

IN THE MATTER OF RAYMOND A. DELBURY	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
	:	Docket No. C64-06
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SUSSEX WANTAGE REGIONAL BOARD OF EDUCATION SUSSEX COUNTY	:	DECISION
	:	
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This matter arises from a complaint, filed on December 11, 2006, by Arthur Jacobs, President of the Sussex Wantage Regional Board of Education (Board), alleging that Raymond Delbury, a member of the Board, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainant specifically alleges as follows:

1. The respondent violated N.J.S.A. 18A:12-24.1(a), (c), (e) and (g) of the Code of Ethics for School Board Members and Board policy when, on November 9, 2006, he took out a classified ad in the local newspaper which said, "Call Sussex Wantage BOE member Ray Delbury for answers to your questions (973) 702-3935."
2. The respondent violated N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (g) and (j) of the Code of Ethics for School Board Members and Board policy when, on November 9, 2006, he wrote a letter to the editor.
3. The respondent violated N.J.S.A. 18A:12-24.1(d) of the Code of Ethics for School Board Members and Board policy because he attempted to control spending and micromanage the Sussex Wantage Regional School District (District). The respondent also violated N.J.S.A. 18A:12-24.1(a), (c), (d), (g), (i) and (j) of the Code of Ethics for School Board Members because he went into the school and took pictures of open windows in the middle school and maxi pads in the Board office bathroom. He then spoke with reporters regarding the open windows in the middle school and the maxi-pads in the Board office bathroom.
4. The respondent violated N.J.S.A. 18A:12-24.1(a), (g) and (j) of the Code of Ethics for School Board Members because he did not take his questions to the superintendent or request information from the superintendent or an appropriate administrator. Instead, he went directly to the Board office without asking or notifying anyone and takes the information he wants. The respondent then showed the information to reporters. On October 12, 2006, the respondent was found going through documents in a secretary's office while the secretary was not present.
5. The respondent violated N.J.S.A. 18A:12-24.1(b) and (f) of the Code of Ethics for School Board Members because he home schools his children and has made every decision based on stopping or reducing spending rather than on the basis of the educational welfare of the children of the District.

6. The respondent violated N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (g), (i) and (j) of the Code of Ethics for School Board Members because he has treated the teachers and other education professionals in a demeaning and harassing manner and contacts teachers and administrators directly without going through the superintendent.

The respondent filed a timely answer on January 22, 2007 through his attorney, Donald P. Hogan, Esquire, wherein he denied that he violated the Act, asked the Commission to find the complaint frivolous and impose sanctions, pursuant to N.J.S.A. 18A:12-29(e), and answered as follows:

1. The respondent admitted taking out the ad, but maintained that he did not indicate in the ad that he was speaking on behalf of the Board.
2. The respondent admitted that he wrote the letter to the editor. The respondent argued that he did not sign the letter as a Board member; rather the newspaper added his Board member title. He further maintained that the letter was accurate.
3. The respondent denied that he micromanaged the District or attempted to control spending.
4. The respondent answered that he has repeatedly asked questions of the administration. The respondent denied opening file cabinets, going through anyone's desk or removing any documents from the Board offices.
5. Respondent maintained that Board members go regularly to the Board office to pick up mail. He further argued that he did not need permission to see bills that he had reviewed earlier in the day.
6. The respondent denied that he harassed, demeaned or bullied staff in the District.

The Commission invited, but did not require, the parties to attend its April 24, 2007 meeting. The parties were advised of their right to bring counsel and witnesses. The matter was adjourned to the May 22, 2007 meeting. The complainant and his witnesses, Susan Petrick, Joyce Cosh, Edward Izbicki, Susan Boyle and Diane Snure attended the May 22, 2007 hearing and testified before the Commission. The respondent did not attend the meeting. During the public portion of the May 22, 2007 meeting, the Commission voted to find that the respondent did not violate the Code of Ethics for School Board Members as alleged in allegations one, two, three, four and five. The Commission also voted to find that the respondent did not violate N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (g) and (j) as alleged in allegation six. However, the Commission voted to find that the respondent violated N.J.S.A. 18A:12-24.1(i) as alleged in count six and to recommend to the Commissioner of Education that the respondent be

