

Before the School Ethics Commission
OAL Docket No.: EEC-06661-18
SEC Docket No.: C17-18
Final Decision

**Anthony M. Fleres,
Complainant**

v.

**Yu Taylor Zhong,
West Windsor-Plainsboro Board of Education, Mercer County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on March 1, 2018, by Anthony M. Fleres (Complainant), a member of the West Windsor-Plainsboro Board of Education (Board), alleging that Yu Taylor Zhong (Respondent), also a member of the Board, violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code).

On March 12, 2018, the Complaint was served on Respondent, via regular and certified mail, notifying him that charges were filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to respond to the Complaint. On April 2, 2018, Respondent filed an Answer to Complaint (Answer).

The parties were notified by correspondence dated April 16, 2018, that this matter would be placed on the Commission's agenda for its meeting on April 24, 2018. At its meeting on April 24, 2018, the Commission considered the parties' filings, and voted to transmit the matter to the Office of Administrative Law (OAL) for a plenary hearing on the allegations set forth in the Complaint.

At the OAL, a hearing was conducted on December 3, 2018, at which both parties appeared and offered testimony. The record was subsequently reopened on January 16, 2019, and remained open until January 22, 2019, to allow Complainant time to produce additional Board policies or procedures relating to his claims against Respondent. On February 28, 2019, Administrative Law Judge Susan L. Olgiati (ALJ Olgiati) issued an Initial Decision and concluded that Respondent violated the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g), and that insufficient evidence was produced to establish that Respondent violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g). Based on her legal conclusions, ALJ Olgiati recommended a penalty of reprimand.

The Commission acknowledged receipt of ALJ Olgiati's Initial Decision on February 28, 2019; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was April 15, 2019. Prior to April 15, 2019, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to receive and review the full record. 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 until May 30, 2019. Neither party filed Exceptions to the Initial Decision.

The Commission considered the full record in this matter at its meeting on March 26, 2019. At a special meeting on May 2, 2019, and for the reasons more fully detailed below, the Commission voted to adopt ALJ Olgiati's findings of fact; to adopt the legal conclusion that Respondent violated the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g) when he forwarded a message to members of his immediate family about an incident involving a student that resulted in discipline (and it was subsequently shared by a member of his immediate family with "countless others"); to adopt the legal conclusion that Complainant did not provide sufficient evidence to prove that Respondent violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g); and to reject the recommended penalty of a reprimand in favor of a censure.

II. Initial Decision

As set forth in the Initial Decision, ALJ Olgiati issued the following findings of facts:

1. At all relevant times, Respondent was a member of the Board.
2. On or about February 6, 2018, Respondent received a message from a parent within the West Windsor-Plainsboro School District (District) concerning an alleged incident resulting in the discipline of a high school student.
3. The message did not identify the student by name, but did contain information identifying the student by high school, grade level, and gender (by use of the pronoun "he").
4. The message also referenced details of the alleged incident and the length of the suspension imposed.
5. Respondent forwarded the message via WeChat, a social media platform, to a group consisting of four (4) members of his immediate family.
6. Respondent forwarded the message to the group without any comment.
7. Thereafter, one of Respondent's family members forwarded the message to others outside Respondent's original message group.
8. The message eventually made its way to one of the students involved in the incident.

In her Initial Decision, ALJ Olgiati noted that, “As a general rule, student records and information relating thereto, including information relating to student discipline, is considered confidential.” *Initial Decision* at 5. In this case, Respondent acknowledged that another parent within the District sent him the message because the parent wanted to know whether the information relating to the student disciplinary incident was true. *Id.* Based on Respondent’s own acknowledgment, the message was sent to him “because he was a member of the [Board] and as such, believed to be in a position to know the truth of the incident.” *Id.* However, rather than attempting to verify the information or to inform the superintendent about the message he received, Respondent “forwarded the message to his family without the benefit of any comment, caution, or instruction.” *Id.* Without any such comment, caution, or instruction, ALJ Olgiati found that Respondent’s family members “believed the information to be ‘news’ and shared it with others.” *Id.* at 5-6. According to ALJ Olgiati, “Respondent’s action in forwarding the message on a social media platform, enabled details of the alleged incident and resulting discipline as well as information identifying the student by grade level, high school, and gender to be disclosed to countless others.” *Id.* at 6. Moreover, “Respondent’s disclosure of information relating to the student and disciplinary action imposed – information that is generally treated as confidential – resulted in needless harm to the student(s) involved.” *Id.*

Based on the facts as set forth above, as well as the applicable law, ALJ Olgiati concluded that Complainant proved, by a preponderance of the competent and credible evidence that Respondent’s actions violated the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g). *Initial Decision* at 6. To the extent that Complainant alleged that Respondent’s actions violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g), ALJ Olgiati concluded that Complainant failed to produce any competent and credible evidence supporting this allegation. *Id.*

Based on her legal conclusions, and because Respondent acknowledged that he made a mistake and did not intend to disclose the information to anyone outside the members of his immediate family, ALJ Olgiati concluded that a penalty of reprimand was warranted. *Initial Decision* at 6.

