

July 19, 2002

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Dear Counsel:

Upon review of respondent's motion to dismiss the petition in the matter captioned *Lord Sterling Schools, Inc. v. Board of Education of the Morris School District, Morris County*, Agency Docket No. 129-4/02, as well as petitioner's response and respondent's reply thereto, I have determined to dismiss the petition as filed beyond the 90-day limitation period in *N.J.A.C. 6A:3-1.3(d)*.

This matter originated with the filing of a petition of appeal by Lord Sterling Schools, Inc. (hereafter petitioner) on April 30, 2002, seeking payment of tuition allegedly owed it by the Morris School District (respondent) for the 1991-1992 and 1992-1993 school years. *See*, Petition of Appeal, Counts I and II. The tuition owed was determined after the Department allegedly certified the tuition rates for the years in question at rates higher than that charged by petitioner to respondent. *See, N.J.A.C. 6:20-4.1*<sup>1</sup> (which allowed private schools for the handicapped to charge a tentative tuition rate set by the Commissioner, and to recoup the tuition owed should the actual certified tuition rate determined after the school year be higher than that charged). Petitioner alleges that the certifications of tuition rates for the years at issue occurred on April 16, 1993 and September 29, 1994. Petition of Appeal at ¶¶ 10 and 17. Petitioner states that bills for the tuition owed were sent to respondent some time after April 16, 1993 and on October 13, 1994. *Id.* at ¶¶ 11 and 18. Payment was never remitted. *Id.* at ¶¶ 12 and 19.

The present petition was filed with the Department after petitioner's complaint filed May 7, 2001 was dismissed by the Superior Court of New Jersey, Law

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<sup>1</sup> This regulation was repealed with the adoption of Chapter 23 in Title 6A of the New Jersey Administrative Code on May 7, 2001.

Division by order dated January 25, 2002. *Id.* at ¶ 2 and Exhibit A. In addition to filing an answer, respondent filed a motion to dismiss the petition as permitted by *N.J.A.C.* 6A:3-1.5(g). The basis of the motion is petitioner's asserted failure to file the petition within 90 days of the accrual of its cause of action, which respondent contends occurred 90 days after the last date permitted by regulation for payment of tuition by respondent after the rates were certified by the Department, which respondent contends was June 1995.

Petitioner, in response to the Motion to Dismiss, contends that the 90-day limitation period has never been triggered because respondent never issued an order, ruling or engaged in any other action to inform petitioner that it would not pay the invoices submitted for payment of tuition as mandated by *N.J.A.C.* 6A:3-1.3(d). Absent such notice, petitioner contends, its time to file a petition never began to run. Petitioner's Responsive Brief at 2. In addition, petitioner contends that this is a simple collections action under the education statutes, in that the amount of tuition owed is not contested, and, thus, that the six-year limitation period in *N.J.S.A.* 2A:14-1 is applicable herein. *Ibid.*

In reply, respondent initially argues that, contrary to petitioner's assertion, it never received the invoices for the tuition owed. Respondent's Reply Brief at 2. In addition, respondent again notes that the 90-day limitation period is applicable herein, not the six-year contract limitation period in *N.J.S.A.* 2A:14-1, and that the limitation period was triggered upon the expiration of the period for recovery of tuition due set forth in the applicable regulation.

Upon review of the record and briefs of the parties, I have determined that the appropriate limitation period in this action is that set forth in *N.J.A.C.* 6A:3-1.3(d), 90 days. In addition, I conclude that the limitation period was triggered, at the latest, upon the expiration of the period for collecting amounts due upon certification of tuition by the Department set forth in the former regulations at *N.J.A.C.* 6:20-4.1(j); the end of the second school year following the year for which the actual cost per pupil is certified. In this case, the 90-day periods for the years at issue began to run, at the latest, June 30, 1995 and June 30, 1996.<sup>2</sup> Because petitioner filed no action challenging respondent's failure to remit the tuition allegedly owed until May 7, 2001 -- five and six years after the expiration of the respective limitation periods as determined herein -- the petition must be dismissed for failure to seek recourse before me in a timely fashion.

