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Selected School Ethics Commission Decisions of 2018

Hyman v. Davenport, Moore and Hyman v. Page, Bailey v. Davenport et al., Pleasantville BOE, Atlantic County, 02/27/2018

The Commission adopted an administrative law judge's several findings of violation:

- Respondent board member Bright "called, questioned, and berated a school official about his performance and also discussed with him who should be hired and where they should be assigned. Because Respondent Bright utilized his position on the Board to usurp the authority of the Superintendent and was not attempting to support and protect school personnel, but rather to question, reprimand, and coerce action by an employee, Respondent Bright violated N.J.S.A. 18A:12-24.1(j).
- Respondent board member Davenport approached and questioned a building principal about a "private issue," namely Respondent Davenport's belief that the building principal's mother had engaged in disrespecting conduct toward Respondent Davenport's wife at a public meeting. Respondent had no board member duty or justification to pursue that personal issue as a public board concern, and there was no justification for Respondent's statements or demeanor, which caused the building principal to visit her doctor and contact law enforcement. Based on his conduct, Respondent Davenport violated N.J.S.A. 18A:12-24.1(e), (g), (i) and (j) because he knew that if there was an issue to be addressed with the principal it was to be addressed to/through the Superintendent; Respondent Davenport has no individual power or authority and must only act through Board action; he took "private action" under the auspices of Board authority against a District employee; and Respondent Davenport's conduct needlessly injured the building principal.
- Respondent Davenport encountered a District employee while on District property to discuss school business, and in response to the employee's inappropriate statement, gave him the middle finger and called him a "stupid nigger." The "resulting gesture and racial epithet is unbecoming for an individual" who serves as a Board member. This "equally egregious" interaction with a District employee violated the obligation to support and protect school personnel, N.J.S.A. 18A:12-24.1(i).
- Respondent Davenport engaged in personal action that compromised the Board when he violated the Board's policies and regulations regarding the use of the District's facilities. Respondent Davenport's contention that he was "grandfathered" with

permission to use the District's facilities was rejected; instead, Respondent Davenport's actions demonstrated his belief that the Board's policies and regulations do not apply to him. Respondent's actions violated N.J.S.A. 18A:12-24.1(e).

The Commission recommended a penalty of censure as to Respondent Bright and 60-day suspension as to Davenport.

Imhoff v. Sostorecz, High Bridge Borough BOE, Hunterdon County, 04/24/18

Complainant board member alleged that Respondent violated N.J.S.A. 18A:12-24.1(g) when she repeatedly "lied" regarding the school board election by referring to a "clerical mix up in the Hunterdon County Clerk's Office" as the reason she was "placed incorrectly on the ballot." The Commission found no violation and dismissed the complaint, stating:

- Even if the statements made by Respondent, and her continued representation of a "clerical mistake," are not completely accurate, a fact which is not clear from the record, Complainant has not offered any evidence to substantiate that the information was inaccurate and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion, or was not attributable to developing circumstances.... In addition, none of Respondent's statements related to Board business, and none of the statements constituted Board action; instead, all of the statements made by, and attributed to, Respondent related to her candidacy for membership on the Board, and her location on the election ballot. Therefore, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(g).

Lesinski et al., v. Ahbez-Anderson, Asbury Park BOE, Monmouth County, 9/25/18

Complainant board members alleged that Respondent board president violated N.J.S.A. 18A:12-24.1(e) when she "used her 'Executive Authority' as the Board President" to approve the use of school facilities and waive facilities use fees associated with a funeral repast at the district's middle school. Respondent's action had been taken upon recommendation of the Superintendent and approval of the State Monitor, but without a board vote. The Commission granted a motion to dismiss the complaint, stating:

- In order for the Commission to find, as argued by Complainants, that Respondent took action beyond the scope of her duties as a Board member, it would need to find, as a predicate matter, that Respondent violated Board Policy 7510, Regulation 7510, Board Policy 0171, N.J.A.C. 6A:32-3.1, N.J.S.A. 18A:19-1, N.J.S.A. 18A:19-9, N.J.S.A. 18A:24-32, and/or N.J.S.A. 18A:6-20. In making such a determination, the Commission would also need to consider whether, as argued by Respondent, the statutes, regulations, and/or Board policy cited by Complainants were modified or overruled by an alleged past practice and/or the authority of the Superintendent or State Monitor. Ultimately, and because, as detailed above, the Commission does not have jurisdiction to adjudicate alleged violations of Board Policy 7510, Regulation 7510, Board Policy 0171, N.J.A.C. 6A:32-3.1, N.J.S.A. 18A:19-1, N.J.S.A. 18A:19-

9, N.J.S.A. 18A:24-32, and/or N.J.S.A. 18A:6-20, the Commission cannot determine whether Respondent exceeded the scope of her authority as set forth in those policies, regulations, and statutes. Therefore, the Commission finds that there is currently insufficient credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12- 24.1(e).”

