

matter was tabled pending receipt of any exceptions. However, neither party filed exceptions to the Initial Decision. N.J.A.C. 1:1-18.4 and N.J.A.C. 1:6C-18.3. At its meeting on December 21, 2010, the Commission modified the legal conclusions of the ALJ, as set forth below.

ANALYSIS

Upon its review, the Commission determines that the record supports the ALJ's findings that the respondent unilaterally proposed to the administration that he develop a student level database, without consulting the Board. As the ALJ noted, the respondent did not have the Board's authority "to receive or analyze student data, to work with the data on his home computer, or to host workshops with principals to advise them of the ways to correlate curriculum to improve standardized test score results." (Initial Decision at page 6) Given these factual findings, the Commission cannot conclude that the respondent's conduct was "board action" so as to implicate N.J.S.A. 18A:12-24.1(c), but rather must conclude that the respondent's conduct constituted "private action," or action beyond the scope of the respondent's duties.² Furthermore, the respondent's possession and maintenance of confidential student data had the potential to compromise the board. Therefore, the Commission concludes that the respondent violated N.J.S.A. 18A:12-24.1(e), but not N.J.S.A. 18A:12-24.1(c).

The Commission concurs with the ALJ that the respondent violated N.J.S.A. 18A:12-24.1(d), not only because he failed to act in concert with his fellow board members, but because he became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration. (N.J.A.C. 6A:28-7.1) As the ALJ found,

After receiving and analyzing the data, and after working with the data on his computer applications, Jackson met, on his own as an individual and without the permission or knowledge of the Board, with various building level administrators to advise them on ways to correlate curriculum to the standardized test score results; these discussions centered, in part, around the confidential data acquired by the respondent. (Initial Decision at page 3)

The ALJ also found that, having obtained this information, the respondent used the student-specific data of the child of one of his fellow Board members to illustrate his student level management system. Thus, the Commission concurs with the ALJ that the respondent breached his confidentiality obligation as a Board member, in violation of N.J.S.A. 18A:12-24.1(g). (*Id.* at p. 7) (See, I/M/O Edmund J. Zilinski, Bloomfield Bd. of Ed., Essex County, C20-05 (October 25, 2005) Commissioner of Education Decision No. 428-05SEC, decided November 23, 2005, wherein the Commission determined that a board member violated N.J.S.A. 18A:12-24.1(e) and (g) when he took private action in organizing confidential information containing the names of students suspended from October to November 2004 on an Excel

² It is noted that in Marc Sovelove v. Paul Breda, Mine Hill Twp. Bd. of Ed., C49-05 (September 26, 2006), the Commission found that a Board member's action cannot be both board action *and* private action.

spreadsheet and accidentally transmitted this information as an attachment to an email sent to all board members.)

DECISION

For the reasons set forth above, the Commission modifies the Initial Decision of the ALJ and concludes that the respondent violated N.J.S.A. 18A:12-24.1(d), (e) and (g) of the Code of Ethics for School Board Members.

PENALTY

The Commission adopts the ALJ's recommended penalty of a censure in this matter. As the ALJ noted, 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 Commissioner agreed with the Commission's recommended 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 I/M/O Edward Vickner, Ewing Township Bd. of Ed., Mercer County, C36-01(May 28, 2002), Commissioner of Education Decision No. 272-02SEC, decided July 16, 2002, aff'd, State Bd. of Ed. Decision No. 32-02, decided July 2, 2003, the Commissioner concurred that censure was an appropriate penalty where a Board member violated N.J.S.A. 18A:12-24.1(e) and (g) when he sought out and disclosed student information to the Board after being advised by the Superintendent that the information was confidential.

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: December 22, 2010

Resolution Adopting Decision – C37-07

Whereas, the Commission found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e) and (g) of the Code of Ethics for School Board Members, as well as N.J.S.A. 18A:12-24(f); and

Whereas, the Commission transmitted the matter to the Office of Administrative Law for a *de novo* hearing; and

Whereas, the Administrative Law Judge concluded in his Initial Decision that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e) and (g) of the Code of Ethics for School Board Members and recommended a penalty of censure; and

Whereas, after consideration of the full record, at its meeting on December 21, 2010, the Commission modified the Initial Decision of the ALJ, and concluded that the respondent violated N.J.S.A. 18A:12-24.1(d), (e) and (g); and

Whereas, the Commission finds that the within decision accurately memorializes its affirmance of the ALJ's recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its 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 December 21, 2010.

Joanne Boyle, Executive Director
School Ethics Commission