

SBE #469-04/98-169
SB # 2-99
SB # 55-99

IN THE MATTER OF THE REVOCATION :
OF THE TEACHING CERTIFICATES OF : STATE BOARD OF EDUCATION
THERESA A. LUCARELLI BY THE STATE : DECISION
BOARD OF EXAMINERS. :

Decided by the State Board of Examiners, November 5, 1998

Remanded by the State Board of Education, May 5, 1999

Decision on remand by the State Board of Examiners, September 23, 1999

For the Petitioner-Respondent, Arlene G. Lutz, Deputy Attorney General
(John J. Farmer, Attorney General of New Jersey)

For the Respondent-Appellant, Wills, O'Neill & Mellk (Arnold M. Mellk, Esq., of
Counsel)

On September 23, 1999, the State Board of Examiners rendered a decision in which it determined that the teaching certificates of Theresa A. Lucarelli (hereinafter "appellant") should be revoked due to unbecoming conduct. In an earlier decision, the Commissioner of Education had ordered that the appellant be dismissed from her tenured employment in the Brielle School District for threatening the Superintendent of Schools in a series of handwritten notes.

On December 17, 1999, the appellant filed a notice of appeal from the Board of Examiners' decision to the State Board of Education. By letter dated January 6, 2000, the Director of the State Board Appeals Office acknowledged receipt of that notice and

advised the appellant that the State Board had not yet received the record in this matter, which was to be certified to it by the Attorney General's Office on behalf of the Board of Examiners pursuant to N.J.A.C. 6:2-1.8(b). Consequently, the briefing schedule was placed into abeyance pending receipt of the record.

By letter dated February 7, 2000, the Director of the State Board Appeals Office advised the appellant that the record had now been certified to the State Board. The Director added:

Perusal of the record, however, reveals that the decision by the State Board of Examiners, which is the subject of this appeal, was rendered on September 23, 1999. N.J.S.A. 18A:6-29 requires that notice of appeal to the State Board must be taken within 30 days after the Board of Examiners has filed its decision. See N.J.A.C. 6:2-1.3. Pursuant to N.J.A.C. 6:2-1.4(a), the decision of the Board of Examiners is deemed filed three days after the date of mailing to the parties. In this instance, the exact date of mailing is not evident from the record. However, the Board of Examiners' decision does indicate that it was mailed "September, 1999." Even assuming that the decision was mailed on September 30, you were required to file a notice of appeal on or before November 3, 1999 under the statutory time limit that governs appeals to the State Board of Education.

Since your notice was not filed until December 17, this matter has been referred to the Legal Committee of the State Board of Education for consideration of the effect of your failure to file timely notice. If you wish to provide an explanation for such filing, you must do so by filing an original and 17 copies of an affidavit setting forth your explanation by February 22, 2000. The briefing schedule will remain in abeyance pending the Legal Committee's review of this issue.

On February 16, 2000, the counsel for the appellant submitted a certification in support of the filing date of the appeal. In his certification, counsel for the appellant indicated that the Board of Examiners' decision, although dated September 23, 1999,

had not been mailed until November 12, and that he had not received it until November 15. He attached a copy of the envelope from the Board of Examiners, which shows a postage meter date of November 12, along with a copy of the cover sheet from the Board of Examiners' decision time-stamped in his office on November 15.

Counsel for the appellant acknowledged that his notice of appeal had still been filed two days late, but averred that his secretary had miscalculated the filing deadline. He attached a certification from his secretary, who confirmed that she had miscalculated the due date for the appeal by two days.

