

IN THE MATTER OF	:	BEFORE THE SCHOOL ETHICS COMMISSION
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	:	
RUDOLPH McCULLERS	:	Docket No. C06-05 & C12-05
<i>GATEWAY CHARTER SCHOOL</i>	:	
<i>BOARD OF TRUSTEES</i>	:	
<i>HUDSON COUNTY</i>	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from two complaints filed by Gregory John Monte, an employee of the Gateway Charter School Board of Trustees (Board), against Rudolph V. McCullers, Jr., President of the Board. The first complaint, C06-05, was filed on March 23, 2005, and alleged that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members in the Act when he engaged in the conduct noted below. The second complaint, C12-05, was filed on April 8, 2005, and alleged that Mr. McCullers violated N.J.S.A. 18A:12-24(b) and (c) of the Act and N.J.S.A. 18A:12-24.1(a), (c) and (e) of the Code of Ethics for School Board Members when he engaged in the conduct noted below. Following are the complainant's allegations:

- (1) As President of the Board, Mr. McCullers participated in a closed executive meeting of the Gateway Charter School Board of Trustees (Board), held on March 17, 2005, without public notice in violation of the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 et seq.;
- (2) Mr. McCullers sent an e-mail on March 17, 2005 at 3:13 p.m., which effectively dismissed the complainant from the position of secretary to the Board without Board approval and without a showing of neglect, misbehavior or other offense;
- (3) During the weekend of February 19-21, 2005, Mr. McCullers or his agent, without cause, removed items from the complainant's desk and rearranged his furniture;
- (4) Mr. McCullers went directly to the complainant regarding a scheduling mix-up that occurred at the school;
- (5) On February 25, 2005, Mr. McCullers entered a classroom, intervened in a dispute between two students and told one student with an IEP that he would not be suspended for his actions. He then went on to lecture teachers about student discipline. After that he entered several other classrooms and the cafeteria and lectured students about their bad behavior;

(6) Mr. McCullers signed several checks without Board authorization, which included several checks made out to him;

(7) As Board President, Mr. McCullers continued the employment of a Business Administrator that was not properly hired by Board approval, who did not hold proper certification as required by N.J.A.C. 6A:11-5.1(b)2, and who also served as Treasurer in violation of N.J.S.A. 18A:17-31;

(8) Mr. McCullers hired Professional Maintenance and Carpeting and Frank Ruiz without soliciting bids, and in early February 2005, he hired Unique Maintenance to strip and re-finish the floors in the school without Board approval, prior to a visit by representatives of the bank at which he is employed as Vice President;

(9) As Board President, Mr. McCullers failed to assure the timely filing of the following items:

1. The corrective audit plan for the 2002-2003 audit;
2. The Fiscal Section of the annual report for fiscal year 2003-2004;
3. The 2003-2004 independent audit;
4. The Board resolution approving the fiscal year 2004-2005 budget; and
5. The signed facility lease;

Furthermore, Mr. McCullers failed to provide certifications required by N.J.A.C. 6A:23-2.11(c)3 and 4 at Board meetings from September 2004 until March 2005. Mr. McCullers also failed to assure that all school expenditures were fully itemized, verified, and certified in writing and presented to the full Board for approval. Finally, Mr. McCullers failed to make certain that all funds were expended only by the Treasurer in violation of N.J.S.A. 18A:17-36, N.J.S.A. 18A:19-1 et seq. and N.J.A.C. 6A:23-2.2; and

(10) Mr. McCullers instructed the Board secretary to draw up a spread sheet to keep track of bank employees who were at the school and, when it was misplaced, he instructed the complainant to get another and to make sure all of the instructors signed in.

