

***Before the School Ethics Commission
Docket No.: D06-21
Decision for Failure to File Complete Personal/Relative and
Financial Disclosure Statements***

***In the Matter of Oliverto Agosto,
City of Orange Township Board of Education, Essex County***

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) at its meeting on July 27, 2021, directing Respondent, a “school official” as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find him in violation of the Act for failing to file complete Personal/Relative and Financial Disclosure Statements (Disclosure Statements) as required by *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1.

In the OTSC that was served on July 27, 2021, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC, and further advised Respondent that failure to respond would be deemed an admission of the facts set forth in the OTSC.¹ Respondent was also notified that, upon receipt of the response or upon expiration of the twenty (20) day time period for so filing, the Commission may proceed to a determination of a violation on a summary basis (i.e., without a hearing or further proceedings) in accordance with *N.J.A.C.* 6A:28-1.6(c), which so permits when the material facts, as here, are not in dispute.

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. By virtue of *N.J.S.A.* 18A:12-23.1, the breadth of the Act was expanded to include charter school trustees and administrators.

Pursuant to *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1(a), all school officials must file, on forms prescribed by the Commission, Disclosure Statements with their local board secretaries or charter school designees, and must do so on or before April 30th of each year. In addition, all newly elected board members or board members appointed to fill vacancies, newly appointed members of a board of trustees of a charter school, and administrators appointed to fill a vacancy must file their Disclosure Statements within thirty (30) days of appointment or taking office. *N.J.A.C.* 6A:28-3.1(c), *N.J.A.C.* 6A:28-3.1(d), *N.J.A.C.* 6A:28-3.1(e), and *N.J.A.C.* 6A:28-3.1(f).

¹ Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission (e-mail) only.

When it is determined that a school official's otherwise timely filed Disclosure Statements are incomplete, the filing shall be returned to the school official, and he shall have twenty (20) days from receipt of the returned filing to complete the Disclosure Statements, and to resubmit them to the local board secretary or charter school designee. *N.J.A.C.* 6A:28-3.4(a). At the expiration of the twenty (20) days, or upon receipt of a filing which continues to fail to provide the information required by *N.J.S.A.* 18A:12-25 and/or *N.J.S.A.* 18A:12-26, the Commission shall issue an Order to Show Cause, directing the school official to show cause as to why the Commission should not impose a sanction. *N.J.A.C.* 6A:28-3.4(b). If the school official fails to submit a response within twenty (20) days, or if the response is returned indicating that the school official refuses to properly file, the "Commission may conclude that a school official's incomplete filing is in effect a failure to file and the Commission shall proceed ... pursuant to the procedures set forth in *N.J.A.C.* 6A:28-3.3." As set forth in *N.J.A.C.* 6A:28-3.3(a), failure to timely file the required Disclosure Statements "shall constitute a violation of the ... Act and may result in the reprimand, censure, suspension or removal of a school official pursuant to the recommendation of the Commission as acted upon by the Commissioner [of Education]." *N.J.A.C.* 6A:28-3.3(a).

With the above in mind, Respondent is a returning school official and, therefore, was required to file complete Disclosure Statements by April 30, 2021. Although Respondent filed Disclosure Statements on June 29, 2021, his filing was rejected. Even though Respondent received reminders as further detailed below, Respondent failed to file complete Disclosure Statements.

More specifically, throughout the months of June and early July, the Commission's staff sent repeated messages to the Board Secretary advising that Respondent had not yet filed complete Disclosure Statements. The electronic correspondence to the Board Secretary further advised that if Respondent failed to file complete Disclosure Statements, the Commission had the authority to issue an OTSC, find Respondent in violation of the Act, and recommend a penalty up to and including removal for non-compliance.

In addition, by electronic correspondence dated July 19, 2021, July 21, 2021, and July 23, 2021, Respondent was reminded that he did not file complete Disclosure Statements. Respondent was further advised that continued failure to file complete Disclosure Statements would result in the Commission issuing an OTSC, and recommending a penalty, up to and including removal.

When Respondent failed to file complete Disclosure Statements as required by *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1, an OTSC was issued by the Commission at its meeting on July 27, 2021. After having been served with the OTSC, Respondent still failed to file complete Disclosure Statements, or to otherwise respond to the OTSC.

III. Decision/Penalty Recommendation

Based on the record as set forth above, and at its special meeting on August 30, 2021, the Commission found that Respondent violated *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1 because he did not file complete Disclosure Statements.

In addition, the Commission readily acknowledges and is sympathetic to the fact that the Coronavirus (COVID-19) has had a significant impact on the daily lives of all people, and believes that reasonable accommodations and extensions of deadlines are appropriate and warranted in certain circumstances. However, the Commission notes that Disclosure Statements are filed annually, can be completed from any computer or device with an internet connection, and that the Commission was only required to issue an OTSC to nine (9) school officials throughout the State for failure to comply with the statutory obligation to file Disclosure Statements. As such, there is no reasonable basis for Respondent, based on the current record, to have failed to comply with this mandate.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed on the school official. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-3.3(a); *N.J.A.C.* 6A:28-10.12. For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **censure**.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. Respondent may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended penalty of the Commission but *not disputing* the Commission's finding of a violation may file, within **thirteen (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, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction."² A copy of any comments filed must be sent to the Commission (school.ethics@doe.nj.gov) 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:4-1 *et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) 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 (thirteen (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 brief on appeal.

Robert W. Bender, Chairperson

Mailing Date: August 30, 2021

² An electronic submission may also be sent to controversiesdisputesfilings@doe.nj.gov.

***Resolution Adopting Decision for Failure to File Complete Personal/Relative and
Financial Disclosure Statements
Docket No.: D06-21***

Whereas, Respondent is a “school official,” as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a school official, Respondent was required to file Personal/Relative and Financial Disclosure Statements (Disclosure Statements) by April 30, 2021; and

Whereas, Respondent failed to file complete Disclosure Statements within the statutorily required timeframe; and

Whereas, at its meeting on July 27, 2021, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause why he failed to file complete Disclosure Statements as required by *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1;

Whereas, Respondent failed to file complete Disclosure Statements following issuance of the OTSC, and failed to otherwise respond to the OTSC; and

Whereas, at its special meeting on August 30, 2021, the Commission found that Respondent violated *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1 by failing to file complete Disclosure Statements; and

Whereas, at its special meeting on August 30, 2021, the Commission recommended that the Commissioner of Education impose a penalty of censure; and

Whereas, at its special meeting on August 30, 2021, 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 its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I hereby certify that the within Resolution was duly adopted by the School Ethics Commission at a special meeting on August 30, 2021.

Kathryn A. Whalen, Director