

EDU #9526-04  
C # 52-05  
SB # 11-05

JOSEPH C. PARLAVECCHIO AND :  
ALFONSE R. ROSSI, :  
 :  
 PETITIONERS-APPELLANTS, : STATE BOARD OF EDUCATION  
 :  
 V. :  
 : DECISION  
 STATE-OPERATED SCHOOL DISTRICT :  
 OF THE CITY OF NEWARK, ESSEX :  
 COUNTY, :  
 :  
 RESPONDENT-RESPONDENT. :  
 \_\_\_\_\_ :

Decided by the Deputy Commissioner of Education, February 2, 2005

For the Petitioners-Appellants, Schwartz, Simon, Edelstein, Celso &  
Kessler, L.L.P. (Stephen J. Edelstein, Esq., of Counsel)

For the Respondent-Respondent, Porzio, Bromberg & Newman, P.C. (Vito  
Gagliardi, Jr., Esq., of Counsel)

Petitioners were formerly employed in the Newark school district, which became a State-operated school district in 1995. In 1995, petitioners were indicted by both State and Federal Grand Juries on charges stemming from their ownership of a building which they had been leasing to the school district. On January 18, 1996, they were acquitted of the federal charges, and on December 24, 1996, the state charges were dismissed with prejudice. At that point, counsel for petitioners requested indemnification from the State-operated district pursuant to N.J.S.A. 18A:16-6.1. By

letter dated April 29, 1997 from the district's Senior Associate Counsel, petitioners' counsel was advised that the request had been denied.

On September 15, 1997, petitioners' counsel filed a complaint on their behalf in Superior Court, Law Division. That complaint sought indemnification for all counsel fees and costs. On January 23, 1998, the complaint was dismissed without prejudice and the matter was transferred to the Commissioner of Education. On September 16, 2004, the matter was transmitted to the Office of Administrative Law for hearing.

Acting on the respondent's motion for summary decision, the Administrative Law Judge ("ALJ") issued his initial decision on December 21, 2004. The ALJ recommended dismissing the matter, finding that the petitioners had failed to comply with the 90-day time limit for filing petitions of appeal to the Commissioner. In this respect, the ALJ found that the letter of April 29, 1997 from the district's Senior Associate Counsel constituted notice that petitioners' request for indemnification was being denied. The ALJ stressed the petitioners had failed to file any kind of action in any court until five months later, when they filed their action in Superior Court. The ALJ also found that petitioners' failure to pursue the matter for more than six years after it was dismissed by the Superior Court and transferred to the Commissioner was certainly contrary to the regulatory time limit.

The Deputy Commissioner concurred with the ALJ that the petition was filed well outside the 90-day time limit established by N.J.A.C. 6A:3-1.3(d) [now codified at N.J.A.C. 6A:3-1.3(i)]. Like the ALJ, the Deputy Commissioner also found that the record did not show any circumstances that would warrant relaxation of the regulatory time limit. In addition, the Deputy Commissioner rejected as without merit petitioners'

contention that their claim involved a statutory right of such character that it was not subject to any statute of limitations.

Based on our review of the record and careful consideration of the arguments presented, the State Board of Education concurs with the ALJ and the Deputy Commissioner that petitioners failed to comply with the time limit for filing appeals with the Commissioner. Like the ALJ, we find that the letter of April 29, 1997 from the State-operated district's Senior Associate Counsel was notice to petitioners that their claim for indemnification was being denied, and we find nothing in the circumstances presented to us that would warrant relaxation of the rule. We, therefore, affirm the Deputy Commissioner's determination to dismiss the matter.

July 6, 2005

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