

New Jersey Commissioner of Education

Final Decision

In the Matter of Lorenzo Richardson,
Jersey City Board of Education,
Hudson County.

This matter involves an appeal of the School Ethics Commission's (Commission) November 20, 2019 decision that appellant Lorenzo Richardson, a member of the Jersey City Board of Education (Board), violated *N.J.S.A.* 18A:12-24(g) and *N.J.S.A.* 18A:12-24.1(e) of the School Ethics Act (Act) by filing a petition of appeal seeking to compel action by the board of education on which he served. Having carefully reviewed the Commission's decision and the record in its entirety, the Commissioner finds that the Commission's decision finding that appellant violated the Act is supported by sufficient, credible evidence, and that appellant failed to establish that the decision is arbitrary, capricious, or contrary to law. *N.J.A.C.* 6A:4-1.1(a). However, the Commissioner disagrees with the Commission's recommended penalty of censure and modifies the penalty to a reprimand.

This matter arises from a complicated dispute regarding the contract of the Superintendent of the Jersey City school district. Appellant believed that the Board was required to vote on the renewal or nonrenewal of the Superintendent's contract¹ and, when he was

¹ The question of whether the Board was required to vote on the contract is not before the Commissioner in this appeal and will not be addressed.

unsuccessful in getting the Board to hold a vote, he filed a petition of appeal with the Commissioner against the Board president and attorney. Appellant was not authorized by the Board to file the petition of appeal. Thereafter, a member of the public filed a complaint against appellant with the Commission. The Commission found probable cause that appellant violated *N.J.S.A.* 18A:12-24(g) and *N.J.S.A.* 18A:12-24.1(e). Following a hearing at the Office of Administrative Law, the Administrative Law Judge (ALJ) concluded that appellant violated *N.J.S.A.* 18A:12-24(g) and *N.J.S.A.* 18A:12-24.1(e) and recommended a penalty of a reprimand. In its November 20, 2019, decision, the Commission adopted the ALJ's factual and legal determinations, but modified the recommended penalty to a censure.

In his appeal and exceptions, appellant argues that the ALJ found that his conduct was “not overtly unethical or conflicted,” which should have ended the analysis. Appellant contends that there is no legal basis to find a *per se* violation of the Act, as the ALJ did here. According to appellant, the Act was not intended as a set of strict liability rules; rather, the Act's purpose is to prevent actual conflicts and self-dealing. Appellant claims that he was not attempting to gain a personal advantage for himself or anyone else, unlike the board members in various cited cases who were found to have violated the Act. Instead, appellant argues that he was merely trying to compel the board to hold a formal vote on the Superintendent's contract – an action within the scope of his duties as a board member, and one similar to actions by board members in cited cases who were found not to have violated the Act.

With respect to the penalty, appellant argues that the Commission improperly enhanced the penalty recommended by the ALJ. First, appellant disputes the Commission's finding that because he had been a Board member for more than four years, “he should be acutely aware of his ethical obligations under the Act.” Appellant points out that at the time he

filed the petition of appeal that gave rise to this matter, he had served for only one year and had received, at most, one training session. Second, appellant contends that the Commission misstated the record in finding that he did not want the Board president and attorney to be aware of his filing, because the documents demonstrate that both of them were copied on the petition of appeal, and the attorney specifically acknowledged in his testimony that he received a copy of the petition at the time it was filed. Finally, appellant takes issue with the Commission's conclusion that a reprimand will not deter board members from taking unilateral actions, because a reprimand is, in fact, designed to deter unethical conduct and there is nothing to suggest that a reprimand would not be an effective and sufficient deterrent.

In reply, the Commission argues that its decision that appellant violated *N.J.S.A.* 18A:12-24(g) and *N.J.S.A.* 18A:12-24.1(e) was reasonable and supported by the record. The Commission notes that appellant does not dispute the ALJ's factual findings and admits that he filed a petition against the Board's president and attorney, challenging the official actions of the Board, without the Board's approval to do so. According to the Commission, the plain and unambiguous language of the Act proscribes appellant's conduct. Furthermore, the Commission contends that there is no "intent" or "mens rea" element to any of the provisions of the Act, contrary to appellant's arguments.

The Commission also contends that a penalty of censure is appropriate. In response to appellant's argument that he had only been a member of the Board for one year at the time of his actions, the Commission argues that there is no period of time for which ignorance may justify the violation of public trust. The Commission indicates that appellant misinterpreted the portion of its decision stating that appellant did not copy the Board's president and attorney, because that statement referred to a letter appellant sent to the Commissioner – but not the Board

president or attorney – seeking intervention, prior to filing the petition of appeal on which all parties were copied. Finally, the Commission takes issue with appellant’s characterization of its determination that a reprimand was not the appropriate penalty. The Commission argues that it did not find that reprimands were ineffective, but rather that if overt divisiveness such as appellant’s is not publicly sanctioned, it will undermine the work of the Board and the fidelity of its decision-making process, such that it was appropriate for the Commission to modify the penalty to a censure.

