

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

ALICIA RICHARDSON, on behalf of Minor,
BR,

Petitioner,

vs.

GOVERNMENT OF THE VIRGIN ISLANDS,
DEPARTMENT OF EDUCATION, and the
17th ELECTED VIRGIN ISLANDS BOARD
OF EDUCATION,

Respondents.

CIVIL NO. ST-16-CV-483

PETITION FOR WRIT OF REVIEW

MEMORANDUM OPINION

THIS MATTER is before the Court on the “Motion to File Petition for Writ of Review Out of Time” filed by Petitioner Alicia Richardson, through counsel, on August 22, 2016. Respondents opposed Petitioner’s motion.¹ For the reason set forth herein, Petitioner’s motion will be denied and the petition for writ of review will be dismissed.

I. Relevant Background

On June 11, 2015, Petitioner Alicia Richardson filed a complaint with the V.I. Board of Education (BOE) challenging her daughter B.R.’s final English grade for the 2014-2015 school year. Richardson’s daughter was in twelfth grade, and the failing

¹ VI Board of Education filed an Opposition on September 22, 2016. The following day the Board of Education and Government of the Virgin Islands Department of Education filed a joint Opposition through separate counsel.

grade prevented her from graduating. *Richardson v. V.I. Dep't of Education*, VIBOE Case No. STT-001-2015, 2. (Sept. 4, 2015). Richardson claimed the grade was not an objective assessment of her daughter's academic achievements, not based on merit, and the teacher was discriminatory in her grading. *Id.* at 1.

The BOE held a hearing on June 24, 2015. *Id.* The BOE ultimately found Richardson failed to prove the grades were invalid, and her complaint was dismissed with prejudice on September 04, 2015.

On August 22, 2016, Richardson, on behalf of her daughter and through counsel, filed a "Petition for Writ of Review" pursuant to 5 V.I.C. § 1421-23 and Virgin Island Superior Court Rule 15 (Rule 15). Under Rule 15, Richardson's petition was untimely, but she simultaneously filed the instant motion asking the Court to accept her untimely petition. She asserts the late filing was not her fault, but instead her counsel "had a medical condition that interfered with his ability to timely file the Petition in this matter." Richardson's counsel offers to provide the Court, *in camera*, with documents to substantiate his medical condition.²

II. Discussion

A. Richardson has a basis to file a writ of review.

The Superior Court has jurisdiction over writs of review when the petitioner has "no appeal or other plain, speedy, and adequate remedy..." 5 V.I.C. 1422.

² Richardson's counsel in this petition for writ of review also represented her before the Board of Education.

Respondents BOE and Government of the Virgin Islands Department of Education (DOE) both point out that Title 17 V.I.C. § 23(c) states “All decisions rendered by the Board of Education...on complaints shall be final, *unless reviewed by the Governor.*” (emphasis added). Relying upon that language, both BOE and DOE argue that Richardson does not have grounds for a writ of review because her proper remedy is through the Governor. *See* BOE’s Opp’n 3. (“Not only does Petitioner have a plain, speedy remedy by first resorting to the Governor of the Virgin Islands...”); DOE’s Opp’n 2. (“This appeal has not been reviewed by the Governor...Under the doctrine of exhaustion of administrative remedies, this court lack jurisdiction...”).

However, 17 V.I.C. § 23 does not provide guidance on how—or if—a complainant may request the Governor to review a Board of Education decision. Therefore, the Court finds that Richardson does not have another plain, speedy, and adequate remedy; and as a result she does have grounds for a writ of review.³

B. The 30-day timeliness requirement in 5 V.I.C. § 1421 is a claims-processing rule.

Nothing within the Virgin Islands Code sets a specific deadline for filing a petition for writ of review. Instead, “[t]itle five, section 1421 et seq. of the Virgin Islands Code authorizes writs of review pursuant to Superior Court Rule 15(a)...”

³ There is no indication that Richardson requested the Governor to review the subject decision. However, that is irrelevant in light of the lack of procedure for requesting a review.

Worldwide Flight Services v. Government of the Virgin Islands, 51 V.I. 105, 109 n.1 (VI. 2009). Rule 15 states the “petition shall be filed within *30 days* after the date of the decision or determination complained of...” V.I. Super. Ct. R. 15(a) (emphasis added).