As held by the State Supreme Court:

The Legislature's broad delegation of power to the Commissioner and the State Board, particularly *N.J.S.A.* 18A:6-26, encompasses the authority to establish a time

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<sup>2</sup> Because the petition was filed many years after the tuition rates were certified, I need not determine whether the 90-day limitation period began to run at an earlier date, as I have determined that 90 days from the expiration of the regulatory period for collection of tuition is the latest time in which a petition of this type could be considered timely.

limitation for the resolution of disputes under the school laws. The limitations period provides a measure of repose, an essential element in the proper and efficient administration of the school laws. \*\*\* The limitation period gives school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after ninety days. Moreover, because local school boards operate on a cash basis, claims must be filed promptly\*\*\*. Certainly, for the Commissioner to find that the efficient administration of a school system requires the stability offered by the ninety-day limitation period is reasonable. *N.J.A.C. 6:24-1.2(c)*<sup>3</sup> represents a fair and reasonably-necessary requirement for the proper and efficient resolution of disputes under the school laws. It falls within the scope of statutory authority granted to the Commissioner and the State Board and is valid. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 *N.J.* 572, 582 (1993).

As the above makes clear, the 90-day limitation period is applicable in school law matters pending before me. Petitioner's attempt to characterize this as a "simple matter of contract and collections law" (Petitioner's Responsive Brief at 7) to which the six-year limitation period in *N.J.S.A. 2A:14-1* applies, fails by its own terms. Not only was this argument rejected by the Superior Court when petitioner's case was dismissed for want of jurisdiction, but also, acceptance of petitioner's proposition would compel a determination that the case is not properly before me, thus mandating dismissal of the petition for that reason. This is because if the case were a contract/collections matter, I would lack jurisdiction over same, as my jurisdiction is statutorily limited to controversies arising under the school laws. *See, N.J.S.A. 18A:6-9. See, also, Board of Education of Middle Township v. Boards of Education of Dennis Township et al., Cape May County*, 1989 *S.L.D.* 1544 (wherein the Commissioner held that the petitioner's claims regarding tuition owed pursuant to sending-receiving relationships were subject to the 90-day limitation period, and that, if petitioner sought to apply the law of contract to the action, it could do so in Superior Court, subject to the six-year limitation period in *N.J.S.A. 2A:14-1*).

In addition, I reject petitioner's assertion that the applicable limitation period was not triggered in the eight and nine years since the tuition rates at issue were certified because respondent never issued an order, ruling or other action informing petitioner of its refusal to pay the invoices for tuition owed. This argument is disingenuous. To accept petitioner's proposition, I would, in effect, have to conclude that a failure to affirmatively state that payment will not be rendered indefinitely tolls the limitation period. Such is not the case.

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<sup>3</sup> *N.J.A.C. 6:24-1.2(c)* is now codified at *N.J.A.C. 6A:3-1.3(d)*.

Herein, there was an unambiguous regulation that provided a set period to collect tuition owed. *See*, former *N.J.A.C.* 6:20-4.1(j). Petitioner's failure to do so, at the latest, within 90 days of the expiration of such period, mandates dismissal of the petition as out of time. Petitioner's attempt to impose an obligation on respondent to affirmatively state that it will not pay in order to trigger the 90-day period is rejected as contrary to the above purpose of the limitation period to provide a proper measure of repose to efficiently administer the school laws, and I decline to adopt the proposed indefinite limitation period.

Based on the foregoing, the Petition of Appeal in this matter is hereby dismissed.

IT IS SO ORDERED.<sup>4</sup>

William L. Librera,  
Commissioner

Date of Mailing: 7/22/02

c. County Superintendent  
Board Secretary

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<sup>4</sup> This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.