

OAL DKT. NO. EDU 9526-04
AGENCY DKT. NO. 113-3/04

JOSEPH C. PARLAVECCHIO AND	:	
ALFONSE R. ROSSI,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
STATE-OPERATED SCHOOL DISTRICT	:	DECISION
OF THE CITY OF NEWARK,	:	
ESSEX COUNTY,	:	
	:	
RESPONDENT.	:	
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners sought and were granted two extensions of time within which to file exceptions to the Initial Decision and such exceptions were filed pursuant to the extended timeframe. These and the District's reply submission were fully considered by the Deputy Commissioner, to whom this matter has been delegated pursuant to *N.J.S.A.* 18A:4-33, in reaching his determination herein.

Upon careful and independent review of the record, the Deputy Commissioner concurs with the Administrative Law Judge (ALJ) that the instant Petition of Appeal was filed well outside the 90-day mandatory timeline prescribed by *N.J.A.C.* 6A:3-1.3(d)(1). The Deputy Commissioner further finds that the record before him reveals no unusual or compelling circumstance which would warrant the relaxation of the 90-day rule and, therefore, as concluded by the ALJ, the petition must be dismissed. In so determining, the Deputy Commissioner rejects, as wholly without merit, petitioners' suggestion that their claim in this matter was a statutory right and, therefore, not subject to any statute of limitations. It is noted that *N.J.S.A.* 18A:16-6.1 requires a board to reimburse its employees for counsel fees and expenses incurred in defending against certain criminal actions. If the requisite statutory standard is satisfied, such indemnification is mandatory. *N.J.S.A.* 18A:16-6.1, read in conjunction with the correlative provisions of the immediately preceding statutory section, *N.J.S.A.* 18A:16-6, sets forth a two-pronged test for

determining whether board employees are entitled to indemnification in this regard, *i.e.*, 1) the underlying criminal action must be dismissed or result in a final disposition in favor of the employee **and** 2) any act or omission upon which the criminal charge is based must arise out of and during the course of the employee's performance of the duties and responsibilities of his position.

Here, there is no dispute that the first prong of the requisite test was satisfied by petitioners' acquittal of the federal charges and dismissal, with prejudice, of the state charges against them. Thus, the remaining issue is whether the underlying criminal charges arose within the legitimate scope of the petitioners' employment with the District. The Deputy Commissioner concludes that it cannot be credibly argued that the specific conduct of petitioners which formed the basis of the criminal charges brought against them, *i.e.*, concealed ownership of a building which they were leasing to the District, *arose out of* the performance of the duties and responsibilities of their employment with the District. *See Scirrotto v. Warren Hills Board of Education*, 272 N.J. Super. 391 (App. Div. 1994). Consequently, petitioners have not satisfied the requisite legal standard which would serve to entitle them to indemnification of their legal fees and expenses pursuant to *N.J.S.A.* 18A:16-6.1.

Accordingly, the Initial Decision of the OAL is adopted for the reasons stated therein. Summary decision is hereby granted to the District and the instant Petition of Appeal is dismissed.

IT IS SO ORDERED.*

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: February 2, 2005

Date of Mailing: February 2, 2005

* This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*