
IN THE MATTER

OF

FREDERICK CONFESSORE,
Harrison Board of Education
Hudson County

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BEFORE THE
SCHOOL ETHICS COMMISSION

Docket No.: C17-99

DECISION

PROCEDURAL HISTORY

The above matter arises from a complaint filed by Thomas Kinsella on July 30, 1999. Therein, he alleged that Harrison School District Assistant Superintendent Frederick Confessore violated the School Ethics Act in connection with his one-third ownership of Study Hall, Inc., which is a day care facility located in the Harrison. The complainant initially alleged that Mr. Confessore's conduct violated N.J.S.A. 18A:12-24(a), (b), (c), (d) and (f). However, at its meeting of January 25, 2000, the School Ethics Commission found probable cause to credit the allegation that Frederick Confessore violated N.J.S.A. 18A:12-24(b) of the School Ethics Act and dismissed charges that he violated N.J.S.A. 18A:12-24(a), (c), (d) and (f) of the Act. At its April 25, 2000 meeting, the Commission voted to find that Mr. Confessore violated N.J.S.A. 18A:12-24(b) and to recommend that the Commissioner of Education impose a penalty of a one-month suspension.

Mr. Confessore filed his answer to the complaint on September 10, 1999, pursuant to an extension, admitting his one-third ownership of the center, but denying any violation of the School Ethics Act by virtue of his ownership or his conduct in relation to his position with the district or his ownership of the center.

The parties were invited to testify at the Commission's October 26, 1999 meeting. Both parties appeared with counsel. Following the October meeting, respondent submitted supplemental affidavits in response to testimony presented at the meeting. At the Commission's next meeting on November 23, 1999, the Commission heard additional testimony from Gene Barisano of the ABC Learning Center who had previously submitted an affidavit in support of the complaint, but later asked the Commission to withdraw it. The parties also appeared at that time to hear and, if necessary, rebut the testimony of the witness.

When the Commission found probable cause to credit the allegations that Frederick Confessore violated N.J.S.A. 18A:12-24(b), it set forth its belief that no material facts were in dispute with regard to the charge. Therefore, the Commission asked the parties to file written submissions by February 29, 2000 setting forth whether the Commission should find Mr. Confessore in violation of the Act and, if he is found in violation, what the sanction should be. Mr. Confessore's attorney asked for an extension

to file, which was granted until March 10, 2000. The Commission received timely submissions from both parties.

For the reasons set forth below, the Commission now finds that Frederick Confessore violated N.J.S.A. 18A:12-24(b) of the School Ethics Act and recommends that the Commissioner of Education impose a penalty of a one-month suspension.

FACTS

The Commission finds the following material facts to be undisputed. These facts were substantially set forth in the Commission's probable cause determination. The parties had the opportunity to indicate if they disagreed with any facts and why those facts were material to the case. These facts have been modified to reflect respondent's arguments.

At all times relevant to this complaint, respondent has served as Assistant Superintendent of Schools in the Harrison School District. As such, he oversees technology programs related to curriculum and instruction. The Harrison School District is an *Abbott*¹ district. Respondent was also, and continues to be the owner of one-third of Study Hall, Inc. Study Hall, Inc. is a day care facility located in Harrison, New Jersey. It was established in 1988 and licensed by the New Jersey Department of Human Services Bureau of Licensing. Mr. Confessore's ex-wife, Carmella Confessore, and Anita Natalini own the other two-thirds equally. In addition to Study Hall, the owners also operate The Tot Spot, which is located in Kearny, New Jersey.

Kidz Academy is a day care center owned by Mr. Kinsella that is also located in Harrison. The New Jersey Department of Human Services licensed it to provide day-care services in the summer of 1999.

On December 18, 1997, Mr. Confessore requested an advisory opinion from the Commission as to whether he would have a conflict of interest in bidding on a contract with the Board to provide private day care services to the children of Harrison. The request was specifically related to Harrison's designation as a special needs district under *Abbott* and the anticipated mandate to provide pre-kindergarten education to children in such districts. Mr. Confessore asked a separate question as to whether his center could contract with the district in the event that the other centers could not adequately provide pre-kindergarten services.

