

IN THE MATTER OF THE EQUIVALENCY :

GRANTED TO THE BOARD OF : STATE BOARD OF EDUCATION

EDUCATION OF THE TOWNSHIP OF : DECISION ON MOTIONS

BERKELEY HEIGHTS, UNION COUNTY. :

Decided by the Commissioner of Education, February 14, 2003

For the Appellant, Zazzali, Fagella, Nowak, Kleinbaum & Friedman
(Kathleen Naprstek Cerisano, Esq., of Counsel)

For the Respondent Board of Education of the Township of Berkeley,
Porzio, Bromberg & Newman, P.C. (Vito A. Gagliardi, Jr., Esq., of
Counsel)

For the Respondent New Jersey Department of Education, Kimberley
Lake Franklin, Deputy Attorney General (Peter C. Harvey, Attorney
General of New Jersey)

By letter dated February 14, 2003, the Commissioner of Education notified the Berkeley Heights School District that its request for an equivalency had been granted so as to permit the District to hire retired teachers as mentors even though N.J.A.C. 6:11-14.5 prohibited this practice. On August 13, 2003, the Berkeley Heights Education Association (hereinafter "Association") obtained a copy of the Report on the Equivalency and Waiver Process for the period of January through June 2003 and learned of the equivalency granted by the Commissioner on February 14.

On September 29, 2003, the Association filed a petition with the Commissioner seeking to revoke that equivalency. By letter of September 30, 2003, the Association was notified that the matter was being referred to the State Board of Education. The State Board considered the petition to be a notice of appeal, which it deemed filed on September 29. Because the appeal had not been filed within the 30-day statutory time limit established by N.J.S.A. 18A:6-28, the Association was advised that the matter was being referred to the State Board's Legal Committee. However, the Association was given the opportunity to file a certification setting forth any circumstances relevant to the filing.

In its certification, the Association asserted that jurisdiction over the matter properly rested with the Commissioner rather than with the State Board. The Association argues that because the language of N.J.A.C. 6A:5-1.7 provides that "any party aggrieved by a determination of the Commissioner to grant or deny an equivalency or waiver...may appeal... in accordance with N.J.A.C. 6A:4," which governs appeals to the State Board, it is not mandatory to appeal to the State Board rather than to the Commissioner. In support of its position, the Association also points to N.J.A.C. 6A:5-1.7(b), which provides that "any party seeking to challenge an action by a district board... on the grounds that such action is in violation of the school laws shall initiate a contested case [before the Commissioner] notwithstanding that the action being challenged may involve the implementation of a waiver or equivalency...."

On October 20, 2003, the Association was advised that since its certification challenged the State Board's jurisdiction over this matter, its submission was being considered as a notice of a motion to transfer jurisdiction to the Commissioner. The

Association submitted a brief in support of that motion, and the respondents filed briefs in opposition to the motion. Along with its opposition brief, the Berkeley Heights Board filed a cross-motion to dismiss the appeal for failure to file in a timely manner.

We reject the Association's contentions and find that jurisdiction over this matter properly lies with the State Board of Education. It is well settled that a determination to grant or deny an equivalency or waiver is a final decision by the Commissioner within the meaning of N.J.S.A. 18A:6-27 and N.J.A.C. 6A:4-1.1. In the Matter of the Waiver Granted to the Board of Educ. of the Twp. of Middletown, decided by the State Board of Education, May 3, 2000; Guttenberg Educ. Assoc. and Aenaida Franqui v. Leo F. Klagholz , Commissioner, and Bd. of Educ. of the Borough of Guttenberg, decided by the State Board of Education, March 3, 1999. Hence, any appeal from such a determination by the Commissioner must be made to the State Board. In contrast, as set forth in N.J.A.C. 6A:5-1.7(b), a challenge to an action taken by a district board must be made by filing a petition with the Commissioner even if the district board's action involves the implementation of a waiver or equivalency. Linda Peters v. Board of Education of the Pinelands Regional School District and Leo F. Klagholz, Commissioner, decided by the State Board of Education, April 1, 1998 (subsequent history omitted).

In this instance, the Association's challenge is limited to the grant of the equivalency, and its papers provide no indication that it is challenging any action taken by the District. Hence, there is no basis for invoking the primary jurisdiction over controversies arising under the education laws conferred on the Commissioner by N.J.S.A. 18A:6-9, and jurisdiction over this appeal lies with the State Board.

As set forth above, the Association's appeal was not filed until September 29, 2003, which was more than 30 days after its receipt on August 13, 2003 of the Report from which it learned of the grant of the equivalency at issue.

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 Association learned of the Commissioner's determination on August 13, 2003. Therefore, as mandated by N.J.S.A. 18A:6-28, the Association was required to file its notice of appeal to the State Board on or before September 12, 2003. As previously indicated, the notice was not filed until September 29, 2003, more than two weeks after the statutory deadline.

Accordingly, for the reasons stated herein, we deny the Association's motion to transfer jurisdiction to the Commissioner and grant the motion filed by the Berkeley Heights Board to dismiss the appeal in this matter for failure to file notice thereof within the statutory time limit.

Debra Casha abstained.

January 7, 2004

Date of mailing _____