

SEC #T25-03
C #498-03SEC
SB # 44-03

IN THE MATTER OF THE SUSPENSION :
OF STEVEN NICHOLAS PURSUANT TO : STATE BOARD OF EDUCATION
N.J.S.A. 18A:12-33, HALEDON BOARD : DECISION
OF EDUCATION, PASSAIC COUNTY. :

Decided by the School Ethics Commission, July 22, 2003

Decided by the Commissioner of Education, August 21, 2003

Reconsideration denied by the School Ethics Commission, September 30,
2003

Decision on motion by the Commissioner of Education, October 14, 2003

For the Respondent-Appellant, Schwartz, Simon, Edelstein, Celso &
Kessler, L.L.P. (Allan P. Dzwilewski, Esq., of Counsel)

On July 22, 2003, the School Ethics Commission found that the respondent, Steven Nicholas, a member of the Haledon Board of Education, had violated N.J.S.A. 18A:12-33 of the School Ethics Act as a result of his failure to attend the training program required for new school board members. The Commission recommended that the respondent be suspended from his seat on the Haledon Board until he attended such training and that he be removed from the Board if he failed to attend one of the training sessions scheduled for October 2003. On August 21, 2003, the Commissioner of Education adopted the Ethics Commission's recommendation and ordered that the respondent be suspended from his seat on the Haledon Board and remain suspended

pending completion of the requisite training. In the event that the respondent failed to complete the training session in October 2003, the Commissioner directed that he be summarily removed from office.

On November 7, 2003, the respondent filed the instant appeal to the State Board, challenging both the Ethics Commission's determination that he had violated the School Ethics Act and the Commissioner's determination of the appropriate penalty. He also filed a brief in support of the appeal.¹ By letter dated November 13, 2003, the Director of the State Board Appeals Office notified counsel for the respondent that review of the notice of appeal indicated that it had been filed beyond the 30-day statutory time limitation of N.J.S.A. 18A:6-28, and, consequently, that this matter was being referred to the Legal Committee of the State Board for consideration of the effect of his failure to file the notice in a timely manner. Counsel was informed that he could submit a certification setting forth the circumstances of the late filing by November 24, 2003.

On November 24, counsel for the respondent submitted a certification in which he averred that the respondent had "presented a substantive public interest matter of transcendent importance, worthy of relaxation of the general rule regarding perfecting an appeal" and that "the late filing creates no prejudice to either party." Certification of Allan P. Dzwilewski, Esq., at 2. Counsel noted in addition that he had requested reconsideration of the School Ethics Commission's decision on September 22, 2003.

Pursuant to N.J.S.A. 18A:6-28, appeals to the State Board of Education 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. 6A:4-1.5(a). In

¹ The respondent relates in his brief that he complied with the Commissioner's directive and attended the required training program on October 21, 2003.

contrast to the period for filing petitions to the Commissioner of Education, see N.J.A.C. 6A:3-1.3(d); N.J.A.C. 6A:3-1.16, 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 Scudato v. Mascot Sav. & Loan Ass’n, 50 N.J. Super. 264 (App. Div. 1958).

As the Court explained in Scudato, 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 Scudato 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 Commissioner’s decision was rendered on August 21, 2003 and mailed on August 25. Accordingly, pursuant to N.J.A.C. 6A:4-1.4, the decision appealed from was deemed filed on August 28, 2003, three days after it was mailed. Therefore, as mandated by N.J.S.A. 18A:6-28, see N.J.A.C. 6A:4-1.3(a); N.J.A.C. 6A:4-1.4(a), as computed under N.J.A.C. 6A:4-1.4(c), the respondent was required to file his notice of appeal to the State Board on or before September 29, 2003.

As previously indicated, the respondent's notice was not filed until November 7, more than a month after the statutory deadline.

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 instance. Contrary to the respondent's contention, we find that he has not shown good cause for the delay in filing the notice of appeal. Moreover, even assuming arguendo that the statutory period for filing an appeal could be construed to have commenced when the School Ethics Commission denied the respondent's request for reconsideration of its decision of July 22, 2003, the respondent still filed his notice more than 30 days after the filing date of that determination, which was dated and mailed on September 30, 2003. Nor does the basis for this appeal, which challenges the statutory requirement for training for new school board members, warrant the extraordinary relief sought under these circumstances.

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.

Thelma Napoleon-Smith abstained.

January 7, 2004

Date of mailing _____