The Commission, in response, issued Advisory Opinion A30-97 on February 26, 1998 advising that Mr. Confessore's proposed action would violate the Act. The Commission found that if Mr. Confessore's center were to bid on the project, the public could reasonably perceive that any decisions or recommendations that he made that had any impact on the pre-kindergarten services to be provided were made in the interest of

¹ A reference to the New Jersey Supreme Court case, *Abbott v. Burke*, which designated 21 districts as special needs districts.

the center rather than the district. Thus, it concluded that he would violate N.J.S.A. 18A:12-24(a) if his center were to contract with the district to provide pre-kindergarten services. The Commission declined to answer the second question, as it was too speculative.

Mr. Confessore requested a second opinion from the Commission on February 11, 1999 setting forth a change in circumstances. He explained that the Harrison School District planned to contract with the Urban League of Hudson County, Inc./Hudson Cares for Kids, to independently coordinate the three and four year old program. In his request, he stressed that the Urban League would be responsible for all phases of the plan inclusive of the initial contact of families to the ultimate placement and payment for services, based upon the parents' choice. He indicated that there would be no contracts or payments between the district and any local provider for childcare services. Rather, the district would pay all early childhood funds to the Urban League, which in turn would contract with the local providers. Mr. Confessore also submitted a letter from the Superintendent enclosing the results of a Rutgers survey that he said showed that his day care center was needed in order to meet the demand for district pre-kindergarten services.

In response to Mr. Confessore's second request, the Commission issued Advisory Opinion A02-99 on March 24, 1999. This opinion advised that Mr. Confessore's day care center could contract with the Urban League to provide pre-kindergarten services noting that the day care center was not contracting with the district, but with the Urban League. In this way, the Commission reasoned, the district would not be involved in the process of choosing day care centers and Mr. Confessore would be kept out of the process in his capacity as a district administrator. The Commission also based its opinion on the fact that the district had no choice but to use every available licensed provider of childcare services and thus, the Commission believed that all centers would be filled to capacity. The Commission cautioned however, that Mr. Confessore should not involve himself in his role as an administrator in Harrison in matters affecting his day care center.

Mr. Confessore was not involved with the presentation of the district's plan for pre-kindergarten education. Supervisor Dr. Brian Duffy, Assistant Superintendent Anthony Compelli, Board Secretary Peter Higgins and Superintendent John DiSalvo prepared the district's plan and submitted it to the State Department of Education. The Department of Education conditionally approved the plan, but asked for additional information regarding statistics concerning children to be serviced and available providers.

In order to comply with the Department's conditions, the district entered into a contract in September 1998 to pay Rutgers University \$24,250 to analyze Harrison's child population. On September 8, 1998, the Office of the Superintendent in Harrison sent survey forms to the directors of the Children's Studio, Study Hall, Inc., the ABC School and Holy Cross School. The memorandum indicated that "[o]nly those programs who return the survey by the deadline can be considered for this collaboration." The district and Rutgers ultimately identified three childcare centers in Harrison that were eligible to accept children under the new early childhood program. These were the ones

to whom the surveys had been sent, except the Holy Cross School, which was not licensed.

On February 11, 1999, Superintendent DiSalvo provided the statistics on space availability to the Commission as part of Mr. Confessore's second request for an advisory opinion. The complainant's day care center was not licensed when the September 8, 1998 correspondence was sent and Rutgers performed its survey. Thus, it was not included in Rutgers' list of eligible facilities.

At a March 16, 1999 meeting of the Board, the Board voted to contract with the Urban League of Hudson County/Hudson Cares for Kids, to independently coordinate the three and four-year old pre-kindergarten program. However, no details of the contract were provided. The resolution stated in part, "Said Professional Services Contract is not available at this time but must be in place prior to the next scheduled meeting of this Board".

On April 20, 1999, Superintendent DiSalvo sent a letter to all parents of district students explaining that the Harrison School District was going to contract with the Urban League to provide a pre-kindergarten program. He listed the three providers identified by Rutgers. The program was described as a voucher subsidy program that the Urban League would coordinate for all three and four year olds who are legitimate residents of Harrison. He stated that the Urban League would make referrals of families to all local providers and would be responsible for placement and payment to providers for services, based on parental choice. The letter indicates that parents with questions should not hesitate to call Mr. DiSalvo.

The Urban League held a registration for the pre-school program at its facility from April 20-23, 1999. Mr. Confessore did not participate in the registration program.

