired by the Regional District as an Assistant Board Secretary. Thereafter, the Regional District appointed him to the position of Board Secretary/School Business Administrator (hereinafter, "BS/SBA"), effective July 1, 1994. Petitioner asserts that he acquired tenure as same on July 1, 1996. After petitioner's hire as the BS/SBA for the

<sup>&</sup>lt;sup>1</sup> The petition requested relief in the form of compensatory damages, punitive damages and costs of suit. However, petitioner was notified by letter dated July 16, 1998 that I was not authorized to award such damages or to compensate parties for legal fees and costs, but could order reinstatement of an individual to a position to which he is entitled, and award back pay and emoluments, as may be appropriate.

Regional District on July 1, 1994, the respondent Board hired Ellen Ball as its BS/SBA. Petitioner asserts, and the Board specifically refutes, that Ms. Ball was granted "early tenure" by the respondent Board, prior to the expiration of the statutory time period for acquiring tenure.

In December 1996, prior to the dissolution of the Regional District, representatives from the Regional District's constituent districts conducted a selection draft, pursuant to *N.J.S.A.* 18A:13-64, allowing the then employees of the Regional District to select employment with a constituent district as of July 1, 1997. Petitioner chose the position of BS/SBA with the respondent Board, unaware that the Board had, according to petitioner, awarded early tenure to Ms. Ball.

By letter dated April 30, 1997, the respondent Board notified petitioner that it did not consider him to have an enforceable right to the position of BS/SBA. Petitioner acknowledges that he received this notice the first week in May 1997. Thereafter, on June 5, 1997, petitioner wrote to the respondent Board's Superintendent, informing him that he was seeking the position as the BS/SBA Additionally, by letter dated June 30, 1997, petitioner notified the Superintendent that he would seek legal redress. Petitioner's complaint was filed in Superior Court on March 17, 1998. As stated, *supra*, the complaint was later filed before me on July 15, 1998, and deemed a Petition of Appeal.

Thereafter, the Board filed a Motion to Dismiss on the grounds that the within action is untimely, pursuant to *N.J.A.C.* 6:24-1.2(c), in that the underlying complaint was not filed until March 17, 1998, nearly eleven months after petitioner was notified that the Board did not consider him to have an enforceable claim to the position he sought. The Board reasons, petitioner

was required to pursue his claim against Springfield ninety (90) days after he received Springfield's letter rejecting his presumed entitlement to the position of Board Secretary/School Business Administrator. Lanzi's Complaint challenging an action by Springfield which occurred nearly one year ago, was filed well beyond the 90-day limitation period provided by *N.J.A.C.* 6:24-1.2(c). (Board's Brief in Support of Motion to Dismiss at p. 7)

The Board underscores that the 90-day rule is designed to encourage prompt assertion of claims under school laws, and to protect local boards from untimely and expensive litigation, allowing boards a degree of certainty in planning for a given school year. (*Id.* at p. 5)

In response, petitioner urges that, in the interest of justice, the 90-day rule should be relaxed, citing *Gincel v. Edison Bd. of Education*, 1980 *S.L.D.* 943, aff'd State Board of Education, 1980 *S.L.D.* 953, aff'd *N.J. Super*. (App. Div) 1982 *S.L.D.* 1503 for the proposition that relaxation is warranted where a petitioner raises his objections by filing timely arbitration proceedings, notwithstanding that his claim before the Commissioner is filed outside the 90-day limitation period. (Petitioner's Brief in Opposition to Respondent's Motion to Dismiss at p. 5) Petitioner reasons that the Board was aware that he was claiming entitlement to the BS/SBA position, in that petitioner so advised the Superintendent in his letter of June 5, 1997. Petitioner argues that,

