

264-26

SEC Dkt. Nos. C64-22, C77-22, and C92-22

OAL Dkt. No. EEC 10551-22, EEC 00171-23, and EEC 03852-23 (consolidated)

Agency Dkt. No. 4-3/25

New Jersey Commissioner of Education

Final Decision

Shauna Williams,

Complainant,

v.

Robert Cianiulli, Jordan Hyman, Angela Penna,
Pamela Stanley, and Michael D'Aquila, Berkeley
Heights Board of Education, Union County,

Respondents.

and

Douglas Grober,

Complainant,

v.

Robert Cianiulli, Jordan Hyman, Pamela
Stanley, Michael D'Aquila, Angela Penna, and
Joy Young, Berkeley Heights Board of
Education, Union County,

Respondents.

and

In the Matter of Pamela Stanley, Berkeley
Heights Board of Education, Union County.

This matter involves an appeal of a School Ethics Commission (Commission) decision determining that appellant Pamela Stanely (Stanley) violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(f)* of the School Ethics Act (Act) and that all the appellants violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(f)* of the Code of Ethics for School Board Members (Code), but did not violate *N.J.S.A. 18A:12-24.1(g)*. Having carefully reviewed the Commission's decision and the record in its entirety, the Commissioner finds that the Commission's decision is supported by sufficient credible evidence, and that appellant failed to establish that the decision is arbitrary, capricious, or contrary to law. *N.J.A.C. 6A:4-4.1(a)*. The Commissioner further finds that the Commission's modification of the recommended penalty from reprimand to censure is appropriate.

This matter arises from three separate, but related, complaints filed with the Commission which allege that appellants, members of the Berkely Heights Board of Education (Board), violated the Act and the Code when they voted to authorize Stanley to file an ethics complaint against another Board member, Sai Bhargavi Akiri (Akiri) and for the Board's counsel to draft the charges. Complainants further allege that appellants, including Stanley, voted against a motion to strike the resolution which would have required Stanley to obtain separate legal counsel to pursue the claim against Akiri.

The matters were later consolidated at the Office of Administrative Law (OAL). Following cross-motions for summary decision and oral argument on the motions, the Administrative Law Judge (ALJ) issued an Initial Decision on November 7, 2024, concluding that Stanley violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(f)*, and that all appellants

violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)*.¹ The ALJ recommended a penalty of reprimand. Thereafter, on February 18, 2025, the Commission adopted the ALJ's legal conclusions with modification to find that appellants did not violate *N.J.S.A. 18A:12-24.1(g)*. The Commission also modified the recommended penalty from reprimand to censure.

In reaching its determination, the Commission found that Stanley used her position as a Board member to secure the privilege of having the Board's counsel represent her in the ethics matter that she filed. In so doing, the Commission rejected appellants' argument that Stanley filed the ethics complaint on behalf of the Board, explaining that "the Act makes clear that only '[a] person' may file an ethics complaint with the Commission." Commission Final Decision at 8, citing to *N.J.S.A. 18A:12-29(a)*. The Commission further explained that it "has consistently held the belief that whether a Board votes to approve and/or adopts a resolution authorizing a Board member to file an ethics complaint with the Commission, the fact remains that the individual, and the individual *alone*, is the named Complainant, and thus, it is his or her *own* complaint and not the Board's." *Ibid.* (emphasis in original). Given this, the Commission concluded that Stanley violated *N.J.S.A. 18A:12-24(b)* when she voted to authorize the use of taxpayer funds to provide her with representation in the ethics complaint against another duly elected Board member. See *N.J.S.A. 18A:12-24(b)* ("No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others").

¹ The Initial Decision did not address the violation of *N.J.S.A. 18A:12-24.1(g)* alleged in C64-22.

As to the violation of *N.J.S.A. 18A:12-24(c)*, the Commission found that Stanley acted in her official capacity as a Board member in a matter where she has a financial involvement when she “voted to authorize the use of Board counsel to file ethics charges in her name, without personally paying that attorney for the representation.” Commission Final Decision at 9. Pursuant to *N.J.S.A. 18A:12-24(c)*, a school official may not act in her official capacity in a matter where she has a direct or indirect financial involvement that might reasonably be expected to impair her independence of judgment or objectivity. The Commission found that a reasonable member of the public would perceive that Stanley had a conflict of interest in voting to permit the use of the Board’s counsel for a matter that she personally supported, and which was filed in her name, at no cost to her. As such, the Commission concluded that the Stanley violated *N.J.S.A. 18A:12-24(c)*.

Similarly, the Commission held that Stanley violated *N.J.S.A. 18A:12-24(f)*, which prohibits a school official from using her public office or employment, or any information, not generally available to the members of the public, which she receives or acquires in the course of and by reason of her office or employment, for the purpose of securing financial gain for herself, any member of her immediate family, or any business organization with which she is associated. The Commission found that Stanley used her position on the Board to obtain free legal representation for herself, a financial gain only available due to her position on the Board. As such, the Commission concluded that Stanley violated *N.J.S.A. 18A:12-24(f)*.

Turning to the charges against all appellants, the Commission determined that appellants engaged in actions unrelated to their duties as Board members in violation of *N.J.S.A. 18A:12-24.1(c)* when they voted to authorize the filing of ethics charges and directed the Board’s counsel

to facilitate the filing. Specifically, the Commission noted that a Board is not permitted to file ethics charges and that by doing so, appellants acted outside of their role to make policy, plan, and appraise. Concerning the violation of *N.J.S.A. 18A:12-24.1(e)*, the Commission found that appellants' actions had the potential to compromise the Board, given that they voted to initiate legal proceedings against another sitting Board member and authorized the use of the Board's counsel. Next, the Commission determined that appellants violated *N.J.S.A. 18A:12-24.1(f)* by utilizing the schools to secure for themselves the benefit of free legal representation in filing the ethics complaint. Lastly, the Commission determined that a violation of *N.J.S.A. 18A:12-24.1(g)* had not been established.

Regarding the penalty, the Commission explained that a sanction more severe than reprimand was appropriate given the public nature of appellants' actions and appellants' use of Board counsel to file charges against another Board member, an action the Board is not authorized to take. The Commission also concluded that appellants had not established the advice of counsel defense as there was no evidence that they "actually sought the advice of counsel prior to voting, let alone in advance of every action they took." *Id.* at 11. However, even if appellants had spoken with counsel beforehand, the Commission found that there were aggravating circumstances warranting censure.

On appeal, appellants argue that the Commission's factual findings and conclusions are not supported by the record. Appellants also contend that the Commission erred in recognizing the ethics complaint as Stanley's personal complaint, and not the Board's. According to appellants, the regulations do not expressly prohibit a Board member, authorized by a supermajority vote of the Board, from filing an ethics complaint on behalf of a board of

education. Moreover, appellants assert that the Commission has accepted such complaints in the past and should have dismissed the complaint if it was not in compliance with the Commission's rules.

As to the charges against Stanley, appellants contend that any benefit conferred by Stanley's votes "redounded to the benefit of the Board as a whole and not any one individual Board member." Appellant's Brief at 19. As to the charges against all appellants, appellants maintain that taking a vote to authorize the filing of the ethics complaint constituted board action, not private action, because it was directly related to their duty to develop the general rules and principles that guide the management of the school district. As such, appellants argue that they did not violate the Act or the Code. Lastly, appellants argue that the Commission erred in enhancing the recommended penalty from reprimand to censure because 1) the Board members have not previously violated the Act; 2) they relied on the advice of counsel; and 3) any violation of the Act should be deemed *de minimis* with no penalty attached.

In reply, the Commission argues that its findings and conclusions are sufficiently supported by the record. The Commission maintains that by not recusing herself, Stanley used her position to secure taxpayer-funded legal counsel for herself in an ethics complaint, a financial benefit not available to the public. Further, the Commission asserts that by voting, Stanley failed to 1) confine her board activity to policy making, 2) refuse to surrender her independent judgment, and 3) refuse to use the schools for personal gain which compromised the Board, in violation of *N.J.S.A. 18A:12-24.1(c),(e), and (f)*. Next, the Commission argues that a plain reading of the Act bars boards of education from filing ethics complaints and that this prohibition extends to individuals filing a complaint on behalf of a board in an attempt to circumvent the regulations.

As to the penalty, the Commission contends that the Commissioner has regularly imposed censure in cases where board members fail to recuse themselves from matters in which they have a financial or personal interest. The Commission further contends that the advice of counsel defense is inapplicable here because the record does not establish that Stanley relied on advice from the board's counsel when she violated the Act and the Code. Nonetheless, the Commission argues that even if Stanley received advice beforehand, she used her position to secure an unwarranted privilege, which is a gross violation of the Act warranting censure.

In their reply, Complainants argue that the invited error doctrine precludes a litigant from arguing "that a lower court acted in error when that party created the alleged error in the first place by arguing for it." Complainant's Brief at 4. Complainants contend that the doctrine bars appellants' claim that the Commission should have dismissed Stanley's complaint if it failed to comply with the regulations because Stanley's attorneys defended the entirety of her complaint against a motion to dismiss by Akiri's counsel. Moreover, complainants note that on November 22, 2022, the Commission issued a decision on the motion to dismiss wherein it cited to the Act in concluding that it cannot accept a filing on behalf of a public body, including a board of education. Complainants contend that, as of that date, appellants were on notice that a board of education could not pursue an ethics complaint and as such, appellants should have sought private counsel or withdrawn the complaint. Lastly, complainants assert that appellants used public funds for private means and therefore urge the Commissioner to affirm the censure determination.

In reply to the Commission's and complainants' opposition, appellants argue that the issue of whether an ethics complaint can be filed by a designated representative on behalf of a

board of education was not settled when the Board voted to authorize the filing against Akiri in June 2022. Appellants reiterate that 1) the record indicates that the decision to pursue ethics charges against Akiri was Board action approved by a supermajority; 2) Stanley merely served as the Board's designated representative, and therefore received no personal benefit from filing the complaint; 3) appellants did not violate the Act and Code; 4) the Commission erred in enhancing the penalty given the advice of counsel defense.

On April 14, 2025, the Commissioner granted the New Jersey Association of School Attorneys (NJASA) and NJ21st leave to participate as amicus curiae. In its brief, NJ21st argues that appellants violated the Act and the Code and therefore requests that the Commissioner affirm the Commission's determination. In contrast, NJASA disputes the notion that a school board is prohibited from designating one of its members as a complainant on its behalf to pursue an ethics complaint against another board member. Also, citing an advisory opinion from the Advisory Committee on Professional Ethics (ACPE), NJASA contends that a board of education's attorney is not conflicted from prosecuting such a complaint at the board's expense solely because the respondent serves on the board the attorney represents. See ACPE Docket No. 07-2024. Accordingly, NJASA urges the Commissioner to reject anything to the contrary in the Commission's decision.

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

by sufficient credible evidence, and that appellant has not established that the SEC acted in a manner that was arbitrary, capricious, or contrary to law.

As an initial matter, the Commissioner notes that a plain reading of the Act bars boards of education from filing ethics complaints. Pursuant to *N.J.S.A. 18A:12-29(a)*, only a “person” may file an ethics complaint with the Commission. *See also N.J.A.C. 6A:28-6.1(a)*. A “person” means a “human being, and does not include district boards of education . . . or school districts.” *N.J.A.C. 6A:28-1.2*. The Commission held, and the Commissioner agrees, that regardless of whether a board of education votes to approve or adopts a resolution authorizing a board member to file an ethics complaint with the Commission, the individual alone is the named complainant, and it is her own complaint, not the board’s. *See, e.g., Lovett and Fussell v. Asbury, et al., Freedom Academy Charter School Bd. of Trustees, Camden County*, C01-09 (April 28, 2009) (recognizing Lovett and Fussell as the complainants rather than “‘Reverend Dr. Mary Lovett and Anthony L. Fussell o/b/o Concerned Citizens for the Children of Camden,’ as was noted in the complaint” because both the “statute and code provide that complaints filed with the Commission be filed by ‘a person,’ rather than an entity, (*N.J.S.A. 18A:12-29; N.J.A.C. 6A:28-6.1(a)*)”). Thus, the Commissioner finds that the Commission was not arbitrary, capricious, or unreasonable in determining that the complaint is Stanley’s and not the Board’s.

Appellants argue that they relied on the Commission’s responses to frequently asked questions (FAQs) on the Commission’s website at the time of filing, which stated that, “[a] Board of Education as an entity may not file a complaint, although individual members of the Board may file.” Appellant’s brief at 8. Appellants further argue that it was only after Stanley filed the complaint that the Commission revised its FAQs to include that “[t]he complaint must include a

person as the complainant(s), and cannot be submitted on behalf of an organization or entity.”

Id. The Commission does not find appellants’ argument to be persuasive. Although the current version of the Commission’s responses were updated to reflect amendments to *N.J.A.C. 6A:28* that were adopted on February 6, 2023, there were no changes to the requirement that only a “person” may file an ethics complaint pursuant to *N.J.A.C. 6A:28-6.1(a)* or to the definition of “person” under *N.J.A.C. 6A:28-1.2*.² See R. 2023 d. 032, eff. March 6, 2023; 54 N.J.R. 1360(a).