Pursuant to N.J.S.A. 18A:6-28, appeals to the State Board must be taken "within 30 days after the decision appealed from is filed." The State Board may not grant extensions to enlarge the time specified for appeal. N.J.A.C. 6:2-1.5(a). In contrast to the period for filing petitions to the Commissioner of Education, see N.J.A.C. 6:24-1.2; N.J.A.C. 6:24-1.15, the time limit within which an appeal must be taken to the State Board is statutory, and, given the jurisdictional nature of the statutory time limit, the State Board lacks the authority to extend it. Mount Pleasant-Blythedale Union Free School District v. New Jersey Department of Education, Docket #A-2180-89T1 (App. Div. 1990), slip op. at 5. The Appellate Division has "consistently concluded" that appeals must be timely filed and that "neither an agency nor our court on appeal may expand a mandatory statutory time limitation." In the Matter of the Special Election of the Northern Burlington County Regional School District, Docket #A-1743-95T5 (App. Div. 1996), slip op. at 3, citing Scrudato v. Mascot Sav. & Loan Ass'n, 50 N.J. Super. 264 (App. Div. 1958).

As the Court explained in Scrudato, supra, at 269: “Where a statute sets up precise time limits within which an aggrieved party may seek recourse to administrative adjudication, those limits have been held mandatory and not subject to relaxation. The agency is without power to waive them and proceed to hearing and determination notwithstanding noncompliance.” The Court in Scrudato found that the fact that an application to the Commissioner of Banking and Insurance was filed only two days after the statutory deadline for such filing did not mitigate the invalidity of such action. The Court stressed that “[e]ven a minor deviation from the statutory limit in a particular case is fatal....This is not a mere technicality, but fundamental to the proper and necessary restraint of the exercise of judicial and administrative discretion. The remedy for results that either tribunal may deem unjust or unwise lies not in disregard of the statutory limitation, but in corrective legislation.” Id. at 271.

In Schaible Oil Co. v. New Jersey Dept. of Env'tl. Protection, 246 N.J. Super. 29 (App. Div. 1991), certif. denied, 126 N.J. 387 (1991), the Court stressed that “[f]irmly embedded in our law is the principle that ‘[e]nlargement of statutory time for appeal to a state administrative agency lies solely within the power of the Legislature...and not with the agency or the courts.’ Hess Oil & Chem. Corp. v. Doremus Sport Club, 80 N.J. Super. 393, 396, 193 A.2d 868 (App. Div. 1963), certif. denied, 41 N.J. 308, 196 A.2d 530 (1964) (citations omitted)....”

In Yorke v. Board of Education of the Township of Piscataway, decided by the State Board of Education, July 6, 1988, aff'd, Docket #A-5912-87T1 (App. Div. 1989), the Court upheld the dismissal of an appeal by the State Board where it found that the notice of appeal had been filed one day late by the appellant’s counsel, who alleged that

he had misread or misunderstood the applicable regulations. The Court added that even if the statute could be construed to permit enlargement of the time for filing an appeal, the appellant therein had failed to establish good cause. See also In the Matter of the Grant of the Charter School Application of the International Charter School of Trenton, etc., Docket #A-004932-97T1 (App. Div. 1998) (the Court, upon reconsideration, upheld the State Board's dismissal of an appeal filed one day late).

In the instant case, the Board of Examiners' decision was rendered on September 23, 1999 and, according to the information provided by the appellant, mailed on November 12. Accordingly, pursuant to N.J.A.C. 6:2-1.4, the decision appealed from was deemed filed on November 15, 1999, three days after it was mailed. Therefore, as mandated by N.J.S.A. 18A:6-28, see N.J.A.C. 6:2-1.3(a); N.J.A.C. 6:2-1.4(a), as computed under N.J.A.C. 6:2-1.4(b), the appellant was required to file his notice of appeal to the State Board on or before December 15, 1999. As previously indicated, the appellant's notice of appeal was not filed until December 17.

Even if N.J.S.A. 18A:6-28 can be construed to provide us with the authority to enlarge the time limit for filing an appeal, we find no substantive basis to warrant doing so in this particular instance. While counsel for the appellant avers that the late filing resulted from a miscalculation by his secretary, it ultimately was his responsibility to assure compliance with the statutory filing requirements.

Accordingly, we dismiss the appeal in this matter for failure to file notice thereof within the statutory time limit as computed under the applicable regulations.

April 5, 2000

Date of mailing _____