

303-21SEC
SEC Dkt. No. C45-19
OAL Dkt. Nos. EEC02887-20, EEC01680-21
Agency Dkt. No. 187-8/21

New Jersey Commissioner of Education

Final Decision

In the Matter of Deborah Anderson,
High Point Regional Board of Education,
Sussex County.

Respondent.

The record of this matter and the decision of the School Ethics Commission (SEC) have been reviewed. The SEC found that respondent violated *N.J.S.A. 18A:12-24(b)* of the School Ethics Act when she voted on a matter involving the district's superintendent while respondent's child was an employee of the district over whom the superintendent had supervisory authority. The SEC's decision was forwarded pursuant to *N.J.S.A. 18A:12-29* for the Commissioner's final determination on the recommended penalty of a reprimand. Respondent has neither filed exceptions to the recommended penalty nor instituted an appeal of the SEC's underlying finding of violation pursuant to *N.J.A.C. 6A:4-1 et seq.* Upon review, the Commissioner concurs with the penalty recommended by the SEC. Accordingly, respondent is hereby reprimanded for violating the School Ethics Act.

IT IS SO ORDERED.¹


ANGELINA ALLEN McMILLAN, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 29, 2021
Date of Mailing: December 1, 2021

¹ 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.

Before the School Ethics Commission
OAL Docket No.: EEC-01680-21
OAL Docket No.: EEC-02887-20 (On Remand)
SEC Docket No.: C45-19
Final Decision

In the Matter of Deborah Anderson,
High Point Regional Board of Education, Sussex County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on June 17, 2019, by John Mannion (Complainant), alleging that Deborah Anderson (Respondent), a member of the High Point Regional Board of Education (Board) violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq. Initial Decision (On Remand)* at 2. More specifically, the Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24(b) “by voting on matters concerning the [S]uperintendent while the High Point Regional School District (District) employed her child.” *Id.*

At its meeting on December 17, 2019, and after reviewing Respondent’s Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and Complainant’s response thereto, the Commission adopted a decision finding that the Complaint was timely filed, denying the Motion to Dismiss in its entirety, and directing Respondent to file an Answer to Complaint (Answer). On January 7, 2020, Respondent filed her Answer as directed, and the above-captioned matter was docketed so that the Commission could make a probable cause determination.

Thereafter, and at its meeting on February 25, 2020, the Commission adopted a decision finding probable cause for the alleged violation of *N.J.S.A.* 18A:12-24(b). *Id.* Based on its finding of probable cause, the Commission also voted to transmit the within matter to the Office of Administrative Law (OAL) for a plenary hearing and, pursuant to *N.J.A.C.* 6A:28-10.7(b), the attorney for the Commission (Petitioner) was charged with prosecuting the allegations in the Complaint which the Commission found probable cause to credit. *Id.* at 2-3.

At the OAL, the matter was assigned to the Honorable Nanci G. Stokes, Administrative Law Judge (ALJ Stokes). After the parties were unable to resolve the matter, Respondent filed a Motion for Summary Decision, and Petitioner filed an Opposition to Respondent’s Motion for Summary Decision, as well as a Cross-Motion for Summary Decision. *Id.* at 3. Following Respondent’s filing of an Opposition to Petitioner’s Cross-Motion for Summary Decision, ALJ Stokes closed the record. *Id.*

On November 10, 2020, ALJ Stokes issued an Initial Decision detailing her findings of fact and legal conclusions. *Id.* In her decision, ALJ Stokes concluded that Respondent violated

N.J.S.A. 18A:12-24(b), and that reprimand was the appropriate penalty. *Id.* However, at its meeting on January 26, 2021, and after discussing and reviewing the full record, including ALJ Stokes' Initial Decision and the filed Exceptions (and related response), the Commission adopted a decision remanding the matter to the OAL. *Id.* In remanding the matter to the OAL, the Commission did not require the holding of a hearing, additional fact-finding, and/or the reopening of the record for the submission of supplemental materials, but rather that ALJ Stokes remove specific facts which were deemed irrelevant to the proceedings, to wit:

