

donor has not provided funds to the school for three years and there has been no evidence provided regarding the donor's reaction to the letter. Furthermore, Mr. Freilich denies that the letter contained information that was inaccurate in violation of N.J.S.A. 18A:12-24.1(g).

Mr. Freilich also responded that his actions could not constitute a violation of N.J.S.A. 18A:12-24.1(d) and that Ms. Phelan did not articulate how this section had been violated. Mr. Freilich responded that he had proposed that his company provide installation and internet security services at no cost to the District. In response to Ms. Alexander's allegation that Mr. Freilich violated N.J.S.A. 18A:12-24.1(e) when he attended the Construction Committee meeting, he denies that he attended the meeting for the purpose of disrupting the meeting. He testified and indicated in his answer that he believed that the Construction Committee meeting was being held in violation of the Open Public Meetings Act (OPMA). He believed that the meeting violated the OPMA because at the April 2003 reorganization meeting, the Board had agreed that they would disband their existing committees and act as a "Committee of the Whole" for all matters. Mr. Freilich believed that the Construction Committee had been disbanded since it had pre-dated the April 2003 meeting. Further, he was aware that Ms. Ackerman, Board President, agreed that David West, another Board member, could attend the meeting.

The Commission invited the parties to attend its August 24, 2004 meeting to present witnesses and testimony to aid in the Commission's investigation, but did not require that they be present. Due to scheduling conflicts, the matter was rescheduled for the November 23, 2004 Commission meeting. The parties attended the meeting and presented testimony. Mr. Freilich was represented by Patrick J. Madden, Esquire. On November 23, 2004, due to lack of a quorum, the Commission could not open a meeting. At that time, the Commission's chairperson appointed a committee to take testimony on this matter and make a recommendation to the Commission for its determination at its December 21, 2004 meeting. The committee consisted of Robert Bender, Randy Beverly, Rosalind Frisch and Paul Garbarini. The parties were asked if they consented to this procedure and they all agreed.

At the December 21, 2004 meeting, the Commission voted to find probable cause to credit the allegations that Bruce Freilich violated N.J.S.A. 18A:12-24(c) of the School Ethics Act when he voted on a bill list that included a \$375.50 reimbursement for aid in lieu of transportation for himself. The Commission also voted to find probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members when he sent an unauthorized letter to a private donor. However, the Commission found no probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-24(d) or N.J.S.A. 18A:12-24.1(d). The Commission also found no probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-24.1(e) when he attended the Construction Committee meeting. The reasons for this decision were set forth in the probable cause decisions dated January 6, 2005.

The Commission found that the material facts were not in dispute with respect to the issues upon which it found probable cause and, therefore, the Commission advised respondent that it would decide the matter on the basis of written submissions. Respondent was invited to provide a written submission to the Commission within 30 days of the date of the probable cause decision and set forth why the Commission should not find him in violation of N.J.S.A. 18A:12-24(c) for voting on a bill list that included a \$375.50 reimbursement for aid in lieu of transportation for himself and N.J.S.A. 18A:12-24.1(e) and (g) for sending an unauthorized letter to a private donor. He was also told that his written submission should include the respondent's position on an appropriate sanction should the Commission determine that the Act was violated.

By correspondence dated February 7, 2005, Mr. Madden advised the Commission that Mr. Freilich would be responding directly to the Commission's probable cause determination. Mr. Freilich submitted a timely response on February 7, 2005 wherein he responded that he is not in conflict with N.J.S.A. 18A:12-24(c) because N.J.S.A. 18A:12-24(h) applies to his vote on the aid in lieu of transportation. He argued that no material or monetary gain could accrue to him or his family to any greater extent than any gain could reasonably be expected to accrue to any family from Washington Township that receives aid in lieu of transportation from the Board. He noted that N.J.S.A. 18A:39-1 created a group of families with the right to either have their children transported to the non-public school they attend or choose to accept aid in lieu of transportation, which is an amount set by that statute.

