

129-21SEC

SEC Dkt Nos. C14-15 and C08-16 (Consolidated)
OAL Dkt. Nos. EEC 15030-15 and EEC 15136-16 (Consolidated)
Agency Dkt. No. 2-3/20A

New Jersey Commissioner of Education
Final Decision

Barbara Holstein,

Complainant,

v.

Tacia Raftopoulos-Johnson, Montague Board
of Education, Sussex County,

Respondent.

In the Matter of Tacia Raftopoulos-Johnson,
Montague Board of Education,
Sussex County.

This matter involves an appeal of the School Ethics Commission's (Commission) February 26, 2020 decision that appellant Tacia Raftopoulos-Johnson, a member of the Montague Board of Education (Board), violated the School Ethics Act (Act) in connection with her attendance at a meeting of the Port Jervis Board of Education to speak about the sending-receiving relationship between the two districts (PJBOE Meeting), and her vote in support of a resolution obligating the Board to pay for students, including her own child, to attend school in Port Jervis after the sending-receiving relationship had been terminated (Resolution). The Commission recommended a penalty of censure for the violation. 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 Commissioner also finds that a penalty of censure is appropriate.

Two complaints were filed with the Commission in this matter. The first complaint, C14-15, concerned the PJBOE Meeting, as well as an email sent by appellant to her child's guidance counselor and blind copied to parents in the district. The complaint alleged that appellant violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), and *N.J.S.A.* 18A:12-24.1(j). Following a motion to dismiss by appellant, the Commission dismissed some allegations and transmitted the remainder of the matter to the Office of Administrative Law (OAL). The matter was held in abeyance when a second complaint (C08-16) was filed concerning the Resolution, and alleging that appellant violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), and *N.J.S.A.* 18A:12-24.1(f). Following a motion to dismiss by appellant, the Commission dismissed the allegations that appellant violated *N.J.S.A.* 18A:12-24(a) and transmitted the remainder of matter to the OAL, where the complaints were consolidated.

Following hearings, the Administrative Law Judge (ALJ) concluded that appellant did not personally and unethically try to benefit herself and thus that the charges had not been sustained. In its February 26, 2020 decision, 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) in connection with her attendance at the PJBOE Meeting, and *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), and *N.J.S.A.* 18A:12-

24.1(f) in connection with her vote on the Resolution.¹ The Commission recommended a penalty of censure, and noted that it would have recommended a penalty of removal, but appellant was no longer serving on the Board.

On appeal, appellant argues that all of her actions were in furtherance of protecting the children of Montague, who had a right to continue their secondary education in Port Jervis, even after the severance of the sending-receiving agreement, pursuant to *N.J.S.A. 18A:38-21.1*. According to appellant, any directives to the contrary from the Department of Education (DOE) were inconsistent with the law, and appellant was placed in the difficult position of ignoring her obligations to the students of her district or ignoring the DOE's directives. Additionally, appellant notes that all decisions were made by the board as a whole. Appellant contends that all board members who have children who attend school or who pay taxes in their district have some sort of financial relationship with the district, and that this relationship does not automatically create a conflict of interest. According to appellant, *N.J.S.A. 18A:12-24(h)* is a defense to her actions, because she did not receive any greater gain than the other 35 parents whose children were also permitted, pursuant to the Resolution, to continue to attend school in Port Jervis at Montague's expense.²

Appellant also alleges that fraud was committed by someone, because the Commission has stated that complaint C08-16 was filed on March 15, 2016, despite the fact that it was not signed and notarized until March 16, 2016. Appellant contends that there were other procedural irregularities, including that the Commission failed to provide her with a copy

¹ The Commission adopted the ALJ's conclusion that appellant's actions related to the email she sent to her child's guidance counselor did not violate the Act. The Commission also adopted the ALJ's conclusion that appellant's actions related to the PJBOE Meeting did not violate *N.J.S.A. 18A:12-24.1(b)* or *N.J.S.A. 18A:12-24.1(d)*.

² Appellant also reviews the individual provisions of the Act at issue in this matter, arguing that she did not violate any of them based on *N.J.S.A. 18A:38-21.1* and *N.J.S.A. 18A:12-24(h)*.

of the complaint. For these reasons, appellant urges the Commissioner to dismiss complaint C08-16, investigate the matter, or refer it to appropriate authorities.

