

#170-10SEC (SEC Decision: <http://www.nj.gov/education/legal/ethics/2009/C40-08.pdf>)

IN THE MATTER OF THOMAS GUARASCIO, :
BOARD OF EDUCATION OF THE TOWNSHIP : COMMISSIONER OF EDUCATION
OF BERKELEY, OCEAN COUNTY. : DECISION
_____:

SYNOPSIS

The School Ethics Commission (Commission) found that respondent – a member of the Board of Education of the Township of Berkeley – violated *N.J.S.A.* 18A:12-24(c) of the Code of Ethics for School Board Members of the School Ethics Act when he voted, *inter alia*, to: reappoint his wife as a teacher in the District; reappoint the Principal, Assistant Principal and Supervisor of Elementary Education under whom his wife served; and to reappoint his wife as club sponsor for the Scrapbook Club. The Commission recommended the penalty of censure in this matter.

Upon review, the Commissioner – whose jurisdiction is limited to reviewing the Commission’s recommended sanction – concurred that censure is the appropriate penalty for the violations found. Accordingly, the Commissioner directed that respondent be censured as a school officer found to have violated the School Ethics Act.

<p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

June 4, 2010

IN THE MATTER OF THOMAS GUARASCIO, :
BOARD OF EDUCATION OF THE TOWNSHIP : COMMISSIONER OF EDUCATION
OF BERKELEY, OCEAN COUNTY. : DECISION
_____ :

The record of this matter and the decision of the School Ethics Commission (“Commission”) – finding that Berkeley Township Board of Education (Board) member Thomas Guarascio violated *N.J.S.A.* 18A:12-24(c), and recommending a penalty of censure – have been reviewed by the Commissioner pursuant to *N.J.S.A.* 18A:12-29 and *N.J.A.C.* 6A:3-9.1 solely for determination on the Commission’s recommended penalty. Mr. Guarascio (respondent) filed timely exceptions to the Commission’s recommendation pursuant to *N.J.A.C.* 6A:3-9.1 and *N.J.A.C.* 1:6C-18.3, but did not appeal the Commission’s finding of violation pursuant to *N.J.A.C.* 6A:4.¹ The Commission duly replied to respondent’s exceptions.

In his exceptions, respondent reiterates that nothing more than a reprimand is warranted for his “rookie mistakes” – which he has acknowledged committing – and contends that the Commission’s decision fails to address all but one of the mitigating circumstances he presented for the Commission’s consideration, instead imposing an “unduly harsh” penalty not supported by the factually distinguishable case law on which the decision purports to rely. (Respondent’s Exceptions at 1-3) Specifically, respondent renews his stance that: 1) five of his

¹ By letter dated April 30, 2010, the complainant in this matter requested an extension of time within which to submit exceptions to the Commission’s decision; he was advised, however, that no action would be taken on his request because he lacked standing to submit exceptions. *N.J.A.C.* 6A:3-9.1 and *N.J.A.C.* 1:6C-18.3 provide that only *parties* to an ethics matter are permitted to submit exceptions, and, pursuant to the March 1, 2000 holding of the State Board of Education in *In the Matter of Frank Pannucci, Board of Education of Brick Township, Ocean County* – reflected in the above-cited rules and now expressly memorialized at *N.J.A.C.* 6A:28-10.7 (see 41 *N.J.R.* 31) – once the Commission has found probable cause to credit a complaint alleging violation of the School Ethics Act, the Commission becomes the prosecutor of the complaint and the complainant is no longer a party to the matter.

six violations involve 9-0 votes that were “mere formalities” and occurred within minutes of respondent’s seating on the Board; 2) in five of the six cases, respondent and the complainant (a fellow Board member) voted the same way, so that complainant could not have objected to the merit of respondent’s votes; 3) five of the six votes involved a simple renewal of pre-existing positions, with no new positions created and no changes made to job status; 4) despite being a “veteran” Board member while respondent was a “rookie,” the complainant never voiced his concerns to respondent prior to or at the time of the votes in question, opting instead to file a School Ethics complaint; 5) no member of the public has voiced any concern to the Commission so as to warrant a conclusion that the public trust was violated; 6) the complainant sought to withdraw his complaint, but the Commission rejected his request; 7) the fact that respondent and complainant voted the same way five of six times compels the conclusion that this matter constituted “a classic ‘set-up;’” and 8) although there was a difference of opinion between respondent and complainant on one of the six votes at issue, “a simple ‘peep’” at the time would have resulted in respondent’s recusal and avoided any question of violation. (*Id.* at 1-2)