On April 26, 1999, Mr. Confessore, in his capacity as a representative of Study Hall, Inc. wrote and signed a letter to an Assistant Commissioner in the New Jersey Department of Human Services. The letter indicated that he and the two other signatories, who were also representatives of day care centers, felt that the children of Harrison should only be referred to the centers that were part of the initial planning process, the Children's Studio, ABC Learning Center and The Study Hall. Therein, he states "We have spent time and money in order to service the district population. We can provide enough slots for the three and four-year old half-day programs." The signatories ask that the Assistant Commissioner send a copy of the response to Peter Higgins, the Board Secretary/School Business Administrator for the Harrison Board. The Director of the Office of Special Initiatives in the Department of Human Services responded to only Mr. Confessore, although there were two other signatories. She replied on April 28, 1999 that, "it is up to the school district to decide which child care centers it wants to contract with as long as sufficient space is available for all three and four-year olds who enroll." She copied only Mr. Higgins.

Each year, in or about the month of May, Study Hall holds an Open House and registers children for the coming Summer and regular year programs. Study Hall held this Open House on May 11, 1999. Study Hall registered students at that time.

On May 18, 1999, Mr. Confessore sent all residents of Harrison correspondence on behalf of Study Hall, Inc. that indicated that the Harrison Board of Education is contracting with the Urban League of Hudson County to run the preschool program for three and four year olds. Mr. Confessore obtained the names of the residents through a copy service, Sir Speedy. The letter provided in part, "...your child may be eligible for a full-day program at our center at **no cost to you.**" (emphasis supplied) The letter provided that Mr. Confessore was an owner and operator of the center and identified him as an Assistant Superintendent with over 25 years of public school experience as a teacher, elementary and middle school principal. It noted that "[a]ll three owners are certified by the New Jersey State Department of Education." The letter enclosed a brochure that discussed admissions criteria, philosophy, standards, and other information regarding the Study Hall. The cover letter indicates that parents can register at the Study Hall from Monday through Friday.

On or about June 1999, Mr. Confessore attended a meeting of the Hudson County Coalition of Day Care Directors. This included about 100 day care providers, including those who were servicing the Abbott districts.

On July 13, 1999, Mr. Confessore and Carmella Confessore attended a meeting with representatives of the Urban League and other preschool owners and directors where the preschool program was discussed. At this meeting, Mrs. Confessore stated that the Study Hall had already registered children, in reference to the registrations at the open house. One of the other attendees who questioned Mrs. Confessore's statement was under the impression that no children were to have been enrolled at that time.

In August 1999, the Urban League sent all parents a flier indicating that four day care centers were available including Kidz Academy, which was then licensed. The flier indicated that parents should contact the Urban League of Hudson County for information.

On August 30, 1999, the Board signed the professional services contract with the Urban League.

Assistant Superintendent Comprelli now serves as the contact person in the Superintendent's office, while one of his principals, Robert Grajewski, serves as the Urban League's contact. Mr. Grajewski also runs the three and four year old program with assistance from Dr. Duffy. According to Superintendent DiSalvo, Mr. Confessore has no involvement with the program in the district and is instructed to leave the Board caucuses if there is any discussion of the program.

ANALYSIS

The Commission found probable cause to credit the allegation that Mr. Confessore's conduct violated N.J.S.A. 18A:12-24(b). It provides:

No 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.

The Commission now concludes that Mr. Confessore used or attempted to use his official position to secure unwarranted privileges or advantages for himself in violation N.J.S.A. 18A:12-24(b) in three ways: 1) when he requested an opinion from the Commission stating that his center would have to be used to meet the demand for services and then wrote a letter to the New Jersey Department of Human Services (NJ DHS) to exclude other providers; 2) when he used his title in his correspondence of May 18, 1999 to the residents of Harrison promoting the day care center; and 3) when he acted contrary to the second advisory opinion by sending the May 18, 2000 letter. The Commission will discuss these in turn.

The first way in which the Commission finds that Mr. Confessore violated N.J.S.A. 18A:12-24(b) is encompassed in his second advisory opinion request. In that request, he states that his center must be used in order to meet the demand for pre-kindergarten services in the district. Based largely on his representation, along with his representation that the Board would not be administering the program, the Commission allowed him to contract with the Urban League to provide pre-kindergarten services to the district. However, after receiving the Commission's opinion, Mr. Confessore wrote a letter to an Assistant Commissioner in the NJ DHS asking the department to restrict the number of providers to only those who were included in the original study of Harrison's day care needs. He said that the three existing licensed centers "can provide enough slots for the three and four-year old half-day programs." Mr. Confessore specifically asked that the children not be referred to the two new centers that "are frantically trying to open." In sum, he presented as fact to the Commission that every provider would be needed in order to meet the pre-kindergarten demand and then wrote a letter to try to ensure that his factual scenario would not change and interfere with the opinion he had received. The Commission finds that Mr. Confessore's representations in his second request for an advisory opinion and his subsequent letter to the Department of Human Services constituted an attempt to use his official position to secure unwarranted privileges or advantages for himself in violation of N.J.S.A. 18A:12-24(b).

