

SEC # 33-96
SB # 97-98

IN THE MATTER OF EDWARD :
MERCER, BRICK TOWNSHIP BOARD : STATE BOARD OF EDUCATION
OF EDUCATION, OCEAN COUNTY : DECISION

Decided by the School Ethics Commission, October 28, 1997

For the Petitioner-Appellant, Wilbert & Montenegro (Ben Montenegro, Esq., of Counsel)

For the Respondent-Respondent, Thomas G. Gannon, Esq.

For the Respondent, Peter Wint, Deputy Attorney General (John J. Farmer, Attorney General of New Jersey)

On November 19, 1998, the Board of Education of the Township of Brick (hereinafter "Board") filed a notice of appeal to the State Board of Education from a determination by the School Ethics Commission that Edward Mercer, a member of the Board, had not violated N.J.S.A. 18A:12-24(b) of the School Ethics Act.

Pursuant to N.J.A.C. 6:2-1.11(a), the Board's brief in support of its appeal was due on December 9, 1998, 20 days after it filed its notice of appeal. The Board, however, failed to file a brief by that date. By letter dated December 17, 1998, the Director of the State Board Appeals Office ("Director") notified the counsel for the Board of his failure to file a brief. On or about January 5, 1999, counsel for the Board made a formal request that this matter be placed in abeyance while he attempted to obtain an audible copy of the tapes from the hearing held before the Ethics Commission. By letter

dated January 11, 1999, counsel for the Board confirmed that both opposing counsel had agreed to his request, and the briefing schedule was placed in abeyance.

On November 18, 1999, more than ten months after this matter was placed in abeyance, the Director of the Appeals Office, having heard nothing further from the counsel for the Board, requested that he advise her of the status of his efforts to obtain the hearing tapes so that the briefing schedule could be reestablished. Counsel for the Board did not respond to that letter. By letter dated January 13, 2000, the Director advised the counsel for the Board that, given these circumstances, this matter was being referred to our Legal Committee.

After consideration of the circumstances, we dismiss the appeal in this matter. The counsel for the Board failed to advise us of the status of his efforts to obtain an audible copy of the hearing tapes for more than a year after this matter was placed in abeyance, failing even to respond to the November 18, 1999 letter from the Director of our Appeals Office requesting such information. Nor has he filed a brief in support of the Board's appeal, more than 14 months after he filed a notice of appeal. We find such failures sufficiently egregious to warrant dismissal of the appeal.

February 2, 2000

Date of mailing _____