

193-24
SEC Dkt. No. C04-20
OAL Dkt. No. EEC 10952-20
Agency Dkt. No. 9-8/23A

New Jersey Commissioner of Education
Final Decision

In the Matter of Shawn Giordano,
Lacey Township Board of Education,
Ocean County

This matter involves an appeal of the School Ethics Commission's (SEC) July 25, 2023, determination that appellant – President of the Lacey Township Board of Education (Board) – violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1 (f)* of the School Ethics Act (Act) by directing the Board attorney to conduct research on a fellow Board member, Regina C. Discenza. Appellant and Discenza filed ethics complaints against each other, resulting in motion practice. Ultimately, the counts against appellant were reduced to those cited above, as well as *N.J.S.A. 18A:12-24.1 (c)*, which appellant was found to have not violated. The SEC recommended that appellant be censured for the violation. Having carefully reviewed the SEC's decision and the record in its entirety, the Commissioner finds that the SEC's decision 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:4-4.1(a)*. The Commissioner further finds that the SEC appropriately assessed the penalty of a censure.

The events in question involve the Board election in November 2019. Appellant and

Discenza had a historically acrimonious relationship, and Discenza campaigned against appellant. Appellant lost the election. One day later, he instructed the Board attorney to investigate Discenza about potential violations concerning her conduct during the election, including her alleged video endorsement of candidates while wearing her Board of Education badge. The Board attorney completed a memo regarding Discenza's conduct, which was reflected on a legal bill. The Board reviewed and approved the November 2019 legal bill on December 6, 2019, which is when Discenza and one other board member first became aware of the matter. The legal bill had fifteen entries marked "Member Conduct," for which the Board attorney billed 33.9 hours of research, totaling \$5,085.

On appeal, appellant argues that he was authorized to contact the Board attorney pursuant to Board Policy 0174, as he was one of three designated contacts who may "request services or advice from contracted legal counsel" as Board President. The other two authorized positions able to seek assistance of legal counsel, according to the Policy, were the Superintendent and the Business Administrator. Appellant submitted certifications from five other Board members, indicating that they each individually contacted him to both discuss the matter and to authorize the research by the Board attorney; however, no quorum was ever reached due to their individual discussions. Appellant argues that any inferences regarding the timing or the topic of the research that may stem from the parties' acrimonious relationship are explained by the certifications of the other five Board members. Appellant also points to the fact that, in a separate proceeding, Ms. Discenza was found to have violated a portion of the School Ethics Act, supporting his argument that his actions were justified.

In opposition, the SEC argues that appellant's long tenure on the Board, years of ethics

trainings, and his position as Board President should have made him aware of the potential ethical violations of his actions. The SEC contends that appellant's use of Board resources by contacting the Board attorney immediately after losing the election to request information about Discenza – whom he actively disliked and who had openly campaigned against him – demonstrated bad faith. According to the SEC, the combination of appellant's personal dislike for Discenza, the timing of the request following the election, and appellant's unilateral decision to instruct the Board attorney to investigate without consulting with the full Board, Superintendent, or Business administrator demonstrate that he violated the Act. The SEC argues that this erosion of public trust warrants a censure instead of a reprimand.

N.J.S.A. 18A:12-24(b) states that “[n]o school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family, or others.” In determining a violation, the question is not whether a school board member intended to secure an unwarranted benefit for themselves or others, but whether a reasonable person could infer that such was the reason for their conduct. *See Friends Retirement Concepts v. Borough of Somerville, Bd. Of Educ.*, 356 N.J. Super. 203, 214 (Law Div. 2002). Similarly, pursuant to *N.J.S.A. 18A:12-24.1(f)*, Board members swear to, “...refuse to surrender [their] independent judgment to special interest or partisan political groups or to use the schools for personal gain or the gain of friends.”

Pursuant to *N.J.S.A. 18A:12-24.1(e)*, Board members agree that they will “recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.” In support of this statute, “*N.J.A.C. 6A:28-6.4(a)(5)* provide[s] that evidence that a [board member] made personal promises or took action

beyond the scope of his or her duties' shall support a finding that a violation of *N.J.S.A. 18A:12-24.1(e)* occurred." *Persi v. Woska*, 2017 N.J. Super. Unpub. LEXIS 625, *20 (App. Div. Mar. 10, 2017).

The record demonstrates that Discenza actively campaigned against appellant, and they had a history of mutual dislike. Additionally, the timing of the request on the day after appellant lost the election, and the brief time span the appellant had to act until he would no longer be a Board member, support the SEC's conclusions. In light of these facts, the Commissioner finds that it was not arbitrary, capricious, or unreasonable for the SEC to conclude that the public could infer that the appellant requested the research against Discenza to secure an advantage for himself and for his own personal gain. Nor was it arbitrary, capricious, or unreasonable for the SEC to conclude that appellant took action that could compromise the Board.

