
IN THE MATTER	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
OF	:	
	:	Docket No.: C37-01
LORRAINE DUNCKLEY,	:	
<i>DENVILLE BD. OF EDUCATION,</i>	:	DECISION
<i>MORRIS COUNTY</i>	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed by the Denville Board of Education on December 27, 2001. The complaint alleged violations of the School Ethics Act under six headings: 1) Respondent filed false disclosure statements; 2) Respondent voted on matters of personal and financial interest; 3) Respondent deliberately misrepresented herself to gain confidential and financial information of the school district; 4) Respondent filed a fraudulent claim with her insurance carrier; 5) Respondent refuses to comply with board policy; and 6) Respondent unlawfully obtained a pupil's educational record to advance her position.

Respondent obtained counsel and filed her answer on February 1, 2001. Therein, she provided explanations of her conduct and denied any violations of the School Ethics Act.

The parties appeared before the Commission at its April 23, 2002 meeting in executive session with counsel and witnesses. After hearing the testimony of the parties and their witnesses, the Commission found probable cause to credit the allegations on three issues and dismissed the remainder of the charges at its public meeting. The Commission found probable cause to credit the allegations that Mrs. Dunckley violated N.J.S.A. 18A:12-26(a)(3) for not disclosing the Board as a source of prepaid expenses for her conference attendance. It also found probable cause to credit the allegations that Mrs. Dunckley violated N.J.S.A. 18A:12-24(c) for voting on the bill list including a reimbursement to her and her husband and for voting on a tuition payment to the school where her husband is employed.

The Commission determined that the material facts were not in dispute regarding the allegations upon which it found probable cause. Therefore, in accordance with N.J.A.C. 6A:28-1.12(b), the Commission notified Ms. Dunckley's counsel that she had 30 days from the date of the probable cause determination to submit a written statement setting forth the reasons that she should not be found in violation of the Act. The Commission received Ms. Dunckley's written statement on May 29, 2002.

The Commission discussed Ms. Dunckley's statement at its meeting of June 25, 2002. At its public meeting, the Commission voted to find that Ms. Dunckley violated

N.J.S.A. 18A:12-24(c) and N.J.S.A. 18A:12-26 of the Act. It now recommends that the Commissioner of Education impose a penalty of censure.

FACTS

The Commission was able to discern the following facts based on the pleadings, documents submitted, testimony and its investigation.

Respondent Lorraine Dunckley was elected to a three-year term on the Board in May 1999. She was re-elected to a three-year term on the Board in April 2002 and continues to sit as a member of the Board.

In 1997, Mrs. Dunckley and her husband entered into an agreement with the Board to settle a lawsuit in which the Dunckleys alleged that their child is entitled to attend a school in which he would obtain special services. The agreement was re-executed each year continuing through all times relevant to this complaint. As in prior years, the agreement for the 2000-2001 school year provides, among other things, that the Dunckleys will pay the school that their child attends directly and the Board will reimburse them for the tuition cost. The district is not responsible for the cost of transportation.

The School Ethics Commission 2000 Personal/Relative Disclosure Statement asks at Section II, question two, “Are you or is any person related to you or related to you by marriage a **party to a contract** with your school district or charter school? (emphasis supplied).” The Commission’s disclosure statement provides spaces for the school official to fill in the “Name and Relationship” of the person who has the contract and the “Nature of Contract.” In response to question two of her 2000 Personal/Relative Disclosure Statement, Mrs. Dunckley wrote in, “No.” She wrote in “N/A” for “not applicable” where the form asked for “Name and Relationship [of person having the contract]” and “Nature of Contract.” Mrs. Dunckley signed this statement on April 16, 2001.

In July 2000, Mrs. Dunckley attended a conference sponsored by the New Jersey School Boards Association (NJSBA) that was promoted as being for board presidents and vice presidents. At the time, Mrs. Dunckley did not hold an office on the Board. Neither the Board nor the administration knew of her intent to attend. When Mrs. Dunckley arrived at the hotel for the conference, the hotel staff indicated they would bill the Board for her stay, which they did. The Board paid for her attendance. When questioned by the business administrator about her attendance, Mrs. Dunckley offered to reimburse the Board for its expense on her behalf. She never reimbursed the Board.

The 2000 School Ethics Commission Financial Disclosure Statement, at question two, asked each school official to “List the name and address of each source of **fees/honorariums** [sic] or **gifts/reimbursements** or **prepaid expenses** having an aggregate value exceeding \$250 from any single source, excluding relatives, received by you... .” The second sentence of question two sets forth, “Be sure to list any

reimbursement received from the district or charter school for such things as **conference attendance, tuition/dues reimbursement, personal appearances, speeches, or writing** (emphasis supplied).” In response to question two of her 2000 Financial Disclosure Statement, Ms. Dunckley wrote in, “N/A” for “not applicable.” Mrs. Dunckley signed this statement on April 16, 2001.

In her defense, Mrs. Dunckley provided information that Board member Susan Sammon attended a NJSBA conference on June 2-4, 2000, for which the Board paid directly. She did not disclose on her 2000 Financial Disclosure Statement that the Board paid expenses for her conference attendance. Mrs. Dunckley also provided information that Board member Richard Zechendorf attended a conference on September 20, 2000, for which the Board paid directly. He did not disclose on his 2000 Financial Disclosure Statement that the Board paid expenses for his conference attendance.

In accordance with Mrs. Dunckley’s previously mentioned agreement with the Board to reimburse the Dunckleys for the cost of tuition for educating their child, the reimbursement check necessarily had to be placed on the bill list for approval when the Dunckleys submitted their invoices from the school the child attends and cancelled checks made out to the school. At Mrs. Dunckley’s request, her name was removed from the bill lists and checks for her reimbursement were referred to as “Parents of Case # ____.” Bill lists were presented to the Board containing “Lorraine Dunckley” or “Parents of Case # ____” for the meetings of January 2001, March 2001, April 2001, May 2001 and September 2001. The December 2000 bill list contained a check to “Parents of Case # ____.” Mrs. Dunckley voted in favor of the bill list of December 2000 at the Board’s January 15, 2001 meeting. After the January meeting, Board Secretary John Boreman sent Mrs. Dunckley an e-mail informing her that the board attorney advised that a board member should abstain from voting on any bill list that includes “a payment related to a contractual obligation.”

The bill list of February 2001 contained a check to “Parents of Case # ____.” The February bill list initially referred to Mrs. Dunckley by name and she asked that the check be deferred, but the February bill list supplied to the Commission refers to “Parents of Case # ____,” so apparently it was changed. Mrs. Dunckley voted in favor of the bill list at the meetings of March 26, 2001 and April 16, 2001. Based on the correspondence from Mrs. Dunckley’s attorney dated March 9, 2001, the Commission accepts Mrs. Dunckley’s representation that she voted for the check to her and her husband on the February bill list at the April 16, 2001 meeting.

The bill list for April contained a check to “Parents of Case # ____.” Mrs. Dunckley voted in favor of the bill list at the Board’s May 14, 2001 meeting. Thus, Mrs. Dunckley voted in favor of a bill list that contained a payment to herself and her husband three times -- January 15, 2001, April 16, 2001 and May 14, 2001. She was not present when the vote on the bill list occurred at the September 2001 meeting.

Mrs. Dunckley’s husband is employed as a special education teacher in the Rockaway Township Public Schools. At the Board’s meeting of August 20, 2001, there

was an item to approve the attendance of special education student 98-39 for the extended summer 2001 program at Rockaway Township Schools for a tuition of \$1,962 and an item to approve the attendance of a special education student at the Rockaway Township Schools, effective 5/14/01 – 6/19/01 at a cost of \$47.92 per day. Mrs. Dunckley voted in favor of the motion that included both of these items.

ANALYSIS

The Commission found probable cause to credit the allegations that Mrs. Dunckley violated N.J.S.A. 18A:12-26(a)(3) for not disclosing the Board as a source of prepaid expenses for her conference attendance. In response to the probable cause finding, Mrs. Dunckley argues through her attorney that her conference attendance was neither reimbursed by the Board nor prepaid by the Board. Rather, the Board was invoiced for Mrs. Dunckley's stay after she arrived at the hotel.

The Commission finds this to be an argument that overly focuses on semantics and neglects the purpose of the disclosure requirement set forth at N.J.S.A. 18A:12-26(a)(3). The purpose of the disclosure requirement at issue is to inform the public whether the Board paid for school officials' attendance at conferences in amounts that exceeded \$250.00. If Mrs. Dunckley had reimbursed the Board, as she had been asked to do, then there would have been nothing to disclose. However, since she did not reimburse the Board and the Board paid for her attendance, whether it paid "pre" or "post" her attendance, Mrs. Dunckley was required to disclose it.

Mrs. Dunckley also argues again that other board members, including those filing this complaint, attended conferences and also failed to disclose their receipt of reimbursements or prepaid expenses from the Board. Again, the Commission will consider that other board members also failed to make the required disclosures under N.J.S.A. 18A:12-26(a)(3) when it determines penalty. It does not negate the fact that Mrs. Dunckley failed to comply with the law. Mrs. Dunckley suggests that the appropriate action to be taken by the Commission is to direct the Denville Board of Education as a whole to correct its disclosure forms to accurately reflect the payments by the board made on behalf of individual board members. The Commission is charged with rendering a decision on the complaint filed before it; which is only against Mrs. Dunckley. However, it does not rule out the possibility of acting on respondent's suggestion at a later date.

The Commission therefore finds that Mrs. Dunckley violated N.J.S.A. 18A:12-26(a)(3) when she failed to disclose the Board as a source of prepaid expenses on her disclosure form.

The Commission also found probable cause that Mrs. Dunckley violated N.J.S.A. 18A:12-24(c) when she voted on a tuition payment to the school where her husband is employed and voted on the bill list including a reimbursement to her and her husband. N.J.S.A. 18A:12-24(c) provides:

No school official shall act in his official capacity in any matter where he or a member of his immediate family 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.

These two allegations will be discussed in turn.

Vote on the Tuition Payment to the School in which Her Husband Teaches

Mrs. Dunckley admits voting in favor of the placement of the special education student at the Rockaway School District where her husband is employed as a special education teacher. In response to the Commission's finding of probable cause that her doing so violated N.J.S.A. 18A:12-24(c), Mrs. Dunckley argues in her written submission that the affidavit from the Director of Special Services indicated that the presence of the Denville student had no impact on Mr. Dunckley's employment with the Rockaway Township Public Schools. The Director further indicated that, because Mr. Dunckley is one of the more senior teaching staff members at Rockaway, even if the special education class disbanded, Mr. Dunckley would have bumping rights to teach in a regular classroom. Mrs. Dunckley further argues that there is no basis to conclude that there is an indirect financial involvement in this matter since the vote involved just one student, which would have a negligible impact on the Rockaway budget.

The Commission is not persuaded that there is no indirect financial involvement in this case. N.J.S.A. 18A:12-24(c) does not require a showing that Mr. Dunckley's employment would cease to exist without the Denville Board's payment of tuition for the child in question, nor does it require a showing that his compensation would be directly affected by the vote. N.J.S.A. 18A:12-24(c) requires an inquiry as to whether Mrs. Dunckley or her husband had an indirect financial involvement that might reasonably be expected to impair her objectivity. The vote in question, even though it was for one student, affected her husband's employer, which is his source of income. Therefore, while fully agreeing that Mr. Dunckley did not have a direct financial involvement, the Commission concludes that there was an indirect financial involvement that might reasonably be expected to impair her objectivity based on the fact that the vote involved his employer.

Mrs. Dunckley also argues that, pursuant to the Individuals with Disabilities in Education Act, she had no choice but to go along with the determination of the Child Study Team that the placement in the Rockaway School District was appropriate. Therefore, she argues, she was precluded by the IDEA from exercising objectivity or independence of judgment. The Commission would be persuaded by this argument if Mrs. Dunckley's abstention may have caused the vote to fail and precluded the placement from taking place. The situation at issue did not create such a necessity. Absent such

necessity, the Commission finds that the appropriate course of action would have been for her to have abstained from the vote.