reprimanded. At its June 26, 2007 meeting, the Commission reconsidered its previous determination and voted to find that the respondent also violated N.J.S.A. 18A:12-24.1(j) as alleged in count four and N.J.S.A. 18A:12-24.1(e) as alleged in count six. At its September 25, 2007 meeting, the Commission again reconsidered its previous determination and voted to find that the respondent violated N.J.S.A. 18A:12-24.1(j) as alleged in count three and N.J.S.A. 18A:12-24.1(d) and (j) as alleged in count six. At its October 30, 2007 meeting, in light of the additional violations it found at its June and September meetings, the Commission reconsidered its determination to recommend to the Commissioner of Education that the respondent be reprimanded and voted to recommend to the Commissioner of Education that the respondent be censured. The Commission adopted this decision at its October 30, 2007 meeting.

FACTS

The Commission was able to discern the following facts based on the pleadings and the documents submitted.

At all times relevant to the allegations in this complaint, the respondent was a member of the Board and the complainant was President of the Board. Board Policy 9020 provides that only the Board President can speak for or in the name of the Board.

On November 9, 2006, the following classified ad was taken out by the respondent in a local newspaper: "Call Sussex Wantage B.O.E. member Ray Delbury for answers to your questions. (973) 702-3935." On the same day and in the same local newspaper, the following letter to the editor, written by the respondent, was published:

As a newly appointed member of the Sussex Wantage Board of Education, I still do not understand why it is so hard for you and me, (the taxpayer) to find our basic information concerning the running of our school system.

I do not understand why, when I ask simple questions (about subjects such as transportation or travel logs) or request copies of expense accounts (if they exists[sic]), or request a detailed summery [sic] of an employees [sic] employment package, or ask to review a contract or other basic information necessary to run a 21-million dollar enterprise, I either receive partial information, or I need to request the information a second or third time causing month's [sic] of delay, or I might not get the requested information at all.

Ladies and gentleman, we need your involvement and help. I am constantly told:

Shhhhhhh keep it quiet. It can be quiet no longer. It is your money. You must get involved. With your help and the help of those board members that are willing to stick their necks out for you and our children, we together can (and will) straighten this place out. But it can not, and it will not, be done without your involvement.

If you owned a 21-million dollar business, (You do!!), what would you do to the individual(s) that made the following decision? (Would you give them tenure? Would you leave them in the position? Would you move them horizontally?) (The Peters Principal) Let us know. In or about July 2006 the decision was made to purchase \$12,000 to \$15,000 worth math books to supplement our 10 year old books. The people who made this decision were in the position to know, or should have known, that new math books [sic] costing us nearly \$50,000 were going to be presented to the board for purchase in September-October 2006.

To this day, I still do not know who the people were that made the decision to purchase these now obsolete math books.

I would also like you to know that the \$12,000 to \$15,000 July purchase was not presented to the finance committee for payment until October. If it had been given to finance, earlier this would have alerted the board to this expenditure,

We were once again sucker punched.

The respondent signed the letter "Raymond A Delbury" and the newspaper added "Sussex-Wantage Board of Education" under the respondent's name.

On or about December 5, 2006, the respondent spoke with reporters and complained about open windows at a school building and maxi-pads in the Board office bathroom. There was testimony that the respondent took pictures of the maxi-pads and open windows and these pictures were published in a local newspaper. The respondent's comments were printed in a December 5, 2006 local newspaper.

Mr. Izbicki, the District's Business Administrator, testified that it is normal practice for the finance committee to review bills before committee meetings. He testified that finance committee members go into the office of the business administrator to review and sign off on the bills before the committee meeting. He further testified that the respondent reviewed the bills with another member of the finance committee, but that he never signed off on the bills. On the morning of October 12, 2006, the respondent and another Board member, as members of the finance committee, went to the office of the business administrator to review the bills. The business administrator was not there. Ms. Cosh, the District's bookkeeper, testified that she provided the respondent and the other Board member a container with the bills. The respondent and the other Board member reviewed the bills, gave the container back to Ms. Cosh and left the office. When Ms. Cosh returned to the office about one hour and a half later, she found the respondent in the office reviewing the bills from the same container in which he had reviewed bills earlier that morning. The respondent had returned without notifying anybody that he was going back to finish reviewing the bills.

