

IN THE MATTER OF DR. JOSEPH ATALLO :

PATERSON BOARD OF EDUCATION, : COMMISSIONER OF EDUCATION

PASSAIC COUNTY. : DECISION

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### SYNOPSIS

The School Ethics Commission found probable cause to credit allegations that respondent – a member of the Paterson Board of Education – violated the School Ethics Act, *N.J.S.A. 18A:12-24.1(e)*, by threatening the then Interim Superintendent while using profanity at an April 2005 public forum, and threatening a member of the public while using profanity at an April 2005 meeting of the Board of Education. The matter was transferred to the Office of Administrative Law for hearing.

The ALJ found that there is insufficient credible evidence to support the allegations against respondent, and concluded that the Commission has failed to satisfy its burden of proving, by a preponderance of credible evidence, that respondent violated *N.J.S.A. 18A:12-24.1(e)* in either of the two alleged incidents in April 2005. Accordingly, the ALJ issued an Initial Decision ordering that the findings of probable cause against respondent be dismissed.

The School Ethics Commission's Final Decision rejected the ALJ's findings, concluded that respondent had violated *N.J.S.A. 18A:12-24.1(e)* of the School Ethics Act with respect to the charges involving a member of the public, and recommended that the appropriate penalty for respondent's violation is a one-year suspension from the Board.

The Commissioner – whose jurisdiction is limited to reviewing the Commission's recommended sanction – found that the Commission's recommended penalty in this case was inconsistent with penalties issued in prior cases and insufficiently supported. Accordingly, the Commissioner found that the appropriate sanction for respondent in this matter is a three-month suspension from the Board. However, in view of respondent's allegations of fundamental error in the Commission's rejection of the ALJ's decision, the Commissioner stayed implementation of the penalty pending timely appeal by respondent to the State Board of Education.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

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The record of this matter and the decision of the School Ethics Commission (Commission) have been reviewed, as have respondent's exceptions and the Commission's reply pursuant to *N.J.A.C. 1:6C-18.3*. In its decision, the Commission found – following a hearing at the Office of Administrative Law (OAL) and contrary to the conclusion of the Administrative Law Judge (ALJ) – that respondent, Paterson Board of Education member Dr. Joseph Atallo, violated *N.J.S.A. 18A:12-24.1(e)* of the School Ethics Act (Act) so as to warrant a one-year suspension from the Board.

On exception, Dr. Atallo contends that the Commission had “no jurisdiction” to overturn the decision of the ALJ, having “failed to timely adopt, reject or modify [such] decision” and having “improperly based [its own decision] on the [ALJ’s] credibility determinations,” contrary to *N.J.S.A. 52:14B-10(c)*. (Exceptions at 1-9, quotation at 2) Dr. Atallo further contends that – even if he had violated the Act as found by the Commission – the recommended penalty is “without precedence, excessive, prejudicial, arbitrary, capricious, and inappropriate.” Citing two prior matters involving board members who confronted a member of the public or a school employee and received either a two-month suspension or a reprimand, Dr. Atallo argues that the penalty imposed against him is out of all proportion to his own (alleged) conduct – in addition to having been reached without rational basis and without the requisite weighing of aggravating and mitigating factors or

consideration of his history of service to the Board and community. (Id. at 9-11, quotation at 9; citing *In the Matter of John Talty and Sharon Kight, Brick Township Board of Education, Ocean County*, decided by the Commission January 24, 2006 and by the Commissioner March 1, 2006, affirmed State Board November 1, 2006, and *In the Matter of Charles Fischer, Eatontown Board of Education, Monmouth County*, decided by the Commission February 24, 2004 and by the Commissioner April 12, 2004)

In reply, the Commission states that Dr. Atallo's comments to the Commissioner must by law be confined to the Commission's recommended sanction, so that his arguments with respect to the Commission's finding of violation must be reserved for appeal pursuant to N.J.S.A. 18A:12-29(d). (Reply at 1-2) The Commission further urges adoption of its recommended sanction, asserting that it is necessary to ensure that members of the public are respected at Board meetings and that Dr. Atallo's conduct toward a community member – making threats, using profanity and indicating that he would see the person “outside” – was far more egregious than the conduct of the board member in *Talty and Kight, supra*, was witnessed by the public at a Board meeting (in contrast to *Fischer, supra*) and had the potential to compromise the Board by causing members of the public to avoid participating at Board meetings for fear that Board members would disrespect or retaliate against them. (Id. at 2-3)

Having considered the positions of Dr. Atallo and the Commission, the Commissioner initially emphasizes that the Commission's fact-finding and determination as to Dr. Atallo's violation of the School Ethics Act are not reviewable herein, since, by law, only the School Ethics Commission may determine whether a violation of the Act has occurred, and appellate review of this determination is expressly in the State Board of Education rather than the Commissioner, whose jurisdiction is expressly limited to reviewing

the Commission's recommended sanction once a violation has been found. *N.J.S.A.* 18A:12-29(c), *N.J.A.C.* 6A:3-9.1, and *N.J.A.C.* 1:6C-2.1. This remains so notwithstanding Dr. Atallo's contention that the Commission's decision is a nullity because the Commission lacked legal authority to reject the Initial Decision of the ALJ at the time and in the manner it did: Given the limits of her authority in school ethics matters, the Commissioner cannot reach alleged deficiencies in the Commission's decision, but must rather accept it as valid and review the Commission's recommended penalty in that light.

