

AGENCY DKT. NO. 149-6/13

SEC DKT. NO. C44-11

KEVIN PATRICK MURPHY, :  
 :  
 COMPLAINANT, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 JAMES MURPHY, WASHINGTON : DECISION  
 TOWNSHIP BOARD OF EDUCATION, :  
 GLOUCESTER COUNTY, :  
 :  
 RESPONDENT. :

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The record of this matter and the decision of the School Ethics Commission (Commission) have been reviewed. This matter involves an appeal of the Commission's June 26, 2013 decision finding that the Respondent-Appellant James Murphy (respondent) violated *N.J.S.A. 18A:12-24.1(e)*<sup>1</sup> of the Code of Ethics for School Board Members in connection with his conduct at the polling place during the April 2011 school board election. The Commission recommended a penalty of reprimand for the violation. The Complainant, Kevin Murphy, (complainant) filed exceptions to the June 26, 2013 decision urging the Commissioner to consider a more serious sanction than a reprimand. The respondent filed an answer in which he replied to the complainant's penalty argument and also appealed the Commission's finding of a violation pursuant to *N.J.A.C. 6A:4-1.3(c)*; complainant filed a response thereto.

In his appeal to the Commissioner, the respondent argues that the Commission's decision is inconsistent in that it adopted the facts reached by the Administrative Law Judge (ALJ) but then reached a different conclusion as to the violation of *N.J.S.A. 18A:12-24.1(e)*. The

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<sup>1</sup>The Commission also found that the respondent did not violate *N.J.S.A. 18A:12-24.1(a), (d), (i) or (j)*.

respondent maintains that the ALJ had the opportunity to assess the credibility of the witnesses and she found that the complainant did not prove by a preponderance of the evidence that there was a violation of *N.J.S.A. 18A:12-24.1(e)*. As a result, the respondent argues that the Commission does not have the authority to find otherwise unless the Commission first determines that the ALJ's findings were arbitrary, capricious or unreasonable or not supported by the credible evidence in the record.

Additionally, the respondent cited to case law to support his argument that the alleged conduct was not a violation of *N.J.S.A. 18A:12-24.1(e)* because it did not amount to action beyond the scope of his duties, such that it has the potential to compromise the Washington Township Board of Education (Board). The respondent asserts that he was present at the polling place during the April 2011 school board election as a private citizen, and the comments and statements that were made to the complainant were related to the election and not related to his capacity as a Board member. Even assuming he acted privately as a Board member, the respondent contends that his actions at the polling place do not have the potential to compromise the Board. Additionally, the respondent points out that the ALJ did not find that he committed perjury or pressured the witness, Robert Schoenfeldt, to commit perjury. Therefore, the respondent maintains that he did not violate *N.J.S.A. 18A:12-24.1(e)* and as such he should not receive a penalty. In the alternative, the respondent argues that if there is a penalty imposed it should be no more than a reprimand.

The complainant argues that the Commission's decision finding a violation of *N.J.S.A. 18A:12-24.1(e)* should be adopted, but with the penalty of removal as opposed to a reprimand. The complainant, who is a Board employee, stresses that the respondent told him at least twice at the polling place during the April 2011 school board election that "he had better watch his back" and hope that his wife won the election. The respondent made the comments in public, in front of other voters and young people. Moreover, the complainant contends that in addition to threatening an employee and demonstrating contempt for the democratic process, the respondent also

gave false testimony and tried to use his position as a board member to pressure Mr. Schoenfeldt to testify in a manner that would support the respondent. The complainant contends that the public has lost respect for the respondent and the only way to adequately address this is by removing him from his elected position.

Upon a comprehensive review of the record, the Commissioner<sup>2</sup> finds that the decision of the Commission as to a determination of a violation of *N.J.S.A. 18A:12-24.1(e)*<sup>3</sup> is supported by sufficient credible evidence, and the respondent has not established that the Commission's decision is arbitrary, capricious or contrary to law. *N.J.A.C. 6A:4-4.1(a)*. The evidence in the record fully supports the Commission's determination that on the day of the April 2011 school board election, respondent took action beyond the scope of his authority by confronting, intimidating, and embarrassing not just the complainant but others as well; and that respondent's conduct has compromised the Board because the public may have lost confidence in respondent and respect for his judgment, thereby potentially making every vote that he is involved with suspect. Contrary to the respondent's assertion that the Commission's decision is inconsistent, the Commissioner notes that the Commission was fully authorized to reject the ALJ's determination that respondent did not violate *N.J.S.A. 18A:12-24.1(e)* without finding that the ALJ's finding of facts were arbitrary, capricious or unreasonable. The Commission simply determined that the ALJ did not properly apply *N.J.S.A. 18A:12-24.1(e)* to the facts that were proven at the hearing. As a result, the Commissioner finds that the Commission's determination that respondent violated *N.J.S.A. 18A:12-24.1(e)* was not arbitrary, capricious or contrary to law.

The Commissioner also accepts the Commission's recommendation – for the reason expressed in the Commission's decision – that a reprimand is the appropriate penalty in this matter.

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<sup>2</sup> This matter has been delegated to the undersigned Assistant Commissioner pursuant to *N.J.S.A. 18A:4-34*.

<sup>3</sup> The Commission also found that the respondent did not violate *N.J.S.A. 18A:12-24.1(a), (d), or (j)*.

In so ruling, the Commissioner is satisfied that the Commission fully considered the nature of the offense and weighed the effects of aggravating and mitigating circumstances. Therefore, the Commission's recommended penalty in this matter will not be disturbed.

Accordingly, IT IS hereby ORDERED that James Murphy be reprimanded as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.<sup>4</sup>

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: November 7, 2013

Date of Mailing: November 7, 2013

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<sup>4</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.