

SEC DKT. NO. D14-09
COMMISSIONER DKT. NO. 1-1/10A

IN THE MATTER OF JIMMY GARCIA, :
BOARD OF EDUCATION OF THE CITY OF : COMMISSIONER OF EDUCATION
UNION, HUDSON COUNTY. : DECISION

Decided by the School Ethics Commission, December 15, 2009

For Respondent-Appellant, Mary J. Hammer, Esq. (Bucceri and Pincus, Esqs.)

For the School Ethics Commission, Bryant L. Horsley, Jr., Deputy Attorney General
(Paula T. Dow, Attorney General)

The above-captioned matter comes before the Commissioner of Education by way of an appeal by Respondent-Appellant Jimmy Garcia (respondent), duly filed on January 14, 2010 pursuant to *N.J.A.C.* 6A:4, of the December 15, 2009 decision of the School Ethics Commission (Commission). In that decision, the Commission found respondent in violation of the School Ethics Act (Act) due to failure to file Personal/Relative Disclosure Statements as required by *N.J.S.A.* 18A:12-25/26, and recommended a penalty of censure if such statements were filed prior to issuance of the Commissioner’s determination on penalty pursuant to *N.J.S.A.* 18A:12-29 or suspension if they were not – such suspension to remain in effect until the date of the statements’ filing, except that if this did not occur within 30 days of the mailing date of the Commissioner’s decision, respondent would summarily be removed from his position.¹

¹ The referenced statements were, in fact, filed on January 7, 2010.

On appeal, respondent – who is employed by the Union City Board of Education as a Senior Network Administrator – argues that the Act does not apply to him because he does not meet the definition of “administrator” set forth at *N.J.S.A.* 18A:12-23, in that his position does not require educational certification and he does not supervise or evaluate other employees or make recommendations regarding hiring or the purchase or acquisition of property or services for the district. He further asserts that he did not know it had been deemed necessary for him to file disclosure statements until his receipt of the Commission’s December 15, 2009 decision finding him in violation of the Act, since he never received the promised response to his inquiry to the district’s School Business Administrator as to why he was asked to file such statements when he did not meet the definition of “administrator,” nor did he receive any communications from the Commission – neither its August 2009 warning letter nor its October 30, 2009 Order to Show Cause, the certified copy of which was returned to the Commission by the post office before he was able to retrieve it and the copy sent by regular mail having never reached him. (Respondent’s Brief at 2-3, with appended exhibits and certification)

In response, the Commission objects to respondent’s attempt to supplement the record through certification, exhibits and additional facts without having filed a motion to do so pursuant to *N.J.A.C.* 6A:4-2.5(c). It further asserts that respondent’s appeal must be dismissed because: 1) it is undisputed that respondent was over seven months late in filing his disclosure statements; 2) service of the Commission’s Order to Show Cause was effective pursuant to *N.J.A.C.* 1:1-7.1/2, having been sent via both regular and certified mail to respondent’s mailing address – the same address at which he undisputedly *did* receive the Commission’s December 15, 2009 decision; and 3) respondent did not present his objection to “administrator” status to the Commission despite ample opportunity to do so, thus circumventing the

Commission's ability to conduct a hearing on the issue. (Commission's Answer Brief at 3-7)

Notwithstanding the above, however, the Commission also observes:

In this instance, given the substantive arguments and new evidence presented by [respondent] that were not before the [Commission], it may be appropriate for the Commissioner to exercise his discretion, *sua sponte*, pursuant to N.J.A.C. 6A:4-2.5(c), to supplement the record with a remand to the [Commission] for further proceedings on the issues.

(Commission's Answer Brief at 7)

Replying to the Commission, respondent counters that the delay in filing his disclosure statements and the adequacy of the Commission's service of papers are immaterial to this matter, in light of his contention that the School Ethics Act does not apply to him at all and his certification that – however they were sent – he did not receive the Commission's mailings. Respondent further states that he does not object to remand of this matter to the Commission, if the Commissioner determines not to vacate the Commission's decision outright. (Respondent's Reply Brief at 1-3)

Upon review of the record and consideration of the parties' submissions, the Commissioner finds that adjudication of respondent's appeal at this juncture would neither be appropriate nor serve the interests of justice. Given the nature of respondent's arguments, the Commissioner cannot agree with the Commission that the appeal should be summarily dismissed; nor, however, can he agree with respondent that the Commission's decision should be summarily vacated. Rather, the central issues raised by respondent's appeal – whether he is subject to the requirements of the School Ethics Act and, if so, the credibility and effect of his representations as to why he failed either to respond to the Order to Show Cause or to timely file disclosure statements – fall squarely within the jurisdictional purview of the School Ethics

Commission and are properly considered by that body, with the benefit of a full record,² in the first instance.

Accordingly, the Commissioner deems the record of this matter supplemented by respondent's submissions on appeal and remands the matter to the Commission for further consideration in light of such supplementation.

The Commissioner does not retain jurisdiction.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: March 26, 2010

Date of Mailing: March 26, 2010

² The Commissioner finds that – given the nature of respondent's arguments on appeal – it would place form over substance to decline consideration of respondent's supporting submissions because not made by motion. *N.J.A.C. 6A:4-4.4(a)*

³ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.