

165-22SEC

SEC Dkt. No. T22-21

Agency Dkt. No. 127-5/22

New Jersey Commissioner of Education

Final Decision

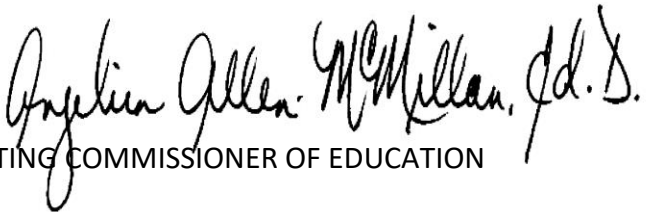
In the Matter of Fred Pierce,
Upper Deerfield Township Board of
Education, Cumberland County.

The Commissioner has reviewed the record of this matter and the decision of the School Ethics Commission (SEC), finding that respondent violated the School Ethics Act for failure to timely complete board member training in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1. The SEC's decision was forwarded to the Commissioner for final determination on the recommended penalty pursuant to *N.J.S.A.* 18A:12-29(c). The SEC recommended a sanction of removal effective upon the adoption of the decision by the Commissioner. Alternatively, if the respondent completed the required training before the issuance of the Commissioner's final decision, the SEC recommended that respondent be suspended for 30 days. Respondent failed to complete the training. 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 for respondent's failure to timely honor an obligation placed upon board members by law.

Accordingly, as of the filing date of this decision, respondent is removed from the board for violating the School Ethics Act.

IT IS SO ORDERED.¹


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

Date of Decision: July 7, 2022
Date of Mailing: July 8, 2022

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
Docket No.: T22-21
Decision for Failure to Complete Mandatory Training
Requirement in a Timely Manner***

***I/M/O Fred Pierce,
Upper Deerfield Township Board of Education, Cumberland County***

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) at its meeting on April 16, 2022, and also served on April 26, 2022, via electronic mail.¹ The OTSC directed Fred Pierce (Respondent), a “board member” as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, to show cause as to why the Commission should not find him in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC served on April 26, 2022, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC, and further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC. Respondent was also notified that, upon receipt of the response or upon expiration of the twenty (20) day time period for so filing, the Commission may proceed to a determination of a violation on a summary basis (i.e., without a hearing or further proceedings) in accordance with *N.J.A.C.* 6A:28-1.6(c), which so permits when material facts are not in dispute.

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of the Upper Deerfield Township Board of Education (Board), located in Cumberland County. As a result of his position on the Board, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. Respondent was required to complete the Governance 4 training program by December 31, 2021.

On or April 15, 2022, NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2021, and the list provided included Respondent. Prior to this time, multiple communications about mandated training

¹ As a result of the ongoing Coronavirus (COVID-19) pandemic, and the implementation of electronic filing, service of process was effectuated by the Commission through electronic transmission only.

were sent to Respondent from NJSBA through a variety of means, including targeted e-mail messages and postings in *School Board Notes*. More specific information detailing the outreach efforts of NJSBA to communicate with Respondent and/or the charter school lead about mandated training is set forth in the attached Certification from NJSBA. Notwithstanding all of these communications, Respondent did not complete mandated training.

In light of Respondent's failure to complete mandated training, an OTSC was issued by the Commission, and served on Respondent, via electronic mail, on April 26, 2022.

To date, there is no dispute that Respondent did not complete his required training by December 31, 2021, and did not complete the training prior to the issuance of the Commission's OTSC. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2021, and also failed to complete training as required by *N.J.S.A. 18A:12-33* and *N.J.A.C. 6A:28-4.1*.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A. 18A:12-33*. Based on the record as set forth above, at its meeting on May 24, 2022, the Commission found that Respondent violated *N.J.S.A. 18A:12-33* and *N.J.A.C. 6A:28-4.1*. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, he failed to complete training as required. Where a violation of the Act is found by the Commission, the Commission may recommend to the Commissioner of Education that a penalty be imposed. The recommended penalty can include a reprimand, censure, suspension, or removal of the school official. *N.J.A.C. 6A:28-10.12*.

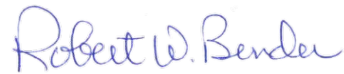
For the reasons set forth above, and because training is regularly completed annually and can be completed from any computer or device with an internet connection, the Commission recommends that the Commissioner of Education impose a penalty of **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be forty-five (45) days after the mailing date of the within decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision.

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. Respondent 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.”² A copy of any comments filed must 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: May 24, 2022

² An electronic submission may also be sent to controversiesdisputesfilings@doe.nj.gov.