

FRANK DIGESERE	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
JOHN CAMPBELL, KEARNY BOARD OF EDUCATION HUDSON COUNTY	:	Docket No. C02-10 DECISION
	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on February 1, 2010 by Frank Digesere, Superintendent of the Kearny School District, alleging that John Campbell, a member of the Kearny Board of Education (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By notice dated February 1, 2010, the complainant was notified that the complaint was deficient and, therefore, not accepted. On February 16, 2010, the complainant submitted an amended complaint, which was also deficient; by letter dated February 17, 2010, the complainant was so notified. On March 10, 2010, another amended complaint was filed, which was accepted by the Commission. Therein, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(d), (e), (f), (g) and (i) of the Code of Ethics for School Board Members.

An answer was filed on behalf of the respondent on April 9, 2010. Thereafter, on April 15, 2010, a Motion to Dismiss was also filed on behalf of the respondent. The complainant was accorded 20 days to respond to the motion, which included an allegation that the complaint was frivolous. The complainant filed his response to the motion on April 29, 2010.

At its meeting on May 25, 2010, the Commission voted to grant the respondent’s Motion to Dismiss Count 3 of the complaint¹, as well as the allegation that the respondent violated N.J.S.A. 18A:12-24.1(i) as alleged in Count 2. The Commission further found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2. Pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to retain this complaint for hearing at a later date.

By letter dated August 10, 2010, the parties were notified that the hearing in this matter would take place at the Commission’s meeting on September 28, 2010. The parties were reminded that the complainant has the burden to factually establish a violation of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a) and that the hearing before the Commission shall be conducted in accordance with the rules of the Office of Administrative Law (OAL). N.J.A.C. 6A:28-10.8(c).

Both parties attended the meeting on September 28, 2010. The complainant appeared pro se. The respondent, John Campbell, appeared with counsel, Frederick Dunne, Esq. After

¹In Count 3 of the complaint, the complainant alleges that the respondent entered a classroom at the High School on November 12, 2009 without authorization or permission, and proceeded to his niece’s desk to give her a tee shirt, disrupting the classroom instructional session. The complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(e) and (i). (Complaint at paragraph 3)

hearing all testimony, the Commission voted during the public portion of its meeting to find that the respondent violated N.J.S.A. 18A:12-24.1(d) and (e) and of the Code of Ethics for School Board Members and to recommend a penalty of censure, for the reasons set forth below.²

SUMMARY OF THE RECORD

The complainant called as his first witness Leonard Cuba, a member of the grounds crew for the Kearny School District. Mr. Cuba testified that one day at the beginning of the 2009-2010 school year, when he was on his lunch hour, the respondent walked into the field house garage and said, “You’re just the man I’m looking for.” Mr. Cuba asked the respondent what he could do for him and, according to Mr. Cuba, the respondent turned and poked him in the shoulder and said, “Who do you think you are, a wise guy?” Mr. Cuba asked the respondent what he was talking about and the respondent referred to an interaction they had the week before. According to Mr. Cuba, the week before he was summoned to the Board office for a “Board run;” that is, he was asked to deliver documents to Board members. He was, at the time, sitting on a bench when the respondent walked by and questioned Mr. Cuba; Mr. Cuba jokingly responded that he was “waiting for a bus.” Mr. Cuba testified that when the respondent later came into the field house he said to him, “Who do you think you are being disrespectful?” Cuba responded that it [the bus stop comment] was a joke. The respondent said that he would be watching Mr. Cuba. Mr. Cuba said he felt intimidated; he stepped back when the respondent poked him. Mr. Cuba testified that he would have “put down” someone [other than a Board member] who said this to him.

On cross-examination, Mr. Cuba stated that there was no one else present in the field house that day. He said that he reported the incident to his supervisor, Mr. Bruscano, the next day. He also acknowledged that it was the Superintendent who asked him to “file a complaint.” In response to questioning from the Commission, Mr. Cuba explained that the field house is a maintenance shed and the public has access to the building.

