

ARTHUR JACOBS	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	Docket No. C44-07
RAYMOND DELBURY	:	
SUSSEX WANTAGE REGIONAL	:	DECISION
BOARD OF EDUCATION	:	
SUSSEX COUNTY	:	
	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on November 7, 2007 by Arthur Jacobs, president of the Sussex Wantage Regional Board of Education (Board), alleging that Raymond Delbury, a member of the Board violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The initial complaint was deficient and, in response to a request from the Commission, the complainant filed an amended complaint on November 20, 2007 correcting the deficiencies. The complainant specifically alleges that the respondent violated N.J.S.A. 18A:12-24.1(b), (c), (d), (e), (g) and (i) of the Code of Ethics for School Board Members. Through his attorney, Donald P. Hogan, Esquire, the respondent timely filed an answer to the complaint. During the public portion of the October 27, 2008 meeting, the Commission found that the complainant did not factually prove that the respondent violated N.J.S.A. 18A:12-24.1(b), (c) and (d). However, the Commission found that the complainant had established that the respondent violated N.J.S.A. 18A:12-24.1(e), (g) and (i) and voted to recommend that the Commissioner of Education suspend the respondent for six months.

**SUMMARY OF THE RECORD**

The parties were invited to appear at the Commission’s October 27, 2008 meeting to present testimony. The complainant appeared and presented testimony. The Board attorney, Bruce W. Padulla, Esquire, appeared, noting for the record that, since this was an intra Board dispute, he was there only to assist the complainant, but not to support or defend the allegations. The complainant presented the testimony of Edward F. Izbicki, superintendent of the Sussex Wantage Regional School District (District), and Thomas Card, the current Board president. The respondent appeared with his attorney, Donald P. Hogan Esquire, and presented testimony. Mr. Hogan noted his procedural objections for the record.<sup>1</sup>

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<sup>1</sup> Mr. Hogan objected to the Commission’s hearing being held beyond the statutory deadline and asserted that the respondent was denied his right to a hearing and discovery before an Administrative Law Judge. He also objected to the participation in the hearing of Commission members who are members of the New Jersey Association of School Business Officials or the New Jersey Administrators and Supervisors Association.

The complainant testified that the respondent posted information about an employee on NJ.com and that action speaks for itself. Following is the text of the email that was posted on NJ.com and attached to the complaint:

It became necessary yesterday (Monday October 15<sup>th</sup>) to remove a staff member from the Wantage School. The staff member is currently hospitalized for treatment of a medical condition. Upon further medical evaluation, additional information will be made available. I will certainly answer your questions if necessary during the Executive Session on October 18<sup>th</sup>. The Board President was immediately advised, as was our attorney and District Physician. The matter was handled in accordance with contract and recommended guidelines.

Thank you,

Ray Nazzaro

On cross examination, the complainant explained that he learned about the posting from a Board member. He confirmed that the email was sent to all Board members from the business administrator/board secretary and, when the recipient opened the email, there was an indication to “treat as confidential.” The complainant stated that, when the email was opened, a Board member first had to indicate yes or no whether to open and receive the email, and, when the recipient clicked on yes to open the email, s/he would see the header indicating that the email was confidential. The complainant testified that he did not know if the email was sent to the respondent’s personal or school account.

Edward Izbicki, the current superintendent, testified that, in his prior position as business administrator/board secretary, he was asked by the interim superintendent to forward a memo to all Board members regarding an incident involving a teacher. The witness explained that the interim superintendent forwarded the written memo to him, which he then sent to all Board members on both their personal email accounts and their district email accounts. Dr. Izbicki explained that when the interim superintendent asked for the memo to be distributed he asked that it be marked as confidential. Dr. Izbicki stated that he flagged the email as confidential by clicking on an automatic icon, although he admitted that he did not know where on the email the recipient would see that it was marked confidential. Dr. Izbicki explained that the next day it was brought to his attention by another Board member that the email was posted on NJ.com. Dr. Izbicki claimed that the respondent asked for emails to be sent to the email account of the respondent’s wife. He testified that there is no written Board policy regarding email addresses. On cross examination, Dr. Izbicki confirmed that he belonged to NJASBO and NJASA. He admitted that those organizations advocate on behalf of administrators and provide boilerplate contracts for negotiations. He also admitted that he did not have a background in computers.