Also unavailing is appellants’ reliance on *Argenziano v. Fable*, 2025 N.J. Super. Unpub. LEXIS 488 (App. Div. Mar. 28, 2025) and *Maureen Castriotta v. Bd. of Educ. of the Twp. of Roxbury, Morris Cty.*, OAK Dkt. No. EDU 9217-10, Agency Dkt. No. 139-7/10 (May 18, 2011), *rev’d on other grounds and remanded*, 427 N.J. Super. 592 (App. Div. 2012). The board member at issue in *Argenziano* used her position on the board to obtain information from other school districts about the costs of technology equipment; her conduct was unrelated to filing an ethics complaint or the use of board resources and board counsel, and the decision therefore has no bearing on the instant matter. Appellants argue that *Argenziano* demonstrates that the Commission has accepted ethics complaints filed by an individual board member on behalf of a board of education in the past, seemingly because when the decision was later appealed to the Appellate Division, the course listed the case name, in part, as “Joseph Argenziano, Bd. President, on behalf of the Northern Valley Regional High School District Board of Education.” However, neither the Commission’s decision nor the Commissioner’s decision in that matter used that case caption, and both decisions identified the complainant only as “Joseph Argenziano.” The Commissioner

² See Frequently Asked Questions About Filing and Responding to a Complaint Filed with the School Ethics Commission, <https://www.nj.gov/education/ethics/home/2%20-%20FAQs.pdf> (last visited June 30, 2026).

is unsure of why the Appellate Division later used a different case caption, and can only surmise that the caption was supplied by the respondent-appellant. In any event, the Appellate Division's use of that case name in the title of an unpublished decision cannot bind the Commission to accept ethics complaints as being filed by a board of education when the plain language of the applicable statute allows filing only by a "person."

Castriotta was not a case adjudicated by the Commission under the Act or the Code, and, therefore, it is not dispositive with regard to this matter. In *Castriotta*, a board of education issued a censure to one of its members for what the board believed were violations of the Code, and that member filed a petition of appeal with the Commissioner, alleging that the board had exceeded its authority because only the Commission has authority to find that a board member has violated the Code. The Commissioner agreed, and in doing so, rejected the board's argument that its own censure was the only way it could discipline the board member because only a "person," and not a board, can initiate a complaint before the Commission. The Commissioner stated, "It is without question that a Board could authorize its Superintendent of Schools, who fully satisfies the regulatory requirement, to file a complaint with the Commission." *Castriotta* at 6. Initially, the Commissioner stated only that a board may authorize its superintendent to file an ethics complaint; it does not comment in any way on a board's ability to authorize one of its members to do so. Additionally, regardless of whether a superintendent is authorized by the board to file a complaint, the complainant would be the superintendent individually and not the board itself. *N.J.S.A. 18A:12-29(a)*. Finally, the Commissioner did not address the use of board counsel to pursue such a complaint, a factor that was critical to the Commission's determination in the instant matter.

With regard to the charges against Stanley, “[t]he determination of whether a particular interest is sufficient to disqualify a board member is necessarily factual in nature and depends upon the circumstances in each case... Absent controlling authority, the decision in issue is dictated by a practical feel for the situation.... An actual conflict of interest is not the decisive factor, nor is ‘whether the public servant succumbs to the temptation,’ but rather whether there is a potential for conflict.” *Friends Retirement Concepts v. Bd. of Educ. of the Borough of Somerville*, 356 N.J. Super. 203, 214 (internal citations omitted). It is undisputed that Stanley voted on two matters in which she had a direct financial interest. First, Stanley voted on a resolution authorizing the use of taxpayer funds by way of payment to Board counsel for her to file an ethics complaint against another Board member. Second, Stanley voted against a motion to strike, which would have required her to obtain her own legal counsel to draft the charges and pursue the ethics complaint against another duly elected Board member. The Commissioner concurs with the Commission that in voting on these matters where she had a direct financial interest, Stanley used her position to secure the unwarranted privilege of free representation in the filing of ethics charges in violation of *N.J.S.A. 18A:12-24(b)*.

The Commissioner further concurs with the Commission that Stanley acted in her official capacity as a Board member in a matter where she has a financial involvement when she voted to authorize the use of Board counsel to file ethics charges in her name, without personally paying counsel for the representation, in violation of *N.J.S.A. 18A:12-24(c)*. Further, a reasonable member of the public would perceive that Stanley had a conflict of interest in voting to allow the use of the Board’s counsel for free in a matter filed in her name. As to *N.J.S.A. 18A:12-24(f)*, the Commissioner agrees with the Commission that Stanley used her position on the Board to retain

Board counsel free of charge – a financial gain only available to her given her position on the Board.

Turning to the charges against all appellants, pursuant to *N.J.S.A.* 18A:12-24.1(c), board members must restrict board action to “policy making, planning, and appraisal” and “frame policies and plans only after the board has consulted those who will be affected by them.” Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) “shall include evidence that the respondent . . . took action beyond the scope of [their] 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). Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(f) “shall include evidence . . . that the respondent(s) used the schools to acquire some benefit for the respondent(s), a member of the respondent’s immediate family or a friend.” *N.J.A.C.* 6A:28- 6.4(a)(6).

Here, it is undisputed that appellants voted to authorize Stanley to file an ethics complaint on behalf of the board against another Board member, and for the Board’s counsel to draft the charges. The Commissioner agrees with the Commission that voting to authorize the filing of ethics charges on behalf of the Board and directing Board counsel to facilitate the filing, when the Board is not permitted to file such complaints, is action beyond appellants’ role to make policy, plan, and appraise in violation of *N.J.S.A.* 18A:12-24.1(c). As such, appellants’ actions do not constitute “board action” as appellants claim. See *Persi v. Woksa*, 2017 N.J. *Super.* Unpub. LEXIS 625, *7 (App. Div. Mar. 10, 2017) (finding that action taken by a board member that is beyond the scope of his authority and duties as a board member meets the definition of “private action” and is sufficient to demonstrate a violation of the Code). The Commissioner notes that if appellants wished to address Akiri’s alleged misconduct, they were free to bring ethics charges

against her in their individual capacities while represented by their own legal counsel, not the Board's.³ The Commission reasonably determined that appellants' actions had the potential to compromise the Board in violation of *N.J.S.A. 18A:12-24.1(e)*, and that appellants used the schools to secure a personal gain for themselves or Stanley in the form of free legal representation for the filing of the complaint in violation of *N.J.S.A. 18A:12-24.1(f)*.

Because appellant has not established that the Commission acted in a manner that was arbitrary, capricious, or contrary to law, the Commissioner affirms the Commission's conclusion that Stanley violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(f)*, and that all the appellants violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(f)*, but did not violate *N.J.S.A. 18A:12-24.1(g)*.

Regarding the recommended penalty, appellant seeks to rely on an "advice of counsel" defense to avoid or mitigate the imposition of a penalty for her violation of the Act. The Appellate Division has previously addressed charges of ethical violations by public officials acting on advice of counsel. *In re Zisa*, 385 *N.J. Super.* 188 (App. Div. 2006). When ethics charges were brought against him regarding his vote, Zisa sought to rely upon the advice of counsel defense. In examining the facts, the Appellate Division considered four prerequisites for an advice of counsel defense:

³ In its amicus brief, NJASA cited to the ACPE's Advisory Opinion (Docket No. 07-2024) in support of its claim that a board's legal counsel is not conflicted from prosecuting school ethics complaints filed by a board member, on behalf of the board, against another board member "simply because the respondent serves on the board he or she represents." NJASA Amicus Brief at 8. The Advisory Opinion applies to ethical rules governing attorneys and the instant matter deals with separate and distinct ethical rules governing school board members. Therefore, the Advisory Opinion is not relevant to the resolution of the instant matter.

1. That the approval or advice was received prior to the action being taken.
2. That the individual who offered the advice or approval relied upon possessed authority or responsibility with regard to ethical issues.
3. That the individual seeking advice or approval made a full disclosure of all pertinent facts and circumstances.
4. That the individual complies with the advice received, including any restrictions it might contain. *Ibid.*

Id. at 198-99. *See also In re Roman*, 2023 N.J. Super. Unpub. LEXIS 2379, at *14 (App. Div. Dec. 21, 2023) (“The application of the advice of counsel defense requires a fact-sensitive analysis to determine if the four prerequisites to an advice of counsel defense were met.”)

Here, the Commissioner finds that the evidence in the record fails to establish that appellants satisfied the *Zisa* prerequisites. The third prerequisite makes clear that the individual seeking to invoke the advice of counsel defense must have affirmatively sought “advice or approval.” *Id.* at 199. This matter is readily distinguishable from *Roman* and *Zisa* because it has not been established that Stanley and the appellants sought the advice of counsel prior to voting on either matter. Further, as the Commission correctly notes, the record does not indicate that any appellant “made a full disclosure of all pertinent facts and circumstances” in pursuit of legal advice at the June 16, 2022, meeting. *Ibid.* Consequently, appellants have not established the prerequisites for an advice of counsel defense.

The Commissioner agrees with the Commission that even if appellants did seek counsel before voting on both matters, censure would still be the appropriate penalty given the public nature of appellants’ actions. Voting in public to allow the filing of an ethics complaint against another Board member, and directing Board counsel to handle the matter, “deserves a heightened and public remedy of censure, not the private remedy.” Final Decision, at 11.

Moreover, the Commissioner finds persuasive the Commission's argument that censure is appropriate given Stanley's failure to recuse herself from motions in which she had a direct financial interest and actively voting to confer a benefit for herself. By failing to adhere to her ethical obligations as a Board member, Stanley used public funds in furtherance of private means.

Accordingly, appellants are hereby censured as school officials found to have violated the School Ethics Act.⁴



COMMISSIONER OF EDUCATION

Date of Decision: July 22, 2026
Date of Mailing: July 22, 2026

⁴ 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
Final Decision***

**Shauna Williams,
Complainant**

**OAL Docket No.: EEC-10551-22
SEC Docket No.: C64-22**

v.

**Robert Cianciulli, Jordan Hyman, Angela Penna,
Pamela Stanley and Michael D'Aquila
Berkeley Heights Board of Education, Union County,
Respondents**

CONSOLIDATED

**Douglas Grober,
Complainant**

**OAL Docket No.: EEC-00171-23
SEC Docket No.: C77-22**

v.

**Robert Cianciulli, Jordan Hyman, Pamela Stanley,
Michael D'Aquila, Angela Penna and Joy Young,
Berkeley Heights Board of Education, Union County,
Respondents**

**I/M/O Pamela Stanley,
Berkeley Heights Board of Education, Union County,**

**OAL Docket No.: EEC-03852-23
SEC Docket No.: C92-22**

I. Procedural History

The above-captioned matter arises from three separate but related Complaints filed with the School Ethics Commission (Commission), by Shauna Williams (Complainant Williams) (C64-22), Douglas Grober (Complainant Grober) (C77-22) and Edmund Maciejewski (Complainant Maciejewski) (C92-22), which allege that members of the Berkeley Heights Board of Education (Board) violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.*, when they voted to authorize one Board member to file an ethics complaint against another Board member, and authorized Board counsel to represent her in the filing. More specifically, in the matter docketed by the Commission as C64-22, filed on June 8, 2022, Complainant Williams alleged that Robert Cianciulli (Respondent Cianciulli), Jordan Hyman (Respondent Hyman), Angela Penna (Respondent Penna), Pamela Stanley (Respondent Stanley) and Michael D'Aquila (Respondent D'Aquila) (collectively, Respondents) violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)* and *N.J.S.A. 18A:12-24.1(g)* of the Code of Ethics for School Board Members (Code). In the matter docketed by the Commission as C77-22, filed on July 25, 2022, Complainant Grober alleged that Respondent Cianciulli, Respondent Hyman, Respondent Stanley, Respondent Penna and Joy Young (Respondent Young) violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* of the Code. In the matter docketed by the Commission as C92-22, filed on October 5, 2022, Complainant Maciejewski

alleged that Respondent Stanley violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(f) and *N.J.S.A.* 18A:12-24(g), as well as *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) of the Code.¹

At its special meeting on October 17, 2022, and after reviewing Respondents' Motion to Dismiss in Lieu of Answer (Motion to Dismiss) in C64-22 and Complainant Williams' response thereto, the Commission adopted a decision denying the Motion to Dismiss in its entirety. Based on its decision, the Commission voted to direct Respondents to file an Answer to Complaint (Answer) as to the allegations in C64-22, and to transmit the matter to the Office of Administrative Law (OAL) following receipt of the Answer.

At its meeting on November 22, 2022, and after reviewing Respondents' Motion to Dismiss in C77-22 and Complainant Grober's response thereto, the Commission adopted a decision denying the Motion to Dismiss in its entirety. Based on its decision, the Commission voted to direct Respondents to file an Answer as to the allegations in C77-22, and to transmit the matter to the OAL following receipt of the Answer.

