288-19SEC

Agency Dkt. No. 2-3/19A
SEC Dkt. No. C34-18 (https://www.state.nj.us/education/legal/ethics/2019/C34-18.pdf)

New Jersey Commissioner of Education

Final Decision

Walter Fields,

Complainant,

v.

Stephanie Lawson-Muhammad, South Orange-Maplewood Board of Education, Essex County,

Respondent/Appellant.

This matter involves an appeal of the School Ethics Commission's (SEC) March 26, 2019 determination that appellant Stephanie Lawson-Muhammad – a member of the South Orange-Maplewood Board of Education (Board) – violated *N.J.S.A.* 18A:12-24.1(e)[1] and (f)[2] of the School Ethics Act (Act) based on her conduct during an April 27, 2018 traffic stop. The SEC recommended a penalty of a six-month suspension for the violations. The appellant filed a Notice of Appeal appealing the SEC's finding of a violation pursuant to *N.J.A.C.* 6A:4-1.3(c).

In her appeal to the Commissioner, the appellant maintains that the SEC erred in finding that she violated *N.J.S.A.* 18A:12-24.1(e) and (f) of the Act.[3] The appellant argues that her

[1] *N.J.S.A.* 18A:12-24.1(e), states "I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board."

[2] *N.J.S.A.* 18A:12-24.1(f), states "I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends."

[3] This decision provides a summary of the arguments advanced by the appellant on appeal. Many of the arguments reiterate the substance of the submissions below that were fully outlined in the SEC's March 26, 2018 decision and will not be repeated herein.

speech during the traffic stop was clearly "beyond the scope of [her] authority and duties as a board member" and thus was private action. While some of her speech during the stop was undeniably lamentable, it did not have the potential to compromise the Board. The appellant cites to the Advisory Opinion of the School Ethics Commission, No. A03-07, decided April 2, 2007, for the proposition that "board members do not surrender the rights that they have as a private citizen, such as First Amendment rights, when they become a board member." Indeed, the SEC must balance "a board member's rights as a private citizen with the interests of the Legislature in ensuring that a board … avoids conduct that would violate the public trust or create a justifiable impression among the public that trust is being violated."

The appellant stresses that at no point during the stop did she engage with a member of the public; rather she had a personal interaction with Officer Horst, a public official, that was fully unrelated to the Board. When a board member's work or duties are not implicated, there must be evidence of an explicit request for preferential treatment or a nexus between the invocation of the member's position and the benefit sought, which did not occur during the stop. Appellant argues that during her initial introduction to Officer Horst, she did not "create … the impression that she was representing the interests of the Board" when she mentioned her board membership. Further, at no point during the stop did the appellant link her position on the Board to her relationship with South Orange Village President, Sheena Collum. The complainant did not present any evidence that the two mentions of Ms. Collum's name invoked "special or elevated standing" sufficient to constitute an abuse of public trust. The appellant also emphasizes that but for an anonymous government actor taking steps to release the video into the public domain, the public would not have had knowledge of the traffic stop, as the stop had nothing to do with Board business.

In addition, the appellant argues that there was no evidence presented showing that she used the schools to acquire some benefit for personal gain as required to establish a violation of *N.J.S.A.* 18A:12-24.1(f). Moreover, the SEC's assertion that the failure to accrue a benefit is "of no moment, as [appellant's] outspoken threat to do so is sufficient" is legally and factually incorrect. First, actual proof of the accrued benefit is required by the statute to substantiate a violation. *See N.J.A.C.* 6A:28-6.4(6) ("Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(f) shall include evidence that the respondent(s) … used the schools in order to acquire some benefit for the respondent(s) …"). Here, the appellant received no benefit in mentioning Ms. Cullom's name as she later appeared in court and paid a fine for the summons issued by Officer Horst. Secondly, appellant contends that name dropping is not a threat nor is it inappropriate. The SEC completely leaves out of its factual summary and subsequent analysis the detail that the appellant called her husband during the stop, who informed her and Officer Horst that he was in possession of the couple's current insurance card. Both invocations of Ms. Cullom's name were made in reaction to what appellant perceived as unfair statements by Officer Horst and a direct reaction to the fact that she did not believe she did anything wrong. Her reference to "Sheena" and calling Chief Kroll a "skinhead" is in direct response to what the appellant believes to be an injustice and her desire to remedy same. Therefore, the SEC's findings must be found to be arbitrary and contrary to law.