In his submission, Mr. Freilich disagreed with the Commission's determination that the material facts were not in dispute. However, he failed to specify which material facts were in dispute. Mr. Freilich merely set forth additional facts that were not material to the Commission's determinations in this matter.

Mr. Freilich further responded that he did not violate N.J.S.A. 18A:12-24.1(e) or (g) when he sent the letter to a private donor. He maintained that the third paragraph of the letter accurately represents the plan as a "proposed plan." He noted that there is no Board policy requiring that all communications be approved by the Board and no policy addressing the procedure to follow with respect to committee communications. He argued that he did not need Board approval to send the letter to the private donor because it only thanked the donor for his donation and did not appeal to the donor for money. He also noted that he had written and sent other letters in his capacity as chair of the Technology Committee that did not need Board approval.

Mr. Freilich maintained that his sending of the letter was not a private action because it was on letterhead that included, in 14 point typeface, the words "Technology Committee," and was signed by him in his capacity as chair of the Technology Committee. He also maintained that these facts show that the letter was not written on behalf of the Board, but was written on behalf of the Technology Committee. He argued that even if his sending of the letter was a private action, it did not compromise the Board, because one month later, in March 2004, the recommendations that were included in the letter were approved unanimously by the Board for inclusion in the 2004-2005

budget and were eventually incorporated into the Long Range Technology Plan for 2004 – 2007. Mr. Freilich further submitted that if the Commission found a violation that the lowest form of penalty should be imposed because none of the alleged acts lead to any personal gain to him or his family, and, with respect to the letter, he did attempt to present same to the Board through the superintendent.

The Commission discussed Mr. Freilich's response at its February 22, 2005 meeting and tabled the matter for further discussion. The Commission discussed the matter again at its April 4, 2005 meeting and voted to find Mr. Freilich in violation of N.J.S.A. 18A:12-24.1(e) and (g) and recommended a penalty of reprimand. It found no violation of N.J.S.A. 18A:12-24(c) and dismissed that charge.

FACTS

The Commission based its findings of probable cause on the following facts:

Mr. Freilich became a member of the Board in April 2003. Ms. Phelan is an employee of Mr. William Haines, Sr., a private donor to the District. At the December 22, 2003 Board meeting, the Board unanimously voted to approve a list of over 50 bills. Included in that list was a warrant for Bruce Freilich in the amount of \$375.50 for aid in lieu of transportation. Mr. Freilich voted to approve the bill list which included a warrant with his name on it. He was not advised that the list included a warrant in his name nor was he asked to recuse himself from voting on that warrant. Mr. Freilich testified that he was aware that he would be receiving reimbursement from the District at some time for aid in lieu of transportation.

Mr. Freilich was the chair of the Technology Committee that was formed by the Board in the fall of 2003. In his role as chair, he was seeking funds to help pay for the District's technology needs. In discussions with the Superintendent, Mr. Freilich came to understand that some funds from a December 2000 donation from a private donor had not been allocated and were available for use. The Technology Committee then developed a short-range technology plan, which was based on expenditure of those unallocated funds. The short-range technology plan included the purchase of 10 new desktop computers and 50 Microsoft Certified Engineering hours offered as a donation by Mr. Freilich at the rate of \$80 an hour to the District by Jersey Data, a consulting company owned by Mr. Freilich.

In his role as chair of the Technology Committee, Mr. Freilich prepared a letter to Mr. Haines. On January 20, 2004, he faxed the letter and a copy of the short-range technology plan to the superintendent asking that, "at a minimum I would like these included in the packets for the next week's meeting." He also noted that if the letter to Mr. Haines was acceptable, he would "consider hand delivering to him tomorrow at the Planning Board meeting." The Superintendent never responded to Mr. Freilich's fax.

The letter, dated January 19, 2004, with a simulated Board letterhead was prepared and signed by Bruce Freilich, Technology Committee Chair. The letter began by noting that the Board thanked Mr. Haines for his generosity. The letter continued:

“We would like to share with you our plans to initiate a bold technology program enabling our children access to modern computer and research skills. Beginning with our Middle School (6-8th graders) we have decided to purchase (10) new desktop computers along with some necessary components and software. All installations and internet security configurations will be performed by Washington Twp. Technology Committee volunteers.”

