

EDU #889-01
C #272-01
SB # 17-02

H.M., on behalf of minor child, R.E., :
PETITIONER-APPELLANT, : STATE BOARD OF EDUCATION
V. : DECISION ON MOTION
BOARD OF EDUCATION OF THE :
PRINCETON REGIONAL SCHOOL :
DISTRICT, MERCER COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, August 27, 2001

For the Petitioner-Appellant, H.M., pro se

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

In a decision rendered on August 27, 2001 and mailed on August 29, 2001, the Commissioner of Education rejected the petitioner's claim that her daughter was entitled to a free public education in the Princeton Regional School District and directed her to reimburse the district for tuition in the amount of \$9,791.

On March 19, 2002, the petitioner hand-delivered a letter to the State Board Appeals Office in which she requested to file a notice of appeal "out of time" to the State Board of Education from the Commissioner's decision of August 27, 2001. In her letter, the petitioner acknowledges that she had been aware of the 30-day statutory

requirement for filing an appeal to the State Board, but that “circumstances that immediately followed [receipt of the Commissioner’s decision] precluded my ability to do so.” She explains that the events of September 11, 2001 were “the cause of personal chaos for my family. My father, my stepmother, and my little sister, now 16 years old, live, work, and go to school near ground zero. I spent the days immediately following the attack trying to locate them and get news.”

The petitioner further relates that her ex-husband had “obtained a revocation of the Non-Modifiable Alimony Orders” on September 12, 2001 in Connecticut and that she and her children had received threatening phone calls on September 18, which, she contends, were made by an individual “enlisted by my ex-husband and his girlfriend to frighten us.” She maintains that “[t]he phonecalls [sic], as well as the fear of someone completely unknown to us, was traumatic for both the children and I, and coupled with September 11th, only heightened the anxiety in our household.” The petitioner continues that she had an auto accident on September 29 in which she hit a deer and, although she does not indicate that there were any injuries to her or her family, she says that “in the months that followed, I was not the same.”

The petitioner closes by stating: “September was hard for all, certainly countless others suffered immeasurably more trauma than we, and ultimately my family was fine. Ultimately, I only lost a right to appeal, and the chance to fend off a judgement of ten thousand dollars. I recognize that’s not much in the scheme of things, and in no way wish to complain or present myself as a special victim of September 11th thereby demeaning those who truly suffered.”

By letter dated March 22, 2002, the Director of the State Board Appeals Office (“Director”) notified the petitioner that, given her pro se status, her letter was being considered as a notice of appeal to the State Board of Education and that the filing date was March 19, 2002 pursuant to N.J.A.C. 6A:4-1.6(b). Since the petitioner had provided the circumstances of her late filing in the letter, the Director advised her that it was also being treated as a motion for leave to file the appeal nunc pro tunc. Under the circumstances, the briefing schedule on the merits of the appeal was placed in abeyance pending determination of the petitioner’s motion.

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.” 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 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 Scrudato 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 August 27, 2001 and mailed to the parties on August 29, 2001. Accordingly, pursuant to N.J.A.C. 6A:4-1.4(a), the decision appealed from was deemed filed on September 1, 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 petitioner was required to file her notice of appeal with the State Board on or before October 1, 2001. The Commissioner's decision clearly notified the petitioner of the 30-day time limitation for filing an appeal. Nonetheless, the petitioner did not file her notice until March 19, 2002, more than 5½ months after the statutory deadline.

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. Notwithstanding the difficulties that the petitioner contends she faced in September 2001, her letter does not provide justification for her failure to file an appeal until March 19, 2002. While we are cognizant of the petitioner's status as a pro se litigant, we are also mindful of the fact that she was notified and was aware of the 30-day time limitation for filing an appeal to the State Board and yet did not contact the State Board Appeals Office until March 2002, more than six months after the Commissioner had issued his decision.

Accordingly, we deny the petitioner's motion for leave to file her appeal nunc pro tunc and dismiss the appeal for failure to file notice thereof within the statutory time limit as computed under the applicable regulations.

May 1, 2002

Date of mailing _____