The second way in which the Commission finds a violation of N.J.S.A. 18A:12-24(b) is in the May 18, 1999 letter that Mr. Confessore sent on behalf of Study Hall, Inc. to the residents of Harrison.

Mr. Confessore's letter must be placed in context. On March 16, 1999, the Board approved a contract with the Urban League to administer its early childhood program.

The Board did not approve a professional service contract, but authorized paying the Urban League a set amount to coordinate a pre-kindergarten program for a certain amount of time. On April 20, 1999, the Superintendent sent a letter to the parents of students in the district explaining the contract with the Urban League. The letter was sent on the letterhead of the Office of the Superintendent with Mr. Confessore's name on it as Assistant Superintendent of Schools describing the program. Mr. Confessore's letter signed "Study Hall, Inc." followed on May 18, 1999. It closely mirrored the wording of the Superintendent's letter regarding the description of the contract with the Urban League. Mr. Confessore's letter indicates in the second paragraph that "Your child may even be eligible for a full-day program at our center at **no cost to you.**" (emphasis supplied) The correspondence markets Study Hall directly to the residents of Harrison and invites them to register with Study Hall. However, according to what Mr. Confessore told the Commission in his second advisory opinion request, and what the Superintendent told parents in his letter, the Urban League was supposed to notify parents of their choices of providers and they would register through the Urban League. The actual details of the professional services agreement with the Urban League were revealed in a contract signed on August 30, 1999.

Mr. Confessore argues in his written submission that he did not use his official position to secure unwarranted privileges or advantages by sending the May 18, 1999 correspondence. He states that he has used the same wording in brochures for many years and always lists the educational backgrounds of the principals to show that the facility only uses certified career educators. He further argues that there is no evidence to support the implication that the other providers were at a disadvantage because the Urban League contract was not executed until August 1999. He argues that all information regarding the three and four year-old program was in the public domain. Last, he argues that he did not possess any information regarding who constituted the parents of three and four year olds in the district and only sent his mailing to residents whose names he obtained from Sir Speedy.

The Commission finds that when Mr. Confessore's letter is viewed in the context of the other information coming from the Superintendent's office, he used the letter to seek an unwarranted privilege or advantage. The Superintendent had written to district parents in April and advised them that the Urban League would be registering parents for daycare. District parents would already know Mr. Confessore as a district Assistant Superintendent and if they did not already know, his title was prominent on the Superintendent's letterhead. Mr. Confessore then sent his letter in May highlighting that he is an owner of Study Hall and also an Assistant Superintendent. In addition to connecting his position to the day care center, Mr. Confessore goes on to note in the letter that his center can provide full day childcare at no cost to the residents. By using this language, he gives the misleading impression that his center is the only center that can provide the free preschool services, particularly the full-day, at no cost to them. Even worse, his correspondence may have given the impression that his is the center that children in the school district should use. The Commission therefore concludes that Mr. Confessore used his position to gain an unwarranted privilege or advantage in violation of N.J.S.A. 18A:12-24(b) by using his title to try to get business and using wording that

misleads readers to believe that his is the only center that can provide free pre-kindergarten services.

The third way in which Mr. Confessore violated N.J.S.A. 18A:12-24(b) of the Act is by doing what he stated that he not would do in his advisory opinion request and also, doing what the Commission told him not to do in its opinion. Mr. Confessore represented to the Commission in his second advisory request that the Urban League would register parents and issue vouchers to parents to send their children where they wished. He said that the Board would not be involved. The Commission understood his statements mean that any opportunity for conflict would thereby be minimized. Mr. Confessore further represented that he would not have to be competing for business with the other centers because the great demand for services ensured that every center would be filled to capacity. Clearly, neither of these representations became the reality.