Additionally, the appellant asserts that the SEC's analysis of the aggravating factors that allegedly justify the unduly harsh recommended penalty is without merit. Naming her speech "offensive and inappropriate," the SEC ridicules appellant's statement to Officer Horst that "you guys hurt black people." The SEC failed to consider the appellant's words within a broader cultural context or to understand appellant's desire to immediately dispel any concern

Officer Horst may have entertained as to whether, as a black woman, she might pose a threat to him. Given the contemporaneous racially motivated events occurring around the country involving police officers, appellant's fears – while not entirely rational – were justified.[4] The complainant's assertion that the appellant's fear was not only unreasonable but also offensive, without any collaborating evidence, further underscores the arbitrary nature of the SEC's finding that the appellant's speech was offensive. Moreover, the appellant mentioned being on the Board and being a member of the community within seconds of the stop to provide her credentials so that the officer knew that she was not a "dangerous black woman." The appellant also points out that punishing an individual in their personal capacity for not being adequately deferential is dubious on its face and implicates the First Amendment. While the SEC may not have liked the tenor of the appellant's language, the SEC's displeasure cannot and does not support a violation of the Act. The appellant also disagrees with the SEC's characterization of "skinhead" as a racial slur, arguing that it may qualify as an epithet, but it is not a racial one.

In analyzing her conduct in conjunction with past cases, the appellant notes that the SEC cites to the cases collectively referred to as *Pleasantville*. *See Hyman, et al. v. Davenport*, SEC Dkt. Nos.: C31-13, C28-13, C45-13, C41-13, C42-13, C43-13, C44-13, *affirmed*, Commissioner Decision No. 113-18SEC, decided April 13, 2018. In that case, the board member respondent, Lawrence Davenport, accosted a pregnant principal in the elevator about a comment the principal's mother made, resulting in the principal having to call law enforcement. The same board member later called a school district employee a "stupid n***er" in an exchange regarding school business that occurred on school property. In that case, the SEC recommended a sixty-day

[4] Appellant cites to various sources and documented incidents that have occurred throughout the country to provide context as to why she was fearful during the stop.

suspension. Using *Pleasantville* to justify the severity of the appellant's penalty, the SEC finds that unlike the *Pleasantville* matter, the appellant was not "involved in a mutual verbal exchange," and that the respondent in *Pleasantville* "denied" his racist behavior; finally, and most outrageously, the respondent's action in *Pleasantville* "did not impact anyone other than him …." The appellant claims that these justifications are as shocking as they are inapposite. Unlike in *Pleasantville,* no nexus exists between the appellant's interaction with Officer Horst and the Board or a school employee. The appellant did not take any action, either with Officer Horst or Ms. Collum, under the auspices of Board authority. Thus, the alleged "aggravating factors" used here as the basis for the SEC's severe penalty recommendation are arbitrary and without basis in fact or law.

Finally, the appellant cites to various cases where the SEC has recommended a penalty of a reprimand or a censure. By contrast, the appellant stated that suspension was only proposed as a sanction in the most egregious breaches of trust, including confrontations between a board member and members of the public involving threats of or actual physical violence and/or harassment, or soliciting financial donations which could have been perceived as under the auspices of the board. *See, In the Matter of Jan Rubino*, SEC Dkt. No. C16-08, decided September 28, 2010. Therefore, the appellant maintains that the SEC's recommended six-month suspension should be rejected, and the Commissioner should determine that the SEC failed to provide credible and corroborating evidence to support its finding of a violation of *N.J.S.A.* 18A:12-24.1(e) and (f) of the Act.

In his response brief, the complainant maintains that the SEC acted appropriately and within the scope of its authority in finding that the appellant violated the Act. *N.J.S.A.* 18A:12-24.1(e) and (f) represent a minimal expectation of a school board member as these provisions speak

to a basic level of behavior and decency.[5] In her appeal of the SEC's findings, the appellant demonstrates an inability to surrender her self-interest for the welfare of the South Orange-Maplewood School District. The complainant stressed that the SEC provided the appellant with ample opportunity to make her case and properly deliberated on the testimony and the evidence provided at the hearing in reaching its decision. The standard of review of the SEC's decision is whether the decision is arbitrary and capricious, which is a significantly high burden for the appellant.

The complainant also contends that the appellant offers a misconstrued interpretation of the Act, as the appellant suggests that since there was no direct action between a board member and the public that involved actual business of the Board, her speech did not violate the Act. This is a misrepresentation of the spirit and intent of the Act and further, *N.J.S.A.* 18A:12-24.1(e) does not reference "direct action." The integrity of the Board is called into question when a member: presents herself as a Board member during a traffic stop; attempts to qualify her public standing to evade being issued a traffic summons when she is guilty of violating a municipal statute; uses her political connections to try to intimidate the officer; and then insults a public employee and denigrates the employee's superior by calling him a racist epitaph. Moreover, there is no question that the appellant sought to use her public position in a private action for personal gain, and by doing so violated the Act. The appellant's claim that the term "skinhead" is not a racial epithet is disingenuous and inconsistent with the fact that the word is universally associated with extremist views held by white males whose appearance includes shaved heads and tattoos.

