

---

**IN THE MATTER OF  
CHARLES CAREY  
PENNSAUKEN BOARD OF  
EDUCATION  
CAMDEN COUNTY**

---

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**BEFORE THE  
SCHOOL ETHICS COMMISSION**

**Docket No. C27-09  
DECISION**

## **PROCEDURAL HISTORY**

This matter arises from a complaint filed on July 9, 2009 by Michael Stargell alleging that Charles Carey, a member of the Pennsauken Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. An answer was filed on behalf of the respondent on October 5, 2009.<sup>1</sup> The complainant and respondent were notified by letter dated December 29, 2009 that the Commission would review this matter at its meeting on January 26, 2010 in order to make a probable cause determination, in accordance with procedures set forth at N.J.A.C. 6A:28-10.7. At its meeting on January 26, 2010, the Commission found probable cause to credit the allegations that the respondent, whose spouse is employed as a secretary in the District, violated N.J.S.A. 18A:12-24(c) when, on June 25, 2009, he voted to reappoint the non-tenured members of the Administrators Association for Pennsauken for the 2009-2010 school year and to reappoint the members of the Pennsauken Association of Educational Secretaries for the 2009-2010 school year. The Commission also determined to resolve this matter on a summary basis pursuant to N.J.A.C. 6A:28-10.7(c)1, in that the material facts are admitted.

Pursuant to N.J.A.C. 6A:28-10.7(c)1, the respondent was accorded 20 days from the mailing date of the Probable Cause Notice to submit a statement setting forth the reasons he should not be found in violation of the Act. On March 8, 2010, the respondent filed his statement, which challenged the continued significance of the advice rendered by the Commission in *Advisory Opinion A30-05* (March 10, 2006), the basis of the complaint. In this connection, the respondent notes that the District has added Assistant Principals and “the responsibilities in the High School have changed dramatically since 2005.” (Respondent’s Statement at p. 2) The respondent also points out that his spouse is a tenured secretary with a pre-existing contract defining her salary increase, which he took no part in negotiating.

At its March 23, 2010 meeting, and upon consideration of the respondent’s arguments, the Commission found that the respondent violated N.J.S.A. 18A:12-24(c), as set forth below, and recommended a penalty of reprimand.

---

<sup>1</sup> By notice dated January 4, 2010, received by the Commission on January 12, 2010, the respondent notified the Commission that he was no longer represented by counsel and that he would be proceeding *pro se* in this matter.

## FINDINGS OF FACTS

The undisputed facts are as follows:

1. At all times relevant, the respondent was a Board member. He is serving as the President of the Board for the 2009-2010 school year. (Answer at p. 2)
2. The respondent's wife is a tenured secretary for the nurses in the Pennsauken High School's nursing office. (Id. at pp. 3, 9)
3. There are five Assistant Principals at the Pennsauken High School. The respondent's spouse is evaluated by one of the Assistant Principals. The Assistant Principals are evaluated by the Principal who, in turn is evaluated by the Superintendent. (Id. at p. 7)
4. On June 25, 2009, the respondent attended a Board meeting. Item 40 on the agenda included a resolution to reappoint the non-tenured members of the Administrators Association for Pennsauken for the 2009-2010 school year, including the Principal of the Pennsauken High School, Dennis Vinson, at a specified salary. The respondent voted in favor of the motion. (Id. at pp. 5-7; Id. at Exhibit A)
5. On June 25, 2009, the respondent attended a Board meeting. Item 41 on the agenda included a resolution to reappoint the members of the Pennsauken Association of Educational Secretaries for the 2009-2010 school year "at salaries to be adjusted pursuant to the successor collective bargaining agreement with the Pennsauken Association of Educational Secretaries." His wife was included on the list of secretaries, with her approved salary. He voted in favor of the motion. (Id. at pp. 8-10; Id. at Exhibit A)
6. There was no reduction in force in effect for the 2009-2010 school year. (Id. at p. 9)
7. The respondent is "Board Member B" in *Advisory Opinion A30-05* (March 10, 2006).

## ANALYSIS

Based on the undisputed facts set forth above, the Commission previously found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c) when, on June 25, 2009, he voted to appoint the non-tenured members of the Administrators Association for Pennsauken for the 2009-2010 school year, which included the Principal of the High School and when he voted to reappoint the members of the Pennsauken Association of Educational Secretaries for the 2009-2010 school year, which included his wife. N.J.S.A. 18A:12-24(c) provides:

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. No school official

shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

In order to find a violation of N.J.S.A. 18A:12-24(c), the Commission must find evidence that respondent has either: 1) taken action in his official capacity in a matter where he, or a member of his immediate family<sup>2</sup> had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment or 2) acted in his official capacity in a matter where he or a member of his immediate family had a personal involvement that is or created some benefit to him or the member of his immediate family.

