

EDU #3937-98  
C # 174-99  
SB # 27-99

J.M. AND D.M., on behalf of minor child, :  
J.L.M., :

PETITIONERS-APPELLANTS, :

V. :

STATE BOARD OF EDUCATION

BOARD OF EDUCATION OF THE CITY :  
OF SUMMIT, UNION COUNTY, :

DECISION

RESPONDENT-RESPONDENT. :

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Decided by the Commissioner of Education, June 1, 1999

For the Petitioners-Appellants, J.M. and D.M., pro se

For the Respondent-Respondent, McCarter & English (Brenda C. Liss, Esq.  
and Dawn Marmo, Esq., of Counsel)

J.M. and D.M. (hereinafter "petitioners"), acting pro se, filed a petition of appeal with the Commissioner of Education alleging that the Board of Education of the City of Summit (hereinafter "Board") had acted in an arbitrary and capricious manner in failing to give their child, J.L.M., the Most Valuable Player awards for the Summit High School cross-country track seasons of 1995 and 1996. The Board filed a motion for summary decision, contending, inter alia, that the petition was not filed within 90 days of the challenged action as required by N.J.A.C. 6:24-1.2(c).<sup>1</sup> On April 14, 1999, an

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<sup>1</sup> N.J.A.C. 6:24-1.2(c) provides that:

The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing.

Administrative Law Judge (“ALJ”) recommended granting the Board’s motion and dismissing the petition. On June 1, 1999, the Commissioner adopted the ALJ’s findings and conclusions and dismissed the petition as untimely. Petitioners filed the instant appeal to the State Board.

After a careful review of the record, we reverse the decision of the Commissioner and remand this matter to him for further proceedings. Under the particular circumstances presented by this case, we conclude that the petition was filed in a timely manner.

The record indicates that petitioners were notified by letter dated September 12, 1997 that the Board had denied their grievance concerning the Most Valuable Player awards at its meeting of September 11. On November 13, 1997, within 90 days of that notice, the petitioners sent a letter to the Director of the Office of Bilingual Education and Equity Services in the State Department of Education “to appeal the Summit Board of Education’s denial of our March 10, 1997 Grievance....” By letter dated January 5, 1998, nearly eight weeks later, the Director of the Office of Bilingual Education and Equity Issues acknowledged receipt of the petitioners’ November 13 letter and recommended that they contact the Department’s Bureau of Controversies and Disputes regarding “whether the legal premises upon which you have based your complaint are valid, and perhaps, the next steps you should take in pursuit of a satisfactory resolution.”

On January 20, 1998, the petitioners wrote to the Director of the Bureau of Controversies and Disputes regarding their challenge to the Board’s action and included

“supporting evidence” for their claim. They requested that the Director “review the enclosed materials and expeditiously arrive at a decision within the next two weeks.”

By letter dated January 26, 1998, the Director of the Bureau of Controversies and Disputes advised the petitioners that they “must file a petition of appeal in conformance with the operative regulations....We are returning to you herewith the materials submitted with your letter, as, while they may be included with your petition, they may not serve as a substitute for it.”

On or about March 24, 1998, the petitioners filed a formal petition of appeal with the Bureau of Controversies and Disputes.

Upon review of the particular circumstances herein, including the petitioners’ status as pro se litigants, we conclude that their November 13, 1997 letter to the Director of the Department’s Office of Bilingual Education and Equity Services constituted a petition of appeal for purposes of complying with the filing requirements of N.J.A.C. 6:24-1.2(c). That letter, which specifically indicated that the petitioners were appealing the Board’s denial of their grievance, was filed approximately two months after the Board had notified petitioners of its action, well within the 90-day filing period. The petitioners were not advised that they had filed their papers in the wrong office of the Department of Education until January 5, 1998, nearly eight weeks later, after the 90-day period had expired. They then wrote to the Director of the Bureau of Controversies and Disputes and subsequently, upon her advice, filed a formal petition of appeal. Under these circumstances, we find that it would be inequitable to hold that the petitioners had failed to file a petition in a timely manner.

Accordingly, we reverse the determination of the Commissioner to dismiss the petition as untimely and remand this matter to him for further proceedings consistent with our decision.<sup>2</sup>

Attorney exceptions are noted.

S. David Brandt opposed.

November 3, 1999

Date of mailing \_\_\_\_\_

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<sup>2</sup> We note in so doing that the Board had also argued in its motion for summary decision that this case should be dismissed as a matter of law, contending that the petitioners had failed to state any legal basis to support their claim. In dismissing the petition as untimely, neither the ALJ nor the Commissioner addressed this argument, which the Board has reiterated in response to the instant appeal. Under the circumstances, we decline to address such contention in the first instance. Consequently, our decision herein does not preclude the Board from reasserting this claim during the proceedings on remand.