

EDU #1747-97
C # 32-99
SB # 14-99

IN THE MATTER OF THE TENURE :
HEARING OF JIMMY DYKES, STATE- :
OPERATED SCHOOL DISTRICT OF THE : STATE BOARD OF EDUCATION
CITY OF NEWARK, ESSEX COUNTY. : DECISION

Decided by the Commissioner of Education, February 11, 1999

For the Petitioner-Respondent, Sills, Cummis, Zuckerman, Radin, Tischman,
Epstein & Gross (Philip E. Stern, Esq., of Counsel)

For the Respondent-Appellant, Balk, Oxfeld, Mandell & Cohen (Nancy I.
Oxfeld, Esq., of Counsel)

On February 11, 1999, the Commissioner of Education issued a decision in which he ordered that Jimmy Dykes (hereinafter "appellant") be dismissed from his tenured employment for unbecoming conduct.

On March 5, 1999, the appellant filed a notice of appeal from that decision with the State Board of Education. Pursuant to N.J.A.C. 6:2-1.11(a), the appellant's brief in support of his appeal was due on March 25, 20 days after he filed his notice of appeal. By letter dated March 18, 1999, counsel for the appellant requested a 30-day extension for filing an appeal brief until April 26. Counsel for the appellant stated that she had recently taken over the case and did not yet have copies of all pertinent documents. She indicated that the counsel for the State-operated District had consented to her request for a 30-day extension and had agreed to provide her with copies of those documents.

By letter dated March 23, 1999, the Director of the State Board Appeals Office advised counsel for the appellant that her request to extend the deadline for appellant's appeal brief until April 26 had been granted.

Appellant, however, failed to file a brief by that date. Nor did she request leave of the Legal Committee for an additional extension.¹ By letter dated April 28, the Director of the State Board Appeals Office notified counsel for the appellant of her failure to file a brief and informed her that this matter was being referred to the Legal Committee of the State Board for consideration of appellant's failure to perfect the appeal.

By letter dated April 29 and received on April 30, counsel for the appellant requested an additional three-week extension until May 17 for filing an appeal brief. She indicated that counsel for the State-operated District had consented to her request.

By letter dated April 30, the Director of the State Board Appeals Office advised counsel for the appellant that her request had been denied, again informing her that this matter had been referred to the Legal Committee. The Director further advised counsel for the appellant that if she wished to file arguments in support of the appeal, she should do so immediately, along with an affidavit explaining the reasons for her failure to file a brief by the extended due date.

¹ N.J.A.C. 6:2-1.5 provides, in pertinent part:

(b) By notice to the Legal Committee of the State Board of Education, extensions with consent of all parties for filing briefs or exceptions to the report of the Legal Committee may be obtained for a period of time not to exceed an accumulated total of 30 days for all extensions in one case.

....

(d) Extensions of time that are opposed, or a combination of opposed and unopposed, may not exceed an accumulated total of 30 days for all extensions in one case. Further extensions of time may be granted only by leave of the Legal Committee upon a showing of good cause.

On May 6, counsel for the appellant filed a certification in which she averred that “[t]hrough inadvertence, [counsel for the State-operated District] did not provide me with [copies of the requested] documents as of the date the brief was due. In the meantime, I had obtained copies of those documents from Mr. Dykes’ counsel before the Commissioner of Education. However, by the time the documents were received, I did not have time to complete the brief by April 26, 1999.”

On May 7, the Director of the State Board Appeals Office again informed counsel for the appellant that this matter had been referred to the Legal Committee. The Director noted that the May 6 submission by counsel for the appellant was the first time in which she had mentioned a problem with obtaining the record.

On May 13, counsel for the appellant filed a certification in response to the Director’s May 7 letter, pointing out that she had indicated in her initial request for an extension the fact that she did not yet have copies of all pertinent documents.

On May 14, counsel for the appellant filed a brief in support of the appeal.

At its meeting of May 19, 1999, the Legal Committee reviewed the record of this matter, including the certifications filed by counsel for the appellant.

After considering the circumstances, we dismiss the appeal in this matter for failure to perfect. We conclude that counsel for the appellant has failed to provide sufficient justification for her untimely filing. Nor has she demonstrated good cause for granting her an additional extension.

As previously noted, N.J.A.C. 6:2-1.5 provides that extensions with consent of all parties for filing briefs “may be obtained for a period of time not to exceed an accumulated total of 30 days for all extensions in one case.” Despite being granted an

extension for the entire 30-day period, counsel for the appellant still failed to file her appeal brief by the extended due date of April 26 or to request leave of the Legal Committee for an additional extension based on good cause prior to that date.² Indeed, counsel for the appellant did not indicate any problem with obtaining copies of documents until May 6, ten days after the extended due date,³ and, even then, she acknowledged having received those documents prior to the April 26 deadline.⁴ Although counsel for the appellant had been advised by letter dated April 30 that her request for an additional extension had been denied and that she should file an appeal brief immediately, she did not file a brief in support of the appeal until May 14, nearly three weeks after the extended due date. Ultimately, it was the obligation and responsibility of counsel for the appellant to assure compliance with the regulations, and we find no basis for relaxation in this instance.

Accordingly, we dismiss the appeal in this matter for failure to perfect. N.J.A.C. 6:2-1.12(a). See Paszamant v. Board of Education of the Borough of Highland Park, decided by the State Board, April 1, 1992, aff'd, Docket #A-4812-91-3 (App. Div. 1993).

June 2, 1999

Date of mailing _____

² See, *supra*, n.1.

³ In her initial request for an extension, counsel for the appellant had indicated only that she did not have all the documents in the record and that the counsel for the State-operated District had agreed to provide them to her. She did not mention any problem with obtaining copies of those documents until May 6, ten days after the extended due date of April 26.

⁴ We note that counsel for the appellant did not indicate when she had received the documents from appellant's previous counsel so as to verify her claim that she did not receive them in time to meet the April 26 due date.