At its meeting on January 31, 2023, and after reviewing Respondent Stanley's Motion to Dismiss and allegation of frivolous filing in C92-22, and Complainant Maciejewski's response thereto, the Commission adopted a decision granting the Motion to Dismiss as to the alleged violation of *N.J.S.A.* 18A:12-24(g); denying the Motion to Dismiss as to the stated violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f); finding the Complaint not frivolous, and denying Respondent Stanley's request for sanctions; and directing Respondent Stanley to file an Answer as to the remaining allegations. Thereafter, on April 25, 2023, the Commission voted to find probable cause for the remaining allegations in the Complaint, namely *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f). Based on its finding of probable cause, the Commission voted to transmit the within matter to the OAL for a hearing, and, pursuant to *N.J.A.C.* 6A:28-10.7(b),² the attorney for the Commission (Petitioner) was charged with prosecuting the allegations in C92-22 that the Commission found probable cause to credit.

The three matters were consolidated at the OAL to promote a prompt and fair resolution of all issues raised by the pleadings. Following cross-motions for summary decision and oral argument on the motions, the Administrative Law Judge (ALJ) issued an Initial Decision on November 7, 2024, finding that Respondent Stanley violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24(f), and all Respondents violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), and recommending a penalty of reprimand.³ Petitioner and Respondents both filed exceptions to the Initial Decision, in accordance with *N.J.A.C.* 1:1-18.4, and Petitioner and Respondents both also filed replies.

¹ Complainant also alleged in C92-22 that Respondent Stanley violated *N.J.S.A.* 18A:12-24(a) and *N.J.S.A.* 18A:12-24.1(a), but Complainant voluntarily withdrew those claims.

² This citation refers to the regulation that was in effect at the time of the probable cause determination.

³ The Initial Decision did not address the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in C64-22.

Complainants Williams and Grober notified the Commission that they are joining in Petitioner's exceptions and reply.

At its meeting on January 28, 2025, the Commission considered the full record in this matter. Thereafter, at its meeting on February 18, 2025, the Commission voted adopt the legal conclusions that Respondent Stanley violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24(f), and all Respondents violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), voted to modify the legal conclusions to find that Respondents did not violate *N.J.S.A.* 18A:12-24.1(g), and voted to modify the recommended penalty of reprimand in favor of censure.

II. Initial Decision

On May 25, 2022, Respondents Cianciulli, Hyman, Penna, Stanley and D'Aquila voted to file an ethics complaint against another Board member, Sai Bhargavi Akiri (Akiri). *Initial Decision* at 5. At the June 16, 2022, Board meeting, all Respondents voted to authorize Respondent Stanley to file the complaint against Akiri, and that the Board's attorney would draft the charges. *Ibid.* Additionally, Respondents (including Stanley) voted against a motion to strike the resolution authorizing the complaint and to require Respondent Stanley to obtain her own legal counsel to file the charges. *Ibid.*

The ALJ found that the evidence presented supports that Respondent Stanley violated the Act when she voted in favor of the Board's attorney to draft the charges for the ethics complaint against another Board member, and against a resolution to hire her own counsel to do so. *Id.* at 22. According to the ALJ, Respondents "voted on a motion that would authorize [the] Board's counsel to draft the charges against another Board member." *Ibid.* The ALJ indicated that "[b]ecause the board of education cannot file an ethics complaint," Board counsel "should not have been involved in such proceedings – even under the pretext that it is a board's action." *Ibid.* The ALJ further found that "[v]oting in favor of such motion would fall beyond the scope [of] any board member['s] duties," and "[w]hen Respondent Stanley agreed to file the ethics complaint against Akiri on behalf of the [B]oard, and voted against a motion that would strike her requirement to seek her own counsel to pursue the claim . . . she used her official position as a Board member to secure an unwarranted advantage for herself: free legal representation, a benefit not generally available to the public." *Ibid.* As such, the ALJ found Respondent "acted in her official capacity in a matter that conferred some benefit to herself, in that, she would not have to pay any legal expenses in the action." *Ibid.* Therefore, the ALJ concluded that Respondent Stanley violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24(f). *Ibid.*

As to a violation of *N.J.S.A.* 18A:12-24.1(c), the ALJ found that the evidence presented supports that Respondents' actions were not related to policy making, planning and appraisal. *Id.* at 23. The ALJ noted that a plain reading of *N.J.A.C.* 6A:28-6.1(a) indicates that a board of education cannot file an ethics complaint against a board member, and if a board member decides to file the complaint individually, he or she should seek individual counsel. *Id.* at 24. The ALJ asserted that although the action was initiated after the Board discussed and agreed upon the matter, Respondents "fail to explain how voting in favor of a resolution directing the Board's

counsel to draft the charges against Akiri is related to development of general rules and principles that guide the management of the school district, the formulation of programs and methods to effectuate the goals of the school district or to ascertain the value or liability of a policy.” *Ibid.* Per the ALJ, the Commission has “clearly” stated that “a board member ‘is free to, among other things, ask questions, make requests, offer a statement or opinion, make inquiries about Board issues/matters, and to raise issues regarding business of the Board.’” *Id.* at 24-25. However, the ALJ found that “[c]omplaining that a board member disagrees with the majority of the board is not related to the development of general rules . . .”; and therefore, when Respondents voted in favor of filing an ethics complaint, they violated *N.J.S.A.* 18A:12-24.1(c). *Id.* at 25.

As to a violation of *N.J.S.A.* 18A:12-24.1(e), the ALJ found that Complainants have provided sufficient factual evidence that Respondents took action beyond their duties such that it compromised the Board. *Ibid.* The ALJ asserted that although a majority of the Board supported the action, the regulation states that only a “person” may file a complaint. *Id.* at 26. The ALJ further asserted that because the Board could not be a party in the action, the Board’s resources, such as Board counsel, should not have been utilized. *Ibid.* Therefore, the ALJ found that when Respondents voted on a motion that would “authorize the Board’s counsel to draft and litigate an ethics complaint against a board member,” they acted beyond the scope of a board member’s duty and violated *N.J.S.A.* 18A:12-24.1(e). *Ibid.*

Regarding a violation of *N.J.S.A.* 18A:12-24.1(f), the ALJ asserted that Respondent Stanley admitted to voting in favor of the motion to strike the requirement of hiring her own attorney, and therefore, she used her position to secure free legal representation. *Id.* at 27. The ALJ found that the lack of involvement of a special interest or political partisan group is irrelevant if Respondents used the schools to acquire a benefit for themselves. *Id.* at 27-28. The ALJ ultimately found that Complainants have provided sufficient factual evidence that Respondents violated the *N.J.S.A.* 18A:12-24.1(f). *Id.* at 26.

The ALJ noted that after the submission of the brief and certifications in support and opposition to the pending motions, Respondents submitted a copy of an Opinion of the Advisory Committee on Professional Ethics (Advisory Opinion), arguing that the Advisory Opinion contained relevant information to the cross-motions for summary decision. *Id.* at 28. The ALJ found the Advisory Opinion is not relevant to the issues in this matter as it related to “ethical rules governing attorneys and the instant matter deals with totally separate and distinct ethical rules which govern school board members.” *Ibid.* Therefore, the ALJ found that relevancy had no impact on whether Respondent Stanley gained an unethical benefit by receiving free legal counsel at taxpayers’ expense or whether all Respondents acted unethically when they authorized Respondent Stanley to file the complaint. *Ibid.*

As to penalty, the ALJ noted that although Respondents have violated the Act and Code, “the fact that they were informed by counsel that their actions were appropriate is a mitigating factor to which [the ALJ gives] substantial weight,” and therefore, the ALJ recommended that the appropriate sanction is a reprimand. *Id.* at 29.

III. Exceptions

Petitioner's Exceptions⁴

Although Petitioner does not take exceptions to the ALJ's findings, Petitioner does take exceptions to the ALJ's recommended penalty of reprimand. While the ALJ stated that Respondent Stanley was informed by counsel that her actions were appropriate, Petitioner maintains the ALJ did not "make any specific findings regarding what advice Stanley specifically sought," nor provide "any analysis of other factors which would affect the penalty." Petitioner argues the ALJ issued the most lenient penalty and "failed to consider the level and nature of Stanley's violations and improperly relied on Stanley's allegation that she relied on advice of counsel." Petitioner further argues that because Respondent "failed to establish the mitigating factor of reliance on counsel, no other mitigating factors are present," and "given the seriousness and public nature of the violations . . ." censure should be the lowest penalty issued.

Petitioner asserts that "using one's position to secure unwarranted privileges is a gross violation of the [Act.]" As such, Petitioner notes the Commission has "routinely imposed censure." Petitioner further notes Respondent Stanley "violated the public trust when she utilized her position on the Board to vote on a resolution which directed the Board to provide her with legal representation for the preparation, filing, and prosecution of an ethics complaint against another Board member." Moreover, according to Petitioner, Respondent Stanley "further violated this trust when she voted against a motion to strike which resulted in the Board bearing all attendant costs and expenses." Petitioner notes that Respondent Stanley "was much more than a passive observer in actions taken by the Board; she actively participated in votes on matters which directly conferred personal financial gain," and she "was aware of her ethical obligations as she was an experienced board member."

Petitioner contends the ALJ reasoned that "mitigation was appropriate because Stanley had relied on the advice of Board counsel"; however, Petitioner argues this "finding must be rejected because the ALJ failed to make any findings of fact to support that claim, which the record does not support." According to Petitioner, "[r]eliance on advice of counsel may mitigate a penalty, but it does not inoculate respondents from a finding that their conduct violated the Act or the Code." Ultimately, Petitioner argues that Respondent Stanley's "violations are not predicated on her filing an ethics complaint against another Board member, but on her failure to recuse herself from motions in which she had a direct pecuniary interest and actively voting to confer a benefit for herself." Therefore, Petitioner asserts Respondent Stanley's "admitted actions constitute a serious violation of the public trust and call for, at minimum, a penalty of censure."

Respondents' Exceptions

First, Respondents take exception to the ALJ's determination that Respondent Stanley took private action to secure a private benefit of any kind. Regarding the ALJ's finding that "the

⁴ Complainants Williams and Grober notified the Commission that they are joining Petitioner's exceptions.

evidence presented supports [the conclusion] that Stanley violated the [School Ethics] Act when she voted in favor of the Board's attorney to draft the charges for the ethics complaint against another Board member, and against a resolution to hire her own counsel to do so," Respondents argue Respondent Stanley "voted with a majority of the [B]oard on a resolution authorizing the Board's counsel to represent her as a representative petitioner with the filing of the complaint on behalf of the Board." Further, Respondents argue that while the ALJ "summarily concluded that the benefit of free legal representation was conferred upon Mrs. Stanley," the ALJ "conflated and ignored important facts of record that directly contradict this conclusion and support the opposite conclusion." Respondents maintain that Respondent Stanley "only agreed to sign the complaint on behalf of the Board, upon the authorization and request of a majority of the full Board, as a matter of procedural compliance." Moreover, according to Respondents, at the time of the filing of the complaint, Respondents were "complying with a good faith interpretation of the Commission's own guidance," namely that a "complaint must include a person as the complainant(s), and cannot be submitted on behalf of an organization or entity," and "the regulations relied upon by [the ALJ] do not 'preclude' a person from filing on behalf of an entity, but rather suggest that an entity may not file a complaint itself." Additionally, Respondents argue there was not any evidence to support that Respondent Stanley had a "direct financial interest" and the conclusion that "the financial benefit conferred upon Mrs. Stanley was free legal representation . . . is specious." Respondents note Respondent Stanley was "never personally billed by the Board Attorney, nor did she retain the Board Attorney privately."

Second, Respondents take exception to the finding of a violation of *N.J.S.A.* 18A:12-24.1(c). Respondents argue the "Board as a whole took action to authorize the drafting of an ethics complaint against Mrs. Akiri to address persistent public conduct of Akiri that the Board reasonably perceived as injurious to school district personnel." Respondents note they only took this action "after unsuccessful attempt[s] to address Akiri's" pattern of perceived misconduct were addressed in executive session. Therefore, Respondents maintain that by filing the complaint, the Board "took reasonable action that it, by majority vote, deemed necessary to effectuate 'policies and plans' and attend to their 'duties as Board members' in particular the duty to protect and support school personnel in the performance of their duties." Respondents further maintain the evidence demonstrates that their actions "were directly related to their duty" and they were "acting to support the general rules and principles that guide management of the district."

Third, Respondents also take exception to the finding of a violation of *N.J.S.A.* 18A:12-24.1(e) because the Complaints do not contain an allegation that personal promises were made. Respondents maintain that a "Board vote authorizing the filing of a complaint against another is axiomatically 'board action' and not a 'private action,'" and the Board Resolution authorizing the same is further evidence of Board action. Therefore, they assert that Respondent Stanley's actions cannot be private action.

Finally, Respondents take exception to the ALJ's finding of a violation of *N.J.S.A.* 18A:12-24.1(f). Respondents contend there is not any evidence "to support the notion that any Respondent used their position on the Board to obtain any personal gain on behalf of themselves or others." On the contrary, Respondents maintain they voted to file the complaint "as part of their policy making power" and to "protect the reputation of the Board and to regain the ability

to create policy that represented the schools efficiently.” Respondents argue they did not take this action on behalf of any other group and there was not any evidence to the contrary. Respondents contend for the reasons detailed above, the Commission should reject the Initial Decision “as unsupported by a sufficient factual record and contrary to applicable law.”

