

ALJ's legal analysis ignored the set of facts as presented by the complainant when she decided that the respondent did not violate the Code. The complainant argues that the ALJ failed to recognize that the respondent's attempt to suborn perjury of a witness or that respondent's conduct, which was outside the scope of his authority, was enough to find a violation.

In his reply, the respondent maintains that the ALJ had heard all of the testimony and had the opportunity to assess the credibility of the witnesses. 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). He further argues that the complainant's reliance on Board Policy to find a violation is inappropriate as the policy was not in effect at the time of the events complained of here.

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 not violate N.J.S.A. 18A:12-24.1(a), (d) and (j). As the ALJ noted, the facts do not warrant a finding that subsection(a) was violated since the complainant's dependence on the school's Policy Alert 194 is misapplied to this case and the evidence is insufficient to prove that the respondent disrupted or interfered with the operation of the schools. (Initial Decision at 12) Moreover, the Commission concurs with the ALJ that the respondent did not violate N.J.S.A. 18A:12-24.1(d), because he did not give a direct order to school personnel or become involved in functions and the day-to-day administration that are the purview of school personnel.²

Similarly, the Commission cannot conclude that the respondent harmed school personnel in the proper performance of his duties so as to implicate N.J.S.A. 18A:12-24.1(i), as these events occurred at a polling place and though the complainant stated that he was intimidated, he was electioneering, as was the respondent, which is an activity that is outside the performance of the complainant's duties.

The Commission also cannot conclude that the respondent attempted to resolve a complaint on his own or conduct an investigation before administrative action was taken so as to implicate N.J.S.A. 18A:12-24.1(j). Although he did not advise the Superintendent of the situation, the respondent did comply with her suggestions for corrective action.

Based on the findings of fact in the record, however, the Commission rejects the ALJ's conclusion of law and determines that the respondent's actions on April 27, 2011 violated N.J.S.A. 18A:12-24.1(e) and had the potential to compromise the Board. The hearing record is rife with facts, which the ALJ heard from witnesses and which both parties agree to be the findings in this matter. Moreover, since the ALJ was in the best position to assess the credibility of these witnesses, the Commission adopts the same findings of fact as credible and fully supported by the record. When reviewed together, these findings establish a violation of subsection(e).

The ALJ accepted as fact that the respondent walked up to the complainant, whose wife was on the ballot and who had just finished voting, and yelled that the complainant was "unethical" for

² The School Ethics Commission does not have jurisdiction to review, enforce, or find a violation of school policy.

speaking with people who had not yet voted. The respondent himself was busy passing out flyers, which looked like an official ballot, but listed only the candidates the respondent supported. The respondent then shouted in a loud voice that “he (the complainant) had better hope that his wife Ginnie Murphy would win, and that if she did not, he had better watch his back.” (*Id.* at p.3, 5) The complainant felt threatened and was concerned over his continued employment, even though the complainant has received excellent evaluations in the past and is ranked high in tenure in his position.

The ALJ accepted as fact that the respondent tried to apologize to the complainant sometime later that day and again in the evening. Both times he was rebuffed. After the first refusal, the respondent repeated that the complainant “had better watch his back,” and that he “had better hope” that his wife wins. When the complainant asked the respondent if he were threatening him, the respondent said to the complainant, “take it any way you want to take it.” (*Id.* at 4)

The ALJ accepted as fact that the complainant’s son, Ryan Murphy, was campaigning for his mother at the high school in the afternoon when he was challenged by respondent for being at the polls when he was not a student in the district’s high school. As Ryan attempted to hand out seed packets as part of his mother’s campaign literature, respondent pushed his hand away. Ryan was again present when respondent attempted to apologize to complainant in the evening, “saying he was sorry about what happened” and asking to shake hands with complainant. When the complainant refused that offer, Ryan heard respondent say, “you know, you had better watch your back; you better just hope she wins. I know people.” Ryan did not feel intimidated or threatened by any of the respondent’s comments. (*Ibid.*)

The ALJ accepted as fact that Kim Deisroth, a worker on Ginny Murphy’s campaign, saw this incident and told respondent to leave Ryan alone. Respondent then became loud with her, to the point where she thought she might call the police because she felt as though she were being threatened. Later in the evening she heard respondent say to the complainant that he should watch his back, as well as his job, and that respondent knew people in high places. (*Ibid.*)

The ALJ accepted as fact that M.G., a high school student and a friend of Ryan’s, was present as respondent approached the complainant in the evening. She heard him say, “You better watch your back; the political business is rough.” (*Id.* at 4)

The ALJ accepted as fact that Andrew Walter, former school board member, stated that respondent had a history of aggressive electioneering and had tried to intimidate him on Election Day in 2010, but that he had never reported respondent’s behavior to anyone. (*Id.* at 8)

The ALJ accepted as fact that Andrew Walter, said that respondent did not inform the board after the incident that complaints from other employees had prompted him to say that complainant “had better watch his back.” (*Id.* at 7)

