

SB #14-05

IN THE MATTER OF THE GRANT OF :
THE CHARTER SCHOOL APPLICATION : STATE BOARD OF EDUCATION
OF THE ECOLE DE LA MER: FRENCH : DECISION
IMMERSION CHARTER SCHOOL OF NEW :
JERSEY, CAPE MAY COUNTY. :

Decided by the Commissioner of Education, January 14, 2005

For the Appellant Upper Township Board of Education, Louis J.
Greco, Esq.

For the Respondent Ecole de la Mer: French Immersion Charter School of
New Jersey, Elizabeth F. Casey, Esq.

By letter dated January 14, 2005, the Commissioner of Education notified the proposed Ecole de la Mer: French Immersion Charter School of New Jersey that he had approved its application for the establishment of a charter school. On March 31, 2005, the Upper Township Board of Education filed the instant appeal to the State Board challenging that determination.

On April 7, 2005, the Charter School filed a motion to dismiss the appeal as untimely.

Pursuant to N.J.S.A. 18A:6-28, appeals to the State Board of Education 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 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 letter decision was issued and mailed on January 14, 2005, and the letter indicates that a copy was sent to the Board’s superintendent of schools. Accordingly, pursuant to N.J.A.C. 6A:4-1.4, the decision appealed from was deemed filed on January 17, 2005, 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); N.J.A.C. 6A:4-1.4(a), as computed under N.J.A.C. 6A:4-1.4(c), the Board was required to file its

notice of appeal to the State Board on or before February 16, 2005. As previously indicated, the Board's appeal was not filed until March 31, six weeks after the statutory deadline.

In an affidavit filed with the Board's appeal setting forth the circumstances of its late filing, the Board's Business Administrator/Board Secretary averred that when the Commissioner issued his letter decision, the Board "was not yet aware that the establishment of this new charter school could have the severe and crisis impact on the operation of the Upper Township public schools as has now become apparent after only recently learning of additional items of financial information....As a result of the finalization of school funding and budgeting data becoming available on March 4, 2005, the Board has now learned that it is faced with a catastrophic loss of revenue....[T]he Board did not realize the necessity to appeal the Ecole de la Mer charter until the complete picture of funding became available." Affidavit of Donna Young, at 1-2.

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 instance. Contrary to the Board's contention, we find that it has not shown good cause for the delay in filing its notice of appeal. The fact that the Board did not know the precise amount of funds it would be required to pay the Charter School until March 4, 2005 did not provide a basis for extending the statutory filing deadline for challenging the grant of this charter. N.J.S.A. 18A:6-28 is clear and unambiguous in providing that an appeal to the State Board of Education must be taken "within 30 days after the decision appealed from is filed...." Moreover, the law is clear with regard to the obligation of a district to pay a charter school for each student living in the district who

attends the school, N.J.S.A. 18A:36A-12b,¹ and the record reveals that the Board in this instance was well aware of the fact that it would be impacted financially by the grant of a charter. Indeed, in a letter to the Commissioner dated September 10, 2004 in response to the Charter School's application, the Board expressed its concerns about the proposed school, stressing that its "major concern is the financial impact the charter school would have on the Upper Township School District."

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.

May 4, 2005

Date of mailing _____

¹ N.J.S.A. 18A:36A-12b provides that:

The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the district an amount equal to the lower of either 90% of the program budget per pupil for the specific grade level in the district or 90% of the maximum T&E amount. The per pupil amount paid to the charter school shall not exceed the program budget per pupil for the specific grade level in the district in which the charter school is located. The district of residence shall also pay directly to the charter school any categorical aid attributable to the student, provided the student is receiving appropriate categorical services, and any federal funds attributable to the student.