Brian Hohmann is a teacher and coach in the District. He testified that on the evening of October 16, 2009, after a football game, he went to the respondent’s home to retrieve a jacket that belonged to him which the respondent had taken from the field house earlier that evening during the game. Mr. Hohmann explained that he secretly taped the conversation with the respondent that evening.

According to Mr. Hohmann, as he was leaving the respondent’s house, the respondent revealed “insider information” about two football players involved in a disciplinary incident. Mr. Hohmann recalled the respondent saying that he disagreed with actions taken by the Board; that a majority of the board was in favor of taking a harder line with the boys, but he was a little more open to being lenient and open to allowing them back on the team. Mr. Hohmann stated that he was pretty surprised by the respondent’s statements, as they were irrelevant to his purpose

² Although the complainant called Marcy Fisher, president of the local education association to testify, Mr. Dunne objected to her testimony in that she has no first-hand knowledge of any incidents in the remaining counts of the complaint. Accordingly, she was dismissed by the Commission as a witness.

for being there, but reasoned that the respondent made the statements because he is a coach and these were his best players. Mr. Hohmann testified that as to the Board's actions with respect to these students, he "had no idea what was going on."

When cross-examined, Mr. Hohmann testified that the respondent did not mention any names and did not disclose that there was discussion about the students in a closed session meeting. Mr. Hohmann could not recall that the respondent mentioned a vote coming up. As to whether the respondent told Mr. Hohmann anything about these students' activities that the witness did not know, Mr. Hohmann responded, "Not specifically." Mr. Hohmann acknowledged that the respondent said something to the effect that it must be tough on the team to not have the students able to play.

As to why Mr. Hohmann taped the conversation with the respondent, he explained that he had spoken to the respondent earlier that evening by telephone and "there was a conflict" about what exactly had happened with respect to Mr. Hohmann's jacket. Mr. Hohmann further explained that there was "already bad blood" between them and he believed that if the respondent saw him, there was a likelihood he would not tell the truth about the jacket. The witness explained that although he did not tell the respondent that he was taping, he did not "bate him" either. Mr. Hohmann further explained that the "bad blood" between them was because, upon an earlier resignation, the respondent tried to prevent him from being rehired as a coach. He also "had a healthy skepticism" about what transpired that night with respect to his jacket. Yet, according to the witness, he was congenial with the respondent that evening "with no ill feelings." According to Mr. Hohmann, his point in making the visit to the respondent's home was to establish boundaries with Board members. Mr. Hohmann acknowledged that he has taped other conversations with people before and has done so without disclosing to people that they are being taped.

Mr. Hohmann stated that when he left the respondent's home that evening, he believed everything was resolved. He testified that he shared the tape with the head coach. According to Mr. Hohmann, when the respondent "denied what happened," he thought it was in the community's best interest for the public to know. He then shared the tape with the Superintendent.

On redirect examination, Mr. Hohmann explained that he secretly taped the conversation because there were "detrimental issues that took place that night." He stated that he and the coach decided that Board members should not feel privileged about walking into the field house; he recorded the conversation because he did not think that the respondent would be honest when he showed up at his home to retrieve his jacket. According to Mr. Hohmann, the respondent's comment about the students was made as he was leaving the respondent's house, just "in passing reflecting on the game—if you had the [name] brothers you probably would have won." Mr. Hohmann stated that he was unaware that the Board was debating punishment and that the majority of the Board was against the students.

Alfred Somma was the Kearny High School Principal during the 2009-2010 school year. Mr. Somma testified that the respondent came to his office and questioned him about why his niece was not being called to substitute in the District. Mr. Somma explained to the respondent

that he does not call the substitutes, his secretary calls them. Mr. Somma stated that he told the respondent that he did not know that the respondent's niece was on the list. However, Mr. Somma stated that, after the respondent left, he inquired about the respondent's niece and learned that when she substituted in the past, she had received bad reports from the High School. According to Mr. Somma, the respondent then spoke with Mr. Somma's secretary, since she calls the substitutes. His secretary reported that the respondent questioned her about his niece.³

