

284-20SEC

SEC Dkt No. C09-19 (SEC decision: <https://www.nj.gov/education/legal/ethics/2020/docs/C09-19.pdf>)

OAL Dkt. No. EEC 10213-19

Agency Dkt. No. 4-6/20A

## New Jersey Commissioner of Education

### Final Decision

James J. Lynch,

Complainant,

v.

Michael Skowronski, East Greenwich  
Township Board of Education,  
Gloucester County,

Appellant.

This matter involves an appeal of the School Ethics Commission’s (Commission) May 19, 2020 decision that appellant Michael Skowronski, a member of the East Greenwich Township Board of Education (Board), violated *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code) when he sent an email to his fellow Board members that included confidential information and, due to the use of the “reply all” function, copied a member of the public on the email. 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).

The complaint in this matter alleged that appellant violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(g) when he emailed confidential information to a parent of

students in the district, who was also employed by the Board as a teacher. The parent had made a complaint against Dr. James Lynch, who was the district's superintendent. The Board president emailed the parent and the members of the Board, expressing support for Dr. Lynch. Appellant replied to the email, raising issues for his fellow Board members to consider related to the handling of the parent's complaint; appellant used the "reply all" function, such that the parent also received the email.

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 Dr. Lynch failed to prove that appellant violated *N.J.S.A.* 18A:12-24.1(g). In its May 19, 2020, decision, the Commission adopted the ALJ's factual findings but rejected his legal conclusions. The Commission found that Appellant violated *N.J.S.A.* 18A:12-24.1(g) and recommended a penalty of reprimand.

In his appeal and exceptions, appellant argues that the Commission erroneously concluded that the information in the email was confidential. According to appellant, neither Dr. Lynch nor the Commission identified any authority making the disclosed information confidential. Appellant contends that nothing in the email disclosed anything about the Board's discussion of the parent's complaint during executive session, and, even if it had, that information was no longer confidential because the Board had previously disclosed it to the parent, thereby waiving any privilege. Furthermore, appellant argues that the email did not contain any opinion, analysis, or even comment on the parent's complaint. Appellant notes that the Open Public Meetings Act, *N.J.S.A.* 10:4-6 *et seq.*, and its interpreting case law hold that discussions and deliberations are open to the public unless an exception applies – there is no

blanket confidentiality. Additionally, appellant asserts that a Board member is entitled to express an opinion disagreeing with the actions of the Board. Appellant disagrees that the email constituted a personnel discussion about Dr. Lynch, and he reiterates that personnel discussions are not under a blanket rule of confidentiality. Appellant also contends that the plain language of *N.J.S.A.* 18A:12-24.1(g) requires that the disclosure “needlessly injure individuals or the schools” and that no such injury was proven.

Upon review, the Commissioner concurs with the Commission’s conclusion that the appellant violated *N.J.S.A.* 18A:12-24.1(g). While appellant focuses his argument on the fact that the information contained in the email did not derive from executive session, nothing in the statute or regulation requires that the information derive from executive session in order to be confidential.<sup>1</sup> The plain language of the regulation provides that a violation occurs when “information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices” is disclosed. *N.J.A.C.* 6A:28-6.4(a)(7).

In analyzing the confidentiality of the information contained in appellant’s email, the Commissioner finds the case law surrounding the deliberative process privilege to be instructive. The deliberative process privilege may be invoked to protect information or documents from disclosure when “the information sought is part of the process leading to formulation of an agency’s policy decision” and it has the “ability to reflect or to expose the deliberative aspects of that process.” *Educ. Law Ctr. v. N.J. Dep’t of Educ.*, 198 *N.J.* 274, 295 (2009). Appellant’s email bears all the hallmarks of deliberative material. First, it is pre-

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<sup>1</sup> The ALJ also incorrectly focused on the issue of closed session. Specifically, the ALJ found that appellant’s statement that the Board should be nervous about safety, discrimination, and harassment complaints did not reference any discussions by the Board in closed session, and thus concluded that the information was not confidential. The ALJ did not consider other ways in which that information might be confidential.

decisional. *See id.* at 286. The Board had just received an email from a parent regarding a complaint against Dr. Lynch and, other than the pleasantries of thanking the parent for her email, the Board had not yet decided how to respond. Second, appellant's email is deliberative in nature. *See id.* at 295. Appellant argues that his email did not contain any opinion, analysis, or comment other than identifying the parent's complaints, but the Commissioner does not find this argument to be persuasive. Appellant expressed concern that mishandling the complaint could put the Board and its stakeholders at risk, recommended that the Board issue a Rice notice, and opined on the Board's fiduciary responsibilities. As the Commission correctly concluded, these types of tentative thoughts, suggestions, and questions are part and parcel of the Board's overall deliberative process.

Furthermore, disclosure of such material needlessly injures the schools.<sup>2</sup> The deliberative process privilege is intended to benefit the public by allowing for candor in internal deliberations, which improves the decision-making process. *Id.* at 286. The exposure of the Board's decision-making process negatively impacts that process. This factor alone is sufficient to demonstrate the requisite injury. Moreover, following her receipt of the email, the parent who had filed the complaint was privy to appellant's opinion that the Board had possible legal exposure, information that could have influenced her actions moving forward – another needless injury.

The Commissioner also concurs with the Commission that a reprimand is the appropriate penalty. In *Fleres v. Zhong*, (SEC Dkt. No. C17-18, May 2, 2019), the Commission

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<sup>2</sup> The Commission's decision indicates that *N.J.A.C.* 6A:28-6.4(a)(7) does not require proof of a specific level of injury, but also concludes that the appellant's disclosure needlessly injured Dr. Lynch. As a point of clarification, the Commissioner notes that *N.J.S.A.* 18A:12-24.1(g) does require that the disclosure needlessly injure individuals or the schools. *See also Messner v. Gray*, 2016 *N.J. Super. Unpub. LEXIS* 703, \*6 (App. Div. Mar. 31, 2016). However, as the Commissioner finds a needless injury to the schools, this statutory requirement has been satisfied.

censured a Board member who deliberately disclosed confidential information about a student. Here, the disclosure was inadvertent, and there is no evidence that the parent did anything with the information she received, nor did the disclosure result in any adverse consequences to Dr. Lynch or the Board. Accordingly, a reprimand is appropriate.

Accordingly, appellant is hereby reprimanded as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.<sup>3</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 15, 2020  
Date of Mailing: December 15, 2020

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<sup>3</sup> 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*).