

member of the Board, violated N.J.S.A. 18A:12-24.1(d), (e), and (f). Each of these matters, with the exception of C43-13, was transmitted to the OAL on or about March 25, 2014, following receipt of each Respondent's Answer. On or about September 17, 2014, and following the Commission's receipt of Respondent Page's Answer, C43-13 was also transmitted to the OAL.

All of the foregoing Complaints were heard together on September 5, 2017, by Administrative Law Judge John S. Kennedy (ALJ Kennedy), and subsequently consolidated by Order dated November 22, 2017. On October 10, 2017, and after receipt of closing briefs, the record closed in this consolidated matter.

In an Initial Decision issued on December 21, 2017, ALJ Kennedy found that none of the Respondents violated any subsection of N.J.S.A. 18A:12-24.1 in creating, passing, discussing, and/or voting on a petition of public interest during the Board's executive session; that Respondent Page did not violate N.J.S.A. 18A:12-24.1(e), (f), (g), (i), or (j) when he voted to place Complainant Bailey on administrative leave and then voted to approve the Board's legal bills, including those that related to an action/proceeding that Complainant Bailey had filed against him; that Respondent Bright violated N.J.S.A. 18A:12-24.1(j) because he utilized his position as a Board member to usurp the authority of the Superintendent; and that Respondent Davenport violated N.J.S.A. 18A:12-24.1(e), (g), (i), and (j) when he (1) approached and questioned a building principal about a personal matter which, ultimately, led the building principal to visit her doctor and contact law enforcement, (2) had an encounter with a District employee during which he made an inappropriate gesture and used a racial epithet, and (3) blatantly disregarded the Board's policies regarding the use of facilities. Based on these findings, ALJ Kennedy recommended that Respondent Bright be censured, and that Respondent Davenport be suspended for thirty (30) days.

The Commission acknowledged receipt of ALJ Kennedy's Initial Decision on December 21, 2017; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was February 5, 2018. Prior to February 5, 2018, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to receive and review the full record, including the parties' Exceptions (if any). Pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, and for good cause shown, the Commission was granted an extension until March 22, 2018.

At its meeting on January 23, 2018, the Commission considered the record in this matter. At its meeting on February 27, 2018, and for the reasons more fully detailed below, the Commission voted to adopt all of ALJ Kennedy's findings of fact; to adopt the legal conclusion that none of the named Respondents violated any subsection of N.J.S.A. 18A:12-24.1 in creating, passing, discussing, and/or voting on a petition of public interest during the Board's executive session; to adopt the legal conclusion that Respondent Page did not violate N.J.S.A. 18A:12-24.1(e), (f), (g), (i), or (j) when he voted to place the former Superintendent on leave and then voted to approve the legal bills relating to the action/proceeding that the former Superintendent filed against him; to adopt the legal conclusion that Respondent Bright violated N.J.S.A. 18A:12-24.1(j) when he, in his capacity as a Board member, questioned, reprimanded, and coerced action by a District employee relative to personnel matters; to adopt the legal conclusion that

Respondent Davenport violated N.J.S.A. 18A:12-24.1(e), (g), (i), and (j) when he (1) approached and questioned a building principal about a personal matter which, ultimately, led the building principal to visit her doctor and contact law enforcement, (2) had an encounter with a District employee and, in the course thereof, made an inappropriate gesture and used a racial epithet, and (3) blatantly disregarded the Board's policies regarding the use of facilities; to recommend a penalty of censure for Respondent Bright; and to revise the recommended penalty for Respondent Davenport from a suspension of thirty (30) days, to a suspension of sixty (60) days.

II. INITIAL DECISION

In his Initial Decision, ALJ Kennedy issued the following findings of fact:

1. [Respondent] Davenport was a member of the [Board]. He engaged in conversation with [the building principal] in the elevator at the Middle School on June 5, 2013, on a topic of personal concern and business. He wanted to address the upset of his wife for a comment made by the principal's mother at a meeting two weeks prior.

2. [Respondent] Davenport's demeanor, tone and attitude in the course of that encounter was authoritative and caused her visible emotional upset. The conversation resulted in the principal being physically shaken and resulting in an emergency appointment with her maternity doctor. The principal's assigned training session was also interrupted.

3. [Respondent] Davenport encountered [a District employee] on July 10, 2013, and in response to [the District employee's] inappropriate statement, gave him the middle finger and called him a "stupid nigger." [Respondent] Davenport did that at the school facility while being a Board member and present on the property to discuss school business.

4. [Respondent] Davenport was a Board member at the public and executive session of the Board on August 13, 2013. He signed a political petition circulated within the executive session room. The petition and the topic was not part of the Board's agenda nor any legitimate business of the [Board]. He acknowledges that he was signing the petition to support and express a personal political view.

