

AGENCY DKT. NO. 4-10/11
SEC DKT. NO. C44-10

G.M.B., :
COMPLAINANT, :
V. : COMMISSIONER OF EDUCATION
CYNTHIA ZIRKLE, : DECISION
CUMBERLAND REGIONAL BOARD OF :
EDUCATION, CUMBERLAND COUNTY :
RESPONDENT. :

The record of this matter and the decision of the School Ethics Commission (“Commission”) came before the Commissioner of Education by way of the October 14, 2011 appeal, pursuant to *N.J.A.C. 6A:4-1.3(c)*, by Respondent-Appellant Cynthia Zirkle (hereinafter “respondent”) of the September 28, 2011 decision of the School Ethics Commission finding her in violation of *N.J.S.A. 18A:12-24.1(e)* of the Code of Ethics for School Board Members, under which she was found to have taken private action that had the potential to compromise the Board. The Commission recommended a penalty of reprimand for such violation. No reply brief was filed by complainant, G.M.B.,¹ or anyone on her behalf.

In her appeal to the Commissioner, respondent does not challenge the factual findings of the Commission, but instead contests whether or not her actions are sufficient to violate the provisions of the Code. Respondent argues that the action she undertook to benefit another was within the scope of her duties and consistent with Cumberland Regional Board of Education Policy #9130, regarding complaints and grievances. This section provides:

When a Board member is confronted with an issue, he/she will withhold commitment and/or opinion and refer the complaint or inquiry to the Superintendent, who shall review the complaint

¹ Initials are used herein to protect the identity of the student.

according to established procedures.

Only in those cases where satisfactory adjustment cannot be made by the Superintendent and the staff shall communications and complaints be referred to the Board of Education.

Respondent states that she was just following the procedure mandated by the policy.

Additionally, the respondent asserts that she did not direct or instruct anyone to act or to refrain from acting like the respondent did in *Tony John, et al. v. Ken Gordon, Willingboro Bd. of Ed., Burlington County, C34-08* (October 27, 2009), *aff'd* Commissioner of Education Decision No. 102-10ASEC, on which the Commission relied to conclude that respondent here also violated the same section of the Code. Instead, she contends that she simply relayed information about a student in need of transportation. In *John*, the respondent actually directed the principal to do something in contravention of the interim Superintendent's actions. Respondent here maintains that she did not act in a similar way.

Respondent also claims that at no time did her actions compromise or have the potential to compromise the Board. Although she admits that she regrets her actions and that she "stupidly thought" that she could help the situation, she posits that her inaction could have compromised the Board as well. Moreover, respondent claims that if this decision and penalty are not reversed, it will chill or inhibit the actions of other board members from reporting deficiencies in an effort to right a wrong.

Upon a thorough review of the record, the Commissioner finds that the respondent's actions were *ultra vires* in that her private action to benefit another was of such a nature that it had potential to compromise the Board. He also makes the following observations: In the instant case, Ms. Zirkle had been a member of the Board of Education for 30 years, having served 16 years as President. J.V., an acquaintance of the respondent for 20 years, advised her that his grandson was staying with him for a few weeks. He said that it was difficult for him arriving at and leaving work on time because he had to drop off and pick up his grandson from school since the bus did not stop at

J.V.'s home. J.V. is an administrator for Fairfield Township and Ms. Zirkle's husband is the Deputy Mayor of Fairfield Township and a committee member. J.V. is the paternal grandfather of the complainant's son. Ms. Zirkle accepted J.V.'s story as true. This conversation and the actions flowing from it took place without the knowledge of the custodial parent, complainant G.M.B. – without her consent and without an opportunity to be heard.

The Commissioner finds that the respondent's intentions were clear from the outset in her answer to the complaint. She states, "I merely reported a situation that did not make sense and needed correction...." Here, Ms. Zirkle violates the very policy she expects to help her: Cumberland Regional Board of Education Policy #9130, *supra*. Under the policy, she – as a board member – was to withhold her opinion and simply report the issue to the Superintendent. Regarding the incident at issue here, respondent formed an opinion quickly and acted on it. Initially, Ms. Zirkle appropriately did so by advising the Superintendent, up the chain of command; however, she continued to "correct" the problem by speaking – down the chain of command – with the Business Administrator, involving someone who could clearly be influenced by her authority and control. She did not ask him to investigate the truth of the matter or seek written authorization; she asked him "to check to see what could be done." When she learned of the changed route the next day, Ms. Zirkle testified that she was surprised that it happened so quickly. She did not testify that she was surprised that it happened at all. Moreover, respondent's failure to allow the Superintendent or the designated standing committee to resolve this issue interfered with the transportation arrangements of the custodial parent, G.M.B., and her child without the parent's consent – thus leaving the Board vulnerable and compromised. As such, respondent Zirkle's private conduct was an action outside the scope of her authority and duties as a board member as described in *N.J.A.C.* 6A:28-6.4(a)5 of the School Ethics Commission's regulations, thereby violating *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members.

Upon full review and consideration, the Commissioner can find no basis on which to disturb the decision of the School Ethics Commission as to its determination of violation, as the Commission's decision is supported by sufficient credible evidence in the record, and respondent has not demonstrated that such decision is arbitrary, capricious or contrary to law. N.J.A.C. 6A:4-4.1(a).

The Commissioner accepts the Commission's recommendation that reprimand is the appropriate penalty in this matter for the reasons expressed in the Commission's decision. In so ruling, the Commissioner is satisfied that in recommending a penalty for the violation it found, the Commission fully considered the nature of the offense and weighed the effects of aggravating and mitigating circumstances. Therefore, the Commission's recommended penalty in this matter will not be disturbed.

Accordingly, IT IS hereby ORDERED that Cynthia Zirkle be reprimanded as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 29, 2012

Date of Mailing: March 29, 2012

² This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.