III. Exceptions

Neither Complainant nor Respondent filed Exceptions to ALJ Olgiati’s Initial Decision.

IV. Analysis

Upon careful and independent review of the full record, the Commission **adopts** ALJ Olgiati’s findings of fact; **adopts** the legal conclusion that Respondent violated the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g) when he forwarded a message to members of his immediate family about an incident involving a student that resulted in discipline (and it was subsequently shared by a member of his immediate family with “countless others”); and **adopts** the legal conclusion that Complainant did not provide sufficient evidence to prove that Respondent violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g). In finding a violation of the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g), the Commission agrees with ALJ Olgiati that Respondent “should have taken greater care to protect the confidentiality

of the student information provided to him.” *Initial Decision* at 6. The Commission additionally agrees that Respondent’s use of his personal email account, as opposed to his Board email account, is of no consequence. It is the substance of the transmission, and not the method of transmission, that is of critical importance.

V. Decision

The Commission adopts ALJ Olgiati’s Initial Decision finding that Respondent violated the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g), and also finding that there was insufficient evidence to prove that Respondent violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g).

VI. Penalty

Based upon the conclusion that Respondent violated the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g) when he forwarded a message to members of his immediate family about an incident involving a student that resulted in discipline (and it was subsequently shared by a member of his immediate family with “countless others”), ALJ Olgiati recommended a penalty of reprimand. In support of this recommendation, ALJ Olgiati cited the fact that Respondent acknowledged that he made a mistake, and indicated that he did not intend to disclose the information to anyone outside the members of his immediate family. *Initial Decision* at 6.

As a Board member, confidential information is regularly entrusted to Respondent’s care. The nature of the confidential information that is received by Board members in the course of their Board duties and responsibilities is broad-ranging, and can relate to a variety of matters including, without limitation, pending Board matters (e.g., policies, procedures, or anticipated votes), student issues (e.g., health or discipline), as well as personnel matters (e.g., contracts). It is the receipt of this confidential information that allows Board members to make the most well-informed decision possible. However, when a Board member fails to hold confidential information sacrosanct, serious harm and injury can result. Although Respondent acknowledged that he made a mistake, and indicated he did not intend for the information to be shared beyond his immediate family, Respondent seems to overlook the fact that confidential information, which is shared with him *because he* is a Board member, should not be shared with *anyone*, including members of his own family until, at the very least, the information is no longer confidential. In this case, and by his own admission, Respondent shared highly sensitive student information with his own children. For these reasons, and in order to impress upon Respondent the fundamental importance of safeguarding confidential information, the Commission **rejects** the recommended penalty of a reprimand, and instead recommends that the Commissioner of Education (Commissioner) impose a penalty of **censure**.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner for review of the Commission’s recommended sanctions. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission’s findings of violations of the Act; or 3) file both exceptions to the recommended sanction and an appeal of the Commission’s findings of violations of the Act.

Parties taking exception to the recommended sanctions of the Commission but *not disputing* the Commission's findings of violations may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended sanctions to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the Commission and all other parties.

Parties seeking to appeal the Commission's findings of violations *must* file an appeal pursuant to the standards set forth at *N.J.A.C. 6A:4, et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the mailing date to the parties, as indicated below. In such cases, the Commissioner's review of the Commission's recommended sanctions will be deferred and incorporated into the Commissioner's review of the findings of violations on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (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 brief on appeal.

Robert W. Bender, Chairperson
School Ethics Commission

Mailing Date: May 3, 2019

**Resolution Adopting Decision
In Connection With C17-18**

Whereas, on April 24, 2018, the School Ethics Commission (Commission) voted to transmit the above-referenced matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, following a hearing, Susan L. Olgiati, Administrative Law Judge (ALJ Olgiati) issued an Initial Decision dated February 28, 2019; and

Whereas, in her Initial Decision, ALJ Olgiati determined that Respondent violated the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g), and also determined that insufficient evidence was produced to establish that Respondent violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g); and

Whereas, based on her legal conclusions, ALJ Olgiati determined that a penalty of reprimand was warranted; and

Whereas, neither party filed Exceptions to ALJ Olgiati’s Initial Decision; and

Whereas, at its meeting on March 26, 2019, the Commission reviewed and discussed the record, including the Initial Decision, and

Whereas, at its meeting on March 26, 2019, the Commission discussed adopting the findings of fact from the Initial Decision; adopting the legal conclusion that Respondent violated the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g) when he forwarded a message to members of his immediate family about an incident involving a student that resulted in discipline (and it was subsequently shared by a member of his immediate family with “countless others”); adopting the legal conclusion that Complainant did not provide sufficient evidence to prove that Respondent violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g); and rejecting ALJ Olgiati’s recommended penalty of a reprimand in favor of a censure; and

Whereas, at a special meeting on May 2, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from March 26, 2019; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision as a Final Decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at a special meeting on May 2, 2019.

Kathryn A. Whalen, Director
School Ethics Commission