Mr. Somma also testified about a phone call that he received from Assistant Superintendent Robert Sprague. According to Mr. Somma, Mr. Sprague told him that the respondent had been questioning Mr. Sprague about Mr. Somma's alleged misuse of school funds and the respondent told Mr. Sprague "that he was out to get me." Mr. Somma stated that he was upset about the comment and he felt threatened.⁴

On cross-examination, Mr. Somma acknowledged that the respondent did not ask him to call his niece to substitute teach. Mr. Somma was not aware of the exact words that the respondent said to his secretary, but he stated that his secretary "felt uncomfortable about the conversation." Mr. Somma testified that the respondent did not tell his secretary to call his niece. In response to questioning from the Commission, Mr. Somma stated that "on occasion," members of the public also ask about procedures for selecting substitutes and he tells them he has a list which the secretary uses to obtain the needed substitutes. They try to maintain an accurate list. Mr. Somma further explained that sometimes the substitutes themselves ask about selection procedures and sometimes they get questions from relatives of the substitutes.

On cross-examination, Mr. Somma also explained that while he was the Vice Principal of Athletics, apparel was sold as a fundraiser. The funds went into the athletic account. Mr. Somma stated that it was brought to his attention that the respondent was questioning the use of the funds; these questions were directed to the Assistant Superintendent.

Assistant Superintendent Robert Sprague testified that he had a discussion with the respondent who indicated that he was pursuing an investigation into the alleged improper use of funds by Mr. Somma. According to Mr. Sprague, there were two points made by the respondent during this discussion: one had to do with the Superintendent's alleged involvement in the improper use of school funds and one had to do with Mr. Somma's alleged involvement in the improper use of school funds.

Pursuant to N.J.A.C. 6A:28-8.3(d), upon completion of complainant's case, and prior to the respondent's testimony, as set forth below, the respondent's counsel moved to dismiss the remaining counts in the complaint. After hearing arguments from the parties, the Commission asked the parties to leave the room so that it could deliberate. The Commission determined to deny the Motion to Dismiss. Upon resumption of the hearing, the respondent's counsel called his witnesses, as summarized below.

³ Although Mr. Somma did not provide a date when the incident occurred, the complaint states that it was January 19, 2010. (Complaint at Count 4)

⁴ Although the witness did not provide a date when the incident occurred, the complaint states that the respondent telephoned the Assistant Superintendent on February 5, 2010. (Complaint at Count 5)

Mark Bruscano, Director of Facilities, testified as Mr. Cuba's supervisor. He stated that he talked with Mr. Cuba after the incident when Mr. Cuba told the respondent that he was waiting for a bus. Mr. Bruscano believed that the respondent thought that Mr. Cuba was being sarcastic and he was annoyed because there was "summer help" present who overheard the interaction. Mr. Bruscano stated that he asked Mr. Cuba not to be sarcastic. Mr. Bruscano testified that he is aware that the respondent later came into the field house, pointed at Mr. Cuba and spoke with him. Mr. Bruscano testified that he does not recall how the conversation between Cuba and the respondent ended.

On cross-examination, Mr. Bruscano stated that complaints should be taken to the Superintendent. He further testified that he has received complaints from Board members and he directed them to the personnel involved in order to determine whether they were valid. When appropriate, the staff person might be verbally reprimanded. Mr. Bruscano acknowledged that Mr. Cuba's statement to the respondent could have been in jest, but he advised Mr. Cuba to be cautious. There was no complaint made to the Superintendent about this matter.

In response to questions from the Commission, Mr. Bruscano explained that the building where the respondent entered to speak to Mr. Cuba is a maintenance shed on the bottom floor and the locker rooms are above the maintenance area. The witness explained that sometimes people walk around the track and, therefore, members of the public may be present. As for the maintenance area, Mr. Bruscano said there is a garage door that is usually left open, although they do not want the general public there. Members of the public are not supposed to be where the staff desks are located, which is about 40 feet from the entrance. The field crew uses this area to work.

