

BARBARA LESINSKI, :
 :
 PETITIONER, :
 :
 v. : COMMISSIONER OF EDUCATION
 :
 GENEVA SMALLWOOD, : DECISION
 ASBURY PARK BOARD OF EDUCATION, :
 MONMOUTH COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

The respondent in this matter appealed the October 28, 2014 determination of the School Ethics Commission (Commission) that respondent violated *N.J.S.A.* 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members for taking private action that had the potential to compromise the Board; specifically, the Commission determined that respondent – an experienced member of the Board – took private action by contacting two potential candidates for employment and discussing confidential Executive Session matters with a third party. The Commission recommended a penalty of reprimand.

The Commissioner found, *inter alia*, that: the factual record fully supports the Commission’s conclusion that respondent violated *N.J.S.A.* 18A:12-24.1(e) and (g); respondent admitted that she telephoned two potential candidates for employment absent any vote from the Board authorizing her to do so, which exceeded the scope of her duties as a board member and had the potential to compromise the Board; the record includes an e-mail exchange with one of the job candidates which supports the Commission’s conclusion that respondent breached the confidentiality of Board Executive Session deliberations, in violation of *N.J.S.A.* 18A:12-24.1(g). The Commissioner concluded that the respondent’s actions violated the Commission’s code of ethics, and accepted the Commission’s recommendation that a reprimand is the appropriate penalty in this case. Accordingly, the Commissioner ordered that the above-named respondent be reprimanded as a school official found to have violated the School Ethics Act.

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.

March 6, 2015

AGENCY DOCKET NO. 11-11/14A
SEC DOCKET NO. C14-04

BARBARA LESINSKI, :
Petitioner :
v. : COMMISSIONER OF EDUCATION
GENEVA SMALLWOOD, : DECISION
ASBURY PARK BOARD OF EDUCATION,
MONMOUTH COUNTY, :
Respondent. :

This matter involves an appeal of the School Ethics Commission’s October 28, 2014 determination that respondent violated *N.J.S.A.* 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members when she took private action by contacting two potential candidates for employment and discussing confidential Executive Session matters with a third party.¹ The Commission recommended a penalty of reprimand for the violation. Complainant filed exceptions, urging the Commissioner to impose a greater penalty. Thereafter, respondent appealed the Commission’s findings pursuant to *N.J.A.C.* 6A:4-1.3(c). Having carefully reviewed the Commission’s decision and the record in its entirety, the Commissioner finds that the Commission’s decision is supported by sufficient, credible evidence and that respondent failed to establish the decision is arbitrary, capricious or contrary to law. *N.J.A.C.* 6A:4-4.1(a). Additionally, the Commissioner finds that a penalty of reprimand is appropriate.

At the outset, a brief synopsis of the arguments advanced by the parties on exception and appeal is warranted. Complainant, in her exceptions, asserts a greater penalty should be imposed since respondent – the Board President – is a veteran, certificated Board member with

¹The Commission dismissed the allegations that respondent violated *N.J.S.A.* 18A:12-24.1(a), (c) and (d).

eight years experience.² (Petitioner’s Exceptions at 1) On appeal, respondent argues her actions were precipitated by a “misunderstanding” and she “legitimately and in good faith believed she had been authorized to contact Candidates 1 and 2 to gauge their continued interest in a position with the District.” (Respondent’s brief at 3) Contending the finding of violation of *N.J.S.A.* 18A:12-24.1(e) should be reversed, respondent denies that she exceeded her duties as Board President or potentially compromised the Board by calling the candidates. Further, respondent maintains that the Commission’s conclusion as to a violation of *N.J.S.A.* 18A:12-24.1(g) is “nothing more than supposition and conjecture” requiring reversal because she testified that she did not reveal any confidential information to the candidates. (*Id.* at 11) In short, respondent’s arguments on appeal are unpersuasive.