Pursuant to Policy 0174, appellant was authorized to contact the Board attorney regarding legal issues. However, there were other options available to appellant. For example, appellant could have asked the Board to vote on the research request before contacting the Board attorney. Alternatively, appellant could have requested an advisory opinion from the SEC, pursuant to *N.J.S.A. 12-31*. This free option could have potentially saved the district \$5,085, but it may not have achieved results prior to the end of appellant's term. Another option would have been for appellant to file an ethics complaint directly against Discenza, as she did to him, without the use of the Board attorney research and the unnecessary expense to the Board. Instead of availing himself of one of these options, appellant took action that created the appearance to the public that he was using his position for personal gain.

Furthermore, in light of the seriousness of appellant's actions, the Commissioner finds that the penalty of censure is appropriate.

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

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 15, 2024
Date of Mailing: May 16, 2024

¹ 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.

Before the School Ethics Commission
OAL Docket No.: EEC-10952-20
SEC Docket No.: C04-20
Final Decision

I/M/O Shawn Giordano,
Lacey Township Board of Education, Ocean County
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on January 13, 2020, by Regina C. Discenza (Complainant), alleging that Shawn Giordano (Respondent), a member of the Lacey Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, when he directed Board counsel to conduct research on another Board member who had campaigned against him in a recent election. More specifically, Complaint asserted that Respondent violated *N.J.S.A.* 18A:12-24(b) (Count 1), as well as *N.J.S.A.* 18A:12-24.1(b) (Count 5 and Count 8), *N.J.S.A.* 18A:12-24.1(c) (Count 2), *N.J.S.A.* 18A:12-24.1(e) (Count 3 and Count 6), and *N.J.S.A.* 18A:12-24.1(f) (Count 4, Count 7, and Count 9) of the Code of Ethics for School Board Members (Code).¹

On February 24, 2020, Respondent filed a Motion to Dismiss in Lieu of an Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On March 20, 2020, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

At its meeting on May 19, 2020, the Commission voted to deny the Motion to Dismiss as to the allegations in Counts 1-4, and to grant the Motion to Dismiss as to the allegations in Counts 5-10. The Commission also voted to find the Complaint not frivolous and to deny the request for sanctions. Based on its decision, the Commission voted to direct Respondent to file an Answer to Complaint (Answer) to the allegations in Counts 1-4. On June 1, 2020, Respondent filed an Answer as directed.

At its meeting on July 21, 2020, the Commission voted to find probable cause for the remaining allegations in this matter. Based on its finding of probable cause, the Commission voted to transmit the within matter to the Office of Administrative Law (OAL) for a hearing, and, pursuant to *N.J.A.C.* 6A:28-10.7(b),² the attorney for the Commission (Petitioner) was

¹ The Complaint also alleged that Linda A. Downing violated *N.J.S.A.* 18A:12-24.1(b) (Count 8) and *N.J.S.A.* 18A:12-24.1(f) (Count 9 and Count 10), and Harold “Skip” Peters violated *N.J.S.A.* 18A:12-24.1(b) (Count 8) and *N.J.S.A.* 18A:12-24.1(f) (Count 9). The alleged violations against Respondent Downing and Peters were dismissed, and as such they are no longer parties in this matter.

² This citation refers to the regulation that was in effect at the time of the probable cause determination.

charged with prosecuting the allegations in the Complaint which the Commission found probable cause to credit.

At the OAL, this matter was initially consolidated with a complaint against Discenza (C75-19). Following cross-motions on summary decision, the Administrative Law Judge (ALJ) issued an Order on Partial Summary Decision on February 27, 2023, that resolved the entire case as to Respondent Giordano. As such, the consolidated matters were severed, and the ALJ issued an Initial Decision on April 27, 2023, incorporating the findings of fact, conclusions of law, and recommendations of penalty pertaining to Respondent as stated in his February 27, 2023, Order on Partial Summary Judgment. Respondent filed Exceptions to the Initial Decision, in accordance with *N.J.A.C.* 1:1-18.4. Petitioner did not file a Reply.

At its meeting on June 27, 2023, the Commission considered the full record in this matter. Thereafter, at its meeting on July 25, 2023, the Commission voted to adopt the Initial Decision's findings of fact, legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), but did not violate *N.J.S.A.* 18A:12-24.1(c), and voted to modify the recommended penalty of reprimand in favor of censure.