After receipt of the complaints, the Commission forwarded both complaints to Mr. McCullers and notified him that, pursuant to N.J.A.C. 6A:28-6.5(a), he had 20 days to submit an answer under oath to the Commission. Mr. McCullers failed to answer either complaint within the 20-day time limit. The Commission then notified Mr. McCullers that, pursuant to N.J.A.C. 6A:28-6.5(d), if he did not provide an answer within 10 days of receipt of the notice, each allegation in both of the complaints would be deemed admitted and he would not be permitted to address the Commission. The Commission received a timely answer to C12-05 on May 20, 2005 that was mistakenly labeled as an answer to C06-05. However, the answer was not sworn under oath as required by N.J.S.A. 18A:12-29(b). Therefore, the Commission did not accept the answer and it was not considered when the Commission made its determination regarding these matters. The Commission did not receive an answer to the allegations in C06-05.

The Commission invited the complainant to attend its May 24, 2005 meeting to present witnesses and testimony, but did not require that he be present. The complainant attended the hearing with a witness. However, since the Commission did not have any questions for either him or the witness, they did not appear before the Commission. Since Mr. McCullers did not provide an answer to C06-05, he could not attend the hearing on C06-05. He was invited to the meeting to testify on C12-05, but then he submitted an uncertified answer, which the Commission could not accept pursuant to N.J.S.A. 18A:12-29(b). Therefore, he could not attend the hearing on C12-05. At its May 24, 2005 meeting, the Commission voted to consolidate C06-05 and C12-05 and voted to find probable cause to credit the allegations that Mr. McCullers violated N.J.S.A. 18A:12-24(b) and (c) of the Act and N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members in the Act.

The Commission found that the material facts were not in dispute with respect to the issue upon which it found probable cause and, therefore, the Commission advised Mr. McCullers that it would decide the matter on the basis of written submissions. Mr. McCullers was invited to provide a written submission to the Commission by August 29, 2005, and set forth why the Commission should not find him in violation of N.J.S.A. 18A:12-24(b) and (c) of the Act and N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members. Mr. McCullers was also told that his written submission should include his position on an appropriate sanction should the Commission determine that the Act was violated. Mr. McCullers did not provide a written submission in response to the Commission's probable cause determination.

FACTS

The Commission based its finding of probable cause on the following facts.

At all times relevant to these complaints, Mr. McCullers was President of the Board and employed at North Fork Bank as Vice President. Mr. McCullers resigned from the Board in June 2005. At all times relevant to the complaints, the complainant was employed by the Board as Vice Principal and, at certain times, employed by the Board as Board Secretary.

(1) March 17, 2005 Closed Executive Meeting

On March 14, 2005, Mr. McCullers sent an e-mail to all Board members asking them to review attachments to the e-mail for the executive Board meeting. The closed executive meeting of the Board was held on March 17, 2005. The public was not provided with any type of notice of the meeting.

(2) Complainant's Position as Board Secretary

On March 17, 2005, at 3:13 p.m., prior to the closed executive meeting of the Board held at 7:00 p.m. that same evening, Mr. McCullers sent an e-mail to the Board and the complainant with an enclosed letter to the complainant wherein Mr. McCullers

indicated that he was, “thanking him for his services and resigning him from holding the position of Board Secretary.” His e-mail also indicated that it is the duty and responsibility of a Board member to be secretary to the Board and that he was assigning the responsibility to the business administrator. During the March 21, 2005 Board meeting, a Board member raised an objection to the procedure that was followed in the dismissal of the complainant. That Board member noted that the dismissal should have been brought before the Board for a vote and that he believed that Mr. McCullers did not follow the proper procedure.

(3) Mr. Monte’s Office

During the weekend of February 19-21, 2005, Mr. McCullers and/or his agent entered the complainant’s office and removed items from his desk. The furniture in the office was also completely rearranged during that time. The complainant discovered the changes on Tuesday, February 22, 2005 when he returned to work after President’s Day weekend.

(4) Scheduling Problems

During February 2005, instructors from North Fork Bank were scheduled to present financial lessons to the 7th grade students. During the presentations, a scheduling mix up occurred. The chief administrative officer e-mailed an explanation to Mr. McCullers in the early morning on February 28, 2005, which provided details as to why the mix up occurred and provided a solution that she would undertake prior to the final visit of the North Fork Bank instructors. Shortly thereafter, Mr. McCullers contacted the complainant directly and asked him to explain the scheduling mix up that had occurred at the school the previous week. After the conversation with Mr. McCullers, the complainant felt compelled to also provide Mr. McCullers with a written explanation. The chief administrative officer was unaware that Mr. McCullers had contacted the complainant directly.

(5) Attendance at School on February 25, 2005

On February 25, 2005, Mr. McCullers entered the school building to deliver a letter to the chief administrative officer. At that time there was a loud argument going on in a classroom between two students. In the presence of the teacher, Mr. McCullers entered the classroom and intervened in the altercation. He spoke to the students about their behavior and then took one of the students into another room. This student had an Individualized Education Plan (IEP) that included specific requirements for behavior modification. Mr. McCullers asked the student to promise that he would not behave in that manner again and then told the student that he would not be suspended for his actions.

Shortly thereafter, Mr. McCullers went to the main office and spoke to several teachers regarding the lack of student discipline at the school. He noted that more students should be suspended and that if it was not done that he would handle it himself.

He also stated that a particular 7th grade student was probably autistic and needed an autism teacher to help out in the classroom. Mr. McCullers then went into several homerooms to lecture students on their behavior. After that, he went into the cafeteria and gave a speech to the students about their bad behavior.

(6) Check Signing

Mr. McCullers signed several checks that were not authorized by the Board, which included several made out to him, as follows:

1. At the January 10, 2005 Board meeting, the Board authorized 23 checks, but, sometime thereafter, Mr. McCullers signed 32 checks, thus, 9 checks were not approved by the Board;
2. Mr. McCullers signed check numbers 3020-3023, 3025 and 7128-7165, which were not approved by the Board;
3. Mr. McCullers signed check numbers 7208-7242 including a check made out to Mr. McCullers, which were not approved by the Board; and
4. Mr. McCullers signed check numbers 7089 and 7229, which were made out to Mr. McCullers, and were not approved by the Board.

(7) School Business Administrator

Mr. McCullers hired Ali Bangura as school business administrator. At the October 18, 2004 Board meeting, Mr. McCullers admitted that Mr. Bangura was not properly hired and stated that a Board member had said that “we should take on this guy before we lose him and we should be paying him.” Mr. McCullers then stated that the Board should vote on whether Mr. Bangura should continue to work. Mr. Bangura does not have proper certification as required by N.J.A.C. 6A:11-5.1(b)2. Mr. Bangura, the school business administrator, also served as Treasurer.

(8) Vendors

Mr. McCullers hired Professional Maintenance and Carpeting, and Frank Ruiz, a maintenance professional, without soliciting bids as required by N.J.S.A. 18A:18A-3(a). Professional Maintenance and Carpeting, which is a firm that is owned by another Board member, was paid \$3,500, and Mr. Ruiz was paid \$12,190. Sometime in early February 2005, Mr. McCullers also hired Unique Maintenance, without Board approval, to strip and re-finish the floors in the school in preparation for the visit to the school of representatives of the bank where Mr. McCullers is employed as Vice President.

(9) Board Member Duties

The following items were not submitted by the due dates as required by statute and regulation:

1. The corrective audit plan for the 2002-2003 audit, which was due by June 30, 2004 as required by N.J.S.A. 18A:23-3, 23-4 and N.J.A.C. 6A:23-2.11;
2. The Fiscal Section of the annual report for fiscal year 2003-2004, which was due by August 1, 2004 as required by N.J.S.A. 18A:36(a)-16(b) and N.J.A.C. 6A:11-2.2;
3. The 2003-2004 independent audit, which was due by November 5, 2004 as required by N.J.S.A. 18A:23 et seq. and N.J.A.C. 6A:231-2.2(i)
4. The Board resolution approving the fiscal year 2004-2005 budget, which was due by March 30, 2004 as required by N.J.A.C. 6A:11-7.1(e); and
5. The signed facility lease, which was due on June 30, 2004.

In his role as Board President, Mr. McCullers failed to provide certifications required by N.J.A.C. 6A:23-2.11(c)3 and 4 at Board meetings from September 2004 until March 2005. He also did not make sure that all school expenditures were fully itemized, verified, and certified in writing and presented to the full Board for approval. Mr. McCullers also did not make certain that all funds were expended only by the Treasurer in violation of N.J.S.A. 18A:17-36, N.J.S.A. 18A:19-1 et seq. and N.J.A.C. 6A:23-2.2.

On September 15, 2004, the Board was notified through correspondence from the Director of the Office of School Funding in the Department of Education (DOE) that it had to submit a corrective action plan to address the above, as well as other issues, where the school was found to be non-compliant with statute and regulations. That correspondence was followed by correspondence on January 7, 2005 notifying the Board that it still had not submitted the corrective action plan and that failure to comply would result in sanctions. Through correspondence dated February 24, 2005, the Board was again notified that failure to submit a corrective action plan would result in sanctions. Finally, in correspondence dated April 15, 2005, the Commissioner placed the school on probationary status as a result of the on-going fiscal problems raised in the previous correspondence and the March 30, 2005 on-site review of the school's fiscal-related activities and academic performance.

(10) Spreadsheet

On February 10 and 11, 2005, Mr. McCullers instructed the school secretary in the main office to draw up a spreadsheet to be used to keep track of North Fork Bank employees who were at the school on those days to provide financial instructions to the 7th grade students. When the spreadsheet was misplaced on February 10, 2005, Mr. McCullers instructed Mr. Monte to get another spreadsheet and told Mr. Monte that it would be his responsibility to make sure that all of the instructors signed in.

ANALYSIS

(1) March 17, 2005 Closed Executive Meeting

The Commission found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a) when he planned and participated in a closed executive meeting of the Board on March 17, 2005 without providing adequate notice. 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.

The OPMA at N.J.S.A. 10:4-9 requires all public bodies to provide adequate notice of meetings that are held by the public bodies. The Board falls within the definition of “public body” at N.J.S.A. 10:4-8, which, in part, defines the term as meaning “a commission, authority, board... organized under the laws of this State, and collectively empowered as a voting body to perform a public governmental function...” Furthermore, N.J.S.A. 18A:36A-6 requires the board of trustees of a charter school to comply with the provisions of the OPMA. “Adequate notice” is also defined, in part, at N.J.S.A. 10:4-8 to mean, “written advance notice of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting...” The closed executive meeting of the Board that was held on March 17, 2005, was held without the provision of a 48 hour written advance notice giving the time, date, and location in violation of OPMA. Therefore, the Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a) when he failed to uphold and enforce all laws pertaining to the schools.

(2) The Complainant’s Position as Board Secretary

The Commission found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a) when he sent an e-mail to all Board members, with a copy to the complainant, on March 17, 2005 just a few hours before the closed executive meeting of the Board, which effectively dismissed the complainant from his position as Board secretary.

As a preliminary matter, the Commission notes that although Mr. McCullers indicated that he was “resigning [the complainant] from his position,” he was effectively dismissing the complainant from his position. “Resignation” is defined in the Black’s Law Dictionary (Fifth Edition) as a formal renouncement or relinquishment of an office which must be accompanied by an act of relinquishment. At no time did the complainant take any action to relinquish or renounce his position as Board secretary. There was no resignation before Mr. McCullers or the Board to accept. It was Mr. McCullers who initiated the dismissal of the complainant from the position of Board secretary.

N.J.S.A. 18A:17-1 provides, in part, that, “no secretary...of a board of education of any school district shall, during the term for which he was appointed, be dismissed or

reduced in compensation, except for neglect, misbehavior or other offense unless it is otherwise provided in his contract of employment.” When Mr. McCullers dismissed the complainant, it appears that he did not uphold the requirements of N.J.S.A. 18A:17-1 since he did not present any evidence that the complainant should be dismissed because of neglect, misbehavior or other offense. Moreover, in the e-mail and its attachment, rather than allege that the complainant should be dismissed because of neglect, misbehavior or other offense, Mr. McCullers thanked the complainant for his services. Based on the foregoing, the Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a) when he failed to uphold and enforce all laws pertaining to the schools.

The Commission also found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24.1(e) when he failed to recognize that authority rests with the board of education and acted on the dismissal alone and did not bring the matter before the entire Board. 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.

In the e-mail and its attachment, Mr. McCullers thanked the complainant for his services, dismissed the complainant from the position of Secretary to the Board and assigned the responsibilities to the business administrator. The Commission notes that Mr. McCullers took it upon himself to dismiss Mr. Monte just hours before a closed executive meeting of the Board. This was not a decision of the Board, rather it was a decision made by Mr. McCullers alone. Furthermore, Mr. McCullers not only dismissed the complainant, but then went on to decide who would replace him. These are all decisions that properly reside with the entire Board. The Commission also notes that when Mr. McCullers made these decisions it was a private action, since no one Board member can decide to dismiss anyone. The private action could have compromised the Board since the complainant was not provided with a Rice¹ notice prior to the closed executive meeting. Based on the foregoing, the Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(e) when he failed to recognize that authority rests with the Board and took private action that could have compromised the Board.

(4) Scheduling Problems

The Commission found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24.1(c) and (d) when, on February 28, 2005, he directly contacted the complainant by phone and asked him to explain a scheduling mix up that had occurred when instructors from North Fork Bank were presenting a financial lesson to 7th grade students.

¹ “Rice” refers to the case *Rice v. Union City. Reg. H. Sch. Dist. Bd. of Educ.*, 155 N.J. Super. 64 (App. Div. 1977) *certif. den.* 76 N.J. 238 (1978), which established the right of employees to have notice when they will be discussed by the Board of Education.

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.

Mr. McCullers took it upon himself to determine why scheduling problems had occurred at the school. First he went to the chief administrative officer and then he went to the complainant to find a solution to the scheduling problems. In doing so, Mr. McCullers failed to confine his action to policy making and planning. Therefore, the Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(c).

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.

When the scheduling problems occurred, Mr. McCullers received an e-mail from the chief administrative officer, which provided an explanation as to why the scheduling problem occurred. The e-mail included an administrative solution that the chief administrative officer would undertake to ensure that the scheduling problems would not happen again. Shortly after he received the e-mail, Mr. McCullers phoned the complainant asking for an explanation as to why the scheduling mix up had occurred. Mr. McCullers did not call the chief administrative officer, but took it upon himself to call the complainant without the knowledge of the chief administrative officer. Mr. McCullers became involved in the administration of the schools when he contacted the complainant after he had been given a solution from the chief administrative officer. Based on the foregoing, the Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(d).

(5) Attendance at School on February 25, 2005

The Commission found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24.1(b) when he intervened in a dispute between two students when he was at the school on February 25, 2005. 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.

On February 25, 2005, when Mr. McCullers was at the school, he overheard a dispute between two students and went into the classroom. He intervened in the dispute and spoke with the two students about their behavior. He then took one student aside, who had an IEP that included specific requirements for behavior modification. Without

knowledge of those specific requirements, Mr. McCullers asked the student to promise that he would not engage in that type of behavior again and told him that he would not be suspended for his actions. Based on the foregoing, the Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(b) when he intervened in the behavior modification of a student with an IEP without knowledge of the IEP requirements, thus, failing to maintain a public school that meets the individual needs of all children regardless of their ability.

The Commission also found probable cause that, on February 25, 2005, Mr. McCullers violated N.J.S.A. 18A:12-24.1(c) and (d), which are set forth above. After he intervened in the dispute with the two students, he then went into the main office and lectured teachers about student discipline, and told the teachers that if there were not more student suspensions, he would handle discipline himself. He further gave the teachers his opinion that a specific student was probably autistic and would need an autism teacher to help out in the classroom. He then proceeded to other classrooms and the cafeteria and lectured the students on their bad behavior. Based on the foregoing, the Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(c) and (d) when he failed to confine his board action to policy making, planning and appraisal and instead took it upon himself to administer the schools by undertaking conduct that is more the province of a chief administrative officer.

(6) Check Signing

The Commission found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a) and (e), which are set forth above, when he signed certain checks without Board authorization, including several made out to himself. Pursuant to N.J.S.A. 18A:19-1(d), prior to expenditure of Board funds, the Board must approve the expenditure by resolution. McCullers signed checks that had not been approved at the January 10, 2005 Board meeting. Mr. McCullers also signed other checks which were not approved by the Board and were drawn on an account separate from the standard account. Mr. McCullers also signed checks without Board authorization made out to him. Based on the foregoing, the Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a) and (e), when he failed to present certain checks to the Board in violation of N.J.S.A. 18A:19-1 et seq., and when he failed to recognize that the authority to expend school funds lies with the entire Board.

The Commission also found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24(b), which 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;

Mr. McCullers signed checks made out to himself without Board approval. He signed the checks as part of his duties as Board President. In doing so, Mr. McCullers used his official position as Board President to secure the unwarranted privilege or

advantage of obtaining funds from the Board without Board approval. Therefore, the Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24(b).

The Commission also found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24(c) when he signed checks made out to himself without Board authorization. N.J.S.A. 18A:12-24(c) provides,

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

Mr. McCullers had a direct financial involvement in the checks that were made out to him. The public could reasonably perceive that his objectivity and independence of judgment would be impaired in that matter. The Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24(c) when he acted in his official capacity as Board President, without Board approval, in a matter where he had a direct financial involvement that might reasonably be expected to impair his objectivity or independence of judgment.

(7) School Business Administrator

The Commission found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a), which is set forth above, when he knowingly hired an uncertified business administrator without Board approval and also had him serve as Board Secretary and Treasurer in violation of N.J.S.A. 18A:17-31. The Board minutes for the October 18, 2004 Board meeting reflect that the Board discussed the hiring of the school business administrator and, during the discussion, it became apparent that the school business administrator was never properly hired by the full Board, but that Mr. McCullers had hired him. The Board minutes also reflect that the school business administrator was not certified. The school business administrator also served as Treasurer for the school in violation of N.J.S.A. 18A:17-31, which provides that the Treasurer cannot be a member or employee of the Board. Based on the foregoing, the Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a), when he failed to uphold and enforce all laws and rules and regulations of the State Board of Education and hired a school business administrator without Board approval and who was not certified.

The Commission also found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24.1(b) when he hired an uncertified school business administrator without Board approval. The Board had received a request from the Director of the Office for School Funding in the DOE, for a corrective action plan in regards to the fact that the Board hired an uncertified business administrator in violation of N.J.A.C. 6A:11-5.1.

There were two follow up letters that told the Board that they risked sanctions if they failed to provide a corrective action plan to rectify the problem. As a result of the failure to submit a corrective action plan, the school was placed on probationary status. Based on the foregoing, the Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(b), when he jeopardized the educational welfare of the children of the school by failing to ensure that the school business administrator was certified.

(8) Vendors

The Commission found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a), which is set forth above, when he hired Professional Maintenance and Carpeting, which is owned by another Board member, without soliciting bids as required by N.J.S.A. 18A:18A-1 et seq. The Commission notes that Professional Maintenance and Carpeting was paid a total of \$3,500 and N.J.S.A. 18A:18A-3(a) allows a purchasing agent authorized by a Board resolution to award a contract without soliciting bids if the contract sum does not exceed \$17,500. Therefore, the purchasing agent did not have to solicit bids to hire Professional Maintenance and Carpeting. However, the Commission notes that there is no evidence that Mr. McCullers was authorized by a Board resolution to be a purchasing agent. Furthermore, there is no evidence to show that the Board hired Professional Maintenance and Carpeting. Therefore, the Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a) when he hired Professional Maintenance and Carpeting.