The respondent, John Campbell, testified that the day after Mr. Cuba made the "waiting for a bus" comment, he went to Mr. Bruscano and told him what happened. Mr. Campbell told Mr. Bruscano that he thought the comment was disrespectful and that Mr. Bruscano should talk to Mr. Cuba. Mr. Campbell acknowledged that he entered the field house, "but not back 40 feet." He explained that he is a member of the Facilities Committee. The Committee had taken a previous tour of the field houses because there was work to be done on these buildings. According to the respondent, he went to the field houses again that day in September 2009 to "take a second look."

Mr. Campbell stated that he entered the field house and saw Mr. Cuba with his feet up on his desk watching television. Mr. Campbell stated, "You're just the guy I wanted to see." He told Mr. Cuba that he embarrassed him [with his bus stop comment] in front of the summer help and he should not have said that. Mr. Campbell affirms that he did not touch or threaten Mr. Cuba; neither did he tell Mr. Cuba that he would be watching him. The respondent felt this was a "man to man" talk; Mr. Cuba said that his earlier comment was a joke and it would not happen again. Mr. Campbell then looked at the exterior of the field house where work is needed.

Mr. Campbell testified about the night that Mr. Hohmann came to his house. That evening, the respondent had attended a football game, along with another Board member. It started raining and he borrowed a jacket. He did not ask Mr. Hohmann if he could borrow it. He intended to wear the jacket during the game, then give it back. He wore the jacket to get his car,

then took it home. Mr. Campbell testified that Mr. Hohmann called his house that night and said, "You have my jacket." The respondent replied that someone said he could borrow it and he did. Mr. Campbell stated that he told Mr. Hohmann he would return the jacket the next day, but Mr. Hohmann said he wanted it that night. Again, the respondent said he would return it the next day, but Mr. Hohmann said he wanted it immediately. The phone call ended; Mr. Hohmann called Mr. Campbell a second time and said that if the respondent did not give him the jacket that evening, he would call the police. Mr. Hohmann then "showed up at the door" and Mr. Campbell gave back the jacket.

Mr. Campbell stated that there were two students suspended for stealing laptop computers; this was common knowledge throughout the town. Mr. Campbell testified that he believed it was in the paper and talked about all over town. Mr. Campbell was shown a copy of a Kearny Police Department incident report; he affirmed that he did not say anything to Mr. Hohmann that was not in that report. He denied that he told Mr. Hohmann how members were going to vote, what they were going to do, or that he revealed anything that was said in closed session.

Mr. Campbell testified that he spoke with Mr. Somma and his secretary about the process for calling substitutes. He asked how they choose the substitutes and whether there was a list. Mr. Campbell testified that Mr. Somma said he did not handle that; he needed to speak to Mr. Somma's secretary. Mr. Campbell stated that the secretary explained the process to him, but it is known in the High School that only the "top names" on the list were being called. Mr. Campbell said that he raised the issue with Somma, but did not ask him or the secretary to hire his niece.

Mr. Campbell said he had "several discussions" with Mr. Sprague when he was the Principal of Franklin School. According to the respondent, he did not tell Mr. Sprague that he was "out to get" Mr. Somma. The respondent stated that there is an investigation underway and he made that information public at a Board meeting. Mr. Campbell attributes the within complaint to the fact that he reported funds being mishandled in the District.

On cross-examination, Mr. Campbell acknowledged that he entered the field house around 11:30 during the work day. He also acknowledged that he did not notify central office that he was going to look at facility. He did not bring the matter of Mr. Cuba's comment to him to the attention of central office staff. Mr. Campbell stated that he went to Mr. Cuba's supervisor; he reasoned that if Mr. Bruscano "thought it was worthy," then he would refer the matter to the Superintendent. Mr. Bruscano handled the matter by having a discussion with Mr. Cuba. The respondent reiterated that it was his intent that day to look at the field house, not talk to Mr. Cuba. He stated that he has "known Lenny for 30 years" and he was surprised he acted the way he did.

Mr. Campbell further testified that on the evening of the football game, he did not enter the locker room area, he entered the field house about 10 steps; he asked the equipment manager about the jacket. Mr. Campbell testified that the equipment manager did not say anything; he later borrowed a jacket.

Although Mr. Campbell acknowledged that the Board did discuss the discipline for the two students, he never stated to Mr. Hohmann that some board members were looking for a harsher penalty. He said that he was sure Mr. Hohmann missed the two boys and he said he did miss them.

Mr. Campbell testified that the reason he went to speak with Mr. Somma was to talk about the tape that Mr. Hohmann made and Mr. Somma said he did not know about it. When he was there, the respondent asked Mr. Somma about procedures for hiring substitutes. The Board was not aware that he was going to talk to Mr. Somma. Mr. Campbell denied speaking to Mr. Sprague about an investigation.

In response to questions from the Commission, Mr. Campbell stated that he believed that the names of the students who were suspended were in the paper because they were adults. He clarified that the Board's discussion of the students was prior to the time Hohmann came to his home. The Commission accepted the Kearny Police report into evidence as Exhibit R-1.

George King is Deputy Police Chief in Kearny. He is currently a member of the Board, but was not on the Board at the time of the incidents in question. Deputy Chief King testified about Exhibit R-1. He stated that the information in the report is available to the public. He provided a copy of the report to the respondent. Mr. King testified that the respondent approached him at the end of August or beginning of September in 2009 regarding the theft of the laptops and asked the Deputy what information he could tell him. The Deputy said that he was familiar with the investigation, but not sure about releasing information. Mr. King checked into the matter and determined that the students were both adults, so he told the respondent about the charges, the amount of bail and that the matter had been referred to the prosecutor's office.

On cross-examination, Deputy Chief King noted that there was nothing in the police report that would reveal or confirm any actions taken by the Board. The Board would administer its own discipline to the students. In response to questioning from the Commission, the witness explained that because Mr. Somma initiated the police complaint, the District was aware of the criminal action pending.

Respondent's Exhibit⁵

R-1	Kearny Police Department Incident Report #901702
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FINDINGS OF FACT

As the trier of fact in this matter, the Commission had the opportunity to observe the demeanor of the witnesses and to judge their credibility. As such, the Commission found that the respondent was generally not a convincing witness. Additionally, while the Commission found Mr. Cuba, Mr. Somma and Mr. Sprague to be credible witnesses and the Commission has accepted their testimony, the Commission found that Mr. Hohmann's testimony was not trustworthy, for the reasons set forth in the analysis of Count 2, below. Thus, the Commission makes the following factual findings:

⁵ The complainant did not offer any exhibits into evidence.

1. The respondent was at all times a member of the Board.
2. In late summer 2009, Leonard Cuba, who is a member the field crew in the District, was at the Board office waiting for documents that were to be part of a “Board run.” When the respondent saw Mr. Cuba and inquired about why he was there that day, Mr. Cuba responded that he was “waiting for a bus.”
3. The next day, Mr. Campbell spoke with Mark Bruscano, Mr. Cuba’s supervisor, about Cuba’s statement. Mr. Campbell told Mr. Bruscano that he thought the comment was disrespectful and that Mr. Bruscano should talk to Mr. Cuba.
4. In early September 2009, Mr. Campbell entered the field house in the middle of the work day and, seeing Mr. Cuba, stated, “You’re just the guy I wanted to see.” The respondent told Mr. Cuba that he embarrassed him by making an earlier comment to him about waiting at a bus stop in that the comment was made in the presence of the summer help.
5. On the evening of October 16, 2009, Brian Hohmann, a teacher and coach, went to the respondent’s home in order to retrieve a jacket that Mr. Campbell had taken from the field house earlier that evening during the football game. Mr. Hohmann surreptitiously taped the conversation between himself and Mr. Campbell.
6. As Mr. Hohmann was leaving Mr. Campbell’s house, talk turned to two students who had been on the football team, but had not played because they were suspended for disciplinary reasons. Mr. Campbell stated that Mr. Hohmann must be missing these players.
7. Mr. Campbell went to speak to Alfred Somma, Principal of the Kearny High School. It is not clear from the testimony what date this conversation took place. Mr. Campbell asked Mr. Somma about the procedures used by the school to contact substitutes, because Mr. Campbell’s niece is a substitute. Mr. Somma informed Mr. Campbell that his secretary had a list and made the calls for substitutes.
8. Mr. Campbell then spoke to the secretary about the procedures for contacting substitutes.
9. Mr. Campbell did not ask Mr. Somma or his secretary to call his niece.
10. Mr. Campbell had a conversation with Assistant Superintendent Robert Sprague about the alleged involvement of the Superintendent and Mr. Somma in the improper use of school funds. It is not clear from the testimony when this conversation took place.
11. Mr. Somma received a telephone call from Mr. Sprague who reported to Mr. Somma that Mr. Campbell questioned Mr. Sprague about Mr. Somma’s alleged misuse of school funds. It is not clear from the testimony when this conversation took place.