II. Initial Decision and Order on Partial Summary Decision

The events giving rise to the within matter began on November 6, 2019, the day after the Board election in which Respondent lost his bid for reelection, when Respondent (Board President) "contacted the Board's attorney and requested that he conduct research regarding the conduct of Board member Discenza." *Order* at 5. The Board reviewed the November 2019 legal bill on December 6, 2019, which is when Complainant first became aware of the request. *Ibid.* The entire Board voted to ratify it, with the exception of Complainant, who abstained. *Id.* at 6. The bill had fifteen entries marked "Member Conduct," and the Board attorney billed for 33.90 hours of research, totaling \$5,085. *Ibid.* According to Board policy, the Superintendent, the Business Administrator/Board Secretary, and the Board President have the authority to request services from the Board's counsel. *Ibid.*

In deciding the cross-motions for summary decision, the ALJ found both parties to the matter agreed there is "substantial negative prior history and continuing mutual disdain" between Respondent and Complainant, and as such, Respondent "violated the public trust" in making his request given the relationship between Respondent and Complainant; the timing and topic of Respondent's request (the day after he lost the election); and that other than seeking ratification of the legal bill, Respondent did not apprise the Board of the request or the results of the research. *Id.* at 16.

In concluding that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), the ALJ found Respondent "used his official position as Board President, as one of the three individuals authorized to contact the Board's attorney to request legal services and did so to secure an unwarranted advantage for himself against a political rival with whom he had a negative history." *Id.* at 17. The ALJ further found Respondent "failed to recognize the Board's authority" when he used school resources for personal reasons and failed to seek the Board's approval for his request beyond seeking ratification for the charges, and such "private action, by its very nature, compromises the integrity and accountability of the Board and

its proper use of school resources.” *Ibid.* Further, the ALJ explained that Respondent would not have had access to such resources but for his position on the Board. *Ibid.* However, the ALJ failed to find a violation of *N.J.S.A.* 18A:12-24.1(c). *Ibid.*

With respect to the appropriate penalty for the violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), the ALJ recommended a penalty of reprimand. *Id.* at 19. The ALJ found that since Respondent no longer serves on the Board, he cannot remove or suspend Respondent. *Ibid.* The ALJ notes that the violations are not *de minimis*, but given the totality of the circumstances, a reprimand is appropriate. *Ibid.*

III. Exceptions

In his exceptions, Respondent argues that summary decision was “premature and prejudicial” to Respondent as it prevented him from calling witnesses to testify on his behalf. Respondent contends the “OAL questionably determined that ‘there is some dispute as to whether a board president can request legal services from the board’s attorney without the prior formal consent or authorization of the board or the other two individuals authorized by the district to request such services.’” Respondent asserts there is no dispute because Board policy designates the Board President as one of the individuals authorized to request services, but alternatively, a dispute would establish a genuine issue of material fact, resulting in the need for a hearing. Additionally, Respondent argues the Initial Decision “incorporates hearsay” from the Complaint as fact, such as that the Board attorney’s research or conclusions were not shared with other members of the Board or that the Superintendent or Board Secretary were not aware of the attorney’s research, and Petitioner failed to provide any evidence to support those allegations. Respondent maintains that Petitioner failed to provide evidence of violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f) because Respondent was authorized to contact the Board attorney for legal services, and he did so after discussing Complainant’s conduct with other Board members. Respondent notes his “concerns were clearly warranted because the research . . . led to an ethics violation against Ms. Discenza and have now been sustained in the [pending] matter.”

Respondent further argues that the ALJ’s determination that he used his official position “to secure an unwarranted advantage for himself against a political rival” is irreconcilable with the OAL’s determination that there was a reasonable basis to request legal research if the basis of that research resulted in ethics charges against Complainant. Respondent reiterates that Board policy did not require an affirmative vote or resolution to request legal services, and he was authorized to contact the Board attorney and was “clearly within his right to request legal research from the Board Attorney on potential unethical conduct of another board member.”

Respondent attached certifications to demonstrate that a majority of the Board had discussed the matter and agreed that Respondent should request legal research. As such, Respondent urges the Commission to reverse the Initial Decision, and at the very least, reopen the matter for a hearing on the merits.

Petitioner did not file exceptions to the Initial Decision and/or a reply to Respondent’s exceptions.

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission agrees with the ALJ that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f). The Commission is also in accord with the ALJ's determination that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c). However, the Commission modifies the recommended penalty of reprimand in favor of censure.

N.J.S.A. 18A:12-24(b) prohibits a board member from using or attempting to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others. The ALJ properly concluded Respondent used his official position as Board President to secure an unwarranted advantage for himself. The parties agreed that Respondent and Complainant had a substantial negative history and mutual disdain for each other. Respondent used his position as an individual authorized to contact the Board's attorney to direct the Board attorney to conduct legal research regarding Complainant's conduct. This was done to gain a personal advantage against Complainant, with whom he had a significant negative history. As a result of Respondent's request, the Board's attorney performed almost 34 hours of research and cost the District's taxpayers over \$5,000.00.

The Commission also agrees that Respondent violated *N.J.S.A.* 18A:12-24.1(e). Under *N.J.S.A.* 18A:12-24.1(e), a board member must recognize that authority rests with the board and a board member shall not make any personal promises or take any action that may compromise the board. Requesting legal research for personal reasons constitutes private action, or action beyond the scope of Respondent's duties as a Board member. The ALJ appropriately concluded "[t]his private action, by its very nature, compromises the integrity and accountability of the Board and its proper use of school resources."

Additionally, the Commission agrees with the ALJ that Respondent's actions also constitute a violation of *N.J.S.A.* 18A:12-24.1(f). Under *N.J.S.A.* 18A:12-24.1(f) a board member must refuse to surrender independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends. Respondent used the school's resources for his own personal gain. Respondent utilized the Board's legal counsel to get information regarding someone he personally disliked, and he would not have had access to those resources absent his position as Board President.

Finally, the Commission finds Respondent's actions did not violate *N.J.S.A.* 18A:12-24.1(c) as he did not take official action to effectuate policies and plans without consulting those affected, nor did he take action that was unrelated to his duty to: develop the general rules that guide the management of the District; formulate the programs and methods to effectuate the District's goals; or ascertain the value or liability of a policy.

The Commission is not persuaded by Respondent's exceptions. Respondent filed a cross-motion for summary decision, but only because he was not successful, does he now argue that the matter should proceed to a hearing. It is irrelevant that Complainant also faced ethics charges; whether another Board member committed an ethics violation does not justify Respondent's actions. While Respondent argues that he was authorized by Board regulation to

seek services from the Board attorney, the Commission notes that his request was beyond the scope of his duties as a Board member as it was motivated by his own personal animus for a political rival. Finally, the certifications Respondent attached to his exceptions are not part of the record; regardless, whether Respondent spoke to other Board members to validate his desire to obtain research about Complainant, it does not change that he made the request for personal reasons which goes beyond the scope of his duties.

While the ALJ recommended a penalty of reprimand for Respondent's violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), the Commission **modifies** the recommended penalty of reprimand to **censure**. The Commission agrees with the ALJ that the Respondent's blatant use of Board resources for his own motivations was not *de minimis*, but finds that considering the facts in the record and the totality of the circumstances, a penalty of censure is justified.

In this regard, the Commission notes that Respondent was elected to the Board in 2013 and remained a Board member until he lost his bid for re-election in 2019. Respondent was on the Board for at least six years and rose to the position of Board President. Given his Board experience and years of ethics trainings, he should have been acutely aware of his ethical obligations under the Act. The Commission also finds the timing of Respondent's violation to be noteworthy. Respondent lost the election, and the very next day used his position as Board President, which he would only hold until January 2020, when his term would end, to seek information about a fellow Board member who campaigned against him. The fact that Respondent contacted the Board attorney immediately after failing to be reelected further demonstrates the bad faith behind Respondent's request. Given the nature of, and relation to, his personal dislike for Complainant, the timing of his request immediately following the election, and that he did it without waiting to discuss it with the Superintendent, Board Secretary and/or the whole Board, the Commission finds such a violation is severe and warrants a censure instead of a reprimand.

IV. Decision

For all of the aforementioned reasons, the Commission adopts the Initial Decision's findings of fact and legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), but did not violate *N.J.S.A.* 18A:12-24.1(c). However, the Commission modifies the recommended penalty of reprimand in favor of **censure** for the violations.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, **within thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding

the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C. 6A:4:1 et seq.* **within thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.



Robert W. Bender, Chairperson

Mailing Date: July 25, 2023

**Resolution Adopting Decision
in Connection with C04-20**

Whereas, at its meeting on July 21, 2020, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, on February 27, 2023, the Administrative Law Judge (ALJ), issued an Order on Partial Summary Decision, which was incorporated into an Initial Decision dated April 3, 2023; and

Whereas, the ALJ found that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), but did not violate *N.J.S.A.* 18A:12-24.1(c), and recommended that Respondent be reprimanded; and

Whereas, Respondent filed exceptions to the Initial Decision but Petitioner did not file exceptions and/or a reply to Respondent's exceptions; and

Whereas, at its meeting on June 27, 2023, the Commission reviewed the record in this matter, discussed adopting the ALJ's conclusion that Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), and discussed modifying the recommended penalty of reprimand in favor of censure; and

Whereas, at its meeting on July 25, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on June 27, 2023; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.



Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its regularly scheduled meeting on July 25, 2023.



Brigid C. Martens, Acting Director
School Ethics Commission