In reply, the Commission argues that appellant improperly engaged in self-help, in defiance of DOE decisions and directives, rather than using the proper legal channels to challenge the DOE's directive that Montague parents who continued to send their children to Port Jervis would be responsible for tuition payments. According to the Commission, appellant improperly secured a benefit for her family when she used her position on the Board to enable her child to continue to attend school in Port Jervis at the Board's expense, rather than her own. The Commissioner also contends that appellant exceeded her authority by making representations at the PJBOE Meeting about the relationship between the districts. The Commission argues that each of its findings that appellant violated the Act was supported by sufficient, credible evidence and was not arbitrary, capricious, or unreasonable. Furthermore, the Commission maintains that its penalty was reasonable, because appellant bore special responsibility for the Board's actions as its president, and she played a significant role in leading the Board to defy the DOE's decisions and directives.

Regarding appellant's claims of fraud, the Commission argues that those claims are without merit. The Commission notes that the initial complaint was timely filed, and even if it had not been, the Commission has discretion to extend the limitations period. The Commission contends that it did not fraudulently alter any dates, and that the record demonstrates that date stamps were changed so that the dates on hard copy filings comported with the dates on faxed copies that were received earlier by the Commission, as the Commission considers the date of the first copy received to be the date of filing. The Commission argues that

its actions were in compliance with its procedures for the filing of complaints, and that appellant's accusations to the contrary do not support a finding of fraud or criminal activity.

Upon a thorough review of the record, the Commissioner concludes that the Commission's decision was not arbitrary, capricious, or unreasonable. The majority of appellant's arguments in this matter are based on *N.J.S.A.* 18A:38-21.1(a)(3), which provides that when a sending-receiving relationship is terminated, secondary school students shall be permitted to continue their education in the receiving district. According to appellant, all of her actions pertaining to Montague's continuing tuition obligations to Port Jervis were required by this statute. However, those issues are not before the Commissioner as part of this appeal.³

Appellant's violations of the Act result not from her interpretation of the law, or her opinion that the DOE's directives were incorrect, but rather from her decision to make statements at the PJBOE Meeting and to vote on the Resolution without seeking recourse through proper legal channels. Even board members who believe that their actions are consistent with the law and their duties can be held accountable when those actions are in violation of the Act. *See In the Matter of Lorenzo Richardson, Jersey City Board of Education, Hudson County, Commissioner Decision No. 19-21SEC (January 26, 2021) (finding a violation of the Act when a board member filed a petition of appeal before the Commissioner to attempt to enforce his interpretation of the law, without authorization from the Board).*

³ The Commissioner notes that neither she nor any former Commissioner has addressed the applicability of *N.J.S.A.* 18A:38-21.1(a)(3) following the termination of a sending-receiving relationship authorized by *N.J.S.A.* 18A:38-10, such as the one between Montague and Port Jervis that existed prior to 2013. The settlement agreement referred to throughout the proceedings, under which Montague paid tuition for its middle school students to continue attending high school in Port Jervis, was approved by Commissioner Hespe. However, approval of the settlement agreement does not constitute a determination that appellant's interpretation of *N.J.S.A.* 18A:38-21.1(a)(3) was correct or that Montague was required to make such tuition payments. It is the nature of settlement agreements that parties may exceed their legal obligations in order to resolve litigation.

At the time it voted on the Resolution, the Board, including appellant, had received two directives from the DOE, indicating that parents who wanted their children to continue to attend school in Port Jervis would have to bear the expense of tuition. Moreover, appellant was specifically advised in an email from the Executive County Superintendent that the Board should follow the process outlined in *N.J.A.C.* 6A:3 to challenge the Commissioner's decision. Exhibit R-13. Appellant herself indicated in her testimony that the outcome of meetings between Board members and DOE employees was that the Board should reach out to the Commissioner with a petition. Tr. June 17, 2019, p. 87, lines 5-7. But instead of seeking a legal remedy through established pathways, the Board chose to vote in defiance of Commissioner decisions and DOE directives – and appellant admitted as much in her testimony.⁴ Tr. June 17, 2019, page 155, lines 12-17.

Additionally, appellant participated in that vote, rather than recusing herself, despite the fact that she would receive a personal financial benefit from the Resolution – the ability to send her child to school in Port Jervis at Montague's expense, rather than her own. The Commissioner does not find persuasive appellant's argument that *N.J.S.A.* 18A:12-24(h) provides a defense for her actions. This provision states, "No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted on, no material or monetary gain accrues to him as a member of any . . . group, to any greater extent than could reasonably be expected to accrue to any other member of that . . . group." Appellant has not identified any statute, regulation, or policy requiring her to vote on the Resolution. Furthermore, the Commissioner notes that even if this provision precludes a finding that appellant violated *N.J.S.A.* 18A:12-24, appellant's actions regarding both the PJBOE

⁴ Appellant is not absolved by the fact that other members of the Board may also have violated the Act by voting in the same manner. See *Cheng v. Rodas*, Commissioner Decision No. 22-17 (Jan. 20, 2017) (noting that board members are responsible for their own actions).

Meeting and the Resolution also violated multiple provisions of *N.J.S.A.* 18A:12-24.1, for which *N.J.S.A.* 18A:12-24(h) provides no defense. Three of those provisions - *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) – do not require any evidence of a conflict of interest or a personal benefit.⁵

Appellant’s arguments are primarily focused on her participation in the vote for the Resolution, but the Commissioner also concludes that appellant’s attendance and statements at the PJBOE Meeting violated the Act, for the reasons detailed in the Commission’s decision.⁶ In particular, the Commissioner emphasizes that appellant’s attendance at the PJBOE Meeting to discuss the various sending-receiving relationships, when appellant clearly understood that those relationships might require further litigation to resolve, exceeded the scope of her authority and had the potential to compromise the board. *N.J.S.A.* 18A:12-24.1(e);⁷ *N.J.A.C.* 6A:28-6.4(a)(5); *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); *Cheng, supra* (finding a violation of *N.J.S.A.* 18A:12-24.1(e) when a board member

⁵ The ALJ appears to have disregarded these provisions when she dismissed the charges based on her conclusion that appellant did not take personal action to achieve an unwarranted personal benefit.

⁶ The Commissioner notes that the ALJ and the Commission made different findings regarding appellant’s statements at the PJBOE Meeting, but a recording of the meeting was entered into evidence as Exhibit R-20, and it speaks for itself. Appellant indicated that the Board “can take corrective action” and “revisit maybe long-term plans on how the relationship with Port Jervis could be continued as much as possible given some of the hasty actions the Board has taken in the past.” Suggesting that the Board could continue a sending-receiving relationship with Port Jervis, when that relationship had been explicitly terminated by the Commissioner and no legal challenge had been made to the Commissioner’s decision or any other issues surrounding the various sending-receiving relationships, cannot reasonably be held to be within the scope of appellant’s authority – even if appellant had the permission of the other Board members to speak at the meeting.

⁷ Appellant contends that the Commission did not argue in its exceptions to the Initial Decision that appellant violated *N.J.S.A.* 18A:12-24.1(e), and that it therefore waived, forfeited, and procedurally defaulted this argument. Respondent points to no authority for this proposition, and the Commissioner finds that it is unfounded. Agency heads have the authority under *N.J.A.C.* 1:1-18.6(b) to modify conclusions of law – as the Commission did here in rejecting the ALJ’s conclusion that appellant did not violate *N.J.S.A.* 18A:24.1(e) – regardless of whether exceptions were filed regarding those conclusions.

acted on his own rather than seeking an Advisory Opinion from the Commission after receiving uncertain legal advice from counsel).

