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| <p>IN THE MATTER</p> <p style="text-align: center;">OF</p> <p>FAYE BALL, Ph.D. <i>EWING TOWNSHIP BOARD OF EDUCATION</i> <i>MERCER COUNTY</i></p> | <p>: : : : : : : : : : : : : : :</p> | <p>BEFORE THE SCHOOL ETHICS COMMISSION</p> <p>Docket No.: C12-02</p> <p>DECISION</p> |
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PROCEDURAL HISTORY

The above matter arises from a complaint filed by School Ethics Commission member Randy Beverly on May 20, 2002 alleging that Ewing Township Board of Education (Board) member, Dr. Faye Ball, violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., when she e-mailed Lisa James-Beavers, Executive Director of the Commission, and requested the delay of the Commission's decision in *Ordini v. Vickner*, SEC Docket No. C36-01 (May 28, 2002). Mr. Beverly specifically alleged that the above conduct constitutes a violation of N.J.S.A. 18A:12-24(b).

Dr. Ball filed an answer to the complaint on July 15, 2002 admitting that she e-mailed Ms. James-Beavers, and asked that an attached letter to Chairperson Paul Garbarini be forwarded to the Commission. However, Dr. Ball denied that the intent of the letter was to delay Commission proceedings and asserted that the letter was intended to inform the Commission of her concerns regarding the efforts of certain Board members and the superintendent to expedite the release of a decision on C36-01 so that it would be available for public review prior to the April 16, 2002 Board election. Dr. Ball further asserted that she merely sought to request that the Commission not be persuaded to release an early decision as desired by the Board members. Dr. Ball denies that she violated any provision of the Act.

The Commission invited the parties to its October 29, 2002 meeting to present witnesses and testimony to aid in the Commission's investigation. Both parties appeared. Dr. Ball was represented by counsel, Barry Chatzinoff, Esq. Mr. Beverly appeared, *pro se*. After hearing testimony, the Commission voted at its public meeting to find probable cause to credit the allegation that Dr. Ball's conduct was in violation of N.J.S.A. 18A:12-24(b). The Commission determined that there were no material facts in dispute and directed Dr. Ball to submit a written statement, setting forth why the Commission should not find her in violation of N.J.S.A. 18A:12-24(b).

Dr. Ball submitted a timely response which was considered by the Commission at its meeting of February 25, 2003. It now concludes that Dr. Ball violated N.J.S.A. 18A:12-24(b) of the School Ethics Act for attempting to secure an unwarranted privilege for Dr. Vickner by requesting the delay of a Commission decision involving him.

FACTS

Dr. Faye Ball has been a member of the Board since April 2001. She has been employed by the New Jersey Department of Education as an Education Development Program Specialist II since 1994.

At the March 18, 2002 Board meeting, in its public session, Board members, Edgar Dunham, Vince Ordini and Bruce Buck questioned the status of a complaint that Mr. Ordini had filed against fellow Board member Edward Vickner, (C36-01)¹. The Board members asked the district superintendent, Dr. Timothy R. Wade to contact the Commission to encourage the release of its decision before the April 16, 2002 Board election.

After the Board meeting, Dr. Ball sent an e-mail to the Executive Director of the Commission, dated March 19, 2002. In the letter attached thereto, Dr. Ball set forth:

Please forgive my meddling into the School Ethics Commission business. However, at last night's Ewing School Board meeting, there were several innuendos made during public session between Mr. Dunham, Mr. Ordini, Mr. Buck, and Dr. Wade (superintendent). The end result was that, at the urging of Mr. Ordini and Mr. Buck, Dr. Wade agreed to call the School Ethics Commission to see if he could get an early decision regarding the above cited case. Dr. Wade mentioned that Mr. Ordini had received a fax about this case. I asked if the decision was public information and I was told no. However, it was apparent to me that several Board members and the administration seemed to be privy to a decision that had not yet been made public nor shared in executive session with the entire Board since the School District paid Mr. Ordini's legal fees.

Based on these shenanigans, my intuition tells me that their intentions for requesting a speedy resolution to the above cited case is less than honorable. I truly believe that if the decision is not favorable, they will use it to smear Dr. Vickner as he seeks re-election. By the way, Mr. Buck is also running for re-election. Therefore, I respectfully request that the School Ethics Commission delay the release of the decision on the above cited matter until after the April 16 School Board Election. In this way, School Ethics Commission decisions can remain above the fray of the Ewing Township School Board. I have advised Dr. Vickner regarding my request and he is in agreement with me.

Thank you, in advance, for your kind consideration.

¹ In C36-01 Vince Ordini alleged that Ewing Township board member, Edward Vickner, violated the School Ethics Act when during the public session of a board meeting, he participated in the discussion regarding the low stipends paid to the Team Leaders of the Fisher Middle School, of which his wife is a member. Complainant also alleged that the respondent disclosed his son's confidential student information to others in violation of the Code of Ethics.

In his memorandum to the Board, dated March 21, 2002, Dr. Wade reported that he had contacted the Commission and was advised that the Commission may act on the matter at its April 2, 2002 meeting.

At the Commission's October 29, 2002 meeting, Dr. Ball testified that she drafted the e-mail during her lunch hour and sent the e-mail during one of her breaks. Dr. Ball also faxed the letter to the Commission from her Department of Education office. New Jersey Department of Education policy provides that "personal use of State equipment shall not amount to more than de minimis, occasional use and may only be permitted during authorized break times, lunch periods or before or after work hours." The e-mail was signed, Faye Frieson Ball, Ph.D., HSPA, SRA, Education Development Specialist, Office of Assessment, NJDOE, and provided two work numbers. Dr. Ball testified that there is an automatic signature and identifying information attached to every e-mail she sends, but she did not intend for the signature or information to be a part of her e-mail. The letterhead identified Dr. Ball as a member of the Ewing Township Board of Education and provided her work e-mail address and phone number. Dr. Ball did not discuss the content of the letter she sent to the Commission with the superintendent, the Board Attorney or any member of the Board, except Dr. Vickner.

