

MELINDO A. PERSI,	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
DANIEL WOSKA	:	
<i>BRICK TOWNSHIP BOARD OF</i>	:	Docket No. C25-08
<i>EDUCATION</i>	:	DECISION
<i>OCEAN COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

The above-captioned complaint was filed before the School Ethics Commission on June 30, 2008. At its meeting on July 22, 2008, the Commission voted to place the complaint in abeyance, pursuant to its authority at N.J.S.A. 18A:12-32, based upon the complainant’s verification that the matter entitled Melindo A. Persi v. Board of Education of the Township of Brick, Ocean County had been filed in Superior Court. In accordance with N.J.S.A. 18A:12-32, the Commission did not process the complaint.¹

By letter dated February 27, 2009, the Commission was advised that the matter entitled Melindo A. Persi v. Board of Education of the Township of Brick, Ocean County was transferred from Superior Court to the Commissioner of Education for adjudication. On February 24, 2011, the Commissioner of Education issued his final decision. Melindo A. Persi v. Board of Education of the Township of Brick, Ocean County, Commissioner of Education Decision No. 67-11, decided February 24, 2011.² By letter dated March 17, 2011, counsel for the complainant advised the Commission that the complainant wished to proceed with the prosecution of the within complaint before the School Ethics Commission.

In the complaint filed with the Commission, the complainant, Melindo Persi, alleged that Daniel Woska, a member of the Brick Township Board of Education (Board) violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. The complainant specifically alleged that the respondent violated N.J.S.A. 18A:12-24.1(a), (c), (d), (e) and (f) of the Code of Ethics for School

¹ On April 15, 2009, the State Board of Education adopted amendments to N.J.A.C. 6A:28, the regulations governing matters that come before the School Ethics Commission. These rules became effective on May 18, 2009. However, because the complaint in this matter was filed before that date, the Commission followed procedures and rendered its determinations herein in accordance with the rules that were in effect at the time the complaint was filed. To the extent this decision cites to regulations, they are the regulations that were in effect when the complaint was filed.

² In the matter before the Commissioner of Education, Persi challenged his April 30, 2008 termination by the respondent Board, contending that the Board’s action violated the terms of a written employment contract which did not expire until November 20, 2008. The Board contended that Persi was employed through a verbal agreement in which the sole remuneration was \$700 per day for each day worked. The Administrative Law judge (ALJ) found, and the Commissioner concurred, that Persi had a valid and enforceable written contract with the Board, which appointed him as Interim Superintendent through November 20, 2008. The ALJ and Commission further concluded that Persi’s contract required 30 days written notice and, therefore, he was entitled to 30 days reimbursement in the amount of \$21,000, reflecting the month of May 2008.

Board Members in connection with actions taken prior to the 2008 reorganization meeting of the Board.

After this complaint was taken out of abeyance, a Motion to Dismiss in Lieu of Answer was filed on behalf of the respondent, who also alleged that the complaint was frivolous. At its meeting on May 24, 2011, the Commission denied the respondent's Motion to Dismiss the allegations that he violated N.J.S.A. 18A:12-24.1(a), (c), (d) and (e), but granted the respondent's Motion to Dismiss the allegation that he violated N.J.S.A. 18A:12-24.1(f). The Commission further found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2.

On July 18, 2011, an answer was filed on behalf of the respondent. Thereafter, pursuant to a conference call conducted with the parties on September 19, 2011, counsel for the complainant and respondent agreed to the following:

- (1) The transcript(s) of the hearing conducted at the Office of Administrative Law in Melindo A. Persi v. Board of Education of the Township of Brick, Ocean County, Commissioner of Education Decision No. 67-11, decided February 24, 2011, would be provided to the School Ethics Commission in lieu of the Commission conducting an evidentiary hearing for C25-08.
- (2) The above-captioned matter would be placed on the Commission's agenda for its regularly-scheduled meeting on January 24, 2012, at which time counsel were invited to appear in order to make oral arguments and answer questions, as needed.
- (3) Counsel may provide written arguments in advance of the Commission's January meeting, such papers should be submitted by the close of business on January 6, 2012.

Counsel submitted written arguments on January 6, 2012 and also appeared at the Commission's meeting on January 24, 2012. After hearing arguments from counsel, the Commission voted during the public portion of its meeting to find that the respondent violated N.J.S.A. 18A:12-24.1(e) and to recommend a penalty of reprimand.

FACTUAL FINDINGS

The Commission finds the following facts based on the transcripts provided:³

1. The Board of Education of Brick Township is a seven person Board. (T1 at p. 220)
2. The respondent, Daniel Woska, was at all relevant times a member of the Board.

³ T1 refers to the transcript from December 9, 2009; T2 refers to the transcript from April 27, 2010; and T3 refers to the transcript from April 30, 2010.

3. Mr. Woska is no longer a member of the Board.⁴
4. The complainant, Melindo Persi, held the position of Interim Superintendent for the Brick Township School District pursuant to a contract beginning July 1, 2007 and ending November 20, 2008. His contract provided for 30 days written notice if he was to be terminated. Persi, supra at slip. op. p. 2.
5. Following the 2008 elections, the Board's reorganization meeting was scheduled for April 29, 2008. There were no other meetings of the Board subsequent to the election and prior to the reorganization meeting. The Board did not vote to issue Persi a Rice⁵ notice. (T1 at p. 222)
6. Three new Board members, Ms. Terebush, Mr. Pifko and Ms. Leone, had been elected that month and were scheduled to attend the reorganization meeting. (T3 at p. 72)
7. Prior to the 2008 reorganization, Mrs. McCarthy was the sitting Board President. (T1 at pp. 190, 219; T2 at pp. 140-141)
8. James Edwards was the School Business Administrator and Board Secretary. (T2 at p. 170)
9. On April 25, 2008, after the 2008 election, and during the District's spring recess, Daniel Woska called Mr. Edwards and told him he wanted a Rice notice prepared in order to discuss Mr. Persi's employment at the April 29, 2008 meeting. (T3 at pp. 20-22, 67)
10. Mr. Woska felt that Mr. Persi was not working in the direction that the community desired and Woska wanted Persi to go. (T3 at p. 67)
11. Mr. Woska was not the Board President at the time he directed the issuance of the Rice notice. He did not, however, call the Board President, Mrs. McCarthy, and discuss the matter with her or ask her to make the request. (T3 at pp. 68-69)
12. Mr. Woska had no discussions with any other sitting Board member or with Board counsel prior to taking that action. He felt it was his prerogative to be able to direct the issuance of a Rice notice. (T3 at pp. 69-70)

⁴ Pursuant to N.J.A.C. 1:1-15.2, at its meeting on January 24, 2012, the Commission informed the parties that it would take official notice of the fact that the respondent is no longer a Board member, since this fact was not in the transcripts provided to the Commission. The Commission permitted counsel the opportunity to object to taking official notice of this information; there were no objections.

⁵ "Rice" notice refers to the matter entitled, Rice v. Union County Regional High School Bd. of Ed., 155 N.J. Super. 64 (App. Div. 1977), certif. den. 76 N.J. 238 (1978) which established the right of employees to obtain notice when they will be discussed by the Board of Education.

13. Prior to the reorganization meeting, Mr. Woska discussed issues related to Mr. Persi with the newly-elected Ms. Terebush, Mr. Pifko and Ms. Leone “in passing,” although there were no set meetings. (T3 at pp. 73, 75)
14. Marie Barnes was the Assistant Secretary to the Business Administrator. On Friday, April 25, 2008, during the District’s spring recess, Mr. Edwards contacted Ms. Barnes and asked her if she could go to the office and prepare a Rice notice to Mr. Persi. Ms. Barnes prepared the notice and brought it to the post office for delivery to Mr. Persi. Also, in response to Ms. Barnes’ request, Mr. Edwards agreed that Ms. Barnes could notify Mr. Persi by phone. (T2 at pp. 121-123; 135; 178-180)
15. The Rice notice was prepared under Ms. Barnes’ name, which was unusual. Ordinarily, a Rice notice would be signed by the Business Administrator, the Superintendent or Assistant Superintendent. (T2 at p. 132)
16. Ms. Barnes called Mr. Persi on April 25, 2008. She apologized for disturbing him and told him that Mr. Edwards had asked her to send him a Rice notice. (T2 at pp. 126-127; T1 at pp. 88; 189-191; 198)
17. No other Board members contacted Mr. Edwards about issuing a Rice notice to Persi. Edwards did not speak to then Board President McCarthy or to any other Board members about the Rice notice. (T2 at p. 242, 244, 247)
18. Mr. Woska contacted Mary Ann Ceres, an assistant superintendent, prior to April 29 and asked her to attend the April 29th meeting. Woska told Ms. Ceres that the Board was unhappy with Persi, that he was going to bring up the issue of Persi’s continued employment and that the Board would then need an interim superintendent. (T3 at pp. 81, 82)
19. Mr. Woska discussed with Ms. Ceres her salary and benefits package. (T3 at p. 82)
20. Mr. Woska also discussed Ceres’ potential appointment with the three newly-elected Board members, Mr. Pifko, Ms. Terebush and Ms. Leone, sometime the weekend before the meeting. (T3 at p. 83)
21. Woska attended the April 29, 2008 meeting at which time the new members were sworn in. Additionally, Persi’s employment was discussed during Executive Session. Persi was present for that discussion. There was a consensus of the majority of the Board to terminate Persi’s employment. When the Board returned to public session, a majority of the seven members voted in the affirmative to terminate Persi’s employment as of that evening. (T3 at pp. 22-26; T1 at pp. 70-71; T2 at p. 129)
22. Mr. Woska was appointed Board President at the April 29, 2008 reorganization meeting. (T1 at p. 175)

