

Before the School Ethics Commission
OAL Docket No.: EEC-04898-20
SEC Docket No.: C60-19
Final Decision

In the Matter of Denise Sanders,
Teaneck Board of Education, Bergen County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on September 26, 2019, by Gerald T. Reiner, Jr. (Complainant) alleging that Denise Sanders (Respondent), a member of the Teaneck Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint averred that Respondent violated *N.J.S.A.* 18A:12-24(c) in Count 1 and Count 2; violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) in Count 3; and violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) in Count 4.

After the Complaint was served, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. As part of his response to the Motion to Dismiss and allegation of frivolous filing, Complainant agreed to voluntarily withdraw the allegations in Count 1.

At its meeting on January 21, 2020, and following a review and discussion of the parties' pleadings at a previous meeting, the Commission adopted a decision granting the Motion to Dismiss as to the allegations in Count 2 and Count 3 (the allegations in Count 1 were voluntarily withdrawn by Complainant); denying the Motion to Dismiss as to the allegations in Count 4; finding the Complaint not frivolous and denying Respondent's request for sanctions; and directing Respondent to file an Answer to Complaint (Answer) for the remaining allegations. On February 11, 2020, Respondent filed an Answer as directed.

Thereafter, and at its meeting on April 21, 2020, the Commission adopted a decision finding probable cause for the remaining allegations in the Complaint. Following its finding of probable cause, the Commission filed the above-captioned matter with the Office of Administrative Law (OAL) as a contested matter, and, pursuant to *N.J.A.C.* 6A:28-10.7(b), the attorney for the Commission (Petitioner) was charged with prosecuting the allegations in the Complaint which the Commission found probable cause to credit.

At the OAL, the above-captioned matter was assigned to the Honorable Kimberly A. Moss, Administrative Law Judge (ALJ Moss). *Initial Decision* at 1. ALJ Moss conducted a hearing on November 8, 2021, and the parties submitted closing briefs on May 16, 2022; thereafter, the record closed. *Id.* at 2.

On May 23, 2022, ALJ Moss issued an *Initial Decision* detailing her findings of fact and legal conclusions. The Commission acknowledged receipt of ALJ Moss's *Initial Decision* on the date it was issued (May 23, 2022); therefore, the forty-five (45) day statutory period for the

Commission to issue a Final Decision was July 7, 2022. Prior to July 7, 2022, 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, including the parties' Exceptions (if any). 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 August 22, 2022.¹

At its meeting on June 28, 2022, the Commission considered the full record in this matter. Thereafter, and at its meeting on July 26, 2022, the Commission voted to adopt the findings of fact from ALJ Moss's *Initial Decision*; to adopt the legal conclusion that Respondent violated *N.J.S.A. 18A:12-24(b)*; to adopt the legal conclusion that Respondent did not violate *N.J.S.A. 18A:12-24(c)*; and to modify the *Initial Decision* to include a penalty of reprimand.

II. Initial Decision

Based on the witness testimony and documentary evidence submitted, ALJ Moss issued the following findings of fact: Respondent became a Board member in 2016; the Board has a nepotism policy which exempts per diem substitute employees from the policy; on October 10, 2018, Respondent's child was approved by the Board to become a per diem substitute for the 2018-2019 school year; on August 21, 2019, Respondent's child was renewed as a per diem substitute for the 2019-2020 school year; and on August 26, 2020, Respondent's child was again renewed as a per diem substitute for the 2020-2021 school year. *Id.* at 7-8.

Furthermore, substitute teachers can choose the assignments they want to take; substitute teachers report to the Human Resources Department, and not to the Superintendent; the Superintendent is responsible for everyone in the Teaneck School District (District); Respondent's child does not live with Respondent, and is not financially dependent on Respondent; Respondent spoke with Board counsel about her child's employment as a per diem substitute, and was told that her child "was eligible to work as a substitute teacher, because substitute teachers are per diem and not employees and exempt from the nepotism policy; and Respondent abstained from voting when renewal of substitute teachers was voted on by the Board. *Id.* at 8.

Moreover, Board members receive yearly training; ethics is part of that training; Respondent participated in those training sessions; Respondent was present in executive session on June 12, 2019, when the Superintendent's evaluation was discussed; at its meeting on June 26, 2019, the Board approved the Superintendent's merit goals, and Respondent voted on the motion (affirmatively); if the merit goals are achieved, the Superintendent receives a fifteen percent (15%) bonus; during executive session on June 26, 2019, the contract and evaluation of the Superintendent was discussed; at the Board's meetings on September 11, 2019, and September 18, 2019, there were executive session discussions concerning merit goals for the Superintendent, and Respondent participated in those discussions; and Respondent never discussed her child's employment with the Superintendent. *Id.* at 9.

¹ Technically, forty-five (45) days after May 23, 2022, was Sunday, August 21, 2022; by rule, the deadline was extended until the next business day, which was Monday, August 22, 2022.

With the above in mind, ALJ Moss found that Respondent's child is not a member of her (Respondent's) immediate family because her child does not live with her (Respondent), and is not financially dependent on Respondent. *Id.* at 11. Because her child is not an immediate family member (as that term is defined in *N.J.S.A.* 18A:12-23), ALJ Moss concludes Respondent did not violate *N.J.S.A.* 18A:12-24(c). *Id.*

However, ALJ Moss further *concludes* Respondent did violate *N.J.S.A.* 18A:12-24(b) because, although a per diem substitute can decide when and where to work and technically reports to the Human Resources Department, "the Superintendent is the individual who is responsible for the District and therefore is responsible for the per diem substitute teachers." *Id.* In this case, Respondent voted to approve the Superintendent's merit goals at the June 26, 2019, Board meeting, and discussed the Superintendent's merit goals at the September 11, 2019, and September 18, 2019, Board meetings (in executive session). *Id.* If the merit goals are achieved, the Superintendent receives a fifteen percent (15%) bonus. *Id.* Taken together, "A reasonable person could believe that by [Respondent] voting on the merit goals which can include a fifteen percent bonus for the Superintendent, [Respondent] believed that her [child] would continue to be a per diem substitute teacher in the District." *Id.* at 11-12. Consequently, Respondent violated *N.J.S.A.* 18A:12-24(b) because "voting and discussing the merit goals of the Superintendent could be seen to have a pecuniary interest for her [child]." *Id.* at 12.

Based on the foregoing, ALJ Moss dismissed the alleged violation of *N.J.S.A.* 18A:12-24(c), and sustained the violation of *N.J.S.A.* 18A:12-24(b). However, ALJ Moss did not recommend a penalty for Respondent's violation of *N.J.S.A.* 18A:12-24(b).

III. Exceptions

Petitioner's Exceptions

In its Exceptions filed on June 6, 2022, Petitioner (counsel for the Commission) argues that the *Initial Decision* should be modified to impose a penalty for Respondent's conduct and, more specifically, for the violation of *N.J.S.A.* 18A:12-24(b). Although ALJ Moss "properly found that Respondent violated" *N.J.S.A.* 18A:12-24(b), she "failed to indicate whether Respondent should face a penalty, and if so what type of penalty she should face based on the violation." According to Petitioner, the absence of a recommended penalty renders the *Initial Decision* incomplete as it "failed to properly dispose of all issues" as required by *N.J.A.C.* 1:1-18.3.

As for the penalty, Petitioner argues that Respondent must be censured for her conduct. In this case, Respondent "engaged in conduct which could reasonably be seen as an attempt to gain a personal benefit for her [child]." Per Petitioner, Respondent "was fully aware of her ethical and statutory obligations, given her trainings." Moreover, this case is analogous so [*I/M/O Anderson, High Point Regional Board of Education, Sussex County, Docket No. 45-19*](#), in which Respondent was reprimanded based on a one-time vote approving the attainment of merit goals by the Superintendent. Importantly, and unlike in *I/M/O Anderson*, Respondent here "violated the Act on not one, but multiple occasions, during multiple meetings," and was not new to the Board or unfamiliar with her requirements; as such, and because Respondent's actions constitute a serious violation of the public trust, a penalty of censure is appropriate.

