

SCHOOL ETHICS COMMISSION DKT. NO. C24-07
COMMISSIONER OF EDUCATION APPEAL
DKT. NO. 13-11/08A

NATHALIE EVE YAFET, :
COMPLAINANT-RESPONDENT, :
V. : COMMISSIONER OF EDUCATION
ELBERT SMITH, : DECISION
HILLSIDE BOARD OF EDUCATION, :
UNION COUNTY, :
RESPONDENT-APPELLANT. :

Decided by the School Ethics Commission on October 28, 2008

For the Respondent-Appellant, Elbert Smith, Allan C. Roth, Esq.

For the Complainant-Respondent, Philip E. Stern, Esq.

Upon a comprehensive consideration of the record and the parties' submissions on appeal, the Commissioner affirms the decision of the School Ethics Commission that the appellant violated the Code of Ethics for School Board Members. More specifically, the Commissioner concurs that the evidence supports the charges of violations of *N.J.S.A. 18A: 12-24.1* (d), (e), (i) and (j). Further, the Commission adopts the penalty recommended to be imposed upon respondent.

In his appellate brief, respondent characterizes his conduct – particularly his multiple memoranda to the Hillside Board of Education – as innocent advisements to the Board and the district superintendent of “information he was provided.” The correspondence generated by respondent and the testimony produced at the Commission hearing, however, do not support

that characterization. The record shows recurrent actions by respondent that arrogated the superintendent's managerial and supervisory responsibilities.

Respondent claims, on appeal, that he did not become directly involved in administrative activities, which would be a violation of *N.J.S.A. 18A:12-24.1(d)*. The thrust of the argument appears to be that his activities were not equal to the interference perpetrated by board members in certain cases adjudicated by the Commission in the past. The Commissioner agrees with the School Ethics Commission, however, that respondent's actions did cross the line between proper board activity and school administration.

For example, Superintendent Dr. Raymond Bandlow appropriately managed the senior prank incident by interviewing his staff, consulting with the police and informing the board of education – in writing. Nonetheless, respondent took it upon himself to speak with the police chief and send memoranda to the board which contained incorrect information about administrative procedures to be followed with respect to the incident. This was appropriately viewed by the Commission as an attempt by respondent to “administer the schools.”

It is undisputed that respondent sent three memoranda to the Board of Education without the knowledge of the district superintendent, which memoranda heavily criticized high school principal EvaMarie Raleigh, among other things. The tone and substance of the correspondence went beyond the simple dissemination of information. The correspondence also reveals respondent's willingness to circumvent the superintendent and serve as a direct conduit of employee complaints to the Board of Education.

Dr. Bandlow, the District Superintendent, testified that the respondent's actions allowed employees to bypass him and improperly take their issues directly to the Hillside Board. That undermined both the superintendent and other school administrators – who articulated same to Bandlow. According to Bandlow, respondent's actions also poisoned the atmosphere in

which Principal Raleigh worked, impairing her ability to make progress in her newly acquired position, and affected Bandlow's ability to supervise her. The foregoing behavior violated respondent's duty under *N.J.S.A. 18A:12-24.1(i)* to protect and support school personnel in the performance of their duties.

The Commission found Bandlow's testimony to be credible, which determination the Commissioner may not disturb unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient competent evidence. *See, e.g., D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 *N.J. Super.* 269, 273 (App. Div. 2004). *See also, Cesare v. Cesare*, 154 *N.J.* 394, 412 (1998) (deference is especially appropriate when the evidence is largely testimonial; the trier of fact observes the witnesses, and can better evaluate their veracity than a reviewing body). Nothing in the record persuades the Commissioner that the School Ethics Commission's credibility determination was unsupportable.

Contrary to respondent's contentions in his appellate brief that his actions did not violate *N.J.S.A. 18A:12-24.1(e)* by compromising the board of education, respondent's dissemination of employee complaints to the Board before the complaints were investigated and evaluated – or even received – by the superintendent undermined the board's ability to impartially consider the matters prematurely brought to their attention by respondent. Ironically, although respondent states in his appellate papers that it is his responsibility to advise the district superintendent of complaints brought to his attention, he was greatly deficient in executing that responsibility – violating *N.J.S.A. 18A:12-24.1(j)*, which requires board members to refer all complaints to the chief school administrative officer. As the Commission noted, “there was nothing [in the record] to show that the superintendent's administrative solutions had failed....”

(Commissioner's Decision at 14) Consequently, there was no reason for respondent to usurp the superintendent's responsibilities – unilaterally or otherwise.

In reviewing appeals from decisions of the School Ethics Commission, the Commissioner's task is to ascertain whether the decision is supported by sufficient credible evidence in the record. The Commission's decision will not be disturbed unless the appellant can demonstrate that it's determination was arbitrary, capricious, inconsistent with the facts, or contrary to law. *N.J.A.C. 6A:4-4.1(a)*. In this case, the respondent has not met that burden, and the Commissioner sees no reason to overturn the Commission's findings or legal conclusions.

As to the penalty recommended by the Commission to be imposed upon respondent, the Commissioner rejects the contention that a lenient sanction is warranted on the grounds that his conduct was unmotivated by self-interest. Respondent repeatedly wrote directly to the board of education disparaging the individual who supervised his wife. While he protested that he was not micromanaging or passing judgment on Principal Raleigh, his writings reveal that he was. Even if respondent's wife's view of Raleigh had nothing to do with his actions, he nonetheless projected the appearance of bias and impropriety.

In the cases respondent cites to suggest that censure is a more appropriate penalty, *e.g. In the Matter of Matilda Touw*, 97 *N.J.A.R.* 2d (EDU) 343, and *In the Matter of Harrison*, 96 *N.J.A.R.* 2d (EDU) 553, the respondents' transgressions were not as extensive and had less of an impact upon the district than those of respondent in the present case. Consequently, the Commissioner finds them unhelpful in evaluating the penalty to be imposed. Equally unhelpful is the case cited by complainant in which a board member was removed after unilaterally usurping the district superintendent's authority to appoint staff, and violating the Open Public Meetings Act by attempting to unilaterally pull agenda items on the afternoon of a regularly scheduled public board of education meeting.

The Commissioner finds no reason to disturb the Commission's recommended penalty of a six-month suspension; Consequently, she adopts same as an appropriate sanction under the circumstances of this case.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: May 15, 2009

Date of Mailing: May 18, 2009

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.