Fields v. Baker, South Orange-Maplewood BOE, Essex County, 10/30/18

Complainant alleged that Respondent board president violated N.J.S.A. 18A:12-24.1(e), N.J.S.A. 18A:12-24.1(f), and N.J.S.A. 18A:12-24.1(j). Respondent had received a memorandum from the Board of Trustees of South Orange Village, expressing that Board’s “concerns” with the behavior of another school board member during a traffic stop. Upon advice of the superintendent and board counsel that the memo did not pertain to board business, Respondent did not share the memo with the board until after it became “public” and the member involved in the incident “apologized to the police officer for speeding and driving without a valid insurance card ... and also apologized to the police chief for referring to him as a ‘skinhead.’”

Complainant alleged that Respondent violated N.J.S.A. 18A:12-24.1(e) because, as Board President, she overstepped her authority by knowingly withholding information from at least two Board members, concealing the conduct of another Board member, purposely deceiving the Board by claiming the memo could not be discussed, and inferring that she was acting on the advice of counsel; N.J.S.A. 18A:12-24.1(f) because by not sharing the memo, she sought to cover-up the incident with the intent to deceive the public as well as the voters of the Townships of Maplewood and South Orange Village for political purposes, and for the gain and protection of a political ally, Ms. Lawson-Mohammad; and N.J.S.A. 18A:12-24.1(j) because she did not refer the complaint (memo) to the chief administrative officer, failed to pursue an administrative solution and to act on a complaint, and sought to conceal the incident which ultimately prevented the Board from exercising its legal responsibilities and rights.

The Commission granted a motion to dismiss the complaint in its entirety, stating:

- As to N.J.S.A. 18A:12-24.1(e): The Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated N.J.S.A. 18A:12-24.1(e). In this regard, Complainant has not identified any specific action that Respondent took which was “beyond the scope” of her duties as Board President. Even if Complainant does not agree with the way Respondent communicated with certain members of the Board (and the community) about the incident and the memo, there is no basis to argue that how Respondent chose to handle the matter, which relates to internal Board governance and appears to have been based on advice of/from Board counsel, exceeded the scope of her authority. Moreover, the Commission agrees that Complainant has not indicated how Respondent’s handling of the memo and the incident had the “potential to compromise” the Board.
- As to N.J.S.A. 18A:12-24.1(f): The Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would

not support a finding that Respondent violated N.J.S.A. 18A:12-24.1(f). There is nothing in the Complaint evidencing what specific action Respondent took “on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion.” Complainant’s declaration, without more, that Ms. Lawson-Mohammad is Respondent’s “political ally” is insufficient to establish that Respondent’s actions were predicated on, or at the request of, a special interest group or other organized persons. Even if Ms. Lawson-Mohammad were a “friend” of Respondent’s, there is also nothing in the Complaint evidencing what “benefit” Ms. Lawson-Mohammad received from Respondent’s actions because, as indicated in the Complaint, the incident and memo were known to the Board (even if the memo itself was not “shared” with two individual Board members), and the matter was acknowledged and addressed at a public Board meeting.

- As to N.J.S.A. 18A:12-24.1(j): The Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated N.J.S.A. 18A:12-24.1(j). According to the Complaint, the memo expressed “great concerns” with Ms. Lawson-Mohammad’s “response to a routine traffic stop for speeding.” There is nothing indicating that the Board of Trustees of the Township of South Orange Village was filing a “complaint” with the expectation that the Board would take any specific action relative to its “great concerns” with Ms. Lawson-Mohammad’s conduct. Absent an allegation that there was a complaint, a violation of N.J.S.A. 18A:12-24.1(j) cannot be sustained.

Bellone v. Czajkowski, Stafford Township BOE, Ocean County, 10/30/18

Complainant former employee of the board of education alleged that Respondent board member made him feel “uncomfortable” and “distressed” when Respondent approached him in his (Complainant’s) office, interrupted his work day, and then asked him to step out into the hallway, outside the earshot of his secretary. During this discussion, Respondent invited Complainant out to lunch to discuss his (Complainant’s) resignation and a shared services agreement between two other school districts, as Complainant was the vice president of the board of education of one of those districts. Complainant asserted that, by engaging Complainant in this conversation, Respondent violated N.J.S.A. 18A:12-24.1(d) because he approached Complainant without the knowledge of, and without first consulting with the Superintendent or the Board, and “wanted to discuss the Facilities Department.” Complainant further alleges that Respondent violated N.J.S.A. 18A:12-24.1(i) because he approached Complainant despite being “told numerous times” to not speak directly to District employees concerning the operation and administration of the Facilities Department.