Respondents should not now be allowed to benefit from their obvious attempt to deprive [him] of his legal rights by awarding early tenure to Ellen Ball. Dismissal of this action would result in grave injustice and be patently unfair to the Petitioner. Allowing this case to continue would not prejudice any party, but would permit the proper disposition and resolution of crucial legal and factual issues. The question posed by the Petitioner of whether an individual who receives early tenure has

superior rights to an individual who acquires tenure by way of statute is an issue which needs to be addressed by the Commissioner. \*\*\* The merits of this case should be reached and Respondents' hypertechnical procedural roadblocks should be lifted. (*Id.* at p. 6)

I do not find petitioner's arguments to be persuasive. I am mindful that the purpose of the 90-day limitation period is to encourage litigants to use proper diligence in the enforcement of their rights so as to allow an opposing party the fair opportunity to defend itself, thus preventing the litigation of stale claims and penalizing dilatoriness. In the instant matter, petitioner's action was filed in Superior Court *more than ten months* after he acknowledges that he received the Board's notice that he did not have an enforceable right to the BS/SBA position. In this regard, petitioner merely states that he

purposely delayed in bringing any action against the Springfield Board in the hope that I would obtain alternative full time employment at a commensurate salary, thereby making any claim I had financially insignificant.

However, I was unable to secure full-time employment until January 19, 1998. I filed my claim against the Respondents less than three months later. (Petitioner's Certification at p. 3)

Petitioner's explanation, however, is both puzzling and inadequate; it does not suffice to outweigh the possible prejudice to the Board were I to relax the 90-day rule. (See, also, *Rutherford Bd. of Educ. v. Karabaic*, 1987 *S.L.D.* 1989, 1997, 2002, where petitioning Board filed its complaint in Superior Court more than nine months after its cause of action arose; the petition was deemed untimely pursuant to N.J.A.C. 6:24-1.2(c).)<sup>2</sup>

Moreover, although petitioner attempts to argue that the holding in *Gincel, supra*, may be applied herein, I find *Gincel* to be distinguishable from the instant action. In *Gincel*, the Board voted to abolish petitioner's position as vice-principal of an elementary school on April 9, 1979. Petitioner apparently sought arbitration on June 27, 1979. *Gincel, supra* at 946. The ALJ therein concluded that "\*\*\*the Board was made aware in timely fashion that petitioner was asserting a right to reassignment as a principal when he filed the grievance and sought to move it to arbitration." (*Id.* at 945) The ALJ further found that the record revealed "no delay on petitioner's part in asserting his alleged right of tenure and seniority to reassignment as a principal \*\*\*," (*Id.* at 946) and concluded that to bar the appeal based on "\*\*\*what appears [to be] a misdirected but good faith effort to resolve the matter under terms of the negotiated agreement, would be to place form over substance." (*Id.* at 947) By contrast, I cannot find that petitioner's letters to the Superintendent in June of 1997, alone, constitute sufficient notice that he was actually asserting a claim to the BS/SBA position.

Therefore, while I recognize that the 90-day filing requirement may be relaxed "\*\*\*where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice," *N.J.A.C.* 6:24-1.15, I find that petitioner has failed to demonstrate cause for relaxation.

Superior Court *within* 90 days of petitioner's notice of his claim, where the matter was subsequently transferred to the Commissioner for adjudication, and the date of filing before the Commissioner was determined to "relate back" to the original filing before the Superior Court.

<sup>&</sup>lt;sup>2</sup> Contrast *Driggins v. Newark Board of Education*, 93 *N.J.A.R.* 2d (EDU) 317, 319, where a complaint was filed in Superior Court within 90 days of petitioner's notice of his claim, where the matter was subsequently transferred to

According	gly, respondent's	Motion to	Dismiss is	hereby gra	anted; the	within Petition	of Appeal is
dismissed. <sup>3</sup>							**

Sincerely,

Leo Klagholz Commissioner

LK/DG/DA/JB/lanzi

c: County Superintendent

<sup>3</sup> This decision, as the Commissioner's final determination in the instant matter, 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.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.