The ALJ accepted as fact that the complainant sent written memoranda of both incidents to Joe Bollendorf, the principal of the high school and contacted the school superintendent, Dr. Cheryl Simone, to express his concern that he had been threatened by a board member. The Superintendent told the respondent that he needed to apologize. (*Id.* at 5, 7)

The ALJ accepted as fact that Dr. Simone said that the respondent explained his conduct as being in the context of having received complaints about complainant from unnamed bus drivers and/or maintenance workers, and that he was trying to advise the complainant that these persons, over whom complainant had no supervisory authority, were upset with him. The superintendent had never heard these alleged complaints, nor did she receive the names of the complainers from respondent. (Id. at 6)

The ALJ accepted as fact that the respondent said that as he was handing out fliers, a number of employees who worked for complainant said that they were being mistreated and that he was harsh with them. That was why respondent said to the complainant that he should watch his back. Respondent admitted telling complainant he had “better watch his back” in the afternoon and again in the evening. Although respondent denied that he had said “you better hope your wife wins,” other witnesses in a position to hear the conversation heard him make these statements. (Ibid.)

The ALJ accepted as fact that when asked at the hearing about the names of the four or five people who had allegedly complained to him about the complainant, respondent identified Bob Schoenfeldt, and others named “Jeff” and “Mike.” Respondent did not provide the superintendent with these names, nor did he tell her what the complaints were. (Id. at 7)

The ALJ accepted as fact that a former school board member, Andrew Walter, said that respondent did not inform the board after the incident that complaints from other employees had prompted him to say that complainant “had better watch his back.” (Ibid.)

The ALJ accepted as fact that respondent contacted Schoenfeldt three times after he had testified at the hearing and told Schoenfeldt about the members of the department who had complained. Schoenfeldt was surprised that he had been brought into this matter. He had never had a discussion with respondent about the complainant, had never complained to respondent about the complainant, and had never received complaints about the complainant. Schoenfeldt reported the contact with respondent to his supervisor. (Ibid.)

The complainant asserts that Mr. Schoenfeldt told the respondent the he (Mr. Schoenfeldt) would testify truthfully that he received no such complaints from others nor had he ever complained about the complainant. (Exceptions at p.7)

In considering the alleged violation of N.J.S.A. 18A:12-24.1(e), the Commission looks to the regulation, which 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.

The Commission’s regulations require:

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.

On April 27, 2011, the day of the school board election, the respondent Board member took action beyond the scope of his authority by confronting, intimidating, and embarrassing not just the complainant, but others as well. Testimony reveals that he had similarly comported himself during the 2010 election. It is of no moment that the respondent tried to apologize or that the election was heated. The complainant should not be compelled to accept a private apology for so public a rebuke, and in difficult situations, the public has the right to expect leadership from their elected officials. Most egregious and most damning is the respondent's attempt to induce Mr. Schoenfeldt to perjure himself in support of the respondent's own self-serving, pretextual testimony. The respondent took an oath as a Board member to uphold the laws of this State. The Commission finds that the respondent failed to do so.

It is not enough for the respondent to have taken action beyond the scope of his duties. His conduct must have had the potential to compromise the Board. The very purpose of the School Ethics Act states:

...it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated. N.J.S.A.18A:12-22

The Commission finds that by his conduct, the respondent has now potentially made any vote or Board action in which he is involved suspect. The public may now have lost its respect and confidence for this member and the Board, which is now compromised.

DECISION

For the reasons set forth above, the Commission accepts the Initial Decision of the ALJ and concludes that the respondent did not violate N.J.S.A. 18A:12-24.1(a), (d), (i) and (j) of the Code of Ethics for School Board Members, but rejected the ALJ's legal conclusion that the respondent did not violate N.J.S.A. 18A:12-24.1(e) and modified the Initial Decision. Based on the ALJ's findings of fact, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(e) and voted to recommend the penalty of reprimand.

Moreover, pursuant Advisory Opinion A06-08 in which the Commission advised a board member not to participate in any vote or Board action involving someone with whom he had a negative history, the respondent is also advised that he must abstain from any vote or Board action regarding this complainant. Such involvement could create a justifiable impression that the public trust is being violated since it would be reasonable for the public to perceive that the respondent is using his position to secure an advantage over complainant as a consequence of the respondent's history with the complainant.

PENALTY

The Commission recommends the penalty of reprimand for respondent's violation of N.J.S.A. 18A:12-24.1(e)

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: June 26, 2013

Resolution Adopting Decision – C44-11

Whereas, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to transmit this matter to the Office of Administrative Law for hearing; and

Whereas, the Administrative Law Judge concluded that respondent's conduct was not sufficient to violate the Act; and

Whereas, the parties filed exceptions to the ALJ's decision and replies; and

Whereas, after consideration of the full record, at its meeting on May 28, 2013, the Commission modified the Initial Decision of the ALJ, and concluded that the respondent violated N.J.S.A. 18A:12-24.1 (e); and

Whereas, the Commission recommends the penalty of reprimand of the respondent for his actions; and

Whereas, the Commission finds that the within decision accurately memorializes its adoption of the Initial Decision;

Now Therefore Be It Resolved, 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 it public meeting on June 25, 2013.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission