

342-23  
SEC Dkt. No. C75-18  
OAL Dkt. No. EEC 10572-19  
Agency Dkt. No. 7-7/23A

## New Jersey Commissioner of Education

### Final Decision

In the Matter of Ardie Walser,  
Board of Education of the Township of  
Teaneck, Bergen County

This matter involves an appeal of a School Ethics Commission (Commission) decision issued on June 27, 2023, determining that appellant – a member of the Teaneck Board of Education (Board) – violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(d)* of the School Ethics Act (Act) by using his Board email account and the Board website to promote his personal business. The Commission recommended that appellant be censured for the violation. For the reasons explained herein, the Commissioner remands the matter to the Commission for further proceedings.

The Commission transmitted this matter to the Office of Administrative Law (OAL) on or about July 26, 2019. In March 2021, the Commission served interrogatories and requests for production of documents on appellant through his counsel, Philip E. Stern, Esq. (Stern) of the law firm of DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, PC. Stern failed to respond to the discovery requests. In March 2022, the Commission served requests for admissions on Stern; he again failed to respond. During 2022, Stern also failed to appear for three conferences scheduled by the Administrative Law Judge (ALJ). In May 2022, the Commission filed a motion to deem admitted the requests for admission and to strike appellant's answer for failure to respond to discovery requests. In January 2023, the ALJ granted the motion, and the parties requested that the file be returned to the Commission. On April 14, 2023, the ALJ issued an Initial decision dismissing the matter. On

June 27, 2023, the Commission rejected the Initial Decision, finding that because the answer had been stricken, the matter was no longer a contested case, and the Commission's regulations provide that the matter should be determined on a summary basis. The Commission found that appellant had violated the Act and recommended a penalty of censure.

On appeal, Stern states that he "failed to competently represent" appellant and that he "failed to communicate those failures" to appellant. Stern characterizes his actions as a "betrayal" of appellant, stating that he "cannot overemphasize his injurious role in this fiasco" and that he failed "miserably." Although Stern cites to a litany of personal issues, he acknowledges that he is "acutely aware that he is not unique in having to deal with personal crises while taking responsibility for clients." He also admits that he is a part of a law firm that was available to assist "in a heartbeat" with the "fairly rudimentary task" of answering discovery requests, but he failed to seek any assistance from his firm. Stern argues that the Commission incorrectly found that appellant had violated the Act and, if the Commission's decision is not reversed, the case should be remanded to the Commission for a full hearing on the merits.

Upon review, the Commissioner concludes that appellant was not responsible for the behavior of his attorney, and that it is in the interests of justice to remand this matter to the Commission for further proceedings. While not directly on point, the Commissioner finds case law surrounding default judgments to be instructive here. Under *N.J.Ct.R. 4:50-1(a)*, a default judgment may be vacated based on excusable neglect. "Carelessness may be excusable when attributable to an honest mistake that is compatible with due diligence or reasonable prudence." *Mancini v. Eds*, 132 *N.J.* 330, 335 (1992). Here, Stern's neglect was inexcusable. As he admits, attorneys routinely deal with issues in their personal lives while representing their clients. Moreover, Stern is not a solo practitioner, but is employed by a firm that includes numerous other attorneys. If Stern's personal

issues were so insurmountable that he could not competently represent appellant, then he could easily have sought assistance from his firm, but he failed to do so.

Default judgments may also be vacated for any other reason justifying relief. *N.J.Ct.R.* 4:50-1(f). The New Jersey Supreme Court has stated that a court should view the opening of default judgments “with great liberality.” *Mancini, supra*, 132 *N.J.* at 334. It is clear that appellant intended to contest the facts alleged in the complaint, and he would have done so if not for Stern’s failures. The Commissioner finds that it would be unjust to hold appellant responsible for his attorney’s failures by affirming the decision the Commission made on a summary basis.<sup>1</sup> However, the Commissioner finds that it is premature to reach a decision on the merits, as the record has not been fully developed through proceedings at the OAL.

Accordingly, this matter is remanded to the Commission for further proceedings consistent with this decision.

IT IS SO ORDERED.

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

Date of Decision: November 20, 2023

Date of Mailing: November 22, 2023

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<sup>1</sup> The Commissioner notes that it was entirely appropriate for the Commission to proceed on a summary basis following the striking of appellant’s answer. Only the information presented to the Commissioner on appeal regarding Stern’s conduct, which was never presented to the Commission, requires a different outcome.

***Before the School Ethics Commission***  
***OAL Docket No.: EEC-10572-19***  
***SEC Docket No.: C75-18***  
***Final Decision***

***I/M/O Ardie Walser,***  
**Teaneck Board of Education, Bergen County**

**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed on December 5, 2018,<sup>1</sup> by Michael Pagan (Complainant) alleging that Ardie Walser (Respondent) a member of the Teaneck Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*<sup>2</sup> More specifically, the Complaint alleged that Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24(d), based on four instances of using his Board email account or Board website to promote his personal business.

On January 22, 2019, Respondent filed a Motion to Dismiss in Lieu of an Answer (Motion to Dismiss) and also alleged that the Complaint is frivolous. On February 11, 2019, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

At its meeting on March 26, 2019, the Commission considered the filings in this matter and, at a special meeting on May 2, 2019, the Commission voted to deny the Motion to Dismiss in its entirety, and to direct Respondent to file an Answer. The Commission also voted to find the Complaint not frivolous, and to deny the request for sanctions. On May 23, 2019, Respondent filed an Answer as directed.

At its special meeting on July 23, 2019, the Commission adopted a decision finding probable cause for all of the allegations in the Complaint. Based on its finding of probable cause, the Commission transmitted the above-captioned 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.

At the OAL, following Respondent's failure to answer discovery requests, the Administrative Law Judge (ALJ) issued an Order on January 13, 2023, deeming the unanswered Requests for Admission "Admitted" and suppressing Respondent's Answer with Defenses.

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<sup>1</sup> On December 5, 2018, Complainant filed a deficient Complaint; however, on December 14, 2018, Complainant cured all defects and filed an Amended Complaint that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3.

<sup>2</sup> The Complaint also alleged that Shahanzaz Arjumand (Respondent Arjumand) violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24(d) in Count 3. Complainant voluntarily withdrew all allegations against Respondent Arjumand.

Thereafter, on April 14, 2023, the ALJ issued an Initial Decision dismissing the matter without prejudice.

Petitioner filed Exceptions to the Initial Decision, in accordance with *N.J.A.C.* 1:1-18.4. Respondent did not file a Reply.

At its regularly scheduled meeting on May 23, 2023, the Commission considered the full record in this matter. Thereafter, at its meeting on June 27, 2023, the Commission voted to reject the Initial Decision and issue a determination on a summary basis, finding that Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24(d) and recommending a penalty of censure.

## **II. Order and Initial Decision**

After transmittal of this matter in July 2019, and a delay in the proceedings that appears to have been due in part to the COVID-19 pandemic, the ALJ issued an Order on January 13, 2023 to address Respondent's outstanding discovery requests. In the written Order, the ALJ noted that Respondent's counsel failed to appear for at least three telephone conferences in 2022 and did not reply to Petitioner's discovery requests. As a result of the outstanding discovery, Petitioner filed a motion on May 26, 2022, seeking to have the Requests for Admission deemed admitted and sanctions, including striking Respondent's Answer. Respondent did not respond to the discovery or the motion. Accordingly, in the January 13, 2023, Order, the ALJ granted the requested relief, deeming the Requests for Admission "Admitted" and suppressing Respondent's Answer with Defenses.

Thereafter, on April 14, 2023, the ALJ issued an Initial Decision finding the January 13, 2023, Order was dispositive of the case. The ALJ concluded that he was "unable to address the merits" of this matter, deemed the matter closed, and returned the file to the Commission. The ALJ further indicated Respondent's attorney "reserves his right to seek to have the matter re-opened." *Initial Decision* at 2. As such, the ALJ dismissed the matter without prejudice.

## **III. Exceptions**

In its exceptions, Petitioner argues that the ALJ erred in dismissing the Complaint without prejudice because the Complaint was never dismissed. Instead, Petitioner explains the matter was returned to the agency because Respondent's Answer was stricken due to his failure to provide discovery responses and was, therefore, no longer a contested case. As such, the case should have been returned to the agency for the Commission to determine on a summary basis, pursuant to *N.J.A.C.* 6A:28-10.7(c)(2)(i),<sup>3</sup> as the facts are no longer in dispute.

Petitioner also takes exception to the statement in the Initial Decision that Respondent's attorney "reserves his right to seek to have the matter re-opened." *Exceptions* at 4. Petitioner notes that Respondent did not "open" the matter initially, so he could not reserve a right to "re-open" the case. *Id.* at 6. Further, Petitioner surmises that "[p]erhaps the ALJ confused this case for one where the State agency was the respondent rather than the petitioner." *Id.* at 5.

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<sup>3</sup> As this matter was initiated before March 6, 2023, the rules in effect prior to that date are applicable to this matter.

Accordingly, Petitioner reiterates that the matter is no longer contested, the facts are not in dispute, and therefore, the Commission should determine whether there is a violation on a summary basis.

Respondent did not file exceptions and/or a reply to Petitioner's exceptions.

#### **IV. Analysis of the Initial Decision**

After review, the Commission finds the Initial Decision in the above-captioned matter must be **rejected**. In the January 13, 2023, Order, the ALJ deemed the Requests for Admission "Admitted" and determined to strike Respondent's Answer due to failure to respond to discovery requests for an extended period of time. Without an Answer, the matter is no longer a contested case. Pursuant to *N.J.A.C. 6A:28-10.7(c)(2)(i)*, "where a matter is transmitted to the OAL and the respondent fails to appear before the OAL and the matter is returned to the Commission for disposition, the allegation(s) which the Commission found probable cause to credit shall be deemed admitted and the Commission may proceed to a determination of a violation on a summary basis." While this matter was not returned for Respondent's failure to appear, the matter was returned to the Commission as the Answer was stricken, which would similarly require a determination on a summary basis. The Commission found probable cause that Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)*. As such, the ALJ's dismissal of this matter without prejudice before a determination on those allegations is inappropriate, and must be rejected. Accordingly, the Commission will decide this matter summarily.

#### **V. Summary Decision**

##### ***A. Factual Findings***

As Respondent's Answer has been stricken in accordance with the January 13, 2023, Order, the facts alleged in the Complaint are uncontested. By way of background, Respondent's bio on the Board website provided that he is the co-founder and director of Math Adventures and Word Play (MAWP), a private tutoring program.

According to the Complaint, on October 10, 2018, an email was sent from the Whittier Elementary School/Teaneck Public Schools District (District) email account to the parents/guardians of students in the District, which contained a link for MAWP and directed anyone interested to contact "Ardie Walser" via email or telephone. Additional contact information was provided for two other people, including "Ardie Walser's spouse." Complainant asserted that although well intended, this program should not have been promoted within the District, and therefore, Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)* in Count 1, because he is a member of the Board/Board President and there is "inherently a conflict with his official role and this role." According to Complainant, it places a principal, administrative official, or teacher in an "uncomfortable position" when correspondence is being requested which includes the name of, or at the request of, the Board President and Respondent is "directly interacting with [District] students and making commentary on the academic work they are being exposed to in the schools."

Complainant further asserted that on or about October 7, 2018, the Board authorized a flyer to be posted on the Board's website for MAWP. The flyer names "Ardie Walser," as the contact person. Complainant alleged that Respondent is Board President and has the authority to determine what information is, and is not, posted on the Board's website, and therefore, Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)* in Count 2, because he is a member of the Board/Board President, and this is in "conflict with his duties in the eye of the public interest." Once again, this information places a principal, administrative official or teacher in an uncomfortable position.

Complainant maintained that on or about November 17, 2018, "various PTO organizations" posted information regarding events that MAWP was hosting, after Respondent sent an email containing the information. Complainant asserted the events, which are "pushed by various board members and the school," appear to be "official events" and may "prejudice the independence and judgments of official action." Therefore, Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)* in Count 3, because the topic of discussion relates to the operation of the schools, specifically technology and education, and Respondent Walser's role as director of this program "blurs the line between" public and private life, and makes it appear that this is an official Board event.

Finally, Complainant contended that on November 19, 2018, Respondent replied to an email from a community member (and possible Board candidate), who was expressing her discontent with a recent Board meeting. In his reply, which was sent from his Board email account, Respondent told the member that if she would like to discuss her concerns further, she could meet him on Saturday, while he was working with students and their families to "improve education for ALL..." and directed her to the MAWP website. Also copied on the email, was the superintendent, Board members, and members of the public, and therefore, Complainant alleged that Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)* in Count 3, because he is urging members of the public to come to his event to discuss official Board actions/matters, which blurs the line between a Board member and his private life/business. This is compounded by the fact that Respondent used his District email account to advertise the event, and included the superintendent and other Board members on the email, thus giving the perception that the event is Board/District approved.

In addition to the facts established in the Complaint, the January 13, 2023, Order of the OAL, also deems the twenty-five Requests for Admission "Admitted." The relevant facts determined "Admitted" in the Requests for Admission, without repeating those that are already deemed uncontested in the Complaint, are as follows:

... 16. When various PTOs posted information about MAWP events, these events appear to be official Board events and may prejudice the independence and judgments of official action. ...

21. Your business/employment with MAWP is in substantial conflict with the proper duties as a Board member and Board President.

22. In your capacity as a Board member/President, you used or otherwise directed the use of the District's e-mail and website to promote your personal business.

