

meeting of April 23, 2002. The Commission received Dr. Vickner's written statement on May 17, 2002.

The Commission discussed Dr. Vickner's statement at its meeting of May 28, 2002. At its public meeting, the Commission voted to find that Dr. Vickner violated N.J.S.A. 18A:12-24(c) and N.J.S.A. 18A:12-24.1(e) and (g) of the Act. It now recommends that the Commissioner of Education impose a penalty of censure.¹

FACTS

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

Dr. Vickner was a member of the Ewing Township Board of Education for six years. Dr. Vickner's wife is a teacher at the Fisher Middle School in the Ewing Township School District. She held the position of team leader during the 2000-2001 school year, for which she received a stipend. At the Board's February 24, 2001 public budget meeting, which was conducted by the Superintendent, the middle school principal raised the issue of increasing the team leader stipend. Dr. Vickner commented that the stipend paid to team leaders was low. The Board was not scheduled to take any formal action at this meeting and therefore, it did not vote on the matter. The team leader stipend is determined by the teachers' contract. The current contract is effective from July 2000 to June 2003. The team leader is chosen by an annual election by the team.

Regarding the release of confidential student information, on September 6, 2001, Dr. Vickner sent an e-mail to the Superintendent of the District requesting certain academic, disciplinary and attendance information regarding complainant's son, who was a student in the Ewing school district during the 2000-2001 school year. In the e-mail, Dr. Vickner indicated that there was concern among some members of the Ewing community regarding the graduation of complainant's son. On September 7, 2001, the Superintendent provided Dr. Vickner with the requested information, but advised that the information was confidential. On October 9, 2001, complainant submitted a memorandum to the Board in which he asserted that the aforementioned conduct of Dr. Vickner was in violation of several ethics rules. Complainant read the memorandum publicly. In response to complainant's memorandum, on November 6, 2001, Dr. Vickner submitted a memorandum to the Board, wherein he disclosed the above-referenced information with respect to complainant's son. The information was provided to the Board and discussed in closed session.

¹ As of the date of this decision, Dr. Vickner is no longer a board member so the penalties of suspension and removal could not be imposed even if the Commission so desired.

ANALYSIS

The Commission found probable cause that Dr. Vickner violated N.J.S.A. 18A:12-24(c) when he commented in a public budget meeting that the stipend paid to team leaders was low when his wife was a team leader at the Fisher Middle School. 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.

Dr. Vickner argues in his written submission in response to the probable cause finding that he was not acting in his official capacity when he made the comment. He submits that the Superintendent conducted the February 24, 2001 budget hearing and Board members were mere audience participants. The Commission disagrees with Dr. Vickner's characterization of his role as a member of the audience. The fact that the February meeting was not a regular Board meeting does not mean that members of the Board were not present in their official capacity. The only difference with the February meeting was that the Superintendent presented the budget. Thus, the Commission concludes that Dr. Vickner was acting in his official capacity as a board member when he made the statement at issue.

Dr. Vickner also argues that since the Commission recognized in its probable cause finding that the team leader stipends are determined by the teachers' contract, which currently is in effect until the end of June 2003, he only stated an opinion. He argues that any formal action by the Board was precluded by the duration of the contract and that, by the conclusion of the contract, his wife may not even be a team leader. The Commission recognized that Dr. Vickner's comment would not have an immediate impact, but nonetheless stated in its probable cause determination that an increase in the team leader stipend is a matter in which his spouse had a direct financial involvement. The Commission is not persuaded that such a financial involvement did not exist because the team leader stipend was determined by contract. The Commission reiterates from its probable cause determination that Dr. Vickner's comment could influence the preparation for budget discussions for the next fiscal year, which includes negotiating the next teachers' contract. Although Dr. Vickner argues that the contract will not expire until 2002-2003, which is the year following the next fiscal year, the Commission is aware that the contract of 2002-2003 was discussed during the fiscal year 2001-2002. Such preliminary discussions on negotiations are common, especially in Ewing Township. Dr. Vickner spoke on a matter in which he had a financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. Moreover, he had a personal involvement with an increase in the team leader stipend that

creates a benefit to the spouse. Therefore, the Commission concludes that Dr. Vickner acted in his official capacity in a matter in which he and his spouse had a direct financial involvement that might reasonably be expected to impair his objectivity and a personal involvement that creates some benefit to him and his spouse in violation of N.J.S.A. 18A:12-24(c).