Because ALJ Stokes determined that Commissioner Roberts' actions are not relevant to and are not the subject of this proceeding, and because the basis for the aforementioned "facts" emanates from exhibits which were not admitted as evidence, the inclusion of Commissioner Roberts' membership on the Middletown Township Board of Education, his child's employment, his unproven voting history on matters related to the Superintendent, and the statement that "the Commission has taken no action against [Commissioner] Roberts for these actions" is inappropriate and must be stricken from the Initial Decision. In this way, the Commission finds that it is arbitrary and capricious to find unverified and unproven conduct as "facts" when Commissioner Roberts was not a named party in this matter or otherwise afforded appropriate due process to formally respond to or answer such accusations following the filing of a complaint against *him*, and when ALJ Stokes concluded that this information was "not relevant to whether [Respondent] violated the Act" and was "not the subject of this proceeding."

Id.

On remand, ALJ Stokes conducted "a telephone conference and directed the parties to provide written submissions addressing the Commission's remand." *Id.* On May 14, 2021, the parties' provided their written legal arguments as directed; Respondent's counsel provided a certification attaching records that were not previously submitted with her motion for summary decision; and the record closed on June 4, 2021. *Id.* at 4.

On June 25, 2021, ALJ Stokes issued an *Initial Decision (On Remand)*, with same detailing findings of fact, and conclusions of law. The Commission acknowledged receipt of ALJ Stokes' *Initial Decision (On Remand)* on the date it was issued (June 25, 2021); therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was August 9, 2021. Prior to August 9, 2021, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to receive and review the full record, including the parties' Exceptions. Pursuant to *N.J.S.A.* 52:14B-10(c) and *N.J.A.C.* 1:1-18.8, and for good cause shown, the Commission was granted an extension until September 23, 2021.

Consequently, at its meeting on July 27, 2021, the Commission considered the full record in the above-captioned matter. Thereafter, at its special meeting on August 30, 2021, the Commission voted to adopt ALJ Stokes' findings of fact; to adopt the legal conclusion that

Respondent violated *N.J.S.A.* 18A:12-24(b); and to adopt the recommended penalty of reprimand.¹

II. Initial Decision (On Remand)

Based on her review of the documents submitted in support of, and in opposition to, the parties' respective motions for summary decision, ALJ Stokes **found** the following as **fact**:

- Respondent has been a Board member since 2013 and has not received a prior sanction from the Commission. *Id.* at 4.
- On November 20, 2018, the Board had a meeting at which all six (6) members were present. At this meeting, the Board “voted unanimously to approve a resolution acknowledging that the [S]uperintendent ... completed a merit goal required by his employment contract with the [Board].” *Id.*
- The Superintendent’s employment contract required a bonus of a set percentage of his salary following completion of a merit goal. *Id.*
- The Board did not discuss the resolution in closed or executive session, and Respondent did not comment on the resolution during public session of the Board’s meeting. *Id.*
- Following approval from the executive county superintendent, the Superintendent received payment for the merit goal achievement. *Id.*
- On November 20, 2018, the date that the Board, including Respondent, voted unanimously to approve a resolution acknowledging that the Superintendent had completed a merit goal, Respondent’s child was employed in the District as a tenured teacher. As such, at the time of Respondent’s vote, the Superintendent had supervisory authority over Respondent’s child. *Id.*
- Following the 2018-2019 school year, Respondent’s child was subject to a reduction-in-force layoff and, as a result, her employment with the District ceased in June 2019. *Id.*
- Respondent was aware that she was unable to participate in the Superintendent’s evaluation and contract approvals, but was “unaware” that she could not participate in votes concerning the achievement of contractual merit goals and attendant bonuses required by the Superintendent’s employment contract. *Id.* at 4-5.

¹ Commissioner Dennis Roberts was not present in Executive Session on July 27, 2021, and/or August 30, 2021, when the above-captioned matter was discussed.

As for the remand specifically, ALJ Stokes further **found** the following additional facts:

- On June 26, 2020, Respondent supplied records concerning one of the Commission’s members, and his actions as a school board member. *Id.* at 5.
- Respondent “urges that the actions of the Commission member are relevant to this case, especially as to the penalty attributed to any violation [Respondent] committed.”
- Despite Respondent’s arguments, ALJ Stokes “determined and still FIND[S] that the conduct of another person is not relevant to whether Respondent’s actions constitute a violation of the ... Act.” *Id.*
- In addition, “the Commission’s action or inaction concerning its member’s conduct is neither before this tribunal nor is what action, if any, known.” *Id.*
- Therefore, ALJ Stokes “**FIND[S]** that the Commission member’s actions, public or not, are irrelevant to what penalty should apply to any violation [Respondent] committed.” *Id.*

In the “Discussion and Conclusions of Law” section of her *Initial Decision (On Remand)*, and after detailing the standard that applies to a motion for summary decision, ALJ Stokes stated, “In this case, there is no genuine issue as to the material facts, and the only issues presented are whether” Respondent’s vote on November 20, 2018, violated *N.J.S.A.* 18A:12-24(b) and, if so, what sanction is appropriate. *Id.* at 5-6. According to ALJ Stokes, “no genuine issue exists that [Respondent] served as a Board member in the same [D]istrict that employed her [child] as a teacher from 2014 until 2019,” nor that on November 20, 2018, Respondent voted to approve the Superintendent’s merit goal achievement. *Id.* at 6. As these facts are “clear and undisputed,” ALJ Stokes **concludes**, “that this case is ripe for summary decision.”

Regarding the Commission’s order of remand, ALJ Stokes notes, “an Agency head may enter an order remanding a contested case to the OAL” *Id.* at 6. Moreover, “the order of remand shall specifically state the reason and necessity for the remand and the issues or arguments to be considered.” *Id.* In this case, the Commission “directs the striking of specific findings of fact regarding the conduct of one of its members and states the reasons for doing so.” *Id.* Although an ALJ “determines what evidence to consider and its relevance under *N.J.A.C.* 1:1-14.6(i) and other UAPR provisions,” ALJ Stokes finds that because the “actions of the Commission member are not relevant to either [Respondent’s] alleged violation or any resulting penalty,” any records provided by Respondent regarding the Commission member, and any specific reference to them, is “unwarranted.” *Id.*

In her motion for summary decision, Respondent argues that she should not be found in violation of the Act because “the law required her action as a board member”; “her vote was simply a ministerial act”; her participation in the vote approving the resolution “had no impact on the result as only four affirmative votes of the six members present [were] needed to pass the resolution”; and when an improper vote does not change the outcome, “the error is harmless.” *Id.* at 12.

After referencing the legislative intent/purpose of the Act; affirming the Commission's role as the "guardian of the public interest"; citing to decisions that reinforce the public policy that school officials must avoid "even the appearance of impropriety" (e.g., *Wyzyskowski v. Rizas*, 132 N.J. 509 (1993); *Friends Retirement Concepts v. Bd. Of Educ. Borough of Somerville*, 356 N.J. Super 203, 214 (Law Div. 2002) (*Friends*)); emphasizing that, per *Friends*, the "question will always turn on 'whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty'"; noting that "[a]n actual conflict of interest is not the decisive factor, nor is 'whether the public servant succumbs to temptation,' but rather whether there is a potential for conflict"; affirming that "[a] conflicting interest arises when the public official has an interest not shared in common with the other members of the public"; and citing to the Commission's advisory opinions which specifically address the limitations on a Board member's conduct/activity when they have a family member or relative employed by the Board on which s/he serves (e.g., *Advisory Opinion A24-17* (A24-17); *Advisory Opinion A07-18* (A07-18)), ALJ Stokes concluded:

