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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1959-21**

**IN THE MATTER OF
SHEILA BROGAN,
RIDGEWOOD BOARD
OF EDUCATION,
BERGEN COUNTY.**

Submitted March 28, 2023 – Decided June 21, 2023

Before Judges Messano and Gilson.

On appeal from the New Jersey Department of Education.

Cornell, Merlino, McKeever & Osborne, LLC, attorneys for appellant Sheila Brogan (Jeffrey R. Merlino and Anthony E. Russo, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Commissioner of Education (Donna Arons, Assistant Attorney General, of counsel; David L. Kalisky, Deputy Attorney General, on the briefs).

PER CURIAM

Appellant Sheila Brogan appeals from a February 25, 2022 final decision by the School Ethics Commission (SE Commission), which found that she had

violated N.J.S.A. 18A:12-24(c), a provision of the School Ethics Act (the SE Act), N.J.S.A. 18A:12-21 to -34. Because appellant did not file an appeal with the Commissioner of Education (Commissioner), we have no jurisdiction and are constrained to dismiss the appeal.

The Legislature enacted the SE Act in 1991 "'to ensure and preserve public confidence' in local school board members, N.J.S.A. 18A:12-22, by providing local board members with advance guidance on ethical conduct so that such members might conduct their personal affairs appropriately and within the bounds ethically expected." Bd. of Educ. of Sea Isle City v. Kennedy, 196 N.J. 1, 16 (2008) (citing N.J.S.A. 18A:12-24(j)). The SE Act created the SE Commission to review complaints alleging violations and to determine if those complaints are supported by probable cause. N.J.S.A. 18A:12-27, -29.¹ If the SE Commission finds no probable cause, the complaint is dismissed. If probable cause is found, the matter is referred to the Office of Administrative Law for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15. N.J.S.A. 18A:12-29(b).

¹ The SE Commission also has authority to review complaints concerning the Code of Ethics for School Board Members (the Code), N.J.S.A. 18A:12-24.1. In this matter, the SE Commission did not find a violation of the Code.

After the hearing, the SE Commission determines whether the conduct complained of constitutes a violation and, if so, recommends an appropriate sanction. The SE Commission's decision must be in writing and must set forth its findings and conclusions of law. N.J.S.A. 18A:12-29(c). "The [C]ommissioner shall then act on the [SE C]ommission's recommendation regarding the sanction." Ibid.

"[A]ny appeal of a determination of the [SE] Commission shall be to the [Commissioner] whose determination shall be a final agency action under the 'Administrative Procedure Act,' and appeal of that action shall be directly to the Appellate Division of the Superior Court." N.J.S.A. 18A:12-29.1 (citation omitted); see also N.J.S.A. 18A:12-29(d) (stating that any appeal of the SE Commission's determination "shall be in accordance with" N.J.S.A. 18A:6-9.1); N.J.S.A. 18A:6-9.1 (explaining that determinations by the Commissioner can be appealed to the Appellate Division). In other words, the Commissioner always reviews and acts on the SE Commission's recommendation regarding the sanction, but only reviews the finding of a violation if there is an administrative appeal.

Consistent with those statutes, the Department of Education has adopted regulations governing appeals from decisions by the SE Commission. See

N.J.A.C. 6A:4-1.3, -2.2. Those regulations state that an appeal of an SE Commission decision finding that a school official had violated the SE Act "shall be made to the Commissioner." N.J.A.C. 6A:4-1.3(c). The appeal to the Commissioner must be filed within thirty days after the final decision by the SE Commission. N.J.A.C. 6A:4-2.2(b).

Appellant did not file an appeal with the Commissioner. Instead, on March 9, 2022, appellant filed a notice of appeal with us from the SE Commission's decision issued on February 25, 2022. On April 14, 2022, the Commissioner issued her final agency decision regarding the recommended sanction of censure. The Commissioner expressly noted: "Respondent [Brogan] has neither filed exceptions to the recommended penalty nor instituted an appeal, pursuant to N.J.A.C. 6A:4-1, et seq., of the [SE] Commission's underlying finding of violation." Consequently, the Commissioner concurred with the censure recommended by the SE Commission. Appellant did not file an amended or new notice appealing the Commissioner's April 14, 2022 final agency decision.

We consider appeals from final decisions or actions of state administrative agencies or officers. R. 2:2-3(a)(2). We do not review administrative decisions when there is a further "right of review before any administrative agency or

officer, unless the interest of justice requires otherwise." Ibid. Our Supreme Court has explained that jurisdiction "is an issue that a court may raise at any time." Silviera-Francisco v. Bd. of Educ. of Elizabeth, 224 N.J. 126, 141 (2016).

The Court has also explained:

When a court recognizes that it lacks jurisdiction, such as when it recognizes that the appeal is not from a final judgment or final agency action, it may dismiss the appeal. Notice and an opportunity to respond to an issue raised by a party or a court are fundamental elements of due process and a fair hearing. Therefore, a court that recognizes a jurisdictional defect should notify the parties and permit them to address the issue of the court's jurisdiction.

[Ibid. (citations omitted).]

Accordingly, when we identified the jurisdictional issue in this matter, we directed the parties to file supplemental briefs to address the issue. The Commissioner responded and agreed that appellant had not filed an administrative appeal and this court has no jurisdiction. Appellant did not file a supplemental brief. The submission confirmed that there was no appeal to the Commissioner and no interest of justice warranting review of this appeal. Therefore, we lack jurisdiction and dismiss the appeal.

Dismissed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION