

236-23

SEC Dkt. No. C81-20

OAL Dkt. No. EEC 04844-21

Agency Dkt. No. 2-4/23A

## New Jersey Commissioner of Education

### Final Decision

In the Matter of Brigitte Goncalves, East Newark  
Board of Education, Hudson County.

This matter involves an appeal of a School Ethics Commission (Commission) decision issued April 25, 2023, determining that appellant, a former member of the East Newark Board of Education (Board), violated *N.J.S.A. 18A:12-24(c)* of the School Ethics Act by voting to approve a shared services agreement between the Board and the Borough of East Newark (Borough) while she was employed part-time as the Borough's Chief Financial Officer. 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:4-4.1(a)*. The Commissioner further finds that the penalty of a reprimand was appropriate.

The relevant facts are uncontested. The Borough of East Newark is a Type I school district in which all Board members are appointed by the Mayor of the Borough. The former Mayor appointed appellant to the Board in March 2019, and she became the Board president in May 2020. While serving as a Board member, appellant was employed by the Borough in various positions. On July 20, 2020, appellant voted to approve a shared services agreement between the Board and the Borough, requiring the Board to pay the Borough for lawn care, snow removal, transportation, and fuel services. At the time of her vote, appellant was employed by the Borough part-time as its Chief Financial Officer and a new Mayor had taken office.

On December 8, 2020, a Board member filed a complaint with the Commission alleging, among other things, that appellant violated *N.J.S.A. 18A:12-24(c)* when she voted to approve the shared services agreement.<sup>1</sup> The Commission found probable cause to credit the allegation and transmitted the matter to the Office of Administrative Law (OAL) for a contested hearing. At the conclusion of the hearing, the Administrative Law Judge (ALJ) concluded that appellant had not violated *N.J.S.A. 18A:12-24(c)* or any other provision of the School Ethics Act and dismissed the complaint.

In its April 25, 2023, decision, the Commission adopted the ALJ's credibility determinations, findings of fact, and the majority of the ALJ's conclusions of law and recommendation to dismiss numerous other alleged violations of the School Ethics Act not at issue on appeal. However, the Commission rejected the ALJ's conclusion that appellant did not violate *N.J.S.A. 18A:12-24(c)* when she voted to approve the shared services agreement. Instead, the Commission found that appellant's "affirmative vote, in and of itself, constituted action in her official capacity in a matter where she . . . had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity." *In the Matter of Brigitte Goncalves*, SEC Docket No. C81-20, SEC Decision (April 25, 2023), at 6-7. As for the appropriate penalty, the Commission recommended a reprimand.

On appeal, appellant contends that she did not violate *N.J.S.A. 18A:12-24(c)* by voting to approve the shared services agreement because her part-time Borough salary did not constitute a financial involvement that might reasonably be expected to impair her objectivity. She asserts that as Chief Financial Officer, she performed day-to-day bookkeeping and accounting functions that did not present a conflict of interest with her role on the Board. In addition, she argues that no

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<sup>1</sup> Because they are not challenged on appeal, the other allegations in the complaint that were dismissed are not discussed herein.

reasonable observer in the Borough could have perceived that her employment impaired her objectivity because they would have known about friction between appellant and the new Mayor's administration and her lack of influence over them. She further contends that even if the Commissioner concludes that she violated *N.J.S.A. 18A:12-24(c)*, no penalty should be imposed because the violation was *de minimis* and she is no longer a Board member.

In reply, the Commission contends that its decision was reasonable and adequately supported by the record. Citing *In the Matter of Carvalho, Neron and Nina, Elizabeth Board of Education, Union County*, and *In the Matter of Nina, Carvalho, Neron and Rodriguez, Elizabeth Board of Education, Union County*, (Consolidated), Commissioner Decision No. 168-18A (June 1, 2018), it asserts that a reasonable member of the public could conclude that appellant's objectivity would be impaired when casting a vote which would benefit her employer. The Commission further asserts that an actual conflict of interest need not exist for a violation to occur and that the recommended penalty of reprimand is consistent with past precedent.

In adjudicating appeals from decisions of the Commission, the Commissioner must "ascertain whether the decision is supported by sufficient credible evidence in the record and shall not disturb the decision unless the appellant has demonstrated that [the Commission] acted in a manner that was arbitrary, capricious, or contrary to law." *N.J.A.C. 6A:4-4.1(a)*. Upon a comprehensive review of the record, the Commissioner finds that the Commission's decision is supported by sufficient credible evidence, and that appellant has not established that the Commission acted in a manner that was arbitrary, capricious, or contrary to law.

When enacting the School Ethics Act, the Legislature declared that "it is essential that the conduct of members of local boards of education . . . hold the respect and confidence of the people. These board members . . . must avoid conduct which is in violation of their public trust or which

creates a justifiable impression among the public that such trust is being violated.” *N.J.S.A. 18A:12-22(a)*. In furtherance of that important goal, *N.J.S.A. 18A:12-24(c)* states, in relevant part: “No school official shall act in his official capacity in any matter where he . . . has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment.”