ANALYSIS

The complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a). See also, N.J.S.A. 18A:12-29(b). Here, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(d), (e), (f), (g) and (i). Each statutory provision is set forth below, together with the regulatory standard establishing the complainant's factual burden of proof.

Count 1

In Count 1 of the complaint, the complainant alleges that the respondent visited the High School field house in September 2009 and verbally and physically harassed and intimidated employees that he believed were being disrespectful to his position as a board member. The complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(d), (e) and (i). (Complaint at paragraph 1) The Commission first considers N.J.S.A. 18A:12-24.1(d), which states:

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.

The Commission's regulations further provide:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(d) shall include, but not be limited to, evidence that the respondent(s) gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school. N.J.A.C. 6A:28-6.4(a)4.

It is clear from this record that the respondent was embarrassed by Mr. Cuba's statement that he was "waiting for a bus," which was undisputedly made to the respondent about a week before their interaction in the field house. The Commission was not persuaded by the respondent's testimony that he returned to the field house the following week to take "a second look" at the facilities. Rather, the Commission is convinced that the respondent sought out Mr. Cuba during his work day in order to speak with him about a comment which the respondent believed to be disrespectful. Indeed, the respondent himself testified that he told Mr. Bruscano about the comment and also advised Mr. Bruscano that he should talk to Mr. Cuba. In so doing, the Commission finds that the respondent became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district. It was not the respondent's place as a Board member to advise Mr. Bruscano to speak with Mr. Cuba and it was certainly not the respondent's place to confront Mr. Cuba in any manner regarding what he perceived to be a disrespectful comment. Thus, the Commission finds that the complainant has established that the respondent violated N.J.S.A. 18A:12-24.1(d).

The Commission next considers whether the respondent violated N.J.S.A. 18A:12-24.1(e), which states:

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.

The Commission's regulations further provide:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

As noted above, the Commission is not persuaded by the respondent's testimony that he returned to the field house the following week to take "a second look" at the facilities. However, even assuming that this was the reason for his appearance at the field house that day, no other member of the Facilities Committee was present and the respondent did not let the administration know that he was going to be at the field house for this purpose. Thereafter, the respondent took it upon himself to interact with Mr. Cuba; the Commission finds this to be "private action," or action taken outside the scope of the respondent's duties as a Board member. The Commission further finds that the respondent's private action was of such a nature that it had the potential to compromise the Board as it may well have sparked an impulsive reaction from Mr. Cuba.

Finally, the complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(i), which states:

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

The Commission's regulations further provide:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(i) shall include evidence that the respondent(s) took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties. N.J.A.C. 6A:28-6.4(a)9.

The Commission has found violations of N.J.S.A. 18A:12-24.1(i) where the comments made to or about the school employee were direct, confrontational and intimidating. For instance, in I/M/O Charles Fischer, Eatontown Bd. of Ed., Monmouth County, C30-03 (February 24, 2004), Commissioner of Education Decision No. 157-04SEC, April 12, 2004, the Commission found that a Board member violated N.J.S.A. 18A:12-24.1(i) when he called an employee at home and became angry when she refused to provide him with the reports that he had requested. In I/M/O David Kanaby, Hillsborough Bd. of Ed., Somerset County, C53-05 (July 24, 2007),

Commissioner of Education Decision No. 350-07SEC, September 10, 2007, the Commission found that the respondent Board member violated N.J.S.A. 18A:12-24.1(i) when he sent an email to the Superintendent which was both “threatening and intimidating” in that it asked the Superintendent for an accounting of her personal leave. The Board member sent the email to all Board members, as well as the Business Administrator, the Assistant Superintendent and his subordinate. The Commission found the respondent’s email to be “a personal and highly critical expression of his anger towards the superintendent in the proper performance of her duties.” (Kanaby at slip op. page 3) Finally, in Brown et al. v. David Matthews, City of Englewood Board of Education, Bergen County, C13-07 (October 27, 2008), *aff’d*, Commissioner of Education Decision No. 123-09A, April 14, 2009, the Commission found the respondent in violation of N.J.S.A. 18A:12-24.1(i) when he refused to cooperate with the District’s affirmative action officer (AAO) and, in so doing, engaged in offensive comments so upsetting to the employee that she resigned as the District’s AAO. On this record, however, the Commission does not find that the respondent’s limited communication with Mr. Cuba rises to the level of taking deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties, so as to violate N.J.S.A. 18A:12-24.1(i). Accordingly, the Commission finds that the complainant has failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(i).

Count 2

In Count 2 of the complaint, the complainant alleges that the respondent held a conversation with a teacher/coach on October 16, 2009 wherein he: (a) discussed another board of education employee; and (b) disclosed closed session information regarding two high school students involved in a disciplinary matter. (Complaint at paragraph 2) The complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(g),⁶ which states:

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.

The Commission’s regulations require that:

Factual evidence of a violation of the confidentiality provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that the respondent(s) took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that the respondent violated the inaccurate information provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the

⁶ As noted above, the Commission previously dismissed the complainant’s allegation of a violation of N.J.S.A. 18A:12-24.1(i).

information provided by the respondent(s) and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. N.J.A.C. 6A:28-6.4(a)7.

First, the Commission notes that there was no testimony with respect to a discussion about another Board employee. As to the closed session information regarding two high school students involved in a disciplinary matter that was allegedly revealed, the Commission initially finds that it cannot, in consideration of this claim, accord weight to Exhibit R-1, the Kearny Police Report, as proof that information as to the students' criminal charges was public, since this exhibit would not necessarily affect the disciplinary actions taken by the Board, nor would it shield the respondent from any culpability for revealing closed session Board discussions relative to the Board's actions.

Consequently, this allegation rests on the testimony that was presented by Mr. Hohmann and Mr. Campbell, the only two witnesses with first-hand knowledge of the conversation that took place on October 16, 2009. As noted above, the Commission generally found the respondent to be less than credible; on this claim, his direct testimony was wholly unenlightening as he flatly denied that any potentially confidential information may have been disclosed. On the other hand, Mr. Hohmann, whose testimony was crucial to this allegation, admittedly approached the respondent that evening with a history of "bad blood," as well as the expectation that he would not be honest about taking his jacket. Not only was it not the place of a coach/teacher to "establish boundaries" for Board members, as Mr. Hohmann testified was his intended purpose for the conversation that evening, but his insistence on going to the respondent's home after the football game to retrieve his jacket, together with his surreptitious taping of the respondent, takes the appearance of a coach/teacher attempting an amateur "sting" operation on a Board member whom he believed needed to be taught a lesson. Thus, the Commission is constrained to find that it cannot rely with any satisfaction on either account of the conversation. Because the complainant bears the burden of factually establishing a violation of N.J.S.A. 18A:12-24.1(g), the Commission must conclude that he has failed to meet his burden.

Count 4:

In Count 4 of the complaint, the complainant alleges that the respondent entered the High School on January 19, 2010 and confronted both the High School Principal and a Secretary about his perception that his niece was not being scheduled often enough as a substitute. (Complaint at paragraph 4) The complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(d), as set forth above and (f), as set forth below. N.J.S.A. 18A:12-24.1(f), states:

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.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(f) shall include evidence that the respondent(s) took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend. N.J.A.C. 6A:28-6.4(a)6.

