

IN THE MATTER OF THE WITHDRAWAL :
OF THE NORTH HALEDON SCHOOL : STATE BOARD OF EDUCATION
DISTRICT FROM THE PASSAIC COUNTY : DECISION ON MOTION
MANCHESTER REGIONAL HIGH SCHOOL :
DISTRICT, PASSAIC COUNTY. :

Decided by the Commissioner of Education, December 17, 2002

For the Appellant, Fogarty & Hara (Rodney T. Hara, Esq., of Counsel)

For the Respondent Board of Education of the Borough of Haledon,
Schwartz, Simon, Edelstein, Celso & Kessler (Allan P. Dzwilewski,
Esq., of Counsel)

For the Respondent Board of Education of the Borough of North Haledon,
Porzio, Bromberg & Newman, P.C. (Vito A. Gagliardi, Jr., Esq., of
Counsel)

For the Respondent Board of Education of the Borough of Prospect Park,
Anthony Sartori, Esq.

For the Respondent Commissioner of Education, Allison Colsey Eck,
Deputy Attorney General (Peter C. Harvey, Acting Attorney General
of New Jersey)

On February 7, 2002, a Board of Review granted the petition filed by the North Haledon Board of Education to conduct a voter referendum on whether North Haledon should be permitted to withdraw from the Passaic County Manchester Regional High School District over a three-year period. The Board of Education of the Manchester Regional High School District (hereinafter "Regional Board") appealed the Board of

Review's decision to the Appellate Division. That appeal is currently pending before the Court.

On September 24, 2002, the voters approved North Haledon's withdrawal from the Regional District, and on December 17, 2002, the Commissioner established July 1, 2003 as the effective date for the withdrawal.

On January 17, 2003, the Regional Board appealed to the State Board of Education from the Commissioner's determination of the date for withdrawal. That appeal is currently pending before the State Board. On February 4, 2003, the Regional Board filed a motion for a stay of the Commissioner's decision pending the State Board's determination on the merits of the appeal.

N.J.A.C. 6A:4-2.2 specifies the procedural requirements for seeking a stay of a Commissioner's decision from the State Board. Pursuant to N.J.A.C. 6A:4-2.2(a), a party must first file a motion for a stay with the Commissioner in accordance with N.J.A.C. 6A:3-1.15, which sets forth the requirements for seeking a stay from the Commissioner, before the party can seek a stay from the State Board. N.J.A.C. 6A:4-2.2(b) provides that if the Commissioner denies the stay, the party may file a motion for a stay with the State Board in conformity with the requirements of N.J.A.C. 6A:4-1.18.

In this instance, the Regional Board has not sought a stay from the Commissioner. Rather, it argues that it should be excused from this requirement pursuant to N.J.A.C. 6A:4-1.19, which provides that the State Board may relax a rule pertaining to appeals if adherence to such rule would result in an injustice. However, after considering the arguments of counsel, we find that this is not the case here.

Therefore, in the absence of a determination by the Commissioner, we deny the motion. In doing so, we reject the Regional Board's contention that it is futile to seek a stay from the Commissioner.

We also reject that portion of the Regional Board's motion that seeks to accelerate the briefing schedule. The Deputy Attorney General has filed the Statement of Items in this matter, so it is unnecessary for us to direct her to do so as the Regional Board has requested, and the matter is no longer in abeyance. Upon receipt of the Statement of Items, the briefing schedule was reestablished by letter dated February 11, 2003. The due date for the Regional Board's brief in support of its appeal is March 5, 2003, more than twenty days after the matter was taken out of abeyance. The Regional Board took advantage of the time it was afforded to prepare its brief and did not accelerate the briefing schedule by filing early. Under these circumstances, it would be unfair to deprive the respondents of the twenty days to which they are entitled by directing them to file their answer briefs before the due date.

March 5, 2003

Date of mailing _____