
BARBARA GARRITY

**BEFORE THE SCHOOL
ETHICS COMMISSION**

V.

**OAL DKT. NO. EEC 7004-13
SEC DKT. NO. C50-12**

**ANA M. VANDER WOUDE,
DENNIS PAVLIK, AND PHYLLIS
PASCUCCI ¹
HOLMDEL TOWNSHIP BOARD
OF EDUCATION,
MONMOUTH COUNTY**

AND

BARBARA DUNCAN

V.

**OAL DKT. NO. EEC 7005-13
SEC DKT. NO. C51-12**

**ANA M. VANDER WOUDE,
HOLMDEL TOWNSHIP BOARD
OF EDUCATION,
MONMOUTH COUNTY**

AND

BARBARA DUNCAN

V.

**OAL DKT. NO. EEC 7009-13
SEC DKT. NO. C52-12**

**DENNIS PAVLIK
HOLMDEL TOWNSHIP BOARD
OF EDUCATION,
MONMOUTH COUNTY**

CONSOLIDATED

FINAL DECISION

PROCEDURAL HISTORY

These matters arise from three complaints, one Complaint filed on December 6, 2012 by Complainant, Barbara Garrity, then Board President of the Holmdel Board of Education, against Board members Ana M. Vander Woude, Dennis Pavlik, and Phyllis Pascucci, and two other

¹ The matter against then Board Member Phyllis Pascucci was withdrawn and she was not included as a Respondent in the ALJ's findings, conclusions or recommended penalty. Accordingly, there was no determination that Ms. Pascucci violated the School Ethics Act and the penalty does not apply to her.

Complaints filed on December 13, 2012 by Superintendent Barbara Duncan against Board members Ana M. Vander Woude and Dennis Pavlik, individually, alleging that the Respondents violated N.J.S.A. 18A:12-24.1(c), (d), (e), (g), (i) and (j) of the Code of Ethics for School Board Members (Code).

After review on May 1, 2013, the Commission transmitted the matters to the Office of Administrative Law for plenary hearings in accordance with N.J.S.A. 18A:12-29(b). These matters were consolidated, and the Administrative Law Judge (ALJ) conducted a hearing on March 10, 2016. He closed the record on April 21, 2016. The Initial Decision of the ALJ was rendered on June 3, 2016, and the School Ethics Commission acknowledged receipt of the Decision on the same day; therefore, the 45-day statutory period for issuing a final decision expires on July 18, 2016. Prior to that date, the School Ethics Commission requested a 45-day extension of time for issuing its decision so as to allow the Commission, which meets only one day each month, to receive and review the full record of the matter, including exceptions and reply arguments. 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 extension of time was granted until September 1, 2016.

The ALJ concluded in his Initial Decision that the conduct of Respondent Vander Woude and Respondent Pavlik constituted violations of N.J.S.A. 18A:12-24.1(c), (d), (e), (g), (i), and (j) of the Code and recommended the sanction of Censure in relation thereto. The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The Respondents subject to the penalty of Censure did not file exceptions to the Initial Decision.

The Commission reviewed the record of this matter and the Initial Decision of the ALJ at its June 21, 2016 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, based on the credible evidence before him, as well as the legal conclusion that Respondents Ana M. Vander Woude and Dennis Pavlik did violate N.J.S.A. 18A:12-24.1(c), (d), (e), (g), (i), and (j) of the Code.

The Commission concurs that the Respondents' actions establish that they violated N.J.S.A. 18A:12-24.1(c), by failing to limit their board action to policy making, planning, and appraisal, and solely helping to frame policies and plans only after the board has consulted those who will be affected by them. Instead, these Respondents exceeded their authority as Board members and failed to consult with the other Board members to ensure that a proper investigation had been conducted. Here, the ALJ concluded that Respondents Vander Woude and Pavlik pursued an investigation, determined guilt and sought punishment without waiting for the results of a proper investigation.

The Commission also accepts the ALJ's factual findings that the Respondents violated N.J.S.A. 18A:12-24.1(d) when they failed to report information received from a constituent to

the Superintendent for her to investigate rather than concluding prematurely on their own that some criminal wrongdoing had occurred. Such responsibility to review complaints is part of the day-to-day function of the Superintendent and not within the authority of a Board member to resolve.

The Commission also accepts the ALJ's factual findings that the Respondents violated N.J.S.A. 18A:12-24.1(e) having taken action beyond the scope of their authority as Board members when, after the Board as a whole accepted the results of the investigation that nothing untoward occurred, Respondents Vander Woude and Pavlik brought their baseless accusations to the Monmouth County Prosecutor for investigation. In doing so, these Respondents failed to recognize that authority rests with the Board, and that they as members, should avoid any action that would compromise the Board.

