

Before the School Ethics Commission
Docket No.: C80-22
Final Decision
Summary Disposition

Matthew J. McDevitt,
Complainant

v.

Scott Lavine,
Pennsauken Board of Education, Camden County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on August 16, 2022, by Matthew J. McDevitt (Complainant), alleging that Scott Lavine (Respondent), a member of the Pennsauken Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*¹ More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24(c) of the Act.

On August 26, 2022, the Complaint was served on Respondent via electronic mail, notifying him that ethics charges had been filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading.² On September 19, 2022, Respondent filed an Answer to Complaint (Answer).

At its meeting on November 22, 2022, and after reviewing the parties' pleadings on October 17, 2022, the Commission adopted a decision finding probable cause for the alleged violation of *N.J.S.A.* 18A:12-24(c), and to decide the above-captioned matter by summary decision pursuant to *N.J.A.C.* 6A:28-10.7(c)(1). The Commission also directed Respondent to file a statement, within twenty (20) days, setting forth the reasons he should not be found in violation of the Act. *N.J.A.C.* 6A:28-10.7(c)(1). Respondent was advised that if he disputes any of the facts determined by the Commission to be both material and undisputed, he should set

¹ By correspondence dated August 17, 2022, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On August 24, 2022, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3.

² In order to conduct business during the Coronavirus (COVID-19) pandemic, the Commission implemented an electronic filing system, which remains a permissible method by which the Commission and parties can effectuate service of process. Consequently, service of process was effectuated by the Commission through electronic transmission only.

forth the facts with which he disagrees, and why they are material to the case. Finally, Respondent was advised that following expiration of the time period for submission of his statement, the Commission may make a determination of a violation on a summary basis. Ultimately, and on December 12, 2022, Respondent submitted a Position Statement/Statement of Reasons (Statement of Reasons) as directed.

Consequently, at a special meeting on January 31, 2023, the Commission reviewed the record in this matter and, at its regularly scheduled meeting on February 21, 2023, adopted a decision **finding** that Respondent violated *N.J.S.A.* 18A:12-24(c), and recommending a penalty of **reprimand** for Respondent's violation of the Act.

II. Summary of the Pleadings

In the Complaint, Complainant submits that, based on the substance of Respondent's 2021 and 2022 Personal/Relative and Financial Disclosure Statements, his (Respondent's) spouse is employed in the Pennsauken Public Schools District (District) as a teacher. *Complaint* at 1. Despite his spouse's employment in the District, and at a Board meeting on June 16, 2022, Respondent voted to approve a new contract for the superintendent. *Id.* Because Respondent "voted to award a contract to the person that is his spouse's ultimate superior," Complainant argues that Respondent acted in his official capacity in a matter where he or a member of his immediate family (his spouse) had a personal involvement that created a direct benefit to himself and his spouse in violation of *N.J.S.A.* 18A:12-24(c). *Id.* at 2.

In his Answer, which included a signed Certification, Respondent admitted that he "inadvertently" voted to approve the superintendent's contract during the Board meeting on June 14, 2022, "notwithstanding that his [spouse] is currently a teacher in the [D]istrict." *Answer* at 1. However, Respondent denies that the vote created a direct benefit to himself and/or his spouse. *Id.* According to Respondent, because the vote to approve the contract was unanimous, his "vote had no impact on the ultimate outcome of the approval of the employment contract." *Id.* Respondent noted that he abstained on another agenda item "which included his [spouse] among those [D]istrict employees who were being transferred for the 2022-2023 school year, evidencing that his vote on the superintendent's employment contract (which was otherwise unanimously approved) was unintentional and inadvertent." *Id.* at 1-2. Further, Respondent noted his action was "entirely due to oversight and error," and further admitted that he should have abstained, but "mistakenly failed to do so." *Id.* at 2. Respondent offered, "In an effort to correct any misconception or claim that [Respondent] was purposefully and/or unethically voting on the superintendent's employment contract, the ... Board ... will be once again vot[ing] upon the very same employment contract at its upcoming October 2022 meeting, and [Respondent] will abstain from voting on that agenda item." *Id.* Therefore, Respondent requested that the Commission "impose no penalty, since [Respondent's] vote on the [s]uperintendent's employment contract amounts to a *de minimus* violation of the Act, was unintentional, had no impact on the outcome of the vote, no longer presents a live controversy, and is moot as the Board will vote again on the same contract ... during the October 2022 [B]oard meeting and [Respondent] will abstain from that vote." *Id.*

