

25, 2006 executive session the Commission discussed the submissions of both parties. At the public portion of the April 25, 2006 meeting, the Commission voted to find that Mr. Chiego violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members and to recommend that the Acting Commissioner of Education impose a penalty of censure. The Commission also decided not to forward the matter to the Attorney General's Office.

FACTS

The Commission was able to discern the following facts based on the pleadings, documents submitted and testimony.

Mr. Chiego is and was at all times relevant to this complaint a member of the Board. On September 26, 2005, Mr. Chiego signed a certification, which was submitted to the Commission in the matter of Patricia Lee, et al. v. Barri Beck, C01-05, (September 27, 2005). However, the Commission did not accept the certification of Mr. Chiego, which was submitted in the afternoon of September 26, 2005, because it was submitted out-of-time and the day before the September 27, 2005 Commission meeting on C01-05. In correspondence dated November 1, 2005, the attorney for the complainants in C01-05 indicated, in part, "that we did not receive any information from Mr. Chiego that the certification he signed was inaccurate until the above matter [C01-05] was dismissed." The certification contained information regarding Mr. Chiego's interpretation of what occurred at the September 22, 2005 Union Township Planning Board (Planning Board) meeting. Mr. Chiego stands by the truth of paragraphs one through 13, which represent an accurate, verbatim account of his observations of the September 22, 2005 meeting of the Union Township Planning Board. Mr. Chiego claims that paragraph 14 of the certification represents his attorney's summary of the previous paragraphs. Mr. Chiego said that he did not read paragraph 14.

The Board was on the agenda for the October 4, 2005 Planning Board meeting to discuss some facility issues. Prior to the appearance of the Board, Mr. Chiego's certification was discussed. One of its members said that Mr. Chiego "...disdains and insults every member of the Planning Board." One Planning Board member told the Board that School Board President Patricia Lee had not seen the certification until he had shown it to Ms. Lee that night. Another Planning Board member asked the Board President if she could explain the situation. The Board President said that, "the affidavit was filed individually by Mr. Chiego." She also indicated that she hoped that Mr. Chiego's action would not impact the Board's relationship with the Planning Board. A Planning Board member said that, "Mr. Chiego's action does not help the relationship." Another Planning Board member found it troubling. The Planning Board referred the matter to the Board Counsel for a response.

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members.

The complainants allege that Mr. Chiego violated N.J.S.A. 18A:12-24.1(a), (c), (e), (f) and (g) when he perjured himself on a certification that was filed on behalf of the Board with the Commission in another matter that was pending before the Commission.

N.J.S.A. 18A:12-24.1(a) provides:

I will uphold and enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Desired changes shall be brought about only through legal and ethical procedures.

In order for the Commission to find a violation of N.J.S.A. 18A:12-24.1(a), the complainants would have to provide the Commission with a determination from the courts or the Commissioner of Education that Mr. Chiego violated a law, rule or regulation of the State Board of Education, or a court order pertaining to the schools. Absent such a determination, the Commission cannot find a failure to enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. The Commission also notes that there is no evidence to show that Mr. Chiego attempted to make any change. Therefore, the Commission finds that Mr. Chiego did not violate N.J.S.A. 18A:12-24.1(a).

N.J.S.A. 18A:12-24.1(c) provides:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

In order for the Commission to find a violation of N.J.S.A. 18A:12-24.1(c), the Commission must first determine if Mr. Chiego's action in filing the certification with the Commission was board action. The evidence before the Commission supports a determination that Mr. Chiego's action was not Board action. The Board president told the Planning Board that Mr. Chiego filed the certification individually. The evidence also shows that the Board President was not even aware that Mr. Chiego had filed the certification with the Commission until the night of the Planning Board meeting on October 4, 2005. Mr. Chiego's filing of the certification was not done in furtherance of his Board duties. The complainants have not presented any evidence to show that Mr. Chiego's action was board action. Therefore, the Commission finds that Mr. Chiego did not violate N.J.S.A. 18A:12-24.1(c).

N.J.S.A. 18A:12-24.1(e) provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

The Commission initially determined at its March 28, 2006 meeting, that Mr. Chiego did not violate N.J.S.A. 18A:12-24.1(e). However, upon further review of the evidence and the submissions of both parties, at its April 25, 2006 meeting, the Commission voted to find that Mr. Chiego violated N.J.S.A. 18A:12-24.1(e) based on the reasoning below.