Last, Mrs. Dunckley argues again that other board members, including those filing this complaint, either worked in the Rockaway School District or had a spouse who worked in the District and voted on the placement of a student in the Rockaway School District. Again, the Commission will consider that other board members also voted to send a student to the Rockaway School District in violation of N.J.S.A. 18A:12-24(c) when it determines penalty. It does not negate the fact that Mrs. Dunckley should have abstained from the vote. Mrs. Dunckley again suggests that the appropriate action to be taken by the Commission is to direct the Denville Board of Education as to the proper manner to conduct itself with respect to such placements given the situations of the individual board members. As set forth above, the Commission is charged with rendering a decision on the complaint filed before it; which is only against Mrs. Dunckley. The Commission's Public Advisory Opinion A05-02 should serve to instruct the Board on how to handle such votes in the future.

For the foregoing reasons, the Commission concludes that when Mrs. Dunckley voted on the payment of tuition to the school District in which her husband teaches, she acted in her official capacity in a matter in which her spouse had an indirect financial involvement that might reasonably be expected to impair her objectivity in violation of N.J.S.A. 18A:12-24(c).

Vote on the Reimbursement to Herself and Husband on the Bill List

Mrs. Dunckley does not dispute that she voted on bill lists that included reimbursement for educational services which she was obligated to pay for initially with respect to her classified child. However, in response to the finding that probable cause existed to credit the allegation that such conduct violated N.J.S.A. 18A:12-24(c), she argues that recusal on that specific item would have resulted in disclosure of her child's disability in violation of state and federal law. She argues that just as the Commission excused her from disclosing receipt of the reimbursement on her School Ethics Commission disclosure form, she should have been excused from abstaining from this item on the bill list.

The Commission rejects the argument of Mrs. Dunckley because she had another choice than to abstain from the reimbursement to her and her husband. She could have abstained from voting on the bill list altogether. Unlike disclosing her receipt of reimbursements on the disclosure form, abstaining from the bill list altogether would not have disclosed any information regarding her child.

Mrs. Dunckley further argues that, if the Commission finds her votes to be a violation of N.J.S.A. 18A:12-24(c), then the penalty should be no greater than a reprimand since she was only voting to approve payments for services which she had been required to prepay on the board's behalf. She argues that no improper gain resulted from the questionable requirement. The Commission notes that Mrs. Dunckley was not

charged with using her position to secure an unwarranted privilege or advantage for herself, but with voting on a matter in which she and her husband had a financial involvement in violation of N.J.S.A. 18A:12-24(c). The appropriate penalty will be discussed below.

DECISION

For the foregoing reasons, the Commission finds Mrs. Dunckley in violation of N.J.S.A. 18A:12-26(a)(3) for not disclosing the Board as a source of prepaid expenses for her conference attendance and N.J.S.A. 18A:12-24(c) of the School Ethics Act for voting on the bill list including a reimbursement to her and her husband and for voting on a tuition payment to the school where her husband is employed.

PENALTY

The Commission has considered the nature of the offenses and, as indicated above, the fact that a few board members who filed this complaint also failed to disclose that the Board paid for them to attend a conference and others voted on the placement of a student in the Rockaway School District when they or their spouses worked for the District. As the Commission stated, the fact that other Board members may have committed the same conduct does not excuse Mrs. Dunckley's failure to comply with the law, but it is a mitigating factor in recommending the penalty. Considering the foregoing, it now recommends that the Commissioner of Education impose a penalty of censure for the combined violations.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C37-01

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof and the testimony of the parties before it; and

Whereas, the Commission found probable cause to credit the allegations in the complaint; and

Whereas, the Commission has reviewed the written submission of Lorraine Dunckley in response to the finding of probable cause; and

Whereas, the Commission has determined that Mrs. Dunckley violated N.J.S.A. 18A:12-26(a) and 18A:12-24(c) of the School Ethics Act; and

Whereas, the Commission has directed that its staff prepare and transmit the decision; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that this decision was duly adopted by the School Ethics Commission at its public meeting on July 23, 2002.*

Lisa James-Beavers
Executive Director

*Commissioner Rosalind Frisch voted against this decision because she believes that the recommended penalty is too harsh.