23. On April 29, 2008, the Board appointed Mary Anne Ceres, an assistant superintendent, as the Interim Superintendent. She was present that evening and in the audience. (T1 at pp. 179, 180; T3 at p. 80)
24. Ms. Ceres did not, however, attend the Board's closed session discussion on April 29, 2008. The Board was presented with her resume during Executive Session. (T3 at p. 86)
25. The same evening, the Board approved the payment of \$550 per day to Mary Ann Ceres. A resolution accompanied that appointment, but Edwards did not prepare the resolution. (T2 at p. 266, 267)
26. Although Persi did not receive written notification of the Board's intent to terminate his employment, the Commissioner of Education determined that, "the Rice notice, followed by [Persi's] presence at the reorganization meeting of April 29, 2008, in which he was terminated, constructively acted as reasonable notification that his contract was terminated." The Commissioner further determined that Persi was entitled to 30 days reimbursement in the amount of \$21,000 for the month of May, 2008. (Persi, Initial Decision at pp. 8-9)

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29(b), the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members. Here, the complainant asserts that the respondent's conduct violated N.J.S.A. 18A:12-24.1(a), (c), (d) and (e) when, prior to the April 2008 reorganization meeting, and prior to being appointed President of the Board, the respondent directed the Assistant Board Secretary to issue Mr. Persi a Rice notice without the consent of the sitting Board President or any of his fellow Board members. (Complaint at paragraphs 12, 13) The complainant further alleges that prior to the 2008 reorganization meeting, the respondent surreptitiously discussed and intentionally planned removing him and he "repeatedly contacted" Mary Ann Ceres to see if she was interested in replacing him as Superintendent. (Id. at paragraphs 15-18)

The Commission first considers the complainant's allegation that the respondent violated N.J.S.A. 18A:12-24.1(a), which provides:

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.

The Commission notes that its regulations require that, in order to prove factually a violation of N.J.S.A. 18A:12-24.1(a), a complainant:

shall include a copy of a final decision from any court of law or administrative agency of this State that finds the respondent(s) failed to enforce all laws, rules and regulations of the State Board

of Education, and/or court orders pertaining to schools or that the respondent[s] brought about changes through illegal or unethical means. N.J.A.C. 6A:28-6.9(b).

The complainant specifically alleges at paragraph 7 of the complaint that his contract for Interim Superintendent of the Brick Township Board included the following statement, “This agreement may be terminated by either party upon 30 days written notice.” (Complaint at paragraph 7) However, according to the complainant, the respondent failed to follow the terms and conditions of the contract requiring written notice by the Board and he failed to provide the complainant with his entitled compensation prior to his alleged dismissal from his position. (Id. at paragraph 21) In this connection, the Commission acknowledges that the Commissioner of Education indeed found that, at the time Persi was terminated as Interim Superintendent, he had a valid and enforceable contract and *the Board* failed to honor the 30-day termination provision of that contract when relieving him of his duties in May 2008, Persi, supra, slip. op. at p. 12. Thus, while the Commission notes there is a decision from an administrative agency which may reasonably be viewed as holding that the Board failed to enforce all laws, rules and regulations of the State Board of Education, and that the Board brought about changes through illegal means, it declines to find that the Commissioner’s decision is sufficient to establish a violation for *this respondent*. As such, the Commission finds that the complainant has not established that the respondent violated N.J.S.A. 18A:12-24.1(a).

