

S.L.G. AND M.S.¹
AS PARENTS OF D.S., AND D.S,

v.

CHARLES L. GRANATA, BONNIE GRANATIR,
AND ANTONIO CALCADO
LIVINGSTON BOARD OF EDUCATION
ESSEX COUNTY

BEFORE THE SCHOOL
ETHICS COMMISSION

DOCKET NO. C18-10
DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed on May 24, 2010 by S.L.G. and M.S., as parents of D.S., a minor, as well as D.S., asserting that Charles L. Granata, Bonnie Granatir, Antonio Calcado and Stanley Graboski,² members of the Livingston Board of Education (“Board”) violated the School Ethics Act (“Act”). Specifically, the complainants assert that the respondents violated N.J.S.A. 18A:12-24.1(b) and (g) of the Code of Ethics for School Board Members when they released to the media student information concerning D.S. that was a part of a prior complaint which they filed against S.L.G. in March 2010, which was docketed by the Commission as C12-10.

On June 17, 2010, a Motion to Dismiss was filed on behalf of the respondents. Pursuant to N.J.A.C. 6A:28-8.2(a), a responsive statement was filed on behalf of the complainants on July 7, 2010. The parties were notified by letter dated June 21, 2010 that this matter would be placed on the agenda for the Commission’s meeting on July 27, 2010 in order to make a determination regarding the respondents’ Motion to Dismiss the complaint. At its meeting on July 27, 2010, the Commission denied the respondents’ Motion to Dismiss the complaint. Pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to retain this complaint for hearing at a later date.

By letter dated October 14, 2010, the parties were notified that this matter would be scheduled for hearing at the Commission’s meeting on November 23, 2010. However, the respondents requested an adjournment of this hearing, which was granted. The hearing was thereafter rescheduled for the Commission’s meeting on January 25, 2011.

The parties attended the meeting on January 25, 2011. The complainants were represented by Robert J. Fettweis, Esq. and the respondents were represented by David B. Rubin, Esq. After hearing all testimony, the Commission voted during the public portion of its meeting to find that the respondent violated N.J.S.A. 18A:12-24.1(b) and (g) of the Code of Ethics for

¹ Initials are used herein to protect the identity of the student in this matter.

² By letter dated October 20, 2010, the attorney for the complainants notified the Commission that the complainants dismissed all claims as to respondent Stanley Graboski.

School Board Members and to recommend a penalty of censure for the respondents, for the reasons set forth below.

SUMMARY OF THE RECORD

The complainants called John McEnroe as a witness. Mr. McEnroe is a former guidance counselor with the Livingston School District (“District”) who retired as of July 1, 2010. He testified that he knew D.S. and was aware that he was interested in studying Hebrew. Although the District did not offer Hebrew as a course, an organization named Educere offered the course online. D.S. could take that online course, and then continue with his Hebrew studies at the community college. D.S. completed the online Hebrew course as reflected in Exhibit C-5, getting an “A” in the course.

Mr. McEnroe explained the need for Exhibit C-6, which is a “To Whom it May Concern” letter written by Mary Oates from the District. According to Mr. McEnroe, such a letter may be necessary to accompany a student’s transcript when, for instance, a grade is not reflected on the transcript. McEnroe testified that he also sent letters to colleges for the purpose of recommending students and to clarify what may be in the transcript. Mr. McEnroe explained that other students had taken online courses and although they would get credit for the course, the grade would not appear on the student’s transcript. Mr. McEnroe acknowledged under cross examination that the situation with D.S. was not handled any differently from the way it had been handled with other students.

Complainant S.L.G. testified that she is an attorney residing in Livingston; her husband is M.S., a co-complainant in this matter. She has a daughter in Middle School and her son, D.S. is now in college. In the 2008-2009 school year, D.S. was a junior at the Livingston High School and her daughter was in sixth grade. S.L.G. stated that Livingston is a five-member Board. She served as a Board member from 2001 to 2010. On two occasions she was the president and on one occasion she was the vice president. On April 20, 2010, she lost her bid for reelection.

S.L.G. testified that during the 2009-2010 school year, her relationship with fellow Board members was strained. She affirmed that during this time, the Superintendent had announced that he was not seeking renewal of his contract. S.L.G. attested that there was great disappointment about the Superintendent’s announcement and a feeling that she was the reason he was leaving.

According to S.L.G., she filed her nominating petition for reelection on February 25, 2010 and Respondent Charles Granata was very vocal in supporting anyone running against her. Toward the end of March 2010, four members of the Board, Antonio Calcado, Stanley Graboski, Charles Granata and Bonnie Granatir, filed a complaint against her with the School Ethics Commission. S.L.G. testified that the complaint mentioned the issue with her son’s online course. S.L.G. stated that she worked hard to repair her relationship with the Board and she was concerned that the search for a new Superintendent would be impacted by the filing of the March 2010 complaint. S.L.G. further stated that, at the time, D.S. was involved in the college application process and she did not want articles in The Alternative Press about him. Therefore, S.L.G. explained that she gave a public apology in an effort to keep her son “out of the picture.”

However, the March 2010 complaint was filed and it included the issue with her son and the Superintendent. S.L.G. stated that the complaint made it seem that D.S. “was trying to take some flimsy course” and she, as a Board member, was trying to get him credit for it.

S.L.G. identified Exhibit C-1 as the Livingston Board’s Student Records Policy #8330 and Exhibit C-2 as Livingston Board’s Public Records Policy #8310. S.L.G. stated that she never provided written consent to the respondents in this matter to transfer any information about D.S.

S.L.G. testified about D.S.’s interest in developing fluency in Hebrew; she insisted that if he dropped his Spanish course, he must take Hebrew for credit. On October 27, 2008, S.L.G. sent an email to Liz Sanchez, the World Language Supervisor inquiring about options for taking Hebrew for credit. Ms. Sanchez responded on October 28, 2008, informing S.L.G. that Educere had an online Hebrew I course. (Exhibit C-3). Later, Ms. Sanchez informed S.L.G. that the Superintendent approved the request and that S.L.G. could contact Educere to make all necessary arrangements. (Exhibit C-4). S.L.G. testified that she understood “approval” to mean that it would go on D.S.’s transcript, although she acknowledged that the email from Ms. Sanchez did not so state. D.S. dropped Spanish and completed the Hebrew course online. Exhibit C-7 is an email chain between S.L.G. and Lisa Yost, a learning coach from Educere, affirming that D.S. completed the course as of June 2009 and that a transcript would be forwarded to Livingston High School. S.L.G., upon receiving a copy of the transcript, notified Ms. Yost that because the transcript heading was “Whitmore Secondary School,” she had concerns that it would not duly convey to colleges that D.S. “took a legitimate world language course in his junior year.” (Exhibit C-7). Thereafter, S.L.G. had a conversation with the Superintendent and learned the school’s position about not including grades for online courses within a student’s transcript.

S.L.G. testified that The Alternative Press was an online news organization started by a Livingston High School graduate, Michael Shapiro, to focus on local issues. It was, according to S.L.G., an alternative to the The West Essex Tribune. She identified Exhibit C-8 as an email from Mr. Shapiro dated December 21, 2009 to all Board members asking questions about “tension” on the Board. Without naming D.S., the email makes reference to S.L.G.’s child and a decision made by the Superintendent that negatively impacted her child. Shapiro invited comment from the Board on “the situation.” (Exhibit C-8) S.L.G. identified Exhibit C-10 as the comments submitted to The Alternative Press from Board members Charles Granata and Stan Graboski. The comments were forwarded to S.L.G., who stated that she made it “a policy to refrain from comment to the Alternative Press about any of my fellow Board members or their styles.” (Exhibit C-9)

S.L.G. testified that, upon receiving the emails in Exhibit C-10, she was concerned that an article about her son would be run by The Alternative Press. In “a frantic move,” she agreed to meet with Mr. Shapiro “off the record” to provide her perspective. She provided names of persons she termed “Board watchers” who had observed her in the nine years she served on the Board. Exhibit C-14 is an email from S.L.G. to a member of the community asking if she would be willing to speak to The Alternative Press.