The Commission also accepts the ALJ's factual findings that the Respondents violated N.J.S.A. 18A:12-24.1(g) by providing "false information and false impressions to the public about the Board and its handling of a confidential personnel matter" (Initial Decision at 21), that led the public to believe that some criminality had occurred, and that the Administration had dealt with the matter inappropriately. The specter of criminality or negligence had been dispelled, and Board counsel had sufficiently cautioned the Respondents that they could face serious consequences for prematurely condemning school personnel. Here, the Respondents chose to speak publicly about the allegations even after the investigation demonstrated that they were unfounded.

Similarly, based on the foregoing discussion of Respondents' conduct, the Commission also accepts the ALJ's factual findings that the Respondents violated N.J.S.A. 18A:12-24.1(i) by taking deliberate action, which undermined and compromised school personnel in the proper performance of their duties. The ALJ concluded that "without a scintilla of evidence" (ID, p.11), these Respondents accused a school employee and the Superintendent of criminal conduct in some degree, and without any actual evidence voiced their concerns to other Board members. Moreover, the ALJ determined that "as if to compound their mischief" (ID, p.12), the Respondents aired their accusations during the November 2012 Board meeting, using references to an unrelated child abuse scandal, which raised public anxiety needlessly as the investigation had already demonstrated that no crime had been perpetrated nor had the public been defrauded. Such abuse of the Respondents' office undermined and compromised the public confidence and trust in the Superintendent and School personnel in the proper performance of their respective duties.

Finally, the Commission also accepts the ALJ's factual findings that the Respondents violated N.J.S.A. 18A:12-24.1(j) by attempting to resolve a constituent's complaint prior to referral to the Superintendent and prior to the failure of the Administration to fashion a solution. The ALJ concluded that even if these Respondents believed that reporting their concerns to the Superintendent would have tainted the investigation because of her alleged involvement, they should have consulted with the Board as a whole and with Board counsel for advice and direction and then waited for the facts to develop in the normal course of a proper investigation.

In accepting the ALJ's findings, 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 his findings based on those determinations cannot be disturbed.

The Commission, therefore, determines that the findings issued by the ALJ provide a sufficient basis for 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. 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 and recommendation, the Commission accepts the ALJ's Initial Decision as the Final Decision in this matter.

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 Respondent Ana M. Vander Woude and Respondent Dennis Pavlik violated N.J.S.A. 18A:12-24.1(c), (d), (e), (g), (i), and (j) of the Code of Ethics for School Board Members.

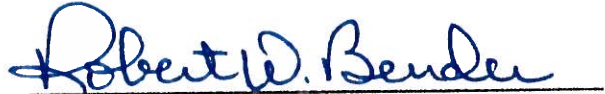
PENALTY

The Commission further adopts the ALJ's recommended penalty of **Censure** 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: July 27, 2016

**Resolution Adopting Decision
C50-12, C51-12, and C52-12 (Consolidated)**

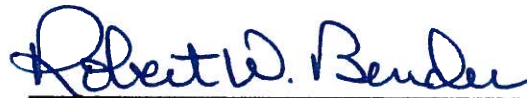
Whereas, the Commission voted to transmit these matters to the Office of Administrative Law for a plenary hearing; and

Whereas, the Administrative Law Judge concluded in his Initial Decision that there is good cause for the Commission to determine that the conduct of Respondents Vander Woude and Pavlik constituted a violation of N.J.S.A. 18A:12-24.1(c), (d), (e), (g), (i), and (j) of the Code of Ethics for School Board Members and recommended a sanction of Censure in relation thereto; and

Whereas, at its meeting on June 21, 2016, the Commission fully considered the entire record and accepts the findings of fact and conclusions of the ALJ; and

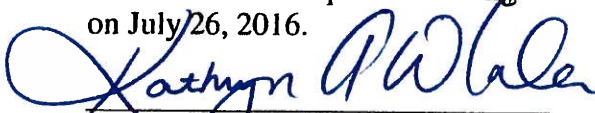
Whereas, at its meeting of July 26, 2016, the Commission recommended that the Commissioner of Education impose a sanction of Censure of Respondents Vander Woude and Pavlik; and

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed Initial Decision referenced as its Final 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 July 26, 2016.



Kathryn A. Whalen
Acting Executive Director
School Ethics Commission