

AGENCY DKT. NO. 6-10/17A
SCHOOL ETHICS DKT. NO. T30-16

IN THE MATTER OF OBDULIA GONZALEZ, :
BOARD OF EDUCATION OF THE CITY OF : COMMISSIONER OF EDUCATION
PERTH AMBOY, MIDDLESEX COUNTY. : DECISION
_____ :

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 July 25, 2017 decision finding that the respondent-appellant Obdulia Gonzalez (respondent) violated the School Ethics Act for failure to timely complete training in accordance with *N.J.S.A. 18A:12-33*. The Commission recommended a penalty of reprimand for the violation. The respondent filed a Notice of Appeal appealing the Commission's finding of a violation pursuant to *N.J.A.C. 6A:4-1.3(c)*.

On appeal, the respondent argues that the extenuating circumstances in this matter would render a penalty in this case unjust and unwarranted. Even if the Commissioner finds that there was a technical violation of the statute, equitable considerations mandate that the Commissioner decline to impose a penalty against the respondent. The respondent believed that she did in fact complete her training prior to the December 31, 2016 deadline, and when she was finally apprised of the fact that the training was incomplete, she immediately rectified the situation on May 5, 2017. Prior to May 2017, neither the respondent nor the Perth Amboy School District received any notification indicating that there were deficiencies in her training requirements. Had the respondent been properly advised of the training deficiencies in a timely manner, she would have promptly re-taken the training that she believed she completed on December 16, 2016. Finally, the respondent has been a school board member for eight years; she has always completed

her training on time; and she completed her training in May 2017 despite undergoing surgery and radiation treatments for cancer between February and April 2017. Therefore, the respondent contends that the Commissioner should reject the Commission's recommendation and determine that no penalty should be imposed on the Respondent.

In reply the Commission states that it is undisputed that the respondent did not timely complete the required training by December 31, 2016 and before the Commission's April 26, 2017 Order to Show Cause. Therefore, it is clear that the respondent violated the School Ethics Act. *N.J.S.A. 18A:12-33* and *N.J.A.C. 6A:28-4.1*. Moreover, precedent exists for the Commissioner to impose a penalty of a reprimand resulting from a school board member's failure to timely complete a required training program. The Commission contends that the respondent's argument that she made a mistake or committed excusable negligence in failing to timely complete the training is not convincing because the respondent has been a board member for eight years and she should know how to complete the training. Further, the respondent was provided notice from both the Commission and the New Jersey School Boards Association after the December 31, 2016 deadline informing her that she had not completed the required training. Therefore, the Commission's decision finding a violation of the School Ethics Act and recommending the penalty of a reprimand should be adopted.

Upon a comprehensive review of the record, the Commissioner finds that the decision of the Commission finding a violation of *N.J.S.A. 18A:12-33* is supported by sufficient credible evidence. The evidence in the record fully supports the Commission's determination that the respondent did not timely complete the training before December 31, 2016. As a result, the Commissioner finds that the Commission's determination that the respondent violated *N.J.S.A. 18A:12-33* was not arbitrary, capricious or contrary to law. *N.J.A.C. 6A:4-4.1(a)*.

However, the Commissioner does not accept the Commission's recommendation of a reprimand, and instead remands this matter to the Commission for further determination of the appropriate penalty. In so ruling, the Commissioner is not satisfied that the Commission fully considered the nature of the offense and weighed the effects of the aggravating and mitigating circumstances. In the July 25, 2017 decision, the Commission states that the respondent did not respond to the April 26, 2017 Order to Show Cause. A review of the record indicates that the respondent did in fact respond to the Order to Show Cause. By letter dated May 4, 2017, which was received by the Commission on May 12, 2017, the respondent outlined the reasons why she did not complete her training by December 31, 2016. The information provided by the respondent in response to the Order to Show Cause should have been considered by the Commission when it was evaluating the appropriate penalty to recommend in this case.

Accordingly, this matter is hereby remanded to the Commission for a determination of the appropriate penalty in light of the mitigating circumstances that exist in this matter.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: March 28, 2018

Date of Mailing: March 29, 2018

¹ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.