S.L.G. stated that on January 10, 2010, she received an email, identified as Exhibit C-15, from Mr. Shapiro, which included another list of questions. S.L.G. believed that The Alternative Press was moving forward on the issue with her child; she had heard that articles from The Alternative Press were being circulated. She agreed to issue an apology in the hope that the articles would stop. S.L.G. identified Exhibit C-19 as an agreement dated January 11, 2010 signed by her, Calcado, Granata, Graboski and Granatir. The statement attached to the agreement is an apology from S.L.G. (Exhibit C-19) The next day, S.L.G. received an email from The Alternative Press stating that “we have decided to put our investigation on hiatus” and there was no need to respond to the outstanding questions. (Exhibit C-20) According to S.L.G., two days later, Respondent Granata announced to The West Essex Tribune that S.L.G. was the reason the Superintendent was leaving.

S.L.G. affirmed that after filing her papers for reelection in February 2010, on March 22 or 23, 2010, Calcado, Granata, Granatir and Graboski filed a complaint against her. She identified Exhibit C-22 as an article published on March 25, 2010 by The Alternative Press which was captioned: “Four Members of Livingston Board of Education File Formal Ethics Complaints Against a Fifth Member, [S.L.G.]; [S.L.G.] Calls Complaints Baseless and Vows to Vigorously Contest Them.” S.L.G. also identified Exhibit C-23 as an article published on April 1, 2010 by The Alternative Press captioned: “Four Board Members Release Statement Regarding Ethics Complaint, Allege [S.L.G.] was Notified of Intent to File Ethics Charges in Advance of Complaints Being Filed.” (Exhibit C-23). As to Exhibit C-23, S.L.G. affirmed that when this was published, she had not yet received a copy of the complaint.

According to S.L.G., Calcado, Granata, Granatir and Graboski issued a press release on April 12, 2010 which was directed to a number of media sources: The Star Ledger, The Alternative Press, The West Essex Tribune, the Livingston Navigator and the Livingston Press. S.L.G. testified that she found the press release at Exhibit C-24 on Patch.com. Along with the press release, Calcado, Granata, Granatir and Graboski provided a copy of the complaint they had filed against S.L.G. Thereafter, The Alternative Press sent S.L.G. an email seeking a response to the complaint. (Exhibit C-25) S.L.G. testified that The West Essex Tribune also asked her for a response to the complaint.

S.L.G. identified Exhibit C-26 as the “redacted” version of the complaint which Calcado, Granata, Granatir and Graboski provided to The Alternative Press. This version of the complaint, with addenda, was, and according to S.L.G., still is, posted online. According to S.L.G., the complaint itself, as well as Addendum C of the complaint, although redacted, included information about her son. She testified that she was “fit to be tied,” not only because it included information about D.S., but because it was not an accurate description of events. S.L.G. identified Exhibits C-27, C-28 and C-29 as articles that appeared in The West Essex Tribune, Newark Star Ledger and The Alternative Press, respectively, on April 15 and 16, 2010, after the complaint was released.