In his Statement of Reasons, Respondent notes that “Agenda Item No. 3” related to the superintendent’s contract and “was one of a block of forty-eight (48) agenda items” that were to be voted upon at the June 14, 2022, Board meeting. *Statement of Reasons* at 1. Respondent further maintains he “deliberately abstained from voting on Agenda Item No. 11,” which involved his spouse; however, he “accidentally failed to abstain from voting on Agenda Item No. 3,” due to “sheer inadvertence and/or momentary inattention.” *Id.* at 2. Respondent contends that although his “inadvertence is no excuse ... it was solely and purely due to his oversight and error that he failed to recuse himself” *Id.* Respondent reasserts that his vote was not the deciding vote, which Respondent notes was unanimous; however, Respondent notes, the superintendent’s contract that was voted upon at the June 14, 2022, meeting was “subsequently rescinded because of procedural deficiency” and was resubmitted for a vote at the Board meeting on October 18, 2022, from which Respondent abstained. *Id.*

Respondent requests that the Commission consider that since becoming a Board member in 2018, Respondent “has never before had an ethics complaint filed against him.” *Id.* Respondent “deeply regrets” his mistake, and apologizes for his oversight, and reiterates that his conduct “was not intentional in any way nor in an effort to escape his ethical responsibility as a Board member, but rather due to oversight and error.” *Id.* at 2-3. Respondent further requests the Commission find that he did not violate the Act, but if a violation is found, Respondent implores “the Commission to consider the lowest level of sanction for his inadvertent failure to abstain.” *Id.* at 3.

III. Findings of Fact

Based on its thorough and independent review of the record, the Commission **finds** the following facts to be **undisputed**:

1. Respondent is a member of the Board and has served in this capacity since 2018. *Complaint* at page 1; *Answer* at 1; *Certification of Respondent* at 1; and *Statement of Reasons* at 1-2.
2. Respondent’s spouse is employed as a teaching staff member in the District. *Complaint* at page 1; *Answer* at 1; *Certification of Respondent* at 1-2; *Statement of Reasons* at 2.
3. The Board had a meeting on June 16, 2022. *Complaint* at page 1; *Answer* at 1; *Certification of Respondent* at 1; and *Statement of Reasons* at 1.
4. At the Board meeting on June 16, 2022, Respondent voted in the affirmative for Agenda Item No. 3, which included “a block of forty-eight agenda items,” including a new employment contract for the superintendent. *Complaint* at page 1; *Answer* at 1; *Certification of Respondent* at 1-2; and *Statement of Reasons* at 1.
5. At the Board meeting on June 16, 2022, Respondent abstained from voting on Agenda Item No. 11, which included a personnel matter related to his spouse, among other District staff. *Answer* at 1-2; *Certification of Respondent* at 1-2; *Statement of Reasons* at 1-2.

6. The superintendent supervises all staff employed in the District. *Complaint* at page 2.

IV. Analysis and Conclusions of Law

The uncontroverted facts in this matter can be briefly summarized as follows: Respondent is a Board member; Respondent's spouse is employed in the District; while Respondent's spouse was employed in the District, he voted to approve a new employment contract for the superintendent, the highest ranking supervisor in the District. By voting on a new employment contract for the superintendent while his spouse was employed in the District, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24(c)*.

N.J.S.A. 18A:12-24(c) states, in relevant part:

No school official shall act in his official capacity in any matter where he ... has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he ... has a personal involvement that is or creates some benefit to the school official

Also of relevance to the Commission's analysis is the legislative findings and declarations relative to the adoption of the Act, to wit:

...

- a. In our representative form of government it is essential that the conduct of members of local boards of education ... hold the respect and confidence of the people. These board members ... 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.

....

