

DHPL #132-98
SB #48-98

IN THE MATTER OF THE DISQUALIFI- :
CATION FROM SCHOOL EMPLOYMENT : STATE BOARD OF EDUCATION
OF D.L. : DECISION

Decided by the Assistant Commissioner of Education, March 20, 1998

For the Petitioner-Appellant, D.L., pro se

On March 20, 1998, the Assistant Commissioner of Education, Executive Services,¹ affirmed the determination of the Office of Criminal History Review disqualifying D.L. (hereinafter "appellant") from school employment as a custodian after a criminal history record review conducted pursuant to N.J.S.A. 18A:6-7.1 revealed that he had been convicted of distributing a controlled dangerous substance, marijuana, within 1,000 feet of school property. The Assistant Commissioner determined that appellant had failed to affirmatively demonstrate his rehabilitation by clear and convincing evidence.

On April 30, 1998, appellant, acting pro se, filed a notice of appeal to the State Board of Education, along with an explanation for his late filing.

¹ We note that N.J.S.A. 18A:4-33 authorizes the Commissioner to "designate an assistant commissioner as deputy commissioner with full power to act in his place and stead during any absence or inability of the commissioner and at such other times as the commissioner may designate." Such authority expressly includes assignment by the Commissioner of the "hearing and determination of controversies and disputes which may arise under the school laws...." N.J.S.A. 18A:4-34.

Pursuant to N.J.S.A. 18A:6-28, appeals to the State Board 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. 6:2-1.5(a). In contrast to the period for filing petitions to the Commissioner of Education, see N.J.A.C. 6:24-1.2; N.J.A.C. 6:24-1.15, 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).

We conclude that the statutory filing requirement with which the appellant failed to comply is of such significance that we dismiss the appeal. 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 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.

In this case, the Assistant Commissioner's decision was rendered on March 20, 1998 and mailed to the appellant on that date. Accordingly, pursuant to N.J.A.C. 6:2-1.4, the decision appealed from was deemed filed on March 23, 1998, three days after it was mailed. Therefore, as mandated by N.J.S.A. 18A:6-28, see N.J.A.C. 6:2-1.3(a); N.J.A.C. 6:2-1.4(a), as computed under N.J.A.C. 6:2-1.4(b), the appellant was required to file his notice of appeal to the State Board on or before April 22, 1998. As previously indicated, the appellant's notice of appeal was not filed until April 30.

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 particular instance. Appellant asserts that he is dyslexic and has other learning disabilities and that he had not been informed of the 30-day deadline for filing an appeal from the Assistant Commissioner's decision. While we are mindful of appellant's pro se status, we find that his explanation does not excuse his failure to comply with the statutory filing requirement.

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.

June 3, 1998

Date of mailing _____