

311-23

SEC Dkt. No. C71-20

OAL Dkt. No. EEC-04006-21

Agency Dkt. No. 8-7/23A

## New Jersey Commissioner of Education

### Final Decision

In the Matter of Sheila Brogan, Ridgewood Board  
of Education, Bergen County.

This matter involves an appeal of a School Ethics Commission (Commission) decision issued February 25, 2022, determining that appellant – a member of the Ridgewood Board of Education (Board) – violated *N.J.S.A. 18A:12-24(c)* of the School Ethics Act by failing to recuse herself from executive session on May 7, 2020, despite her personal interest in a lawsuit slated to be discussed. The Commission recommended that appellant be censured for the violation. For the reasons explained herein, the Commissioner holds that the appeal should be dismissed as untimely.

It is well-established that “any appeal of a determination of the School Ethics Commission shall be to the Commissioner of Education whose determination shall be a final agency action ....and appeal of that action shall be directly to the Appellate Division of the Superior Court.” *N.J.S.A. 18A:12-29.1*. Consistent with this statutory requirement, page 8 of the Commission’s February 25, 2022, decision states that “[p]arties seeking to appeal the Commission’s findings of violations *must* file an appeal pursuant to the standards set forth at *N.J.A.C. 6A:4*, et seq., within thirty (30) days of the filing date of the decision from which the appeal is taken.” Indeed, *N.J.A.C. 6A:4-1.3(c)* provides that “[a]ppeals of School Ethics Commission decisions finding that a school official has violated the School Ethics Act (Act), including the Code of Ethics for School Board Members, shall be made to the

Commissioner in accordance with this chapter.” Such appeals “shall be filed within 30 days of the filing date of the decision being appealed.” *N.J.A.C. 6A:4-2.2(b)*.

Instead of appealing the Commission’s decision to the Commissioner, appellant filed an appeal with the Superior Court of New Jersey, Appellate Division, on March 9, 2022. *In the Matter of Sheila Brogan, Ridgewood Board of Education, Bergen County*, Dkt. No. A-1959-21 (June 21, 2023) (slip op. at 4). Meanwhile, as the Commissioner had not received an appeal of the underlying violation from appellant, the Commissioner reviewed the Commission’s recommended penalty of censure as required pursuant to *N.J.S.A. 18A:12-29(c)*. On April 14, 2022, the Commissioner issued a final decision concurring with the recommended penalty and censuring appellant for violating the Act. *In the Matter of Sheila Brogan, Ridgewood Board of Education, Bergen County*, Commissioner Decision No. 79-22SEC (April 14, 2022). Over a year later, on June 21, 2023, the Appellate Division dismissed appellant’s appeal for lack of jurisdiction. *In re Brogan*, slip op. at 4-5.<sup>1</sup> Subsequently, appellant filed the instant appeal to the Commissioner on July 10, 2023, challenging the underlying violation.

Appellant contends that although her appeal to the Commissioner is untimely, it should be considered “[i]n light of the directions on the Final Decision dated April 14, 2022.” Appellant’s brief, at 5. That decision—a final agency decision of the Commissioner adopting the penalty recommended by the Commission—states in a footnote that it may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Although it is uncontested that appellant filed her appeal of the Commission’s decision with the Appellate Division on March 9, 2022, she now attempts to convince the Commissioner that she only did so because of the instruction in the footnote of the

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<sup>1</sup> See *N.J. Ct. R. 2:2-3(a)(2)* (permitting appeals to the Appellate Division as of right from “final decisions or actions of any state administrative agency or officer”).

Commissioner’s April 14, 2022 final agency decision regarding the penalty. Given the undisputed fact that her appeal to the Appellate Division was filed more than one month *before* the Commissioner’s final agency decision was issued, this explanation is clearly disingenuous.

Furthermore, appellant has not established any unusual or compelling circumstances that would warrant relaxation of the thirty-day filing deadline for appeals in the interest of justice. See *N.J.A.C. 6A:4-4.4(a)* (explaining that Chapter 4 rules “shall be construed to secure a just determination, simplicity of procedure, fairness in administration, and elimination of unnecessary delay” and are subject to relaxation by the Commissioner when not mandated by statute “in his or her discretion, if strict adherence to the rule is deemed inappropriate or unnecessary or would result in injustice”).

Accordingly, appellant’s appeal of the Commission’s February 25, 2022, decision is dismissed as untimely. The Commissioner’s April 14, 2022, final decision concurring with the penalty recommended by the Commission and censuring appellant for violating the Act remains in full force and effect.

IT IS SO ORDERED.<sup>2</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 18, 2023  
Date of Mailing: October 19, 2023

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<sup>2</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.