[5] This decision also provides a summary of the arguments advanced by the complainant on appeal. Many of the arguments reiterate the substance of the submissions below that were fully outlined in the SEC's March 26, 2018 decision and will not be repeated herein.

Additionally, the complainant argues that the appellant wrongfully seeks to have the Commissioner believe that she had reason to fear the officer due to the current social climate. Yet at no time did Officer Horst make a threat: he spoke respectfully and in an even tone, and went so far as to let the appellant's daughter exit the car and walk to school. The appellant is clearly seeking to take advantage of current tensions in the relationship between the African American community and law enforcement. However, the appellant's behavior was irresponsible, unattached to the substantive issues African Americans have faced with local law enforcement, and is abusive of real efforts to resolve long-standing issues. Finally, in its March 26, 2019 decision, the SEC made clear that it had taken into consideration all "mitigating factors" and levied a penalty that could have been more severe. The appellant's behavior cannot be condoned as acceptable: her service is a privilege and not an entitlement. As a result, the complainant contends that the SEC's decision should be adopted by the Commissioner.

Upon a comprehensive review of the record – which includes a video of the April 27, 2018 traffic stop, as well as the sound recording of the hearing before the SEC on November 27, 2018 – the Commissioner finds that the appellant has not established that the SEC's decision, finding violations of the Act, is arbitrary, capricious, or contrary to law. *N.J.A.C.* 6A:4-4.1(a). The facts in this case are not in dispute as the video of the traffic stop clearly depicts the appellant's behavior and her interaction with Officer Horst. There is no evidence in the record to suggest that the SEC was unreasonable in determining that the appellant violated *N.J.S.A.* 18A:12-24.1(e) and (f) in referencing her membership on the Board and her relationship with the South Orange Village president. Regardless of the appellant's motivation for identifying herself as a Board member, the fact that she did so at the very least gave the appearance of impropriety, and it was not unreasonable for the SEC to find that it linked her Board membership to the traffic stop.

Likewise, based on the video of the traffic stop, it was not unreasonable for the SEC to determine that the appellant used the schools for personal gain when she stated her position as a Board member and referenced her relationship with the South Orange Village president. The Commissioner is mindful of the appellant's contention that, but for an anonymous source providing the video to the complainant, the circumstances surrounding the traffic stop would have remained a personal issue. However, the video did ultimately become public and the impact that it has had on the Board and the community cannot be ignored.

Turning to the appropriate penalty, and while in no way minimizing the appellant's conduct, the Commissioner finds that the SEC's recommended penalty of a six-month suspension is not supported by the evidence in the record and is inconsistent with penalties recommended by the SEC in other cases. In recommending the extreme penalty of a six-month suspension, the SEC assessed the appellant's conduct during the traffic stop and her testimony before the Commission in an unduly harsh manner. Moreover, the weight afforded to the aggravating factors by the SEC was disproportionate to that afforded to the mitigating circumstances in light of the nature of the offense.

Specifically, the Commissioner disagrees with the SEC's conclusion that "seemingly without any reasonable basis" the appellant stated "[a]nd I am scared of cops because you guys hurt black people." The SEC did not give due consideration to the fact that the appellant testified that she was afraid and, more importantly, the SEC appeared to minimize the anxiety the appellant experienced during the traffic stop. Whether the SEC believes that the appellant should or should not feel a certain way is immaterial here; rather, in evaluating an appropriate penalty, the motivation behind appellant's behavior must be fully considered.[6] Although the appellant's use

[6] In the March 26, 2019 decision, the SEC did state that in recommending the penalty of a six-month suspension, it "gave due consideration to [appellant's] testimony as to how she felt during the traffic stop, and her stated mindset on

of inappropriate language was not necessary, it was also not unreasonable for the appellant to feel insulted when Officer Horst offered to call an ambulance given her mindset that morning. The appellant's testimony at the hearing about why she felt the way she did (*i.e.*, her concern for her personal safety as a black woman during a traffic stop; her stress about getting her kids to school; her irrational response to her interaction with Officer Horst) was overall very compelling in light of the circumstances.