Last, Dr. Vickner argues that if the Commission finds that he violated the Act merely by expressing his opinion, it is violating his First Amendment right to free speech. Dr. Vickner is welcome to express his opinion as to any matter other than the terms and conditions of his spouse's employment. The Commission does not believe that by so ruling, it is limiting Dr. Vickner's free speech beyond that which the School Ethics Act requires.

The Commission also found probable cause to credit the allegations that Dr. Vickner violated the Code of Ethics sections (e) and (g), when he sought out and disclosed student information to the Board after being advised by the Superintendent that the information was confidential. N.J.S.A. 18A:12-24.1(e) of the Code of Ethics 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.

Section (g) of the Code of Ethics provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

In response to the probable cause finding, Dr. Vickner argues that he was essentially "set up" by complainant who accused him in a public meeting of bothering his daughter, wife, son and family business and other Board members who stated that his failure to respond to complainant's allegations was an admission that the accusations were true. Dr. Vickner states that he was compelled to write a memorandum to the Board referencing complainant's son and did not do so until after the complainant read his letter making the accusations, after the Board President wrote a letter further accusing him of using "terroristic" [sic] methods and after another Board member said that his silence was an admission. Dr. Vickner adds that when he did reference complainant's son in his memorandum, he only discussed his son's absences and credits and made no mention of his discipline record. He argues that all Board members had the same absence and credit data for all students enrolled in the alternative high school. He stresses that the discussion was held in closed session and that N.J.A.C. 6:3-6.5(c) permits the Board to discuss a pupil's record in executive session.

While Dr. Vickner has clearly explained why he sought the information and wrote the memorandum referencing complainant's son and why he brought it to the attention of Board members at the closed session meeting on November 10, 2001, his explanation does not negate the probable cause finding as he argues. The Commission believes that Dr. Vickner's actions were not vicious or in bad faith, in that he attempted to resolve a discrepancy where he believed that a board member's son was being given privileges that were not extended to other students. However, given the sensitive nature of the information, the more prudent course of action would have been to discuss the matter with the Superintendent who had provided the information in the first instance. Dr. Vickner argues that the Board reviews attendance and credit data for all students of the alternate school; however, when it does so, it does not refer to students by name. In the present case, Dr. Vickner made complainant's son the sole object of the Board's focus. This was not a discussion about record keeping problems or the awarding of class credit at the alternate school, the only concern was complainant's son. Although N.J.A.C. 6:3-6.5(c)(6) does allow a board to discuss information contained in a pupil's record in executive session, as Dr. Vickner argues, Dr. Vickner went beyond the discussion of the pupil's record to accusations that complainant's son should not have graduated. The Commission concludes that his doing so constituted taking private action that could compromise the Board in violation of N.J.S.A. 18A:12-24.1(e) and failing to hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals in violation of N.J.S.A. 18A:12-24.1(g).

DECISION

For the foregoing reasons, the Commission finds Dr. Vickner in violation of N.J.S.A. 18A:12-24(c) and N.J.S.A. 18A:12-24.1(e) and (g) of the School Ethics Act.

The Commission has considered the nature of the offenses and the fact that Dr. Vickner has suffered the ultimate penalty of not being re-elected to the Board. It now recommends that the Commissioner of Education impose a penalty of censure for the combined violations.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C36-01

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 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 Edward Vickner, Ph.D., in response to the finding of probable cause; and

Whereas, the Commission has determined that Dr. Vickner violated N.J.S.A. 18A:12-24(c) and N.J.S.A. 18A:12-24.1(e) and (g) 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 May 28, 2002.

Lisa James-Beavers
Executive Director