#### Action Concerning Employment Issues of the Supervisor of Respondent's Spouse

With respect to the respondent's vote on June 25, 2009 to appoint the non-tenured members of the Administrators Association for Pennsauken for the 2009-2010 school year, the Commission has advised that a Board member whose spouse works in the District may not participate in discussions or vote on employment issues concerning the employee's supervisors. *Advisory Opinion* A10-00 (June 27, 2000); *Advisory Opinion* A30-05 (March 10, 2006). The Commission has affirmed this principle in recent decisions. In I/M/O Richard Filipek, Saddlebrook Bd. of Ed., C18-07 (June 24, 2008) Commissioner of Education Decision No. 317-08, decided July 23, 2008, the Commission found that the respondent Board member, whose spouse was employed in the District, violated N.J.S.A. 18A:12-24(c) by being present in his capacity as president of the Board and running two closed session meetings of the Board when the tenure appointment of the middle/high school principal, his wife's direct supervisor, was discussed, notwithstanding that he did not participate in the vote. The Commission found that the respondent had a direct financial involvement in the tenure appointment of the middle/high school principal that would reasonably be expected to impair his objectivity or independence of judgment. See also, I/M/O William Depsee, Woodland Park Board of Education, Passaic County, C30-09 (January 26, 2010), Commissioner of Education Decision No. 65-10SEC, decided March 11, 2010.

In the instant matter, there is no dispute that the respondent's wife is employed in the District as a secretary for the nurses in the Pennsauken High School's nursing office. According to the respondent, his wife's evaluation is performed by an Assistant Principal. (Answer at p. 7) The Assistant Principal is evaluated by the Principal and the Principal is evaluated by the Superintendent. (Id.) Thus, while the respondent argues in his responsive statement that the existing reporting hierarchy in the District renders *A30-05* inapplicable, the Commission notes that the facts presented for the purpose of that advisory were not appreciably different from those set forth above. Specifically, *A30-05* includes the following recitation of facts:

---

<sup>2</sup> The School Ethics Act at N.J.S.A. 18A:12-23 defines "member of the immediate family" as the spouse or dependent child of a school official residing in the same household. The Commission's regulations at N.J.A.C. 6A:28-1.2 define "spouse" as "the person to whom the school official is legally married under New Jersey law and also includes a partner in a civil union couple as established in N.J.S.A. 37:1-33." Thus, the respondent's spouse is a member of his immediate family.

You have further set forth that board member B has a spouse employed in the district as a secretary in the office of the nurse at the high school. The principal of the high school is the direct and immediate supervisor of the spouse. The Superintendent is the immediate supervisor of the principal of the high school. Board member B's spouse is a member of the secretaries' union and the majority of the terms, conditions and benefits of her employment are subject to collective bargaining. (A30-05 at p. 2)

Thus, in A30-05, the Commission stated, in relevant part:

With regards to board member B, since the high school principal is the direct and immediate supervisor of the board member's spouse, for the reasoning noted above, the board member would violate N.J.S.A. 18A:12-24(c) if he were to participate in any employment issues regarding the principal. (A30-05 at p. 4, emphasis added)

Consequently, the Commission advised that Board member B "would violate N.J.S.A. 18A:12-24(c) if he were to participate in employment issues regarding the principal of the High School and the Superintendent." The Commission further advised that Board member B must recuse himself "from all discussions **and votes** with regard to those administrators." (Id., emphasis added) Although the respondent's action in this matter did not take place in Executive Session, as in Filipek, and even granting that the High School Principal is no longer the "direct and immediate supervisor" of the respondent's spouse, the Commission nevertheless reasons, as it did in A30-05, that "there is an opportunity for the spouse's employment to be affected by the [respondent's] involvement in employment issues related to [the supervisors in his spouse's chain of command] in terms of the way the administrators treat and evaluate the spouse, even if such impact does not affect the contractually determined salary." (A30-05 at p. 4) Thus, when the respondent voted on June 25, 2009 to reappoint the non-tenured Principal of the High School, he was acting in his official capacity in a matter where a member of his immediate family had an indirect financial involvement which a reasonable person could perceive to impair the respondent's objectivity or independence of judgment in violation of N.J.S.A. 18A:12-24(c).

