

SCHOOL ETHICS COMMISSION DKT. NO. C49-07  
COMMISSIONER DKT NO. 1-3/09A

IN THE MATTER OF DAVID HOLLANDER, :  
SPRINGFIELD BOARD OF EDUCATION, : COMMISSIONER OF EDUCATION  
UNION COUNTY. : DECISION

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Decided by the School Ethics Commission, February 24, 2009

For the Respondent-Appellant, Brenda C. Liss, Esq. (Riker, Danzig, Scherer,  
Hyland, Perretti)

For the Petitioner-Respondent, School Ethics Commission, Melissa T. Dutton,  
Deputy Attorney General (Anne Milgram, Attorney General of New Jersey)

The above-captioned matter came before the Commissioner of Education by way of the March 9, 2009 appeal by Respondent-Appellant David Hollander (hereinafter “respondent”) of the February 24, 2009 decision of the School Ethics Commission finding him in violation of *N.J.S.A.* 18A:12-24.1(i) of the Code of Ethics for School Board Members<sup>1</sup> as alleged in Counts 3 and 4 of the complaint against him when on May 31, 2007 he sent a letter to the complainant Superintendent of Schools accusing him of allowing his administrative staff to violate Board policy and – by copies of this letter – directed his recriminations to the attention of State officials. The Commission recommended a penalty of censure for such violation.

In his appeal to the Commissioner, respondent argues that the Commission’s finding of a violation should be reversed because: 1) it is contrary to established precedent (where a challenged action by a board member is not threatening, demeaning or an attack on an employee, there is no violation); 2) it is unsupported by the evidence in the record and is

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<sup>1</sup> This provision provides: “I will support and protect school personnel in proper performance of their duties.”

arbitrary, capricious and unreasonable (*N.J.S.A. 18A:12-24.1(i)*) requires support of school personnel in the proper performance of their duties; respondent can't be convicted of failure to support conduct he considers improper or unsatisfactory; there is no evidence in the record that the Superintendent was performing "properly"); 3) it is contrary to public policy supporting the School Ethics Act (the Act's purpose is to engender public respect and confidence of boards and administrators; respondent's letter expressed concern that the Superintendent's actions were detrimental to effective governance, schools and students causing the Board to lose the trust of the community); 4) it is a violation of respondent's Constitutional Right to Free Expression (respondent had a right to express his views). Respondent further contends that should the Commissioner uphold the Commission's finding of a violation, the recommended penalty of censure should be overturned as such penalty is far out of proportion to the severity of the violation and inconsistent with prior Commission decisions involving similar facts. Respondent additionally maintains that the fact that he was a board member for only a year at the time he wrote the letter at issue and that he has not sought re-election and will no longer be a board member by the time a decision is issued in this matter should be factors mitigating in favor of a penalty of reprimand at most. Finally, respondent urges the Commissioner to overturn the Commission's decision denying his request for a sanction to be imposed on the Superintendent for filing a frivolous complaint. (Respondent's Brief in Support of Appeal at 1-31)

In reply, the Commission submits 1) the Commission's finding of a violation for sending a letter to state officials which was highly critical of the Superintendent's performance and accused him of violating board policy is entirely consistent with its prior decisions dealing with violations of *N.J.S.A. 18A:12-24.1(i)* (See *IMO Karen Jackson*, C08-05, SEC December 20, 2005; *IMO David Kanaby*, C53-05, SEC July 24, 2007; *Yafet v. Smith*, C24-07,

SEC October 27, 2008) (Commission Reply Brief at 10-11); 2) respondent's violation is supported by the record and is in no way arbitrary, capricious or unreasonable. His letter – which was not merely a disagreement with the way the Superintendent was handling matters but, rather, directly accused him of violating and allowing his staff to violate board policy, notwithstanding that no evidence was presented that the Superintendent was acting outside of or in violation of board policy – and the fact that this letter was directed to state officials, amply evidences that respondent failed to support the Superintendent in the proper performance of his duties; and 3) the Commission's determination of violation does not infringe upon respondent's right of free expression as he claims. In exercising such rights, however, he is compelled to conform to the requirements of the School Ethics Act. Although he was free to express dissatisfaction with the Superintendent's performance, it was the manner by which he did so which violated the Act. As to the penalty to be imposed for respondent's violation, the Commission urges that the cases cited in its decision dealing with instances where board members have been censured for single violations of the Act demonstrate that this recommended sanction is appropriate. (Commission's Reply Brief at 1-15)