On cross-examination, S.L.G. acknowledged that she was upset when she learned that the Hebrew course would not be reflected on her son’s transcript and she discussed the matter with the Superintendent. She admitted that she attempted to show the Superintendent that there was precedent for allowing the course to appear on the transcript by providing him with a copy of

another student's transcript and acknowledged that on June 29, 2009, she provided the Superintendent, via email, with a copy of the other student's transcript. She insisted that the transcript had no identifying information. In response to further questioning on this issue, S.L.G. testified that she had the permission of the student's parents to be in possession of the transcript. In this connection, she explained that, as a member of the Livingston Municipal Alliance Committee, she was reviewing students' applications for scholarships. As to whether she used the student's transcript for the intended purpose, S.L.G. replied that she was in possession of it and the Superintendent had the ability to use it anyway. S.L.G. acknowledged that the student's transcript reflected enrollment at another school for an entire year, rather than enrollment for a single course. She denied that when she spoke to the Superintendent about this matter, he gave her options for addressing the disagreement, such as appealing the matter to the Board or developing a new policy.

S.L.G. further acknowledged that she gave a statement to The West Essex Tribune; although she did not write the article, she is quoted therein. She identified that statement as included in Exhibit R-2, published April 8, 2010. She admitted that she did not discuss every issue raised in the C12-10 complaint, but stated that it was her understanding that much of what was in the complaint did not meet "the statute of limitations" and she did not need to "drag up things" that did not meet the limitations period. Therefore, the statement implied that the central theme of the complaint was the issue of how she dealt with parents.

Pursuant to N.J.A.C. 6A:28-8.3(d), upon completion of complainants' case, the respondents' counsel moved to dismiss the complaint. After hearing arguments from the parties, the Commission asked the parties to leave the room so that it could deliberate. The Commission denied the Motion to Dismiss. Upon resumption of the hearing, the respondent's counsel called his witnesses, as summarized below.

Dr. Brad Draeger is the Superintendent of the Livingston School District; he was familiar with the circumstances surrounding the transcript issue relative to D.S. He discussed the matter with the Assistant Superintendent. He said that the granting institution would provide the course transcript, but that no child had ever had an outside course reflected on his/her transcript. Although there was no policy so stating, this was the District's practice. Dr. Draeger recalled a discussion by telephone with S.L.G., after which S.L.G. sent him another child's transcript showing credit for courses taken outside the District. Dr. Draeger distinguished the student's transcript as one which reflected an entire year of outside study. Dr. Draeger testified that he made it clear to S.L.G. that he was treating her as a parent and he would not deviate from past practice. He provided S.L.G. with two options: either appeal his decision to the Board or work on a new Board policy. Dr. Draeger testified that the phone call with S.L.G. became heated when he maintained that he would not do for her what he does not do for others. The call did not end pleasantly.

On cross-examination, Dr. Draeger acknowledged that as Superintendent, he would have had access to the transcript that was sent to him by S.L.G. He confirmed that at the time, the Board did not have a policy about dealing with outside courses, although he stated that one is evolving in light of changing graduation requirements. Dr. Draeger further acknowledged that he "alerted" Granata and Granatir that a Board member was requesting an exception for her child

and he informed that Board member to appeal his decision or formulate a policy. He mentioned that the child was a High School student and he was treating the parent/member as he treated other parents. He did not recall whether the student's name was used.

Respondent Bonnie Granatir was called to testify that Exhibit C-24 offered by the complainants was not the version of the press release that the complainants in C12-10 prepared and she had no way of knowing whether this was still available on the internet. The "abbreviated" version prepared by herself, along with Calcado, Granata and Graboski is at Exhibit R-3. According to Granatir, this is the version she gave to The Alternative Press. She testified that the press release was drafted by Charles Granata; the others edited it and they agreed to the final, abbreviated version.

Complainants' Exhibits

C-1	Livingston Board of Education Student Records Policy #8330
C-2	Livingston Board of Education Public Records Policy #8310
C-3	Email, Liz Sanchez to S.L.G., 10/28/08 and prior email in the chain
C-4	Email, Liz Sanchez to S.L.G. 11/11/08 and prior email in chain
C-5	Whitmore School Secondary Transcript for DS
C-6	Letter, Mary Oates "To Whom it May Concern" dated 6/29/09
C-7	Email, Lisa Yost to S.L.G., 6/24/09 and prior emails in chain
C-8	Email, The Alternative Press to S.L.G. et al., 12/21/09
C-9	Email, S.L.G. to The Alternative Press, 1/5/10
C-10	Email, The Alternative Press to S.L.G., 1/6/10 and prior emails in the chain
C-14	Email, S.L.G. to Alisa Hare, 1/8/10 and prior emails in chain
C-15	Email, Michael Shapiro to S.L.G., 1/10/10
C-19	Settlement Agreement, 1/11/10 and attached statement.
C-20	Email, The Alternative Press to S.L.G., 1/12/10
C-22	Article, The Alternative Press, 3/25/10
C-23	Article, The Alternative Press, 4/1/10
C-24	Press Release 4/12/10
C-25	Email, The Alternative Press to S.L.G., 4/13/10
C-26	"Redacted" complaint, as released to the Press, dated 4/12/10
C-27	Article, West Essex Tribune, 4/15/10
C-28	Article, Newark Star Ledger, 4/15/10
C-29	Article, The Alternative Press, 4/16/10

Respondents' Exhibits

R-2	Articles, West Essex Tribune, 3/25/10; 4/1/10, 4/8/10 and 4/15/10
R-3	Press Release, 4/12/10

FINDINGS OF FACT

The Commission finds the following facts to be material and undisputed in this matter:

1. Respondents Charles L. Granata, Bonnie Granatir and Antonio Calcado are three members of a five-person Board of Education.
2. S.L.G. was a member of the Board from 2001 until 2010. During the 2008-2009 school year, she had one child, D.S., attending Livingston High School.
3. On January 11, 2010, S.L.G., together with Charles L. Granata, Bonnie Granatir, Antonio Calcado and Stanley Graboski, signed an agreement which stated, in relevant part,

All Board members will discontinue individual communication with The Alternative Press and any other media outlet with respect to this issue.

All Board members will retract any statements which have been made to The Alternative Press which have yet to be printed.

In the event that The Alternative Press or any other media outlet runs an article regarding the issue of [S.L.G.'s] son's high school transcript, the Board will issue a joint statement defending the confidentiality of all students. (Exhibit C-19 at paragraphs 2, 3 and 5).

4. In February 2010, S.L.G. filed her nominating petition to run for re-election in April 2010. She did not win reelection to the Board.
5. On March 25, 2010 Antonio Calcado, Stanley Graboski, Charles L. Granata and Bonnie Granatir, members of the Livingston Board of Education, filed a complaint against S.L.G. alleging that she violated the School Ethics Act. This complaint was docketed by the School Ethics Commission as C12-10.³ It included eight charges.
6. On April 8, 2010, an article appeared in The West Essex Tribune which included a statement from S.L.G. The statement referred to the complaint as "frivolous." S.L.G. stated, in part:

³ A Motion to Dismiss was filed on behalf of S.L.G. in C12-10. The Commission voted to grant S.L.G.'s Motion to Dismiss all allegations in the complaint, with the exception of the allegations set forth in Count 1 that the respondent violated N.J.S.A. 18A:12-24.1(e) and N.J.S.A. 18A:12-24.1(g). A hearing on the remaining claims was scheduled for October 26, 2010. On October 19, 2010, the complainants notified the Commission that they were withdrawing the complaint. Consequently, the remaining allegations in C12-10 were administratively dismissed.

This dispute could be best classified as a disagreement over the interpretation of a Board member's role when advocating for students and community members.

I can say with confidence that it stems from my strong commitment to advocate for community members' concerns and in no way contradicts the high ethical standards the community should demand from me as an elected official.

