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<b>IN THE MATTER OF</b> <b>JIMMY GARCIA</b> <b>UNION CITY BOARD OF EDUCATION</b> <b>HUDSON COUNTY</b>	: : : : : : : : :	<b>BEFORE THE SCHOOL</b> <b>ETHICS COMMISSION</b>  <b>Docket No. D14-09</b> <b>DECISION ON REMAND</b>
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**PROCEDURAL HISTORY**

This matter arises from an Order to Show Cause (OTSC) issued by the School Ethics Commission (Commission) on October 30, 2009, through regular and certified mail, return receipt requested, directing the respondent to show cause as to why the Commission should not find him in violation of the School Ethics Act, N.J.S.A. 18A:12-21 et seq., for failing to file Personal/Relative and Financial Disclosure statements required by N.J.S.A. 18A:12-25 and 26. The Commission therein provided notification that the respondent had 20 days to respond to the OTSC, and that the failure to respond would be deemed an admission of the facts set forth in the Order. The respondent was further notified that, upon receipt of the response or upon expiration of the 20-day time period for so filing, the Commission may proceed to a determination of a violation on a summary basis (*i.e.*, without a hearing or further proceedings) in accordance with N.J.A.C. 6A:28-1.6(c), which so permits when material facts are not in dispute.

The respondent failed to reply to the Order to Show Cause.<sup>1</sup> Accordingly, at its meeting on December 15, 2009, the Commission found that the respondent violated N.J.S.A. 18A:12-25 and 26. The Commission recommended that the Commissioner of Education impose a sanction of suspension until the school official filed the disclosure statements, removal if the disclosure statements were not filed within 30 days of the Commissioner’s decision, and censure if the disclosure statements were filed prior to issuance of the Commissioner’s decision.

Pursuant to N.J.A.C. 6A:4-1 et seq., the respondent appealed the Commission’s findings and recommended penalty to the Commissioner of Education. On appeal, the respondent argued that, as a Senior Network Administrator, the Act does not apply to him because he does not meet the definition of “administrator” set forth at N.J.S.A. 18A:12-23. He further asserted that he was not aware that he was required to file the disclosure statements until he received the Commission’s December 15, 2009 decision finding him in violation of the Act. In this connection, he asserts that he did not receive the “warning letter” dated August 21, 2009 issued by the Commission, nor did he receive the Commission’s October 30, 2009 Order to Show Cause which was sent by both regular and certified mail. (I/M/O Jimmy Garcia, Board of Education of the City of Union, Hudson County, Commissioner Decision No. 99-10ASEC, decided March 26, 2010, at p. 2) In support of his appeal, the respondent supplemented the record with a copy of a job posting for the position of Network Administrator dated December 1, 1999; a copy of the a notice from the U.S. Post Office dated November 3, 2009 indicating that

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<sup>1</sup> It is noted in this connection that while the certified mail copy of the Order was returned as “unclaimed,” the copy sent by regular mail was not returned and is, therefore, deemed received.

there was an attempted delivery of a letter sent via certified mail; and a sworn certification signed by the respondent on January 11, 2010. In his decision, the Commissioner found that:

[T]he central issues raised by the respondent's appeal [are] whether he is subject to the requirements of the School Ethics Act and, if so, the credibility and effect of his representations as to why he failed to respond to the Order to Show Cause or to timely file disclosure statements \*\*\*." (Garcia, supra at p. 3)

Accordingly this matter was remanded to the Commission for consideration "with the benefits of a full record." (Id. at pp. 3-4) The Commissioner did not retain jurisdiction.

By letter dated March 31, 2010, the Commission notified respondent's counsel that it would place this matter on its agenda for consideration at its meeting on April 20, 2010. The respondent was invited to attend. The Commission provided a copy of that letter to the Board Secretary, also inviting his attendance, as well as the submission of "any documentation relevant to the determination that, for the 2009 calendar year, the respondent was subject to the School Ethics Act as a school administrator, together with any documentation to show that the respondent was duly apprised of the same." (Commission's March 31, 2010 letter)

On April 9, 2010, counsel for the Board supplemented the record with, *inter alia*, a statement of the job responsibilities for the Senior Network Administrator provided by the Board's Supervisor of Technology & Information Systems, as well as a certification from the Board Secretary and supporting exhibits. The respondent attended the Commission's meeting on April 20, 2010, with counsel, Mary J. Hammer, Esq.

At the outset, counsel for the respondent noted that the respondent filed his 2009 Personal/Relative and Financial Disclosure statements during the pendency of his appeal before the Commissioner of Education and also filed his 2010 Personal/Relative and Financial Disclosure statements due on April 30, 2010 in order to avoid sanction. Counsel argued that the respondent did so irrespective of his belief as to whether the Act requires him to file the statements. In this connection, counsel argued that the respondent is not a school administrator as contemplated by the Act; she likened his respondent's job duties to buying a car. That is, the respondent would tell the District that it needed to purchase a six cylinder sedan, but would not recommend the particular model to be purchased.

The respondent testified that he was initially hired in 1996 as a Programmer/Systems Administrator and in 2000 he became a Network Administrator. In 2004, he became the Senior Network Administrator. The respondent stated that he obtained the 2009 Personal/Relative and Financial Disclosure forms around February 2009 when they were placed in an envelope to be filled out. He stated that he was told to fill out the forms. The respondent testified that he did not understand why he was required to complete the forms since he had been employed in the position for 12 years and had not previously been asked to complete the statements. When he received the form, he went to his Human Resources office and was directed to the School Ethics Commission's website. He testified that he read the statute and did not think that it applied to

him. Additionally, the respondent testified that Assistant Superintendent Caputo informed him that he did not think that he had to file the forms.

The respondent testified that he then spoke to the Board Secretary's administrative assistant who indicated that she did not know why he was being asked to complete the forms, but his name was on the list of school administrators who needed to complete the form. The respondent stated that he then asked the Board secretary why he was required to complete the forms, but the Board Secretary did not get back to him with a response. In response to questioning from the Commission, the respondent acknowledged that when the Board Secretary did not directly respond to his inquiry, he made the decision not to fill out the forms because he believed that the statute did not require that he do so. As to the emails that were submitted to the Commission by the Board Secretary showing that the respondent was repeatedly reminded of his duty to file the statements, the respondent affirmed that although the email address was his, he "never saw those emails." The respondent asserted that these emails were in memo format and could have been typed.

The respondent testified that after receiving the Commission's December 15, 2009 decision, he discussed the matter with the Executive County Superintendent because, according to the respondent, he heard nothing from the District. He stated that although the Commission's August 2009 warning letter and October 2009 Order to Show Cause were sent to the correct mailing address, he did not receive either.

The respondent disputed that his job requires him to make recommendations as to the purchase of goods or services, as set forth in the Board Secretary's certification submitted to the Commission, although he acknowledged that after 2006, he played "a big role," from a technology standpoint, in construction being done in the District. The respondent testified that, in accordance with the District's technology plan, it was his role to ensure that any new construction would be compatible with existing infrastructures and warrantees. However, the respondent stated that the Board decides what products to purchase and what vendors to hire; he never interacted with the vendors. The respondent indicated that he did not have a job description that would show his duties and responsibilities in 2009.

In response to a question from the Commission, the respondent acknowledged that he and his supervisors have a different perception of his role and that in the future, if the District requires that the disclosure statements be completed, he will complete them. The respondent testified that he completed the 2010 disclosure statements so as to avoid being sanctioned.

After hearing testimony from the respondent, at the Commission's public session, it voted to find that the School Ethics Act applied to the respondent in that he satisfied the definition of "school administrator" as set forth in N.J.S.A. 18A:12-23. The Commission found that the respondent was accorded proper notice that he was required to file 2009 Personal/Relative and Financial Disclosure Statements and consequently violated N.J.S.A. 18A:12-25 and 26 when he failed to file those statements until January 2010. The Commission recommended a penalty of censure.

## FINDINGS OF FACT

Based on the documentary and testimonial evidence, the Commission finds the following facts on remand. In so doing, the Commission found the respondent's testimony ineffective as a rebuttal to the District's position, as set forth within, that he is subject to the School Ethics Act and particularly lacking in credibility with respect to his claims that he did not receive any notice that he was required to file 2009 Personal/Relative and Financial Disclosure Statements.

1. The respondent is a Senior Network Administrator employed by the Board.
2. The Board's Supervisor of Technology & Information Systems provided a job description for Senior Network Administrator as follows:

As Senior Network Administrator, Mr. Garcia's responsibilities include the management/direction of the Technical Support Specialists (full and part time employees) for infrastructure, design, management, maintenance and repair for both the local and wide area networks (LAN and WAN). In addition, he is responsible for the configuration, upgrades/maintenance, security and back-ups of district servers, the configuration, upgrades/maintenance and security of switched electronics, routers, firewall, faltering services, VPN Access, email system, computer imaging, hardware and software trouble shooting. Mr. Garcia also managed the district telephone system until the system was replaced. (Completed in 2009). Finally, in the commission of his job responsibilities, Mr. Garcia recommended/specified the equipment and/or supplies to be ordered. (Lavelle letter, February 5, 2010 at p. 2)

3. The Board Secretary, Anthony Dragona, certified that in 2009, the respondent's job responsibilities "included involvement in the development, recommendation (of vendors, contracted services and equipment purchases) and specifications of technology hardware, equipment, supplies and services for the District" in connection with a school construction project. As such, the respondent "was in the position to impact the purchasing decisions of the Technology phase of the new construction projects \*\*\*"(Dragona Certification at paragraph 4).
4. By email dated March 17, 2009, the Board Secretary's office forwarded to the respondent's correct email address the following statement:

Please accept this email as a reminder for filing your financial disclosure statement which was due on March 16, 2009. Please kindly submit your forms to the Board Secretary's office as soon as possible. (Dragona Certification at Exhibit A).

5. By email dated April 3, 2009, the Board Secretary's office forwarded to the respondent's correct email address the following statement:

Please accept this email to remind you that the deadline for the filing of your financial and personal/relative disclosure statements was March 16, 2009. To date, I have not received your completed statements. Please bring your completed statements to my office as soon as possible. Your original disclosure statements will be date-stamped upon receipt, and you will be provided with a copy of the date-stamped statements for your records. The disclosure statements may be downloaded from the School Ethics Commission's website at [www.nj.gov/education/ethics/fdform.htm](http://www.nj.gov/education/ethics/fdform.htm). If you lack internet access, you may come to my office to receive a form.

The School Ethics Commission has asked me to advise you that if the completed statements are not filed in my office by April 30, 2009, it has the right to issue an Order requiring you to Show Cause why you have not filed. It has further asked me to advise you that failure to timely file your disclosure statements may result in the Commission finding you in violation of N.J.S.A. 18A:12-25 and 26 of the School Ethics Act.

Thank you. (Dragona Certification at Exhibit B).

6. By email dated March 3, 2009, the office of the Board Secretary alerted Board Counsel, as follows:

In reference to ethics disclosure statements—I was informed to hand a form to Jimmy, which I did.

He came back to me on 2/29 informing me that he never filed an ethics disclosure form out before and that he didn't have to this year. He also questioned me of why he was given the form.

I showed him the ethics disclosure memo from the state and a section of the memo explains who has to file. I explained to him that because he makes recommendations on purchase of services he has to file.

He doesn't think that he has too [sic] and I informed him that it was not a big deal just fill out the form and don't leave any questions blank.

He mention [sic] to me that he was going to speak to Tony and Janice about this.

As of today, I have not received the filled out form. (Dragona Certification at Exhibit D).

7. By email dated April 23, 2009, the Board Secretary's office forwarded to the respondent's correct email address the following statement:

Please accept this email to remind you that the deadline for the filing of your financial and personal/relative disclosure statements was March 16, 2009. To date, I have not received your completed statements. Please bring your completed statements to my office as soon as possible. Your original disclosure statements will be date-stamped upon receipt, and you will be provided with a copy of the date-stamped statements for your records. The disclosure statements may be downloaded from the School Ethics Commission's website at [www.nj.gov/education/ethics/fdform.htm](http://www.nj.gov/education/ethics/fdform.htm). If you lack internet access, you may come to my office to receive a form.

The School Ethics Commission has asked me to advise you that if the completed statements are not filed in my office by April 30, 2009, it has the right to issue an Order requiring you to Show Cause why you have not filed. It has further asked me to advise you that failure to timely file your disclosure statements may result in the Commission finding you in violation of N.J.S.A. 18A:12-25 and 26 of the School Ethics Act.

Thank you. (Dragona Certification at Exhibit C).

8. By letter dated August 21, 2009, the School Ethics Commission directed a "warning letter" to the respondent's correct home address, which stated, in relevant part:

Your board secretary has identified you as a school official required to file the disclosure statements. However, to date, your Executive County Superintendent's office has not received your completed disclosure statements or, your statements were received but were returned to you because they were not properly completed. **Please immediately bring your completed disclosure statements to your board secretary's office where the statements should be date stamped and copied.** The board secretary will forward the original statements to the county office. The county office will report to the Commission when the statements are filed. \*\*\*

**If the completed disclosure statements are not received in the office of the Executive County Superintendent by September**

**30, 2009, the Commission may issue an Order requiring you to show cause why you have not filed, which may result in the Commission finding you in violation of N.J.S.A. 18A:12-25 and 26 of the School Ethics Act and recommending that the Commissioner of Education impose a penalty in accordance with the statute. \*\*\* (August 21, 2009, School Ethics Commission; emphasis in text)**

9. On October 30, 2009, an Order to Show Cause was issued by the Commission via regular and certified mail to the respondent's correct home address directing the respondent to show cause as to why the Commission should not find him in violation of the School Ethics Act, N.J.S.A. 18A:12-21 et seq., for failing to file Personal/Relative and Financial Disclosure statements required by N.J.S.A. 18A:12-25 and 26.
10. On December 15, 2009, a decision was issued by the Commission finding that the respondent violated N.J.S.A. 18A:12-25 and 26. The Commission recommended that the Commissioner of Education impose a sanction of suspension until the school official files the disclosure statements, removal if the disclosure statements are not filed within 30 days of the Commissioner's decision, and censure if the disclosure statements are filed prior to issuance of the Commissioner's decision.
11. The August 21, 2009 warning letter, the October 30, 2009 Order to Show Cause and the December 15, 2009 decision were all forwarded to the respondent at the same address, which is the respondent's correct address.
12. On January 7, 2010, the Hudson County Office notified the office of the School Ethics Commission that the respondent filed his 2009 disclosure statements. (email from Hudson County Office to School Ethics Commission dated January 7, 2009)
13. The respondent filed his 2010 Personal/Relative and Financial Disclosure statements that were due on April 30, 2010.

## **ANALYSIS**

The School Ethics Act, N.J.S.A. 18A:12-21 et seq. was enacted by the New Jersey State Legislature to ensure and preserve public confidence in school board members and school administrators. Annually, on or before April 30th of each year, all school officials, as defined in N.J.S.A. 18A:12-23, must file both a Personal/Relative Disclosure Statement and a Financial Disclosure Statement with their local board secretaries or charter school designees. Indeed, N.J.S.A. 18A:12-25 and 26 place an affirmative duty on the individual school official to file the required statements. The term "school official" is defined as a board member (or charter school trustee), an administrator or a managerial employee or officer of the New Jersey School Boards Association. N.J.S.A. 18A:12-23 and 23.1. Pursuant to N.J.S.A. 18A:12-23:

“Administrator” means any officer, other than a board member, or employee of a local school district who:

- (i) holds a position which requires a certificate that authorizes the holder to serve as school administrator, principal, or school business administrator; or
- (ii) **holds a position which does not require that the person hold any type of certificate but is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district; or**
- (iii) holds a position which requires a certificate that authorizes the holder to serve as supervisor and who is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district. (emphasis added)

Additionally, the Commission's regulations provide that:

In order to comply with the filing requirement, each local district board secretary or charter school designee shall annually, on or before February 1, file with the executive county superintendent a written list of names of those school officials, by office and position, **whose responsibilities would require the filing of the Financial and Personal/Relative Disclosure Statements pursuant to the criteria contained in N.J.S.A. 18A:12-21 et seq. and these rules.** Offices and positions vacant or to become vacant by virtue of expiration of terms or personnel leaving the district are to be listed. (N.J.A.C. 6A:28-3.2(a)); emphasis added)

Thus, it is the Board Secretary, in the first instance, who determines which individuals are subject to the filing requirement, notwithstanding that it is clearly the individual school official's duty, as set forth in statute, to meet the filing mandate.

Here, the Board Secretary determined that the respondent should file disclosure statements in the 2009 calendar year because he was responsible for making recommendations regarding "the purchase or acquisition of any property or services by the local school district." The Commission finds sufficient support for the Board Secretary's determination in the record as supplemented on appeal and thus determines that the respondent was required to file both a Personal/Relative Disclosure Statement and a Financial Disclosure Statement in 2009, but failed to do so until January 2010. In this connection, although the respondent argued that he cannot be considered a school administrator under the Act because it is only the Board which is authorized to make decisions about the purchase of goods and services, the Commission notes that the statute requires only that the non-certificated person is *responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district.* To the extent the respondent disputes the Board Secretary's certification or the job description for Senior Network Administrator offered by the Board's Supervisor of Technology & Information Systems which specifically stated that the respondent recommended/specified the equipment and/or supplies to be ordered in connection with his job duties (Factual Finding #2),



the Commission notes that the respondent failed to offer any documentation as to his *current* job duties that contradicts the District's position.

Additionally, contrary to his contention on appeal, the Commission finds that the respondent was fairly notified that he was expected to file the disclosure statements. The respondent forthrightly admitted that he was told in February 2009 that he was expected to file the statements. He also testified that after receiving the forms, he consulted the statute. Thus, the Commission finds it fair to conclude that the respondent was: (1) timely notified that he was expected to file and (2) aware that he must do so by April 30, 2009. However, as acknowledged in his testimony, he made the decision *not* to complete the disclosure statements because the Board Secretary did not directly respond to his inquiry and he believed that the statute did not require that someone in his position do so.

The Commission further finds that once the respondent was fairly notified that he was expected to file the statements, the District was under no legal obligation to continually remind him of his duty. Thus, the respondent's claim that he never received the email correspondences from the Board Secretary's office, even if true, is without legal consequence. Similarly, the respondent's assertion that he did not receive the Commission's August 21, 2009 warning letter, if true, is without legal consequence, where such a letter is not required to be sent to a delinquent filer.

Respondent's claim that he did not receive the Commission's Order to Show Cause presents a more difficult question, since the Order is the basis for the Commission's original action. N.J.A.C. 6A:28-1.6. However, the Commission is satisfied that, absent the return of the regular mailing for an improper address, or some other plausible explanation from the respondent, the Order sent by regular mail *was* properly delivered and is, therefore, deemed received. New Jersey Court Rule 1:5-4(b). The Commission finds that the respondent's assertion that "The first time I learned that I was required to file the statements was when I received the December 16, 2009 letter from the School Ethics Commission enclosing their decision finding me in violation of the Act" strains credibility. (Garcia Certification at paragraph 11) In this connection, the Commission is persuaded that the respondent's statements on appeal, and on remand, were motivated by his desire to avoid a sanction.

## **DECISION**

Based on the record supplemented on appeal, the Commission finds that the respondent was required to file both a Personal/Relative Disclosure Statement and a Financial Disclosure Statement in 2009, but failed to timely do so. Accordingly, the respondent violated N.J.S.A. 18A:12-25 and 26.

## **PENALTY**

In its decision dated December 15, 2009, the Commission recommended that the Commissioner of Education impose a sanction of suspension until the school official filed the disclosure statements, removal if the disclosure statements were not filed within 30 days of the Commissioner's decision, and censure if the disclosure statements were filed prior to issuance of

the Commissioner's decision. As noted above, the respondent filed his 2009 disclosure statements in January 2010, prior to the issuance of the Commissioner's decision on March 26, 2010. Accordingly, consistent with its prior decision and noting that the respondent, on remand, offered no testimony that would persuade the Commission that a lesser penalty was warranted, the Commission finds that censure is the appropriate penalty.

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. The school official 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 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: May 26, 2010

## Resolution Adopting Decision – D14-09

**Whereas**, the School Ethics Commission has considered this matter remanded by the Commissioner of Education, including the record on appeal, all documents submitted to the Commission on remand and the respondent's testimony on April 20, 2010; and

**Whereas**, at its meeting on April 20, 2010, the Commission found that the respondent was required to file both a Personal/Relative Disclosure Statement and a Financial Disclosure Statement in 2009, but failed to timely do so, in violation of N.J.S.A. 18A:12-25 and 26; and

**Whereas**, at its meeting on April 20, 2010, the Commission recommended a penalty of censure; and

**Whereas**, at its meeting on May 25, 2010, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

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

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Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on May 25, 2010.

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Joanne Boyle, Executive Director