

33-22SEC

Agency Dkt. No. 7-10/21A

SEC Dkt. No. T-22-21

New Jersey Commissioner of Education

Final Decision

In the Matter of Carlos Lejnieks, Hoboken Dual
Language Charter School, Hudson County.

This matter involves an appeal of the School Ethics Commission's (SEC) August 30, 2021 determination that appellant Carlos Lejnieks – a charter school trustee for the Hoboken Dual Language Charter School – violated the School Ethics Act (Act) for failure to timely complete charter school trustee training in accordance with *N.J.S.A. 18A:12-33*, *N.J.A.C. 6A:28-4.1*, and *N.J.A.C. 6A:11-3.1(a)*. The appellant ultimately completed the training after the issuance of the SEC's July 27, 2021 Order to Show Cause (OTSC), but prior to its August 30, 2021 decision. The SEC recommended a penalty of reprimand for the violation, and the appellant appealed the SEC's determination. Having carefully reviewed the SEC's decision and the record in its entirety, the Commissioner finds that the SEC's decision is supported by sufficient, credible evidence, and that the appellant failed to establish that the SEC's finding of a violation of the Act is arbitrary, capricious or contrary to law. *N.J.A.C. 6A:4-4.1(a)*. However, as set forth below, while the Commissioner would ordinarily agree that a penalty of reprimand is appropriate in matters such as this, due to the unique circumstances specific to appellant's case, the Commissioner finds that no penalty is warranted.

Pursuant to *N.J.A.C. 6A:28-4.1*, charter school trustees must annually complete a training program offered online by the New Jersey School Boards Association (NJSBA). Appellant was required to complete his Governance 1 training by June 30, 2021. Exhibit A to the SEC's decision

– a certification by an NJSBA employee – indicates that on May 19, 2021¹, the NJSBA sent an email to appellant with the link to access the training, along with an additional email about the training on June 11, 2021. According to Exhibit A, the NJSBA sent additional notices to appellant on June 17 and June 28, 2021, along with notices to the school Business Administrator on June 11 and 21, 2021 indicating that appellant had not completed the training.²

The documents provided in appellant’s appendix provide that on June 25, 2021, prior to the June 30, 2021 deadline, appellant began communicating with the Business Administrator about trouble accessing the training. (Aa12-Aa25). When appellant logged into his account, he could only see training events for dates that had passed, but did not have access to the online training, and he indicated that he had not received a link for the online training from NJSBA. (Aa21-Aa25). On June 30, 2021, the Business Administrator contacted the NJSBA call center and asked for the training links to be resent to appellant. (Aa26). A response email by the NJSBA on the same date indicated that the training links were resent, but that “You can do the training when you have time don’t rush to finish today.” (Aa29).

Thereafter, the NJSBA sent notices to both appellant and the Business Administrator on July 7, 2021 and July 15, 2021. (Exhibit A). The SEC then issued its OTSC on July 27, 2021. The following day, the Business Administrator resumed communication with the call center about appellant’s required training. (Aa30-Aa34). The Business Administrator then reached out to appellant, informing him that his “email address was incorrect with NJSBA – the correct email has been given.” (Aa35). On August 13, 2021, appellant communicated with the NJSBA that

¹ The certification indicates the year of this communication was 2020, which is presumably a typographical error.

² Copies of the emails referenced in Exhibit A are not included in the record.

while he could now login to his account, he still could not access the training because he was getting a blank portal screen when he tried to click “take class.” (Aa39). That same date, appellant submitted his resignation from the Board rather than face disciplinary action. (Aa44-Aa45). On August 16, 2021, the NJSBA responded, “We have corrected this error that you have been encountering. Please try and access the course one more time.” (Aa46). Appellant successfully completed his training on that same date and retracted his resignation. (Aa47-Aa49). Thereafter, the SEC issued its decision on August 30, 2021, finding that appellant violated the Act and recommending a penalty of reprimand.

In his appeal to the Commissioner, appellant argues that the SEC’s decision was not supported by sufficient credible evidence and is therefore arbitrary, capricious and contrary to law. First, appellant argues that the SEC decision states that the NJSBA sent multiple communications to appellant regarding the training. While the certification attached as Exhibit A details dates that emails were purportedly sent, no copies of the emails are included in the record. Furthermore, on July 28, 2021, it was discovered that NJSBA had an incorrect email address for appellant. (Aa35). Additionally, while the SEC decision states that appellant did not respond to the OTSC, such statement is inaccurate because appellant did submit proof that he completed the training, along with a transcript, as the OTSC directed him to do. (Aa8; Aa49). Finally, while the SEC decision indicates that there was no reasonable basis for appellant to have failed to complete the training by June 30, 2021, appellant argues that he faced multiple technical flaws with the online training platform, which were not resolved until August 16, 2021. Moreover, the NJSBA told appellant on the due date that he could complete the training when

he had time and did not need to rush to finish that day. Accordingly, appellant requests that the Commissioner reverse the SEC finding of a violation of the Act.