Respondent additionally contends that a bad precedent is being set by subjecting him to censure, since this will invite similar proceedings in other districts having “split” boards; he reiterates that, in his view, the present situation involves a veteran Board member who complained about a rookie – notwithstanding the absence of either public outcry or any attempt to prevent or stop the violations on the part of the veteran – who opted instead to keep quiet until filing a formal complaint at a moment of his own choosing. (Respondent’s Exceptions at 2) Finally, respondent opines that the public reading of a resolution of censure will create “quite the spectacle” given the complainant’s prior silence and the lack of any expressed concern on the part of the public, and that the posting of such resolution in the Board’s public notice area, as

required by law, will have the additional effect of punishing respondent's wife, who is an innocent Board employee. (*Id.* at 3)²

In reply, the Commission asserts that it did, in fact, consider the mitigating factors and case law presented by respondent, but was not persuaded thereby. The Commission summarizes the findings and decisional precedents previously set forth, and adds that the factors cited by respondent over and above his inexperience as a Board member did not relieve him of his duty to abstain from all actions affecting his wife's employment. (Commission's Reply at 1-5)

Upon review, the Commissioner concurs with the Commission that censure of respondent is the appropriate penalty in this matter.

In so holding, the Commissioner is satisfied that the Commission properly considered the nature and circumstances of respondent's violations, as well as his arguments regarding mitigation, and imposed a penalty appropriate to the facts in light of prior decisional law. Like the Commission, the Commissioner finds it particularly significant that – even making reasonable allowance for several violations having occurred at respondent's first meeting as a Board member on April 30, 2008 – respondent committed two similar violations three weeks later and, in September 2008, yet another even after completing new board member training in June. Nor is the Commissioner persuaded by the fact that respondent's votes may not in most instances have altered the ultimate action taken by the Board or affected its current staffing, or by the fact that respondent was not cautioned that he was about to commit – or promptly notified that he had just committed – violations of the School Ethics Act; as the Commission has recognized, the provision violated by respondent speaks to reasonable perception of a potential for biased judgment rather than to actual outcome, and respondent cannot rely on the silence of

² Respondent additionally renews his request that, in the alternative, his violations be found *de minimis* so as not to warrant any penalty, invoking the current rule at *N.J.A.C.* 6A:28-10.12(a) notwithstanding that this matter arose under, and was reviewed by the Commission pursuant to, prior regulations. (See Commission's Decision at 1)

others to explain away his own failure as a school official charged with knowledge of the duties and responsibilities of his office.³ Similarly, the fact that imposition of a censure may cause surprise to members of the public or school community previously unaware of a school ethics proceeding, or chagrin to an employee whose relationship to the sanctioned school official is the basis for a finding of violation, cannot limit the Commission's (or the Commissioner's) ability to impose the statutorily authorized penalty deemed appropriate for the violation found; to hold otherwise would compromise enforcement of the provisions of the School Ethics Act as contemplated by the Legislature and State Board.⁴

Accordingly, there being no basis on which to disturb the Commission's penalty recommendation, the Commissioner hereby directs that Thomas Guarascio be censured as a member of the Berkeley Township Board of Education found to have violated the School Ethics Act.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: June 4, 2010

Date of Mailing: June 4, 2010

³ In this regard, the Commissioner notes respondent's acknowledgement before the Commission, following complainant's assertion that Board candidates receive kits including the School Ethics Act and newly elected Board members receive a copy of the Code of Ethics for School Board Members prior to the reorganization meeting, that he signed the Code of Ethics statements but did not read what was handed to him and that he did not take the time at new board member training to seek clarification on the issues presented by his spouse's employment in the district. (Probable Cause Notice at 3-4; included with respondent's Exceptions as Exhibit F)

⁴ The Commissioner also notes that complainant's attempt to withdraw his complaint cannot serve to mitigate penalty where a violation has been found, since, pursuant to *Pannucci, supra*, it is "not the function of the Ethics Commission...to adjudicate the rights of complainants vis-à-vis school officials"; rather, "the function of a complainant is to bring acts by school officials which may indicate a violation of the School Ethics Act to the attention of the Ethics Commission so as to protect the public's confidence," and it "is the Commission, not the complainant, which is charged in this context with acting as the guardian of the public interest." (Slip Opinion at 9)

⁵ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.