For the foregoing reasons, Petitioner argues the *Initial Decision* should be modified to include a recommendation for censure.

Response to Petitioner's Exceptions

In her response to Petitioner's Exceptions, which were also filed on June 6, 2022, Respondent asserts Petitioner's "expanded interpretation of *N.J.S.A. 18A:12-29(c)* lacks merit as the requirements set forth in the statute apply to the findings of the Commission and not that of the [ALJ]." Respondent further asserts that she was "misguided as to her ethical and statutory obligations" and, therefore a reprimand, not a censure, is appropriate.

Respondent testified that she consulted with a representative from the New Jersey School Boards Association (NJSBA), prior to June 12, 2019, and this individual "advised [Respondent] that substitutes are not employees of the district and that any decision she would be required to make as a board member or trustee would not be affected by her [child's] appointment as a per diem substitute." Respondent further testified that she consulted with Board counsel before her child was hired as a per diem substitute, who advised Respondent, "as a per diem substitute teacher her [child] would 'not have the same regulations as an employee.'"

Despite Petitioner's argument, Respondent maintains ALJ Moss was not required to recommend a penalty to the Commission in her *Initial Decision*. Moreover, despite Petitioner's contention that Respondent should have been aware of her ethical and statutory obligations as a result of the trainings she received, Respondent consulted with the NJSBA and Board counsel, who both advised she was not required to recuse herself in matters related to the Superintendent because her child was a per diem substitute teacher and, therefore, not an employee of the District. Citing [Cheng v. Rhodas, West New York Board of Education, Hudson County, Docket No. C58-14](#), as well as [I/M/O Carmine Cimino, Little Egg Harbor Township Board of Education, Ocean County, Docket No. C31-14](#), Respondent notes, a "penalty greater than reprimand would constitute an egregious miscarriage of justice" as Respondent relied, to her detriment, on the advice of others. Therefore, Respondent asserts, if a penalty is necessary, "it should be no greater than a reprimand."

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission **adopts** ALJ Moss's findings of fact; **adopts** the legal conclusion that Respondent violated *N.J.S.A. 18A:12-24(b)*; and **adopts** the legal conclusion that Respondent did not violate *N.J.S.A. 18A:12-24(c)*.

Because, as determined by ALJ Moss, Respondent's child does not reside in her (Respondent's) household and is not financially dependent on Respondent, the Commission agrees that a violation of *N.J.S.A. 18A:12-24(c)* - which requires a school official to act in a matter where she, *a member of her immediate family*, or a business organization in which she has an interest, has a direct or indirect financial involvement, or to act in a matter where she or *a member of her immediate family* has a personal involvement – is not supported by the record. Had Respondent's child fell within the parameters of the term "member of immediate family," a violation of *N.J.S.A. 18A:12-24(c)* would have been sustainable.

As for the violation of *N.J.S.A.* 18A:12-24(b), the Commission agrees with ALJ Moss that a reasonable person could believe that by discussing and voting to approve a significant financial payment/bonus for the individual (the Superintendent) who is ultimately responsible for the oversight and supervision of everyone who works in the District, including her own child, Respondent “believed that her [child] would continue to be a per diem substitute teacher in the District.” *Id.* at 11-12. By discussing and voting on the Superintendent’s merit goals, the Commission wholeheartedly agrees that Respondent’s action “could be seen to have a pecuniary interest for her [child].” *Id.* at 12.

V. Decision

For the foregoing reasons, the Commission **adopts** the findings of fact from the *Initial Decision*, **adopts** the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24(b), and **adopts** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24(c).

