
IN THE MATTER

OF

**DENISE SCHMIDT,
BERLIN BOROUGH BD. OF EDUCATION
CAMDEN COUNTY**

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**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No.: C01-02

DECISION

PROCEDURAL HISTORY

The above-captioned matter arises from a complaint against former Berlin Borough Board of Education (Board) member Denise Schmidt alleging that Ms. Schmidt violated N.J.S.A. 18A:12-24.1(e), (f) and (g) of the Code of Ethics for School Board Members in the School Ethics Act when she distributed a letter that contained false and demeaning information regarding fellow board members. Ms. Schmidt filed an answer denying that she distributed the letter or committed any violation of the School Ethics Act.

At the Commission's October 29, 2002 meeting, Ms. Schmidt appeared, along with Mark Houck and Donna Heaton for the complainants. All parties appeared pro se. In its public meeting of October 29, 2002, the School Ethics Commission found probable cause to credit the allegation that Ms. Schmidt violated N.J.S.A. 18A:12-24.1(e) and (f) of the School Ethics Act when, as a member of the Board, she copied and distributed to certain school staff, using school equipment, a malicious document regarding four other Board members. The Commission found the material facts to be undisputed regarding the conduct on which it found probable cause and invited Ms. Schmidt to submit a written statement within 30 days setting forth why she should not be found in violation of N.J.S.A. 18A:12-24.1(e) and (f) of the Act.

Ms. Schmidt submitted a timely response and the Commission addressed this matter at its meeting of January 28, 2003. At that time, the Commission found Ms. Schmidt in violation of N.J.S.A. 18A:12-24.1(e) and recommended a penalty of reprimand.

FACTS

Based on the pleadings, the documents submitted and the testimony presented, the Commission believes that the following facts are undisputed. At all times relevant to the allegations in this complaint, Denise Schmidt and the complainants were members of the Berlin Borough Board of Education. Ms. Schmidt's term as a Board member ended in April 2002. . As of the writing of this decision, two additional complainants were no longer members of the Board.

On or before April 21, 2001, a letter was directed to “Residents of Berlin Borough” that contained derogatory remarks about four members of the Board who are complainants in this matter. The letter was copied to Mayor and Council, New Jersey School Boards and the Camden County Superintendent. Ms. Schmidt received the letter at her home. Mark Houck received a copy of the letter at his home as did some of the other complainants. On or about April 25, 2001, Ms. Schmidt went to the Board office in connection with a meeting involving a member of her family. Ms. Schmidt testified that the superintendent asked her to make copies of the letter; however, the complainants produced a statement from the superintendent denying that he asked Ms. Schmidt to make copies of the letter or that he even knew that she was making copies of the letter. Whether Ms. Schmidt was asked to make copies by the superintendent as she states or whether she made copies on her own initiative, she admitted to making at least two copies of the letter and providing them to members of the superintendent’s secretarial staff. Ms. Schmidt eventually paid the Board for having made six copies, which equates to three copies of the two-page letter.

ANALYSIS

The Commission dismissed the charge that Ms. Schmidt violated N.J.S.A. 18A:12-24(g), but found probable cause that your conduct violated N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics. N.J.S.A. 18A:12-24.1(e) provides:

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.

Ms. Schmidt set forth in her response to the finding of probable cause that she does not believe that her copying of the letter in the Board office compromised the board. She argues that she followed board policy and did not give her personal opinion or discuss the letter with any person other than the superintendent. Thus, she urges the Commission to find that her conduct was not such that it may have compromised the Board. The Commission finds that the letter was so disparaging of the Board members that to give it to staff members who may not have received it by other means that it could compromise the Board in decreasing its credibility among the staff and the public that it serves. By copying the letter and distributing it, Ms. Schmidt had the potential to compromise the Board by spreading the letter to staff such that Ms. Schmidt violated N.J.S.A. 18A:12-24.1(e) of the School Ethics Act.

The Commission next found probable cause that Ms. Schmidt’s conduct violated N.J.S.A. 18A:12-24.1(f) of the Act. It provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or the gain of friends.

In its probable cause decision, the Commission did not find the first part of N.J.S.A. 18A:12-24.1(f) to be applicable to the present matter, but found the provision that a board

member must refuse to use the schools for personal gain or the gain of friends to apply to these facts. The Commission found probable cause to credit the allegation that Ms. Schmidt used the schools for personal gain by making copies of the letter in question on school equipment and distributing it to members of the school district staff during school hours. The Commission found the fact that Ms. Schmidt paid to have three copies of the letter made to be an admission that Ms. Schmidt used school equipment to make three copies of the letter. The Commission also found that Ms. Schmidt distributed the letter among members of the staff who would not necessarily have received it otherwise, since it was addressed to the residents of Berlin Borough. However, Ms. Schmidt disputes that what she did could be viewed as using the schools for personal gain. She denies any knowledge of the identity of the authors of the letter and therefore denies that she did anything to gain personally or financially. After reviewing the written submission of Ms. Schmidt, the Commission finds that there is insufficient evidence of personal gain to find her in violation of N.J.S.A. 18A:12-24.1(f). She paid for the copies that she made and the Commission is unsure what she gained by distributing the letter to members of the staff. Therefore, the Commission now dismisses the charge that Ms. Schmidt violated N.J.S.A. 18A:12-24.1(f). .

DECISION

For the foregoing reasons, the Commission concludes that Ms. Schmidt took private action that may compromise the Board in violation of N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board members. The Commission does not find that she used the schools for personal gain or the gain of friends and dismissed the charge that she violated N.J.S.A. 18A:12-24.1(f). Because it was never alleged that Ms. Schmidt had any involvement with the writing or mailing of the disparaging letter, but rather that she made and distributed copies in the board office, the Commission recommends that the Commissioner of Education impose a sanction of reprimand.

This decision has been adopted by a formal resolution of the School Ethics Commission. This matter shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation **for sanction only**, pursuant to N.J.S.A. 18A:12-29. Within thirteen (13) days from the date on which the Commission's decision was mailed to the parties, Ms. Schmidt may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Paul C. Garbarini, Chairperson

Resolution Adopting Decision – C01-02

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof and the information obtained from its investigation; and

Whereas, at its meeting of January 28, 2003, the Commission found that Denise Schmidt violated N.J.S.A. 18A:12-24.1(e) of the Act and recommended that the Commissioner of Education impose a sanction of reprimand; and

Whereas, the Commission requested that its staff prepare a decision consistent with the aforementioned conclusion; and

Whereas, at its meeting of February 25, 2003, the Commission reviewed the draft decision and agrees with the 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 Resolution was duly adopted by the School Ethics Commission at its public meeting on February 25, 2003.

Lisa James-Beavers
Executive Director