15-25SEC
SEC Dkt. No. C11-24
Agency Dkt. No. 377-11/24

New Jersey Commissioner of Education

Final Decision

John Berenato,

Complainant,

v.

Timothy Poss, Manchester Township Board of Education, Ocean County,

Respondent.

The Commissioner has reviewed the record of this matter and the November 26, 2024 decision of the School Ethics Commission (SEC). The SEC found that respondent Timothy Poss, a member of the Manchester Township Board of Education (Board), violated *N.J.S.A.* 18A:12-24(d) of the School Ethics Act. The SEC found that, in light of the circumstances – wherein respondent continued in his role as a volunteer football coach until the end of the season, or approximately two months after his appointment to the Board – respondent's violation was *de minimis* and a penalty was not warranted. 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). Respondent neither filed exceptions to the recommended penalty nor instituted an appeal, pursuant to *N.J.A.C.* 6A:4-1 *et seq.*, of the SEC's underlying finding of violation.

Upon review, the Commissioner concurs with the SEC that respondent's actions in remaining as a volunteer coach for a brief period following his appointment to fill a Board vacancy were *de minimis* and that a penalty is not warranted.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 10, 2025
Date of Mailing: January 13, 2025

[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.: C11-24
Final Decision
Summary Disposition

John Berenato
Complainant

v.

Timothy Poss,
Manchester Township Board of Education, Ocean County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on February 2, 2024, by John Berenato (Complainant), alleging that Timothy Poss (Respondent), a member of the Manchester Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq*. More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24(a) (Counts 1 and 2), *N.J.S.A.* 18A:12-24(b) (Counts 1 and 2), *N.J.S.A.* 18A:12-24(c) (Counts 1 and 2), *N.J.S.A.* 18A:12-24(d) (Count 2) and *N.J.S.A.* 18A:12-24(e) (Count 1), as well as *N.J.S.A.* 18A:12-24.1(a) (Count 3), *N.J.S.A.* 18A:12-24.1(c) (Count 3), *N.J.S.A.* 18A:12-24.1(e) (Counts 1 and 3), *N.J.S.A.* 18A:12-24.1(f) (Count 3) and *N.J.S.A.* 18A:12-24.1(i) (Count 3) of the Code of Ethics for School Board Members (Code). On February 21, 2024, Respondent filed a Written Statement.

At its meeting on July 23, 2024, the Commission considered the filings, and at its meeting on August 27, 2024, the Commission adopted a decision finding that there are sufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24(d) was violated in Count 2, but insufficient facts and circumstances to lead a reasonable person to believe that the remaining allegations in the Complaint were violated. Additionally, the Commission voted to decide the above-captioned matter by summary decision, in accordance with *N.J.A.C.* 6A:28-9.8(c), and directed Respondent to file a statement setting forth the reasons (Statement of Reasons) he should not be found in violation of the Act. Respondent was advised that if he disputes any of the facts determined by the Commission to be both material and undisputed, he should set forth the facts with which he disagrees, and why they are material to the case. Finally, Respondent was advised that the Commission may then make a determination of a violation on a summary basis. Respondent filed a Statement of Reasons on September 11, 2024.

Thereafter, at its meeting on October 22, 2024, the Commission reviewed the record in this matter and, at its meeting on November 26, 2024, adopted a decision finding that

Respondent violated *N.J.S.A.* 18A:12-24(d), but declined to issue a penalty due to the totality of the circumstances.

II. Summary of the Pleadings

A. *Remaining Allegation of the Complaint*

In Count 2, Complainant maintains that on June 14, 2023 (prior to becoming a Board member on August 29, 2023), Respondent was appointed as a volunteer football coach in the District, and worked as an unpaid coach during the summer of 2023, supporting the coaching staff. According to Complainant, a Board member contacted the New Jersey School Boards Association (NJSBA) for an advisory opinion on whether Respondent could serve the District in both capacities as a Board member and volunteer coach, and the NJSBA advised that Respondent "must relinquish his role as an assistant coach if he intends to remain a [B]oard member," but that Respondent refused. Complainant asserts Respondent has violated *N.J.S.A. N.J.S.A.* 18A:12-24(d) because he compromised the integrity of the Board.

B. *Written Statement*

Respondent asserts he was appointed by the Board to serve as a volunteer football coach in June 2023, and was then appointed to fill a Board vacancy in August 2023. Respondent further asserts he continued to volunteer after his appointment to the Board to the end of the football season on November 2, 2023. Respondent maintains that Complainant was "well aware" that Respondent was serving in both roles and never advised Respondent that he could not do so. According to Respondent, on or about November 12, 2023, after the season had ended, a fellow Board member contacted NJSBA, and was advised that Respondent could not serve in both roles, and therefore, Respondent decided that he would not volunteer to coach football in the next year.

C. *Statement of Reasons*

According to Respondent, he had "no specific obligation" to attend practices and/or be present at football games. He notes he did not "take any direction from the head coach or any of the assistant coaches." Furthermore, Respondent indicates he was not "involved in any decision-making process with regards [(sic)] to training, scheduling etc." Respondent states his only involvement with the football team was to "assist students with developing their skills as he observed them in practice and during a game when he was present." Respondent asserts that he shared his experience as a former college and high school football player, and "used his knowledge of playing a defensive position to provide students with advice on how they can improve their playing skills." Respondent maintains that he did not violate the Act because "he did not participate in or work with the coaches and the management of the football team in any way, shape or form."