The Commission's decision thoroughly details the individual provisions of the Act at issue and the reasons the Commission concluded that appellant violated each of them. The Commissioner concludes that the Commission was not arbitrary, capricious, or unreasonable when it determined that appellant's conduct was in violation of the Act. Furthermore, the Commissioner concurs with the Commission that the appropriate penalty is censure. The Commissioner has previously imposed a penalty of reprimand when board members violated the Act but did not receive a benefit from their actions. *See IMO Carvalho, Neron, Nina, and Rodriguez*, Commissioner Decision No. 168-18A (June 1, 2018) (violation of *N.J.S.A.* 18A:12-24.(c)); *Richardson, supra* (violation of *N.J.S.A.* 18A:12-24(g) and *N.J.S.A.* 18A:12-24.1(e)); *Cheng, supra* (violation of *N.J.S.A.* 18A:12-24.1(e)). Here, because appellant violated multiple provisions of the Act – and received a benefit – the Commissioner concludes that the Commission's recommendation of censure was appropriate.

Finally, following a comprehensive review of the record, the Commissioner determines that there was no impropriety in the Commission's acceptance of Complaint C08-16. First, the Commissioner finds that the complaint was timely filed. The meeting at issue in the complaint occurred on August 25, 2015.⁸ According to *N.J.A.C.* 6A:28-6.5, complaints must be filed within 180 days of notice of the events which form the basis of the alleged violation. Here,

⁸ The complainant argued that the minutes for the August 25, 2016 meeting were not approved until September 23, 2015, and that the time period to file did not begin to run until that date. The Commissioner notes that the time period begins to run from notice of the events at issue. While the approval of meeting minutes is one method by which the public could receive notice of actions taken by a board member, it is not the only method – for example, a member of the public present at the August 2, 2016 meeting would have notice on that date of the events that had occurred. As the record does not reflect when the complainant was actually on notice of the events at issue, the Commissioner finds that it is most appropriate to use the date of the meeting as the commencement of the time period to file.

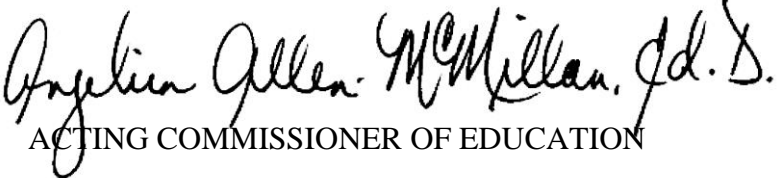
the expiration of the 180-day time period was February 21, 2016, which was a Sunday. It is standard in legal practice that a deadline falling on a weekend is extended to the next business day. *See, e.g., N.J. Ct. R. 1:3-1; N.J.A.C. 6A:3-1.2.* Complaint C08-16 was initially filed on February 22, 2016, the first business day after February 21, 2016, meeting the 180-day deadline. The complaint was deficient, and the complainant was given an opportunity to cure any defects, which she did by filing an amended complaint in March 2016. The Commissioner finds any issues regarding the precise date of filing of the amended complaint to be irrelevant, as the Commission's rules clearly provide that a complainant may amend a complaint to "cure technical defects, clarify or amplify allegations made in the original complaint and such amendments will relate back to the date the complaint was first received by the Commission for the purposes of determining timeliness." *N.J.A.C. 6A:28-6.7(b).*⁹

Moreover, there is no evidence that appellant has been prejudiced by any alleged issues related to the filing of Complaint C08-16. She has been ably represented by counsel throughout the proceedings, submitted numerous briefs and items of evidence, and had the opportunity to present and cross-examine witnesses during multiple days of hearings at the OAL. Additionally, the Commissioner concludes that appellant's violations of the Act related to Complaint C14-15 are sufficient to warrant a penalty of censure, even in the absence of any violations related to Complaint C08-16.

⁹ Notwithstanding the Commissioner's conclusion that the precise filing date of the amended complaint is irrelevant because it relates back to the date of the initial filing, the Commissioner does not find any fraud or impropriety in the Commission's explanation for any date discrepancies on the amended complaint. The record demonstrates that a faxed copy of the amended complaint was received on March 15, 2016, and when a hard copy was received and stamped on March 18, 2016, the date stamp was modified to reflect the first date on which the amended complaint was received – March 15, 2016. While the amended complaint was not notarized until March 16, that technical defect does not alter the date of the faxed filing.

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

IT IS SO ORDERED.¹⁰


ANGELINA ALLEN McMILLAN, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 22, 2021
Date of Mailing: June 22, 2021

¹⁰ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.