In opposition, the SEC argues that its decision should be affirmed because it is supported by sufficient credible evidence in the record. The SEC reiterates that appellant received multiple notifications to complete the training but failed to do so in timely manner, by the due date of June 30, 2021. The SEC argues that appellant does not provide proof that NJSBA had the wrong email address on file. Additionally, the SEC points out that there is a one-month gap in appellant's emails regarding training from June 30, 2021 to July 28, 2021 (the day after the OTSC was issued), without any explanation as to why he did not attempt to complete the training during that time. The SEC contends that appellant's explanations do not excuse the fact that he failed to complete the training by the June 30, 2021 deadline, and instead completed the training on August 16, 2021. As such, the SEC argues that it applied a clear and straightforward application of the statute and regulations and its decision must be affirmed.

In reply, appellant points out that he did provide proof that he did not receive the NJSBA's emails. Specifically, appellant provided an email from the Business Administrator indicating that NJSBA had an incorrect email for him. Appellant further contends that the SEC provides no proof that the NJSBA used a correct email address. Additionally, appellant argues that he should not be faulted for the one-month gap between communications as he was attending to urgent personal matters and the NJSBA had advised him that he did not need to rush to finish the training. Appellant maintains that he ultimately completed the training before the final deadline set by the OTSC.

Upon a comprehensive review of the record, the Commissioner finds that the SEC's determination that the appellant is in violation of the Act is supported by sufficient credible evidence, and the appellant has not established that the SEC's decision is arbitrary, capricious, or contrary to law. *N.J.A.C. 6A:4-4.1(a)*. Pursuant to *N.J.A.C. 6A:28-4.1*, appellant was required to complete the Governance 1 training program by June 30, 2021. There is no dispute that appellant ultimately completed the training on August 16, 2021. As such, appellant failed to timely complete his charter school trustee training in accordance with *N.J.S.A. 18A:12-33*, *N.J.A.C. 6A:28-4.1*, and *N.J.A.C. 6A:11-3.1(a)*.

With respect to the appropriate penalty, the Commissioner is sympathetic to appellant's arguments that he attempted to complete the training before the June 30, 2021 deadline, dealt with technological issues in accessing the training, and was told by the NJSBA that he did not need to rush to complete it. An email in the record demonstrates that the NJSBA had an incorrect email address for respondent. The SEC does not provide any evidence to the contrary, and the July 28, 2021 email from the Business Administrator indicating that appellant's email address with the NJSBA was incorrect, but that the correct email had now been given, demonstrates that the email address had been incorrect until that date. As such, the evidence in the record demonstrates that appellant never received the link to access the training on May 19, 2021, or the other warning notices from the NJSBA. There are emails prior to the June 30, 2021 deadline in which appellant was attempting to access the training, did not have the link, and could only see dates for trainings that had passed rather than the option to take the training online. When the NJSBA was advised of this, they told him, "You can do the training when you have time don't rush to finish today." (Aa29). While the SEC argues that the one-month gap between

communications cannot be excused, the Commissioner notes that the problem with the portal was not fixed until August 16, 2021, and appellant completed the training that same day.

Pursuant to *N.J.A.C. 6A:28-10.12(a)*, when a violation of the Act is found, the SEC may recommend that the Commissioner impose a penalty of reprimand, censure, suspension, or removal of a school official. Additionally, the SEC may decline to issue a penalty when it finds that the violation was de minimis. *N.J.A.C. 6A:28-10.12(a)*. The Commissioner notes that ordinarily, school board members or charter school trustees who complete the training after the issuance of the OTSC but before the SEC's meeting receive a penalty of reprimand. However, the unique circumstances in this matter – in which the appellant did not receive the link to access the training due to an incorrect email address, attempted to complete the training prior to the June 30, 2021 deadline before running into technological difficulty, and was directed by the NJSBA that he did not need to complete the training by the deadline – render this matter different from ordinary cases. As such, the Commissioner finds that appellant's violation of the Act was de minimis and no penalty is warranted.

Accordingly, although respondent is a school official found to have violated the School Ethics Act, no penalty shall be issued.

IT IS SO ORDERED.³



ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 23, 2022

Date of Mailing: February 23, 2022

³ 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.