Ms. Petrick, the District's Supervisor of Curriculum and Instruction, testified that the respondent stopped in her office every Friday for several weeks and would ask her questions that she could not answer. She testified that the respondent would then get upset with her and ask why he could not get the information. Ms. Petrick testified that

the respondent wanted to see what the teachers actually used to teach and he wanted to observe the teachers teaching. She also testified that the respondent wanted to see the evaluations for each teacher. Ms. Petrick testified that she felt intimidated by the respondent when he became upset with her. She testified that she felt that the respondent was bullying her. Ms. Petrick testified that when the respondent got upset with her, his face would get red and he would get loud and in her face to the point that she would have to back off. She further testified that the respondent would put his hand in her face. Ms. Snure, a member of the Board, testified that she has seen the respondent get in the face of the people he demands information from. She also testified that if the respondent does not like what you say, he puts his hand in your face. She testified that she has seen the respondent treat Ms. Petrick in an unprofessional and intimidating manner.

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members.

The Commission will first address the complainant's contention in allegations one and two that the respondent violated Board policy. The Commission does not have jurisdiction to enforce Board policy. It only has jurisdiction to enforce the Act. Therefore, the Commission will not make a determination regarding the complainant's contention, in both allegations one and two, that the respondent violated Board policy.

The Commission will next address the complainant's allegations in counts one, two, three, four and six that the respondent violated N.J.S.A. 18A:12-24.1(a). N.J.S.A. 18A:12-24.1(a) provides:

I will uphold and enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Desired changes shall be brought about only through legal and ethical procedures.

As noted above, the Commission only has jurisdiction to find a violation of the Act; it does not have jurisdiction to find a violation of all laws, rules and regulations of the State Board of Education or court orders pertaining to the schools. Absent a determination from a court of law or an administrative agency of this State finding that the respondent failed to enforce all laws, rules and regulations of the State Board of Education, or court orders pertaining to schools, or a finding that the respondent attempted to bring about changes through illegal or unethical procedures, the Commission cannot find that the respondent violated N.J.S.A. 18A:12-24.1(a). The Commission can find no evidence to factually prove that the respondent failed to enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools or that the respondent failed to bring about changes only through legal and ethical procedures. Therefore, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(a) and dismisses the

allegation that the respondent violated N.J.S.A. 18A:12-24.1(a) with respect to allegations one, two, three, four and six.

The Commission will next address the remaining allegations in counts one through six.

COUNT ONE

In count one, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(c), (e) and (g) of the Code of Ethics for School Board Members when, on November 9, 2006, he took out a classified ad in a local newspaper. N.J.S.A. 18A:12-24.1(c) provides:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

To find a violation of N.J.S.A. 18A:12-24.1(c), the Commission would initially have to find that the respondent took Board action when he placed the classified ad in the local newspaper. The Commission would then have to find that the respondent failed to confine his Board action to policy making, planning and appraisal when he placed the classified ad. The classified ad said, "Call Sussex Wantage BOE member Ray Delbury for answers to your questions (973) 702-3935." The Commission notes that the respondent took out the classified ad on his own and without knowledge of the Board. In the ad, the respondent identifies himself as a member of the Board and gives a phone number where he can be called for answers to questions. The respondent does not indicate that he will answer questions on behalf of the Board. He does not indicate that he put the ad in the paper on behalf of the Board. He also does not indicate that he will only answer questions regarding the Board or education topics. Since he was not acting on behalf of the Board, the Commission finds that the respondent took private action when he placed the classified ad in the local newspaper. Since the respondent's action was private action and not Board action, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(c) and dismisses the allegation that respondent violated N.J.S.A. 18A:12-24.1(c) when he placed the classified ad in the local newspaper.

N.J.S.A. 18A:12-24.1(e) provides:

I 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.

Having found that the respondent took private action when he placed the classified ad in the newspaper, in order to find a violation of N.J.S.A. 18A:12-24.1(e), the Commission must determine whether that private action could have compromised the Board. The complainant has provided no evidence to show how the respondent's

classified ad could have compromised the Board. To prove a violation of N.J.S.A. 18A:12-24.1(e), the complainant maintains that the ad violated Board policy because only the president speaks for the Board. However, the Commission notes that the ad does not indicate that the respondent will answer questions on behalf of the Board or speak for the Board. The ad only indicates that the respondent, a member of the Board, will answer questions. Having found no evidence to factually prove that respondent's private action compromised the Board, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(e) and dismisses this allegation in count one.

N.J.S.A. 18A:12-24.1(g) provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

To prove a violation of N.J.S.A. 18A:12-24.1(g), the complainant argues that the respondent gave misinformation in the ad. The Commission can find no misinformation in the ad. The respondent identifies himself as a member of the Board and gives a phone number for answers to questions. He does not indicate that he is acting on behalf of the Board or with knowledge of the Board. He does not indicate that he put the ad in the newspaper on behalf of the Board. The Commission can find no evidence to factually prove that the respondent failed to provide accurate information when he placed the classified ad in the local newspaper. Therefore, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(e) and dismisses this allegation in count one.

COUNT TWO

In count two, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e), (g) and (j) of the Code of Ethics for School Board Members when, on November 9, 2006, he wrote a letter to the editor. The Commission initially notes that the respondent's letter to the editor was written prior to the Commission's advice in *Advisory Opinion A03-07*, (April 2, 2007), and, therefore, the Commission will not apply its advice to this case.

To prove a violation of N.J.S.A. 18A:12-24.1(c), which is set forth above, the complainant argues that the respondent took Board action when he wrote the November 9, 2006 letter to the editor and that the Board action went beyond policy making, planning and appraisal. The complainant also argues that the respondent did not have authority to write the letter to the editor on behalf of the Board. While the Commission notes that the respondent began the letter to the editor by identifying himself as an appointed member of the Board, it is apparent to the Commission, after reviewing the contents of the letter, that the respondent did not hold himself out as representing the

Board. It is also apparent to the Commission that the letter was written in the respondent's capacity as a private citizen. Thus, the respondent did not take Board action when he wrote the letter. Since the respondent's action was private action and not Board action, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(c) and dismisses the allegation that respondent violated N.J.S.A. 18A:12-24.1(c) when he wrote the November 9, 2006 letter to the editor and dismisses this allegation.

N.J.S.A. 18A:12-24.1(d) provides:

I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

To prove a violation of N.J.S.A. 18A:12-24.1(d), the complainant maintains that the respondent administered the schools when he wrote the letter to the editor. The Commission notes that in all of its previous decisions where it found a violation of N.J.S.A. 18A:12-24.1(d), there was some overt action that was taken by the board member to administer the schools. For example, in I/M/O William Lahn, C25-05, (December 20, 2005), a board member was found to have violated N.J.S.A. 18A:12-24.1(d) when he went directly to the guidance secretary to ask for documents, and when he went to the boys' locker room, inspected the lockers and instructed district employees regarding the supervision of students. Also, in I/M/O Julia Hankerson, C36-02, (June 24, 2003), a board member was found to have violated N.J.S.A. 18A:12-24.1(d) when she went to the board office on several occasions and instructed district employees to perform certain tasks. As alleged in count two, the respondent did not interact with staff, nor did he take any overt action to administer the schools. Rather, he wrote a letter to the editor critical of the administration, which does not rise to the level of administering the schools. Therefore the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(d) when he wrote the November 9, 2006 letter to the editor and dismisses this allegation.

Having found that the respondent took private action when he wrote the letter to the editor, in order to find a violation of N.J.S.A. 18A:12-24.1(e), which is set forth above, the Commission must determine whether that private action could have compromised the Board; however, the respondent has not provided any factual evidence to show how the letter could have compromised the Board. While the respondent's letter is critical of the administration and somewhat critical of the Board, this alone does not show that the letter compromised the Board. The Commission can find no factual evidence to show that the respondent's letter to the editor compromised the Board or could have compromised the Board. Based on the foregoing, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(e) when he wrote the letter to the editor and dismisses this allegation.

The complainant maintains that the respondent violated N.J.S.A. 18A:12-24.1(g), which is set forth above, because he provided inaccurate information in the letter to the

editor. However, the complainant did not provide any evidence to show that the information was inaccurate. Thus, the Commission has no basis upon which to determine if the information was inaccurate. The complainant also maintains that the respondent violated N.J.S.A. 18A:12-24.1(g) because he was not working in concert with his fellow Board members. However, the phrase “in concert with my fellow board members” is modified by the phrase “interpret to the staff the aspirations of the community for its school,” and the complainant has provided no evidence to show that, in not working in concert with the Board, the respondent failed to interpret to the staff the aspirations of the community for its school. Based on the foregoing, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(g) when he wrote the letter to the editor and dismisses this allegation.

N.J.S.A. 18A:12-24.1(j) provides:

I will refer all complaints to the chief school administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

To prove that the respondent violated N.J.S.A. 18A:12-24.1(j) when he wrote the letter to the editor, the complainant maintains that the letter itself is a violation of N.J.S.A. 18A:12-24.1(j). However, the Commission finds that the letter is not a violation of N.J.S.A. 18A:12-24.1(j), because N.J.S.A. 18A:12-24.1(j) refers to a process for the resolution of complaints. In the letter to the editor, the respondent merely shares his personal opinion and concerns with the public and asks for their help. The respondent’s letter to the editor does not circumvent the resolution of any particular complaint. The Commission notes that, in the letter, the respondent is critical of the administration because of its alleged inability to provide the respondent with information as requested. However, these are not concrete complaints, but are general criticisms of the administration. Based on the foregoing, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(j) when he wrote the letter to the editor and dismisses this allegation.

COUNT THREE

In count three, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(d) of the Code of Ethics for School Board Members, which is set forth above, because he attempted to control spending and micromanage the District . In order to find a violation of 18A:12-24.1(d), the Commission must determine if the respondent administered the schools. As noted above, in previous decisions where the Commission found a violation of N.J.S.A. 18A:12-24.1(d), there was some overt action that was taken by the board member to administer the schools. The complainant has provided no factual evidence of any overt action on the part of the respondent to show how the respondent’s attempt to control spending and micromanage the district rose to the level of administering the schools. The Commission notes that one of the responsibilities of a board of education is adoption of the budget. In attempting to control spending, the respondent was carrying out his responsibility as a board member in relation to the

budget. Based on the foregoing, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(d) as alleged above and dismisses this allegation.

In count three, the complainant also alleges that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (g), (i) and (j) of the Code of Ethics for School Board Members because he spoke with reporters and questioned why windows were open in the middle school and why there were maxi-pads in the Board office bathroom. To prove a violation of the above provisions, the complainant maintains that the respondent did not have authorization to speak with reporters and give the reporters pictures he took of the open windows and maxi-pads. To find a violation of N.J.S.A. 18A:12-24.1(c), the Commission must find that the respondent failed to confine his board action to policy making, planning and appraisal. There is no factual evidence to show that the respondent indicated to the reporter that he was speaking on behalf of the Board when he discussed the open windows and maxi-pads with the reporter. Thus, the Commission cannot find that the respondent was taking Board action when he did so. Therefore, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(c) and dismisses this allegation in count three. Regarding N.J.S.A. 18A:12-24.1(d), the Commission finds that the respondent's conduct as alleged in count three does not rise to the level of administering the schools in violation of N.J.S.A. 18A:12-24.1(d). While the respondent took an action related to the schools when he took pictures of the open windows and the maxi-pads, this action alone does not rise to the level of administering the schools. The respondent did not go into the schools and close the windows or ask school personnel to close the windows. The respondent did not take the maxi-pads out of the bathroom or tell school personnel to remove them. Therefore, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(d) and dismisses this allegation in count three.

To find a violation of N.J.S.A. 18A:12-24.1(g), the Commission must determine if the respondent failed to hold all matters pertaining to the schools confidential which, if disclosed, would needlessly injure individuals or the schools or provided inaccurate information. The complainant provided no factual evidence to show that the respondent revealed information that should have been kept confidential. The information regarding the open windows at the middle school and the maxi-pads in the Board bathroom is not the type of information which the respondent was required to keep confidential. The complainant also did not provide information to show that the pictures were inaccurate. Therefore, the Commission finds that the respondent did not violate N.J.S.A. 18A:12-24.1(g) and dismisses this allegation in count three.

N.J.S.A. 18A:12-24.1(i) provides:

I will support and protect school personnel in proper performance of their duties.

The complainant offers no argument or factual evidence to prove a violation of N.J.S.A. 18A:12-24.1(i) except that the respondent spoke to reporters and gave them

pictures of open windows in the middle school and maxi-pads in the Board bathroom. The pictures and respondent's statement were eventually published in a local newspaper. The complainant did not provide any factual evidence to show how this conduct failed to support school personnel in proper performance of their duties. There is no factual evidence to prove that the respondent had any interactions with school personnel or even implicated school personnel in his statements to the reporters. Based on the foregoing, the Commission finds that this conduct does not rise to the level of a violation of N.J.S.A. 18A:12-24.1(i) and the Commission dismisses this allegation in count three.

Regarding N.J.S.A. 18A:12-24.1(j), the complainant argues that the respondent violated N.J.S.A. 18A:12-24.1(j) when he went into the school and took pictures of open windows in the middle school and maxi-pads in the Board bathroom and then spoke with reporters regarding his concerns and gave the reporters copies of the pictures. Rather than go to the superintendent with his concerns regarding the open windows in the bathroom and the maxi-pads in the Board bathroom, the respondent went directly to reporters with his complaints. This evidence, in accordance with N.J.A.C. 6A:28-6.9(b)4, shows that the respondent acted on a complaint prior to referral of the complaint to the chief administrative officer, prior to the failure of an administrative solution and at a time other than a public meeting. Therefore, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(j) as alleged in count three.

COUNT FOUR

In count four, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(g) and (j) of the Code of Ethics for School Board Members because he does not take his questions to the superintendent or request information from the superintendent or an appropriate administrator. Instead, he goes directly to the Board office without asking or notifying anyone and takes the information he wants. The respondent then shows the information to reporters. On October 12, 2006, the respondent was found going through documents in a secretary's office while the secretary was not present. The complainant did not provide any factual evidence to show that the information the respondent gave to the reporters was confidential or inaccurate. Therefore, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(g) and dismisses this allegation in count four.

To prove a violation of N.J.S.A. 18A:12-24.1(j), the complainant argues that when the respondent gave the reporters information regarding the schools, he should have taken those concerns and complaints to the superintendent first and provided the superintendent with the opportunity to address the respondent's concerns. As noted in count three, when the respondent went into the school and took pictures of open windows in the middle school and maxi-pads in the Board bathroom and then spoke with reporters regarding his concerns and gave the reporters copies of the pictures, he violated N.J.S.A. 18A:12-24.1(j) because he did not go to the superintendent with his complaints and wait for an administrative solution to his concerns. This evidence, in accordance with N.J.A.C. 6A:28-6.9(b)4, shows that the respondent acted on a complaint prior to referral of the complaint to the chief administrative officer, prior to the failure of an

administrative solution and at a time other than a public meeting. Therefore, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(j) as alleged in count four.

COUNT FIVE

In count five, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(b) and (f) of the Code of Ethics for School Board Members because he home schools his children and makes every decision based on stopping or reducing spending rather than on the basis of the educational welfare of children of the District. N.J.S.A. 18A:12-24.1(b) provides:

I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race creed, sex, or social standing.

To prove a violation of N.J.S.A. 18A:12-24.1(b), the complainant argues that the respondent seeks to stop or reduce spending and does not make decisions based on the educational welfare of children. However, the complainant does not provide any factual evidence to show that the respondent does not make decisions in terms of the educational welfare of children. The respondent's focus on the reduction of spending alone does not prove that his decisions are not made in terms of the educational welfare of children. Therefore, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(b) and dismisses this allegation in count five.

N.J.S.A. 18A:12-24.1(f) provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

To prove a violation of N.J.S.A. 18A:12-24.1(f), the complainant argues that because the respondent home schools his children, he has surrendered his independent judgment to special interest or partisan political groups and used the schools for his gain. However, the complainant has provided no factual evidence to prove this allegation except for the fact that the respondent home schools his children. The Commission notes that there is no involvement of a special interest or partisan political group. The Commission further notes that the fact that the respondent home schools his children does not prove that he has used the schools for his gain. Based on the foregoing, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(f) and dismisses this allegation in count five.

COUNT SIX

In count six, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e), (g), (i) and (j) of the Code of Ethics for School Board Members because he has treated the teachers and other education professionals in a demeaning and harassing manner and contacts teachers and administrators directly without going through the superintendent. To prove a violation of N.J.S.A. 18A:12-24.1(c), the complainant maintains that the respondent took Board action when he treated the teachers in a demeaning and harassing manner. Previously in I/M/O Paul Schaefer, C03/C04/C06/C07/C12-03, (September 23, 2003), the Commission found that the chairman of a board of trustees violated N.J.S.A. 18A:12-24.1(c) when he acted to terminate the chief administrative officer without giving notice to all of the board members that such action was to take place. In Schaefer, the chairman acted in his official duties as chairman of the Board of trustees when he terminated the chief administrative officer. In this matter, the respondent was not acting in his official role as a Board member when he interacted with administrators. Therefore, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(c) and dismisses this allegation in count six.

To prove a violation of N.J.S.A. 18A:12-24.1(d), the complainant argues that the respondent went directly to certain administrators and asked them for information without going to the superintendent. The complainant presented evidence to show that the respondent stopped in the District's Supervisor of Curriculum and Instruction office every Friday for several weeks asking the supervisor for information. When the supervisor failed to produce the information, the respondent became upset, got loud, and got in the supervisor's face asking her why she could not give him the information. This proves that the respondent administered the schools because N.J.A.C.6A:28-7.1 defines "administer the schools," in part, as meaning that a board member has given a direct order to school personnel. Therefore, the Commission voted to find that the respondent violated N.J.S.A. 18A:12-24.1(d) as alleged in count six.

To prove a violation of N.J.S.A. 18A:12-24.1(e), the complainant argues that the respondent's demeaning and harassing treatment of the District's Supervisor of Curriculum and Instruction was private action that could have compromised the Board. Previously in I/M/O Eileen Quinn, C45-04, (February 7, 2005), the Commission found that a board member's distribution of a flier was a private action since it did not involve her board member duties. In this matter, when the respondent went to the supervisor to ask for information, he was not acting in his role as a Board member; therefore, his action was private action. The Commission finds that his demeaning and harassing treatment of the supervisor could have compromised the Board because it could have become subject to litigation. Therefore, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(e) when he treated the supervisor in a demeaning and harassing manner.

The Commission cannot discern how the respondent's demeaning and harassing treatment of the supervisor violated N.J.S.A. 18A:12-24.1(g). To prove a violation of N.J.S.A. 18A:12-24.1(g), the complainant would have to provide factual evidence that

the respondent failed to hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools or provided inaccurate information. The complainant has not provided such factual evidence. Therefore, the Commission finds that the complainant has not demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(g) and dismisses this allegation in count six.

To prove a violation of N.J.S.A. 18A:12-24.1(i) the complainant alleges that the respondent failed to support and protect District's Supervisor of Curriculum and Instruction in the proper performance of her duties. The evidence shows that the respondent got upset when the supervisor could not provide him with the information he requested. The supervisor testified that she felt that the respondent bullied her. She also testified that when the respondent got upset with her, he got loud, his face turned red and he got in her face and put his hand in her face. Ms. Snure, a member of the Board, also testified that she saw the respondent get in the face of people he demands information from and put his hand in their face. Certainly whenever a board member becomes loud with personnel in the district and intimidates them by getting in their face, that board member has failed to protect and support the District personnel in the proper performance of their duties. The evidence shows that the respondent did not support and protect the supervisor in the proper performance of her duties. Therefore, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(i) when he treated the supervisor in a demeaning and harassing manner.

