

IN THE MATTER OF DAVID KANABY :  
BOARD OF EDUCATION, OF THE : COMMISSIONER OF EDUCATION  
TOWNSHIP OF HILLSBOROUGH, : DECISION  
SOMERSET COUNTY. :  
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SYNOPSIS

The School Ethics Commission found probable cause to credit allegations that respondent – a member of the Hillsborough Board of Education – violated the School Ethics Act, *N.J.S.A.* 18A:12-24(b) and (c), and the Code of Ethics for School Board Members, *N.J.S.A.* 18A:12-24.1(c) and (i), by sending an email to the Superintendent of the Hillsborough School District in which he was critical of her handling of a matter involving respondent’s wife, a teacher in the district. The matter was transmitted to the Office of Administrative Law for hearing as a contested case.

The ALJ found, *inter alia*, that respondent violated *N.J.S.A.* 18A:12-24(b) and (c), and *N.J.S.A.* 18A:12-24.1(c) and (i), when he emailed the district superintendent in an attempt to secure an unwarranted privilege for his wife with respect to the disposition of two days of leave time. Accordingly, the ALJ determined that there is sufficient credible evidence to support the allegations against respondent, and issued an Initial Decision ordering that the findings of probable cause against respondent be affirmed. Subsequently, the School Ethics Commission’s Final Decision adopted the ALJ’s conclusions, and recommended a sanction consisting of a three-month 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. Accordingly, the Commissioner found that the appropriate sanction for respondent in this matter is a one-month suspension from the Board, to be effective as of the filing date of this decision.

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.

September 10, 2007

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The record of this matter and the decision of the School Ethics Commission (Commission) have been reviewed, as have the respondent's exceptions and the Commission's reply pursuant to *N.J.A.C.* 1:6C-18.3. In its decision, the Commission adopted the conclusion of the Administrative Law Judge (ALJ) – after a hearing at the Office of Administrative Law (OAL) – that respondent, Hillsborough Board of Education member David Kanaby, violated *N.J.S.A.* 18A:12-24(b) and (c) and *N.J.S.A.* 18A:12-24.1(c) and (i) of the School Ethics Act (Act) by sending an email to the district superintendent berating her for her treatment of respondent's wife with respect to the disposition of two days of leave time, by demanding the receipt of the superintendent's own leave-time records, by publishing the email to other board members and personnel, and by directing the email recipients to avoid "Sunshine Law" issues by refraining from responding to the email. The Commission recommended a sanction consisting of a three-month suspension from the Board.

The Commission's fact-finding and determination as to respondent's violation of the School Ethics Act are not reviewable herein, since, by law, only the 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. 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.

Respondent excepts to the sanction recommended by the Commission, contending that the three-month suspension is disproportionate to the penalties imposed by the Commissioner in prior cases with similar fact patterns.<sup>1</sup> For example, respondent cites *In the Matter of Edward Gore, Hamilton Township Board of Education*, SB 9-97 (State Board 6/4/97), where a school board member received a censure for securing the home addresses of district employees and sending them an intimidating letter suggesting that their jobs could be in jeopardy if they did not vote for the board candidates he endorsed. The Commissioner notes that *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, is a more recent case in which a board member was found to have attempted to direct the activities of a district employee. More specifically, a board member received a reprimand for contacting a board employee at home and making demands of her in an angry and insistent manner.

Petitioner argues that the greater sanction is warranted by the fact that multiple statutory provisions were found to have been violated. The Commissioner is not, however, persuaded that a greater penalty is automatically warranted based solely upon the number of

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<sup>1</sup> The Commissioner finds that most of the cases cited by respondent in support of his position pertain to voting and to participation in discussions and debate about matters as to which the respondent board members might not be impartial. As such, the cases are not sufficiently apposite to provide guidance in the present matter.

statutory provisions implicated by the offending behavior. It is the nature of the behavior that drives the penalty.

The present matter shares with the two cases cited *supra* the violations of N.J.S.A. 18A:12-24.1 (c) and (i); *i.e.*, respondent did not limit his actions as a board member to policy making, planning and appraisal, and breached the duty to support and protect school personnel. On the other hand, the two cited cases did not implicate a direct personal interest of the nature that underlay respondent's action in the present matter.

A school board member's ability to separate his personal interests from his service to the public is of utmost importance to the effectiveness of his service and to the public's trust in its school board. The record reveals, however, that by the date of respondent's email to the district superintendent, the issues pertaining to his wife's leave time had been reviewed by the school board and resolved. A significant economic interest was not involved here. On the other hand, as the Commission concluded, respondent did use his official position to attempt actions that another person – not similarly situated – would not have been privileged to take.

The Commission's decisions since its inception<sup>2</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. Having reviewed the positions of respondent and the Commission, and in consideration of prior precedent, the

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<sup>2</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).

Commissioner finds that the appropriate sanction to be imposed in this instance is a suspension of one month.

Accordingly, respondent, as a school official found to have violated the School Ethics Act, is hereby suspended for a period of one month from his membership on the Hillsborough Board of Education, to be effective as of the filing date of this decision.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: September 10, 2007

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<sup>3</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).*