5. [Respondent] Davenport admits that he was at the Pleasantville High School gym with others on August 17, 2013, without any Board permission and without following any of the Board's policies in use of school facilities. Other than the fact that he had done it before, [Respondent] Davenport offered no other explanation.

6. [Respondent] Page signed the political petition regarding the public question in Pleasantville in the course of the [Board] executive session.

7. [Respondent] Rowell signed the political petition regarding the public question in Pleasantville in the course of the [Board] executive session.

8. [Respondent] Bright signed the political petition regarding the public question in Pleasantville in the course of the [Board] executive session.

9. In February 2013, [Respondent] Page voted to place [Complainant] Bailey on administrative leave. [Complainant] Bailey filed suit against [Respondent] Page. [Respondent] Page seconded a motion to have bills paid which included his legal bills. The legal bills were ultimately approved and paid at the direction of the State appointed monitor.

10. [Respondent] Bright contacted the District's Director of Public Safety...on several occasions in an attempt to have [him] hire individuals that [Respondent] Bright wanted hired without following District policy and procedure.

Based on the facts as set forth above, ALJ Kennedy issued several conclusions of law. First, regarding the political question petition that was distributed during the Board's Executive Session on August 13, 2013, he noted that all of the named Respondents admitted and acknowledged that the petition did not constitute Board business. Each Board member also testified that neither the petition, nor the contents of the petition, was discussed during executive session. Because the petition did not have any effect on, and was not related to what was discussed or occurred during either Executive Session or the public portion of the Board's meeting, ALJ Kennedy concluded that none of the Respondents violated any subsection of N.J.S.A. 18A:12-24.1. Because the allegations against Respondent Rowell solely related to creating, passing, discussing, and/or voting on a petition of public interest during the Board's executive session, and ALJ Kennedy found that this conduct did not violate the Act, the complaint against Respondent Rowell was dismissed.

Second, with regard to Respondent Page, and his vote to place Complainant Bailey on administrative leave and then to approve the Board's legal bills, including those related to an action/proceeding between Respondent Page and Complainant Bailey, ALJ Kennedy concluded that a violation of the Act had not occurred. Instead, ALJ Kennedy noted that the legal bills were ultimately approved and paid at the direction of the State appointed monitor and, therefore, there was no evidence that Respondent Page violated N.J.S.A. 18A:12-24.1(e), (f), (g), (i), or (j). Based on this determination, as well as the determination that Respondent Page's involvement in creating, passing, discussing, and/or voting on a petition of public interest during the Board's executive session did not violate any subsection of N.J.S.A. 18A:12-24.1, the complaint against Respondent Page was also dismissed.

Third, regarding Respondent Bright's communication with the District's Director of Homeland Security on July 9, 2013, ALJ Kennedy found that Respondent Bright called, questioned, and berated a school official about his performance, and also discussed with him who should be hired, and where they should be assigned. Because Respondent Bright utilized his position on the Board to usurp the authority of the Superintendent, and was not attempting to

support and protect school personnel, but rather to question, reprimand, and coerce action by an employee, ALJ Kennedy found that Respondent Bright violated N.J.S.A. 18A:12-24.1(j). In light of the fact that Respondent Bright is no longer a Board member, ALJ Kennedy recommended a penalty of censure.

Finally, with regard to Respondent Davenport, the ALJ found that he admitted that he approached and questioned a building principal about a “private issue,” namely Respondent Davenport’s belief that the building principal’s mother had engaged in disrespecting conduct toward Respondent Davenport’s wife at a public meeting. According to ALJ Kennedy, Respondent Davenport “had no board member duty or justification to pursue that personal issue as a public board concern,” and there is “no justification for [Respondent’s] statements or demeanor” which ultimately caused the building principal to visit her doctor and contact law enforcement. Based on his conduct, ALJ Kennedy found that Respondent Davenport violated N.J.S.A. 18A:12-24.1(e), (g), (i) and (j) because he knew that if there was an issue to be addressed with the building principal it was to be addressed to/through the Superintendent; Respondent Davenport has no individual power or authority and must only act through Board action; he took “private action” under the auspices of Board authority against a District employee; and Respondent Davenport’s conduct needlessly injured the building principal.

In addition, ALJ Kennedy found that Respondent Davenport’s interaction with another District employee on July 10, 2013, was “equally egregious,” and the “resulting gesture and racial epithet is unbecoming for an individual” who serves as a Board member. Board members are charged with supporting and protecting school personnel, and his interaction with this District employee violated this ethical obligation. As such, Respondent Davenport’s conduct on that date violated N.J.S.A. 18A:12-24.1(i).

The ALJ further concluded that Respondent Davenport engaged in personal action that compromised the Board when he violated the Board’s policies and regulations regarding the use of the District’s facilities. The ALJ rejected Respondent Davenport’s contention that he was “grandfathered” with permission to use the District’s facilities, finding instead that Respondent Davenport’s actions simply demonstrated his belief that the Board’s policies and regulations do not apply to him. ALJ Kennedy concluded that Respondent Davenport’s actions violated N.J.S.A. 18A:12-24.1(e).

As for the recommended penalty for Respondent Davenport, ALJ Kennedy indicated that, based on the “quantity and quality of ethical violations,” he has demonstrated a “consistent theme of conduct and action” that cannot be tolerated. Therefore, ALJ Kennedy concluded that a penalty of suspension for thirty (30) days was appropriate.

Finally, the Commission notes that the ALJ did not specifically discuss each alleged violation of the Act that was transmitted to the OAL. Specifically, the ALJ did not discuss the alleged violation of N.J.S.A. 18:12-24.1(a) or N.J.S.A. 18:12-24.1(f) by Respondent Davenport as articulated in C31-13; did not discuss the alleged violation of N.J.S.A. 18A:12-24.1(d) by Respondent Bright as set forth in C45-13; did not discuss the alleged violation of N.J.S.A. 18A:12-24.1(g) or N.J.S.A. 18A:12-24.1(h) by Respondent Rowell as articulated in C44-13; and did not discuss the alleged violation of N.J.S.A. 18A:12-24.1(a) or N.J.S.A. 18A:12-24.1(b) by

Respondent Page as set forth in C28-13. The Commission also notes that Petitioners did not file Exceptions to the ALJ's apparent dismissal of those claims. To the extent that the ALJ did not find violations of the Act for those claims, and because there is no objection in the record from Petitioners, the Commission dismisses those allegations.

III. EXCEPTIONS

Neither party filed Exceptions to the Initial Decision with the Commission.

IV. ANALYSIS

Upon careful and independent review of the record, the Commission adopts ALJ Kennedy's findings of fact as set forth above. Based on ALJ Kennedy's findings of fact, the Commission adopts ALJ Kennedy's legal conclusion that none of the named Respondents violated any subsection of N.J.S.A. 18A:12-24.1 in creating, passing, discussing, and/or voting on a petition of public interest during the Board's executive session; to adopt the legal conclusion that Respondent Page did not violate N.J.S.A. 18A:12-24.1(e), (f), (g), (i), or (j) when he voted to place the former Superintendent on leave and then voted to approve the legal bills relating to the action/proceeding that the former Superintendent filed against him; to adopt the legal conclusion that Respondent Bright violated N.J.S.A. 18A:12-24.1(j) when he, in his capacity as a Board member, questioned, reprimanded, and coerced action by a District employee relative to personnel matters; and to adopt the legal conclusion that Respondent Davenport violated N.J.S.A. 18A:12-24.1(e), (g), (i), and (j) when he (1) approached and questioned a building principal about a personal matter which, ultimately, led the building principal to visit her doctor and contact law enforcement, (2) had an encounter with a District employee and, in the course thereof, made an inappropriate gesture and used a racial epithet, and (3) blatantly disregarded the Board's policies regarding the use of facilities.

V. DECISION

The Commission determines to adopt the ALJ's Initial Decision dismissing the Complaints against Respondent Rowell and Respondent Page, and finding that Respondent Bright and Respondent Davenport violated the Act.

VI. PENALTY

Based upon the conclusion that Respondent Bright violated N.J.S.A. 18A:12-24.1(j) when he, in his capacity as a Board member, questioned, reprimanded, and coerced action by a District employee relative to personnel matters, matters which clearly do not fall within the purview of an individual Board member, the Commission concurs with ALJ Kennedy's recommended penalty of **censure**.

However, based upon the conclusion that Respondent Davenport violated N.J.S.A. 18A:12-24.1(e), (g), (i), and (j) in connection with three separate incidents over the course of several months, the Commission disagrees with ALJ Kennedy's recommended penalty of suspension for thirty (30) days. The Commission does not believe, based on the frequency of the

violations and the completely inappropriate conduct involved, that a thirty (30) day suspension is sufficient to impress upon Respondent Davenport the critical importance of abiding by the ethics rules and regulations that apply to all Board members. A suspension for thirty (30) days could result in missing only one (1) Board meeting.