The statement referenced concerns that S.L.G. had received from parents and how she responded to them. (Exhibit R-2)

7. On April 12, 2010, Antonio Calcado, Stanley Graboski, Charles L. Granata and Bonnie Granatir, issued a press release to the following sources: The Star Ledger, The Alternative Press, The West Essex Tribune, the Livingston Navigator and the Livingston Press. (Exhibit R-2) The press release stated, in relevant part:

Four members of the Livingston Board of Education who recently filed formal ethics complaints against the fifth member [S.L.G.] will release the full complaint to the media today. The media outlets listed above will receive the entire substance of the charges sent on March 23 to the School Ethics Commission in Trenton. Although the complainants have repeatedly stated that they wished the case to be settled privately before the Ethics Commission, the documents are being issued in order to end speculation regarding the basis and substance of the charges, and to dispel inaccuracies that have been published relating to the charges. The four members stress their disappointment that [S.L.G.] has chosen to divulge selected portions of the complaint, which have been taken out of context. (Exhibit R-2)

8. Along with the press release, the respondents released a redacted version of the complaint docketed as C12-10 to the media, as set forth in Exhibit C-26.

9. The complaint that was released to the media included the following allegation:

It appeared to individual Board members that the respondent, acting as an individual, engaged in antagonistic, retaliatory behavior directed at the Superintendent of Schools beginning in June 2009, pursuant to her dissatisfaction with an educational decision that the Superintendent made on behalf of her child. *** (Exhibit C-26 at p. 5)

10. Page 6 of the complaint referred to Addendum C, which stated:

It was reported to several Board members by [S.L.G.] that sometime in May 2009, she approached the Superintendent and asked him to consider adding a grade (for a foreign language course taken via an online educational service) to [STUDENT'S NAME REDACTED]'s transcript.

Apparently, the Superintendent advised [S.L.G.] that he did not feel that the course should be added to the transcript, as the district could not verify that the final examination met the criteria of an equivalent in-house Livingston HS course. Further, he explained that the district lacked a policy governing the granting of transcript credit for such courses. He told [S.L.G.] that in the interest of fairness he had made the same decision in [STUDENT'S NAME REDACTED]'s case that he would have made for any other student in the same situation.

According to [S.L.G.] (and verified by the Superintendent), [S.L.G.] did not accept the Superintendent's verdict. She had heated discussions with him, pleading her case for the grade to be added to the transcript. The Superintendent declined to change his decision, offering two avenues of appeal to [S.L.G.]: bring the matter before the full Board for an appeal (as any [NAME OF GROUP REDACTED] has the right to do), and/or propose that the Board bring the process of granting transcript credit for online courses to a full Board policy discussion. [S.L.G.] rejected both suggestions.*** (Exhibit C-26 at p. 22).

11. The Board has a Student Records Policy #8330 which states, with respect to the access of student records:

In order to fulfill its legal responsibility as a Board, the Board has access through the Superintendent or designee to information contained in a student's record. Information shall be discussed in executive session unless otherwise requested by the parent or adult student. (Exhibit C-1 at p. 4, paragraph 6).

Organizations, agencies, and persons from outside the school if they have the written consent of the parent or adult student, except that these organizations, agencies, and persons shall not transfer student record information to a third party without the written consent of the parent or adult student. (Exhibit C-1 at p. 5, paragraph 12).

12. The Board's Policy #8330 further states, "In providing access to student records in accordance with N.J.A.C. 6A:32-7.5, individuals shall adhere to requirements pursuant to

N.J.S.A. 47:1A-10, the Open Public Records Act (OPRA) and 34 CFR Part 99, the Family Educational Rights and Privacy Act (FERPA).” (Exhibit C-1 at p. 6).

13. The Board’s Public Records Policy #8310 states, as to public records, “confidential and exempt records” which are exempt from public review include, “information concerning individual pupil records or information regarding grievance or disciplinary proceedings against a pupil to the extent disclosure would reveal the identity of the pupil.” (Exhibit C-2 at p. 2).

ANALYSIS

The complainants bear the burden of factually proving any violations of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a). See also, N.J.S.A. 18A:12-29(b).