Mr. Confessore is an Assistant Superintendent in the Superintendent's office. From that office came a letter from the Superintendent in April to district parents explaining the Urban League contract and inviting them to call his office rather than the Urban League and providing its number. As a result of that letter, the Superintendent's office was placed in the position of receiving telephone calls from district parents who had questions about the pre-kindergarten program. In addition, the owner of a daycare center testified that he called Mr. Confessore at the Superintendent's office and discussed with him questions he had about the program, although he said he called Mr. Confessore in his role as daycare center owner. Thus, Mr. Confessore's role as an Assistant Superintendent became immediately entangled with his role as a daycare center owner because the program was not funneled exclusively through the Urban League as Mr. Confessore represented. Further, despite the representations that all the centers would be filled to capacity, the centers were indeed competing for business. Mr. Confessore was not to be soliciting pre-school children for his daycare center under the program as he described it to the Commission. Yet, this is exactly what he did by his May 18, 2000 letter in violation of the restraints he had placed on himself in seeking the second advisory opinion. Based on his May 18, 2000 letter and the other circumstances creating the appearance of impropriety, the Commission finds that Mr. Confessore used his position to secure unwarranted privileges or advantages for himself in violation of N.J.S.A. 18A:12-24(b).

Furthermore, in its second advisory opinion to Mr. Confessore, the Commission cautioned Mr. Confessore that he should not involve himself in his role as an administrator in the Harrison School District in matters affecting his childcare center. Mr. Confessore's use of his title in his correspondence to Harrison residents as a means to get business when he had represented that there would not be a need for such correspondence in the first instance, was a misuse of his position in violation of the Commission's caution to him. The Commission therefore concludes that by his May 18, 2000 correspondence, Mr. Confessore used his position to secure unwarranted privileges and advantages in violation of N.J.S.A. 18A:12-24(b).

DECISION

For the foregoing reasons, the Commission finds that Mr. Confessore violated N.J.S.A. 18A:12-24(b) of the School Ethics Act: 1) when he set forth that the district would have to use all daycare centers in order to obtain an opinion to allow him to provide daycare to the district and then sent the letter to the NJDHS to ensure that those facts would remain the same; 2) when he sent his May 18, 2000 correspondence to the residents of Harrison using his title; and 3) when, by doing so, he contravened the representations he made in his request for an opinion from the Commission and violated the Commission's caution to him.

PENALTY RECOMMENDATION

The Commission has carefully considered the conduct of Mr. Confessore and now believes that the appropriate penalty to recommend to the Commissioner of Education is a penalty of a one-month suspension.

In determining the appropriate penalty, the Commission considers both the conduct involved in the violation as well as any mitigating and aggravating factors. Mr. Confessore urges the Commission to find as a mitigating factor that Mr. Confessore sought an advisory opinion from the Commission in good faith and acted in accordance with the advisory opinion. Thus, he argues, if any violation is found, the violation should be deemed inconsequential or "de minimus." The Commission disagrees.

The violation of section 24(b), the use of one's official position to secure unwarranted privileges or advantages for himself, is a very serious offense for which reprimand or censure would not be appropriate unless there were mitigating circumstances. Mr. Confessore's requests for an advisory opinion do not provide those mitigating circumstances.

Mr. Confessore indeed sought an advisory opinion from the Commission, which initially said that he would be in violation of N.J.S.A. 18A:12-24(a) if he were to attempt to contract with the Board to provide day care services to the district. Mr. Confessore later requested a second opinion by setting forth a change in circumstances. The Commission's second advisory opinion said that he could contract with the Urban League to provide the daycare services, but based on the facts that no one in the Board offices would be involved with the program and that pre-kindergarten programs were in such short supply that there would be no competition for students. The evidence before the Commission has demonstrated that neither fact was correct. Moreover, the Commission found that he violated the caution it set forth at the conclusion of its advisory opinion. One cannot seek an advisory opinion and then act contrary to its advice without consequences. Therefore, the Commission does not find Mr. Confessore's requests for an advisory opinion to be mitigating circumstances.

The Commission believes that the appropriate penalty for a school official's use of his position to secure unwarranted privileges or advantages for himself is a suspension from his position. The Commission believes that a suspension length of one month will have the necessary punitive and deterrent effects.

Robert W. Bender
Acting Chairperson

Resolution Adopting Decision -- C17-99

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof and has considered the testimony of the parties; and

Whereas, the Commission found probable cause to credit the allegations in the complaint that respondent violated N.J.S.A. 18A:12-24(b) of the School Ethics Act; and

Whereas, the Commission has reviewed the proposed decision of its staff setting forth the reasons for its conclusion; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission adopts the proposed decision referenced as its decision in this matter finding Mr. Confessore in violation of N.J.S.A. 18A:12-24(b) and recommending a penalty of a one-month suspension.

Robert W. Bender, Acting Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on April 25, 2000. Paul Garbarini abstained from this decision.

Lisa James-Beavers
Executive Director

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