#### Action Concerning the Respondent's Spouse

The Commission now considers the respondent's vote on June 25, 2009 to reappoint the members of the Pennsauken Association of Educational Secretaries for the 2009-2010 school year, which included his wife. The Commission has long held that a Board member may not vote on matters where he, or a member of his immediate family, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. See, I/M/O Wayne Wurtz, Paulsboro Bd. of Ed., C01-96 (May 28, 1996), Commissioner of Education Decision No. 293-96SEC, decided July 9, 1996; I/M/O Barry Levine, Egg Harbor Township School District, C31-97 (July 30, 1998), Commissioner of Education Decision No. 373-98SEC, decided August 26, 1998; I/M/O Lorraine Dunckley, Denville Twp. Bd. of Ed., C37-01 (July 23, 2002) Commissioner of Education Decision No.

330-02SEC, decided September 6, 2002; I/M/O Alexander Sipos, Garfield Bd. of Ed., C20-99 (May 23, 2000) Commissioner of Education Decision No. 221-00, decided July 10, 2000. Even granting that the respondent's wife is tenured and there was no reduction in force in effect for the 2009-2010 school year (Answer at p. 9), the Commission has found that "the employment of one's spouse is a matter which might reasonably be expected to impair one's objectivity." (Sipos, slip op. at p. 3) In this connection, the Commission rejects the respondent's position that his wife's tenure rights shield him from accountability. See, Donna Custode v. Bd. of Education of the Town of Hackettstown, Warren County, Commissioner of Education Decision No. 349-00, decided October 30, 2000, State Bd. of Ed., Decision No. 71-00, *aff'd*. The Commission finds, therefore, that when the respondent voted on June 25, 2009 to reappoint the members of the Pennsauken Association of Educational Secretaries for the 2009-2010 school year at a specified rate, which included his wife, he was acting in his official capacity in a matter where a member of his immediate family had an indirect financial involvement which a reasonable person could perceive to impair the respondent's objectivity or independence of judgment and was also acting in a matter where a member of his immediate family had a personal involvement that is or creates a benefit to her. Therefore, the Commission finds that the respondent violated N.J.S.A. 18A:12-24(c).

## **DECISION**

For the reasons set forth above, the Commission finds that Charles Carey violated N.J.S.A. 18A:12-24(c) when, on June 25, 2009, he voted to reappoint the non-tenured members of the Administrators Association for Pennsauken for the 2009-2010 school year and to reappoint the members of the Pennsauken Association of Educational Secretaries for the 2009-2010 school year.

## **PENALTY**

The Commission recommends a penalty of reprimand. In so doing, it has carefully considered that this respondent was recently found in violation of N.J.S.A. 18A:12-24(c). See, I/M/O Charles Carey, Pennsauken Bd. of Ed., C33-08 (March 23, 2010), which is pending review before the Commissioner of Education pursuant to N.J.S.A. 18A:12-29(c). In this connection, however, the Commission noted that the actions taken by the respondent occurred on June 25, 2009, well before C33-08 was adjudicated by the Commission. Consequently, in this unusual circumstance, the Commission is constrained to recommend a penalty of reprimand, in accordance with its previous decisions. See, I/M/O Wayne Wurtz, Paulsboro Bd. of Ed., C01-96 (May 28, 1996), Commissioner of Education Decision No. 293-96SEC, decided July 9, 1996; I/M/O Barry Levine, Egg Harbor Township School District, C31-97 (July 30, 1998), Commissioner of Education Decision No. 373-98SEC, decided August 26, 1998; and I/M/O William Depsee, Woodland Park Board of Education, Passaic County, C30-09 (January 26, 2010), Commissioner of Education Decision No. 65-10SEC, decided March 11, 2010.

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: April 21, 2010

**Resolution Adopting Decision – C27-09**

**Whereas**, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof; and

**Whereas**, at its meeting on January 26, 2010, the Commission found probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act; and

**Whereas**, the respondent was so notified and accorded 20 days to submit a written statement setting forth the reasons why he should not be found in violation of the Act.

**Whereas**, the respondent submitted a written statement which was considered by the Commission;

**Whereas**, at its meeting on March 23, 2010, the Commission determined that the respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act and recommended a penalty of reprimand; and

**Whereas**, at its meeting on April 20, 2010, 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.

---

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on April 20, 2010.

---

Joanne Boyle, Executive Director