In the third paragraph, Mr. Freilich indicated that an outline of the proposed plan is attached for review. It also indicated that the donor’s contribution had never been utilized and that, after the lengthy delay, “we would like to begin making a difference, giving our children every advantage.” He ended the letter by asking for suggestions or directions.

The January 2004 Board meeting was cancelled. At the February 2, 2004 Board meeting, during the Board committee reports, Mr. Freilich presented the short-range technology plan. The letter and short-range technology plan that he had faxed to the Superintendent was not included in the Board agenda, as he had requested. Mr. Freilich had made some copies of the letter and short-range technology plan for the Board members to review during the discussion. No formal action was taken by the Board on the plan. After the meeting, Mr. Freilich handed the letter to Ms. Phelan and asked her to deliver it to Mr. Haines. Ms. Phelan delivered the letter to Mr. Haines. Mr. Freilich never received any response from Mr. Haines.

ANALYSIS

The Commission found probable cause to credit the allegation that Mr. Freilich violated N.J.S.A. 18A:12-24(c) when, at the December 22, 2003 Board meeting, he voted in the affirmative on a bill list that included a \$375.50 reimbursement for aid in lieu of transportation for himself. 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;

In its probable cause determination, the Commission found probable cause that Mr. Freilich had a direct financial involvement in voting on the bill list because the

reimbursement of \$375.50 was for him and the bill warrant listed that reimbursement under his name. In making its determination, the Commission noted that Mr. Freilich could have reviewed the bill list prior to the Board meeting to determine if his name was on the list since he was aware that he would be receiving reimbursement for aid in lieu of transportation.

The Commission then considered whether Mr. Freilich's direct financial involvement might reasonably be expected to impair his objectivity or independence of judgment. The Commission noted that it previously found that a sending district board member's objectivity or independence of judgment might reasonably be expected to be impaired where the board member voted on the payment of tuition to the Mercer County Vocational School where he was employed as a principal. See I/M/O Bruce White, C01-01 (July 24, 2001). In its probable cause determination, the Commission found that when a Board member has a direct financial involvement on an item listed in a lengthy bill list that is voted on in a block it is reasonable to expect that his objectivity or independence of judgment might be impaired due to the direct financial interest.

In his submission in response to the probable cause determination, Mr. Freilich argues that N.J.S.A. 18A:12-24(h) applies to his vote on the aid in lieu of transportation. N.J.S.A. 18A:12-24(h) provides:

No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted upon, no material or monetary gain accrues to him as a member of any business, profession, occupation, or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of that business, profession, occupation or group;

There are two previous matters in which the Commission found N.J.S.A. 18A:12-24(h) to be applicable to alleged violations of the Act. In Hoboken Education Association v. David Anthony, C11-00 (December 19, 2000), the Commission found that N.J.S.A. 18A:12-24(h) applied and a board member did not violate the Act when he negotiated a lease with a charter school in which his children were enrolled. The Commission reasoned that no material gain could be said to accrue to the board member as a member of the group of charter school parents to any greater extent than any gain could reasonably be expected to accrue to any other parents of children who attend the charter school. The Commission further found "N.J.S.A. 18A:12-24(h) to be particularly applicable when issues arise concerning proposals that come before a board from which a school official's child can benefit." The Commission noted the difficulty that could arise if school officials had to remove themselves from all decisions that affected their children as students in the district. The Commission further concluded that "where the policy, lease or other board decision does not benefit that school official's children more than the other students, the Commission will consider applying N.J.S.A. 18A:12-24(h)."