The Commission also found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a) when he hired Frank Ruiz as a maintenance professional at the school without soliciting bids as required by N.J.S.A. 18A:18A-1 et seq. The Commission notes that Mr. Ruiz was paid a total of \$12,190, and N.J.S.A. 18A:18A-3(a) allows a purchasing agent authorized by a Board resolution to award a contract without soliciting bids if the contract sum does not exceed \$17,500. Therefore, the purchasing agent did not have to solicit bids to hire Mr. Ruiz. However, again the Commission notes that there is no evidence that Mr. McCullers was authorized by a Board resolution to be a purchasing agent. Furthermore, there is no evidence that the Board hired Mr. Ruiz. Therefore, the Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a) when he hired Frank Ruiz.

The Commission also found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24.1(e) and (f), which are set forth above, when, sometime in early February 2005, he hired Unique Maintenance without Board approval to strip and re-finish the floors in preparation for a visit to the school of representatives of North Fork Bank where Mr. McCullers is Vice-President. There was no Board resolution to hire Unique Maintenance for such work. The Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(e) because he failed to recognize that authority rests with the Board when he hired Unique Maintenance without Board approval. The Commission also finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(f) when he used the schools for personal gain by hiring Unique Maintenance to strip and re-finish the floors right before the visit to the school by representatives of North Fork Bank, thus giving the perception that he was

trying to impress the representatives who were from the bank in which he is employed as Vice President.

(9) Board Member Duties

The Commission found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a) and (b), which are set forth above, when he failed to submit numerous documents to the DOE by the required timeline, failed to provide certifications for several Board meetings, failed to make sure that all school expenditures were fully itemized, verified, and certified in writing and presented to the Board for approval, and failed to make certain that all funds were expended only by the Treasurer in violation of N.J.S.A. 18A:36A-16, N.J.S.A. 18A:17-36, N.J.S.A. 18A:19 et seq. and N.J.A.C. 6A:23-2.2 as indicated in several communications from the DOE. Those communications warned the Board that it needed to address these violations or it would face sanctions. However, the Board did not respond to these many communications. This resulted in the school being placed on probation by the Commissioner. Based on the foregoing, the Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(a), because he did not uphold and enforce all laws and rules and regulations of the State Board of Education. The Commission also finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(b), when he failed to correct many problems identified by the DOE's communications resulting in the school being placed on probation, thus jeopardizing the educational welfare of the children of the school.

(10) Spreadsheet

The Commission found probable cause that Mr. McCullers violated N.J.S.A. 18A:12-24.1(c), which is set forth above, when he instructed the school secretary to draw up a spread sheet to be used to keep track of North Fork Bank employees who were at the school to provide financial instruction. When the spreadsheet was misplaced, Mr. McCullers instructed the complainant to get another and then told the complainant that it was his responsibility to make sure that all of the instructors signed in. The Commission finds that Mr. McCullers violated N.J.S.A. 18A:12-24.1(c) because he went directly to school employees and instructed them on their duties, thus administering the schools.

DECISION

For the reasons discussed above, the Commission finds that Rudolph McCullers violated N.J.S.A. 18A:12-24(b) and (c) of the Act and N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members in the Act. The Commission recommends that the Commissioner of Education impose a penalty of censure since Mr. McCullers is no longer a member of the Board and censure is the highest penalty that may be imposed on a former Board member. Because of the extensive violations of the Act, the Commission would have recommended a sanction of removal if Mr. McCullers was still on the Board.

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. McCullers 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 – C06-05 & C12-05

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

Whereas, at its meeting of September 27, 2005, the Commission found that Rudolph McCullers violated N.J.S.A. 18A:12-24(b) and (c) of the Act and N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members in the Act and recommended that the Commissioner of Education impose a sanction of censure; and

Whereas, at its meeting of September 27, 2005, the Commission reviewed a draft decision prepared by its staff and agrees with the decision;

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 September 27, 2005.

Lisa James-Beavers
Executive Director