Petitioner’s Reply to Respondents’ Exceptions⁵

Petitioner maintains the ALJ accurately determined based on “undisputed facts” that Respondent Stanley violated the Act “by voting on matters which she had a personal involvement and which conferred a direct, unwarranted financial benefit.” Petitioner notes that a violation of the Act or Code “does not turn on whether a benefit is actually conferred; rather, it is whether the board member had an actual relationship that a reasonable member of the public ‘would expect to create a conflict of interest,’ and whether the board member’s actions breach the public trust.” Petitioner maintains “it is undisputed” that Respondent Stanley voted on the Resolution, which provided her with Board counsel and voted against a separate motion to strike. According to Petitioner, “[b]y failing to recuse herself, Stanley unequivocally used her position to ‘secure unwarranted privileges,’ ‘secure financial gain,’ and ‘create[] some benefit’ for herself that is not available to the public that is, she affirmatively voted on matters which ensure she received legal counsel in her personal capacity to file and prosecute an ethics complaint, paid by the Board.” Petitioner further maintains Respondent Stanley’s “admitted conduct of voting to grant herself the benefit of legal counsel paid by the Board” violated the Code because she used “her votes to secure personal legal services at the taxpayers’ expense,” and therefore, “failed to ‘confine [her] board action to policy making,’” “failed to ‘refuse to surrender [her] independent judgment,’” and “failed to ‘refuse to . . . use the school for personal gain,’” ultimately, compromising the Board. Petitioner asserts “regardless of whether a board votes to authorize a member to file an ethics complaint, an individual can only file a complaint personally and must ‘seek his or her own counsel.’”

Respondents’ Reply to Petitioner’s Exceptions

As an initial matter, Respondents note that there is not any evidence to demonstrate that Respondent Stanley “had any personal involvement with the drafting or filing of the Complaint.” Respondents maintain the Board counsel drafted the complaint without Respondent Stanley’s involvement, and therefore, Petitioner’s “argument for a censure is premised on the unsubstantiated conclusion that Stanley acted to obtain a personal benefit in the filing of the ethics complaint on behalf of the Board.” However, according to Respondents, “the facts demonstrate that at all times Stanley was not acting in her individual capacity for a matter she individually sought, but as and on behalf of the Board, pursuant to Board authorization.”

Respondents argue Petitioner did not provide, nor did the ALJ find any evidence to demonstrate that Respondent Stanley “or any other Respondent voted on a resolution allowing Stanley to avoid personal financial responsibility or directing the Board to provide her, ‘**as an individual,**’ with legal counsel through the Board’s Attorney.” Respondents contend that the

⁵ Complainants Shauna Williams and Doug Grober notified the Commission that they are joining Petitioner’s reply to exceptions.

ALJ “erred in concluding that there was a violation of the Act because Stanley at all times was acting on behalf of the Board, through authorization by the majority of the Board.”

Additionally, according to Respondents, although the ALJ “did not explicitly make findings of fact to support advice of counsel factors, [the ALJ’s] Initial Decision contains many factual oversights in coming to his ultimate conclusion.” Respondents maintain although the ALJ did not explicitly articulate the facts, it “does not mean that those facts do not exist.” Therefore, Respondents contend the ALJ “was correct in determining that the advice of counsel defense applied in this situation.” However, the ALJ’s recommended penalty of reprimand “is excessive given the fact that Respondents were not only complying with the advice from the Board Attorney, but also that of the Commission’s own guidance.” Based on the above, Respondents argue a penalty should not be imposed on Respondents as they did not violate the Act. Alternatively, should the Commission find a violation occurred, Respondents argue a penalty should not be imposed.

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission the agrees with the Initial Decision’s legal conclusions that Respondent Stanley violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24(f), and all Respondents violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), but modifies the legal conclusions to find that Respondents did not violate *N.J.S.A.* 18A:12-24.1(g). The Commission also modifies the recommended penalty of reprimand in favor of censure.

N.J.S.A. 18A:12-24(b) prohibits a school official from using or attempting to use her official position to secure unwarranted privileges, advantages or employment for herself, members of her immediate family or others. The Commission finds that Respondent Stanley used her position as a Board member to secure the privilege and advantage of using Board counsel to represent her in an ethics proceeding that she filed. Despite Respondents’ argument that Respondent Stanley simply filed the ethics complaint on behalf of the Board and did not seek counsel on her own behalf, the Act makes clear that only “[a] person” may file an ethics complaint with the Commission. *N.J.S.A.* 18A:12-29(a). The Commission has consistently held the belief that whether a Board votes to approve and/or adopts a resolution authorizing a Board member to file an ethics complaint with the Commission, the fact remains that the individual, and the individual *alone*, is the named Complainant, and thus, it is his or her *own* complaint, and not the Board’s. In this circumstance, to make matters worse, the Board, including Respondent Stanley, authorized the use of taxpayer funds by way of Board counsel to file an ethics complaint against another duly elected Board member. The use of the Board’s resources to provide Respondent Stanley with representation in filing ethics charges constitutes a clear privilege or advantage that she received solely because of her position as a Board member. As such, the Commission agrees with the ALJ that Respondent Stanley violated *N.J.S.A.* 18A:12-24(b).

N.J.S.A. 18A:12-24(c) prohibits a school official from acting in her official capacity in a matter where she, a member of her immediate family, or a business organization in which she has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment, and from acting in her official capacity in

a matter where she or a member of her immediate family has a personal involvement that is or creates some benefit to her or a member of her immediate family. Respondent Stanley voted to authorize the use of Board counsel to file ethics charges in her name, without personally paying that attorney for the representation. The Commission finds that in doing so, Respondent Stanley took action in her official capacity in a matter where she has a financial involvement – free legal representation – that might reasonably be expected to impair her objectivity or independence of judgment. A reasonable member of the public would perceive that Respondent Stanley would have a conflict of interest in voting to authorize the use of Board counsel’s services for a matter that she personally supports and will be filed in her name against another Board member. Accordingly, the Commission agrees with the ALJ that Respondent Stanley violated *N.J.S.A. 18A:12-24(c)*.

N.J.S.A. 18A:12-24(f) prohibits a school official from using, or allowing to be used, her public office or employment, or any information, not generally available to the members of the public, which she receives or acquires in the course of and by reason of her office or employment, for the purpose of securing financial gain for herself, any member of her immediate family, or any business organization with which she is associated. The Commission finds that Respondent Stanley used her position, and the ability to use Board counsel, for her personal use. The ability to retain Board counsel, free of charge personally, provided Respondent Stanley with financial gain that was only available to her due to her position on the Board. Therefore, the Commission agrees with the ALJ that Respondent Stanley violated *N.J.S.A. 18A:12-24(f)*.

Pursuant to *N.J.S.A. 18A:12-24.1(c)*, board members must confine board action to “policy making, planning, and appraisal” and “frame policies and plans only after the board has consulted those who will be affected by them.” The Commission finds that Respondents’ vote to authorize the filing of ethics charges on behalf of the Board and the authorization of Board counsel to facilitate the filing, when the Board is not permitted to file ethics charges, was action outside of their roles to make policy, plan and appraise. Despite Respondents’ argument that their actions were directly related to their duties as Board members because they had unsuccessfully made attempts to address Akiri’s pattern of misconduct, and therefore, they voted as a majority to file the charges which they “deemed necessary” to effectuate policies and plans and support school personnel, the Commission finds that directing the Board attorney to engage in legal work that the Board itself is not authorized to file is action unrelated to Respondents’ duties as a Board member. As such, the Commission agrees with the ALJ that Respondents violated *N.J.S.A. 18A:12-24.1(c)*.

Under *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. The Commission finds that Respondents’ actions in authorizing Board counsel to facilitate ethics charges that they personally supported and that they, in essence, told Respondent Stanley to file, was action outside of the scope of their duties as Board members. Ethics charges that are filed with the Commission are filed by individuals, not entities, and therefore, the individual Board members (or one representative, in this circumstance) are required to file the matter on their own behalf, not on behalf of a Board. While Respondents argue that the action was “board action,” the Commission notes that the Board was not permitted to take any action, and Respondents simply sought to turn their personal motives into a Board

matter by improperly authorizing the filing of ethics charges. The Commission further finds that Respondents' actions certainly had the potential to compromise the Board, as they initiated legal proceedings against another sitting Board member, and authorized Board counsel to file the ethics charges, which will cost the Board money in legal bills. Accordingly, the Commission agrees with the ALJ that Respondents violated *N.J.S.A. 18A:12-24.1(e)*.

Pursuant to *N.J.S.A. 18A:12-24.1(f)*, a board member must refuse to surrender independent judgment to special interest or partisan groups or use the schools for personal gain or for the gain of friends. The Commission finds that Respondents used the schools to acquire a benefit for themselves and when they authorized the use of the Board's attorney to file ethics charges on their own behalf (through Respondent Stanley). In doing so, Respondents secured free legal representation for the filing of ethics charges, which is a personal gain for themselves, or for their colleague, Respondent Stanley. Therefore, the Commission agrees with the ALJ that Respondents violated *N.J.S.A. 18A:12-24.1(f)*.

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. Although this provision of the Code was not addressed by the ALJ, the Commission finds that it has not been established that in authorizing the filing of ethics charges, Respondents took action to make public, reveal or disclosure any information that was confidential or not public. As such, the Commission finds that Respondents Cianciulli, Hyman, Penna, Stanley or D'Aquila did not violate *N.J.S.A. 18A:12-24.1(g)*.

With respect to the appropriate penalty, the Commission modifies the recommended penalty of reprimand to censure for all Respondents. Respondents unquestionably weaponized the Board to file legal proceedings against a fellow Board member and went so far as to authorize the use of Board counsel to support their cause. Such actions are highly inappropriate and deserve a more severe sanction than reprimand, especially given that the Commission's statute, which has remained unchanged, indicates that only individuals can file ethics charges, not boards of education. *N.J.S.A. 18A:12-29(a)*. Additionally, while individuals may file ethics charges against other Board members, voting at a *public* meeting to file ethics charges against another Board member (when ethics charges would otherwise be held confidential pursuant to *N.J.A.C. 6A:28-6.6(g)*) and using Board counsel to facilitate the filings against another duly-elected Board member, when a Board is not authorized to take such action, has the potential to compromise the Board, as Respondents improperly used the Board and its resources to support their own goals. Notably, the Commission has previously issued a penalty of censure, in a similar matter where a Board President violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* when he requested that Board counsel conduct research regarding another Board member, who was his political rival. *I/M/O Shawn Giordano*, Lacey Township Board of Education, C04-20 (July 25, 2023), *affirmed* (May 15, 2024).

While the ALJ reasoned that a penalty of reprimand was appropriate because Respondents were informed by counsel that their actions were appropriate, this reasoning is unsupported by the Initial Decision's factual findings, and the record. The Commission acknowledges that considering the factors set forth in *In re Zisa*, 385 *N.J. Super.* 188 (App. Div. 2006), the defense of advice of counsel may be considered a mitigating factor when imposing

penalties for ethical violations. However, in this circumstance, it has not been established that Respondents actually sought the advice of counsel prior to voting, let alone in advance of every action they took. Whether the attorney implicitly sanctioned Respondents' actions by moving forward in drafting the ethics charges does not satisfy the requirement that they seek advice prior to taking any action. However, even if Respondents did speak with counsel prior to voting to authorize the filing of ethics charges and also prior to voting to authorize counsel to file them, the Commission notes that there are also aggravating circumstances in this matter, specifically the public nature of Respondents' actions. Voting in public to authorize the filing of ethics charges against another Board member, and asking counsel to handle the matter, deserves a heightened and public remedy of censure, not the private remedy of reprimand. If members of the public were at the Board meeting or have read the meeting minutes of the public meeting when the improper and unauthorized votes took place, they deserve to learn the outcome that Respondents acted inappropriately and witness the public censure. Respondents made this an issue of public interest when they sought to make the alleged ethical violations of a fellow Board member known to the public by discussing it and voting on filing an ethics complaint at a public meeting; therefore, the general public now has a right to be informed of the sanction publicly. As such, when balancing any potential mitigating factor with the aggravating factor, the Commission finds that the aggravating factor weighs heavier on the scale, and a censure would nevertheless still be warranted in this matter. Accordingly, the Commission finds a penalty of censure is appropriate for Respondent Stanley's violations of *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(f)*, as well as for all Respondents' violations of *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)*.

IV. Decision

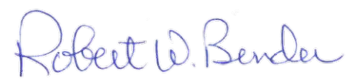
For the aforementioned reasons, the Commission adopts the ALJ's legal conclusions that Respondent Stanley violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(f)*, and all Respondents violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)*, but modifies the legal conclusions to find that Respondents did not violate *N.J.S.A. 18A:12-24.1(g)*. Additionally, Commission modifies the recommended penalty of reprimand in favor of censure.

