

104-26
SEC Dkt. No. C89-21
OAL Dkt. No. EEC 06498-22
Agency Dkt. No. 13-12/24A

New Jersey Commissioner of Education
Final Decision

Laura Davey and Lynn Belletier,

Complainants,

v.

Michael Evans, Avon Board of Education,
Monmouth County,

Appellant.

This matter involves an appeal of the School Ethics Commission’s (Commission) November 26, 2024, determination that appellant Michael Evans violated *N.J.S.A. 18A:12-24.1(e)*, but did not violate *N.J.S.A. 18A:12-24.1(d)* or *N.J.S.A. 18A:12-24.1(g)*.¹ Having 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)*. In addition, the Commissioner finds that a penalty of reprimand is appropriate for the violation.

¹ *N.J.S.A. 18A:12-24.1(e)* of the Code of Ethics for School Board Members (Code) prohibits board members from making personal promises or taking private action “that may compromise the board.” *N.J.S.A. 18A:12-24.1(d)* of the Code prohibits board members from administering the schools. *N.J.S.A. 18A:12-24.1(g)* prohibits board members from disclosing information on “all matters pertaining to the school which, if disclosed, would needlessly injure individuals or the schools.”

Appellant contends that the Commissioner should reject the Administrative Law Judge's (ALJ) and Commission's conclusion that appellant violated *N.J.S.A. 18A:12-24.1(e)* when he replied to a text thread, which included a former teacher and a District parent, with the following message:

Did you ever receive a Rice notice² (required notification of executive session and opportunity for you [sic] demand it be public)? I could accuse the board president or secretary or CSA of malfeasance if you did not receive the notice and they want to discuss you in Exec[utive] Session. BOE may try to discuss you again Monday unless you demand it be public.

The Commission agreed with the ALJ that appellant violated *N.J.S.A. 18A:12-24.1(e)*, finding that when appellant texted the teacher that he "could accuse the board president or secretary or CSA of malfeasance if you did not receive the notice," he made a personal promise that he could take action against the Board if she did not receive a Rice notice. The Commission further found that in sending the text message, appellant acted beyond the scope of his duty and that his conduct had the potential to compromise the Board. The Commission reasoned that appellant was essentially encouraging the teacher to accuse the Board of wrongdoing or offering to make that accusation on her behalf.

On appeal before the Commissioner, appellant asserts that complainants failed to establish that he made any personal promises or offered to take private action that could compromise the Board. Specifically, appellant contends that complainants "did not offer any witness or other evidence at the hearing that proved the allegations contained" in the Complaint. Appellant's Brief at 4. Instead, appellant asserts that he made a factual statement that if the

² An employee is entitled to advance notice when a board of education intends to discuss in closed session a personnel matter that could adversely affect the employee. *Rice v. Union County Reg'l High Sch. Bd. of Educ.*, 155 *N.J. Super.* 64, 73 (App. Div. 1977).

Board failed to provide notice to an employee that the terms of their employment would be discussed, pursuant to the mandates of *Rice*, then the Board, Board President, and/or Board Secretary could face disciplinary action. As such, appellant argues that his actions are not in violation of *N.J.S.A. 18A:12-24.1(e)*.

In addition, appellant contends that the ALJ did not allow him to present relevant material evidence at the hearing. Specifically, appellant argues that the ALJ excluded several documents relating to the climate and state of morale of the school district at the time of the alleged violation, which are “crucial to . . . understanding . . . why he made the statement that he did to the former employee.” Appellant’s Brief at 13. Appellant further argues that while he provided evidence to support his contentions, specifically Exhibit R9, the ALJ “displayed little interest in the testimony or evidence relating to the morale or culture of the district, or the departure of approximately 25% of the teaching staff including [the former teacher].” *Id.* at 12. Appellant further asserts that he had significant concerns about how the then-Superintendent was managing the district; however, the ALJ did not allow him to provide proper context. Appellant argues that the ALJ’s decision to exclude evidence regarding the culture of the district at the time of the alleged violation “was a clear abuse of discretion that resulted in a denial of justice,” *id.* at 15, as it prevented him from presenting a complete case in his defense. Accordingly, appellant requests that the conclusion that he violated *N.J.S.A. 18A:12-24.1(e)* be reversed.

Next, appellant asserts that the ALJ disregarded and ignored appellant’s testimony regarding his reasons for communicating with the former employee. Moreover, appellant takes issue with the fact that the ALJ did not make a statement in the Initial Decision that she did not find appellant’s testimony credible. Lastly, appellant contends that the ALJ’s conclusion that he

violated *N.J.S.A. 18A:12-24.1(e)* was based on opinion, not fact. According to appellant, “[t]here was no reference or citation to any testimony or other piece of evidence to support the assertions and conclusion contained in the Initial Decision.” *Id.* at 22.

Appellant contends that the Commission’s decision is conclusory in that it fails to address how appellant’s behavior compromised the Board. In addition, appellant argues that the ALJ’s conclusion that appellant violated *N.J.S.A. 18A:12-24.1(e)* “is devoid of any proof in its support of the recommendation for a reprimand.” *Id.* at 6. Citing to case law, appellant contends that the plain language of *N.J.S.A. 18A:12-29(f)* “does not foreclose the Commissioner from assessing no penalty, as an appropriate sanction includes but does not require the penalty of reprimand.” *Id.* at 7. Appellant contends that neither the Commission nor the ALJ considered the range of penalties available, including no penalty. Additionally, appellant argues that neither the Commission nor the ALJ provided reasons for why they determined that a penalty of reprimand was warranted.

Upon a comprehensive review of the record, the Commissioner finds that the Commission’s determination that appellant violated *N.J.S.A. 18A:12-24.1(e)* is supported by sufficient, credible evidence and that appellant failed to establish that the decision is arbitrary, capricious, or contrary to law. Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(e)* “shall include evidence that the appellant made personal promises or took action beyond the scope of appellant’s duties such that, by its nature, had the potential to compromise the district board of education.” *N.J.A.C. 6A:28-6.4(a)(5)*. The Commissioner agrees with the Commission that the factual record establishes that appellant violated the Code when he sent a text message to a former teacher that he could “accuse the board president or secretary or CSA of malfeasance if

you did not receive the notice and they want to discuss you in Exec[utive] Session.” Appellant’s message includes a personal promise to the teacher that he could take action against the Board if the teacher did not receive a Rice notice. Furthermore, appellant acted beyond the scope of his duty as a Board member by sending that text message. The Commissioner agrees with the Commission that appellant’s behavior had the potential to compromise the Board in that he was encouraging the teacher to accuse the Board of misconduct or offering to make such an accusation on her behalf.

The Commissioner does not find appellant’s remaining arguments to be persuasive. Appellant contends that he did not make a personal promise, but rather a factual statement that if the proper procedure was not followed, there could be consequences. The record does not support appellant’s contention. Appellant’s text message reads, “I could accuse the board president or secretary or CSA of malfeasance.” Appellant does not dispute that he sent the text message. The plain language of the text indicates appellant’s intention to act against the Board if the former teacher did not receive proper notice. As such, appellant has failed to establish that the Commission’s conclusion that he made a personal promise was arbitrary, capricious, or contrary to law.

Appellant’s claim that the ALJ abused her discretion by failing to include in evidence documents that appellant considered material to the matter – thereby allegedly rendering appellant’s defense incomplete – is unsupported by the record. The Commissioner agrees with the Commission that Exhibit R9, which appellant contends describes the morale of the district at the time of the text message, was ultimately admitted into evidence. The Commissioner further agrees with the Commission that regardless of the additional context appellant asserts these

excluded documents may have provided, appellant acted beyond the scope of his duties by sending the text message, and his behavior had the potential to compromise the Board.

Regarding the recommended penalty of reprimand, appellant has not established that the ALJ's and Commission's recommendation is arbitrary, capricious, or contrary to law. Therefore, the Commission's recommended penalty of reprimand will not be disturbed.

Accordingly, appellant is hereby reprimanded as a school official found to have violated the Code of Ethics.

IT IS SO ORDERED.³


COMMISSIONER OF EDUCATION

Date of Decision: March 25, 2026
Date of Mailing: March 25, 2026

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.

***Before the School Ethics Commission
OAL Docket No.: EEC 06498-22
SEC Docket No.: C89-21
Final Decision***

**Laura Davey and Lynn Belletier,
Complainants**

v.

**Michael Evans,
Avon Board of Education, Monmouth County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on December 1, 2021,¹ by Laura Davey and Lynn Belletier (Complainants), alleging that Michael Evans (Respondent), a member of the Avon Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* The Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code).

At its meeting on June 28, 2022, and after reviewing Respondent's Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and Complainants' response thereto, the Commission voted to deny the Motion to Dismiss in its entirety, find the Complaint not frivolous, and deny Respondent's request for sanctions. In light of the fact that the Complaint only involved violations of the Code, the Commission additionally voted to transmit the matter to the Office of Administrative Law (OAL) following receipt of the Answer, which Respondent filed on July 18, 2022.

A hearing was held at the OAL on March 7 and April 8, 2024. Thereafter, the Administrative Law Judge (ALJ) issued an Initial Decision on September 3, 2024, finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e), but did not violate *N.J.S.A.* 18A:12-24.1(d) or *N.J.S.A.* 18A:12-24.1(g), and recommending a penalty of reprimand. Complainants and Respondent filed exceptions to the Initial Decision, in accordance with *N.J.A.C.* 1:1-18.4.

At its meeting on October 22, 2024, the Commission considered the full record in this matter. Thereafter, at its meeting on November 26, 2024, the Commission voted to adopt the

¹ On December 1, 2021, Complainants filed a deficient Complaint; however, on December 20, 2021, Complainants 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.

Initial Decision's legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24.1(e), but did not violate *N.J.S.A.* 18A:12-24.1(d) or *N.J.S.A.* 18A:12-24.1(g), and the recommended penalty of reprimand.

II. Initial Decision

This matter stems from a teacher's resignation on July 14, 2021, effective August 31, 2021. *Initial Decision* at 3. The teacher sent a text message to Respondent and a District parent that said, "I just sent a copy of my exit form to all the board members. Please keep me posted." *Ibid.* Respondent replied, "Received. Thanks for your honesty and bravery. Are you ok to have it read publicly, or do you want to attend the meeting Monday? Otherwise, the majority may bury it in executive session..." *Ibid.*

Thereafter, on September 10, 2021, Respondent replied to the text thread, which included the teacher and the parent, stating, "Did you ever receive a Rice² notice? (required notification of executive session and opportunity for you [sic] demand it be public)? I could accuse the board president or secretary or CSA of malfeasance if you did not receive the notice and they want to discuss you in Exec[utive] Session. BOE may try to discuss you again Monday unless you demand it be public." *Id.* at 3-4.

On October 29, 2021, a part-time Supervisor of Instruction sent a letter to the Board, attaching the September 10, 2021, text message from Respondent, advising:

Today a staff member shared the attached screen shot of a text from a BOE member to a colleague who is no longer here. The staff member shared a feeling of extreme discomfort to discover that BOE members attempt to manipulate employees to suit their own agenda. Though this person wishes to remain anonymous (which I respect), the message in the text is clear and reveals extreme dysfunction and impropriety existing among the board.

I feel compelled to share this with you in the hope that it will help to shine a light on the truth.

[*Id.* at 4.]

The ALJ noted that Respondent believed the Board improperly discussed certain matters during public session and did not comply with the mandatory Rice notice procedures. *Id.* at 9. Although Respondent did not know if the teacher's rights were violated, he had a "general belief that the Board failed to comply with its obligations," and the impacted individuals were unaware of the failure. *Ibid.* The ALJ further noted, Respondent's text to the teacher did not reveal confidential information, but instead inquired whether "she wanted her exit survey read publicly and suggested that the Board might not disclose her survey responses publicly." *Ibid.* Further,

² *Rice v. Union County Regional High School Board of Education*, 155 N.J. Super. 64 (App. Div. 1977), certif. denied, 76 N.J. 238 (1978).

Respondent asked if she received a Rice notice, and suggested if she did not, the Board may not have proceeded properly. Respondent also suggested a course of action that the teacher could take if the Board did not follow proper procedures. *Ibid.*

The ALJ asserted that even if Respondent communicated with District personnel, which he maintains he did not, Respondent “did not issue a directive concerning the duties of school personnel or the day-to-day operations” of the District. *Id.* at 15. The ALJ found there is not any evidence to demonstrate that Respondent “issued a directive or became directly involved with specific [District] duties or operations.” *Ibid.* Therefore, the ALJ concluded that Complainants have not demonstrated by a preponderance of evidence that Respondent violated *N.J.S.A.* 18A:12-24.1(d). *Ibid.*

According to the ALJ, “the substance and tone of” Respondent’s text message indicated that he “made more than simple statements of fact.” *Id.* at 16. The ALJ contended that Respondent “attempted to direct or influence the former employee’s actions” regarding the Board by suggesting that the Board would discuss her during an upcoming meeting. *Ibid.* Moreover, this “was bolstered by his statement that he could take action on her behalf if she had not received a Rice notice.” *Ibid.* The ALJ maintained that Respondent’s “apparent intention was to compromise the Board by influencing the actions of the former employee who was subject to discussion by the Board,” and therefore, the ALJ concluded that Complainants have established by a preponderance of evidence that Respondent violated *N.J.S.A.* 18A:12-24.1(e). *Ibid.*

Finally, as to a violation of *N.J.S.A.* 18A:12-24.1(g), the ALJ found that Respondent did not disclose confidential information, such as something that was discussed in executive session, but rather, “speculated about the Board’s potential actions” with respect to the teacher, and the texts do not contain confidential information. *Id.* at 17. Therefore, the ALJ concluded that Complainants have not demonstrated by a preponderance of evidence that Respondent violated *N.J.S.A.* 18A:12-24.1(g). *Ibid.*

Finally, in recommending an appropriate penalty for the violation of *N.J.S.A.* 18A:12-24.1(e), the ALJ noted that Respondent violated one out of three of the alleged provisions, he acknowledged that he was motivated by his suspicion that a Rice notice was not properly being issued, and he was also motivated by his concern about the Board’s compliance with proper procedures. *Id.* at 18. To this end, the ALJ found that Respondent’s actions were misguided and that a reprimand is appropriate. *Ibid.*

III. Exceptions

Complainants’ Exceptions

Complainants argue, “a reprimand is not sufficient given [Respondent’s] inappropriate text communications to two individuals (a former teacher and a parent in the community).” Complainants further argue the Initial Decision noted that Respondent “attempted to direct or influence the former employee’s actions,” that Respondent stated he “could take action on her behalf,” and that “[h]is apparent intention was to compromise the Board.” Complainants assert, “[w]hatever [] Respondent’s alleged motivation was should not influence the assessed penalty.”

According to Complainants, if Respondent was concerned whether the teacher received a Rice notice, he could have confirmed that with the Business Administrator or confidentially with the former employee, rather than having “inappropriate discussions with a former employee as well as a parent in the community.” Complainants contend Respondent’s actions put the District at risk. Therefore, Complainants request that the Commission issue a censure or remove Respondent.

Additionally, Complainants disagree with the ALJ’s finding that they did not “demonstrate by a preponderance of credible evidence that Respondent violated *N.J.S.A.* 18A:12-24.1(g).” Complainants argue Respondent’s text messages stated, “. . . and they want to discuss you in Exec Session. BOE may try to discuss you again Monday unless you demand it be public.” Per Complainants, Respondent disclosed confidential information about what was being discussed in executive session to the two individuals who are not Board members. Therefore, Complainants request that the Commission also find that Respondent violated *N.J.S.A.* 18A:12-24.1(g).

Respondent’s Exceptions

Respondent initially notes that Complainants “did not offer any witness or other evidence at the hearing that proved the allegations contained” in the Complaint. Specifically, Respondent argues the Initial Decision did not provide any “reference or citation to any testimony or other piece of evidence to support the assertions and conclusions” that Respondent violated *N.J.S.A.* 18A:12-24.1(e). According to Respondent, despite the ALJ’s reliance on the “substance and tone” of the text message, as well as Respondent’s “apparent intention” to compromise the Board, the ALJ did not discuss “the basis upon which she [drew] these conclusions regarding” a violation of *N.J.S.A.* 18A:12-24.1(e). Furthermore, Respondent maintains the ALJ did “not address any of the witness[es]’ testimony in her decision, and she [did] not make any statement whatsoever that she did not find [Respondent’s] testimony credible.”

Respondent asserts that the ALJ would not allow him to present relevant material evidence at the hearing. According to Respondent, the ALJ was “interested only in the most-narrow reading of the charges against” Respondent. More specifically, Respondent asserts that although he provided evidence to support his contentions, specifically Exhibit R9, a petition and two District climate surveys, the ALJ “displayed little interest in the testimony or evidence relating to the morale or culture of the district, or the departure of 25% of the teaching staff, including [the teacher].” Respondent notes the context of the morale of the District “is crucial to the understanding for why he made the statements that he did to the former employee,” and the ALJ’s “obvious disinterest in evidence regarding the climate or morale of the [s]chool district” did not allow him to present a “complete case in his defense.” Respondent notes he had “serious concerns about” how the Superintendent was managing the District; however, he was unable to provide the context to the Court. Per Respondent, the “culture of the district at that time was critical to explaining [Respondent’s] actions,” and the ALJ’s “decision not to admit this evidence was a clear abuse of discretion that resulted in the denial of justice,” and therefore, the conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(e) should be reversed.

Furthermore, Respondent asserts the ALJ's failure to consider the circumstances of the situation was a "clear abuse of discretion and resulted in an arbitrary finding that [Respondent] acted in a way to compromise the Board." Respondent maintains that the ALJ provided "conflicting statements" about his intentions, first noting his intention was to compromise the Board and then concluding that he was "motivated by his suspicion that Rice notices were not properly issued." Respondent further maintains that he testified that his intention was "to see if the district administration was following proper procedures" and that he testified that he did not make any personal promises.

Finally, Respondent provides that the ALJ's conclusion is not supported by testimony or physical evidence. Respondent reiterates that the only evidence that Complainants provided was their own testimonies. They did not have any documentary evidence to support their claims. Respondent argues that the ALJ's conclusion that he violated *N.J.S.A.* 18A:12-24.1(e) was "solely based on opinions and not facts." Ultimately, the ALJ "relied upon her interpretation of the 'substance and tone' of the text message, and that [Respondent's] 'apparent intention' was to compromise the Board"; however, the ALJ did not discuss "the basis upon which she [drew] these conclusions" related to *N.J.S.A.* 18A:12-24.1(e), and therefore, Respondent asserts the Initial Decision should be vacated.

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission agrees with the ALJ's legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24.1(e), but did not violate *N.J.S.A.* 18A:12-24.1(d) or *N.J.S.A.* 18A:12-24.1(g), and the recommended penalty of reprimand.

N.J.S.A. 18A:12-24.1(d) requires a board member to carry out his responsibility not to administer the schools, and together with fellow board members, see that they are well run. The Commission agrees with the ALJ that by sending a text message to a former employee, without further evidence that Respondent directed school personnel to take any sort of action with respect to the substance of the text messages, Respondent did not give a direct order to school personnel or become directly involved in activities or functions that are the responsibility of school personnel, or the day to day administration of the District. Accordingly, a violation of *N.J.S.A.* 18A:12-24.1(d) has not been established.

Pursuant to *N.J.S.A.* 18A:12-24.1(e), a board member must recognize that authority rests with the board and a board member shall not make any personal promises or take any action that may compromise the board. When Respondent sent a text message to the teacher that he could "accuse the board president or secretary or CSA of malfeasance if you did not receive the notice and they want to discuss you in Exec[utive] Session," he made a personal promise that he could take action if she did not receive a Rice notice. Further, by sending such a message, Respondent acted beyond the scope of his duty, and this conduct had the potential to compromise the Board. Respondent was, in essence, encouraging an individual to accuse the Board of wrongdoing, or offering to make that accusation on her behalf. As such, the Commission agrees with the ALJ that Respondent's actions violated *N.J.S.A.* 18A:12-24.1(e).

N.J.S.A. 18A:12-24.1(g) requires a board member to hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools, and also to provide accurate information. The Commission agrees with the ALJ that Respondent's text message did not disclose any confidential information. Instead, Respondent inquired about a Rice notice and speculated about whether the Board would discuss the former teacher during the meeting. Respondent did not reveal any information that had been previously discussed in Executive Session. Therefore, Respondent's actions did not violate *N.J.S.A.* 18A:12-24.1(g).

The Commission does not find the parties' exceptions to be persuasive. Although Respondent argues that he could not provide a complete defense to the accusations against him, the Commission notes that Exhibit R9, which Respondent contends explained the morale of the District at the time of the text message and set the stage for the why he sent the text message, was ultimately admitted into evidence. Although Respondent also challenges the exclusion of several documents, including a petition and two District climate surveys, the Commission notes that regardless of the additional context that Respondent asserts these documents may have provided, the text message was inappropriate action beyond the scope of his duties that had the potential to compromise the Board. The Commission further notes that the Initial Decision did not have conflicting statements. The ALJ acknowledged, as Respondent also maintains, that he had concerns regarding the proper issuance of Rice notices.

Finally, the Commission agrees with the ALJ that a reprimand is the appropriate penalty for Respondent's violation of *N.J.S.A.* 18A:12-24.1(e). While Respondent's communication was inappropriate and compromised the Board, Respondent's communication stemmed from his concern that Rice notices may not have been properly issued.

IV. Decision

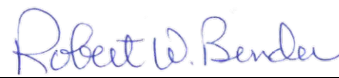
For all of the aforementioned reasons, the Commission adopts the Initial Decision's legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24.1(e), but did not violate *N.J.S.A.* 18A:12-24.1(d) or *N.J.S.A.* 18A:12-24.1(g), and the recommended penalty of reprimand.

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 Office 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 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: November 26, 2024

**Resolution Adopting Decision
in Connection with C89-21**

Whereas, at its meeting on June 28, 2022, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing; and

Whereas, the Administrative Law Judge (ALJ) issued an Initial Decision dated September 3, 2024; and

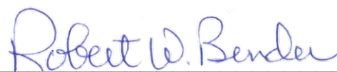
Whereas, the ALJ found that Respondent violated *N.J.S.A.* 18A:12-24.1(e), but did not violate *N.J.S.A.* 18A:12-24.1(d) or *N.J.S.A.* 18A:12-24.1(g), and recommended a penalty of reprimand; and

Whereas, both Complainants and Respondent filed exceptions to the Initial Decision; and

Whereas, at its meeting on October 22, 2024, the Commission reviewed the record in this matter, and discussed adopting the ALJ's legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24.1(e), but did not violate *N.J.S.A.* 18A:12-24.1(d) or *N.J.S.A.* 18A:12-24.1(g), and the recommended penalty of reprimand; 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, the Commission hereby adopts the within decision.



Robert W. Bender, Chairperson

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



Brigid C. Martens, Director
School Ethics Commission



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EEC 06498-22

AGENCY DKT. NO. C89-21

LAURA DAVEY AND LYNN BELLETIER,

Complainants,

v.

**MICHAEL EVANS, AVON BOARD OF
EDUCATION, MONMOUTH COUNTY,**

Respondent.

Laura Davey and Lynn Belletier, complainants, pro se

Dennis McKeever, Esq. for respondent (Cornell, Merlino, McKeever & Osborne,
LLC, attorneys)

Record Closed: July 27, 2024

Decided: September 3, 2024

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Complainants Laura Davey and Lynn Belletier and respondent Michael Evans were members of the Avon Board of Education (Board) at the times relevant to the complaint. Complainants filed a complaint with the School Ethics Commission (Commission) in which they allege respondent Michael Evans violated the Code of Ethics

for School Board Members (Code of Ethics), N.J.S.A. 18A:12-24.1. They assert that respondent violated N.J.S.A. 18A:12-24.1(d), (e), and (g) when he independently contacted personnel; indicated that he could independently make an accusation of wrongdoing and take private action with respect to the allegation; and breached his obligation to keep Board of Education matters confidential.

PROCEDURAL HISTORY

On December 20, 2021¹, complainants filed a complaint with the Commission in which they alleged respondent violated N.J.S.A. 18A:12-24.1(d), (e), and (g). On March 31, 2022, respondent filed a motion to dismiss the complaint in lieu of an answer and asserted that the petition was frivolous. Complainants filed their response on April 1, 2022. On June 28, 2022, the Commission denied the motion to dismiss each of the charges and rejected the claim that the complaint was frivolous. This matter was transmitted to the Office of Administrative Law (OAL) by the New Jersey Department of Education, School Ethics Commission, where it was filed on July 27, 2022, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. During the first prehearing conference, the hearing was scheduled to be conducted on December 14, 2022. The hearing was adjourned, and on March 31, 2023, respondent filed a motion to compel more specific and complete answers to his discovery requests. Complainants were ordered to produce documents for in-camera review. Complainants complied with the order, and on July 19, 2023, they were directed to produce specific documents. During an August 22, 2023, prehearing conference, the hearing was scheduled to be conducted on March 7, 2024, and April 8, 2024. The latter date was adjourned to April 15, 2024. The hearing was conducted on March 7, 2024, and April 15, 2024. The parties submitted post-hearing briefs by June 14, 2024, and the record closed that day. An extension of the deadline for the issuance of this initial decision was granted on July 22, 2024.

¹ A prior complaint that was filed on December 1, 2021, was found to be deficient.

FINDINGS OF FACT

The following facts are undisputed, and thus, I **FIND** them as **FACT**:

1. Complainants Lynn Belletier and Laura Davey were Board members during the times relevant to this matter. They are no longer members of the Board.
2. Respondent Michael Evans has been a member of the Board since 2020 and was a member of the Board during the 2021–2022 school year.
3. William Bing was the Board President during the 2021–2022 school year and is the current Board President.
4. Tara Ciufu-Vasilenko resigned her position as a teacher with the Board on July 14, 2021, effective August 31, 2021.
5. The Board accepted Ciufu-Vasilenko’s letter of resignation during its July 14, 2021, meeting.
6. In a text message to respondent and Maggie Kinkella, a parent of a District student, Ms. Ciufu-Vasilenko wrote, “I just sent a copy of my exit form to all of the board members. Please keep me posted.” R-12; P-B at 1. Respondent replied, “Received. Thanks for your honesty and bravery. Are you ok to have it read publicly, or do you want to attend the meeting Monday? Otherwise, the majority may bury it in executive session. . .” R-12.
7. On September 10, 2021, respondent replied to the above text thread with the following message:

Tara, Did you ever receive a Rice notice² (required notification of executive session and opportunity for you [sic] demand it

² See Rice v. Union Cnty. Reg’l High Sch. Bd. of Educ., 155 N.J. Super. 64, 74 (App. Div. 1977), certif. denied, 76 N.J. 238 (1978) (“employees were entitled to reasonable notice of the intention of the board to

be public)? I could accuse the board president or secretary or CSA of malfeasance if you did not receive the notice and they want to discuss you in Exec[utive] Session. BOE may try to discuss you again Monday unless you demand it be public.

[J-1.]

8. Eileen Sennett was a part-time Supervisor of Instruction for the Board during the 2021–2022 school year.
9. On October 29, 2021, Sennett sent a letter to the Board, to which she attached the September 10, 2021, text message that respondent sent to Ciufu-Vasilenko. J-2. Sennett wrote:

Today a staff member shared the attached screen shot of a text from a BOE member to a colleague who is no longer here. The staff member shared a feeling of extreme discomfort to discover that BOE members attempt to manipulate employees to suit their own agenda. Though this person wishes to remain anonymous (which I respect), the message in the text is clear and reveals extreme dysfunction and impropriety existing among the board.

I feel compelled to share this with you in the hope that it will help to shine a light on the truth.

[J-2.]

10. During the November 10, 2021, Board meeting, respondent acknowledged that he sent the text message to Ciufu-Vasilenko. J-3.
11. During the November 10, 2021, Board meeting, Amy Lerner was the Board Secretary. J-3.

consider personnel matters related to them”).

Testimony

For complainants:

Laura Davey asserted that respondent acted without Board or administration authorization, and, in doing so, he exposed the Board to risk. He essentially threatened to bring charges against the Board and disclosed to a former employee and a community member confidential information that was discussed in the Board's executive session meeting. Information relating to personnel matters is "highly sensitive." T1³ 17:5.

In support of her assertions, she cited a motion to dismiss filed with the Commission on behalf of respondent in which respondent admitted that he sent the text message to Ciufu-Vasilenko and Kinkella. P-B at 13.

During the public session of the November 10, 2021, Board meeting, Board President Bing distributed Sennett's October 29, 2021, letter, with the attached text message, to the Board members. J-2. Bing did not read the letter aloud; the Board did not discuss it; and individuals who were involved were not identified. However, respondent stated that he sent the attached text message and that he wanted to discuss it during the public session. Bing attempted to discourage discussion of the letter and text at that time, and Davey asked if it should be addressed during the executive session because it "contained personnel communication" and involved a Board member. T1 12:9. They agreed to discuss the letter and text later, after other Board matters were addressed. Respondent raised the issue toward the end of the public session, and he read "it⁴ aloud." T1 28:1.

On cross-examination, Davey acknowledged that she did not know who initiated the text exchange. T1 23:11. Also, although the text referenced a potential charge concerning failure to issue a "Rice notice," respondent did not make such a charge. T1 23:20. Davey also acknowledged that Ciufu-Vasilenko was no longer employed by the

³ T1 and T2 refer to the transcripts of the March 7, 2024, and April 15, 2024, hearings, respectively. They are followed by the referenced page and line numbers.

⁴ Davey did not specify whether respondent read Sennett's letter or his text, or both.

District when the text exchange occurred. Also, at the time Davey learned of the text, she could not determine who it was about, who sent it, or when it was sent. T1 24:22 to 25:1. She also did not know why Kinkella was involved.

Lynn Belletier was not present at the Board meeting during which the text message was addressed. She discussed the message with Davey after the meeting. She believed that an administrator or the Board secretary must communicate with current and former employees; Board members should not. In doing so, respondent was “negligent” and violated the Ethics Code. T1 35:17. He also impermissibly “took personal action when he reached out to an employee and alluded that he could actually accuse someone of malfeasance.” T1 35:19–22. This, too, was “negligent behavior” because he was “looking to construe a problem that you don’t know that [sic] exists or not and puts the board of ed[ucation] in a compromise as a whole.” T1 35:24 to 36:3. Further, he sought to make Board personnel “look . . . incompetent[.]” T1 36:18–19.

Belletier confirmed that the statements at issue are the text messages (J-2 and R-12) and the factual statement in the motion to dismiss. She clarified that the chief school administrator is responsible for issuing Rice Notices and that respondent did not issue such a notice.

For respondent:

Respondent **Michael Evans** explained that Kinkella was President of the Avon Home and School Association. He did not know why Kinkella was included and did not know if he noticed that she was included at the time he sent his text messages. He did not regularly engage with her.

Ciufo-Vasilenko initiated the text exchange with respondent. He assumed that she sent her text after she resigned from her teaching position. The exit survey form that Ciufo-Vasilenko referenced in the text message is a standard form that is obtained from staff members who are leaving their jobs. Exit interviews are conducted to obtain feedback from the departing staff. Ciufo-Vasilenko submitted her exit form to all Board members, including respondent, by email, on August 25, 2021. R-9.

Respondent explained why he sent another text to Ciufu-Vasilenko on September 10, even though she did not respond to his prior text:

[M]y concern about the Rice procedures and my fear at the time is that the procedures may not have been followed, because it had been my previous experience that we discussed so many things in executive session, . . . we spent more time in executive session than we did in public session, which was concerning to me in general. And if we were not following the procedures appropriately, we needed to change them, and we needed to call that out if that was a problem. . . .

So, whereas the first part was about her honesty and her bravery in being forthright in her exit survey, exit interview, the second one was more about . . . my concern about the process and were people on notice and do they know what they were supposed to know with regard to . . . them potentially being discussed in executive session, which . . . I didn't make any reference to any information that was actually in executive session in this text.

[T1 85:5–25.]

Respondent learned of Sennett's October 29, 2021, letter during the November 2021, Board meeting. He did not know how she obtained the text exchange as he did not share it with anyone. During the meeting, there was a suggestion that they discuss the letter during the executive session because children were in attendance. Respondent disagreed because he "thought it should be . . . in the full meeting with everybody present who was at the meeting." T1 63:15–17. The proposed minutes of the November 10, 2021, Board meeting inaccurately reported that respondent read the letter aloud and stated the author's name. Board President Bing read the letter aloud. Also, the minutes referred to the impropriety of texting employees when, in fact, Ciufu-Vasilenko was no longer an employee. Respondent also objected to statements in the minutes that suggested his actions were inappropriate.

Respondent acknowledged that he was not aware that the Board had failed to properly issue Rice notices. However, he suspected that this occurred. He was concerned about the possibility of matters being improperly kept from the public. When

he wrote “otherwise the majority may bury it in executive session,” he was not working against the Board. Rather, he was acting in the “spirit” of what the Board is supposed to do. T1 73:17. That is, he told Ciufu-Vasilenko that it was brave of her to answer questions posed to her about the Board. Also, he did not promise her that he would take action on her behalf. Rather, he “said I could do something if something happened, but that was more about the process.” T1 71:6–7. He did not “divulge[] anything that wasn’t already out there about the process.” T1 71:7–8.

Respondent never directed a member of the administration or a staff member concerning the administration or operation of the school district. He did not independently contact a staff member, except in the context as a parent of a student who attended school there. He did not make promises to a staff member or anyone else concerning the content of the text message (R-12). He did not contact anyone about the text message and did not file charges against the Board. He never discussed confidential information that he learned during Board meetings.

Christina Lemanowicz was a teacher for the Avon School District from 2016 through 2021 and was Co-President of the Avon Education Association. She left the District before the events at issue occurred and is now a teacher for a different school district. While she worked for Avon, respondent and other Board members asked her questions about the “climate” of the school district. T2 14:5. She did not feel that the Board supported her when she was Co-President of the Education Association; however, the President interacted with the Board more than she did. On November 11, 2020, the “Teachers of Avon Elementary School” sent a letter to the Board in which they discussed the climate of the school.

On cross-examination, Lemanowicz acknowledged that she and respondent discussed school personnel and administration matters while he was a Board member. She did so with other Board members, too. There was a casual relationship between the Board and the community. None of the conversations were about confidential personnel or private business matters.

ADDITIONAL FACTUAL FINDINGS

Having considered the credibility of the witness's testimony, I **FIND** the following additional **FACTS**:

Respondent believed the Board improperly discussed certain matters during its public sessions and did not comply with mandatory Rice notice procedures. While he did not know if Ciufu-Vasilenko's rights in this regard were violated, he had a general belief that the Board failed to comply with its obligations and that the impacted individuals, including possibly Ciufu-Vasilenko, were unaware of these failures.

In his text to Ciufu-Vasilenko, respondent did not reveal confidential information about her. Rather, he asked if she wanted her exit survey to be read publicly and suggested that the Board might not disclose her survey responses publicly. He also asked if she received a Rice Notice and suggested, without knowing if she had received the Notice, that the Board may have proceeded inappropriately. He also suggested a course of action to Ciufu-Vasilenko based upon his assumptions about the Board's action during an upcoming meeting.

Parties' Arguments

Complainants rely solely upon respondent's text messages and his acknowledgment that he sent the messages.⁵ They argue that he violated N.J.S.A. 18A:12-24.1(d) when he communicated directly with personnel concerning the administration of the school district. They assert that the Board Secretary is charged with issuing Rice notices⁶ and that the District Superintendent is responsible for overseeing the Board Secretary. Board members are not charged with contacting current or former employees about Rice notices. They assert that by communicating in this manner,

⁵ While there was discussion about respondent having read the letter aloud during a Board meeting, complainants did not cite to this as a basis for their charges against him.

⁶ "[E]mployees must be given reasonable notice when a public entity intends to consider taking adverse employment action related to them. The details of that notice . . . have become commonly known as a Rice notice." Kean Federation of Teachers v. Morell, 233 N.J. 566, 573 (2018) (internal quotations and citations omitted).

respondent violated this section of the ethics act and “exposed the Board to potential risks[.]” Complainants’ Br. at 2.

Complainants also contend that respondent violated N.J.S.A. 18A:12-24.1(e) because he “made a personal promise to bring action[;]” acted outside the scope of his duties; and “potentially compromised the Board[.]” Ibid.

Finally, complainants contend respondent violated N.J.S.A. 18A:12-24.1(g) when he disclosed to Ciufu-Vasilenko and a parent that the former was discussed during the Board’s executive session. This is problematic because, pursuant to N.J.S.A. 10:4-12(b), matters discussed during executive sessions must be kept confidential. This “exposed the Board to potential risk.” Id. at 3.

Respondent asserts that complainants failed to demonstrate that he violated the above-referenced provisions. First, he did not communicate with a current employee, and moreover, he is permitted to communicate with former employees. Second, he did not distribute the texts or read them aloud. Third, he did not “impart any information, confidential or otherwise, about any District personnel.” Resp. Br. at 15. He “did not directly order any personnel to act; he did not directly involve himself in any activities or functions that are for personnel to manage; and he did not involve himself in the daily operations of the schools.” Ibid. Fourth, he did not make any personal promises or offer to take private action that could compromise the Board. Rather, he merely stated a fact that if Ciufu-Vasilenko had not received a Rice notice, the Board would have failed to comply with the law and it or its officers could face discipline.

LEGAL DISCUSSION

The School Ethics Act (SEA), N.J.S.A. 18A:12-21 to -34, governs the conduct of members of local boards of education and school administrators. The Legislature stated, “[I]t is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators 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).

Any person may file a complaint with the Commission against a school official, alleging a violation of the Act. N.J.S.A. 18A:12-29(a). If the Commission determines that probable cause exists to credit the allegations, it shall transmit the matter to the Office of Administrative Law for a hearing. N.J.S.A. 18A:12-29(b). After a hearing and an initial decision, the Commission shall determine whether there has been a violation of the Act and recommend the appropriate sanction—reprimand, censure, suspension, or removal—to the Commissioner of Education. N.J.S.A. 18A:12-29(c). The Commissioner’s final decision may be appealed to the State Board of Education. N.J.S.A. 18A:12-29(d).

The SEA was amended in 2001 to create a Code of Ethics for School Board Members. N.J.S.A. 18A:12-24.1. It provides:

A school board member shall abide by the following Code of Ethics for School Board Members:

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.
- b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.
- c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.
- d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

- e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.
- f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.
- g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.
- h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.
- i. I will support and protect school personnel in proper performance of their duties.
- j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

[N.J.S.A. 18A:12-24.1.]

“In making a determination regarding an alleged violation of the Code of Ethics for School Board Members, the burden of proof shall be on the accusing party to establish factually a violation of the code.” N.J.S.A. 18A:12-29(b).

The SEA’s implementing regulations address the evidence that must be presented to establish a violation of the Code of Ethics. The relevant provisions are:

- (a) For complaints alleging a violation of the Code of Ethics for School Board Members, the complainant has the burden to factually establish a violation, in accordance with the standards set forth below:

....

- 4. Factual evidence of a violation of N.J.S.A. 18A:12-24.1.d shall include, but not be limited to, evidence that the respondent(s) gave a direct order to school

personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district, the charter school, or the renaissance school project.

5. Factual evidence of a violation of N.J.S.A. 18A:12-24.1.e shall include evidence that the respondent made personal promises or took action beyond the scope of the respondent's duties such that, by its nature, had the potential to compromise the district board of education or the board of trustees.

. . . .

7. Factual evidence of a violation of the confidentiality provision at N.J.S.A. 18A:12-24.1.g shall include evidence that the respondent(s) took action to make public, reveal, or disclose information that was not public under any laws, regulations, or court orders of this State, or information that was otherwise confidential in accordance with policies, procedures, or practices. Factual evidence that the respondent(s) violated the inaccurate information provision at N.J.S.A. 18A:12-24.1.g shall include evidence that substantiates the inaccuracy of the information provided by the respondent(s) and evidence that establishes the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

[N.J.A.C. 6A:28-6.4.]

Malintent is not required to demonstrate a violation of the Code of Ethics. In Dericks v. Schiavoni, 2011 N.J. Super. Unpub. LEXIS 1393, **15–16 (App. Div. 2011)⁷, the Appellate Division addressed the distinction between intent and action:

To be sure, we are cognizant that appellant generally appears to have been well-intended in his overzealous personal involvement in the district's hiring process for these two principals. Appellant seems to have been trying to adapt certain hiring criteria and processes, which he was familiar with from the private sector, to the district's own hiring processes. The problem is that appellant went beyond suggesting ideas to the appointing authorities but instead

⁷ Unpublished Appellate Division and administrative decisions are not precedential.

injected himself into their operational functions. Despite his apparently benign motives, appellant violated the plain terms of applicable codes, which prohibit school board members from directly involving themselves in the administration of the schools.

Appellant's transgression, while clearly proven, comprised an "ethical violation" solely in the nuanced regulatory context of the public school laws. We stress that the decisions of the Commissioner and the Acting Commissioner by no means signify that appellant is an unethical person in general, or that he was attempting in this case to engage in patronage or self-dealing. He simply crossed over a functional line that must be observed in order for the school administrators to perform their responsibilities effectively.

To find a violation of N.J.S.A. 18A:12-24.1(d), there must be evidence that respondent "gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district[.]" N.J.A.C. 6A:28-6.4(a)(4). Respondent cites Persi v. Woska, SEC Docket No. C03-14 (C25-08 on Remand), www.nj.gov/education/legal/ethics/2013/C03-14.pdf (October 29, 2014), aff'd 2017 N.J. Super. Unpub. LEXIS 625 (March 10, 2017), in support of his argument that he did not violate this provision. In Persi, board member Woska told the board secretary that he wanted a Rice notice prepared so he could discuss the interim superintendent's employment during a board meeting. Woska did not discuss this with the board president or other board members before he made the request. He later discussed his concerns about the interim superintendent with newly elected board members, who had not yet been sworn in, and asked the assistant superintendent to attend the board meeting during which the interim superintendent's employment would be discussed. He told the assistant superintendent that the board was unhappy with the interim superintendent and that a new interim superintendent would be needed.

The Commission found that there was insufficient evidence that Woska "ordered school personnel or became involved in the school's day-to-day functions or activities of the school, e.g. attendance, monitoring, busing, etc. [His] contact with the three members-elect and [assistant superintendent] was outside the environs of daily school activity and the members-elect were not school employees. To the extent [the assistant

superintendent] is District personnel, the record reflects that she willingly accepted the respondent's plan and was not ordered to do so." Id. at *8.

Here, even if the people with whom respondent communicated were school personnel, he did not issue a directive concerning the duties of school personnel or the day-to-day operations of the school district. There is no evidence that he issued a directive or became directly involved with specific school district duties or operations, although it appears complainants surmise that he intended to engage in such actions. Accordingly, I **CONCLUDE** that complainants have not demonstrated by a preponderance of the evidence that respondent violated N.J.S.A. 18A:12-24.1(d).

To find a violation of N.J.S.A. 18A:12-24.1(e), there must be evidence that respondent "made personal promises or took action beyond the scope of [his] duties such that, by its nature, had the potential to compromise the district board of education or the board of trustees." N.J.A.C. 6A:28-6.4(a)(5). The Commissioner of Education highlighted that there need not be evidence of a conflict of evidence or personal benefit. Holstein v. Raftopoulos-Johnson, 2021 N.J. AGEN LEXIS 195, *8 (June 22, 2021).

In Persi, the Appellate Division held that Woska violated this provision because he unilaterally directed the issuance of a Rice notice and he "embarked on a course of private action to achieve" his goal of replacing the interim superintendent. 2017 N.J. Super. Unpub. LEXIS 625, *16.