Here, the complainants allege that the respondents violated N.J.S.A. 18A:12-24.1(b) and (g). The complainants argue that when the respondents released the complaint docketed as C12-10 to the media on April 12, 2010, they publicly disseminated confidential information relative to D.S., then a student at the Livingston High School. Moreover, they contend that the information in the complaint was both inaccurate and misleading, as it suggested that the Hebrew course taken by D.S. was substandard and not pre-approved by the Superintendent. The complainants further assert that the respondents filed the complaint and released its contents to the media in an attempt to defeat S.L.G.’s re-election campaign, as there had been a strained relationship between S.L.G and the other four members of the Board during the 2009-2010 school year. They argue that, notwithstanding the redactions, the complaint released to the media clearly identified D.S. as the student referenced in Addendum C.

The respondents concede that the redacted version of the complaint was released to the media on April 12, 2010, but they argue that this release was necessary to counter the statement that S.L.G. made to The West Essex Tribune, published on April 8, 2010, which left a reader with the impression that the charges in C12-10 solely concerned S.L.G.’s advocacy for community members. Thus, they reason that S.L.G. “opened the door;” that is, when S.L.G. misrepresented to the public the nature of the complaint, respondents were compelled to release a full copy of the complaint so that no one would be misled. In this connection, respondents argue that as parties to the C12-10 complaint, they had a “qualified privilege” to release the complaint to the community, since the community shared a common interest in knowing the truth about the substance of the complaint.⁴ Finally, respondents contend that the redacted version of the complaint deleted S.L.G.’s son’s name and minimally references the transcript issue focusing primarily on S.L.G.’s reaction to the issue.

⁴ Respondents argued that, “Our courts have recognized a qualified privilege ‘if the circumstances lead any one of several persons having a common interest in a particular subject matter correctly or reasonably to believe that there is information another sharing the common interest is entitled to know.’ Gallo v. Princeton Univ., 281 N.J. Super. 134, 143 (App. Div.) (quoting Restatement (Second) of Torts § 596), certif. denied, 142 N.J. 453 (1995); see also Murphy v. Johns-Manville Prods. Corp., 45 N.J. Super 478 (App. Div.), certif. denied, 25 N.J. 55 (1957).***” (Respondents’ Brief, January 13, 2011 at p. 3).

The Commission first considers N.J.S.A. 18A:12-24.1(g), which provides:

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.

The Commission's regulations require that:

Factual evidence of a violation of the confidentiality provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that the respondent(s) took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that the respondent violated the inaccurate information provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by the respondent(s) and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. N.J.A.C. 6A:28-6.4(a)7.

The Commission finds that the undisputed facts on this record establish that by releasing the complaint to the media on April 12, 2010, the respondents took action to make public, reveal or disclose information that was confidential in accordance with board policies, procedures or practices. Specifically, the complaint referenced S.L.G.'s "dissatisfaction with an educational decision that the Superintendent made on behalf of her child." *** (Exhibit C-26 at p. 5). Even the redacted version of Addendum C provided the following information about S.L.G.'s child: (1) he attended Livingston High School (S.L.G. testified that she had only one child in the high school at the time); (2) he took an online foreign language course; (3) his grade for the online course did not appear on his transcript; (4) the Superintendent advised S.L.G. that he did not feel that the course should be added to the transcript; (5) S.L.G. did not accept the Superintendent's decision about D.S.'s transcript; and (6) the Superintendent offered S.L.G. two avenues of appeal regarding this transcript dispute.

The Commission further finds that, even granting that the respondents enjoyed a "qualified privilege" to share information with the media and the community, such a privilege may not be carried out in disregard of a student's regulatory and statutory rights to confidentiality. If the respondents felt compelled to clarify "misrepresentations" made by S.L.G., they could have released a summary of the complaint which did not reveal information about the student's academic record. Thus, the Commission finds that the complainants established that the respondents violated the confidentiality provision of N.J.S.A. 18A:12-24.1(g). In so doing, the Commission finds no cause to reach to the complainants' allegations that the respondents also violated the "inaccuracy" provision of N.J.S.A. 18A:12-24.1(g).