Upon a comprehensive review of the record, the Commissioner finds that the decision of the Commission that appellant violated *N.J.S.A.* 18A:12-24(g) and *N.J.S.A.* 18A:12-24.1(e) is supported by sufficient credible evidence, and appellant has not established that the Commission’s decision is arbitrary, capricious, or contrary to law. *N.J.S.A.* 18A:12-24(g) provides that a board member shall not represent any person or party other than the Board in connection with any proceeding involving the school district in which he serves. By filing a petition of appeal with the Commissioner that involved the Jersey City school district, without authorization of the Board, appellant plainly violated the statute. Moreover, his action went beyond the scope of his duties and had the potential to compromise the Board. *N.J.S.A.* 18A:12-24.1(e); *N.J.A.C.* 6A:28-6.4(a)(5).

Appellant cites to *Molica v. Sayre, Pequannock Township Bd. of Educ., Morris City.*, SEC Dkt. No. 07-13 (June 24, 2014) as an example of a board member who was found not to have violated the Act. In that matter, the ALJ found, and the Commission affirmed, that a board president who participated in a telephone conference with the board attorney and superintendent about a legal issue, the result of which was the board attorney sending a letter to a third party, did not take private action that could compromise the board even though the rest of

the board was not involved in the conference or the decision to send the letter. Appellant argues that he also consulted privately with the Board president and attorney regarding his concerns, so he also should be found not to have violated the Act. But appellant's argument disregards the fact that his discussions with the Board president and attorney are not what resulted in the finding that he violated the Act. The action that violated the Act was appellant's filing of a petition of appeal – an action that requires the approval of the majority of the Board – without authorization.

In another case cited by appellant, *Good v. Brattoli, Little Ferry Bd. of Educ., Bergen Cty.*, SEC Dkt. No. 21-14 (November 25, 2014), the respondent board member received a complaint from the public that the complainant board member allegedly misused a school vehicle. The respondent asked for additional information to corroborate the complaint and then forwarded all of the information to the superintendent. The Commission found that the respondent did not make personal promises or take action beyond the scope of her duties that had the potential to compromise the board and that, in fact, she had a duty to report a constituent's concerns to the superintendent for resolution. Appellant argues that he was acting similarly by communicating with appropriate officials about an issue that was likely to impact the school. However, instituting a legal action – without approval of the Board and adverse to the Board – is a step far beyond gathering and communicating information within the district.

In regard to the appropriate penalty, the Commissioner disagrees with the Commission and finds a reprimand to be appropriate. The penalty section of the Commission's decision contains several factual inaccuracies, which were not persuasively corrected by the Commission's brief on appeal. First, the Commission relied on the fact that appellant has been a board member for more than four years, despite the fact that appellant had been a board member

for only one year at the time of his actions in this case. While the Commissioner agrees with the Commission that ignorance of the law cannot be excused no matter how brief a time a board member has served, the Commission cannot rely on a long period of service to support an enhanced penalty when appellant did not, in fact, have a long period of service at the time of his actions. The Commission also noted that appellant did not copy the Board president or attorney on his petition of appeal. While the Commission's brief attempts to explain that this statement referred to his initial letter to the Commissioner, that argument is unavailing, as the decision very clearly states "when [appellant] filed his petition of appeal with Commissioner, he failed to copy" the Board president and attorney.

Removing these factually incorrect bases for assessing a penalty of censure, the Commission's remaining rationale is that without a greater sanction than a reprimand, there is no deterrent to a board member taking unilateral action by filing a legal proceeding against the board on which he serves. The Commissioner cannot agree that a decision finding that appellant violated the Act, and reprimanding him for doing so, is not a deterrent to other board members who might be considering legal action against the boards on which they serve.

Notably, in assessing a penalty of reprimand, the ALJ found that appellant's actions were not self-serving. While this finding does not prevent a conclusion that appellant violated *N.J.S.A.* 18A:12-24(g) and *N.J.S.A.* 18A:12-24.1(e) – because neither provision requires that the board member receive a benefit from his actions – it is relevant in determining the appropriate penalty. In *IMO Carvalho, Neron, Nina, and Rodriguez*, Commissioner Decision No. 168-18A (June 1, 2018), the Commissioner determined that a reprimand was the appropriate penalty for board members who had a conflict of interest but did not receive a benefit from their

actions. Here, the same penalty of reprimand is appropriate for appellant, who violated the Act by taking action against the Board but did not do so out of self-interest.

Accordingly, appellant is hereby reprimanded as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 26, 2021
Date of Mailing: January 26, 2021

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