
IN THE MATTER

OF

**BARBARA GARRITY,
HOLMDEL BOARD OF EDUCATION,
MONMOUTH COUNTY**

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**BEFORE THE SCHOOL
ETHICS COMMISSION**

**SEC Docket No.: C24-13
OAL Docket No. EEC13324-13**

FINAL DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed before the School Ethics Commission (Commission) on May 14, 2013 by complainant/Board members, Phyllis Pascucci, Dennis Pavlik, and Ana Vander Woude alleging that respondent, Barbara Garrity, then President of the Holmdel Board of Education (Board), violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 *et seq.* By letter dated May 31, 2013, the Commission forwarded a copy of the complaint, thus notifying the respondent that the complaint had been filed. Specifically, the complainants allege that the respondent violated N.J.S.A. 18A:12-24(b), as well as N.J.S.A. 18A:12-24.1(a), (e), and (f) of the Code of Ethics for School Board Members (Code).

On June 17, 2013, the respondent filed an answer, alleging that the complaint was frivolous. By letter dated July 8, 2013, the parties were notified that the Commission would review this matter at its meeting on July 22, 2013 in order to make a probable cause determination, in accordance with procedures set forth at N.J.A.C. 6A:28-10.9, as well as a determination on the allegation of frivolousness. The complainants were accorded an opportunity to respond to the claim of frivolousness, pursuant to N.J.A.C. 6A:28-7.2(b), and on July 24, 2013, they filed their response.

At its July 22, 2013 meeting, the Commission found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b) in Count 2. The Commission also found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(e) and (f) as alleged in Count 2, but dismissed all alleged violations in Count 1. Moreover, the Commission found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2. Finally, the Commission voted to transmit the matter to the Office of Administrative Law (OAL) for a *de novo* plenary hearing in accordance with N.J.S.A. 18A:12-29b on September 5, 2013.

After the hearing on April 25, 2014, the Administrative Law Judge (ALJ) closed the record on June 9, 2014 to allow the submission of post-hearing briefs and replies. The Initial Decision of the ALJ, rendered June 30, 2014, was mailed to the parties the same day, and the closed file was transmitted to the Commission on July 3, 2014, along with the decision. The ALJ

concluded in his initial decision that respondent's conduct constituted a violation of N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(f)¹ and recommended the sanction of reprimand.

Pursuant to N.J.A.C. 1:1-18.4, the respondent filed exceptions to the Initial Decision with the Commission on July 9, 2014, and on July 14, 2014, the Deputy Attorney General, representing the Commission, filed a reply thereto. Upon return of the matter from the OAL, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8 and for good cause shown, the Commission was granted an extension of time in which to issue its final decision in this matter.

The Commission reviewed the record of this matter and the Initial Decision of the ALJ at its July 22, 2014 meeting at which time the Commission adopted the conclusions of the ALJ for the reasons expressed in his Initial Decision.

ANALYSIS

Upon careful and independent review of the record, the Commission finds that the record supports the ALJ's factual findings as well as the legal conclusion that the respondent did violate N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(f).

The respondent argues in her exceptions that the court was factually inaccurate in some of his findings, marginalized testimony of former counsel to the Board, disregarded consideration of the complainant's motives, and failed to apply the appropriate legal standards in this matter. The DAG contends that if there were errors, they were minor and of no significance to the ALJ's decision, that the ALJ based his decision on the credible evidence before him and, *inter alia*, avers that there was no legal error in the finding of a violation of N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(f).