The Commission next considers the complainant’s allegations that the respondent violated N.J.S.A. 18A:12-24.1(c), (d) and (e), which state, respectively:

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.

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.

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.

On this record, the Commission finds insufficient evidence to conclude that the respondent’s actions were adequately connected to his duties as a Board member so as to constitute “board action” as set forth in N.J.S.A. 18A:12-24.1(c).⁶ Rather, respondent’s conduct implicates

⁶ Contrast, I/M/O Marlene Polinik, Wayne Twp Bd. of Ed., Passaic County C45-06 (January 22, 2008), Commissioner of Education Decision No.112-08SEC, decided March 10, 2008, where the Commission found that the respondent went to the Board office on Board business related to the hiring of personnel in order to review the resumes of candidates that had applied for an open position. The Commission found that the respondent’s “Board action” violated N.J.S.A. 18A:12-24.1(c) when she went beyond the appraisal of the resumes that were given to her by the personnel secretary, and she took several steps to locate the resumes of other candidates that were in a locked office.

N.J.S.A. 18A:12-24.1(e), as set forth below.⁷ Further, in this analysis, the Commission acknowledges the unique issue raised in this matter, *i.e.*, *who determines how or when the chief school administrator's employment is reviewed and assessed?* Daniel Woska called Mr. Edwards and told him he wanted a Rice notice prepared in order to discuss Mr. Persi's employment at the April 29, 2008 meeting. Although Ms. Barnes testified that, ordinarily, a Rice notice would be signed by the Business Administrator, the Superintendent or Assistant Superintendent, in this instance, the Interim Superintendent was to be the subject of the discussion. Therefore, the Commission declines to find that Mr. Woska "administered the schools" by becoming directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district and, therefore, dismisses the allegation that the respondent violated N.J.S.A. 18A:12-24.1(d). (See, N.J.A.C. 6A:28-7.1)

Rather, the Commission finds that issuing a Rice notice to Persi was not an administrative function, but, rather a function of the Board. Yet, Mr. Woska was not the Board President at the time he directed the issuance of the Rice notice and he did not call the sitting Board President to discuss the matter with her or ask her to make the request. Additionally, Woska had no discussions with any other sitting Board member or with Board counsel prior to directing Mr. Edwards to issue the Rice notice, although he acknowledged that prior to the reorganization meeting, he discussed issues related to Mr. Persi with the newly-elected Ms. Terebush, Mr. Pifko and Ms. Leone "in passing."

The Commission notes that "private action" means action taken by a Board member that is beyond the scope of the duties and responsibilities of the Board member. N.J.A.C. 6A:28-7.1. The Commission finds that when Mr. Woska called Mr. Edwards on April 25, 2008 and told him he wanted a Rice notice prepared in order to discuss Mr. Persi's employment at the April 29, 2008 meeting, he took private action, or action outside the scope of his duties as a Board member. Although the Commission acknowledges the argument advanced by counsel for the respondent that there is no legal requirement that a Rice notice be issued only by a Board President or that a Board member first consult with the Board, (Woska Brief, January 6, 2012 at pp. 4-5), and notwithstanding that it does not call into question Mr. Woska's right to bring to the table the question of who should be the chief school administrator in the District, the Commission must disagree with the respondent that it was *his* prerogative to be able to direct the issuance of a Rice notice. Instead, the Commission finds that, under these circumstances, it was *the Board's prerogative* to issue the Rice notice to Mr. Persi or determine who should issue the notice.

Moreover, the Commission finds that Mr. Woska's unilateral action to direct the issuance of the Rice notice not only had the potential to compromise the Board, but, arguably, *did* compromise the Board in that it set off a chain of events which resulted in litigation both before the Commissioner of Education and before the Commission. The Commission finds that this is precisely the type of action which the Code of Ethics for School Board Members was intended to proscribe. (See, Dericks et. al v. Schiavoni, Sparta BOE, Sussex County C41-07 (February 24, 2009) *aff'd* Commissioner of Education Decision No. 260-09SEC, decided August 18, 2009, where a Board member sent a letter to the editor without the full knowledge and consent of the

⁷ It is noted that in Marc Sovelove v. Paul Breda, Mine Hill Twp. Bd. of Ed., Morris County, C49-05 (September 26, 2006), the Commission found that a Board member's action cannot be both board action *and* private action.

