

SBE #434-01/97
SB # 62-97

IN THE MATTER OF THE ISSUANCE OF :
AN EMERGENCY TEACHING CERTIFI- : STATE BOARD OF EDUCATION
CATE TO CHRISTOPHER ILCONICH. : DECISION ON MOTION

Decided by the State Board of Examiners, January 23, 1997

For the Appellant, Zazzali, Zazzali, Fagella & Nowak (Richard A. Friedman,
Esq., of Counsel)

For the Respondent, Nancy Kaplen, Deputy Attorney General (Peter Verniero,
Attorney General of New Jersey)

On July 7, 1997, Christopher Ilconich (hereinafter "respondent") filed a notice of appeal to the State Board of Education. It appeared from the notice that respondent was seeking to appeal a decision issued by the State Board of Examiners on January 23, 1997 denying an application he had made for emergency certification as a teacher of the handicapped. In that respondent's notice appeared to be untimely, we notified him in a letter dated July 9 that this matter was being referred to our Legal Committee and that he could make a submission relating to the untimeliness issue by July 21.

By letter dated July 15, 1997, respondent indicated that this matter had arisen from an order issued by the Board of Examiners to show cause why his Teacher of Elementary School certificate of eligibility should not be revoked or suspended, at which time the Board of Examiners had also taken action to "block" issuance of an emergency certification to him during the pendency of those proceedings. Respondent characterizes this appeal as interlocutory and contends that his notice was filed within the five-day time

limit imposed by N.J.A.C. 6:2-2.3,¹ arguing that a letter dated June 23, 1997 from Ida Graham, Secretary for the Board of Examiners, constituted the first notice that may be used to assess the timeliness of his appeal. He further contends that the notice was timely because it was filed within five working days after June 27, 1997, the date on which he received Ms. Graham's June 23 letter.

After reviewing the record certified to us on behalf of the State Board of Examiners, we conclude that respondent had sufficient notice of the Board of Examiners' interim action upon receipt of a letter from Ida Graham dated May 12, 1997. By letter of that date, Ms. Graham advised respondent that:

As noted in our April 28, 1997 reply, upon receipt of your client's request for reconsideration of the State Board of Examiners' previous decision to block issuance of an Emergency Teacher of the Handicapped License, the Board discussed, deliberated and determined at its April 3, 1997 meeting that there were insufficient reasons tendered to the Board in April to alter its earlier decision to block issuance of that license to Mr. Ilconich. The reasons for the January 23, 1997 determination were provided in our letter decision dated February 14, 1997.

Certainly such letter provided respondent with notice of the "action" from which he is now seeking leave to appeal sufficient to permit him to comply with the filing requirements of N.J.A.C. 6:2-2.3.

Moreover, we find that respondent's notice of appeal was not timely even if we accept his contention that June 27, the date on which he received the Board of Examiners'

¹ N.J.A.C. 6:2-2.3 provides that:

Motion for leave to appeal an interlocutory order, decision or action shall be made by filing a motion for leave to appeal to the State Board of Education within five days after the action or service of the interlocutory decision or order. Motion for leave to appeal shall conform to the requirements of N.J.A.C. 6:2-1.18, except that the brief in support of the motion shall also include the merits of the issues sought to be appealed. The respondent's answer shall be filed within 10 days of service of motion.

June 23 correspondence, should be the operative date for assessing the timeliness of his notice. N.J.A.C. 6:2-2.3 requires that a motion for leave to appeal an interlocutory order or decision must be filed “within five days after the action or service of the interlocutory decision or order.” Thus, even accepting June 27 as the operative date for assessing the timeliness of the appeal, respondent’s notice would have been due on July 2, 1997. As noted, respondent did not file his notice until July 7. N.J.A.C. 6:2-2.3 does not provide five working days for filing a motion for leave to appeal, as respondent urges. Nor do we find the circumstances herein, as presented by respondent, to be such as to warrant relaxation of our rules. N.J.A.C. 6:2-1.19.

Accordingly, we conclude that respondent’s notice of motion for leave to appeal an interlocutory decision of the State Board of Examiners was not filed in a timely manner. We stress, however, that an interlocutory ruling may be subject to our review upon appeal from a final decision on the merits of the case. N.J.A.C. 1:1-14.10.

Finally, we note that although respondent sought to challenge a determination of the Board of Examiners to “block issuance” of an emergency certificate to him pending the outcome of proceedings to revoke his certificate of eligibility, see N.J.A.C. 6:11-4.4, an emergency certificate is, in contrast to standard certification, a substandard certificate issued for a period of one year only on application of a public school district. N.J.A.C. 6:11-4.3.

Maud Dahme recused herself from this matter.

September 3, 1997

Date of mailing _____