... [Respondent's] arguments [for summary decision are] unpersuasive. The legislative findings and declarations, the seminal decision in *Friends*, and the advisory opinions make plain that [Respondent] should have recused herself. ... *A24-17*, issued more than a year before the vote, clearly mandates that [Respondent] be uninvolved in any matter regarding the [S]uperintendent while her [child] was an employee in the [D]istrict. [Respondent's] vote created the potential conflict the *Friends*' Court warned against and could reasonably be interpreted to show that it had the likely capacity to tempt [Respondent] from her sworn public duty. In other words, that she exerted an undue influence over the individual responsible for securing her [child's] employment. Notably, the board member needs not to secure unwarranted benefits for their relative to violate the Act. Thus, her [child's] subsequent layoff is not relevant to whether the violation occurred. Also, while harmless errors may prevent the invalidation of a [B]oard's action, this does not address whether the board member violated the Act's prohibitions against conflicts of interest.

Id. at 12-13.

Consequently, and given her findings of fact and discussion of the applicable law, ALJ Stokes concluded that Respondent's "vote created a justifiable impression among the public that [Respondent] used her official position as a board member to secure an unwarranted privilege or advantage for her [child] in violation of *N.J.S.A.* 18A:12-24(b). *Id.* at 13.

As for the appropriate penalty for Respondent's violation, although the Commission urges censure for Respondent's violation, ALJ Stokes finds that the cases cited by the Commission, namely *I/M/O Michael Kilmurray*, Docket No. C12-94 (February 24, 1998) (*Kilmurray*), and *I/M/O James Famularo*, Docket No. C23-96 (February 24, 1998) (*Famularo*), are "distinguishable from the violation committed by [Respondent]." *Id.* at 14. Unlike the Respondents in *Kilmurray* and *Famularo*, Respondent's vote was a single violation of the Act;

did not directly involve her child; she did not attempt to influence other board members, or make comments to other Board members; and did not take direct and specific action to reward someone with whom she had a personal connection and prior business relationship. *Id.* As a result, and because there is no evidence that Respondent attempted to influence the vote and did not engage in “more direct action” as involved in *Kilmurray* and *Famularo*, and because she (Respondent) “believed the merit goals were contractual and that the [S]uperintendent’s contract legally required the [Board] to pass on a resolution upon obtaining those goals,” ALJ Stokes concludes that reprimand is appropriate. *Id.* at 15. Of note, although ALJ Stokes only recommended a reprimand, she states, “even in seemingly ministerial matters, the level of conduct expected of public officials must be such as to be beyond reproach.” *Id.*

With the above in mind, ALJ Stokes orders that Complainant’s motion for summary decision is granted as to Respondent’s violation of *N.J.S.A.* 18A:12-24(b); Respondent’s motion for summary decision is denied; and Respondent is reprimanded for having violated *N.J.S.A.* 18A:12-24(b). *Id.*

III. Exceptions

As of July 27, 2021, neither Petitioner nor Respondent filed Exceptions to the *Initial Decision (On Remand)*, or otherwise requested an extension to file same.

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission **adopts** ALJ Stokes’ findings of fact, and **adopts** the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24(b).

Pursuant to *N.J.S.A.* 18A:12-24(b), “No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others” By voting to approve a resolution concerning the attainment of the Superintendent’s merit goals while (a) her child was employed in the District and (b) the Superintendent had supervisory authority over her (Respondent’s) child, facts which are not in dispute, the Commission wholeheartedly agrees that Respondent violated this provision of the Act.