To prove a violation of N.J.S.A. 18A:12-24.1(j), the complainant alleges that the respondent went directly to certain administrators and asked them for information without going to the superintendent. The evidence shows that the respondent stopped in a supervisor's office every Friday for several weeks asking her for information. When she failed to produce the information, the respondent became upset, got loud, and got in her face asking her why she could not give him the information. The evidence also shows that the respondent went into the school and took pictures of open windows in the middle school and maxi-pads in the Board bathroom and then spoke with reporters regarding his concerns and gave the reporters copies of the pictures without going first to the superintendent and waiting for an administrative solution to his concerns. This evidence, in accordance with N.J.A.C. 6A:28-6.9(b)4, shows that the respondent acted on a complaint prior to referral of the complaint to the chief administrative officer, prior to the failure of an administrative solution and at a time other than a public meeting. Based on the foregoing, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(j) as alleged in count six.

DECISION

For the reasons expressed above, the Commission finds that Raymond A. Delbury violated N.J.S.A. 18A:12-24.1(d), (e), (i) and (j) of the Code of Ethics for School Board Members and the Commission dismisses the remaining allegations against him. The Commission recommends that the Commissioner of Education impose the penalty of a censure. The Commission notes that in I/M/O William Lahn, the Commissioner concurred with the Commission's penalty recommendation of censure where a board

member was found to have violated N.J.S.A. 18A:12-24.1(d) when he went directly to a guidance secretary and requested SAT reports insisting that he receive a copy of the reports and when he personally inspected the boys' lockers to determine if new lockers were needed and, in doing so, he instructed district employees to provide more supervision when the students were present. Also in I/M/O Kroschwitz, II and Sturgeon, C29-03, (November 25, 2003), the Commissioner concurred with the Commission's recommendation that two board members be censured where the Commission found that the two board members violated N.J.S.A. 18A:12-24.1(j) when they visited the kitchens in three schools without notifying the administration and without signing in, took pictures of the unsanitary conditions in the kitchens, appeared on a television program to air their complaints as to the sanitary nature of the kitchens and spoke to reporters regarding their complaints. This respondent's violations of N.J.S.A. 18A:12-24.1(d), (e), (i) and (j) are similar to the above matters in that the respondent went to reporters with complaints about the District and went directly to school personnel requesting information in a demeaning and harassing manner. Thus, the Commission recommends the penalty of censure to the Commissioner.

This decision has been adopted by a formal resolution of the School Ethics Commission. This matter shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation **for sanction only**, pursuant to N.J.S.A. 18A:12-29. Within 13 days from the date on which the Commission's decision was mailed to the parties, Mr. Delbury may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C64-06

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

Whereas, at its meeting of May 22, 2007, the Commission found that Raymond A. Delbury violated N.J.S.A. 18A:12-24.1(i) of the Code of Ethics for School Board Members as alleged in count six and recommended that the Commissioner of Education impose a sanction of reprimand; and

Whereas, at its meeting of June 26, 2007, the Commission reconsidered its previous decision and found that Raymond A. Delbury also violated N.J.S.A. 18A:12-24.1(j) as alleged in count four and N.J.S.A. 18A:12-24.1(e) as alleged in count six and recommended that the Commissioner of Education impose a sanction of reprimand; and

Whereas, at its meeting of September 25, 2007, the Commission reconsidered its previous decisions and found that Raymond A. Delbury also violated N.J.S.A. 18A:12-24.1(j) as alleged in count three and N.J.S.A. 18A:12-24.1(d) and (j) as alleged in count six and recommended that the Commissioner of Education impose a sanction of reprimand; and

Whereas, at its meeting of October 30, 2007, the Commission reconsidered its penalty determination and found that, because of the numerous violations, the Commission recommended that the Commissioner of Education impose a sanction of censure and adopted this draft decision as prepared by its staff; and

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 30, 2007.

Joanne Boyle
Executive Director