“It is well established that time limits set exclusively by court rules are mere claims-processing rules which do not affect a court's subject-matter jurisdiction even if they may result in dismissal if violated.” *Gov't of the V.I. v. Crooke*, 54 V.I. 237, 253-54 (V.I. 2010). Therefore, the Court has subject matter jurisdiction of the petition for writ of review. Nevertheless, when a party timely invokes a claims-processing rule, application of the rule remains mandatory. *Hughley v. Government of the Virgin Islands*, 61 V.I. 323, 331-332, 2014 V.I. Supreme LEXIS 48, *11-12 (VI. Oct. 1, 2014) citing *Public Emples. Rel. Bd. v. United Indus. Workers-Seafarers Int'l Union*, 56 V.I. 429, 435-36 (V.I. 2012) (citing *Eberhart v. United States*, 546 U.S. 12, 19, 126 S. Ct. 403, 163 L. Ed. 2d 14 (2005)). Here the Respondents objected to Richardson’s “Motion to File Petition for Writ of Review Out of Time” at their first opportunity.

The Court notes that the purpose of claim-processing rules is to “assure relief to a party properly raising them, but do not compel the same result if the party forfeits them.” *Ventura v. People of the Virgin Islands*, 64 V.I. 589, 616-617, 2016 V.I. Supreme LEXIS 15, *39 (VI. May 4, 2016) citing *Eberhart v. United States*, 546 U.S. 12, 19, 126 S. Ct. 403, 163 L. Ed. 2d 14 (2005).

Even though a claims-processing statute may be equitably tolled or judicially modified in some circumstances, the Superior Court is obligated to enforce a claim-processing rule upon proper invocation by a party. *See Hughley v. Gov't of the V.I.*, 61 V.I. 323, 331 (2014) (“when a party timely invokes a claims-processing rule, application of the rule remains mandatory.”); *Pub. Emples. Rel. Bd. v. United Indus. Workers-Seafarers Int’l Union*, 56 V.I. 429, 435-36 (2012) (“both respondents properly challenged the timeliness of the petition for writ of review, and thus the Superior Court possessed an obligation to enforce the timeliness requirement”); *Ventura v. People of the Virgin Islands*, 64 V.I. 589, 617 (VI. 2016) (“[t]he purpose of claim-processing rules is to assure relief to a party properly raising them...”)

Richardson’s petition for writ of review was filed almost one year after the BOE entered its decision. Respondents DOE and BOE have properly challenged the timeliness of Richardson’s petition. Thus the Court must therefore assure their relief by enforcing the timeliness requirement. The Court must deny Richardson’s motion and dismiss the petition for writ. *Hughley* and *Ventura*.

III. Conclusion.

Petitioner Richardson filed her petition for writ of review 353 days after the Board of Education dismissed her claim. The 30-day filing requirement for writs of review is a claims-processing rule. Therefore, this Court has subject matter jurisdiction. However, Respondents properly invoked the timeliness requirement.

Therefore, Richardson's "Motion to File Petition for Writ of Review Out of Time" will be denied and the petition for writ of review will be dismissed.

An Order consistent with this Memorandum Opinion will be entered.

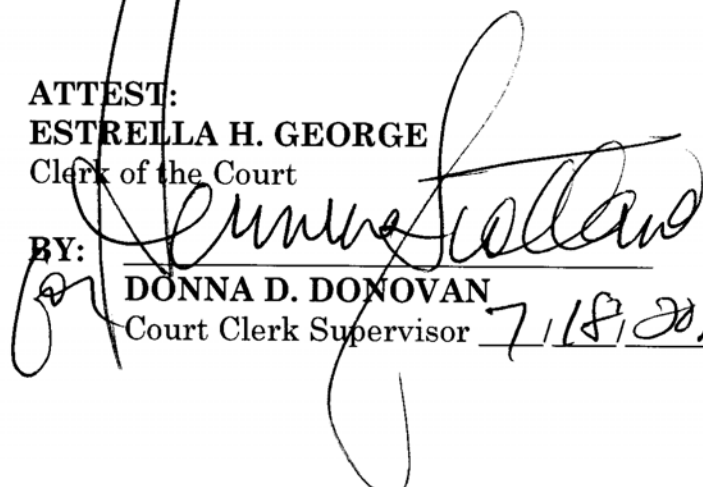
DATED: July 18, 2017



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

BY:



DONNA D. DONOVAN

Court Clerk Supervisor

7.18.2017