Tom Card, the current Board president, testified that he received the email concerning confidential employee information. He confirmed that the email was marked as confidential. He explained that he was told by other people that the email was on NJ.com and he saw it there. On cross examination, Mr. Card verified that he received the email on his hotmail account, which he does not share with anyone. Mr. Card stated that he believed the email to be confidential because it contained information about an employee who was possibly being disciplined, although he admitted that the possibility of discipline was not in the email message. Mr. Card claimed that any information about an employee was confidential until it goes to the Board. He confirmed that this was his understanding of the law.

The respondent testified that the email was sent to his wife's email account and that either he or his wife opened it up. He claimed that it was not marked confidential. He explained that, prior to the email, there had been rumors in the community. The respondent maintained that no one told him that the information was confidential. He confirmed that after he received the email he copied it and sent it out over NJ.com. On cross examination, the respondent stated that he had a district email account but did not have a personal email account. He explained that he uses his wife's email account because the Board requested that he provide an email address where he could be reached. The respondent testified that personnel and policy were discussed in executive session because the public can not know what transpires. He again denied that the email was marked as confidential. The respondent verified that the email attached to his answer as Exhibit A was not altered. He also verified that he had attended board member training.

## **FINDINGS OF FACT**

The Commission found the following facts based on the pleadings, testimony and documents on the record.

1. At all times relevant to the complaint, the complainant was president of the Board and the respondent was a member of the Board.
2. The respondent attended board member training.
3. On or about October 17, 2007, the interim superintendent sent a memorandum to the business administrator/board secretary and asked him to forward it to all Board members and mark it as confidential.
3. The business administrator/board secretary copied the memorandum and placed it into an email which he sent to all Board members at both their district and personal email accounts. He flagged the email as confidential by clicking on an automatic icon which would, upon opening the email, notify the email recipient that the content of the email was confidential.
4. The memorandum in the email, as set forth above at page 2, contained information regarding the hospitalization of a staff member for a medical

condition. In the memorandum, the interim superintendent indicated that he would answer questions during the October 18, 2007 executive session.

5. The email was sent to the email account of the respondent's wife which is the email account that the respondent gave to the Board. It was also sent to the respondent's district email account.
6. The email was opened by either the respondent or his wife.
7. The respondent read the entire contents of the email.
8. The respondent posted the memorandum in the email word for word on an internet chat room and bulletin board at [www.nj.com/forums/sussex](http://www.nj.com/forums/sussex).

## ANALYSIS

As an initial matter, the Commission notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members. The complainant contends that the respondent violated N.J.S.A. 18A:12-24.1(b), which provides:

I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race creed, sex, or social standing.

There is nothing on this record to show that the respondent's conduct was contrary to the educational welfare of children or that the respondent's conduct obstructed the schools ability to meet the individual needs of all children regardless of their ability, race creed, sex, or social standing. The complainant has failed to present the Commission with any factual evidence to support the allegation that the respondent's conduct violated N.J.S.A. 18A:12-24.1(b). Thus, the Commission finds that the complainant has failed to sustain his burden to prove that the respondent violated N.J.S.A. 18A:12-24.1(b) and dismisses this allegation.

The complainant also alleges that the respondent violated N.J.S.A. 18A:12-24.1(c), which provides:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The complainant provided no evidence to factually establish that the respondent's actions constituted Board action. The respondent's action in posting the email on a public web page was not within the scope of the respondent's duties and responsibilities as a Board member. As noted below, the respondent's action constituted private action.

Previously, in Marc Sovelove v. Paul Breda, C49-05 (September 26, 2006), the Commission found that a Board member's action cannot be both board action and private action. The Commission stated that if the board member's action is found to be board action it cannot be private action. (Id., at page 4) Conversely, if a board member's action is found to be private action it cannot constitute board action. The Commission finds that the complainant did not factually establish that the respondent failed to confine his board action to policy making, planning, and appraisal or that he failed to help frame policies and plans only after the board has consulted those who will be affected by them. Therefore, the Commission dismisses the allegation that the respondent violated N.J.S.A. 18A:12-24.1(c).

The complainant contends that the respondent violated N.J.S.A. 18A:12-24.1(d), which provides:

I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

Pursuant to N.J.A.C. 6A:28-7.1, "administer the schools" means, in part, "that a member of the district board of education...has become directly involved in activities or functions that are the responsibility of school personnel or the day to day administration of the school district...or has given a direct order to school personnel." There is no factual evidence on this record to show that the respondent's action in posting the email rose to the level of administering the schools. The respondent's action was in no way connected to the administration of the schools as defined above. There is also no factual evidence to show that the respondent failed to see that the schools are well run together with his fellow Board members. The Commission finds that the complainant failed to sustain his burden to prove that the respondent violated N.J.S.A. 18A:12-24.1(d); therefore, the Commission dismisses this allegation.