In finding a violation of *N.J.S.A.* 18A:12-24(b), ALJ Stokes appropriately analyzed and considered the legislative intent/purpose of the Act; the Commission’s previous decisions; as well as the Commission’s advisory opinions which directly address the limitations on a board member’s activities when s/he has an immediate family member(s) or relative(s) who is employed by the Board on which s/he serves. In this regard, the Commission cannot emphasize or underscore enough the fact that, as detailed in *A24-17* and *A07-18*, established in previous decisions, and affirmed by ALJ Stokes, board members who have an immediate family member(s) or relative(s) employed in the district **must always** abstain from involvement in, without limitation, ***any and all matters pertaining to the Superintendent***. This direction is clear, definitive, and unambiguous, and “any and all matters” is not conditional, or otherwise subject to exception or interpretation, even for what could be described as involvement in “ministerial”

acts. Any level of involvement in any matter(s) involving the Superintendent while an immediate family member(s) or relative(s) is employed in the district will, among other things, **always** create a justifiable impression among the public that a board member is using, or attempting to use, his/her position to secure an unwarranted privilege, advantage, or employment for him/herself, a member of his/her immediately family, or an “other.” Moreover, and in recognition of the legislative intent of the Act, no degree of latitude can be afforded when a board of education member who is the subject of a complaint engages in such conduct, no matter how trivial or ministerial such conduct may appear to the school official. As such, ALJ Stokes’ determination is entirely appropriate, and in line with the Commission’s advisory opinions and decisions.

V. Decision

For all of the aforementioned reasons, the Commission **adopts** the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24(b) when she voted on a matter concerning an individual with the ultimate supervisory authority over her child, and her child’s continued employment in the District.

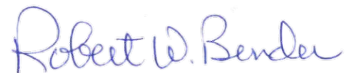
VI. Penalty

Based upon the conclusion that Respondent violated *N.J.S.A.* 18A:12-24(b), ALJ Stokes recommended a penalty of reprimand. Following its careful, thorough, and independent review of the record, the Commission **adopts** the recommended penalty of reprimand. In adopting ALJ Stokes’ recommended penalty, the Commission was primarily persuaded by the fact that the only finding of a violation stemmed from Respondent’s *one-time vote* to approve a resolution concerning the Superintendent’s attainment of a merit goal. As such, and based on the facts and circumstances presented here, the Commission does not believe that Respondent’s one-time vote on what may be regarded as a “ministerial” matter is worthy of a penalty more harsh than a reprimand, especially for a board member who has served for nearly a decade without an adjudication by the Commission that she previously violated the Act.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission’s recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission’s finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission’s finding of a violation may file, **within thirteen (13) days** from the date the Commission’s decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked “Attention: Comments on Ethics Commission Sanction,” as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C. 6A:4:1 et seq.* **within thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.



Robert W. Bender, Chairperson

Mailing Date: August 30, 2021

**Resolution Adopting Decision
in Connection with C45-19**

Whereas, at its meeting on February 25, 2020, the School Ethics Commission (Commission) voted to find probable cause to credit the allegation that Respondent violated *N.J.S.A.* 18A:12-24(b), and voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing; and

Whereas, following transmittal, the Honorable Nanci G. Stokes, Administrative Law Judge (ALJ Stokes) issued an *Initial Decision* dated November 10, 2020; and

Whereas, at its meeting on January 26, 2021, the Commission voted to approve a decision remanding the above-captioned matter to the OAL; and

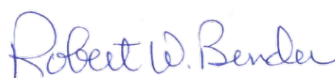
Whereas, following remand, ALJ Stokes issued an *Initial Decision (On Remand)* dated June 25, 2021; and

Whereas, in her *Initial Decision (On Remand)*, ALJ Stokes found that Respondent violated *N.J.S.A.* 18A:12-24(b), and recommended that Respondent receive a reprimand; and

Whereas, at its meeting on July 27, 2021, the Commission reviewed the record in this matter, and discussed adopting ALJ Stokes' findings of fact; adopting the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24(b); and adopting the recommended penalty of reprimand; and

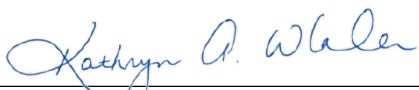
Whereas, at its special meeting on August 30, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 27, 2021; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.



Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its special meeting on August 30, 2021.



Kathryn A. Whalen, Director
School Ethics Commission