



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

OFFICE OF ADMINISTRATIVE LAW JUDGES

IN THE MATTER OF

State of New Jersey,

Applicant.

Docket No. 13-67-R

Recovery of Funds Proceeding

ACN: ED-OIG/A02K0014

DECISION ON JURISDICTION

The Office of Administrative Law Judges (OALJ) does not have jurisdiction of the request for review filed on November 18, 2013 by the State of New Jersey Department of Education (New Jersey), concerning a notice of disallowance determination or program determination letter (PDL) issued on August 14, 2013, by Deborah S. Delisle, Assistant Secretary for Elementary and Secondary Education.¹ The appeal places in issue a request for recovery of funds in the amount of \$1,463,062.00.

According to its own admission, New Jersey received the PDL on August 16, 2013. Consequently, New Jersey was required to submit its application for review no later than October 15, 2013. By letter dated October 1, 2013, New Jersey requested an extension of time to appeal the August 14, 2013 PDL. In its October 1, 2013 request, New Jersey asked for an extension of time until November 14, 2013 to present its appeal. New Jersey's request was delivered during the federal government shutdown and was incorrectly sent to Assistant Secretary Delisle instead of the OALJ. After the end of the government shutdown, on October 24, 2013, Assistant Secretary Delisle sent New Jersey a letter stating that the OALJ has jurisdiction over proceedings concerning the recovery of funds. Accordingly, any request for an extension of the appeal deadline should be directed to the OALJ. Subsequently, on November 1, 2013, New Jersey submitted a motion for extension until November 29, 2013 to file its request for review. New Jersey then submitted its application for review to the OALJ on November 18, 2013.

In support of its position, New Jersey states that it was not able to contact the OALJ due to the government shutdown; thus, it could not orally request an extension of time, as allegedly

¹ See 20 U.S.C. § 1234a(b)(1).

permitted by 34 C.F.R. § 81.11. New Jersey argues that because it submitted its first request for an extension prior to the expiration of time to file its appeal, its second request for an extension of time be granted, nunc pro tunc. New Jersey further argues that no party was harmed or prejudiced by the short delay in filing its application for review.

On November 22, 2013, the above-captioned proceeding was reassigned from Chief Administrative Law Judge Allan C. Lewis to me.

These proceedings are governed under the General Education Provisions Act (GEPA). Under GEPA, 20 U.S.C. § 1234a(b)(1) and 34 C.F.R. § 81.37, an application for review of a disallowance decision must be filed no later than 60 days after the date the recipient receives the notice of a disallowance decision. “Any requirement to return funds that is not timely appealed becomes the final decision of the Department.” See 34 C.F.R. § 81.37(e).

For the reasons stated below, it is found that the application for review was not filed within the period prescribed by law; therefore, this tribunal must dismiss the matter as it has no jurisdiction. “Absent ambiguous language, jurisdictional statutes are strictly construed. Danko v. United States Dep’t of Labor, 846 F.2d 366, 369 (6th Cir. 1986); King v. Dole, 782 F.2d 274 (D.C. Cir. 1986), cert. denied, 479 U.S. 856 (1986). Prior decisions of the OALJ have established that the plain language of the statute here is clear regarding the period in which to file an application for review. In re Puerto Rico Dep’t of Education, Docket No. 89-2-R, U.S. Dep’t. of Education (Sep. 1, 1989) and In re Maine Dept. of Education, Docket No. 90-74-R, U.S. Dep’t of Education (Nov. 27, 1990).” See In re Oglala Lakota College, Docket No. 90-58-R, U.S. Dep’t. of Education (December 14, 1990). “It is a long-standing fundamental principle of American law that without jurisdiction, a tribunal “cannot proceed at all in any cause,” and when jurisdiction “ceases to exist [] the only function remaining... is that of announcing the fact and dismissing the cause.”” See In re State of California, Docket No. 09-05-R, U.S. Dep’t. of Education (Decision of the Secretary) (Order Accepting Petition for Interlocutory Review) (December 17, 2009), citing Will v. Hallock, 546 U.S. 345, 349 (2006) (citations omitted).

Consequently, since New Jersey’s application was not filed until November 18, 2013, it was untimely. New Jersey’s failure to submit its application until after its time to appeal the PDL expired cannot be considered nunc pro tunc. Moreover, despite the government shutdown, New Jersey still had an obligation to file its appeal within 60 days of receipt of the PDL. The OALJ does not have the authority to grant an extension of the 60-day filing requirement. Even if there had been no government shutdown, New Jersey still would have had to file its request for review by October 15, 2013; it would not be able to request an extension of time. New Jersey also makes no argument as to why it could not timely comply with the minimal requirements for filing a request for review under 34 C.F.R. § 81.37(c). The statutory timeframe for filing a request for review is a mandatory provision.² Similarly, the regulations allowing motions for an

² See 20 U.S.C. § 1234a(b)(1): “(1) A recipient that has received written notice of a preliminary departmental decision and that desires to have such decision reviewed by the Office **shall** (emphasis added) submit to the Office an application for review not later than 60 days after receipt of notice of the preliminary departmental decision. The application shall be in the form and contain the information specified by the Office. As expeditiously as possible, the Office shall return to the Secretary for such action as the Secretary considers appropriate any preliminary departmental decision which the Office determines does not meet the requirements of subsection (a)(2) of this

extension of time apply to requests made after a timely appeal has been filed. Timeliness is a jurisdictional matter that cannot be waived by the OALJ.

Thus, I have no jurisdiction over this matter and the request for review is hereby dismissed.

A handwritten signature in black ink, appearing to read "Rod Dixon", written over a horizontal line.

Rod Dixon
Administrative Law Judge

Issued: December 30, 2013
Washington, D.C.

SERVICE

On December 30, 2013, a copy of the attached document was sent by the OES and by mail to the following:

Jennifer J. McGruther
Deputy Attorney General
Office of the Attorney General
Department of Law and Public Safety
Division of Law
P.O. Box 112
Trenton, NJ 08625-0112
(courtesy email: Jennifer.McGruther@dol.lps.state.nj.us)

Michael J. Anderson, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110
(courtesy email: Michael.Anderson@ed.gov)

Kay E. Rigling, Esq.
Acting Assistant General Counsel
Elementary, Secondary, Adult, and Vocational Education Division
U.S. Department of Education
LBJ Building, Room 6E326
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110
(courtesy email: Kay.Rigling@ed.gov)

Operations Management Staff
Office of the General Counsel
U.S. Department of Education
LBJ Building, Room 6E300
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110

Deborah S. Delisle
Assistant Secretary for Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-6100
Attn: Delores Warner, Room 3W330
(courtesy email: Deborah.Delisle@ed.gov; Delores.Warner@ed.gov)

Accounts Receivable Group (by email only)
Office of the Chief Financial Officer
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-4330
(courtesy email: OCFOAccountsReceivable@ed.gov)