The factual record fully supports the Commission’s conclusion that respondent violated *N.J.S.A.* 18A:12-24.1(e) and (g). First, as to the violation of *N.J.S.A.* 18A:12-24.1(e), respondent admitted that she telephoned two potential candidates for employment absent any vote from the Board authorizing her to do so. (Testimony of Geneva Smallwood, T at 9-12, 60; 24-25, 89; 1-3, 90)³ Six other board members testified credibly that the Board never authorized respondent – formally or informally – to contact the candidates; instead, they agreed during Executive Session that respondent should contact the State Monitor to determine if her “out of the box” plan involving the candidates was viable.⁴ (*SEC Decision* at 12) Absent a formal directive, respondent’s actions exceeded the scope of her duties as a board member and had the potential to compromise the Board. By calling the candidates, respondent could have easily created the impression that she was acting

²Complainant did not file opposition to respondent’s brief in support of the appeal.

³This citation refers to a transcript of a hearing held before the School Ethics Commission on September 23, 2014.

⁴After the State Monitor overruled the Board’s candidate for superintendent in November 2013, respondent hatched a plan to hire both the rejected candidate and another candidate on a trial basis and discussed same with the Board in Executive Session, which led to the present controversy. (*SEC Decision* at 7)

on behalf of her Board when, in fact, they neither authorized her to contact the candidates nor approved her plan to hire them. See *Dericks v. Schiavoni*, Commissioner’s Decision No. 260-09 SEC, decided August 18, 2009, at 5-6 (“communications from individual board members purporting or appearing to represent the full board” violate *N.J.S.A.* 18A:12-24.1(e)) For the reasons expressed in the Commission’s comprehensive decision, respondent’s conduct violated *N.J.S.A.* 18A:12-24.1(e).

Second, as to the violation of *N.J.S.A.* 18A:12-24.1(g), respondent’s appeal brief fails to address a crucial document that she offered as evidence before the Commission – a revealing e-mail exchange with one of the candidates. (T at 19-24, 67; 4-25, 71; Respondent’s Exhibit 3) Simply stated, the e-mails demonstrate that her discussion with said candidate was not limited to gauging his interest in future employment. Rather, at the candidate’s request, respondent subsequently arranged an in-person meeting between her “delegation” and the candidate’s “group” to discuss his “attributes.” (Respondent’s Exhibit 3) After the meeting, respondent e-mailed the candidate noting that she “found the exchange interesting and informative,” that she would be reporting back to the Board, and that she was “doing everything” she could to “resolve this CSA situation.”⁵ (*Ibid.*) These e-mails support the Commission’s conclusion that respondent breached the confidentiality of Executive Session deliberations when she called the candidates and discussed her plan “in greater detail than simply gauging the candidates’ interest,” thereby sharing

⁵Although cited by respondent, *Verhasselt v. Madden*, SEC Decision No. C40-06, decided September 23, 2008, is distinguishable from the present matter – mainly due to respondent’s own admissions (both her testimony during direct examination and her e-mail exchange with the candidate). In *Verhasselt*, the record lacked sufficient evidence to prove a violation of *N.J.S.A.* 18A:12-24.1(e) and (g) when complainant relied solely upon respondent’s inconclusive answers to interrogatories and depositions in a civil matter. By contrast, there is nothing inconclusive about respondent’s testimony or the content of the e-mail messages she offered as evidence.

confidential information with a third party.⁶ (*SEC Decision* at 13) For the reasons expressed in the Commission's comprehensive decision, respondent's conduct violated *N.J.S.A.* 18A:12-24.1(g).

As to penalty, the Commissioner accepts the Commission's recommendation that a reprimand is appropriate for the reasons expressed in its decision. Moreover, the Commissioner finds that issuance of a reprimand here is in accord with the penalties in prior cases involving violations of *N.J.S.A.* 18A:12-24.1(e) and (g). Therefore, the Commission's recommended penalty will not be disturbed.

Accordingly, IT IS ORDERED that Geneva Smallwood is hereby reprimanded as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.⁷

COMMISSIONER OF EDUCATION

Date of Decision: March 6, 2015

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⁶Although respondent denied that she revealed anything confidential during her conversations, the Commission determined her testimony on that issue lacked credibility. (*SEC Decision* at 13)

⁷This decision may be appealed to the Superior Court, Appellate Division, pursuant to P.L. 2008, c. 36. (*N.J.S.A.* 18A:6-9.1)