

***Before the School Ethics Commission
Docket No.: D08-21
Decision for Failure to File Personal/Relative and
Financial Disclosure Statements***

***In the Matter of Franklin Pachay,
The Gray Charter School, 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 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)*.

If a school official fails to file the required Disclosure Statements, the Commission is authorized, pursuant to *N.J.A.C. 6A:28-3.3(b)*, to issue an Order to Show Cause. Moreover, failure to timely file the required Disclosure Statements “shall constitute a violation of the ... Act

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

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 Disclosure Statements by April 30, 2021. Despite this fact, and even though Respondent received reminders as further detailed below, Respondent failed to file Disclosure Statements within the statutorily required timeframe.

More specifically, throughout the months of June and early July, the Commission’s staff sent repeated messages to the Charter School Lead advising that Respondent had not yet filed Disclosure Statements. The electronic correspondence to the Charter School Lead further advised that if Respondent failed to file 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, and July 23, 2021, Respondent was reminded that his Disclosure Statements had not yet been filed. Respondent was further advised that continued failure to file Disclosure Statements would result in the Commission issuing an OTSC, and recommending a penalty, up to and including removal.

When Respondent failed to file 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 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 timely file 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 **removal**, with such removal to become effective immediately upon adoption by the Commissioner of Education.

However, if Respondent files Disclosure Statements before the Commissioner of Education adopts a final decision (which will be forty-five (45) days after the mailing date of the within decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon adoption by the Commissioner of Education.

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 Personal/Relative and
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Docket No.: D08-21***

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 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 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; and

Whereas, Respondent failed to file his 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 Disclosure Statements; and

Whereas, at its special meeting on August 30, 2021, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon adoption by the Commissioner of Education. However, if Respondent files Disclosure Statements before the Commissioner of Education adopts a final decision (which will be forty-five (45) days after the mailing date of the within decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon adoption by the Commissioner of Education; 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