VI. Penalty

Although ALJ Moss found a violation of *N.J.S.A.* 18A:12-24(b), the *Initial Decision* did not recommend a penalty for Respondent’s ethical violation. Pursuant to *N.J.A.C.* 1:1-18.3(c), a written initial decision “shall” contain, among other things, a “disposition” of the contested matter. *N.J.A.C.* 1:1-18.3(c). Because ALJ Moss found a violation of the Act, the Commission agrees with Petitioner that the failure to include a recommended penalty for the violation does not fully dispose of the contested case.

Although the Commission could remand the above-captioned matter so that a penalty could be recommended, the Commission instead elects to **modify** the *Initial Decision* to include a penalty of reprimand for the violation of *N.J.S.A.* 18A:12-24(b). The Commission’s decision to modify the *Initial Decision*, as opposed to remanding the above-captioned matter, is because the record provides a sufficient basis upon which the Commission can recommend a penalty.

Based on the record, it is clear that Respondent received yearly training(s) (from NJSBA) in her capacity as a Board member and that, despite receipt of such training(s), she was present for and/or participated in several discussions regarding the Superintendent, and voted in the affirmative on matters which resulted in the Superintendent receiving significant financial remuneration (a bonus). *Id.* at 2-9. However, Respondent also testified that she consulted with a representative from NJSBA and Board counsel about her involvement in matters related to the Superintendent while her child was employed in the District, and she was advised, by both NJSBA’s representative and Board counsel, that she did not have a conflict of interest.

Absent Respondent’s good faith efforts to seek guidance and advice from NJSBA and Board counsel, and because Respondent repeatedly failed to recuse herself from such matters on multiple occasions, the Commission would have censured Respondent for her conduct. However, because she relied, albeit to her detriment, on the advice provided by NJSBA and Board counsel, the Commission finds that a penalty of **reprimand** is appropriate.

In adopting a violation of *N.J.S.A.* 18A:12-24(b) and recommending a penalty of reprimand, the Commission must emphasize and underscore the fact that although (as in this case) a board of education may be able to *hire* a relative or member of a school official’s immediate family because he/she is excluded from the scope of the school district’s nepotism

policy; the relative or member of the school official's immediate family was grandfathered (i.e., because the employment of the relative or member of the school official's immediate family *preceded* a school official's election, appointment, or employment); and/or the board of education sought and received approval from the executive county superintendent for the *hiring*, school officials can *still* violate the Act if they do not recuse themselves from **any and all matters** in which they have a conflict of interest because of their relative or immediate family member's employment in the school district. In [*Advisory Opinion A24-17*](#), the Commission specifically addresses the matters from which school officials must recuse themselves because of their familial relationships.

Accordingly, and for the reasons set forth above, Commission modifies the *Initial Decision* to include a recommended penalty of **reprimand**.

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

Mailing Date: July 26, 2022

***Resolution Adopting Decision
in Connection with C60-19***

Whereas, on or about April 21, 2020, the School Ethics Commission (Commission) transmitted the above-captioned matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, following a hearing, the Honorable Kimberly A. Moss, Administrative Law Judge (ALJ Moss) issued an *Initial Decision* dated May 23, 2022; and

Whereas, in her *Initial Decision*, ALJ Moss issued findings of fact and found that Respondent violated *N.J.S.A. 18A:12-24(b)*, but did not violate *N.J.S.A. 18A:12-24(c)*; and

Whereas, Petitioner filed Exceptions to the *Initial Decision*, and Respondent filed a response to Petitioner's Exceptions;

Whereas, at its meeting on June 28, 2022, the Commission reviewed and discussed the full record in the above-captioned matter; and

Whereas, at its meeting on June 28, 2022, the Commission discussed adopting the findings of fact from ALJ Moss's *Initial Decision*; adopting the legal conclusion that Respondent violated *N.J.S.A. 18A:12-24(b)*; adopting the legal conclusion that Respondent did not violate *N.J.S.A. 18A:12-24(c)*; and modifying the *Initial Decision* to include a penalty of reprimand; and

Whereas, at its meeting on July 26, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on June 28, 2022; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 26, 2022.

Kathryn A. Whalen, Esq.
Director, School Ethics Commission