Turning to such penalty, however, the Commissioner concurs with Dr. Atallo that the Commission's recommendation is both excessive and insufficiently supported.<sup>1</sup> The Commissioner certainly does not disagree with the Commission that conduct of the type in which it found Dr. Atallo to have engaged is reprehensible and cannot be countenanced in public school district board of education members under any circumstances. However, the Commission has offered no explanation as to why Dr. Atallo's conduct was so much more egregious, or the circumstances of his offense so much more compelling, that he should warrant a penalty so much more severe than the two-month suspension imposed in *Talty and Kight, supra* – the case precedent most closely resembling the present matter – which involved a board member taking private action to confront and threaten a member of the public at a board meeting in response to comments made during the public comment session.<sup>2</sup>

This is particularly so in view of the fact that the vast majority of School Ethics decisions finding violation of the Act – even very serious violation – have resulted in

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<sup>1</sup> The Commission's recommendation reads in its entirety: “\*\*\*the Legislature found that ‘board members ...must avoid conduct which is in violation of the public trust...’ Dr. Atallo’s threat to Mr. Mutooni is one of the most egregious violations of the public trust that a board member can commit. Therefore, the Commission recommends to the Commissioner of Education that Dr. Atallo be suspended from the Board for one year.” (School Ethics Commission Decision at 4)

<sup>2</sup> The situation at issue in *Fischer, supra*, is somewhat different, involving a board member who contacted a board employee at home and made demands of her in an angry and insistent manner.

penalties substantially less than a one-year suspension. Indeed, the Commission's decisions since its inception<sup>3</sup> have included relatively few instances – other than for delay in obtaining required board member training or filing required disclosure statements – where penalties of suspension have been imposed, and such suspensions as have been issued – including those in training and disclosure cases – have almost invariably been short-term, usually for one or two months.<sup>4</sup> The sole instance of any suspension exceeding three months was a one-year suspension imposed under circumstances, and for reasons, entirely unlike those herein: There, the Commission recommended the unpaid suspension of the tenured school business administrator of a Type I school district for a period of time intended to ensure – in addition to conveying the extreme seriousness of his violation and the fact that he had persisted in holding dual office despite two instances of prior Commission advice – that he would not return to work for the same board members he had appointed in his capacity as mayor, and from whom he had received significant special treatment. *Irvington Municipal Council v. Michael Steele and Board of Education of the Township of Irvington, Essex County*, 95 N.J.A.R.2d (EDU) 123, penalty adopted by Commissioner March 9, 1995; affirmed by State Board September 9, 1995.

In consideration, then, of prior precedent, the Commission's articulated reasons for its recommended penalty, and its findings as to Dr. Atallo's violation of the Act – which, it is again stressed, must be accepted by the Commissioner – the Commissioner finds that the appropriate sanction to be imposed in this instance is a suspension of three months,

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<sup>3</sup> See <http://www.state.nj.us/education/legal/ethics/index.html> for decisions from January 1, 1997 and beyond; decisions from 1992-1996 resulting in the imposition of a penalty can be found in the *New Jersey Administrative Reports* (N.J.A.R.2d).

<sup>4</sup> The Commission has generally reserved removal for a handful of instances where board members were found to have engaged in persistent, extensive or especially flagrant violation of the Act. A few additional instances of removal would exist, but for the Commission's inability to impose a penalty greater than censure on a board member who had already resigned by the time of the Commission's ruling.

thus providing for consistency with *Talty and Kight, supra*, while also taking into account Dr. Atallo's use of profanity and threat of direct physical violence, as well as the fact that – through its ruling in *Talty and Kight* – the Commission had previously served notice that it deemed conduct of the type at issue herein to be a violation of the Act.

Accordingly, Dr. Joseph Atallo, as a school official found to have violated the School Ethics Act, is hereby suspended for a period of three months from his membership on the Paterson Board of Education. However, in light of Dr. Atallo's vigorous denial of the Commission's fact-finding and his allegations of fundamental error in the Commission's rejection of the decision of the Administrative Law Judge, the Commissioner determines *to stay implementation of the penalty ordered herein*, pending timely appeal by Dr. Atallo to the State Board of Education. If no such appeal is filed, the suspension shall be effectuated as ordered immediately upon expiration of the time for filing an appeal pursuant to *N.J.S.A. 18A:6-28* and *N.J.A.C. 6A:4-1.3*.

IT IS SO ORDERED.<sup>5</sup>

COMMISSIONER OF EDUCATION

Date of Decision: October 25, 2007

Date of Mailing: October 25, 2007

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<sup>5</sup> 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.* Commissioner decisions are deemed filed three days after the date of mailing to the parties. *N.J.A.C. 6A:3-1.14(c)*.