
**IN THE MATTER OF
SANFORD STUDENT
EVESHAM TOWNSHIP
BOARD OF EDUCATION
BURLINGTON COUNTY**

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**BEFORE THE SCHOOL
ETHICS COMMISSION**

**SEC Docket No. C40-09
OAL Docket No. EEC 2590-10
DECISION**

PROCEDURAL HISTORY

This matter arises from a complaint filed on October 16, 2009 by Lisa Mansfield and Bonnie Olt alleging that Sanford Student, a member of the Evesham Township Board of Education (“Board”) violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. The complainants specifically alleged that the respondent violated N.J.S.A. 18A:12-24(b), (c) and (g) of the prohibited acts portion of the Act and N.J.S.A. 18A:12-24.1(c), (e), (f), (g), (i) and (j) of the Code of Ethics for School Board Members. An answer was submitted on behalf of the respondent on November 20, 2009. The respondent therein asserted that the complaint was frivolous. Pursuant to N.J.A.C. 6A:28-7.2(b), the complainant was accorded 20 days to respond to the allegation of frivolousness. A reply was filed on December 15, 2009.

The complainant and respondent were notified by letter dated January 27, 2010 that the Commission would review this matter at its meeting on February 23, 2010 in order to make a probable cause determination, in accordance with procedures set forth at N.J.A.C. 6A:28-10.9. At its meeting on February 23, 2010, the Commission found probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e), as alleged in Count I of the complaint and also found that the complaint was not frivolous. Pursuant to N.J.A.C. 6A:28-10.7(c)2, the matter was transmitted to the Office of Administrative Law (OAL) for a *de novo* hearing where the Commission prosecuted those allegations in the complaint which it found probable cause to credit.

Following the hearing on this matter, the Administrative Law Judge (ALJ) concluded that the respondent violated N.J.S.A. 18A:12-24(b), as well as N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members. The ALJ recommended a penalty of censure. The Initial Decision of the ALJ was reviewed by the Commission at its January 24, 2012; however, the matter was tabled pending expiration of the time in which to file exceptions, pursuant to N.J.A.C. 1:1-18.4. Additionally, the Commission obtained an extension of time in which to consider the full record of this matter.

In his exceptions, the respondent does not challenge the factual findings or legal conclusions of the ALJ, but, rather objects to the ALJ’s recommended sanction of censure. The respondent argues that the ALJ failed to recognize that the Commission’s regulations allow the Commission to decline to recommend a penalty where it determines by majority vote that the violation was *di minimis*. The respondent contends, “that to the extent it has been determined by the ALJ that violations did occur, they are *de minimis* at best and, therefore, [he] should not be

censured.” (Exceptions at p. 2) The respondent further argues that the cases cited by the ALJ in support of the recommended penalty of censure are distinguishable from this matter. In particular, the respondent notes that the ALJ found “that there is no evidence that [he] attempted to gain any unwarranted privilege for himself.” (*Id.* at p. 4) Thus, the respondent reasons that he is not deserving of a censure.

ANALYSIS

Upon careful and independent review of the record, the Commission finds that the record amply supports the ALJ’s factual findings as well as the legal conclusion that the respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members. In this connection, the Commission underscores the ALJ’s finding that the respondent attempted to obtain an unwarranted privilege or advantage for TD Bank. (I/M/O Student, slip op. at p. 8) Inasmuch as N.J.S.A. 18A:12-24(b) provides that “[n]o school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family *or others*,” it is of no moment that the respondent himself was not the intended beneficiary of the unwarranted privilege or advantage. The Commission further finds that this record supports the conclusion that, in contacting TD Bank, which bid on the Board’s RFP for banking services, the respondent took action beyond the scope of his duties such that, by its nature, had the potential to compromise the board, so as to violate N.J.S.A. 18A:12-24.1(e). Contrary to the respondent’s urging, the Commission declines to find that these violations are *de minimis*.

DECISION

For the reasons set forth above, the Commission adopts the Initial Decision of the ALJ finding that the respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A: 12-24.1(e).

PENALTY

The Commission further concurs that the appropriate penalty is a censure, as recommended by the ALJ. In addition to the cases cited by the ALJ, the Commission also notes that censure was the appropriate penalty where a Board member was found in violation of N.J.S.A. 18A:12-24(b) when she used her position to acquire mailing labels containing student information that were used to send mailings for her husband’s mayoral campaign. (I/M/O Michele Russo, Hoboken Bd. of Ed., Hudson County, C18-01 (February 26, 2002) Commissioner of Education Decision No. 167-02SEC, decided April 18, 2002. Moreover, it cannot be overlooked that the respondent was found to have violated N.J.S.A. 18A:24.1(e), which alone could support the within penalty. See, Dericks et. al v. Schiavoni, Sparta BOE, Sussex County, C41-07 (February 24, 2009) *aff’d* Commissioner of Education Decision No. 260-09SEC, decided August 18, 2009, where a Board member was found to have violated N.J.S.A. 18A:12-24.1(e) when he sent a letter to the editor without the full knowledge and consent of the Board which addressed Board matters and administrative issues.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the School Ethics Commission’s recommended sanction. Parties may

either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of violation may file, within **13 days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, indicated below. Such exceptions must be forwarded to: 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.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4 within **30 days** of the filing date of the decision from which the appeal is taken. The filing date shall be three days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (13 days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender
Chairperson

Mailing Date: February 29, 2012

Resolution Adopting Decision – C40-09

Whereas, the Commission found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members; and

Whereas, the Commission transmitted the matter to the Office of Administrative Law for a *de novo* hearing; and

Whereas, the Administrative Law Judge concluded in his Initial Decision that the respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e) and recommended a penalty of censure; and

Whereas, after consideration of the full record, at its meeting on February 28, 2012, the Commission adopted the Initial Decision of the ALJ;

Whereas, the Commission finds that the within decision accurately memorializes its adoption of the ALJ's recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of its decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on February 28, 2012.

Joanne Boyle, Executive Director
School Ethics Commission