
**IN THE MATTER OF
DEREK CAPANA
TEAM Charter School
Essex County**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

**DECISION FOR
FAILURE TO ATTEND TRAINING**

DOCKET NO. T17-10/2

PROCEDURAL HISTORY

This matter arises from an Order to Show Cause issued by the School Ethics Commission on September 22, 2010 to the above-named respondent alleging that the board member/trustee failed to complete training as required by N.J.S.A. 18A:12-33 and offered by the New Jersey School Boards Association (NJSBA). Pursuant to N.J.S.A. 18A:12-33, all board members and charter school trustees must complete:

- during the first year of their first term, a training program offered by the NJSBA identified as “New Board Member Orientation” (N.J.A.C. 6A:28-4.1(a) and (N.J.A.C. 6A:11-3.1(d));
- in the second year of their first term, a training program offered by the NJSBA which, for the 2009-2010 training cycle, was identified as “NJQSAC” (N.J.A.C. 6A:28-4.1(a));
- in the third year of their first term, a training program offered by the NJSBA, which for the 2009-2010 training cycle, was identified as “Finance” (N.J.A.C. 6A:28-4.1(a)); and
- within one year after re-election or re-appointment to a board, a training program offered by the NJSBA, which for the 2009-2010 training cycle, was identified as “Legal Update.” (N.J.A.C. 6A:28-4.1(a)).

The NJSBA advised all board members and trustees of this training requirement through notices published in its newsletter, School Board Notes, beginning March 25, 2009. The NJSBA conducted seven NJQSAC training sessions between May 20, 2009 and January 9, 2010 at varying locations. The NJSBA also made available an on-line web-based opportunity to meet this second-year training requirement from January 12, 2010 through May 28, 2010. These training opportunities were published in School Board Notes and posted on the NJSBA’s website. By correspondence dated April 30, 2010, the Commission notified all board members and charter school trustees of their non-compliance with the training mandate and reminded them of the opportunity to obtain training or to inform the Commission of errors in its data.

Additionally, in July 2010, the School Ethics Commission issued a Notice of Enforcement to the respondent’s Board Secretary/Charter School Administrator, with a copy of the same to the respondent, notifying that the NJSBA identified the board member/trustee as having failed to complete the “NJQSAC” training program within the required training period. In addition to providing another opportunity to inform the Commission of any errors in its data, this notice identified a final on-line training opportunity, made available by the NJSBA from July 19, 2010 through August 27, 2010, to fulfill the second-year training requirement at a time convenient to the respondent’s schedule.

Pursuant to N.J.A.C. 6A:28-4.2(c), the NJSBA is required to provide the School Ethics Commission with a report listing those board members and trustees who have not fulfilled the training

mandate. The 2010 report from the NJSBA indicated that the respondent failed to complete the “NJQSAC” training program within the required time period.

The September 22, 2010 Order to Show Cause sent to the respondent via regular and certified mail, specifically stated, pursuant to N.J.A.C. 6A:28-1.6, that the respondent must show cause under oath and in writing before the Commission, within 20 days of receipt of the Order, reasons why the board member/trustee should not be found in violation of N.J.S.A. 18A:12-33. The respondent replied that he did not know that he was delinquent in training until July 2010. Following receipt of the Commission’s Order to Show Cause, the respondent completed the requisite training.

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; N.J.S.A. 18A:12-33 requires each board member and charter school trustee to complete training, as specified above.

There is no dispute that the respondent did not complete the required training program prior to the issuance of the Commission’s show cause order. N.J.A.C. 6A:28-4.2(d) provides that board members and trustees failing to comply with the training mandate shall be considered in violation of N.J.S.A. 18A:12-33. The respondent failed to timely comply with the training mandate, and is, therefore, in violation of N.J.S.A. 18A:12-33.

DECISION

At its meeting on October 26, 2010, the Commission voted to find the respondent in violation of N.J.S.A. 18A:12-33 and to recommend a penalty, as set forth below.

PENALTY

If a violation of the School Ethics Act is found by the Commission, it may recommend to the Commissioner the reprimand, censure, suspension or removal of the school official. N.J.A.C. 6A:28-10.12. Upon review of the record in this matter the Commission finds that although a finding of violation is warranted, the respondent’s completion of the program after receipt of the Order to Show Cause may fairly serve to mitigate the penalty in this matter. Therefore, the Commission recommends to the Commissioner of Education a penalty of reprimand.

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: November 24, 2010

I hereby certify that this decision was duly adopted by the School Ethics Commission at its public meeting on November 23, 2010.

Joanne Boyle, Executive Director

E/training/2010/Decisions after OTSC/T17-10-2.