23. The nature of your employment by/with MAWP in and of itself might reasonably be expected to prejudice your independence of judgment in the exercise of your official duties as a Board member and Board President.

24. In your capacity as a Board member/President, you directed PTO organizations to advertise the work of your personal business.

25. In your capacity as a Board member/President, you used or otherwise directed the use of the District resources to promote “the good work” of your personal business.

### ***B. Analysis and Conclusions of Law***

Based upon its review of this matter, including the uncontested facts and the “Admitted” facts and findings in the record, the Commission concludes that Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24(d), which provide:

a. No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

With respect to Count 1, Respondent’s use of his District email account to promote his personal business by sending parents/guardians in the District a link for MAWP and directing those interested to contact him or his spouse violates *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24(d). The use of his District email to seek clients for the financial benefit of his business demonstrates that Respondent used his official capacity on the Board for personal gain. Additionally, the direct interaction with District students regarding their academic work through his private business demonstrates a direct and substantial conflict with his ability to discharge his duties as a Board member, and the nature of Respondent’s employment at his private tutoring company, which he sought to promote through his Board email, can reasonably be expected to impair his objectivity and prejudice his independence of judgment.



When Respondent, in his position as Board President, authorized a flyer to be posted on the Board's website that advertised his personal business, his personal interests were substantially in conflict with his duties in the public interest, and he used his official capacity as a Board member to publicize his business in order to obtain a financial benefit. Respondent's use of his official capacity on the Board to financially benefit his business, and the nature of his employment as co-founder of MAWP, can reasonably be expected to prejudice his independence of judgment in his duties as a Board member. As such, Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)* in Count 2.

In Count 3, Respondent sent an email to "PTO organizations" regarding upcoming events MAWP was hosting that urged the organizations to post and advertise the events. The use of his position on the Board to promote his personal business, which creates the appearance that such events are official school events, creates a substantial conflict as it blurs the line between his financial interest in MAWP and his position on the Board. Respondent's direct role in approving the website content in order to market his private company illustrates his blatant use of his official capacity on the Board for personal, financial gain. These actions, and Respondent's leadership position at MAWP, may result in his inability to exercise sound judgment in his official duties. As such, Respondent is in violation of *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)*.

Respondent's use of his Board email account to communicate with the public and solicit a meeting with a community member during a time when he would be working with students and families through MAWP, as established in Count 4, violates *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)*. Respondent deliberately used his official capacity in responding to an email as a Board member to set up a meeting at his private tutoring company, in which he has a financial interest. Respondent's actions to promote his personal business create an obvious and substantial conflict as he is attempting to conduct responsibilities for his position on the Board at the same time as he is working in his capacity as co-founder and director of MAWP. Such a conflict gives the appearance as though his personal MAWP event is also a Board event and his employment at MAWP can, therefore, reasonably be expected to prejudice his independence of judgment when executing his Board member duties.

Accordingly, and based on a complete and thorough review of the record, and the undisputed evidence as set forth herein, the Commission finds that Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)* in Counts 1-4 of the Complaint.

## **VI. Recommended Penalty**

Having found that Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)*, the Commission is authorized to recommend to the Commissioner of Education (Commissioner) an appropriate penalty, which may range from reprimand to removal. *N.J.S.A. 18A:12-29(c)*.

In reaching its determination of a penalty in this matter, the Commission emphasizes the severity of Respondent's violations of the Act, which did not occur once, but rather in several instances. The Commission finds that based on the undisputed record before it, Respondent deliberately and intentionally used his position on the Board to benefit financially through soliciting clients for his personal tutoring business. The Commission finds such blatant violations

of the Act are egregious. The Commission, therefore, recommends a penalty of **censure** for Respondent's violations of the Act.<sup>4</sup>

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](mailto:ControversiesDisputesFilings@doe.nj.gov)). A copy must also be sent to the Commission ([school.ethics@doe.nj.gov](mailto: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.



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Robert W. Bender, Chairperson  
School Ethics Commission

Mailing Date: June 27, 2023

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<sup>4</sup> The Commission acknowledges that Respondent is no longer a member of the Board, but notes that there is precedent for issuing a penalty of censure against a respondent who is no longer a board member. See *I/M/O Daniel Leonard*, Toms River Board of Education, Ocean County, Commission Docket Nos. C56-19 and C57-10 (Consolidated), decided November 16, 2021, *penalty adopted* Commissioner Decision No. 201-22SEC, dated August 12, 2022 (issuing a censure for a violation of *N.J.S.A.* 18A:12-24.1(e) after the respondent's term on the board of education had ended).