The Commission next considers the complainants' allegation that the respondents violated N.J.S.A. 18A:12-24.1(b), which provides:

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.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(b) shall include evidence that the respondent(s) willfully made a decision contrary to the educational welfare of children, or evidence that the respondent(s) took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing. N.J.A.C. 6A:28-6.4(a)2.

The Commission finds that this record supports the conclusion that the respondents willfully made a decision contrary to the educational welfare of D.S. As Board members, the respondents are entrusted with confidential information about students. Notably, when the respondents released the C12-10 complaint to the press, they redacted the student's name so as to indicate that they recognized that the complaint contained information about a student's record. Yet, they failed to consider, or they failed to take the time to consider, that the redaction was insufficient, under these circumstances, to protect the student's identity, for the reasons set forth above under the analysis of N.J.S.A. 18A:12-24.1(g). In this connection, the Commission does not rule out the complainants' contention that the release of the complaint was strategically timed for days before the April election. Unfortunately, it appears to the Commission that in the respondents' eagerness to redress the conduct of S.L.G., they acted with indifference to her son's rights. Accordingly, the Commission finds that the complainants established that the respondents violated N.J.S.A. 18A:12-24.1(b).

Finally, the Commission notes that there was much testimony provided in this matter about the circumstances surrounding the release of the complaint. While that testimony provided a context, ultimately, it offered almost no information that was of legal consequence to the Commission's determination. Thus, although the Commission did not find S.L.G.'s testimony as to these background events to be convincing and while the Commission acknowledges that counsel for the respondents deftly impeached what minimal credibility S.L.G. offered, the Commission is nevertheless constrained to find that the determinations herein are essentially driven by the undisputed fact of the release of the complaint.

DECISION

The Commission finds that respondents, Charles L. Granata, Bonnie Granatir, Antonio Calcado, violated N.J.S.A. 18A:12-24.1(b) and (g) of the Code of Ethics for School Board Members.

PENALTY

If a violation of the Act is found, the Commission may recommend to the Commissioner of Education the reprimand, censure, suspension or removal of the school official. Here, the Commission recommends that the Commissioner impose a penalty of censure on each of the three respondents. In I/M/O Edward Vickner, Ewing Township Bd. of Ed., Mercer County, C36-01(May 28, 2002), Commissioner of Education Decision No. 272-02SEC, decided July 16, 2002, the Commission found that a Board member violated N.J.S.A. 18A:12-24.1(e) and (g) when he sought out and disclosed student information to the Board after being advised by the Superintendent that the information was confidential. The Commission recommended a penalty of censure, which was approved by the Commissioner. While, in the instant matter, the Commission did not find a violation of N.J.S.A. 18A:12-24.1(e), it did find a violation of N.J.S.A. 18A:12-24.1(b), along with N.J.S.A. 18A:12-24.1(g). By recommending a penalty of censure, the Commission seeks to impress upon these respondents the seriousness of their breach of duty to abide by the Code of Ethics for School Board Members.

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. Parties 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.

Acting Chairperson

Mailing Date: February 23, 2011

Resolution Adopting Decision – C18-10

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and the testimony of the parties from its hearing on January 25, 2011; and

Whereas, at its meeting on January 25, 2011, the Commission found Respondents Charles L. Granata, Bonnie Granatir, Antonio Calcado violated N.J.S.A. 18A:12-24.1(b) and (g) of the Code of Ethics for School Board Members; and

Whereas, the Commission recommends to the Commissioner of Education a penalty of censure for these respondents; and

Whereas, at its meeting on February 22, 2011, 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.

Acting Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on February 22, 2011.

Joanne Boyle
Executive Director