Board, in which he speaks on behalf of the Board and addresses Board matters; I/M/O Bruce Freilich, Washington Township Bd. of Ed., Burlington County C18-04 & C19-04 Consolidated, (April 4, 2005) Commissioner of Education Decision No. 156-05, decided May 2, 2005, where a board member sent a letter to a private donor giving the impression that the letter was written on behalf of the Board when, in fact, the Board had not authorized the respondent to send the letter; and I/M/O Randie Zimmerman, Rocky Hill Bd. of Ed., Somerset County (C49-02) (July 22, 2003), Commissioner of Education Decision No. 497-03SEC, decided August 21, 2003, where a Board member investigated a complaint and drafted a letter that appeared to have the endorsement of the Board.)

Although the Commission acknowledges that the respondent believed that Persi was not the best person to be the chief school administrator, the Commission is persuaded that the respondent lost sight of his duty to recognize that authority rests with the Board, including the decision to discuss and review the chief school administrator's employment.⁸ Accordingly, the Commission finds that the complainant has established that the respondent violated N.J.S.A. 18A:12-24.1(e).

DECISION

The Commission finds that respondent Daniel Woska violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members and the Commission dismisses the allegations that the respondent violated N.J.S.A. 18A:12-24.1(a), (c) and (d).

PENALTY

The Commission recommends a penalty of reprimand. In so doing, it reflects on Tony John et al. v. Ken Gordon, Willingboro Bd. of Ed., Burlington County, C34-08 (October 27, 2009), *aff'd* Commission of Education Decision No. 102-10ASEC, decided March 30, 2010, where the respondent, Ken Gordon, violated N.J.S.A. 18A:12-24.1(e) by directing a principal to contact other principals and tell them that a mock election was not a Board event and by directing a principal to tell other principals not to stand in the way of the mock election, notwithstanding that the Interim Superintendent had already informed the principals that the mock election was cancelled. The Commission therein found that the respondent's private action resulted in the principals receiving mixed messages about the mock election.⁹ The Commission recommended a penalty of reprimand and, on appeal, the Commissioner affirmed the finding(s) of violation as well as the penalty of reprimand.

More recently, the Commission recommended a penalty of reprimand in G.M.B. v. Cynthia Zirkle, Cumberland Regional Board of Education, Cumberland County, C44-10 (September 27, 2011) where the respondent was found to have violated N.J.S.A. 18A:12-24.1(e)

⁸ In so finding, the Commission notes that it does not find the respondent's actions relative to Ms. Ceres, as set forth in the Factual Findings herein, are sufficient to base a finding of a violation of the Code of Ethics for School Board Members.

⁹ The Commission also found that Respondent Gordon violated N.J.S.A. 18A:12-24.1(d) and (i).

when she telephoned the Board office, spoke to the Business Administrator and asked what could be done about changing a student's bus pass to the residence of the child's paternal grandfather, rather than the residence of the student's mother, without the knowledge or consent of the student's mother. The Commission found that although the respondent's actions may have been motivated by a misguided attempt to remedy what she believed to be a problem, she overstepped her role as a Board member.¹⁰ See also, Zimmerman, *supra* and Freilich, *supra*.

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.

Robert Bender
Chairperson

Mailing Date: February 29, 2012

¹⁰ This decision is on appeal before the Commissioner of Education.

Resolution Adopting Decision – C25-08

Whereas, the School Ethics Commission has considered the complaint, the answer, the transcripts of the proceedings held in Melindo A. Persi v. Board of Education of the Township of Brick, Ocean County, Commissioner of Education Decision No. 67-11, as well as written and oral arguments; and

Whereas, at its meeting on January 24, 2012, the Commission found that respondent violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members and the Commission dismissed the allegations that the respondent violated N.J.S.A. 18A:12-24.1(a), (c) and (d); and

Whereas, the Commission also voted to recommend to the Commissioner of Education a penalty of reprimand; and

Whereas, at its meeting on February 28, 2012, the Commission agreed that the within decision accurately memorializes its findings and recommendations;

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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on February 28, 2012.

Joanne Boyle
Executive Director