The Commission granted a motion to dismiss the complaint in its entirety, stating:

- As to N.J.S.A. 18A:12-24.1(d): The Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated N.J.S.A. 18A:12-24.1(d). By being on school property, entering Complainant’s office, interrupting Complainant’s work day, and “directing” Complainant into the hallway to have a conversation with him,

Complainant suggests that Respondent violated N.J.S.A. 18A:12-24.1(d) because this conversation occurred without the knowledge of the Superintendent or the Board. Other than asking Complainant to step out in the hallway, there is no evidence that Respondent gave a direct order to Complainant, or otherwise engaged in conduct that violates N.J.S.A. 18A:12-24.1(d).

- As to N.J.S.A. 18A:12-24(i): The Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated N.J.S.A. 18A:12-24.1(i). By being on school property, entering Complainant's office, interrupting Complainant's work day, and "directing" Complainant into the hallway to have a conversation with him, Complainant alleges that Respondent violated N.J.S.A. 18A:12-24.1(i) because he (Respondent) was "told numerous times" not to speak with District employees "concerning the operation and administration of the facilities department." However, based on Complainant's factual allegations, Respondent merely engaged Complainant in a conversation about his resignation (which had already been tendered), and inquired as to whether Complainant would be willing to have a more detailed conversation/meeting with Respondent outside of the school day. The two also discussed, briefly, a shared services agreement between two other boards of education. Notably, there is no evidence that the two discussed any specifics about the operations or the administration of the Facilities Department. In addition, there is no evidence that the conversation between Complainant and Respondent undermined, opposed, compromised, or harmed Complainant, even though it is clear that Complainant did not welcome, or even appreciate, the conversation.

I/M/O Gonzalez, Varela, Tejeda, Lebreault, and Puccio, Perth Amboy BOE, Middlesex County, 11/27/18

Complaint alleged that Respondents, five board members, violated N.J.S.A. 18A:12-22(a), N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-24(e), and N.J.S.A. 18A:12-24(f) when they participated in discussion and action to approve a settlement with the former superintendent which included payment of \$184,000 and withdrawal of pending ethics charges filed by the former superintendent against Respondents, and voted to approve minutes of the meeting where that action had been taken. The Commission adopted the decision of an administrative law judge finding violation of NJSA 18A:12-24.1(c), stating:

... The Commission finds wholly unpersuasive any argument that Respondents' involvement in the discussion and vote on the settlement agreement was, somehow, in the best interest of the school district and/or the public. Even if the settlement agreement did avoid protracted, expensive, and potential unsavory or embarrassing litigation between the Board and Caffrey, Respondents conveniently ignore the fact that the approval of the settlement agreement also dismissed multiple ethics charges against each of them – specifically, three (3) cases against Respondent Varela, one case (1) against Respondent Gonzalez, and one (1) case against Respondent Tejeda. The purpose of the Act was to ensure and preserve public confidence in the conduct of school officials, and by voting to approve an agreement that undermined these very principles,

Respondents acted in a way that is the antithesis of ethical conduct, and the definition of self-serving behavior. Moreover, by characterizing the dismissal of the ethics charges as “incidental,” it is clear that Respondents fail to fully appreciate the importance of the standards to which their conduct as school officials must adhere, or the penalties that can be imposed for failure to comply.

In addition, and as noted by ALJ Moscowitz, there is nothing in the Board’s minutes to indicate that Respondents sought, obtained, or relied upon legal advice when they chose to discuss, and then vote upon, the settlement agreement that resulted in the dismissal of ethics charges against each of them. Therefore, the Commission finds this argument equally unpersuasive.

The Commission adopted the ALJ’s recommended penalty of suspension. However, “in order to avoid disruption of the Perth Amboy School District’s operations, and in recognition of the fact that the suspension of multiple board members may cause hardship to the Board for quorum purposes,” the Commission recommended that the Commissioner stagger the imposition of the penalties for Respondents.

Selected School Ethics Commission Advisory Opinions of 2018

Advisory Opinion A10-18

During the course of a board member’s candidacy, the local education association decided, on its own, to endorse her re-election, offering financial support she declined and distributing mailers. Additionally, the member has been put on notice of a lawsuit against her for defamation against the Association President.

The Commission advised that, without additional facts and circumstances, the member’s current and future Board activities are not limited because of the Association’s and NJEA’s endorsement. Examples of action taken that could compromise the Board include, without limitation, if she had accepted a financial contribution from the LEA and/or the NJEA that was intended to influence your duties as a Board member. The Commission notes that the endorsement of a candidate by a local and/or statewide union does not create a per se future conflict. The Commission noted that the board member should recuse herself from matters related to the Association if and when there is litigation against her by the LEA President.

Advisory Opinion A15-18

A recently elected board member is “a very active member of the School District’s parent community.”

The Commission advised that “serving on the Board does not preclude a Board member from also serving as a parent to his/her child. Therefore, and generally speaking, Board members are

able to volunteer for activities that support their children within the District without violating the Act.“ With the facts presented here, involvement in negotiations and on the PTA did not rise to the level of involvement which would be inconsistent with the School Ethics Act.” However, the Commission cautioned that the Board member should “advise the Superintendent and relevant staff that she will be performing this work and, when doing so, she will be there in her capacity as a volunteer and parent, not as a Board member.”

Advisory Opinion A06-18

“Board Member A” is 18 years old and a current senior in the District’s high school. He also has two siblings in the District, his mother is a school nurse in the District and a member of the local education association, and his father is the varsity golf coach at the high school, whose stipend for that position is governed by the collective negotiations agreement with the union.

The Commission advised:

Board Member A is prohibited from participating in the evaluations, personnel actions and/or decisions regarding individuals who are in direct reporting relationship to Board Member A’s parents, up to and including the Superintendent. Furthermore, he is limited in matters involving discussing, voting and serving on the negotiations committee with the LEA or any other bargaining unit within the District in which there is evidence of linkage to the LEA collective negotiations agreement and participating in executive session regarding the collective negotiations agreement with the LEA or any other bargaining unit within the District in which there is evidence of linkage to the LEA collective negotiations agreement based on his mother’s employment as a nurse and his father’s position as a golf coach in the District.

The Commission also reaffirmed a prior opinion, A36-17, stating, “a board member who is a student, absent another conflict, does not have a conflict simply because he/she is a student in the district,” and also “Board Member A is only a Board member while serving and sitting on the Board; for the remainder of Board Member A’s time, he is a student.”

Advisory Opinion 36-17

Board member is 18 years old, a senior in the District. He also serves as the Senior Class President and is a member of the Principal’s Advisory Council.

The Commission advised:

[T]he Commission advises that, absent another conflict, the facts and circumstances of which were not presented in your request, this Board member may participate in and vote on all subjects detailed in your request, as well as the many other matters that he will encounter as a Board member. To your inquiry, this Board member may (1) participate in personnel discussions and vote on personnel matters; (2) participate in collective negotiations with the District’s teachers’ association; (3) participate in grievance hearings; (4) serve as a volunteer for school related activities and functions in

the same manner as any other Board member; (5) participate in student suspension/expulsion hearings; (6) participate in closed session discussions where a particular pupil matter is being discussed; (7) participate in residency hearings where the Superintendent is seeking removal of a currently enrolled pupil; (8) vote for class trips, club trips and/or competitions involving student travel for District clubs or activities; (9) vote for the establishment of new clubs, sports or activities at the high school; and (10) vote on policies related to pupils or personnel.

Advisory Opinion A07-18

A Board member's wife's cousin works in the School District and is a member of the local education association and the NJEA. The wife's cousin does not hold a leadership position in either union and is not a member of the bargaining team of the local union.

The Commission advised that the member's wife's cousin "is not defined as a family member by any controlling authority, but is considered an "other" under N.J.S.A. 18A:12-24(b), under which no board of education member may extend any "unwarranted privileges, advantages or employment for himself, members of his immediate family or others." Therefore, there is no presumption of a conflict for [him] on any board activity because of the fact that [his] wife's cousin is employed by the Board, and [he] may participate in negotiations between the Board and the local education association and [he] may continue to serve in [his] role on the Board's finance committee."

N.J.S.A. 18A:12-24 School officials; prohibited conduct

- a. No school official or any member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;
- b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;
- c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment....
- d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.
- e. No school official ... shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties....
- f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;
- g. No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves...
- h. No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted upon, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of that business, profession, occupation or group;
- i. No elected member shall be prohibited from making an inquiry for information on behalf of a constituent, if no fee, reward or other thing of value is promised to, given to or accepted by the member or a member of his immediate family, whether directly or indirectly, in return therefor;
- j. Nothing shall prohibit any school official, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests....

N.J.S.A. 18A:12-24.1 Code of Ethics for School Board Members

A school board member shall abide by the following Code of Ethics for School Board Members:

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.
- b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.
- c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.
- d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.
- e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.
- f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.
- g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.
- h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.
- i. I will support and protect school personnel in proper performance of their duties.
- j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.