111-03

BOARD OF EDUCATION OF THE CALDWELL-WEST CALDWELL SCHOOL DISTRICT, ESSEX COUNTY,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
THE CHILDREN'S INSTITUTE,	:	
RESPONDENT.	:	

SYNOPSIS

Petitioning Board alleged that respondent, The Children's Institute (TCI), a nonprofit organization which operates an approved New Jersey State Department of Education private school for children with special education needs, submitted a tuition rebill for the 1999-2000 school year that was unreasonable, invalid and void *ab initio*. Respondent argued that the petition should be dismissed for failure to timely file.

Initially, the ALJ found that summary decision should not be granted against petitioner based on the issue of untimeliness since time limitations might have been relaxed if it was shown that petitioner was led to believe that it could informally seek relief and not be concerned with the time limitations. The ALJ, however, granted respondent TCI's Motion for Summary Decision finding summary decision was appropriate on the grounds that the record did not show that TCI's inclusion of lease termination costs and unamortized depreciation on leasehold improvements in the expenses of TCI for the 1999-2000 school year, in accordance with Generally Accepted Accounting Procedures, was patently unreasonable.

The Commissioner adopted the Initial Decision with modification.

March 14, 2003

OAL DKT. NO. EDU 5132-02
AGENCY DKT. NO. 67-3/02

BOARD OF EDUCATION OF THE CALDWELL-WEST CALDWELL SCHOOL DISTRICT, ESSEX COUNTY,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions were submitted in accordance with *N.J.A.C.* 1:1-18.4.

In its exceptions, respondent maintains its position that the Petition of Appeal was untimely filed, arguing that petitioner was on notice, no later than December 5, 2000, that The Children's Institute (TCI) was going to rebill petitioner; however, petitioner thereafter engaged in "stalling tactics," refusing to pay the rebilled amount. (Respondent's Exceptions at 6) Although respondent acknowledges the circumstances upon which the 90-day rule may be relaxed, it contends that it was simply not reasonable in this instance for petitioner "to have relied on alleged representations made by the Department of Education that the 90-day rule was inapplicable.***" (*Id*. at 12) Respondent asserts:

> As a matter of law, it should be determined that no trier of fact would be able to conclude that it was reasonable for a sophisticated school administrator versed in the ways of the Commissioner's procedures to believe, based upon a phone conversation with Verner, that a procedural rule, which is strictly applied and enforced, would be waived under these circumstances.

> Furthermore, even if Verner advised Skopak as asserted and Skopak relied upon the information, it would have no legal significance since ignorance of the law cannot toll the limitation period, except in instances of fraud.***" (citations omitted) (*Id*. at 13, 14)

Moreover, respondent points out that a review of petitioner's May 30, 2001 letter demonstrates that Skopak did not reasonably believe that he was relieved of the obligation to file a petition with the Commissioner, where the May 30, 2001 letter specifically states that Skopak was instructed by Verner that the District's only appeal was to the Commissioner of Education. (*Id*. at 14) Instead, respondent contends that petitioner knew of its obligation to file a petition but, instead, "gambled for a favorable decision in one forum and, having been unsuccessful, now seeks further relief in another.***" (*Ibid*.) Respondent contrasts this situation with *Brown, supra*, wherein the petitioner "was a teacher who likely never had a dispute submitted to the Commissioner and would not have been versed in either the Commissioner's procedures or the substantive law." (*Id.* at 15)

Finally, respondent argues that filing an action in the wrong forum does not toll the 90-day filing rule. (*Ibid*) "Likewise, seeking an informal resolution to a controversy does not relieve the petitioner of fulfilling the 90-day requirement." (*Id*. at 16) Respondent urges, therefore, that the petition should have been filed 90 days after receipt of TCI's rebilling on December 5, 2000 or, *at the latest*, 90 days after May 30, 2001, the date when petitioner concedes in its correspondence that it was informed that the rebilling was sought. (*Id*. at 17)

Upon careful and independent review of the record in this matter, the Commissioner determines to modify the Initial Decision, as set forth herein. Initially, the Commissioner concurs, for the reasons set forth in the Initial Decision, that the within petition was untimely filed. Additionally, the Commissioner finds no cause for relaxation of the 90-day

filing requirement, since this matter presents "no important or novel constitutional question or important public interest, which requires adjudication." (Initial Decision at 10)[1] Neither does the Commissioner find that strict adherence to the 90-day rule will yield an unjust result in this instance.[2]

Notwithstanding this determination, the Commissioner notes that inasmuch as the ALJ reaches to the merits of this matter, he acknowledges his concurrence with the ALJ's conclusion that petitioner has failed to meet its burden of proving that respondent's inclusion of the lease termination costs and unamortized depreciation on leasehold improvements in TCI's expenses for the 1999-2000 school year was patently unreasonable.

Accordingly, the Commissioner concurs that summary decision must be granted in respondent's favor.

IT IS SO ORDERED.[3]

COMMISSIONER OF EDUCATION

Date of Decision: March 14, 2003

Date of Mailing: March 14, 2003

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[1] In this connection, the Commissioner notes that respondent correctly states that "Caldwell's reliance on *Brunetti v. Borough of New Milford*, 68 *N.J.* 576, 586 (1975) and *TriState Ship. Repair and Drydock v. City of Perth Amboy*, 349 *N.J. Super*. 418, 423 (App. Div. 2002), is misplaced since both cases pertain to actions in lieu of prerogative writs ***." (Respondent's Reply Brief in Support of Motion for Summary Decision, at 4)

[2] In so determining, the Commissioner rejects the ALJ's finding that petitioner's communications with the Department, even assuming, *arguendo*, such communications were misleading, may warrant relaxation of the 90-day rule under these circumstances. (Initial Decision at 11) *See, Board of Education of the Township of East Brunswick, Middlesex County v. New Jersey State Department of Education, Division of Finance,* Commissioner Decision August 10, 2001, slip. op. at 10, wherein the Commissioner held that it is not the responsibility of Department personnel to inform a high level administrative officer of the specific procedural requirements for filing an appeal. The Commissioner dismissed the appeal as untimely and underscored, "[a]s stated by the New Jersey Supreme Court in *Kaprow*, attempts to resolve a claim through negotiations are irrelevant. Such efforts do not negate the fact of adequate notice nor do they toll the running of the time limitation."

[3] This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq*. and *N.J.A.C.* 6A:4-1.1 *et seq.*