

AGENCY DKT. NO. 614-10/10
SEC DKT. NO. C04-10

IN THE MATTER OF PAUL J. BIRCH, :
 : COMMISSIONER OF EDUCATION
PROSPECT PARK BOARD OF :
 : DECISION
EDUCATION, PASSAIC COUNTY. :

This matter comes before the Commissioner to impose a sanction upon Respondent Paul J. Birch, member of the Prospect Park Board of Education, based upon findings of fact and conclusions of law by the Commission that he violated *N.J.S.A.* 18A:12-24 (c) of the Code of Ethics for School Board Members – as set forth in a complaint against him. The record, the decision of the School Ethics Commission (“Commission”) – including the recommended penalty of censure – and the parties’ exceptions and reply thereto have been reviewed.

Initially, it must be emphasized that – pursuant to *N.J.S.A.* 18A:12-29(c) and *N.J.A.C.* 6A:3-9.1 – the determination of the Commission as to violation of the School Ethics Act is not reviewable by the Commissioner unless a notice of appeal is filed pursuant to P.L. 2008, c. 36 and *N.J.A.C.* 6A:4. Because respondent did not file such an appeal, this decision is restricted solely to a review of the Commission’s recommended penalty.¹

Respondent argues that censure is too severe a penalty because “his actions were so attenuated from any objective impairment or interest (even if there were evidence supporting such a conclusion, which there was not) that such a distinction necessarily should be recognized by the Commissioner and the sanction reduced.” The Commissioner disagrees.

¹ Thus, the Commissioner will not consider respondent’s request, in his exceptions, to amend the Commission’s findings of fact.

First, prior cases – such as *In the Matter of Richard Filipek, Saddle Brook Board of Education, Bergen County*, C18-07 (June 24, 2008) – have not been decided based upon the actual potential for the respondent or his relatives to receive benefit from the respondent's actions. Thus, the distinction which respondent advocates is unsupported by precedent.

Second, the advisory opinions cited by the Commission clearly instruct that once administrators are hired, board officers with immediate family members employed by the district should not participate in discussions or actions relating to any supervising administrators – including the district Superintendent. *See, e.g.*, Advisory Opinions A30-05 (March 10, 2006); A10-00 (June 27, 2000); and A07-06 (July 31, 2006). It is undisputed that respondent participated in negotiating committee discussions, made motions at public meetings and even voted on issues relating to salaries for incumbent administrators.

The Commission found and the Commissioner concurs that the penalty of censure is congruent with penalties imposed in previously decided similar cases. Thus, the Commissioner finds no cause to disturb the Commission's recommended penalty in this matter.

IT IS HEREBY ORDERED that Paul J. Birch be censured as a school official found to have violated the School Ethics Act.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 13, 2010

Date of Mailing: December 13, 2010

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008. C. 36* (*N.J.S.A. 18A:6-9.1*).