In In re the Suspension of Kight, 2008 N.J. Super. Unpub. LEXIS 2153 (App. Div. 2008), a board member confronted a member of the public after the board's public session. She "acted in an aggressive manner, engaged in physical contact with him, angrily berated him, and threatened him." Id. at *2. The Commissioner found, based upon the testimony of the member of the public, that her actions "had an impact" on the member of the public because he did "not feel comfortable speaking at Board meetings" and also that they "had the potential to compromise the Board because the actions hurt the integrity of the Board and intimidated the public from coming forward and addressing the Board." Id. at **2-3. The Appellate Division affirmed the Commissioner's determination.

Here, the substance and tone of respondent's text message indicate that he made more than simple statements of fact. Rather, he attempted to direct or influence the former employee's actions with respect to the Board by suggesting that the Board would discuss her during an upcoming meeting. This was bolstered by his statement that he could take action on her behalf if she had not received a Rice notice. His apparent intention was to compromise the Board by influencing the actions of the former employee who was subject to discussion by the Board. For these reasons, I **CONCLUDE** that complainants have established by a preponderance of the evidence that respondent violated N.J.S.A. 18A:12-24.1(e).

To find a violation of N.J.S.A. 18A:12-24.1(g), there must be evidence that respondent:

took action to make public, reveal, or disclose information that was not public under any laws, regulations, or court orders of this State, or information that was otherwise confidential in accordance with policies, procedures, or practices. Factual evidence that the respondent(s) violated the inaccurate information provision at N.J.S.A. 18A:12-24.1.g shall include evidence that substantiates the inaccuracy of the information provided by the respondent(s) and evidence that establishes the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

[N.J.A.C. 6A:28-6.4(a)(7) (emphasis added).]

Here, complainants claim that respondent disclosed to the former employee and a parent that the former employee was discussed during the Board's executive session, contrary to N.J.S.A. 10:4-12. That section provides:

- a. Except as provided by subsection b. of this section all meetings of public bodies shall be open to the public at all times. Nothing in this act shall be construed to limit the discretion of a public body to permit, prohibit, or regulate the active participation of the public at any meeting, except that a municipal governing body and a board of education

shall be required to set aside a portion of every meeting of the municipal governing body or board of education, the length of the portion to be determined by the municipal governing body or board of education, for public comment on any governmental or school district issue that a member of the public feels may be of concern to the residents of the municipality or school district.

- b. A public body may exclude the public only from that portion of a meeting at which the public body discusses any:

. . . .

- (8) matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion, or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that the matter or matters be discussed at a public meeting[.]

In rejecting respondent's motion to dismiss the complaint, the Commission wrote that complainants would prove their case if they adequately demonstrated that he "affirmatively contacted a District staff member and disclosed confidential information (namely that he/she was discussed in executive session)." P-C at 7. Here, respondent did not disclose this type of information. Rather, he speculated about the Board's potential actions with respect to Ciufu-Vasilenko. The texts, which are the only evidence of malfeasance, do not contain confidential information. For this reason, I **CONCLUDE** that complainants have not demonstrated by a preponderance of the credible evidence that respondent violated N.J.S.A. 18A:12-24.1(g).

With respect to the penalty to be imposed, the options are:

- Reprimand, which is a declaration that the conduct of a board member "violated the standards of conduct prescribed by the [SEA], but does not result in the publication or the adoption of a formal resolution by the Commission." N.J.A.C. 6A:28-1.2.

- Censure, which is “a formal expression of disapproval by the Commissioner of Education for a violation(s) of the [SEA], which is publicized by the adoption of a formal resolution by the School Ethics Commission, and which is provided to the district board of education or the board of trustees to read and adopt at its next regularly scheduled public meeting.” Ibid.
- Suspension, which bars the board member “from engaging in any activity and/or matter related to the school official’s position for a designated period of time.” Ibid.
- Removal, which is the immediate termination of a board member’s membership. Ibid.

Here, only one of the three charges against respondent has been proven by a preponderance of the evidence. That charge involved respondent’s attempt to intervene and influence the actions of a former employee with regard to her interactions with the Board. He acknowledged that he was motivated by his suspicion that Rice notices were not properly issued and, thus, that members of the public were not given appropriate access to information. Respondent’s actions were motivated by his concern about compliance with proper procedures. However, those actions were misguided. Accordingly, I **CONCLUDE** that a reprimand is warranted.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent violated N.J.S.A. 18A:12-24.1(e) and that a reprimand is warranted.

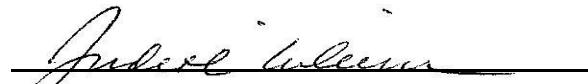
I hereby **FILE** my initial decision with the **SCHOOL ETHICS COMMISSION**. Pursuant to N.J.S.A. 18A:12-29, the School Ethics Commission has jurisdiction to determine whether a violation of the School Ethics Act occurred. If it concludes that the conduct constitutes a violation of the School Ethics Act, it shall recommend an appropriate penalty to the Commissioner of Education. The Commissioner of Education shall issue the final decision in this matter.

If the School Ethics Commission determines that a violation has occurred, it shall issue a written decision recommending to the Commissioner of Education an appropriate penalty and shall forward the record, including this recommended decision and its decision, to the Commissioner of Education. The Commissioner of Education may subsequently render a final decision as to the appropriate penalty. If the Commissioner of Education does not render a final decision within forty-five days of its receipt of this initial decision, and unless such time period is otherwise extended, the recommended decision of the School Ethics Commission shall become the final decision.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SCHOOL ETHICS COMMISSION, DEPARTMENT OF EDUCATION, PO Box 500, Trenton, NJ 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

September 3, 2024 _____

DATE



JUDITH LIEBERMAN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JL/mg

APPENDIX

Exhibits

Joint:

- J-1 Text message, September 10, 2021
- J-2 Sennett letter, October 29, 2021
- J-3 Board meeting minutes, November 10, 2021

For Complainants:

- P-A Same as J-2
- P-B Respondent's motion to dismiss complaint, March 31, 2022
- P-C School Ethics Commission Decision on Motion to Dismiss, June 28, 2022
- P-D Same as J-3

For Respondent:

- R-1 Code of Ethics for School Board Members
- R-8 Ciufu-Vasilenko resignation letter, June 24, 2021
- R-9 Ciufu-Vasilenko email to Board, September 9, 2021
- R-10 Board meeting minutes, July 14, 2021
- R-12 Text thread, September 10, 2021
- R-14 Board meeting minutes, January 5, 2022