Further, a review of the hearing testimony reveals that the appellant was contrite, recognizing that she was anxious and overreacted during the traffic stop, and she unequivocally conceded that she was rude to Officer Horst. *Audio of the November 27, 2018 Code Hearing* (*Audio*) 1:17, 1:19, 1:30. Appellant also emotionally testified about the impact that this situation has had on the community, the police chief, Officer Horst and herself, stressing that she "had a very bad day" and that she is not proud of her behavior nor is she trying to justify her conduct. *Audio* 1:45-47. [7] As such, the Commissioner does not agree with the SEC's finding that an aggravating factor was the appellant's failure to recognize that her words could negatively impact the public's perception of the Board. Clearly, the appellant has also been personally impacted by the public release of the video. As she emphasized during the hearing, "[m]y worst moment was caught on film and I have had to pay for it." *Audio* 1:47.

The Commissioner also finds that the recommended penalty is inconsistent with the penalty recommended by the SEC in other cases. Most notably, in *Hyman*, s*upra*, board member

actual and observed interactions with police officers." This statement, however, is not consistent with the SEC's ultimate characterization of the appellant's conduct and the unduly harsh penalty recommendation.

[7] The appellant also apologized to the police chief and issued a formal statement of apology at a board meeting. With respect to the fact that the appellant did not issue an apology to Officer Horst, the record reveals that there are clearly some unresolved feelings between the appellant and Officer Horst. It was undoubtably a bad interaction with Officer Horst, but it was a stretch for the SEC to conclude that the appellant "attempted to escalate the situation."

Lawrence Davenport was found to have violated *N.J.S.A.* 18A:12-24.1(e), (g) and (i) when he: approached and questioned a pregnant principal in the elevator of the middle school about a personal matter, causing the principal to visit her doctor and call law enforcement; had an exchange with a district employee on school premises that resulted in Mr. Davenport giving the employee the middle finger and calling him a "stupid n***er"; and blatantly disregarding the board's policies regarding the use of facilities. The totality of Mr. Davenport's conduct, which involved three separate incidents on school grounds over the course of several months, was far more egregious and offensive than the conduct displayed by the appellant in this case. Yet, in *Hyman*, s*upra*, the SEC recommended a sixty-day suspension for Mr. Davenport's "completely inappropriate conduct" and "wholly unacceptable decision making," while recommending a six-month suspension in this case.[8]

Moreover, the appellant's interaction with Officer Horst was an isolated incident that did not occur in a school setting or at a board meeting, as the only link to the Board was the appellant's statement that she was a board member. This stands in contrast to the facts in *In the Matter of John Talty and Sharon Kight, Brick Township Board of Education, Ocean County*, SEC Dkt. No. C18-05 and C19-05, *affirmed*, Commissioner Decision No. 84-06SEC, decided March 1, 2006, where the board member received a sixty-day suspension for verbally and physical confronting a member of the public that actually took place at a board meeting. Similarly, the six-month suspension imposed on the board member in *In the Matter of Jan Rubio, Matawan-*

[8] In its March 26, 2019 decision, the SEC appeared to suggest that the conduct in this case necessitated a more severe penalty than Mr. Davenport received because the appellant and Officer Horst were not involved in a mutual verbal exchange; Mr. Davenport denied giving the employee the middle finger and using the racial epithet; and Mr. Davenport's actions did not impact anyone other than him. The Commissioner disagrees with the SEC's comparison of the circumstances in *Hyman, supra*, with the appellant's conduct in this case. The fact that Mr. Davenport had the benefit of no video evidence of his inappropriate conduct does not negate its existence and degree of egregiousness. Further, the Administrative Law Judge who had the opportunity to observe the demeanor of the witnesses at the hearing and assess their credibility found that Mr. Davenport did in fact give the employee the middle finger and call him a "stupid n***er"

Aberdeen Regional School District Board of Education, Monmouth County, SEC Dkt. No. C16-08, *affirmed*, Commissioner Decision No. 494-10, decided November 15, 2010, resulted from Code violations for soliciting – via the school email system – and receiving campaign contributions from school employees. The impact on the integrity of the boards of education in those cases was far more pronounced than in the instant case.

Although a six-month suspension is unduly harsh, the Commissioner agrees with the SEC that the proven conduct necessitates some form of penalty. The traffic-stop video reveals that appellant displayed questionable judgment in referencing her Board membership and her relationship with the South Orange Village president. Further, the use of inappropriate language toward Officer Horst and offensively referring to the police chief as a "skinhead" had a detrimental effect on the Board and the community. Therefore, the Commissioner finds that a 30-day suspension is a sufficient penalty to impress upon the appellant the significance of her errors in judgment displayed in this matter.

Accordingly, IT IS ORDERED that respondent is hereby suspended from the South Orange-Maplewood Board of Education for thirty (30) days as a school official having found to have violated the School Ethics Act.

IT IS SO ORDERED.[9]

COMMISSIONER OF EDUCATION

Date of Decision: October 31, 2019

Date of Mailing: October 31, 2019

[9] 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)