Because the record is clear that Respondent Davenport exercised wholly unacceptable decision making in at least three separate incidents, the Commission recommends a penalty of **suspension for sixty (60) days**. The Commission is hopeful that a suspension for this duration will convey to Respondent Davenport that he must always be mindful of the ethical rules and regulations that apply to him, and that he must always be mindful of these obligations in all interactions, whether with District personnel, staff, students, or the public.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education (Commissioner) for review of the Commission's recommended sanctions. Parties may either: 1) file exceptions to the recommended sanctions; 2) file an appeal of the Commission's findings of violations of the Act; or 3) file both exceptions to the recommended sanctions and an appeal of the Commission's findings of violations of the Act.

Parties taking exception to the recommended sanctions of the Commission but *not disputing* the Commission's findings of violations may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended sanctions to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the Commission and all other parties.

Parties seeking to appeal the Commission's findings of violations *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4, *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the mailing date to the parties, as indicated below. In such cases, the Commissioner's review of the Commission's recommended sanctions will be deferred and incorporated into the Commissioner's review of the findings of violations on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (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 brief on appeal.

Robert W. Bender, Chairperson
School Ethics Commission

Mailing Date: February 28, 2018

**RESOLUTION ADOPTING DECISION –
C28-13, C31-13, C41-13, C42-13, C43-13, C44-13, and C45-13**

WHEREAS, pursuant to N.J.A.C. 6A:28-10.8, the School Ethics Commission (Commission) voted to transmit the above matters to the Office of Administrative Law for a plenary hearing; and

WHEREAS, by Order dated November 22, 2017, Administrative Law Judge John S. Kennedy (ALJ Kennedy) consolidated the above matters; and

WHEREAS, ALJ Kennedy issued his Initial Decision on December 21, 2017; and

WHEREAS, in his Initial Decision, ALJ Kennedy found that none of the Respondents violated any subsection of N.J.S.A. 18A:12-24.1 in creating, passing, discussing, and/or voting on a petition of public interest during the Board’s executive session; Respondent Page did not violate N.J.S.A. 18A:12-24.1(e), (f), (g), (i), or (j) when he voted to place Complainant Bailey on administrative leave and then voted to approve the Board’s legal bills, including those that related to an action/proceeding that Complainant Bailey had filed against him; Respondent Bright violated N.J.S.A. 18A:12-24.1(j) because he utilized his position as a Board member to usurp the authority of the Superintendent; and Respondent Davenport violated N.J.S.A. 18A:12-24.1(e), (g), (i), and (j) when he (1) approached and questioned a building principal about a personal matter which, ultimately, led the building principal to visit her doctor and contact law enforcement, (2) had an encounter with a District employee and, in the course thereof, made an inappropriate gesture and used a racial epithet, and (3) blatantly disregarded the Board’s policies regarding the use of facilities; recommended that Respondent Bright be censured; and recommended that Respondent Davenport be suspended for thirty (30) days; and

WHEREAS, neither party filed Exceptions; and

WHEREAS, at its meeting on January 23, 2018, the Commission reviewed and discussed the record, including the Initial Decision, and

WHEREAS, at its meeting on January 23, 2018, the Commission discussed adopting the findings of fact from the Initial Decision; adopting the legal conclusion that none of the named Respondents violated any subsection of N.J.S.A. 18A:12-24.1 in creating, passing, discussing, and/or voting on a petition of public interest during executive session; adopting the legal conclusion that Respondent Page did not violate N.J.S.A. 18A:12-24.1(e), (f), (g), (i), or (j) when he voted to place the former Superintendent on leave and then voted to approve the legal bills relating to the action/proceeding that the former Superintendent filed against him; dismissing the Complaint against Respondent Rowell; dismissing the Complaint against Respondent Page; adopting the legal conclusion that Respondent Bright violated N.J.S.A. 18A:12-24.1(j) when he, in his capacity as a board member, questioned, reprimanded, and coerced action by an employee relative to personnel matters; adopting the legal conclusion that Respondent Davenport violated N.J.S.A. 18A:12-24.1(e), (g), (i), and (j) when he (1) approached and questioned a building principal about a personal matter which, ultimately, led the building principal to visit her doctor and contact law enforcement, (2) had an encounter with a District employee and, in the course

thereof, made an inappropriate gesture and used a racial epithet, and (3) blatantly disregarded the Board's policies regarding the use of facilities; recommending a penalty of censure for Respondent Bright; and recommending a penalty of suspension of sixty (60) days for Respondent Davenport; and

WHEREAS, at its meeting on February 27, 2018, the Commission voted to approve the within decision; and

NOW THEREFORE BE IT RESOLVED, the Commission hereby adopts the within decision as a Final Decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on February 27, 2018.

Kathryn A. Whalen, Director
School Ethics Commission