

BOARD OF EDUCATION OF THE :  
TOWNSHIP OF WATERFORD, :  
CAMDEN COUNTY, :  
  
PETITIONER, :  
  
V. :  
  
BOARD OF EDUCATION OF THE : COMMISSIONER OF EDUCATION  
TOWNSHIP OF HAMMONTON, :  
ATLANTIC COUNTY, : DECISION  
  
RESPONDENT, :  
  
AND  
  
BOARD OF EDUCATION OF THE :  
BOROUGH OF FOLSOM, :  
ATLANTIC COUNTY, :  
  
V. :  
  
BOARD OF EDUCATION OF THE :  
TOWNSHIP OF HAMMONTON, :  
ATLANTIC COUNTY, :  
  
RESPONDENT. :

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SYNOPSIS

Petitioners – the Waterford Board of Education (Waterford) and the Borough of Folsom Board of Education (Folsom), which are both in a sending/receiving relationship with the respondent Board – appealed a determination by the Hammonton Board of Education (Hammonton) for retroactive resource room charges for each of the school years from 2004-05 forward. Petitioning Boards contend that tuition contracts with Hammonton were in place for the years in question, and did not contain provisions requiring separate payment for resource room. Respondent contends that the petitions were filed out of time.

The ALJ found, *inter alia*, that: resource room charges are permissive, not mandatory, pursuant to *N.J.S.A.* 18A:38-19 and *N.J.A.C.* 6A:23-3.1; Hammonton chose to exclude such charges in its contracts with the sending school districts; future resource room assessments may be charged to the sending districts, if they are presented in advance for budgetary consideration; Hammonton agreed to waive resource room costs for students from Waterford in its sending/receiving relationship, in consideration for Waterford’s assumption of the costs of a Child Study Team; Folsom is exempt from the resource room assessments, as it was without foreknowledge of any additional charges to be applied to its sending/receiving payments for the periods at issue. The ALJ recommended that summary decision be entered on behalf of the petitioners.

Upon careful review and consideration, the Commissioner rejected the Initial Decision and dismissed petitioners’ appeals for failure to file within the 90-day limitation period, noting that it is clear from petitioners’ factual recitations that they had knowledge of Hammonton’s position well before receipt of a May 2007 letter from the New Jersey Department of Education, Division of Finance, which they contend should start the 90-day period of limitations.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.
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March 24, 2008

OAL DKT. NOS. EDU 6798-07 AND EDU 8091-07 (CONSOLIDATED)  
AGENCY DKT. NOS. 204-7/07 AND 235-8/07

BOARD OF EDUCATION OF THE :  
TOWNSHIP OF WATERFORD, :  
CAMDEN COUNTY, :  
PETITIONER, :  
V. :  
BOARD OF EDUCATION OF THE : COMMISSIONER OF EDUCATION  
TOWNSHIP OF HAMMONTON, :  
ATLANTIC COUNTY, : DECISION  
RESPONDENT, :  
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TOWNSHIP OF HAMMONTON, :  
ATLANTIC COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_ :

The record of these consolidated matters and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions submitted by the respondent Hammonton Township Board of Education (“Hammonton” or “the Board”) and the joint reply submitted by petitioners (“Waterford” or “Folsom,” individually) pursuant to *N.J.A.C. 1:1-18.4*.

In its exceptions, Hammonton urges the Commissioner to reject the Initial Decision and find that its actions were proper in all respects. The Board reiterates that petitioners' appeals should be dismissed as untimely filed and asserts that the Administrative Law Judge (ALJ) misapplied the standard for summary decision in numerous ways, including: accepting as a matter of law claims made solely by affidavit; failing to address the involved school administrators' lack of legal authority to bind their respective boards of education; ignoring the absence of evidence on record with respect to purported prior agreements and issues of waiver or estoppel; and not giving appropriate weight to written opinions from Department of Education (Department) staff members that support Hammonton's position. (Respondent's Exceptions at 3-4 and 15-16) The Board identifies – and proposes alternatives to – the specific findings of fact and conclusions of law with which it takes issue (*Id.* at 4-7), supporting its stance with arguments previously raised at the OAL (*Id.* at 7-14 and 17-38).<sup>1</sup>

In reply, petitioners assert that the ALJ decided the matter correctly and urge the Commissioner to adopt the Initial Decision. Petitioners rely on their prior submissions in most respects, additionally stressing that: 1) their appeals were not untimely filed, since they submitted their dispute to the county superintendent as required by regulation, sought an opinion from the Department when the county superintendent failed to respond, and filed their petitions within 90 days of the Department's opinion letter; and 2) their respective business administrators did not act without board authority, since they apprised the boards of the proposed agreements with Hammonton, which were subsequently endorsed through board approval of annual tuition contracts for the years in question. (Petitioners' Reply at 1-2)

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<sup>1</sup> These arguments are reproduced, essentially verbatim, in the Initial Decision at 13-20 and 29-50.