The Commission also applied N.J.S.A. 18A:12-24(h) in *Advisory Opinion A01-98* (February 27, 1998). The Commission was asked whether certain board members can

participate in the discussion and vote on a proposal to give greater weight to certain more rigorous academic courses when their children are enrolled in those courses without violating the Act. In applying N.J.S.A. 18A:12-24(h), the Commission reasoned that the board members did not stand to gain more than other parents in deciding to weight grades, which is a matter of policy and similar to any other curriculum decision. However, the Commission found that N.J.S.A. 18A:12-24(h) did not apply to the same board member's vote to make the weighted grades retroactive. The Commission noted that by voting in favor of making the policy retroactive, the board members in question would be voting to make their own children's transcripts look better for their application to college. The Commission noted that the general proposal affects every parent of a student in the district, while the retroactive application of the proposal affects those parents who have had children in more rigorous academic courses who are now college bound. The Commission advised that the board members had a personal involvement in determining whether to weight the courses retroactively that could impair their objectivity and N.J.S.A. 18A:12-24(h) would not provide an exception to allow them to participate.

In this matter, Mr. Freilich notes that N.J.S.A. 18A:39-1 *et seq.* created a group of families with the right to either have their children transported to the non-public school they attend or to choose to accept aid in lieu of transportation, which is an amount set by that statute. Based on the fact that the aid in lieu of transportation amount is set by N.J.S.A. 18A:39-1a, he argues that no material or monetary gain could accrue to him or his family to any greater extent than any gain could reasonably be expected to accrue to any family from Washington Township which receives aid in lieu of transportation from the Board.

The Commission agrees with Mr. Freilich that N.J.S.A. 18A:12-24(h) applies to the distinct facts of this case. Mr. Freilich is a member of a group created by N.J.S.A. 18A:39-1 *et seq.* and, as a member of that group, he receives aid in lieu of transportation the amount of which is set by N.J.S.A. 18A:39-1a. If a parent qualifies for aid in lieu of transportation, the Board has no discretion in the amount of aid that parent will be entitled to receive. Mr. Freilich testified that the district had notified him that he qualified for aid in lieu of transportation. Since the amount of aid is set by statute, Mr. Freilich could not have received aid in lieu of transportation in an amount greater than any member of the group that received such aid from the Board. Furthermore, as a board member, he had no discretion in setting the amount of the aid that he would receive.

The Commission finds the facts in I/M/O White, supra, to be distinguishable from the facts of this case, because the board member in White was not a member of a distinct group. The Commission also finds that *A01-98* can be distinguished from this case in two ways. First, Mr. Freilich did not vote for a retroactive approval of aid in lieu of transportation. He had already been approved by the district to receive aid in lieu of transportation and his actual receipt of the amount of aid was perfunctory. Second, Mr. Freilich did not have the same type of personal involvement as the board members in *A01-98*. Mr. Freilich could not be expected to accrue monetary gain to any greater extent than could be expected to accrue to any other parent receiving aid in lieu of

transportation, while the board members in *A01-98* had a personal involvement whereby their children's transcripts could look better for their application to college.

The Commission finds that, in this case, where Mr. Freilich's vote did not benefit him or his child to any greater extent than the other parents or children receiving aid in lieu of transportation, it is appropriate to apply N.J.S.A. 18A:12-24(h). Therefore, the Commission finds that Mr. Freilich cannot be deemed in conflict with N.J.S.A. 18A:12-24(c) because of his vote in the affirmative on a bill list that included a \$375.50 reimbursement for aid in lieu of transportation and it dismisses this charge.

The Commission also found probable cause that Mr. Freilich violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members for sending an unauthorized letter to a private donor. 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 its probable cause determination, the Commission found that Mr. Freilich took private action that may compromise the Board when he sent the letter to the private donor. In determining that Mr. Freilich took private action, the Commission noted that the body of the letter gave the impression that the letter was written on behalf of the Board. The Commission disagrees with Mr. Freilich's contention that because the letterhead included, in 14 point typeface, the words "Technology Committee" and was signed by him in his capacity as chair of the Technology Committee that it shows that the letter was written on behalf of the Technology Committee and not the Board. The letter begins by noting that the Board would like to thank Mr. Haines for his generosity. In subsequent paragraphs, the term "we" is used. Since the letter begins with a reference to the Board as a whole, it is reasonable to conclude that the term "we" refers to "we" the Board, not "we" the Technology Committee.

In determining that the sending of the letter was a private action, the Commission also noted that Mr. Freilich did not have authorization to send the letter on behalf of the Board. The Board had not reviewed the letter and the Superintendent had not approved it. Furthermore, the Board had taken no action on the short-range technology plan, components of which were included in the letter. The Commission disagrees with Mr. Freilich's contention that he did not need Board authorization to send out the letter. Even though the Board may lack policy regarding the approval procedure, Mr. Freilich should have waited to send out the letter until after it had been discussed and approved by the Board. Mr. Freilich contends that the letter only thanked the donor and did not ask for money and for that reason he did not need Board authorization. However, in actuality the letter did more than thank the donor; it provided details of the short-range technology plan on which the Board had taken no formal action. Specifically, the letter referenced one component of that plan when it indicated that "...we have decided to purchase (10) new desktop computers along with some necessary components and software." The Board did not approve such a purchase. The letter also refers to the fact that installations

and internet security configurations would be performed by the Technology Committee volunteers, which was also included in the short-range technology plan, that was never approved of by the Board.

In determining that Mr. Freilich's private action was such that it may compromise the Board, the Commission noted that the letter could have compromised the Board because it included information regarding the short-range technology plan that had not been approved for implementation. Mr. Freilich maintains that it did not compromise the Board because one month later the recommendations in the letter were approved unanimously by the Board for inclusion in the 2004-2005 budget and were eventually incorporated into the Long Range Technology Plan for 2004 – 2007. However, it is immaterial whether the recommendations in the letter were eventually approved by the Board or not. The fact that the recommendations were not approved by the Board when the letter was sent to the private donor could have compromised the Board. Therefore, the Commission finds that Mr. Freilich violated N.J.S.A. 18A:12-24.1(e) when he prepared and sent a letter to a private donor.

The Commission also found probable cause that Mr. Freilich violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members for sending an unauthorized letter to a private donor. 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.

In its probable cause determination, the Commission found the letter to be inaccurate in at least two aspects. First, the body of the letter gave the impression that the letter was written on behalf of the Board when it had not been reviewed or approved by the Board. The first paragraph thanking the donor from the Board, the use of the term "we" throughout the body of the letter, and the fact that the letterhead began with the name of the Board gave the impression that the letter was written for the Board. Second, the letter also gave the impression that the technology plan had been approved by the Board when it had not. The letter included more than one reference to the short-range technology plan as though it was an approved Board plan.

In his response, Mr. Freilich maintains that the letter did not inaccurately represent that the Board had approved the short range technology plan because the third paragraph refers to the plan as a "proposed plan attached for your review." However, the preceding paragraph references two major components of the plan, i.e. the purchase of 10 desktop computers and the installation and configuration of same by Technology Committee volunteers, as though the Board had already decided to implement those components. The subsequent reference to the "proposed plan" merely highlights the previous paragraph's indication that two components of the plan had already been

decided upon. Therefore, the Commission finds that Mr. Freilich violated N.J.S.A. 18A:12-24.1(g) when he prepared and sent a letter to a private donor.

DECISION

For the reasons discussed above, the Commission finds that Bruce Freilich violated N.J.S.A. 18A:12-24.1(e) and (g) when he prepared and sent a letter to a private donor. The Commission recommends that the Commissioner of Education impose a penalty of reprimand for because he had been a member of the Board for less than a year when he sent the letter and the Board had no policy regarding direct correspondence being sent from a Committee.

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. Freilich 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 – C18-04 and C19-04

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

Whereas, at its meeting of February 22, 2005 the Commission found that Bruce Freilich violated N.J.S.A. 18A:12-24.1(e) of the Act and recommended that the Commissioner of Education impose a sanction of reprimand; and

Whereas, at its meeting of February 22, 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 April 4, 2005.

Lisa James-Beavers
Executive Director