Initially, appellant’s contention that her part-time employment with the Borough does not establish a financial involvement that can reasonably be expected to impair her objectivity under *N.J.S.A. 18A:12-24(c)* is undermined by past precedent. The fact that she worked part-time is not dispositive. “A small financial interest – or no financial interest at all – can nevertheless constitute direct or indirect financial involvement that might reasonably be expected to impair a Board member’s objectivity or independence of judgment.” *In the Matter of Monteiro, Jr., Elizabeth Board of Education, Union County*, Commissioner Decision No. 94-15SEC (March 16, 2015), at 3. Thus, although she did not earn a full-time salary, her employment with the Borough nonetheless constituted a financial involvement that could reasonably be expected to impair her objectivity. *See also SEC Public Advisory Opinion A01-19* (March 27, 2019) (advising that Board members employed by the City would violate *N.J.S.A. 18A:12-24(c)* by voting on a potential land transfer proposed by the City as it would “appear that they were acting in a matter in which they had a direct or indirect financial involvement that might reasonably be expected to impair their objectivity or independence of judgment”).

Appellant’s attempt to distinguish *Carvalho*, relied upon by the Commission, is unpersuasive. In *Carvalho* at 5-6, the Commissioner held that respondent Board members violated *N.J.S.A. 18A:12-24(c)* when they simultaneously worked for the City of Elizabeth and voted to appoint a City Councilman to the position of Assistant Superintendent. The Commissioner reasoned that the

respondents' employment with the City "could reasonably be expected to impair their objectivity or independence of judgment because they were voting for their employer" and "their vote . . . created the perception that they may not be objective." *Ibid.* The fact that the nature of the vote in *Carvalho* differed as it involved appointment of an Assistant Superintendent as opposed to the approval of a shared services agreement does not render it inapplicable to the matter at hand. In both cases, the Board members' votes were cast in their employers' favor. Here, under the agreement's terms, the Borough was slated to receive payments from the Board. Consequently, appellant's vote in favor of the agreement while simultaneously employed by the Borough created the perception that she might not be acting objectively or independently.

Appellant further contends that her vote did not violate *N.J.S.A. 18A:12-24(c)* because: (1) her duties as Chief Financial Officer involved ministerial functions such as bookkeeping and accounting; (2) she did not advise or hold influence over the new Mayor or Borough Council regarding policy decisions or any matters related to the school district; and (3) the Borough never adopted the shared services agreement for the school year in question although similar agreements had been adopted in prior years. Each of these contentions is unavailing. As explained in *Carvalho*, the pertinent inquiry is whether appellant's vote in favor of the shared services agreement with the Borough could create the perception among members of the public that the employer-employee relationship might impair her objectivity or independent judgment. The Commissioner finds that a reasonable member of the public could perceive that appellant, due to her employment with the Borough, might be more inclined to vote in favor of the shared services agreement with the Borough even if its adoption was not in the Board's best interest. Appellant's actual duties, her actual influence over the new Mayor or Borough Council, and whether the Borough ultimately adopted the shared services agreement are irrelevant to this inquiry. *See, generally, Friends Retirement Concepts*

*v. Bd. of Educ. of Borough of Somerville*, 356 N.J. Super. 203, 215 (Law Div. 2002) (discussing a violation of the School Ethics Act and explaining that “[a]n actual conflict of interest is not the decisive factor . . . but rather whether there is a potential for conflict”).

Citing *Mayer v. Berrios*, SEC Docket No. C03-23, SEC Decision on Motion to Dismiss (April 25, 2023), appellant also contends that because the Borough is a very small community, reasonable community members were surely aware that she lacked influence over the new Mayor and Borough Council due to an ongoing rift between them. Therefore, they could not have perceived that the acrimonious employer-employee relationship could have resulted in the impairment of appellant’s objectivity or judgment when voting on the shared services agreement. The Commissioner finds that *Mayer*, which is both factually and legally distinguishable from the present matter and does not involve a violation of N.J.S.A. 18A:12-24(c), fails to support appellant’s position. Moreover, there is no factual or legal basis to support appellant’s assertion that a reasonable Borough resident would have likely been aware of an alleged political rift between appellant and Borough officials merely because the Borough is a very small community of several thousand residents. On the contrary, a reasonable resident of the Borough—regardless of its size—could justifiably believe that appellant’s objectivity was impaired due to her employment status when she voted to approve the shared services agreement and that the public trust had been violated. This conclusion is consistent with the express legislative intent of the School Ethics Act. See N.J.S.A. 18A:12-22(a) (“[B]oard members . . . must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.”).

Finally, the Commissioner concurs with the Commission that the least severe penalty, a reprimand, is appropriate. Appellant’s vote in favor of the shared services agreement—given her employment status with the Borough—resembles that of the respondents in *Carvalho*, who were also

reprimanded for casting votes in favor of their employer. In addition, as was true in *Carvalho*, the record lacks evidence of “political cronyism or any other aggravating factor.” *In the Matter of Brigitte Goncalves*, SEC Docket No. C81-20, SEC Decision (April 25, 2023), at 8-9 (citing *Carvalho* at 5-6). Contrary to appellant’s assertion, her violation of *N.J.S.A. 18A:12-24(c)* was not *de minimis* and the fact that she is no longer a Board member does not negate her past actions or otherwise exonerate her from receiving a penalty.

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

IT IS SO ORDERED.<sup>2</sup>

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

Date of Decision: August 7, 2023  
Date of Mailing: August 9, 2023

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<sup>2</sup> 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.