III. Findings of Fact

Based on its thorough and independent review of the record, the Commission finds the following facts to be undisputed:

1. Respondent was appointed by the Board as a volunteer football coach in June 2023 for the 2023 football season. *Complaint* at page 4; *Written Statement* at page 3.

2. Respondent was appointed as a Board member on or about August 29, 2023. *Complaint* at page 5; *Written Statement* at page 3.

3. Respondent continued to serve as a volunteer football coach until the end of the football season on November 2, 2023. *Written Statement* at page 3.

4. As a volunteer football coach, Respondent's involvement with the football team was to "assist students with developing their skills as he observed them in practice or during a game when he was present," and he "used his knowledge of playing a defensive position to provide students with advice on how they can improve their playing skills." *Statement of Reasons* at 1.

5. Respondent was not obligated to attend practices or football games and was not involved in "any decision-making process," such as training or scheduling.

6. On or about November 12, 2023, a fellow Board member contacted the NJSBA for advice on whether Respondent may serve as both Board member and volunteer football coach in the District. *Complaint* at page 5; *Written Statement* at page 3.

7. In response, the NJSBA advised that Respondent must relinquish his role as a volunteer football coach if he intends to remain a Board member. *Complaint* at page 5; *Written Statement* at page 3.

8. As the football season had already ended, Respondent decided that he would not participate as a volunteer football coach for the 2024 season. *Written Statement* at 3.

IV. Analysis and Conclusions of Law

The remaining issue in this matter is whether Respondent violated *N.J.S.A.* 18A:12-24(d) when he continued to serve as a volunteer football coach after being appointed to the Board for approximately two months until the football season ended. This provision of the Act states:

> 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;

The Commission has advised that while it "does not consider there to be a general prohibition on Board members volunteering in activities within the District they oversee," it weighs the degree of involvement a board member has with staff and students, and the degree to which the board member gave and received directions and orders from staff during the volunteer activity in determining whether the volunteer activity is permissible. *Advisory Opinion A17-15* (A17-15). The Commission has advised that the level of involvement of board members who

served as a club leader in *Advisory Opinion A10-15* (A10-15) and assisted with rehearsals for the fall play and the spring musical and served as an advisor for a school festival in *Advisory Opinion A32-14* (A32-14) would result in ethical violations. However, in A17-15, the Commission advised that a board member's involvement in building sets for the school plays and handling equipment for the marching band, and having limited interaction with staff and students in that capacity, would not result in an ethical violation.

With the above in mind, the Commission notes that from the time that Respondent was appointed to the Board on August 29, 2023, until the end of the football season on November 2, 2023, Respondent served in both capacities as a volunteer coach and Board member. After the conclusion of the football season, Respondent received advice from the NJSBA that he could not serve in both capacities, and agreed not to volunteer the following year. Nevertheless, Respondent served in both roles for approximately two months after his appointment to the Board. In considering the level of interaction that Respondent had with staff and students in his role as a volunteer coach in order to determine whether Respondent's involvement violated the Act, the Commission finds that, as a volunteer coach, Respondent had direct involvement with students. While he notes that he was not required to attend practices or football games and was not involved in the decision-making aspect of coaching, Respondent had direct involvement with students when he attended practices or games in his role as a volunteer coach. As he indicated, Respondent worked with the players to develop their skills and provide advice based on his personal experience. Such direct involvement with students in an advisory capacity is more akin to assisting with rehearsals for the fall play and spring musical and serving as an advisor for a school festival (A32-24) than building sets for the school plays and handling equipment for the marching band, which did not involve interaction with staff or students. (A17-15). The Commission finds that by serving in both roles, Respondent undertook service, even though it was on a volunteer basis, that might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties as a Board member, in violation of *N.J.S.A.* 18A:12-24(d).

V. Recommended Penalty

Having found that Respondent violated *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). However, pursuant to *N.J.A.C.* 6A:28-9.11(a), the Commission may decline to issue a penalty for violations that it finds are de minimis.

In this circumstance, the Commission declines to issue a penalty for the violation of *N.J.S.A.* 18A:12-24(d). In this matter, Respondent was already serving as a volunteer football coach prior to his appointment to the Board. While the Commission notes that he did not resign from his position as a volunteer coach upon becoming a Board member, he would not yet have completed ethics training as a brand new Board member, advice was not sought by the NJSBA until after the close of the football season, and he served in the position for a minimal amount of time and agreed not to coach in the future after being advised that serving as a volunteer coach presented a conflict with his Board membership. The Commission finds that considering the

totality of the circumstances, Respondent's violation was de minimis and a penalty is not warranted.

VI. Decision

For the reasons set forth above, the Commission finds that Respondent violated *N.J.S.A.* 18A:12-24(d), but declines to issue a penalty due to the totality of the circumstances.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner 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 a 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. 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 in the appellant's briefs on appeal.

Robert W. Bender

Robert W. Bender, Chairperson

Mailing Date: November 26, 2024

Resolution Adopting Decision in Connection with 11-24

Whereas, at its meeting on October 22, 2024, the School Ethics Commission (Commission) considered the entirety of the record in this matter; and

Whereas, at its meeting on October 22, 2024, the Commission discussed finding a violation of *N.J.S.A.* 18A:12-24(d); and

Whereas, at its meeting on October 22, 2024, the Commission discussed declining to issue a penalty for the violation of *N.J.S.A.* 18A:12-24(d); and

Whereas, at its meeting on November 26, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on October 22, 2024; and

Now Therefore Be It Resolved, that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its meeting on November 26, 2024.

Brigid C. Martens

Brigid C. Martens, Director
School Ethics Commission