

SEC Dkt No. C48-18
OAL Dkt. Nos. EEC 017338-18
Agency Dkt. No. 3-3/20A

New Jersey Commissioner of Education

Final Decision

James Smith,

Complainant,

v.

Emmanuel Capers,

Appellant.

This matter involves an appeal of the School Ethics Commission’s (Commission) March 17, 2020 decision that appellant Emmanuel Capers, a member of the Paterson Board of Education, violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code) when he attended an all-expenses-paid conference offered by a potential vendor of the school district. 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 appellant failed to establish that the decision is arbitrary, capricious or contrary to law. *N.J.A.C.* 6A:4-1.1(a). However, the Commissioner finds that a six-month suspension is the appropriate penalty in this case.

The complaint in this matter alleged that appellant violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) when he attended a conference presented and paid for by Woz U – an entity that offers coding programs

to school districts – and brought Woz U to the attention of the district as a possible vendor. The Commission dismissed the allegation that appellant violated *N.J.S.A.* 18A:12-24.1(a) and transmitted the remainder of the matter to the Office of Administrative Law (OAL). Following a hearing, the Administrative Law Judge (ALJ) concluded that appellant did not violate any of the provisions of the Code that were alleged in the complaint. In its March 17, 2020 decision, the Commission adopted the ALJ’s factual findings, but rejected her legal conclusions. The Commission found that appellant violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) of the Code and recommended a penalty of removal.

In his appeal and exceptions, appellant argues that the conclusion that he violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) is not supported by the record. Regarding *N.J.S.A.* 18A:12-24.1(c), appellant notes that the ALJ found that his actions in providing information about Woz U’s programs were consistent with his position on the curriculum committee and did not constitute an impermissible framing of policies or plans. In reversing the ALJ’s conclusion, the Commission found that his “advocacy” for the program was “problematic” given his “pre-existing – yet not completely defined” relationship with a representative of Woz U. Appellant argues that the Commission does not explain how this relationship was sufficient to support a finding that he took board action to effectuate policies or plans without consulting those affected by those policies or plans, or that he took action that was unrelated to his duties. Furthermore, according to appellant, the Commission erred in concluding that there was no legitimate reason for a board member to accept an all-expenses paid trip to the conference and claims that he attended not only to learn about Woz U’s offerings, but to gain a broader understanding of effective education techniques related to technology in low-income schools. Appellant indicates that he was transparent about his attendance at the conference and

recused himself from the eventual vote taken on Woz U. He further argues that he did not hold himself out to be speaking for the Board or acting in his capacity as a Board member when he accepted the trip and, therefore, his actions were private actions, not Board actions.

Regarding *N.J.S.A.* 18A:12-24.1(e), appellant argues that the record demonstrates that he made no personal promises to anyone connected to Woz U, and that his attendance at the conference was not conditioned on Woz U eventually becoming a vendor for the district. Appellant contends that the Commission's conclusion that his actions had the potential to compromise the Board was unsupported. According to appellant, he engaged in private actions that were not of the type that the Code is intended to proscribe. Appellant further notes that the superintendent's recommendation that he not attend the conference is irrelevant, because he is not an employee of the district and the superintendent does not have the authority to order a Board member to do – or to refrain from doing – anything.

Regarding *N.J.S.A.* 18A:12-24.1(f), appellant argues that the Commission improperly found that he accepted the trip in his capacity as a Board member, because that conclusion is unsupported by the record. Appellant contends that there is no evidence that he “used the schools” for personal gain.

With respect to the penalty, appellant argues that it is unduly harsh and is based on a mischaracterization of his actions. Appellant notes that removal is reserved for the most egregious cases in which a board member's actions render him unfit to continue to serve, citing to cases in which removal was the appropriate penalty and contrasting the actions of board members in those cases with his own. According to appellant, censure would be a more appropriate remedy if he is found to have violated the Code, because there is no indication that he was acting in bad faith or that he repeatedly acted in violation of the Code.

Upon a comprehensive review of the record, the Commissioner finds that the decision of the Commission that appellant violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) is supported by sufficient credible evidence, and appellant has not met his burden of establishing that the Commission's decision is arbitrary, capricious, or contrary to law.

The evidence and testimony at the hearing demonstrates that appellant took action unrelated to his duties as a board member, which is sufficient evidence under *N.J.A.C.* 6A:28-6.4(a)(3) to demonstrate a violation of *N.J.S.A.* 18A:12-24.1(c). The ALJ based her conclusion that appellant did not violate this provision on the fact that he was on the curriculum committee, and she inferred that bringing a program to the district's attention was consistent with appellant's duties as a member of that committee. However, the ALJ's conclusion failed to address the appellant's action in accepting a trip from Woz U. The Commission was not arbitrary, capricious, or unreasonable in concluding that there is no legitimate reason for an individual board member to accept an all-expenses-paid trip to a conference in order to learn about a product.¹ There are certainly means of learning about such programs that do not include accepting a trip from a potential vendor; in fact, Woz U had already provided at least one live presentation about its programs to district representatives prior to Appellant's acceptance of the trip. Notably, the district's administrators, who are responsible for implementing the curriculum, declined the offer to attend the conference, demonstrating that the type of "research" appellant conducted at the conference was unnecessary to a decision regarding the district's possible future use of Woz U programs. Moreover, appellant himself recognized the conflict resulting from his