The Commission accepts the ALJ's factual findings that the respondent violated N.J.S.A. 18A:12-24(b) by using her position as a Board member to benefit her son and that her action "smacks of under influence." (Initial Decision at p. 10) The Commission agrees. Moreover, by using her position on the Board, the respondent was able to gain access to a forum for her son that was not afforded to other such candidates, who had to endure the conventional application and vetting processes

The Commission further concurs that the respondent's actions establish that she violated N.J.S.A. 18A:12-24.1(f), which prohibits a Board member from "using the schools for personal gain or the gain of friends" and ceding the member's independent judgment "for the gain of friends." The respondent sought gain for her son, "surely within the group contemplated as 'friends.'" (Initial Decision at 11). But for the respondent's position, her son would not have been able to avail himself of the benefits offered under this "internship." It is of no moment that the "unwarranted privilege" was not obtained. It is enough that the respondent sought to benefit her son.

¹ The ALJ did not find a violation of N.J.S.A. 18A:12-24.1(e), deciding that because the respondent was not successful in her pursuit of the internship for her son, the Board was not compromised by her private action, which he opined did not rise to the level of conduct sought to be barred in the statute.

In accepting the ALJ's findings, the Commission underscores that a litigant's challenge to the factual findings rendered by an ALJ require the objecting party to provide the Commission with relevant portions of the transcript of the hearing in order to permit the Commission to assess the merits of those exceptions. *In re Morrison*, 216 N.J. Super. 143, 157-158 (App. Div. 1987) Here, however, no transcript was provided.

The Commission recognizes that these are matters that turn on the credibility of witnesses. In this regard, the Commission must give deference to the credibility determinations of the ALJ. "The reason for this rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses, and, consequently, is better qualified to judge their credibility." *In the Matter of Tenure Hearing of Tyler*, 236 N.J. Super. 478, 485 (App. Div.), certif. denied, 121 N.J. 615 (1989)." Upon review of the record, the Commission hereby concludes that the ALJ's credibility determinations in this matter must be given deference and her findings based on those determinations cannot be overturned.

As such, the Commission does not have the authority to find otherwise unless it first determines that the "findings are arbitrary, capricious or unreasonable or not supported by sufficient complete and credible evidence in the record. N.J.S.A. 52:14B-10(c). Here, the Commission does not so find.

To the extent that the respondent contends that the ALJ misjudged the testimony and the documentary evidence, the Commission determines that the findings issued by the ALJ provide a sufficient basis for reviewing his conclusions and recommendations. In this connection, the Commission recognizes that "the ultimate determination of the agency and the ALJ's recommendations must be accompanied by basic findings of fact sufficient to support them." *State, Dept. of Health v. Tegnazian*, 194 N.J. Super. 435 at 442, 443. The purpose of such findings "is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefore." (*Id.* at 443) Here, the Commission finds that the ALJ fairly summarizes the testimony and evidence. Because the Commission determines that the ALJ's factual findings provide a reasonable basis for his conclusions, there is no cause to disturb his decision.

DECISION

For the foregoing reasons, the Commission accepts the findings of fact and the conclusions of law as set forth in Initial Decision of the ALJ that the respondent be violated N.J.S.A. 18A:12-24(b) of the Act and N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members.

PENALTY

The Commission further adopts the ALJ's recommended penalty of **Reprimand** for these violations.

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, et seq. 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: August 27, 2014

Resolution Adopting Decision – C24-13

Whereas, the Commission found probable cause to credit the allegation that Barbara Garrity N.J.S.A. 18A:12-24(b), (e) and (f) and N.J.S.A. 18A:12-24.1(a), (e) and (f) of the Code of Ethics for School Board Members;

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

Whereas, the Administrative Law Judge concluded in his Initial Decision that there is good cause for the Commission to determine that respondent's conduct constituted a violation of N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(f) and to recommend a sanction Reprimand in relation thereto; and

Whereas, the Commission fully considered all of the documentation timely filed in response to the ALJ's decision and accepts the conclusions of the ALJ at its meeting on July 22, 2014; and

Whereas, at its meeting of August 26, 2014, the Commission recommended that the Commissioner of Education impose a sanction of Reprimand; and

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

Robert W. Bender, Chairperson

I hereby certify that the School Ethics Commission adopted this decision at its public meeting on August 26, 2014.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission