

**New Jersey Commissioner of Education**

**Final Decision**

Stephen Kubricki,

Petitioner,

v.

Rachel Harper and Board of Education  
of the Township of Little Egg Harbor,  
Ocean County,

Respondent.

**Synopsis**

*Pro se* petitioner filed an appeal alleging that respondent, who serves as the Intervention and Referral Services Coordinator for the Little Egg Harbor Board of Education (LEHBOE), violated the Code of Ethics for School Board Members because she is also a member of the Board of the Pinelands Regional School District (PRSD), which shares a superintendent with LEHBOE. Petitioner asserted that respondent's position as a board member of PRSD while employed by LEHBOE represents a conflict of interest in violation of the School Ethics Act, *N.J.S.A.* 18A:12-24 (Act). Respondent filed a motion for summary decision, asserting that the Commissioner lacks jurisdiction over disputes of alleged violations of the Act, which are within the sole jurisdiction of the School Ethics Commission (SEC).

Upon review, the ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioner argued that because of respondent Harper's employment with the LEHBOE, she cannot be permitted to serve as a board member of the PRSD since allowing her to hold both positions would be a violation of conflict of interest provisions of *N.J.S.A.* 18A:12-24; petitioner's filing alleged no other wrongdoings or improprieties on the part of Harper; while petitioner filed the within appeal with the New Jersey Department of Education, Office of Controversies and Disputes, violations of the Act are solely within the jurisdiction of the SEC, *N.J.A.C.* 6A:28-1.4(a); and any person seeking to have a school board member disciplined for misconduct under the Act must use the statutory mechanism set forth in *N.J.S.A.* 18A:12-29. Accordingly, the ALJ granted the respondent's motion for summary decision, and the matter was dismissed for lack of jurisdiction.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ that the petition must be dismissed for lack of subject matter jurisdiction, for the reasons detailed in the Initial Decision. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

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.

February 16, 2021

**New Jersey Commissioner of Education**  
**Final Decision**

Stephen Kubricki,

Petitioner,

v.

Rachel Harper and Board of Education  
of the Township of Little Egg Harbor,  
Ocean County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioner pursuant to *N.J.A.C.* 1:1-18.4 have been reviewed and considered.<sup>1</sup>

Respondent Rachel Harper is employed by respondent Little Egg Harbor Board of Education as its Intervention and Referral Services Coordinator. Petitioner in this matter alleges that it was a conflict of interest in violation of the School Ethics Act (Act) for Harper to be elected to and assume the duties of a member of the Pinelands Regional Board of Education, which shares a superintendent with Little Egg Harbor. The Administrative Law Judge granted respondents' motion for summary decision, concluding that violations of the Act are within the sole jurisdiction of the School Ethics Commission (Commission), and petitioner had not filed a complaint with the Commission.

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<sup>1</sup> Respondents did not file a reply to petitioner's exceptions.

Petitioner filed exceptions to the portion of the Initial Decision stating that petitioner had failed to appear for a scheduled oral argument and argued that he had not received notice of this scheduled proceeding.

Upon review, the Commissioner concurs with the ALJ that the petition must be dismissed for lack of subject matter jurisdiction, for the reasons thoroughly detailed in the Initial Decision. Petitioner's exceptions do not contest any of the conclusions of the ALJ, and the question of whether petitioner received notice of the oral argument has no bearing on the legal conclusion that sole jurisdiction over alleged violations of the Act lies with the Commission.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition is hereby dismissed.

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

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 16, 2021  
Date of Mailing: February 16, 2021

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<sup>2</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**  
**GRANTING MOTION FOR**  
**SUMMARY DECISION**

OAL DKT. NO. EDU 04613-20

AGENCY REF. NO. 41-2/20

**STEPHEN KUBRICKI,**

Petitioner,

v.

**RACHEL HARPER, TOWNSHIP OF LITTLE**

**EGG HARBOR BOARD OF EDUCATION,**

**OCEAN COUNTY,**

Respondent.

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**Stephen Kubricki**, petitioner, pro se

**Jared S. Schure**, Esq., for respondent (Methfessel & Werbel, PC, attorneys)

Record Closed: December 9, 2020

Decided: December 30, 2020

BEFORE **DAVID M. FRITCH, ALJ**:

**STATEMENT OF THE CASE**

Petitioner filed a complaint with the New Jersey Department of Education's (NJDOE) Office of Controversies and Disputes (OCD) against respondent alleging

violations of the School Ethics Code. Petitioner alleges that respondent, who serves as the Intervention & Referral Services Coordinator for the Little Egg Harbor School District (LEHSD) violated the Code of Ethics for School Board Members when she was elected to and assumed duties as a member of the Pinelands Regional Board of Education (PRBOE). Petitioner asserts that, because the Pinelands Regional School District (PRSD) and LEHSD share a superintendent, respondent's position on the Board of the PRBOE while being an employee of the LEHSD represents a conflict of interest in violation of the School Ethics Act (SEA), N.J.S.A. 18A:12-24. Respondent seeks dismissal of petitioner's action because OCD lacks jurisdiction over disputes of alleged violations of the SEA.

### **PROCEDURAL HISTORY**

The matter stems from a complaint petitioner filed with the OCD on February 18, 2020. OCD transmitted the matter to the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, where it was filed on May 11, 2020, for determination as a contested case. A prehearing conference was held with the parties on October 14, 2020. At that conference, counsel for respondent indicated they wished to file a motion for summary decision to dismiss petitioner's complaint. Pursuant to a briefing schedule established with the parties, respondent's motion was received on October 22, 2020. Petitioner's response to respondent's motion was received on November 16, 2020. As petitioner requested oral argument on the motion, oral argument was scheduled to be held via teleconference on December 9, 2020. Notice of this oral argument was sent to the parties via email on December 1, 2020. At the scheduled date and time, respondent was on the teleconference bridge for the scheduled appearance, but petitioner failed to dial into the teleconference bridge. Following petitioner's non-appearance at the scheduled oral argument, the record closed.

## **FACTUAL DISCUSSION**

As the following facts are undisputed, I **FIND** the following **FACTS**:

1. On or about February 18, 2020, petitioner filed a Pro Se Petition of Appeal with OCD. (Schure Cert. at Ex. A.)
2. Petitioner's petition set forth the following allegations:
  - a. Respondent, Rachel Harper, serves as the Intervention and Referral Services Coordinator for the LEHSD.
  - b. In November 2019, Harper was elected to the PRBOE and assumed her duties with the PRBOE in January 2020.
  - c. Both the PRSD and LEHSD share a common superintendent.
3. The basis of petitioner's petition to OCD was that, because of Harper's employment with the LEHSD, she could not be permitted to serve as a board member of the PRBOE because allowing her to hold both positions would "be inconsistent with the 'Conflict of Interest' provisions of N.J.S.A. 18A:12-24."
4. Petitioner alleges that Harper cannot serve as an employee of the LEHSD, reporting to the shared superintendent of LEHSD and PRSD, while also serving as a board member of the PRBOE who exercises supervision over the shared superintendent in their capacity as superintendent of the PRSD.
5. Petitioner avers that Harper's serving as both an employee of the LEHSD and a board member of the PRBOE violates the provisions of N.J.S.A. 18A:12-24.
6. Petitioner's petition to OCD does not allege any other wrongdoing or improprieties regarding respondent.

## LEGAL DISCUSSION

N.J.A.C. 1:1-15.5 provides that summary decision should be granted “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” This language is substantially similar to summary judgment under New Jersey Court Rule 4:46-2(c). Though not required to do so, the OAL uses the standards for summary judgment, as set forth by the New Jersey Supreme Court, as our standards for summary decision. “[S]ince there are pronounced similarities in the exercise of judicial and ‘quasi-judicial’ powers, . . . court fashioned doctrines for the handling of litigation do in fact have some genuine utility and relevance in administrative proceedings.” City of Hackensack v. Winner, 82 N.J. 1, 29 (1980). It is recognized that the OAL performs many “quasi-judicial” or adjudicative functions and that, in doing so, “[j]udicial rules of procedure and practice are transferable to [the OAL] when these are conducive to ensuring fairness, independence, integrity, and efficiency in administrative adjudications.” Matter of Tenure Hearing of Onorevole, 103 N.J. 548, 554-55 (1986).

Summary decision is granted if, after considering the evidence presented in the light most favorable to the non-moving party, there exists no genuine issue of material fact. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 523 (1995). The essential question is “whether the evidence presents a sufficient disagreement to require [a hearing] or whether it is so one sided that one party must prevail as a matter of law.” Id. at 533. The Brill Court recognized that this necessarily involves the judge in the process of weighing the evidence presented. Id. When determining whether a genuine issue of material fact exists, “the court should be guided by the same evidentiary standard of proof . . . that would apply” at a hearing. Id. This weighing differs from the weighing the judge would perform after a hearing in that “on a motion for summary [decision] the court must grant all the favorable inferences to the non-movant.” Id. at 536.

“When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” N.J.A.C.

1:1-12.5(b). “If an adverse party does not so respond, a summary decision, if appropriate, shall be entered.” Id. I **CONCLUDE** that, under the Brill standards, this matter is appropriate for summary disposition. The material facts, as set forth by the parties in their filings, are undisputed as they relate to respondent’s challenge to OCD’s jurisdiction over the allegations as stated in petitioners’ petition of appeal. Accordingly, as there are no disputed material facts, the matter is ripe to be determined for summary decision.

Respondent seeks dismissal of petitioner’s petition with the OCD because it alleges a violation of the SEA, and OCD lacks jurisdiction over disputes involving alleged violations of the SEA. (Resp. Br. at 7.) The SEA (N.J.S.A. 12:21 et seq.) is intended to ensure that the conduct of school officials holds the respect and confidence of the people. SEA defines “school officials” as school board members, school administrators, charter school trustees, charter school administrators, and New Jersey School Boards Association officers and professional staff. N.J.S.A. 18A:12-23 and 23.1. Through the SEA, the Legislature declared that school officials must avoid conduct which is in violation of their public trust or which creates a justifiable impression that the public trust is being violated. Fisher v. Hamilton, 2013 N.J. Super. Unpub. LEXIS at \*11-12 (App. Div. July 12, 2013). Additionally, the Legislature determined that school administrators should “have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards among them.” N.J.S.A. 18A:12-22(b). To accomplish its objectives, the Legislature established standards for conflicts of interest, N.J.S.A. 18A:12-24, and of ethical conduct, N.J.S.A. 18A:12-24.1, by which all school officials must abide. Among these standards, the SEA sets forth a Code of Ethics (N.J.S.A. 18A:12-24.1(a) through (j)), which applies to school board members and charter school trustees.

Because the OAL is not a court, but a tribunal designated to hear disputes transmitted from state agencies, it derives its jurisdiction from the transmitting agency. Although “[t]he judge may render any ruling or order necessary to decide any matter presented to him or her which is within the jurisdiction of the transmitting agency conducting the hearing” N.J.A.C. 1:1-14.6, the OAL shall not “receive, hear or consider



any pleadings, motion papers, or documents of any kind” relating to matters beyond its limited jurisdiction. N.J.A.C. 1:1-3.2.

Petitioner in this matter is contending that respondent’s continued service as a member of the PRBOE is in violation of the SEA. (See Schure Cert. at Ex. A.) Petitioner, in his briefing, cited to numerous SEC advisory opinions in support of his position that respondent’s conduct violates the SEA. (Pet. Br. at ¶¶ 2–4.) See also State of New Jersey, Department of Education, School Ethics Commission, Advisory Opinion A11-13, July 31, 2013 (advising school board member in joint services agreement with regional school district cannot be employed by regional school district sharing services or superintendent with a board of education where they are a member without violating N.J.A.C. 18A:12-24(c)). The basis of respondent’s motion, however, is not on the merits of petitioner’s claims under the SEA but rather whether this tribunal possesses jurisdiction to adjudicate them.

While this matter was filed with OCD, violations of the SEA are solely within the jurisdiction of the School Ethics Commission (SEC). N.J.A.C. 6A:28-1.4(a). Any person who seeks to have a school board member disciplined for misconduct under the SEA must use the statutory mechanism set forth in N.J.S.A. 18A:12-29. This includes submission of the complaint on a prescribed form; review of the complaint by the SEC which must decide whether probable cause exists to credit the allegations. N.J.S.A. 18A:12-29, N.J.A.C. 6A:28-6.2(a). If probable cause is found, the SEC refers the matter to the OAL for a hearing. N.J.S.A. 18A:12-29(b). In this case, the SEC has not had the opportunity to decide whether probable cause exists to credit petitioner’s allegations and has not referred a case to the OAL because the matter was not filed with the SEC.

Petitioner filed this matter with OCD, and OCD referred the matter to the OAL. (See Schure Cert. at Ex. E.) Because violations of the SEA are solely within the jurisdiction of the SEC, OCD lacks the subject matter jurisdiction to adjudicate petitioner’s claims in this matter alleging Code of Ethics violations by respondent. Thomas Taylor v. Bd. of Educ. of the Borough of Washington, Warren County and Lance Rozsa, Superintendent, EDU 04803-12, Final Decision, (March 19, 2013)

<http://lawlibrary.rutgers.edu/oal/search.html>. See also Bd. of Educ. v. Twp. Council of E. Brunswick, 48 N.J. 94, 102 (1966) (“Where the controversy does not arise under the school laws, it is outside the Commissioner’s jurisdiction even though it may pertain to school personnel”); Ciripompa v. Bd. Of Educ. of the Borough of Bound Brook, EDU 00121-16, Final Decision, (November 7, 2016) <http://lawlibrary.rutgers.edu/oal/search.html> (allegations of violations of SEA by school board member is beyond jurisdiction of Commissioner of Education and must be filed with SEC).

Since this tribunal’s jurisdiction is derived from the transmitting agency, the lack of jurisdiction of OCD to decide matters involving alleged violations of the SEA precludes this tribunal from exercising such jurisdiction in a case transmitted by OCD and not the SEC. Accordingly, I **CONCLUDE** that this tribunal lacks jurisdiction to determine whether Harper’s alleged conduct as set forth in petitioner’s appeal to OCD violates the SEA. Accordingly, I **CONCLUDE** that this matter, as filed with OCD, must be dismissed for lack of subject matter jurisdiction and respondent’s motion for summary decision seeking to dismiss petitioner’s pleading due to lack of subject matter jurisdiction should be **GRANTED**.

### **ORDER**

It is therefore **ORDERED** that respondent’s motion for summary decision is hereby **GRANTED**.

I hereby **FILE** my initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES**, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 30, 2020

DATE

  
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**DAVID M. FRITCH, ALJ**

Date Received at Agency:

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Date Mailed to Parties:

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