

EDU #2660-07
C # 120-08
SB # 23-08

THOMAS LYGATE, :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF CARTERET, :
MIDDLESEX COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, March 17, 2008

For the Petitioner-Appellant, Stephen E. Klausner, Esq.

For the Respondent-Respondent, Lenox, Socey, Wilgus,
Formidoni, Brown, Giordano & Casey (Patrick F. Carrigg,
Esq.)

In a decision dated March 17, 2008, the Commissioner of Education (“Commissioner”) dismissed the appellant’s petition because it was filed out of time and the Commissioner found that relaxation of *N.J.A.C. 6A:3-1.3(i)* was not warranted. On April 4, 2008, appellant filed the instant appeal to the State Board of Education (“State Board”).

Pursuant to *N.J.A.C. 6A:4-1.11(a)*, appellant’s brief in support of his appeal was due on April 24, 2008, 20 days after he filed his notice of appeal. Counsel for appellant, however, failed to file a brief or request an extension for such filing by that date. By letter dated April 29, 2008, the Acting Director of the State Board Office notified appellant’s counsel of his failure to file a brief and

informed him that this matter was being referred to the Legal Committee of the State Board for consideration of appellant's failure to perfect the appeal.

On May 20, 2008, counsel for appellant faxed a letter brief to the State Board Office along with a certification stating that counsel's health issues were the reason for the late filing and thus, his failure to timely file a brief in support of the appeal should be excused on grounds of "excusable neglect." After fully considering this request and the context in which it was filed, the State Board has determined not to accept appellant's brief and to dismiss the appeal for failure to perfect. *N.J.A.C. 6A:4-1.12(a)*. See Paszamant v. Board of Education of the Borough of Highland Park, decided by the State Board of Education, April 1, 1992, aff'd, Docket #A-4812-91-3 (App. Div. 1993).

While counsel for appellant may have experienced health related issues, the State Board cannot ignore the fact that neither counsel nor his staff contacted the State Board Office to address the filing of a brief until almost one month after the brief was due. In addition, and of equal import, is the fact that counsel for appellant has a long history of ignoring State Board regulations governing appeals.

A review of State Board cases reveals a consistent pattern of non-compliance with filing requirements from appellant's counsel. For example, in Paszamant, supra, counsel for the appellant herein filed an untimely brief with the State Board and also alleged "excusable neglect" as proffered grounds for accepting the late filing. We refused to relax the filing rules in Paszamant stating that to do so would be "an affront to the interests of justice and the orderly

administration of appeals.” Id. at p. 3. We concluded “our rules are not to be taken lightly, and disregard of or indifference thereto cannot and will not be tolerated.” Id. at p.3-4. In a footnote on page 7 of the Paszamant decision, we cited four other cases in which appellant’s counsel failed to comply with filing requirements. Id. at p. 7 n.5. Those failures date back to 1988.

More recently, we dismissed an appeal filed by the counsel in the instant appeal in Marbut v. Board of Education of the Township of South Brunswick, decided by the State Board, January 8, 1997, based on his failure to file a brief in support of the appeal by the due date. This pattern of disregard for State Board filing requirements continues in the present case. As stated in previous decisions, this type of dereliction will not be tolerated by the State Board. Paszamant, supra.

Accordingly, we conclude that appellant’s counsel’s assertion of “excusable neglect” does not justify his failure to file an appeal brief within the prescribed time limits or to timely request an extension as permitted by regulation. See *N.J.A.C. 6A:4-1.5*. We, therefore, dismiss the appeal pursuant to *N.J.A.C. 6A:4-1.12 (a)*.

Ernest Lepore did not participate in the vote

May 21, 2008

Date of mailing _____