

C #22-99L
SB #16-99

IN THE MATTER OF THE DISSOLUTION :
OF THE LOWER CAMDEN COUNTY : STATE BOARD OF EDUCATION
REGIONAL HIGH SCHOOL DISTRICT : DECISION ON MOTION
NO. 1, CAMDEN COUNTY. :

Decided by the Commissioner of Education, January 27, 1999

For the Petitioners-Appellants Board of Education of Waterford, Township of Waterford, Board of Education of Chesilhurst and Borough of Chesilhurst, Anat Gordon, Esq.

For the Respondents-Respondents Board of Education of Berlin, Township of Berlin, Board of Education of Clementon, Borough of Clementon, Board of Education of Lindenwold, Borough of Lindenwold, Board of Education of Pine Hill, Borough of Pine Hill, Board of Education of Winslow Township and Township of Winslow, Ravin, Sarasohn, Cook, Baumgarten, Fisch & Rosen (Vito A. Gagliardi, Jr. Esq., of Counsel)

For the Respondent-Respondent Lower Camden County Regional High School District No. 1, Weinberg, McCormick, Chatzinoff & Paul (Joseph M. Weinberg, Esq., of Counsel)

On March 9, 1999, the appellants herein, the governing bodies and boards of education of Waterford and Chesilhurst, filed a notice of appeal to the State Board of Education from a decision of an Assistant Commissioner of Education dated January 27, 1999.¹ In that decision, the Assistant Commissioner had rejected the

¹ N.J.S.A. 18A:4-33 authorizes the Commissioner to “designate an assistant commissioner as deputy commissioner with full power to act in his place and stead during any absence or inability of the commissioner and at such other times as the commissioner may designate.” Such authority expressly includes assignment by the Commissioner of the “hearing and determination of controversies and disputes which may arise under the school laws....” N.J.S.A. 18A:4-34.

appellants' attempt to invalidate the results of a referendum authorizing dissolution of the Lower Camden County Regional High School District No. 1.

Along with their notice of appeal, the appellants filed a motion requesting to file their appeal nunc pro tunc since it had not been filed within 30 days of the filing date of the Commissioner's decision as required by N.J.S.A. 18A:6-28. See N.J.A.C. 6:2-1.3 and 6:2-1.4. In support of that motion, counsel for the appellants provided a certification in which she averred that she had filed a motion with the Commissioner on March 1, 1999—within the 30-day timeframe for filing an appeal to the State Board—requesting reconsideration of the Commissioner's decision. Appellants' counsel indicated that it had been her understanding that the time for filing an appeal to the State Board had been tolled by the filing of that motion with the Commissioner. The record indicates that such impression had been communicated by counsel for the appellants in her cover letter accompanying the motion filed with the Commissioner on March 1, the last day of the 30-day period for filing an appeal to the State Board. In a letter dated March 4, 1999, the Director of the Bureau of Controversies and Disputes advised appellants' counsel that “such tolling is not automatic by virtue of your filing the above-referenced motion.”

Under the particular circumstances presented herein, we grant the appellants' motion to file their appeal nunc pro tunc. As previously indicated, appellants' motion for reconsideration was filed with the Commissioner within the 30-day period for filing an appeal to the State Board and, at the time of such filing, counsel for the appellants indicated in a cover letter accompanying that motion her impression that such filing would toll the time for filing an appeal to the State Board. Although there is nothing in

statute or regulation that would toll the time for filing an appeal to the State Board on the basis of a motion for reconsideration filed with the Commissioner, under the circumstances, we have considered appellants' motion to the Commissioner as an attempt to file an appeal with the State Board. The appellants' appeal is therefore deemed to have been filed in a timely manner on March 1. In so doing, however, we caution appellants' counsel that failure to comply with procedural requirements could result in the dismissal of an appeal. See, e.g., Paszamant v. Board of Education of the Borough of Highland Park, decided by the State Board, April 1, 1992, aff'd, Docket #A-4812-91-3 (App. Div. 1993).

The briefing schedule in this matter will remain in abeyance pending a determination by the Commissioner of appellants' motion for reconsideration.²

May 5, 1999

Date of mailing _____

² We note that we have not considered appellants' reply brief filed in response to the respondents' brief in opposition to the instant motion. The regulations governing appeals do not provide for such a filing without leave of our Legal Committee, which was not requested in this instance. N.J.A.C. 6:2-1.18.