Both Mr. Somma and Mr. Campbell agree that a conversation took place wherein Mr. Campbell asked Mr. Somma about procedures that were used by the High School to contact substitute teachers. Mr. Somma acknowledged that at times, other members of the public have asked about such procedures. Notably, he stated that the respondent did not ask him or his secretary to contact his niece from the list of substitutes. The Commission does not find that the conversation which took place between the respondent and either Mr. Somma or his secretary establishes that the respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district so as to constitute a violation of N.J.S.A. 18A:12-24.1(d). Likewise, the Commission can find no evidence that the respondent surrendered his independent judgment to special interest or partisan political groups or used the schools for personal gain or for the gain of his friends. Accordingly, the Commission finds that the complainant failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(d) and 24.1(f) as alleged in this count.

Count 5

In Count 5 of the complaint, the complainant alleges that on February 5, 2010, the respondent telephoned the Assistant Superintendent of Schools and told him he was “out to get” the High School Principal. (Complaint at paragraph 5) The complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(e) as set forth above and (i), as set forth above.

Mr. Somma testified that Mr. Sprague relayed the message to him that Mr. Campbell stated he was “out to get” Mr. Somma. Notably, however, Mr. Sprague did *not* testify that these specific words were spoken by Mr. Campbell. Because Mr. Sprague was a party to the conversation with the respondent and was found to be a credible witness, the Commission accepts his account of the conversation as fact. In so doing, the Commission finds that the complainant has, therefore, failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(e) by failing to recognize that authority rests with the board of education and making a personal promise or taking private action that was of such a nature that it might compromise the board. Similarly, the Commission finds insufficient evidence on the record to conclude that the respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties so as to violate N.J.S.A. 18A:12-24.1(i). Accordingly, the Commission finds that the complainant failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(e) and 24.1(i) as alleged in this count.

DECISION

The Commission finds that respondent John Campbell violated N.J.S.A. 18A:12-24.1(d) and (e) and of the Code of Ethics for School Board Members as set forth in Count 1 and dismisses the remaining allegations in the complaint.

PENALTY

The Commission recommends that the Commissioner of Education impose a penalty of censure. In I/M/O Doris Graves, Pleasantville Board of Education, Atlantic County, C47-05 (May 27, 2008), Commissioner of Education Decision No. 301-08SEC, decided July 10, 2008, the Commission recommended a penalty of censure where the Board member was found to have violated 18A:12-24.1(d) on two occasions: first when she spoke with the district's facilities coordinator about a proposed personnel action involving her cousin by marriage, rather than bringing her concerns to the Superintendent, and second when she appeared at a Board Personnel meeting regarding a personnel action affecting the same person.

In Jennifer Dericks et al., v. Michael Schiavoni, Sparta Township Board of Education, Sussex County, C45-07 (April 28, 2009), aff'd Commissioner of Education Decision No. 294-09SEC, decided September 15, 2009, the Commissioner agreed that censure was an appropriate penalty for a former Board member found to be in violation of N.J.S.A. 18A:12-24.1(c) and (d). The Commission found that the respondent administered the schools and became directly involved in a function that was the responsibility of the Superintendent by controlling the hiring process for a Principal's position. In another matter, the same respondent was censured by the Commission for sending a letter to the editor without the full knowledge and consent of the Board in violation of N.J.S.A. 18A:12-24.1(e). Jennifer Dericks et. al v. Michael Schiavoni, Sparta Board of Education, Sussex County, C41-07 (February 24, 2009) aff'd Commissioner of Education Decision No. 260-09SEC, decided August 18, 2009. Thus, the Commission finds that, on balance, a penalty of censure is appropriate given the findings in this decision.

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

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of violation may file, within **13 days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, indicated below. Such exceptions must be forwarded to: 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.

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

Robert W. Bender
Chairperson

Mailing Date: October 27, 2010

Resolution Adopting Decision – C02-10

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 from its hearing on September 28, 2010; and

Whereas, at its meeting on September 28, 2010, the Commission found that the respondent, John Campbell, violated N.J.S.A. 18A:12-24.1(d) and (e) of the Code of Ethics for School Board Members as alleged in Count 1 of the complaint, and the Commission dismissed all other allegations; and

Whereas, at its meeting on October 26, 2010, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on October 26, 2010.

Joanne Boyle, Executive Director