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). 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: February 18, 2025

***Resolution Adopting Decision
in Connection with C64-22, C77-22 and C92-22 (Consolidated)***

Whereas, at its special meeting on October 17, 2022, the School Ethics Commission (Commission) voted to transmit the matter docketed as C64-22 to the Office of Administrative Law (OAL) for a hearing; and

Whereas, at its meeting on November 22, 2022, the Commission voted to transmit the matter docketed as C77-22 to the OAL for a hearing; and

Whereas, at its meeting on April 25, 2023, the Commission voted to transmit the matter docketed as C92-22 to the OAL for a hearing; and

Whereas, the matters docketed as C64-22, C77-22 and C92-22 were consolidated at the OAL; and

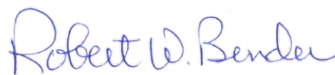
Whereas, on November 7, 2024, the ALJ issued an Initial Decision, finding that Respondent Stanley violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(f)*, and all Respondents violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)*, and recommending a penalty of reprimand; and

Whereas, both Petitioner and Respondents filed exceptions to the Initial Decision and both Petitioner and Respondents filed replies; and

Whereas, at its meeting on January 28, 2025 the Commission reviewed the record in this matter, discussed adopting the legal conclusions that Respondent Stanley violated *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(f)*, and all Respondents violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)*, discussed modifying the legal conclusions to find that Respondents did not violate *N.J.S.A. 18A:12-24.1(g)*, and discussed modifying the recommended penalty of reprimand in favor of censure; and

Whereas, at its meeting on February 18, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on January 28, 2025; 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 February 18, 2025



Brigid C. Martens, Director
School Ethics Commission



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

(CONSOLIDATED)

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EEC 10551-22

AGENCY DKT. NO. #C64-22

SHAUNA WILLIAMS,

Petitioner,

v.

ROBERT CIANCIULLI, ET AL, BERKELEY

HEIGHTS BOE, UNION COUNTY,

Respondent.

DOUGLAS GROBER,

Petitioner,

v.

ROBERT CIANCIULLI, ET AL, BERKELEY

HEIGHTS BOE, UNION COUNTY,

Respondent.

IN THE MATTER OF PAMELA STANLEY,
BERKELEY HEIGHTS BOE, UNION COUNTY.

OAL DKT. NO. EEC 00171-23

AGENCY DKT. NO. #C77-22

OAL DKT. NO. EEC 03852-23

AGENCY DKT. NO. #C92-22

Walter M. Luers, Esq., for Complainant Douglas Grober and Shauna Williams
(Cohn, Lifland, Pearlman, Herrmann & Knopf, LLP, attorneys)

Ryan J. Silver, Deputy Attorney General, for Complainant, School Ethics Commission c/o Department of Education (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Mark A. Wenczel, Esq., for respondent, Berkeley Heights Board of Education members Robert Cianciulli, Angela Penna, Joy Young, Pamela Stanley and Jordan Hyman, and former Board member Michael D'Aquila (Cleary, Giacobbe, Alfieri, Jacobs, LLC, attorneys)

Record Closed: March 15, 2024

Decided: November 7, 2024

BEFORE **WILLIAM COURTNEY**, ALJ:

STATEMENT OF THE CASE

Robert Cianciulli, Jordan Hyman, Pamela Stanley, Michael D'Aquila, Angela Penna and Joy Young (collectively "Respondents") oppose the motions for summary decision of the School Ethics Commission (the "Commission"), Shauna Williams and Douglas Grober (collectively "Complainants"). Each motion requests for the Court to find that Respondents' conduct violated the Act and Code of Ethics for Board Members, notably N.J.S.A. 18A:12-24(b), (c), and (f) and N.J.S.A. 18A:12-24.1(c), (e), and (f), when the Board voted on a resolution to have the Board's Attorney draft an ethics complaint against another Board member and when Board member Stanley, chosen to submit the complaint on behalf of the Board, voted against a motion to strike the language authorizing the Board's counsel to draft and litigate the complaint.

PROCEDURAL HISTORY

These consolidated matters arises from three separate but related complaints filed by citizens Shauna Williams, Doug Grober, and Edmund Maciejewski against members of the Berkeley Heights Board of Education (specifically Robert Cianciulli, Jordan Hyman,

Pamela Stanley, Michael D'Aquila, Angela Penna and Joy Young) regarding a resolution they approved to file ethics charges against another Board member, Sai Bhargavi Akiri, and to have the Board's attorney draft said ethics charges. Thereafter, they voted to have board member Stanley file the charges on behalf of the Board. The complaints also alleged ethics violations arising from Respondents' voting against a motion to strike the resolution after it was made.

In the OAL Docket No. EEC 10551-22 matter, Williams filed a complaint (School Ethics Commission Docket No. C64-22), on or around June 8, 2022, against Respondents Cianciulli, Hyman, Penna, Stanley and D'Aquila (collectively "Respondents"), members of the Berkeley Heights Board of Education, alleging their conduct violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically N.J.S.A. 18A:12-24.1(c), (e), (f) and (g) of the Code of Ethics for School Board Members. The School Ethics Commission ("Commission") reviewed the complaint and issued a decision on October 17, 2022. The contested matter was transmitted to the OAL where it was filed under OAL Dkt. No. EEC 10551-22.

In the OAL Docket No. EEC 00171-23 matter, Grober filed a complaint (School Ethics Commission Docket No. C77-22), on or around July 25, 2022, against Respondents Cianciulli, Stanley, D'Aquila, Penna and Young (collectively "Respondents"), members of the Berkeley Heights Board of Education, alleging their conduct violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically N.J.S.A. 18A:12-24.1(c), (e) and (f) of the Code of Ethics for School Board Members. The Commission reviewed the complaint and issued a decision on November 22, 2022. The contested matter was transmitted to the OAL where it was filed under OAL Dkt. No. EEC 00171-23.

In the OAL Docket No. EEC 03852-23 matter, Maciejewski originally filed a complaint (School Ethics Commission Docket No. C92-22), on or around October 5, 2022, against Stanley (a member of the Berkeley Heights Board of Education), alleging that her conduct violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically

N.J.S.A. 18A:12-24(a) (Count 1), N.J.S.A. 18A:12-24(b) (Count 2), N.J.S.A. 18A:12-24(c) (Count 3), N.J.S.A. 18A:12-24(f) (Count 4), N.J.S.A. 18A:12-24(g) (Count 5), as well as N.J.S.A. 18A:12-24.1(a) (Count 6), N.J.S.A. 18A:12-24-1(c) (Count 7), N.J.S.A. 18A:12-24-1(e) (Count 8) and N.J.S.A. 18A:12-24-1(f) (Count 9) of the Code of Ethics for School Board Members. In its December 20, 2022 meeting, the Commission reviewed the complaint. In its March 31, 2023 meeting, the Commission found probable cause for the allegations of violations of N.J.S.A. 18A:12-24(b) (Count 2), N.J.S.A. 18A:12-24(c) (Count 3), N.J.S.A. 18A:12-24(f) (Count 4), N.J.S.A. 18A:12-24.1(c) (Count 7), N.J.S.A. 18A:12-24.1(e) (Count 8), and N.J.S.A. 18A:12-24.1(f) (Count 9), and the matter was referred to the OAL. Since the Commission found probable cause to at least one violation of N.J.S.A. 18A:12-24 and transmitted the case to the OAL for a hearing, pursuant to N.J.S.A. 18A:12-29(b), the attorney for the Commission was designated to litigate the allegations in Maciejewski complaint for which the Commission found probable cause. N.J.A.C. 6A:28-9.8(a)(2). On April 25, 2023, the Commission filed the Probable Cause Notice. The contested matter was then transmitted to the OAL where it was filed under OAL Dkt. No. EEC 03852-23.

Consolidation of EEC 10551-22 and EEC 00171-23 (the Williams and Grover Complaints) was ordered on March 22, 2023,¹ as it appeared that the consolidation standards set forth in N.J.A.C. 1:1-17.3 in terms of the identity of the parties,² the nature of all questions of fact and law involved, the advisability to dispose of all aspects of this controversy in a single proceeding, and that consolidation would promote a prompt and fair resolution of the issues raised by the pleadings.

Consolidation of EEC 10551-22, EEC 00171-23 and EEC 003852-23³ was ordered on August 25, 2023 on the same grounds.

¹ The order is incorrectly dated March 22, 2022, instead of March 22, 2023.

² Although the named Respondent(s) in each matter is different, the named Respondent(s) are represented by the same attorney.

³ The order incorrectly repeats EEC 00171-23 and captions Pamela Stanley v. Berkeley Heights Board of Education, Union County instead of EEC 003852-23 in the matter of Pamela Stanley, Berkeley Heights Board of Education, Union County. In the records, revised orders dated September 8, 2023 and September 29, 2023 corrected the captions, but incorrectly listed OAL Docket No. EEC 003852-22 instead of EEC 03852-23.

Discovery was completed in October 2023. All dispositive motions were submitted on December 11, 2023. All oppositions were submitted by December 29, 2023. All replies to oppositions were submitted on January 12, 2024. Oral Argument was held on March 15, 2024 and the record closed that day.

FACTUAL BACKGROUND

During the Berkeley Heights Board of Education meeting of May 25, 2022, board members Cianciulli, Hyman, Penna, Stanley and D'Aquila, voted to file an ethics complaint against another Board member, Sai Bhargavi Akiri ("Akiri"), and to have the Board's attorney draft the charges of the ethics complaint.

The Board's actions during that meeting gave rise to complaint C64-22 dated June 3, 2022 (received by the Commission on or around June 8, 2022), wherein Complainant Williams alleged Respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically N.J.S.A. 18A:12-24.1(c), (e), (f) and (g) of the Code of Ethics for School Board Members when they voted to file ethics charges against Akiri and approved the Board's attorney to draft said charges.

During the Board's meeting of June 16, 2022, Respondents Cianciulli, Hyman, Stanley, D'Aquila, Penna and Young voted to authorize Stanley to file the complaint against Akiri on behalf of the Board, and that the Board's attorney draft the charges of the complaint. Respondents, including Respondent Stanley, also voted against a separate motion striking language and requiring Stanley to obtain her own legal counsel to draft the charges and to bring the ethics complaint against Board member Akiri.

The ethics complaint filed by Stanley (on behalf of the Board) against Akiri was received and filed by the School Ethics Commission on or around June 21, 2022 under Docket No. C67-22. In this complaint, Stanley alleged that Akiri violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically N.J.S.A. 18A:12-24.1(c) through (g), then (i) and (j) of the Code of Ethics for School Board Members, when she questioned and/or

inquired about school related matters, published a news article regarding the budget approval process, publicly criticized in a meeting how the minutes presented for approval “violated legal requirements”, and accused the school administration and the Board’s counsel to be in “collusion” on social media.

On or around July 2, 2022, Respondents filed a motion to dismiss C64-22, asserting that their action in voting to pass a resolution authorizing the Board attorney to draft an ethics complaint was “in accordance with their sworn duties and ethical obligations as Board [m]embers.”

On or around July 14, 2022, Williams filed a response to the motion to dismiss, arguing that Respondents failed to provide adequate reasons for the dismissal of the complaint.

While the motion to dismiss C64-22 was still pending, Douglas Grober filed his complaint on or around July 19, 2022 (and received by the School Ethics Commission on or around July 25, 2022 under Docket No. C77-22), alleging that Respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically N.J.S.A. 18A:12-24.1(c), (e) and (f) of the Code of Ethics for School Board Members when they voted to file ethical charges against another Board member, and for approving the resolution to have the Board’s attorney draft said charges.

On or around August 1, 2022, Akiri filed a motion to dismiss C67-22. On or around August 22, 2022, Complainant Stanley filed a response to the motion to dismiss.

On or around August 18, 2022, Respondents filed a motion to dismiss C77-22. On or around September 7, 2022, Complainant Grober filed a response to the motion to dismiss.

On or around August 24, 2022, Akiri requested the Board’s attorney’s law firm to withdraw from representation upon an alleged conflict of interest pursuant to R.P.C.

1.8(k). In a letter dated September 13, 2022, the Board's law firm denied the request, advising that, although both parties were members of the Board of Education the lawyer represented, the claim was filed on behalf of the Board through Complainant, not through Respondent, thus negating any conflicts of interest.

On or around October 5, 2022, Edmund Maciejewski filed his ethics complaint (School Ethics Commission Docket No. C92-22) against Stanley alleging that she violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically N.J.S.A. 18A:12-24(a) (Count 1), N.J.S.A. 18A:12-24(b) (Count 2), N.J.S.A. 18A:12-24(c) (Count 3), N.J.S.A. 18A:12-24(f) (Count 4), N.J.S.A. 18A:12-24(g) (Count 5), as well as N.J.S.A. 18A:12-24.1(a) (Count 6), N.J.S.A. 18A:12-24.1(c) (Count 7), N.J.S.A. 18A:12-24.1(e) (Count 8) and N.J.S.A. 18A:12-24.1(f) (Count 9) of the Code of Ethics for School Board Members. When the Commission found probable cause for at least one of the allegations of violations of N.J.S.A. 18A:12.24 and transmitted the case to the OAL, the Commission's counsel replaced Maciejewski to litigate the claim.

During its October 17, 2022 meeting, the Commission denied the motion to dismiss C64-22 in its entirety, finding that

if the facts as pled in the complaint are proven true by sufficient credible evidence and Respondents, among other things, publicly discussed and then directed the Board attorney to engage in legal work that the Board is not authorized to file, they may support a determination(s) that the named Respondents took action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondents' duties as Board members (N.J.S.A. 18A:12-24.1(c)); made personal promises or took action beyond the scope of their duties such that, by its nature, had the potential to compromise the Board (N.J.S.A. 18A:12-24.1(e)); used the schools in order to acquire some benefit for themselves, a member of their immediate family or a friend (N.J.S.A. 18A:12-24.1(f)); and/or 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 board policies, procedures or practices, and/or provided inaccurate information (N.J.S.A. 18A:12-24.1(g)).

[Sch. Ethics Comm'n, Dkt. No. C64-22, Decision (Oct. 17, 2022)]

On or around October 31, 2022, Respondent filed a motion to dismiss C92-22 and also alleged the complaint was frivolous.

C64-22 was transmitted as a contested case to the OAL where it was filed under OAL Docket No. EEC 10551-22 on November 22, 2022.

In its November 22, 2022 meeting, the Commission reviewed and partly granted and partly denied Respondent's motion to dismiss C67-22. It addressed that a complaint could not be filed by a board of education so it could only consider the individual who filed complaint C67-22 as the sole complainant, not accepting the complaint filed on behalf of the Board.

Pursuant to N.J.S.A. 18A:12-29, "Any person ... may file a complaint alleging a violation of the provisions of this act" Consequently, and because the Commission cannot accept a filing of behalf of a public body or entity, including from a board of education, the only named Complainant in the above-captioned matter is the "person" who filed the Complaint – Ms. Stanley.

...

As a seated and voting member of the Board, Respondent [Akiri] is free to, among other things, ask questions, make requests, offer a statement or opinion, make inquiries about Board issues/matters, and to raise issues regarding the business of the Board. This kind of behavior and conduct is inherent in the duties and responsibilities of a Board member, and helps to ensure sound decision-making. The fact that the members of the administration did not appreciate the nature of Respondent's questions, or may have regarded them as nettlesome and vexatious, does not mean Respondent's conduct, based on the facts and circumstances pled in the Complaint, was unethical.

[Sch. Ethics Comm'n, Dkt. No. C67-22, Decision (Nov. 22, 2022)]

During the same November 22, 2022 meeting, the Commission denied the motion to dismiss C77-22 in its entirety, finding that

if the facts as argued in the Complaint are proven true by sufficient credible evidence and Respondents engaged in certain actions including, but not limited to, authorizing and/or directing Respondent Stanley to take certain action on behalf of the Board that the Board, as a public body, is not authorized to take, and/or authorizing and/or directing the expenditure of District funds and the appointment of the Board's attorney to prosecute a matter(s) that the Board, as a public body, is not permitted to file, they may support a determination(s) that the named Respondents took action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondents' duties as Board members (N.J.S.A. 18A:12-24.1(c)); made personal promises or took action beyond the scope of their duties such that, by its nature, had the potential to compromise the Board (N.J.S.A. 18A:12-24.1(e)); and/or used the schools in order to acquire some benefit for themselves, a member of their immediate family or a friend (N.J.S.A. 18A:12-24-1(f)).

[Sch. Ethics Comm'n, Dkt. No. C77-22, Decision (Nov. 22, 2022)]

On or around November 23, 2022, Complainant Maciejewski filed a response to the motion to dismiss and allegation of frivolous filing, and voluntarily withdrew the claims in Count 1 and Count 6.

C77-22 was transmitted as a contested case to the OAL where it was filed under Docket No. EEC 00171-23 on January 4, 2023.

In its January 31, 2023 meeting, the Commission adopted the decision of its December 20, 2022 meeting, where it denied the motion to dismiss C92-22 as to the stated violations of N.J.S.A. 18A:12-24(b) (Count 2), N.J.S.A. 18A:12-24(c) (Count 3), N.J.S.A. 18A:12-24(f) (Count 4), N.J.S.A. 18A:12-24.1(c) (Count 7), N.J.S.A. 18A:12-24.1(e) (Count 8), and N.J.S.A. 18A:12-24.1(f) (Count 9). The Commission also voted that the complaint was not frivolous and denied Respondent's request for sanctions. It found that

if the facts as enumerated in the Complaint are proven true by sufficient credible evidence, and Respondent voted on a matter(s) which authorized and/or directed the Board to provide her with a Board-appointed attorney in connection with the filing and prosecution of a personal matter (at no personal cost to Respondent), and/or voted against a motion to strike which might have resulted in Respondent bearing personal financial responsibility for the filing and prosecution of a personal matter, they may support a finding(s) that Respondent used or attempted to use her official position to secure unwarranted privileges, advantages or employment for herself, members of her immediate family or others (N.J.S.A. 18A:12-24(b)); acted in her official capacity in a matter where she, a member of her immediate family, or a business organization in which she has an interest, had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment, or in a matter where she or a member of her immediate family had a personal involvement that is or creates some benefit to her or a member of her immediate family (N.J.S.A. 18A:12-24(c)); and/or used, or allowed to be used, her public office for the purpose of securing financial gain for herself, any member of her immediate family, or any business organization with which she is associated (N.J.S.A. 18A:12-24(f)).

Similarly, the facts as asserted in the Complaint may additionally support a determination(s) that Respondent, by engaging in the action(s) further detailed herein, took action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to her duties as a Board member (N.J.S.A. 18A:12-24.1(c)); made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the Board (N.J.S.A. 18A:12-24.1(e)); and/or used the schools in order to acquire some benefit for herself, a member of her immediate family, or a friend (N.J.S.A. 18A:12-24.1(f)).

Notwithstanding with the above, the Commission finds that even if the facts as pled in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated N.J.S.A. 18A:12-24(g).

[Sch. Ethics Comm'n, Dkt No. C92-22, Decision (Jan. 31, 2023)]

At its March 21, 2023 meeting, the Commission voted to find probable cause for the allegations of violations of N.J.S.A. 18A:12-24(b) (Count 2), N.J.S.A. 18A:12-24(c) (Count 3), N.J.S.A. 18A:12-24(f) (Count 4), N.J.S.A. 18A:12-24.1(c) (Count 7), N.J.S.A. 18A:12;24.1(e) (Count 8), and N.J.S.A. 18A:12-24.1(f) (Count 9). The matter was referred to the OAL for a hearing, pursuant to N.J.S.A. 18A:12-29(b). Further, when the Commission finds probable cause and transmits the case to the OAL, the Complainant is no longer a party and “[t]he attorney for the Commission shall litigate the allegations in the complaint for which the Commission found probable cause to credit.” N.J.A.C. 6A:28-9.8(a)(2).

On March 22, 2023⁴, at Complainants Williams and Grober’s request, due to the actions arising from the same course of events, the ALJ ordered the consolidation of School Ethics Commission Docket No. C64-22 / OAL Docket No. 10551-22 and School Ethics Commission Docket No. C77-22 / OAL Docket No. 00171-23, to promote a prompt and fair resolution of the issues raised by the pleadings.

On April 25, 2023, the Commission filed the Probable Cause Notice.

On April 26, 2023, the Commission transmitted the matter to the OAL, where it was received and filed under Docket No. EEC 003852-23 on May 2, 2023.

On August 25, 2023, at the Commission’s request, due to the actions arising from the same course of events, the ALJ ordered the consolidation of School Ethics Commission Docket No. C64-22 / OAL Docket No. 10551-22, School Ethics Commission Docket No. C77-22 / OAL Docket No. 00171-23, and School Ethics Commission Docket No. C92-22 / OAL Docket No. 03852-23, to promote a prompt and fair resolution of the issues raised by the pleadings.

⁴ The order of consolidation is incorrectly dated March 22, 2022, instead of March 22, 2023.

On December 11, 2023, Complainants Williams and Grober filed a motion for summary decision against Respondents; the Commission filed a motion for summary decision against Respondent Stanley; Respondents filed a motion to dismiss all claims.

Summary of Motions

Williams and Grober v. Respondents, Berkeley Heights BOE

Complainants Williams and Grober state that all evidence provided point to the fact that Respondents acted unethically by (1) directing Board counsel to draft an ethics complaint on behalf of the Board against another Board member, and (2) approving one of the Respondents to file an ethics complaint on behalf of the Board against another Board member.

Complainants argue that pursuant to N.J.A.C. 6A:28-6.1(a), any person may file a complaint with the Commission alleging a violation of the Act. The language in N.J.A.C. 6A:28-1.2 clearly excludes “boards of education, labor organizations or school districts” from the definition of “person.” Since Boards of Education cannot file ethics complaints, the ethics complaint that Respondents authorized and filed was a nullity, and by authorizing and filing that complaint, they committed several ethics violations.

Complainants assert that, by authorizing Board counsel to draft, file, and represent a board member on an ethics complaint against another Board member, all Respondents failed to confine their actions to policy making, planning and appraisal. They concluded that the filing of an ethics complaint as a board majority violated N.J.S.A. 18A:12-24.1(c). They further asserted that filing ethics complaints against other Board members has nothing to do with policy or the formulation of programs or the ascertainment of policy.

Complainants also denounce the fact that Respondents are using taxpayer funds to have general counsel prepare, file and prosecute an ethics complaint against one of their own when one Board member dissents from the majority. They maintained that

making their internal dysfunction public, airing their grievances, showing that internal disfunction or disagreement could not be managed internally and creating tension between the Board's general counsel and the Board member who was the target of the ethics complaint were acts that compromised the Board, therefore violated N.J.S.A. 18A:12-24.1(e).

Complainants argue that because Respondents could only have filed an ethics complaint against Board Member Akiri in their personal capacities, they all conferred a benefit on themselves by utilizing Board counsel to file the ethics complaint. at no cost to them. Complainants explain that by using the Board's general counsel to represent Respondents, they spare either the time, effort and expense of having to hire an attorney to represent them in an ethics complaint against their political rival; or (2) the time and effort to do it themselves or they shifted all the burdens and work of preparing, filing and litigating an ethics complaint onto the Berkeley Heights taxpayers. In doing so, they violated N.J.S.A. 18A:12-24.1(f). Id., pp.10-11

Complainants thus request summary decision to be granted and for the Court to hold that (1) Respondents failed to confine their "board action to policy making, planning, and appraisal," in violation of N.J.S.A. 18A:12-24.1(c); (2) failed to refrain from taking private action that "may compromise the board," in violation of N.J.S.A. 18A:12-24.1(e); and (3) used the schools for personal gain, by directing Board general counsel to prepare, file and litigate the ethics complaint against Board member Akiri, in violation of N.J.S.A. 18A:12-24.1(f). Complainants also request for the Court to proceed with determining an appropriate sanction.

The Commission v. Stanley

The Commission asserts that Respondent Stanley's conduct violated the School Ethic Act and the Code of Ethics for Board Members. She breached her duty to uphold the public trust in the ethical operation of the schools when she voted on resolutions in which she had a personal interest. N.J.S.A. 18A:12-22(a) requires that board members

and administrators avoid conduct which is in violation of the public trust or which creates a justifiable impression among the public that such trust is violated. The Commission claims Respondent Stanley specifically violated N.J.S.A. 18A:12-24(b), (c), and (f), as well as N.J.S.A. 18A:12-24.1(c), (e), and (f), when she admittedly voted on resolutions which secured her legal services by the Board's counsel and ensured that all associated costs and fees she incurred when she filed an ethics complaint against another Board member would be paid by the Board.

The Commission applies the Wyzykowski standard to determine whether there has been a violation of the Act's conflict of interest provision.⁵ Wyzykowski v. Rizas, 132 N.J. 509, 525-26 (1993). It asserts that the case at bar is likely a situation of "direct pecuniary interest" that would have required Respondent Stanley to disqualify herself from voting, and she did not. Not only did Respondent Stanley vote on a resolution which directed the Board to provide her with a Board-appointed attorney, but she also voted against a motion to strike which resulted in the Board bearing all costs and expenses related to the filing and prosecution of Stanley's ethics complaint against Akiri. By being involved in a matter where the school board member stands to gain a benefit not generally available to the public or reap a financial benefit is a violation of the Act, the Commission maintains she violated N.J.S.A. 18A:12-24(b), (c), (f). In support of its position, the Commission cites IMO Shawn Giordano, Lacey Twp. Bd. of Educ., Ocean Cnty., No. C04-20, 2023 N.J. AGEN LEXIS 265, *3-4 (Apr. 27, 2023) (initial decision finding board member "used school resources for his own personal gain, and would not have had access to such

⁵ Four types of situations require disqualification: (1) "Direct pecuniary interests," when an official votes on a matter benefitting the official's own property or affording a direct financial gain; (2) "Indirect pecuniary interests," when an official votes on a matter that financially benefits one closely tied to the official, such as an employer, or family member; (3) "Direct personal interest," when an official votes on a matter that benefits a blood relative or close friend in a non-financial way, but a matter of great importance, as in the case of a councilman's mother being in the nursing home subject to the zoning issue; and (4) "Indirect Personal Interest," when an official votes on a matter in which an individual's judgment may be affected because of membership in some organization and a desire to help that organization further its policies. See Michael A. Pane, Conflict of Interest: Sometimes a Confusing Maze, Part II, New Jersey Municipalities, March 1980, at 8, 9. [Wyzykowski v. Rizas, 132 N.J. 509, 525-26 (1993)]

resources but for his position on the Board” in violation of the Act when he requested personal legal services from board’s attorney); IMO Obdulia Gonzalez, Israel Varela, Milady Tejeda, Samuel Lebreault, and Kenneth Puccio, C08-15 (Sept. 11, 2018), *aff’d*, (Nov. 27, 2018) (violation occurred where board members voted to approve settlements of litigation that involved them personally); Scotch Plains-Fanwood Bd. of Educ. v. Syvertsen, 251 N.J. Super. 566, 568-70 (App. Div. 1991) (barring a Board member from meetings at which a private cause of action he instituted was discussed); Tighe v. Local Fin. Bd., 97 N.J.A.R.2d (CAF) 76, 79-81 (violation occurred when zoning board member voted to approve a project in which he had a direct financial interest). Comm’n’s br., pp.15-16.

The Commission states that N.J.A.C. 6A:28-6.1(a) implies that individuals who file complaints must only represent their own interests, not that of a district board or other organization. See 41 N.J.R. 26(a); 55 N.J.R. 359(b). It reiterated that complaints filed “on behalf of” a board of education are generally prohibited.⁶ Accordingly, when Respondent Stanley voted to direct the Board’s counsel to draft the ethics complaint against Akiri, she violated the Act’s prohibition on using her position to secure a benefit and voting on matters in which she had a direct financial interest. N.J.S.A. 18A:12-24(b), (c), and (f).

It is the Commission’s position that voting on a resolution which directed the Board’s attorney to provide Respondent Stanley with counsel to draft and litigate an ethics complaint gave Stanley a benefit that no other member of the public could receive, therefore creating a conflict of interest. See IMO John Harrison, 1996 N.J. AGEN LEXIS 427, *15 (Mar. 6, 1996) (Finding violation of the Act where board member voted to extend the time to complete a construction project based on his partnership with a firm subcontracted by the project’s architect, which “created a public impression that such vote

⁶ See Frequently Asked Questions About Filing and Responding to a Complaint Filed with the School Ethics Commission, <https://www.nj.gov/education/ethics/home/2%20-%20FAQs.pdf> (last visited December 10, 2023). While the current version of the Commission’s responses to frequently asked questions was updated to reflect amendments to N.J.A.C. 6A:28 that were adopted on February 1, 2023, no changes were made to the requirements that only a “person” could file an ethics complaint as directed by N.J.A.C. 6A:28-6.1(a), or to the definition of “person” under N.J.A.C. 6A:28-1.2. See R. 2023 d. 032, *eff.* March 6, 2023; see also 54 N.J.R. 1360(a); 55 N.J.R. 359(b).

was case in self-interest rather than in public interest”); Advisory Opinion A24-16 (“[A] conflict would present itself requiring absolute recusal from that matter and abstaining from all votes”). The Commission further concludes that by voting against the motion to strike the resolution that would grant her free legal services from the Board’s counsel, a benefit not generally available to the public, Respondent Stanley clearly violated N.J.S.A. 18A:12-24(b), (c), and (f).

The Commission asserts that Respondent Stanley used her position to seek the benefit of free legal counsel to file the ethics complaint against another board member. She “did not “confine [her] board action to policy making,” N.J.S.A. 18A:12-24.1(c), when she failed to “refuse to surrender [her] independent judgment,” and, more specifically, failed to “refuse to . . . use the schools for personal gain,” N.J.S.A. 18A:12-24.1(f). By using the Board for personal gain, Stanley compromised the Board. N.J.S.A. 18A:12-24.1(e). Stanley’s conduct violated the Code of Ethics for Board Members, specifically N.J.S.A. 18A:12-24.1(c), (e), and (f). Id., pp.21-22.

Since Respondent Stanley’s conduct is not disputed, and it is in violation of the Act and the Code Ethics for Board Members, the Commission claims that such conduct warrants an appropriate penalty, pursuant to N.J.S.A. 18A:12-29(c). Censure has routinely been imposed in cases where board members do not recuse themselves from matters in which they have a personal or financial interest. See, e.g., IMO Pirillo, Washington Twp. Bd. of Educ., C12-04 (Sept. 30, 2004)(censure imposed for violation of N.J.S.A. 18A: 12-24(c) where board member attended and participated in discussions during committee meeting when bids for the purchase of new copiers were discussed and one of the vendors that had submitted a bid was a company in which her husband possessed a financial interest); IMO Rhon, South Amboy Bd. of Educ., C03-97 (Oct. 28, 1997) (censure imposed where board member voted on a resolution to hire outside counsel to investigate the district superintendent when board member was involved in a legal dispute with superintendent and was the adversary to him); IMO Sheila Brogan, Ridgewood Bd. of Educ., Bergen Cnty., C71-20 (Feb. 25, 2022) (censure imposed where

a board member did not recuse herself from a matter in which she had a conflict.)
Comm'n's br., pp.24-25.

For the foregoing reasons, the Commission requests summary decision to be granted and for the Court to hold that Respondent Stanley violated N.J.S.A. 18A:12-24(b), (c), and (f), as well as N.J.S.A. 18A:12-24.1(c), (e), and (f). The Commission also requests Respondent Stanley to be penalized, pursuant to N.J.S.A. 18A:12-29(c).

Respondents' motion for summary decision to dismiss all claims made by Complainants

Respondents assert that complainants are unable to produce credible evidence of school ethics act violations. Respondents, the Superintendent and the Business Administrator spoke with Board Member Akiri about her conduct⁷ before proceeding with the vote on the resolution to approve the filing of the School Ethics complaint. Respondent Stanley filed the complaint on behalf of the Board, and such complaint was filed as a valid complaint by the Commission.

Respondents first claim that their actions "were directly related to their duty to develop the general rules and principles that guide the management of the school district." Accordingly, any claims alleging a violation of N.J.S.A. 18A:12-24.1(c) cannot be sustained.

Second, Respondents claim their actions did not compromise the Board. They compare their actions to the actions taken in IMO Michael Schiavoni, Sparta Twp. Bd. of Educ., C41-07 & C46-07 & C47-07 consolidated, Commission Decision No. 260-09, Aug. 18, 2009, where the Board President acted without bringing the matter to the attention of the Board. They claim that in this action; in making and passing of the motion, action was taken as a Board. No personal promises were made nor was any private action taken. The action taken was to seek to address the private and compromising actions of Board

⁷ Respondents explained why they perceived Akiri's constant inquiries and comments, as well as media interaction, as "critical", "harmful", "adversarial", provocative and uncooperative, and presented each instance as undisputed material facts.

Member Akiri. Accordingly, any claims alleging a violation of N.J.S.A. 18A:12-24.1(e) cannot be sustained and are ripe for dismissal by summary decision.

Third, Respondents claim their actions were not taken “on behalf of a political group but rather on behalf of the Board and the Administration and for [the] purpose of supporting and protecting school employees. They further claim that no evidence has been produced to support the contention that the action was taken for the benefit of the Respondent or members of their immediate families or friends. Respondents take the position that the evidence clearly demonstrates that their actions were taken solely to “fulfill a duty to support and protect school employees.” They maintain that any claims alleging a violation of N.J.S.A. 18A:12-24.1(f) cannot be sustained and are ripe for dismissal by summary decision.

Fourth, they claim there was no credible evidence that Respondent Cianciulli “disclosed [any] confidential information in making the motion,” and/or that any Respondent “provided inaccurate information.” Therefore, they maintain that any claims alleging a violation of N.J.S.A. 18A:12-24.1(g) cannot be sustained and are ripe for dismissal by summary decision. Id., p. 17, pp.22-23.

Fifth, Respondent Stanley’s complaint against Board member Akiri was entirely initiated and pursued as a fully disclosed board action. The ethics complaint was signed by Respondent Stanley “solely on behalf of the Board” as authorized and clearly stated in the Board resolution dated June 16, 2022, the Respondents’ certified answers to interrogatories, and the transcripts of the Board discussions surrounding the votes on the subject resolutions passed at the May 15, 2022 and June 16, 2022 Board meetings. N.J.A.C. 6A:28-6.1(a) indicates that while a board of education could not file an ethics complaint against a board member, such complaint could be initiated by another board member. The same interpretation was repeated in the Frequently Asked Questions of the Commission’s website. Respondents therefore concluded that a board member on behalf of the board could file an ethics complaint against another board member. The Board’s counsel drafting and litigating of the ethics complaint against Akiri was, therefore, not a

personal and/or financial benefit conferred to Respondent Stanley. Claiming there was no credible evidence supporting the allegations of violations of the Act and Code made by the Commission against Respondent Stanley, they should not be substantiated and are thus ripe for dismissal by summary decision. Id., pp.23-31.

For the foregoing reasons, Respondents request that all claims against Respondents must be dismissed by summary decision.

LEGAL ANALYSIS

Under N.J.A.C. 1:1-12.5(a), “[a] party may move for summary decision upon all or any of the substantive issues in a contested case.” A motion for summary decision may be granted “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). And, if “a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid. In determining whether a genuine issue exists, the appropriate test is “whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995).

The School Ethics Act recognizes that school board members must “hold the respect and confidence of the people,” and is thus designed to prevent school officials from engaging in “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). The act further declares that “[t]o ensure and preserve public confidence, school board members . . . should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards among them.” N.J.S.A. 18A:12-22(b). The act therefore prohibits certain conducts that

would give the impression of conflicts of interest, including those listed in N.J.S.A. 18A:12-24, that provides, in part, that:

b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

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;

...

f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated; [N.J.S.A. 18A:12-24(b), (c), (f)]

The specific standards guiding the conduct of school board members is the Code of Ethics set forth at N.J.S.A. 18A:12-24.1. The Code of Ethics requires board members to comply with several ethical standards, including “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,” N.J.S.A. 18A:12-24.1(c); “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,” N.J.S.A. 18A:12-24.1(e); and “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,” N.J.S.A. 18A:12-24.1(f).

The School Ethics Act created the Commission “for the purpose of enforcing those ethical standards through a procedure for reviewing complaints of ethical violations,

investigating those complaints and ultimately rendering recommendations to the Commissioner [of Education] as to the imposition of sanctions when violations are demonstrated.” N.J.A.C. 6A:28-1.1(b). The Commission’s rules implementing the School Ethics Act, N.J.A.C. 6A:28-1.1 to -10.1, include provisions for complaints alleging Code of Ethics violations.

Under N.J.A.C. 6A:28-6.4, the complainant has the burden to factually establish a violation . . . N.J.A.C. 6A:28-6.4(a). And he or she must present particular evidence for to show a violation of a Code of Ethics standard. Ibid.

To establish a violation of N.J.S.A. 18A:12-24.1(c):

Factual evidence . . . shall include evidence that the respondent(s) took official action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to: i. Develop the general rules and principles that guide the management of the school district, the charter school, or the renaissance school project; ii. Formulate the programs and methods to effectuate the goals of the school district, the charter school, or the renaissance school project; or iii. Ascertain the value or liability of a policy.
[N.J.A.C. 6A:28-6.4(a)(3).]

For N.J.S.A. 18A:12-24.1(e):

Factual evidence of a violation . . . 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.
[N.J.A.C. 6A:28-6.4(a)(5).]

Finally, for N.J.S.A. 18A:12-24.1(f):

Factual evidence of a violation . . . shall include evidence that the respondent(s) took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools to acquire some benefit for the

respondent(s), a member of the respondent's immediate family or a friend. [N.J.A.C. 6A:28-6.4(a)(6).]

If the Commission finds probable cause for a violation of the Code of Ethics, the matter may be transmitted to the OAL for a hearing. N.J.A.C. 6A:28-9.8. Ultimately, a school official who is determined to have violated the Code of Ethics may be subject to "reprimand, censure, suspension, or removal." N.J.A.C. 6A:28-9.11.

I FIND that the evidence presented supports that Stanley violated the Act when she voted in favor of the Board's attorney to draft the charges for the ethics complaint against another Board member, and against a resolution to hire her own counsel to do so.

In the School Ethics Act, N.J.S.A. § 18A:12-21 et seq., the Legislature declared its intention to ensure and preserve public confidence in local school board members by providing local board members with advance guidance on ethical conduct so that such members might conduct their personal affairs appropriately and within the bounds ethically expected. Accordingly, N.J.S.A. § 18A:12-24(a)-(g) list seven specific prohibitions applicable to all school officials, including members of boards of education. Nonetheless, N.J.S.A. § 18A:12-24(j) provides that nothing shall prohibit any school official, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests.

More than intent, the appearance of a conflict of interest will trigger a violation of the Act. See In re Perrino, Little Egg Harbor Twp. Bd. of Educ., Ocean Cnty., C30-14 (July 28, 2015) ("Whether direct or indirect, a violation of N.J.S.A. 18A:12-24(c) is determined by what a reasonable member of the public would believe.") (citing In re Haines, Haddonfield Bd. of Educ., Camden Cnty., C07-00 (Sept. 27, 2000), *aff'd*, (Nov. 27, 2000)). See also Advisory Opinion A24-16 ("[A] conflict would present itself requiring absolute recusal from that matter and abstaining from all votes").