Upon full review and consideration, the Commissioner can find no basis on which to disturb the decision of the School Ethics Commission as to its determination of violation, as the Commission's decision is supported by sufficient credible evidence in the record, and respondent has not demonstrated that such decision is arbitrary, capricious or contrary to law.

*N.J.A.C. 6A:4-4.1(a)*. Rather, the Commissioner is in full agreement with the Commission that:

...the letter was not a mere statement of disagreement or dissatisfaction with the complainant's handling of matters. It went further; the respondent accused the complainant of allowing his administrative staff to violate Board policy, then directed his recriminations to the attention of State officials. Indeed, in the third paragraph, the respondent states, "Your refusal to sit down

and talk, and work out our differences is no longer tolerable. Your decision to allow an administrator to violate board policy because you do not like the chairperson, without speaking to the BOE member himself, is, in my belief, a further recipe for disaster for our school and our kids.” The Commission notes that there is no evidence on this record that the complainant was acting outside of Board policy. Assuming, however, that there was a valid disagreement between them, the respondent could fairly have sent this letter to the complainant without copying State officials. In the alternative, he could have stated his disagreement publicly, in a less antagonistic manner. The Commission therefore, finds that the respondent’s letter rises to a violation of *N.J.S.A. 18A:12-24.1(i)*. (Commission’s February 24, 2009 Decision at 8)

Turning to the penalty to be imposed in this matter, while duly noting the cases cited in the Commission’s decision for the proposition that a penalty of censure has previously been imposed for a single violation of the Act, the Commission provided no articulation of why it found that the circumstances of the instant matter placed it under the rubric of those cases. In the absence of any elaboration as to the rationale for so concluding to convince him otherwise, the Commissioner is not persuaded that the factual situation or the egregiousness of the violation in the instant matter rises to the level of the behavior involved in the Commission’s cited cases. Rather, he is compelled to find and conclude – as argued by respondent – that this matter presents facts more akin to those existing in *IMO Juan Santiago*, C01-03 (SEC July 22, 2003; Commissioner’s Decision #486-03SEC, August 19, 2003); *IMO Charles Fischer*, C30-03 (SEC February 24, 2004; Commissioner’s Decision #157-04SEC, April 12, 2004); and *IMO Karen Jackson*, C08-05 (SEC December 20, 2005; Commissioner’s Decision #26-06SEC, January 24, 2006), where reprimand was deemed to be the appropriate penalty.

Finally, the Commissioner declines to overturn the Commission’s denial of respondent’s request for a sanction to be imposed on the Superintendent for filing a frivolous complaint as he concurs with the Commission’s determination in this regard, namely:

...the Commission finds that there is ample documentation in the record to support this complaint so as to mitigate against a finding that the complaint was filed solely for the purpose of harassment or retaliation. Thus, the Commission finds that the [complaint] was not filed in bad faith solely for the purpose of harassment, delay or malicious injury. While the respondent argues that the complainant knows or should have known that many of the allegations and claims in the complaint are without any reasonable factual, legal or equitable basis, the record before the Commission does not support such a claim. Therefore, the Commission declines to find that the complaint is frivolous and denies the respondent's request for sanctions against the complainant. (Commission's Probable Cause Determination, October 24, 2008 – included in Respondent's Appeal Materials)

Accordingly, for the reasons set forth therein and above, the Commissioner affirms the decision of the School Ethics Commission finding that respondent David Hollander violated *N.J.S.A.* 18A:12-24.1(i) of the Code of Ethics for School Board Members but rejects its recommended penalty of censure finding, instead, that Mr. Hollander should be and hereby is reprimanded for such violation.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 5, 2010  
Date of Mailing: March 5, 2010

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<sup>2</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, c. 36 (*N.J.S.A.* 18A:6-9.1)