ANALYSIS

The Commission found probable cause to credit the allegation that Dr. Ball's e-mail to the Commission requesting it to delay its decision regarding C36-01 was in violation of N.J.S.A. 18A:12-24(b), which provides:

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.

Dr. Ball testified that she used her computer at her Department of Education office to send the e-mail. Dr. Ball further testified that her computer at work has a function that automatically signs her name with her title and phone numbers when she sends e-mails, but she did not intend to sign the e-mail with that information. Dr. Ball also provided the Commission with a copy of the State policy that allows for minimal and occasional use of State equipment for personal purposes. Dr. Ball also testified that her only intent was to inform the Commission of the Board's plan to request an expedited decision, which she believed to be improper.

In her response to the finding of probable cause, Dr. Ball asserts that in previous matters involving violations of N.J.S.A. 18A:12-24(b) the Commission has considered whether attempts to secure unwarranted privileges were coupled with pressure or leverage.² Dr. Ball also argues that she had no authority or ability to pressure or influence the Commission and therefore did not have leverage.

² See generally, Public Advisory Opinion A04-98, In the Matter of Melindo Persi (April 8, 1997), In the Matter of John Galish (September 23, 1997), In the Matter of Edward Mercer C33-96 (October 28, 1997), In the Matter of Ray Dawson C22/25-97 (March 30, 1998), Morales v. Campbell C26-99 (September 27, 2000), Maynard v. Glinsman C30-01 (October 23, 2001), Fenishel v. Hartsough C33-01 (December 18, 2001).

The Commission acknowledges the Department of Education's policy regarding employee use of State equipment and that there may be instances where State employees use State equipment to send e-mails that are unrelated to their job. However, the question is whether Dr. Ball attempted to use her official position as a Board member to secure some unwarranted privilege for herself or others. The letterhead of Dr. Ball's letter identified Dr. Ball as a member of the Board as well as a Department of Education employee. In the letter, Dr. Ball requested that the Commission "delay" the release of a decision that would "smear Dr. Vickner as he seeks re-election," until after the April 16, 2001 Board election. Dr. Ball also set forth in the letter that she had advised Dr. Vickner regarding her request and he was in agreement with it. Dr. Ball testified that she did not discuss the letter with any Board member other than Dr. Vickner, nor did she discuss it with the superintendent or the Board Attorney. She testified that she failed to do so because she was uncomfortable. Dr. Ball also testified that she did not seek authorization from the Board to send the letter.

While Dr. Ball argues that the only intent of the letter was to advise the Commission of the Board's conduct, she went beyond merely advising the Commission of the Board's alleged wrongdoing by independently seeking the delay of the decision. It is clear that Dr. Vickner would benefit from the delay of the public release of a decision that could have negatively influenced his campaign for re-election if it were released before the Board election.

The Commission acknowledges Dr. Ball's argument that in previous matters it has considered whether attempts to secure unwarranted privileges were coupled with leverage, which is also defined as influence. The Commission also recognizes that Dr. Ball did not have the authority to influence the Commission. However, the Commission notes that under N.J.S.A. 18A:12-24(b) the Commission need only find that the school official made an attempt to secure unwarranted privileges. The Commission, therefore, finds that Dr. Ball's request for a "delay" in the release of a Commission decision and her use of her official title as a Department of Education employee and a Board member on her letterhead in making that request, is sufficient evidence to show that she attempted to use her official position to influence the Commission to delay the issue of its decision in a matter that would have clearly benefited fellow Board member, Dr. Vickner.

Dr. Ball further argues that a finding of attempt requires that the particular result be achieved with a "purposeful mental state." The Commission finds that Dr. Ball's written request for a delay in Commission proceedings that would have benefited Dr. Vickner and the fact that she e-mailed and faxed the request to the Commission shows that she possessed a "purposeful mental state" to secure unwarranted privileges for Dr. Vickner.

DECISION

For the foregoing reasons, the Commission finds Dr. Faye Ball in violation of N.J.S.A. 18A:12-24(b) of the School Ethics Act for attempting to secure an unwarranted privilege for Dr. Edward Vickner by requesting the delay of a Commission decision involving him.

PENALTY

The Commission has considered the nature of the offense and notes that in her response, Dr. Ball now recognizes that her concerns could have been more appropriately presented by way of argument to the Board of Education, by contacting the Board Solicitor or by more formally presenting the issues in a complaint to the School Ethics Commission. The Commission finds that the appropriate penalty for Dr. Ball's violation in this case is a reprimand.

This decision, having been adopted by the School Ethics 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 – C12-02

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

Whereas, the Commission found probable cause to credit the allegations that Dr. Ball violated N.J.S.A. 18A:12-24(b) of the School Ethics Act; and

Whereas, the Commission reviewed the written submissions of Dr. Ball in response to the finding of probable cause; and

Whereas, the Commission now finds that respondent violated the School Ethics Act and believes that a reprimand would be the appropriate penalty;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter finding Dr. Faye Ball in violation of the Act and recommends that the Commissioner of Education impose a penalty of reprimand.

Paul C. Garbarini, Chairman

I hereby certify that the School Ethics Commission adopted this decision at its public meeting on March 25, 2003.*

Lisa James-Beavers
Executive Director

*Commissioners Robert Bender and Randy Beverly abstained from the vote on this decision.