In [*Advisory Opinion 24-17 \(A24-17\)*](#), the Commission issued clear and unequivocal guidance regarding Board members "who have immediate family members or relatives who are employed in ... the District" More specifically, the Commission stated, "A Board member with a **relative** who is employed **in the District**, **cannot** participate in any aspect of negotiations, including the vote on the collective negotiations agreement following attainment of the memorandum of the agreement." (emphasis in original). *Id.* The Commission further advised that, "a Board member who has a **relative or immediate family member** employed **in the District** would also be prohibited from participating in any and all issues related to the superintendent, including the search, contract approval, and evaluation of performance" (emphasis in original). *Id.*

With the above in mind, the Commission finds that because Respondent voted, albeit unintentionally and inadvertently, to approve a new employment contract for the superintendent – the individual who has ultimate supervisory authority over Respondent's spouse, and the individual who is charged with making personnel recommendations for his spouse (including

continued employment and possible promotions) – while his spouse was employed in the District, the Commission finds that Respondent acted in his official capacity in a matter where “he ... has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment,” and in his “official capacity in any matter where he ... has a personal involvement that is or creates some benefit to the school official”

The Commission also notes that regardless of whether Respondent’s spouse may have actually received a benefit from Respondent’s vote is irrelevant, because the “question will always turn on ‘whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty,’” and “[a]n actual conflict of interest is not the decisive factor, nor is ‘whether the public servant succumbs to temptation,’ but rather whether there is a potential for conflict.” *I/M/O Deborah Anderson*, High Point Regional Board of Education, Sussex County, Docket No. C45-19, at page 5. In this case, and as conceded by Respondent, there is no question that, due to the employment of his spouse in the District, Respondent had a conflict of interest, actual and/or perceived, and should have abstained from voting on the new employment contract for the superintendent.

Accordingly, and based on a complete and thorough review of the record, the Commission **finds**, based on the undisputed evidence as set forth herein, that Respondent violated *N.J.S.A.* 18A:12-24(c) when he voted to approve a new employment contract for the superintendent while his spouse was employed in the District.

V. Recommended Penalty

Having found that Respondent violated *N.J.S.A.* 18A:12-24(c), the Commission is authorized to recommend to the Commissioner of Education (Commissioner) an appropriate penalty, which may range from reprimand to removal. *N.J.S.A.* 18A:12-29(c).

In its review, the Commission finds that **reprimand** is the most appropriate penalty. In reaching this determination, the Commission finds that, based on the record, Respondent did not act deliberately or intentionally, and that his vote was, based on his abstention in another matter, “sheer inadvertence.” The Commission genuinely appreciates Respondent’s contrition for his mistake, and his ready acknowledgment of wrongdoing. As the Commission has stated in other decisions, this matter is “a reminder that he, like all other school officials, must be mindful of how their Board action can implicate, and potentially, violate the Act. *No one* is beyond reproach, and *everyone* is entitled to make a mistake.” *Mervin Rose v. Ronnie McDowell*, Township of Union Board of Education, Union County, Docket No. C78-20, at 6. The Commission urges Respondent, and all other school officials, to ensure vigilance when reviewing all agenda items to ensure that they are abstaining from all matters as appropriate.

VI. Decision

For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **reprimand** for the violation of *N.J.S.A.* 18A:12-24(c).

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, **within thirteen (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, 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," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of a violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* **within thirty (30) days** of the filing date of the decision. The filing date shall be three (3) 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 (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 in the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: February 21, 2023

***Resolution Adopting Decision
in Connection with C80-22***

Whereas, at its special meeting on January 31, 2023, the School Ethics Commission (Commission) considered the entirety of the record in this matter; and

Whereas, at its special meeting on January 31, 2023, the Commission discussed finding a violation of *N.J.S.A.* 18A:12-24(c); and

Whereas, at its special meeting on January 31, 2023, the Commission discussed recommending a penalty of reprimand for the violation of *N.J.S.A.* 18A:12-24(c); and

Whereas, at its regularly scheduled meeting on February 21, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on January 31, 2023; and

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

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its meeting on February 21, 2023.

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