

EDU # 12071-93
C # 287-94
APP. DIV. #A-3175-94T3
SB # 103-95
APP. DIV. #A-4742-95T3

BOARD OF EDUCATION OF THE
TOWNSHIP OF CRANFORD, UNION
COUNTY,

PETITIONER-RESPONDENT,

V.

ANDRE L. MC GUIRE AND LISA C.
MC GUIRE,

RESPONDENTS-APPELLANTS.

STATE BOARD OF EDUCATION
DECISION

Decided by the Commissioner of Education, October 26, 1994

Remanded by the Appellate Division, September 19, 1995

Decision on remand by the State Board of Education, December 6, 1995

Remanded by the Appellate Division, February 10, 1998

For the Petitioner-Respondent, Anthony P. Sciarrillo, Esq.

For the Respondents-Appellants, Andre L. and Lisa C. McGuire, pro se

This matter is before us pursuant to a remand by the Appellate Division. The appeal at issue was an appeal to the State Board from a decision of the Commissioner of Education dated October 26, 1994 regarding the entitlement of appellants' two children to a free public education in the Cranford school district. Adopting the initial decision of the Administrative Law Judge (ALJ), the Commissioner held that appellants

had not met their burden under N.J.S.A. 18A:38-1(b)(2) of proving that the two children involved in this matter were domiciled in Cranford after December 1993, at which time their mother had married and moved to Newark to live with her new husband. Consequently, the Commissioner concluded that appellants were responsible for tuition from December 1993. Pursuant to the Commissioner's determination, appellants were directed to pay tuition for the relevant period as calculated by the Board.

By notice dated February 21, 1995, appellants filed an appeal from the Commissioner's decision. However, they made their appeal to the Appellate Division rather than to the State Board.

On September 18, 1995, the Appellate Division, acting on a motion to dismiss filed on behalf of the Commissioner, transferred the appeal to the State Board.

By decision of December 6, 1995, the State Board dismissed the appeal, stressing that even if it had been filed with the State Board rather than the Appellate Division, the appeal had not been filed within the 30-day statutory time limit imposed by N.J.S.A. 18A:6-28. The State Board also found that even if it had the authority to enlarge the statutory time limit, there was nothing in the record to excuse appellants' late notice of appeal, which had not been filed until four months after the Commissioner's decision was rendered.

On appeal from our determination, the Appellate Division agreed with the State Board that the 30-day statutory time limit set forth in N.J.S.A. 18A:6-28 was jurisdictional. Hence, the Court concurred that, if that time limit was applicable, the State Board could not expand it. The Court, however, questioned whether the 30-day time limit was applicable in this case inasmuch as the appeal appeared to be

interlocutory since appellants could not pay tuition to the Board until the Board calculated the amount due.

Stressing that interpretation of a statute is a judicial rather than an administrative function, the Court concluded that the “State Board erred as a matter of law in...dismissing the appeal without determining whether the decision appealed from was final.” Appellate Division’s Decision, slip op. at 11. However, the Court further concluded that the State Board must have the opportunity to interpret its own regulations and, therefore, remanded the matter to the State Board for reconsideration.

In addition, the Court offered comments on the record “in the event that they may be helpful in any further proceedings at the agency level.” *Id.* First, the Court was concerned about whether the Commissioner had included any notice to the parties with respect to the appeal procedure when he rendered his decision. Secondly, the Court questioned the Commissioner’s adoption of the Administrative Law Judge’s finding that appellants had not proven that the children were domiciled in Cranford after their parent’s marriage in December 1993. Thirdly, the Court questioned the application of the burden imposed by N.J.S.A. 18A:38-1(b) under the circumstances presented by this case.

Our first task pursuant to the Court’s decision is to determine whether the Commissioner’s decision in this case was a final decision within the meaning of N.J.A.C. 6:2-1.1(a). That regulation provides that final decisions for purposes of appeal to the State Board include:

Any determination of the Commissioner, including, as to those separable issues upon which the Commissioner has

rendered a final decision, a decision remanding all or part of a controverted case....

There has never been any question that, in general, a decision of the Commissioner under N.J.S.A. 18A:38-1 as to whether a child is entitled to a free public education in a given school district is a final decision for purposes of appeal to the State Board. In such cases, where a parent has contested a district board's determination as to domicile and the Commissioner has made a judgment under N.J.S.A. 18A:38-1(b)(2) that the evidence does not support the parent's claim, the statute mandates that:

The Commissioner shall assess the parent...tuition for the student prorated to the time of the student's ineligible attendance....Tuition shall be computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance and shall be collected in the manner in which orders of the commissioner are enforced.

In cases of this kind, the annual per pupil cost to the school district is established during the initial proceedings before the Administrative Law Judge. See, e.g., M.T., on behalf of minor children, L.T. and H.T. v Board of Education of the Lower Camden County Regional High School District, 97 N.J.A.R.2d (EDU) 374; Zadran v. Board of Education of the Township of Belleville, 97 N.J.A.R.2d (EDU) 334 (subsequent history omitted). Once that amount is established, the statute controls the calculation. Hence, once the period of ineligible attendance is determined, the computation is ministerial and the time for appeal to the State Board is not automatically tolled.

We reaffirm that decisions of this kind are final decisions within the meaning of our regulation. Accordingly, they are appealable to the State Board at that point and subject to the thirty-day statutory time limit.

Nonetheless, the Court found the circumstances presented by the record in this particular case to be such that the appeal at issue may not have been time-barred. Close examination of the ALJ's initial decision indicates that there may be merit to the Court's view. Compare with Ahmed v. Board of Education of the City of Paramus, 97 N.J.A.R.2d (EDU) 243 (finding of fact by the ALJ as to amount of tuition). However, we find that a definitive conclusion as to the character of the Commissioner's decision cannot be made without reconsidering the question in the context of a complete examination of the record upon which the decision was based. We therefore remand this matter to the Commissioner for determination of whether the amount of annual per pupil cost to the district that was applicable for the years in question had been adequately established in the record before the Commissioner rendered his decision and for such proceedings as may be required in light of the concerns expressed by the Court.

We retain jurisdiction.

May 6, 1998

Date of mailing _____