

was never any legal advice provided on the issue of his presence in the executive session. (*Ibid.*) Mr. Pettinelli further asserts that he was unaware that his attendance in the executive sessions would cause a legal conflict and that a review of the wording of *N.J.S.A.* 18A:12-24(c) would not have made him aware of the potential for such conflict since he did not stand to benefit in any respect from his presence in executive session. (*Id.* at 3)

With respect to the penalty recommended by the Commission, Mr. Pettinelli argues that any violation by him must be considered both inadvertent and technical, and that imposing a penalty greater than a reprimand would be unfair and unwarranted. (*Id.* at 6) In support thereof, Mr. Pettinelli points to numerous instances where the penalty of reprimand has been imposed in matters he claims involved much more severe and obvious violations of the School Ethics Act, such as, *inter alia*: 1) *In the Matter of Matilda Touw*, 97 *N.J.A.R.2d* (EDU) 343, where a Board member was reprimanded for *voting* on her son's reappointment as school custodian; 2) *In the Matter of Wayne Wurtz*, 96 *N.J.A.R.2d* (EDU) 843, where a Board member was reprimanded for *voting* on his wife's appointment as a classroom aide; 3) *In the Matter of Sheri Scozzaro*, decided by the Commissioner January 21, 1998, where a Board member was reprimanded for *voting* for her daughter's appointment as a substitute; 4) *In the Matter of Patricia Haines*, decided by the Commissioner November 27, 2000, where a Board member was reprimanded for *voting* on a resolution authorizing the sale of bonds on behalf of the Board by her employer; 5) *In the Matter of James Carpenter*, decided by the Commissioner February 1, 2002, where a Board member was reprimanded for *voting* to retain the bank by whom he was employed as the Board's financial institution; 6) *In the Matter of Katherine Mallette*, decided by the Commissioner, February 9, 1999, where a Board member was reprimanded for *actively participating* in all closed session and public-session discussion of the Board's purchase of her brother-in-law's property at two separate board meetings; 7) *In the Matter of Harrison*, 96 *N.J.A.R.2d* (EDU) 553, where a Board member was reprimanded for

voting on a contract extension for a construction project for which his company was a subcontractor; and 8) *Dilzer v. Sweet*, 96 N.J.A.R.2d (EDU) 132, where a Board's Vice-President was reprimanded for *soliciting* signatures from Board employees for a nominating petition for another board candidate. (*Id.* at 3-5, emphasis in text)

Mr. Pettinelli contends that, unlike the cases cited above, he did not participate in negotiations when he had a known conflict, did not vote for a family member or relative, did not use his position to obtain a benefit for anyone and did not actively participate in any Board action that would benefit himself or his brother. (*Id.* at 5) Mr. Pettinelli points out that he abstained from the vote on the amendment to the Board's nepotism policy, that he abstained from any vote on the position of the instrumental music teacher and that he abstained from any vote on his brother's appointment. (*Ibid.*) Thus, Mr. Pettinelli concludes, his conduct was far less severe than the conduct in the cases he has cited wherein the board member received the penalty of reprimand. (*Ibid.*) Accordingly, Mr. Pettinelli urges the Commissioner to impose a penalty no greater than a reprimand in this matter. (*Id.* at 6)

Initially, it must be emphasized that, pursuant to *N.J.S.A.* 18A:12-29(c) and *N.J.A.C.* 6A:3-9.1, the determination of the Commission as to violation of the School Ethics Act is **not reviewable by the Commissioner** herein. Only the Commission may determine whether a violation of the School Ethics Act occurred. The Commissioner's jurisdiction is limited to reviewing the sanction to be imposed based upon a finding of a violation by the Commission. Therefore, this decision is restricted solely to a review of the Commission's recommended penalty.

Upon a thorough review of the record and of the penalties assessed in cases where similar violations of the School Ethics Act have occurred, the Commissioner concludes that the recommended penalty of censure is disproportionately severe in the present instance. In so concluding, the Commissioner emphasizes that, while Mr. Pettinelli's violations of the Act are

serious infractions, it is essential that the sanction imposed is consistent with prior determinations.

A review of sanctions imposed for similar violations of the Act reveals that, in instances where a Board member has received a penalty of censure for his/her actions, the violations were more egregious than those found herein. In this regard, it is noted that, in its analysis the Commission found the within matter analogous to *In the Matter of James Russo and Thomas Scarano*, decided by the Commissioner April 16, 1998 and *In the Matter of Michael Kilmurray*, decided by the Commissioner April 15, 1998, wherein sanctions of censure were imposed. However, upon review of the particulars of these matters, the Commissioner finds that *Russo* and *Kilmurray* involved infractions of a more severe nature. In *Russo*, two Board members, one who had a sister and the other a fiancé and brother who were members of the teacher's bargaining unit, violated the Act when they served as the only two members of a board negotiations team that not only negotiated a contract with the teacher's bargaining unit, but also voted on the collective bargaining agreement. In *Kilmurray*, the board member was found to have violated the Act by: 1) interjecting himself into deliberations on the proposed appointment of his sister-in-law in closed session; 2) commenting that his sister-in-law and another candidate were both good candidates; and 3) making and supporting the motion to re-vote on the appointment of his sister-in-law when the original motion failed.

Additionally, other matters where a sanction of censure has been imposed include:

1) *In the Matter of William Gunning*, decided by the Commissioner July 29, 1994, where the board member was censured for voting on the superintendent's salary increase when his wife was the superintendent's confidential secretary; 2) *In the Matter of Mark Connolly*, decided by the Commissioner June 23, 1997, where the board member was censured for sitting in on the personnel committee's discussion of his wife's appointment as a teacher and asking a fellow board member to facilitate a re-vote; and 3) *In the Matter of Famularo*, decided by the

Commissioner March 16, 1998, where the board member was censured for participating in public and executive session discussions and voting in favor of a town councilperson for whom he had been a campaign manager, for the position of principal.¹

Accordingly, upon an extensive review of the above matters provided by Mr. Pettinelli wherein the penalty of reprimand was imposed, and an independent review of instances wherein the penalty of censure has been imposed, the Commissioner concludes that a reprimand is the appropriate penalty in this matter for the reasons explicated above.

Accordingly, IT IS hereby ORDERED that Dino Pettinelli be reprimanded as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: September 8, 2004

Date of Mailing: September 8, 2004

¹ In *Scannella v. Scudillo*, 95 N.J.A.R.2d (EDU) 190, *rev'd and remanded* State Board at 195, decided by the Commissioner *on remand*, 97 N.J.A.R.2d (EDU) 617, the board member was censured for casting the deciding vote for her son-in-law as superintendent and for selling gloves to district employees. However, at the time when the penalty for violation was determined, Ms. Scudillo was no longer a member of the Board, so that the penalties of suspension or removal from office were no longer possibilities.

² This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*