The complainant also contends that the respondent violated N.J.S.A. 18A:12-24.1(e), which 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.

To find a violation of N.J.S.A. 18A:12-24.1(e), the Commission must first determine whether the respondent's public posting of the email was a private action. Pursuant to N.J.A.C. 6A:28-7.1 "private action means, in part, action taken by a board member "...that is beyond the scope of the duties and responsibilities..." of a member of the board. Here, it was not within the duty or responsibility of the respondent as a board member to publicly post the email. In publicly posting the email, the respondent was taking private action. Next, the Commission must determine if the respondent's private action could have compromised the Board. The Commission finds that the respondent's private actions could have compromised the Board because the email contained medical

information regarding a District employee and the public posting exposed the Board to adverse consequences including possible litigation. Therefore, the Commission finds that the complainant has sustained his burden of proof and the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(e).

The complainant further alleges that the respondent violated N.J.S.A. 18A:12-24.1(g), which 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.

The Commission notes that there was contradictory testimony as to whether the respondent saw the notification on the email flagging the contents of the email as confidential. However, the Commission does not need to reach to this evidence to determine whether the respondent should have known that the information in the email was confidential. The text of the email contained personal information about a staff member that was to be discussed at an executive session of the Board. A reasonable board member would have known that personal information, particularly information related to the removal of a staff member for hospitalization due to a medical concern, was confidential. Furthermore, the fact that, in the email, the superintendent indicated that he would answer Board members' questions at the next executive session, should have also informed the respondent that the information in the email was confidential, since confidential personnel information is only discussed in executive session. Previously, in I/M/O Frank Pizzichillo, C17-02 (January 28, 2003), Commissioner of Education Decision No. 102-03 decided March 6, 2003, the Commission found that a board member should have been convinced that documents given to the Board at a public meeting were confidential due to the specific personal information contained in the documents.<sup>2</sup> In Pizzichillo the documents were not marked confidential, which is similar to this matter where the respondent claims that he did not see that the email was flagged as confidential. Like the board member in Pizzichillo, the respondent should have been convinced by the content of the email that the email was confidential. The respondent's public posting of the confidential information could have needlessly injured the staff member or the schools because it exposed the school to possible litigation and revealed confidential medical information about a staff member. Based on the foregoing, the Commission finds that the complainant has sustained his burden of proof and the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(g).

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<sup>2</sup> In Pizzichillo, the Commission found that a board member violated N.J.A.C. 18A:12-24.1(e) and (g) when he provided a member of the public with documents he received at a public meeting of the board, which contained a school administrator's payroll records. The Commission found that the documents were confidential and dissemination of the documents was private action that could have compromised the board or needlessly injure an individual or the schools.

Finally the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(i), which provides:

I will support and protect school personnel in proper performance of their duties.

When the respondent publicly posted confidential information that a staff member was removed from the school and hospitalized for a medical condition, the respondent failed to support that staff member. The Commission notes that the respondent did not just release this confidential information to a limited amount of people, but posted it on an internet chat room and bulletin board at [www.nj.com/forums/sussex](http://www.nj.com/forums/sussex) where anyone could access the information. The posting of this confidential information regarding a staff member's medical condition undermined that staff member's ability to effectively execute his or her duties. The Commission finds that the complainant sustained his burden of proof and finds that the respondent violated N.J.S.A. 18A:12-24.1(i).

## **DECISION**

The Commission finds that the complainant has established that the respondent violated N.J.S.A. 18A:12-24.1(e), (g) and (i) of the Code of Ethics for School Board Members. The Commission dismisses the allegations that the respondent violated N.J.S.A. 18A:12-24.1(b), (c) and (d).