Upon review, the Commissioner finds that the Initial Decision cannot be adopted as the final decision in this matter, in that it fails to address the threshold procedural issue of whether – as contended by Hammonton – petitioners’ appeals were filed out of time pursuant to *N.J.A.C. 6A:3-1.3(i)*. This issue was raised as an affirmative defense in Hammonton’s answers to both petitions (Answer to Waterford at 5, Answer to Folsom at 6), as well as in briefing before the OAL (Initial Decision at 51, replicating Respondent’s Reply Brief at 2-3); yet, inexplicably, neither the prehearing order nor the Initial Decision provide for its determination. Notwithstanding such omission, however, the Commissioner finds it unnecessary to remand this matter for further proceedings because the record as it now stands is sufficient to decide the issue.

Petitioners essentially contend that the 90-day limitation period for the filing of their appeals commenced with receipt of the May 14, 2007 letter from the Department’s Division of Finance – responding to Waterford’s inquiry regarding Hammonton’s attempt to recoup prior year resource room costs – so that appeals filed on July 25, 2007 (Waterford) and August 22, 2007 (Folsom) were, indeed, timely.

However, it is clear from the petitioners’ own factual recitations – as presented to the OAL and reproduced verbatim in the Initial Decision at 3-7 and 7-12 – that they had knowledge of Hammonton’s firm position, and of their equally firm disagreement with it, at least as early as November 2006 in Waterford’s case<sup>2</sup> (Initial Decision at 12) and February 2007 in Folsom’s (*Id.* at 7). Notwithstanding that *N.J.A.C. 6A:23-3.1(f)5* requires tuition rate disputes to be taken to the county superintendent, the purpose of this process is expressly that of mediation, with no provision in any statute or rule for subsequent involvement by the Division of Finance;

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<sup>2</sup> Certainly not later than issuance of the March 2, 2007 tuition contract.

thus, when the parties' ongoing dispute was not resolved through mediation at the county level – regardless of the reason – there was no basis for delaying action pending inquiry to and response from the Division of Finance. Simply stated, the petitioners could and should have acted to protect their rights in this matter well before July and August of 2007, regardless of ongoing efforts to resolve the dispute by means other than litigation. *Riely v. Board of Education of Hunterdon Central High School*, 173 N.J. Super. 109 (App. Div. 1980); *Kaprow v. Board of Education of Berkeley Township*, 131 N.J. 572 (1993); *Board of Education of the Township of Pemberton, Burlington County v. Board of Education of the Burlington County Special Services School District, Burlington County*, Commissioner of Education Decision No. 134-07, decided April 12, 2007; *Board of Education of the Borough of Mountainside, Union County v. Board of Education of the Township of Berkeley Heights, Union County*, Commissioner of Education Decision No. 21-08, decided January 17, 2008.

Additionally, while the Commissioner is aware that the 90-day rule may be relaxed when circumstances warrant, *N.J.A.C. 6A:3-1.16*, she can find no reason to do so herein. Initially, while application of the 90-day rule can be harsh in its effect on individual litigants, the Commissioner must consider the rule's history of consistent enforcement and its paramount purpose of providing repose in administrative affairs. *Kaprow, supra*; *Pemberton, supra*. Moreover, in the present instance, the Commissioner is mindful that: 1) the fundamental question raised by petitioners – whether a sending district is obliged, when demanded as part of the three-year reconciliation process established by rule, to pay the difference between tentative and certified tuition charges for a given year when the tentative charge did not include costs which the certified charge

does and the parties' contract provides on its face for full payment of actual certified costs – has been addressed by a prior Commissioner decision, *Board of Education of the Borough of Spotswood, Middlesex County v. Board of Education of the Borough of Milltown, Middlesex County*, Commissioner of Education Decision No. 179-99, decided June 7, 1999, so that this matter does not present a situation where the Commissioner should consider relaxing the rule in order to decide a question of broad public interest and applicability; and 2) strict enforcement of the rule will not result in injustice because the petitioners will not be paying more than the amount allowed by law for services which they undisputedly received<sup>3</sup> and – notwithstanding that they may not have anticipated the associated additional costs – they have had the benefit of the time value of those monies.<sup>4</sup> *Mountainside, supra; Spotswood, supra.*

Accordingly, for the reasons set forth herein, the Initial Decision of the OAL is rejected and petitioners' appeals are dismissed for failure to file within the period of limitations prescribed by law.

IT IS SO ORDERED.<sup>5</sup>

COMMISSIONER OF EDUCATION

Date of Decision: March 24, 2008

Date of Mailing: March 25, 2008

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<sup>3</sup> It is noted that Hammonton's calculation method provides a credit to Waterford to offset the costs it paid for a child study team for Hammonton. (Affidavit of Barbara Prettyman at 9)

<sup>4</sup> Indeed, they will not be billed for 2005-06 and 2006-07 costs until 2008-09 and 2009-10, respectively.

<sup>5</sup> This decision 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.*