¹ The Commissioner does not find appellant's arguments regarding the other offerings at the conference to be persuasive. It defies common sense to suggest that the primary purpose of a conference presented and paid for by a vendor was not to sell that vendor's product.

attendance at the conference, indicating at the time he accepted the trip that he would recuse himself from any vote related to Woz U. Research into a program that was appropriate and consistent with appellant's position on the curriculum committee would not result in his being unable to vote on the district's implementation of that program.

Furthermore, appellant's actions went beyond the scope of his duties as a board member and had the potential to compromise the Board, which is sufficient evidence under *N.J.A.C.* 6A:28-6.5(a)(4) to demonstrate a violation of *N.J.S.A.* 18A:12-24.1(e). The Commission was not arbitrary, capricious, or unreasonable in concluding that appellant's acceptance of the trip could have compromised both the Board's ability to contract with Woz U and the public's opinion of the Board's integrity. While the appellant argues that he made no personal promises to Woz U, such is not required by *N.J.A.C.* 6A:28-6.4(a)(5), which provides that evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) may include that "respondent made personal promises or took action beyond the scope of his or her duties" (emphasis added); *see also Persi v. Woska*, 2017 *N.J. Super.* Unpub. LEXIS 625, *7 (App. Div. Mar. 10, 2017) (finding that action taken by a board member that is beyond the scope of his authority and duties as a board member meets the definition of "private action" and is sufficient to demonstrate a violation of the Code). Moreover, the fact that appellant apparently did not attempt to influence the votes of the other Board members does not counteract the appearance of impropriety resulting from his acceptance of an expensive trip from a vendor that had the potential to do business with the Board. Members of the public who were aware of the gift would rightly question the Board's integrity regarding any vote related to Woz U.

Finally, these actions clearly show that appellant used the schools in order to obtain a benefit – a trip – for himself, which is sufficient evidence under *N.J.A.C.* 6A:28-

6.5(a)(6) to demonstrate a violation of *N.J.S.A.* 18A:12-24.1(f). The trip was offered to board members and school personnel, and thus was clearly related to those individuals' positions relative to the schools.

With respect to the appropriate penalty, the Commissioner finds that removing the appellant from the board is an unduly harsh penalty for the proven violations. Notably, the Commissioner disagrees with the Commission that removal is the only penalty sufficient to deter board members from accepting gifts from vendors. The Commissioner also disagrees with the appellant's assertion that the lack of bad faith makes censure the appropriate penalty. Appellant was well aware of the impropriety of his decision to accept the trip. Although he was not an employee of the district and therefore not required to follow the directive of the superintendent that staff not attend the conference due to ethical concerns, he was aware of those concerns and nonetheless chose to reap a benefit worth several thousand dollars from his position as a board member.

Looking to other matters, the Commissioner finds a similar level of misconduct in *Yafet v. Smith, Hillside Board of Education, Union County*, SEC Dkt. No. C24-01 (Oct. 27, 2008), *affirmed*, Commissioner Decision No. 156-09A (May 15, 2009), in which a board member (Smith) sent multiple memoranda criticizing a school principal, despite having a conflict of interest because that principal supervised the board member's wife. Finding four violations of the Code, including *N.J.S.A.* 18A:12-24.1(e) and (f), Smith received a six-month suspension. In setting that penalty, the Commission reviewed other cases and concluded that Smith's conduct was not as egregious as that of board members in other cases who had been removed from their positions, because the violations did not occur on multiple occasions or through a variety of acts. However, the Commission also found that censure was not

appropriate, because the conflict of interest was clear, and Smith had notice that his actions were improper. The Commission therefore concluded that a six-month penalty was appropriate. *See also, In the Matter of Jan Rubio, Matawan-Aberdeen Regional School District Board of Education, Monmouth County*, SEC Dkt. No. C16-08, *affirmed*, Commissioner Decision No. 494-10, decided November 15, 2010 (Six-month suspension imposed on a board member resulting from Code violations for soliciting – via the school email system – and receiving campaign contributions from school employees.).

Here, while appellant has violated three provisions of the Code rather than the four provisions at issue in *Smith, supra*, his conduct in accepting a gift from a potential vendor had significant potential to compromise the public’s opinion of the Board’s integrity. Balancing these factors, the Commissioner finds that a six-month suspension is the appropriate penalty in this case.

Accordingly, appellant is hereby suspended for six months as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.²

INTERIM COMMISSIONER OF EDUCATION

Date of Decision: October 20, 2020
Date of Mailing: October 23, 2020

² This 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*).