To find a violation of N.J.S.A. 18A:12-24.1(e), the Commission must first determine whether Mr. Chiego's action in signing the certification was private action. The Commission determined above that, based on the evidence, Mr. Chiego's action was not board action. The same evidence that led to the Commission's finding that the action was not board action also leads to a conclusion that the action was private action. The Board president, who was unaware that Mr. Chiego had filed the certification, told the Planning Board that Mr. Chiego filed the certification individually. Based on the evidence, the Commission finds that Mr. Chiego's action in filing the certification with the Commission was private action.

The Commission must next determine if Mr. Chiego took private action that may compromise the Board. Mr. Chiego's certification contained information regarding his interpretation about what occurred at the September 22, 2005 Planning Board meeting. The Board was on the agenda for the October 4, 2005 Planning Board meeting to discuss facility issues. The evidence shows that the Planning Board was so concerned with the certification that Mr. Chiego filed, that at the October 4, 2005 meeting, prior to the Board's appearance before the Planning Board, Planning Board members asked the Board president to provide an explanation of the situation. At that Planning Board meeting, there was also a discussion between the Board president and the Planning Board regarding the impact of Mr. Chiego's action on the relationship of the Board with the Planning Board. One Planning Board member said that "Mr. Chiego's action does not help the relationship." The Planning Board ultimately referred the matter to their attorney. Based on the evidence, the Commission finds that when Mr. Chiego filed the certification with the Commission, he took private action that may compromise the Board. Therefore, the Commission finds that Mr. Chiego violated N.J.S.A. 18A:12-24.1(e).

N.J.S.A. 18A:12-24.1(f) provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

There is no evidence to show the involvement of any special interest or partisan political groups. Mr. Chiego submitted the certification in support of the complainants in C01-05 who are not special interest or partisan political groups. Furthermore, there is no evidence to show that Mr. Chiego used the schools for his gain or the gain of his friends. His submission of the certification was unrelated to the use of the schools. Therefore, the Commission finds that Mr. Chiego did not violate N.J.S.A. 18A:12-24.1(f).

N.J.S.A. 18A:12-24.1(g) provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

Mr. Chiego stands by the truth of paragraphs one through 13 in the certification, since they set forth his observations, but argues that paragraph 14 represented his attorney's summary of the previous paragraphs. Mr. Chiego also certified that he did not read paragraph 14. This evidence creates an inference that paragraph 14 is inaccurate. For this reason the Commission initially found, at its March 28, 2006 meeting, that Mr. Chiego violated N.J.S.A. 18A:12-24.1(g). However, upon further review of the evidence and the submissions of both parties, at its April 25, 2006 meeting, the Commission concluded that the certification contained information that was Mr. Chiego's interpretation of what occurred at the September 22, 2005 Planning Board meeting. It represented Mr. Chiego's opinion, which the Commission cannot find either accurate or inaccurate. Therefore, the Commission finds that Mr. Chiego did not violate N.J.S.A. 18A:12-24.1(g).

Based on further review of the evidence, which indicated that paragraph 14 was an opinion rather than a misstatement of fact, the Commission decided not to forward the matter to the Attorney General's office.

DECISION

For the reasons discussed above, the Commission finds that James Chiego violated N.J.S.A. 18A:12-24.1(e) of the Act. The Commission recommends that the Acting Commissioner of Education impose a penalty of censure because, although Mr. Chiego asserts that he did not read the entire certification when he signed it, he intended it to be submitted to the Commission for consideration. As a board member, he is responsible for ensuring the accuracy of his entire certification and he must be publicly held accountable for the consequences.

This decision has been adopted by a formal resolution of the School Ethics Commission. This matter shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation **for sanction only**, pursuant to N.J.S.A. 18A:12-29. Within 13 days from the date on which the Commission's decision was

mailed to the parties, Mr. Chiego may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C51-05

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof; and

Whereas, at its meeting of March 28, 2006, the Commission found that James Chiego violated N.J.S.A. 18A:12-24.1(g) of the Act; and

Whereas, at its meeting of April 25, 2006 the Commission vacated the March 28, 2006 decision and found that Mr. Chiego violated N.J.S.A. 18A:12-24.1(e) and recommended that the Commissioner of Education impose a sanction of censure; and

Whereas, at its meeting of April 25, 2006, the Commission reviewed a draft decision prepared by its staff and agrees with the decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on April 25, 2006.

Lisa James-Beavers
Executive Director