In Wyzykowski v. Rizas, 132 N.J. 509 (1993), the New Jersey Supreme Court found four types of situations that require disqualification, including a situation of ““direct pecuniary interests”, when an official votes on a matter benefitting the official's own property or affording a direct financial gain”. Wyzykowski v. Rizas, 132 N.J. 509, 525 (1993).

Here, Respondents voted on a motion that would authorize Board’s counsel to draft the charges against another Board member. Because a board of education cannot file an ethics complaint, pursuant to N.J.A.C. 6A:28-6.1(a), board’s counsel should not have been involved in such proceedings – even under the pretext that it is a board’s action. Voting in favor of such motion would fall beyond the scope any board member duties. When Respondent Stanley agreed to file the ethics complaint against Akiri on behalf of the board, and voted against a motion that would strike her requirement to seek her own counsel to pursue the claim (perhaps unbeknownst to her and under the Board’s counsel’s guidance) she used her official position as a Board member to secure an unwarranted advantage for herself: free legal representation, a benefit not generally available to the public. She also acted in her official capacity in a matter that conferred some benefit to herself, in that, she would not have to pay any legal expenses in the action. In doing so, **I CONCLUDE** she violated N.J.S.A. 18A:12-24(b), (c) and (f).

I FURTHER FIND that the evidence presented supports that Respondents’ actions were not related to policy making, planning, and appraisal.

Complainants Williams and Grober assert that Respondents violated N.J.S.A. 18A:12-24.1(c) for (1) directing Board counsel to draft an ethics complaint on behalf of the Board against another Board member; and (2) approving a motion for Board Member Stanley to file an ethics complaint on behalf of the Board. Complainants argue that only a “person” may file an ethics complaint against a board member, pursuant to N.J.A.C. 6A:28-6.1(a). The individual cannot file on behalf of a board of education because boards of education are not a person, as defined in N.J.A.C. 6A:28-1.2. Voting in favor of a

motion directing Board counsel to draft an ethics complaint against a board member is unrelated to school policy, the formulation of programs or the ascertainment of policy.

The Commission also claims that Respondent Stanley violated N.J.S.A. 18A:12-24.1(c) when she admittedly voted on resolutions which secured her legal services by the Board's counsel and ensured that all associated costs and fees she incurred when she filed an ethics complaint against another Board member would be paid for by the Board. Respondent Stanley did not confine her board action to policy making when she voted on getting the Board 's counsel to draft and litigate the ethics complaint against Akiri that she personally submitted to the Commission.

Respondents counter that the Board's actions were directly related to their duty to develop the general rules and principles that guide the management of the school districts. The conduct of board member Akiri was disruptive to the good operations of the school. The Board voted to file the ethics complaint against her. Since the actions were related to the development of general rules and principles that guide the management of the school district, Respondents contend that Complainants Williams and Grober and the Commission failed to provide factual evidence that Respondents violated N.J.S.A. 18A:12-24.1(c).

A plain reading of N.J.A.C. 6A:28-6.1(a) indicates that a board of education cannot file an ethics complaint against a board member. If a board member decides to file the complaint individually, as correctly interpreted by the School Ethics Commission, then the complainant should seek his or her own counsel. Even though the action was initiated after consultation of the Board, Respondents fail to explain how voting in favor of a resolution directing the Board's counsel to draft the charges against Akiri is related to the development of general rules and principles that guide the management of the school district, the formulation of programs and methods to effectuate the goals of the school district or to ascertain the value or liability of a policy. The Commission clearly indicated in previous decisions and reiterated its position in Sch. Ethics Comm'n Dkt. No. C67-22 that a board member "is free to, among other things, ask questions, make requests, offer

a statement or opinion, make inquiries about Board issues/matters, and to raise issues regarding the business of the Board. This kind of behavior and conduct is inherent in the duties and responsibilities of a Board member and helps to ensure sound decision-making.” Complaining that a board member disagrees with the majority of the board is not related to the development of general rules and principles that guide the management of the school district. Accordingly, when Respondents voted in favor of filing an ethics complaint and have the Board’s counsel to draft the charges against Akiri, they violated N.J.S.A. 18A:12-24.1(c).

I **FURTHER FIND** that Complainants have provided sufficient factual evidence that Respondents’ took action beyond their duties such that it compromised the Board.

Complainants Williams and Grober assert that Respondents violated N.J.S.A. 18A:12-24.1(e) when they (1) made their internal dysfunction public; (2) aired their grievances; (3) showed that any internal dysfunction or disagreement could not be managed internally; and (4) created tension between the board’s general counsel and the member of the Board subject to the ethics complaint. Turning the Board’s counsel against one of its own can only result in destroying the trust of the public and compromising the Board.

The Commission argues that Respondent Stanley compromised the Board when she voted on getting the Board ‘s counsel to draft and litigate the ethics complaint [against Akiri] that she personally submitted. The Commission addressed the fact that when it accepted the original complaint of Respondent Stanley against Akiri (Sch. Ethics Comm’n, Dkt No. C67-22), it considered that Respondent Stanley was the only complainant, pursuant to N.J.A.C. 6A:28-6.1(a), despite the language that it was submitted on behalf of the Board. The Commission further asserts that it has always been its position that a board member cannot file an ethics complaint against another member on behalf of the board. The regulation has not changed, contrary to Respondents’ claims. Respondent Stanley also compromised the Board when she voted against a resolution to strike using the Board’s counsel to draft the ethics complaint instead of hiring her own attorney.

Respondents counter with the facts that the Board supported the action with a majority of the votes, and that the Commission accepted the ethics complaint made against Akiri by Respondent Stanley on behalf of the Board. It is the duty of the Board's counsel to represent the interests of the Board, and while Respondent Stanley signed and submitted the complaint, it was a complaint on behalf of the Board. Respondents also argue that there are many ways to compromise a board, such as (i) publishing a flier with misleading information; (ii) engaging in singularly, self-serving actions that exposed the board of education to the risk of litigation and the concomitant expenditure of public funds (see Persi v. Woska, Sch. Ethics Comm'n Dkt. No. C03-14 (Oct. 28, 2014); and (iii) contacting employment candidates without board approval and sharing confidential information. Here, Respondents have not acted personally. None of these situations apply here.

Pursuant to N.J.A.C. 6A:28-6.1(a), a board of education cannot file an ethics complaint against another board member. While the action was supported by the board, the regulation indicates that only a person can file such complaint. Because the Board could not be a party in the action, the Board's resources, including the legal services of the Board's attorney, should not have been utilized. Voting on a motion that would authorize the Board's counsel to draft and litigate an ethics complaint against a board member while a board cannot file such ethics complaint is thus beyond the scope of a board member's duty and a violation of N.J.S.A. 18A:12-24.1(e).

I **FUTHER FIND** that Complainants have provided sufficient factual evidence that Respondents violated N.J.S.A. 18A:12-24.1(f).

Complainants Williams and Grober assert that Respondents used the schools for personal gain, when they authorized the Board's counsel to draft and litigate the ethics complaint against Board member Akiri, in violation of N.J.S.A. 12A:12-24.1(f). Since the Board cannot file ethics complaints, the Board's attorney should not be involved. Here,

Respondents shifted all the burdens of preparing, filing and litigating the ethics complaint onto the Berkeley Heights taxpayers.

The Commission contends that Respondent Stanley used her position to benefit from free legal counsel from the Board in order to file and prosecute the ethics complaint against Akiri, a benefit not generally available to the public. By voting on matters which secured the benefit of free legal counsel, Respondent Stanley had a direct financial interest and violated the Act's conflict of interest prohibition as well as the Code of Ethics for Board Members N.J.S.A. (c), (e) and (f). Respondent Stanley cannot hide behind the fact that the action was sanctioned by a majority vote of the Board to receive the benefit of the Board's counsel representing her interest in the ethics complaint. The Commission has already addressed the fact that N.J.A.C. 6A:28-6.1(a) only permits individual actions and prohibits any complaints on behalf of a board of education. It reiterates that when it accepted it, it was considered a personal complaint from Respondent Stanley. As an individual action, she should not have used the school resources to process and litigate it.

Respondents argue that Complainants and the Commission failed to show that Respondents were involved with a special interest group or partisan political party and absent such involvement, there is no evidence that Respondents violated N.J.S.A. 18A:12-24.1(f).

To prove a violation of N.J.S.A. 18A:12-24.1(f), N.J.A.C. 6A:28-6.4(a)(6) states, in part, that complainants must provide "evidence that the respondent(s) used the schools to acquire some benefit for the respondent(s), a member of the respondent's immediate family or a friend." Respondent Stanley admittedly voted in favor of a motion to have the Board's counsel draft the charges for an ethics complaint against another board member, and against the motion to strike the requirement of hiring her own attorney to do so. Stanley, a board member, therefore used her position to secure free legal representation for the drafting and litigation of the complaint, a benefit generally not available to the public, and thus violated N.J.S.A. 18A:12-24.1(f). The argument that the violation did not occur because there was no involvement with a special interest group or partisan political

group does not stand, if complainants proved that respondent(s) used the schools to acquire some benefit for the respondent(s).

After the submission of the briefs and certifications in support and opposition to the pending motions, on July 18, 2024, counsel representing the Respondent Board of Education members submitted a copy of an Opinion of the Advisory Committee on Professional Ethics (ACPE Docket No. 07-2024, hereinafter the “Advisory Opinion”) and alleged that the Advisory Opinion contained issues that were “pertinent to the [pending] cross-motions for summary decision. On July 22, 2024, Attorney for Complainants Grober and Williams submitted a supplemental letter brief wherein he asserted the Advisory Opinion was not relevant to this case and that it should be disregarded.

I agree with Complainants’ position that the Advisory Opinion is not relevant to the issues in this case. The Advisory Opinion pertains to ethical rules governing attorneys and the instant matter deals with totally separate and distinct ethical rules which govern school board members. While the Advisory Opinion may indeed be relevant to whether the school board attorney in this matter violated his own professional conduct rules when he counseled the Board, **I FIND** that relevancy has no impact on whether respondent Stanley gained an unethical benefit by receiving free legal counsel at taxpayers’ expense or whether all respondents acted unethically when they authorized Stanley to file the ethics complaint against a fellow Board member.

Finally, N.J.S.A. 18A: 12-29 c requires that upon completion of the hearing a recommendation shall be made to the commissioner as to the reprimand, censure, suspension, or removal of the Board members found to have violated the Act or the Code of Ethics. While I find that Respondents have violated the Act and the Code of Ethics for Board Members, the fact that they were informed by counsel that their actions were appropriate is a mitigating factor to which I give substantial weight. Accordingly, I believe that a reprimand would be the appropriate sanction for their actions.

CONCLUSION

For the foregoing reasons, I **CONCLUDE** that Respondents' conduct violated the Act and the Code of Ethics for Board Members, notably N.J.S.A. 18A:12-24(b), (c), and (f), as well as N.J.S.A. 18A:12-24.1(c), (e), and (f). Respondents' motion should therefore be denied. The Commission's and Complainants Williams and Grober's motions for summary decision should be granted. I further **CONCLUDE** the appropriate sanction for Respondents' violations of the Act is a reprimand.

ORDER

1. The Commission's Motion for Summary Decision is **GRANTED**;
2. The Motion for Summary Decision filed by Complainants Williams and Grober is **GRANTED**;
3. Respondent's Motion for Summary Decision is **DENIED**;
4. The Commissioner shall issue a reprimand to each of the Respondents as a sanction for their conduct in violation of the Act and the Code of Ethics for Board Members.

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.



November 7, 2024

DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Moving Papers

For Complainants Shauna Williams and Douglas Grober:

Notice of Motion for Summary Decision Dated December 11, 2023

Letter Brief in support of the motion date December 11, 2023

Statement of Undisputed Material Facts dated December 11, 2023

December 11, 2023 Certification of Walter M. Luers, Esq.

Reply Brief dated January 12, 2024

Letter Brief in Opposition to Respondents' Motion for Summary Decision dated
December 29, 2023

December 29, 2023 Response to Respondents Statement of Material facts.

December 29, 2023 Certification of Walter M. Luers, Esq.

For School Ethics Commission:

December 11, 2023 Certification of Ryan J. Silver, DAG

December 11, 2023 Letter Brief in Support of Motion of Motion for Summary
Decision

December 29, 2023 Letter Brief in Opposition to Motion for Summary Decision filed
by Pamela Stanley

For Respondents:

December 11, 2023 Certification of Mark Wenczel, Esq.

December 22, 2023 Certification of Mark A. Wenczel. Esq.(attaching a copy of an
unpublished decision)

December 22, 2023 Certification of Angela Penna

December 22, 2023 Certification of Jordan Hyman

December 22, 2023 Certification of Micheal D'Aquila

December 22, 2023 Certification of Pamela Stanley

December 22, 2023 Certification of Robert Cianciulli

December 22, 2023 Certification of Joy Young

Brief in support of Motion for Summary Decision

Letter Brief in Opposition to Motion for Summary Decision from Williams and Grober