## **PENALTY**

The Commission recommends that the Commissioner of Education impose a penalty of suspension for six months. In so doing, the Commission takes into account that, on December 6, 2007, the respondent was censured by the Commissioner of Education for violating N.J.S.A. 18A:12-24.1(d), (e), (i) and (j) of the Code of Ethics for School Board Members. (I/M/O Raymond A. Delbury, C64-06 (October 30, 2007), Commissioner of Education Decision No. 472-07 decided December 6, 2007, affirmed by State Board of Education Decision No. 1-08 decided June 18, 2008)<sup>3</sup> Thus, this is the second time that the respondent has been found to have violated the School Ethics Act. As such, the Commission finds instructive the Commissioner of Education's decision in I/M/O Sara Davis and Rosemary Jackson, Commissioner of Education Decision No. 91-03 decided February 27, 2003,<sup>4</sup> where the Commissioner imposed a more severe sanction

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<sup>3</sup> The Commission found that the respondent violated N.J.S.A. 18A:12-24.1(j) when he went into the school and took pictures of open windows in the middle school and maxi-pads in the board bathroom and then spoke with reporters regarding his concerns giving the reporters copies of the pictures. The Commission also found that the respondent violated N.J.S.A. 18A:12-24.1(d), (e), (i) and (j) when he treated teachers and other education professionals in a demeaning and harassing manner and contacted teachers and administrators directly without going through the superintendent.

<sup>4</sup> In I/M/O/ Sara Davis and Rosemary Jackson, C08-02 (November 26, 2002), the Commission found that board member, Rosemary Jackson had violated N.J.S.A. 18A:12-24(b) and (c) for lobbying the board to have her personal attorney appointed as board solicitor, and recommended that the Commissioner of Education censure Ms. Jackson. Previously in I/M/O Rosemary Jackson, C11-01 (June 26, 2001), the Commission, pursuant to a settlement agreement, recommended that board member Rosemary Jackson be

than that recommended by the Commission because a board member was found to have violated the Act a second time. In that regard, the Commissioner stated:

Given that the instant violation is Ms. Jackson's second infraction of the School Ethics Act in a short period of time, the Commissioner finds that it evidences a serious lack of attention to and concern for adherence to the law which governs her conduct, which cannot be condoned. It is crucial that board members recognize the importance of maintaining public confidence in them. Central to this effort is a clear recognition that they *must* conform their conduct to the standards set forth in the School Ethics Act. Because he finds it imperative to deter behavior that creates an impression of a violation of the public trust, the Commissioner wants it clearly understood by this and all board members that repetitive violations of the Act cannot and will not be tolerated. (Id., at page 11) (emphasis in text)

The Commission also takes into account that the respondent had knowledge and understanding of his duties and responsibilities under the Act because he had attended board member training. Indeed, the matter docketed as C64-06, which involved similar allegations of violations of the Code of Ethics, was under review by the Commission well before the respondent publicly posted the confidential email. In this regard, the Commission is troubled by the respondent's clear lack of an understanding that the email contained confidential medical information about a staff member that was to be discussed in executive session. To the extent that the respondent questioned whether the email was confidential as suggested in his answer, the appropriate course of action would have been to ask the interim superintendent before he took any action with regard to the email. His failure to do so, coupled with the posting of the confidential email on an internet chat room and bulletin board where thousands or more could gain access, constituted a strident disregard of the Code of Ethics for School Board Members. Given that the instant violation is the respondent's second violation of the Act in a short period of time and given the concerns noted above, the Commission recommends that the Commissioner of Education impose a penalty of a six-month suspension.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the School Ethics Commission's recommended sanction. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of violation may file, within **13 days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions

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reprimanded for voting on a bill list containing a bill of her employer. The Commissioner of Education accepted the penalty recommendation, and Ms. Jackson was reprimanded. (Commissioner of Education Decision No. 238-01 decided July 27, 2001)



regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, indicated below. Such exceptions must be forwarded to: 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.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4 within **30 days** of the filing date of the decision from which the appeal is taken. The filing date shall be three days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (13 days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Paul C. Garbarini, Chairperson

Mailing Date: \_\_\_\_\_

**Resolution Adopting Decision – C44-07**

**Whereas**, the School Ethics Commission has considered the pleadings, the testimony and the documents submitted in support thereof; and

**Whereas**, the Commission found that Raymond Delbury violated N.J.S.A. 18A:12-24.1(e), (g) and (i) of the School Ethics Act; and

**Whereas**, the Commission voted to recommend to the Commissioner of Education that Mr. Delbury be suspended for six months; and

**Whereas**, the Commission has reviewed the proposed decision of its staff; and

**Whereas**, the Commission agrees with the proposed decision;

**Now Therefore Be It Resolved** that the Commission hereby adopts the proposed decision. The Commission directs its staff to notify all parties to this action of its decision herein.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on November 25, 2008.

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Joanne Boyle  
Executive Director