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<b>IN THE MATTER</b>	:	<b>BEFORE THE</b>
	:	<b>SCHOOL ETHICS COMMISSION</b>
<b>OF</b>	:	<b>Docket No.: C11-04</b>
<b>REMOND PALMER</b>	:	<b>DECISION</b>
<i>ASBURY PARK</i>	:	
<i>BOARD OF EDUCATION,</i>	:	
<i>MONMOUTH COUNTY</i>	:	

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**PROCEDURAL HISTORY**

This matter arises from a complaint filed by Raymond Montgomery of the Office of Compliance Investigation in the New Jersey Department of Education alleging that Asbury Park Board of Education member Remond Palmer violated provisions of the Code of Ethics for School Board Members within the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Specifically, the complaint alleges that Mr. Palmer directed an administrative staff member to remove names of individuals recommended for employment by the superintendent from the agenda. The complaint further alleges that after the names remained on the agenda and the items were voted upon by the Asbury Park Board of Education (Board), Mr. Palmer advised the newly hired employees that their appointment was void. Complainant alleges that the above conduct was in violation of N.J.S.A. 18A:12-24.1(a) and (e) of the Code of Ethics for School Board Members.

The Commission notified Mr. Palmer of the complaint by letter of March 5, 2004, which was received by him on March 16, 2004, according the return receipt. On April 8, 2004, the Commission sent Mr. Palmer a letter reminding him that the time to answer the complaint had expired and stated that, if he did not answer in ten days, the Commission would consider the complaint without his response, as well as minutes and correspondence received from Mr. Montgomery. On May 6, 2004, the Commission further advised that, since it had still not received Mr. Palmer’s answer, the Commission would deem the allegations in the complaint to be admitted pursuant to N.J.A.C. 6A:28-1.11(d). The Commission further advised him that the Commission would hear the matter on May 25, 2004, but that he had waived his right to appear since the allegations were already deemed admitted.

The Commission heard testimony on this matter on May 25, 2004. Kim Belin, Esq., Manager in the Office of Compliance Investigation and Karl Feltes, Investigator, attended the meeting on behalf of the complainant to answer any questions of the Commission. In response to questions of the Commission, they offered to produce affidavits from the administrators referenced, but not named, in the complaint. During its public meeting of May 25, 2004, the Commission tabled the matter to allow the investigators to submit affidavits. Affidavits from Kathy McDavid, Jessie Ricks and

Andrea Bates were received by the Commission on June 21, 2004. A letter from Jessie Ricks to the Monmouth County Superintendent was also faxed to the Commission on June 21, 2004. The Commission provided these items to Mr. Palmer.

At its June 22, 2004 meeting, the Commission voted to find probable cause to credit the allegations that Mr. Palmer violated N.J.S.A. 18A:12-24.1(a) and (e) of the Act. The Commission found that there were no material facts in dispute since Mr. Palmer admitted to the allegations by failing to answer the complaint. Therefore, the Commission requested that he file a written submission within 30 days of the date of the Commission's probable cause decision. Mr. Palmer was told that his submission should set forth his position as to whether the Commission should find him in violation of the Act and, if he is found in violation, what sanction the Commission should recommend, pursuant to N.J.A.C. 6A:28-1.1 et seq.

This matter was placed on the agenda for decision by the Commission at its meeting of August 24, 2004, as was set forth in the Commission's probable cause decision. Mr. Palmer never filed a written submission in response. At the public meeting of August 24, 2004, the Commission voted to find Mr. Palmer in violation of N.J.S.A. 18A:12-24.1(a) and (e) and recommend that the Commissioner of Education remove him from the Board of Education. The Commission adopted this decision at its meeting of September 30, 2004.

## **FACTS**

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted and testimony.

At all times relevant to this complaint, Mr. Palmer was a member of the Asbury Park Board of Education having been elected in April 2002. Mr. Palmer served as President of the Board and a member of the Personnel Committee. Kathy McDavid was the Acting Superintendent of Schools for the Asbury Park Board of Education for the period from December 11, 2003 to January 21, 2004. At all times relevant to this complaint, complainant was the Director of the Office of Compliance Investigation in the New Jersey Department of Education.

In December 2003, the Acting Asbury Park Superintendent submitted the names of the individuals for appointment to fill vacancies in the District. The recommendations were included in the approved agenda for the December 17, 2003 Board meeting. On December 17, 2003, in the afternoon prior to a board meeting, Mr. Palmer directed an administrative staff member, Angela Bates, to remove names of the persons recommended for the Disaffected Youth Grant (DYG) positions. When Ms. Bates told Mr. Palmer that the superintendent is responsible for making the recommendations and the Board may vote yes or no, Mr. Palmer replied that the Board's previous superintendent was no longer there – a reference to the removal of Dr. Antonio Lewis.

During the closed session of the December 17, 2003 meeting, when Mr. Palmer saw that the names had been placed on the agenda, Mr. Palmer approached Ms. Bates and asked her to tell Ms. McDavid to remove the administrative salaries from the agenda. Ms. Bates advised him that the public would have to be informed if any items are being removed from the agenda. In the December 17, 2003 public meeting, Mr. Palmer then moved the entire personnel agenda including the individuals from the DYG that he had wanted removed. The Board unanimously approved the motion.

Although the persons recommended for positions with the DYG were approved by the Board, after the meeting was adjourned, Mr. Palmer told one of the persons appointed that she did not have the job. He later approached Ms. McDavid and asked her why the item was not taken off the agenda. Mr. Palmer then proceeded to tell her that the agenda is the President's responsibility and in the future, he must review it. On December 18, 2003, at Mr. Palmer's direction, Board Counsel issued a letter to the acting superintendent declaring the Board's vote to be a "nullity." As a result, although approved by the Board, the individual appointees were denied appointment to the respective positions as recommended by the superintendent.

The two recommended appointees did eventually receive positions with the Asbury Park Board of Education.

## **ANALYSIS**

Complainant alleges that Mr. Palmer violated N.J.S.A. 18A:12-24.1(a) and (e) of the School Ethics Act. N.J.S.A. 18A:12-24.1(a) provides:

I will uphold and enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

Complainant asserts that Mr. Palmer's conduct was in violation of N.J.S.A. 18A:27-4.1(a), which provides that a board of education shall appoint a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the board. They also assert that Mr. Palmer violated the Open Public Meetings Act, N.J.S.A. 10:4-1 et seq., which requires that all actions of a public body are to be conducted in public.

The Commission cannot find that Mr. Palmer's conduct in asking that the item be pulled from the agenda was an attempt to change the agenda by disregarding N.J.S.A. 18A:27-4.1(a). However, Mr. Palmer's subsequent conversation with one of the appointees indicating that her appointment was void was an attempt to bring about a change through illegal and unethical procedures. The Superintendent recommended her appointment, the Board approved it and therefore, she was hired, despite whether Mr. Palmer intended to make the motion to approve her appointment.

Further, the Commission finds that the attempt to pull the item from the agenda behind closed doors rather than state to the public that the item was going to be held for consideration at a later date was an attempt to circumvent the Open Public Meetings Act (OPMA). Similarly, Mr. Palmer's discussion with the just appointed employee indicating that she did not have a job despite the public Board vote affirming the appointment was another attempt to circumvent the OPMA. The Commission's findings were noted in the probable cause decision, but Mr. Palmer did not respond. For the foregoing reasons, the Commission finds that Mr. Palmer failed to uphold and enforce all laws, and tried to bring about a change through illegal and unethical procedures in violation of N.J.S.A. 18A:12-24.1(a) when he asked Ms. Bates to remove an item from the agenda and when it was not removed, told the person hired that she did not have a job when the Board had clearly approved the appointment.

Complainant also alleges a violation of N.J.S.A. 18A:12-24.1(e), which sets forth:

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.

Complainant urges the Commission to find that Mr. Palmer's conduct, telling Ms. Bates to remove the personnel items from the agenda, and his subsequent comment to the newly appointed employee that she did not have a job, were private actions that compromised the Board in violation of N.J.S.A. 18A:12-24.1(e). The Commission set forth in its probable cause decision that there was sufficient evidence that Mr. Palmer's statement to the appointed employee that she did not have a job did not recognize that authority rests with the Board because his statement was in direct conflict with the action of the Board. It further constituted private action that may compromise the Board because he left the Board open for a lawsuit if the employee did not receive the job that she knew the Board voted for her to have. Mr. Palmer did not respond to the Commission's finding. The Commission therefore concludes that Mr. Palmer violated N.J.S.A. 18A:12-24.1(e) when he told an administrator to remove personnel items from the agenda and commented to the newly appointed employee that she did not have a job after the Board had approved her employment.

## **DECISION**

For the foregoing reasons, the Commission concludes that Mr. Palmer violated N.J.S.A. 18A:12-24.1(a) and (e) of the School Ethics Act.

## **PENALTY**

Mr. Palmer flouted the Code of Ethics for School Board members in ordering an administrator to remove personnel items from an agenda and then disregarding a vote of the Board to tell someone hired by the Board that she did not have a job. Further, as set forth in the Procedural History of this decision, Mr. Palmer has ignored every pleading and item of correspondence that the Commission has sent to him regarding this matter. He

evidently did not feel that it was worthy of a response. Thus, the Commission concludes that the appropriate penalty in this matter would be removal from office. Therefore, it recommends that the Commissioner of Education remove Mr. Palmer from his position on the Asbury Park Board of Education. The Commission anticipates that Mr. Palmer will now oppose its recommendation, so it asks for the opportunity to respond to any exceptions that Mr. Palmer files before the Commissioner of Education renders his ruling because the Commission has never received any response from Mr. Palmer since the inception of this complaint.

This decision, having been adopted by the Commission, 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, the respondent 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 – C11-04**

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

Whereas, the Commission found probable cause to credit the allegations that Mr. Palmer violated N.J.S.A. 18A:12-24.1(a) and (e) of the School Ethics Act; and

Whereas, Mr. Palmer did not provide a written submission in response to the finding of probable cause; and

Whereas, the Commission now concludes that respondent violated the School Ethics Act and further concludes that removal would be the appropriate penalty for the reasons set forth;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter finding Remond Palmer in violation of the Act and recommending that the Commissioner of Education impose a penalty of removal.

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Paul C. Garbarini, Chairperson

I hereby certify that the School Ethics Commission adopted this decision at its public meeting on September 30, 2004.

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Lisa James-Beavers  
Executive Director