

EDU # 1061-00  
C # 165-01  
SB # 19-01

J.M. ON BEHALF OF MINOR CHILD, S.C., :

PETITIONER-RESPONDENT, :

STATE BOARD OF EDUCATION

V. :

DECISION

BOARD OF EDUCATION OF THE :  
TOWNSHIP OF WEST ORANGE, ESSEX :  
COUNTY, :

RESPONDENT-APPELLANT. :

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Decided by the Commissioner of Education, May 24, 2001

For the Respondent-Appellant, Stephen J. Christiano, Esq.

For the Petitioner-Respondent, J.M., pro se

J.M. (hereinafter "petitioner") challenged a determination by the Board of Education of the Township of West Orange (hereinafter "Board") that her son was not entitled to a free public education in the district. In a decision issued on May 24, 2001, the Commissioner of Education concluded that J.M.'s son was entitled to attend school in West Orange pursuant to N.J.S.A. 18A:38-1a. The Commissioner, however, remanded the matter to the Office of Administrative Law for additional proceedings to determine when the petitioner ceased to be domiciled in West Orange and the amount of tuition, if any, that might be due to the Board as a result.

On June 27, 2001, the Board filed a notice of appeal to the State Board.<sup>1</sup> By letter dated July 2, 2001, the Director of the State Board Appeals Office acknowledged receipt of that notice and advised the counsel for the Board that:

...N.J.S.A. 18A:6-28 requires that an appeal to the State Board of Education must be taken within 30 days after the Commissioner has filed his decision. See N.J.A.C. 6A:4-1.3(a). Pursuant to N.J.A.C. 6A:4-1.4(a), “[a] decision of the Commissioner...shall be deemed filed three days after the date of mailing to the parties.” In this instance, the date of mailing of the Commissioner’s decision was May 24, 2001, so that your notice of appeal was required to be filed by June 26, 2001. See N.J.A.C. 6A:4-1.6.

Since your notice was not filed by that date, N.J.A.C. 6A:4-1.5(a), this matter is being referred to the Legal Committee for consideration of the effect of your failure to file a timely appeal. If you wish to file an affidavit setting forth the circumstances of your late filing, you must do so by July 13, 2001.

On July 9, 2001, the counsel for the Board submitted an affidavit in support of the filing date of the appeal. In his certification, counsel acknowledged his responsibility for the late filing and indicated that he had “thought (incorrectly) that the date of filing (May 27), as it fell on a Sunday, would become effective on May 29, the day after Memorial Day. I was thus computing the 30-day appeals period from May 29.”

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. 6A:4-1.5(a). In contrast to the period for filing petitions to the Commissioner of Education, see N.J.A.C. 6A:3-1.3(d); N.J.A.C. 6A:3-1.16, the time limit within which an appeal must be taken to

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<sup>1</sup> The notice of appeal was dated June 27, 2001 and included a certification from the counsel for the Board indicating that it was also mailed on that date. Hence, pursuant to N.J.A.C. 6A:4-1.6(b), it was considered filed on June 27.

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).

As the Court explained in Scudato, supra, at 269: “Where a statute sets up precise time limits within which an aggrieved party may seek recourse to administrative adjudication, those limits have been held mandatory and not subject to relaxation. The agency is without power to waive them and proceed to hearing and determination notwithstanding noncompliance.” The Court in Scudato found that the fact that an application to the Commissioner of Banking and Insurance was filed only two days after the statutory deadline for such filing did not mitigate the invalidity of such action. The Court stressed that “[e]ven a minor deviation from the statutory limit in a particular case is fatal....This is not a mere technicality, but fundamental to the proper and necessary restraint of the exercise of judicial and administrative discretion. The remedy for results that either tribunal may deem unjust or unwise lies not in disregard of the statutory limitation, but in corrective legislation.” Id. at 271.

In Schaible Oil Co. v. New Jersey Dept. of Env'tl. Protection, 246 N.J. Super. 29 (App. Div. 1991), certif. denied, 126 N.J. 387 (1991), the Court stressed that “[f]irmly

embedded in our law is the principle that '[e]nlargement of statutory time for appeal to a state administrative agency lies solely within the power of the Legislature...and not with the agency or the courts.' Hess Oil & Chem. Corp. v. Doremus Sport Club, 80 N.J.Super. 393, 396, 193 A.2d 868 (App. Div. 1963), certif. denied, 41 N.J. 308, 196 A.2d 530 (1964) (citations omitted)....”

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 the 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. See also In the Matter of the Grant of the Charter School Application of the International Charter School of Trenton, etc., Docket #A-004932-97T1 (App. Div. 1998) (the Court, upon reconsideration, upheld the State Board’s dismissal of an appeal filed one day late).

In the instant case, the Commissioner’s decision was rendered on May 24, 2001 and mailed on that date. Accordingly, pursuant to N.J.A.C. 6A:4-1.4(a), the decision appealed from was deemed filed on May 27, 2001, three days after it was mailed. Therefore, as mandated by N.J.S.A. 18A:6-28, see N.J.A.C. 6A:4-1.3(a), the Board was required to file its notice of appeal with the State Board on or before June 26, 2001. As previously indicated, the Board’s notice of appeal was not filed until June 27.

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. Our regulations are clear that a decision of the Commissioner “shall be deemed filed three days after the date of mailing to the parties,” N.J.A.C. 6A:4-1.4(a), and that an appeal must be filed “within 30 days of the filing date of the decision from which appeal is taken,” N.J.A.C. 6A:4-1.3(a). See also N.J.S.A. 18A:6-28 (“An appeal to the state board shall be taken in the manner prescribed by rules of the board, within 30 days after the decision appealed from is filed....”) Since the Commissioner’s decision was mailed on May 24, 2001, it was deemed filed on May 27, and the notice of appeal was required to be filed 30 days thereafter, by June 26.

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.

August 1, 2001

Date of mailing \_\_\_\_\_