

voted to recommend to the Commissioner of Education that Mr. Kanaby be suspended from the Board for three months.

In his exceptions, the respondent maintains that the ALJ's factual findings were substantially consistent with the respondent's version of what occurred. The respondent relies on his post-hearing briefs dated February 20 and February 22, 2007 to argue that, the facts as established by the ALJ, do not support a finding that the respondent violated the School Ethics Act (Act) N.J.S.A. 18A:12-21 et seq. The respondent's first exception is that, "The thrust of the Commission's probable cause findings under N.J.S.A. 18A:12-24(b) and (c) was that the respondent attempted to use the weight of his Board membership to pressure [the superintendent] into conferring an unwarranted benefit on his wife." See, Respondent's February 20, 2007 post-hearing brief, pages 16 & 17. The respondent then argues that the evidence shows that he was not attempting to secure paid leave days or any other benefit for his wife because the superintendent had already granted his wife a paid leave for November 22nd and the Board had already acted on the matter of an unpaid leave for November 23rd. The complainant replies that, when the respondent e-mailed the superintendent just hours before a scheduled disciplinary meeting, he was seeking preferential treatment for his wife, which could not have been obtained had respondent not been a member of the Board.

While the Commission acknowledges prior resolution of the leave granted for November 22 and 23, it notes that the superintendent had information that "Mrs. Kanaby had called out sick on the two days in question...Thus, there were two reasons for Mrs. Kanaby's absence." See, Initial Decision, page 3. In order to determine the cause for Mrs. Kanaby's absence, the superintendent arranged a meeting with her. Only hours prior to that meeting, the respondent sent an e-mail to the superintendent, copying all of the members of the Board, the business administrator, assistant superintendent and his subordinate. The respondent's e-mail was critical of the superintendent and he attempted to influence the superintendent in the supervision of his wife. Thus, the unwarranted benefit that the respondent attempted to secure for his wife was influence over the superintendent in her treatment of Mrs. Kanaby. Therefore, the Commission agrees with the ALJ's finding that the respondent violated N.J.S.A. 18A:12-24(b) and (c).

The respondent's second exception is that N.J.S.A. 18A:12-24.1(i), which provides that the Board member shall support and protect personnel in the proper performance of their duties, is a broad statement of principle, offering little guidance to Board members on what conduct is required or prohibited. In support of his contention, the respondent relies on a ruling by Judge Metzger in I/M/O William O'Brien, OAL Dkt. No. EEC 6598-04. However, the Commission disagrees with Judge Metzger's conclusion that N.J.S.A. 18A:12-24.1(i) is only a statement of principle and, therefore, not enforceable without specific code language. It would be impossible and unnecessary to codify every type of conduct that may give rise to an ethical violation under N.J.S.A. 18A:12-24.1(i).

The respondent also argues that, based on Lauren Spicer v. John Della Vecchia, et al, C31-04, (February 22, 2005), the Commission has proceeded with caution in application of

N.J.S.A. 18A:12-24.1(i) to the superintendent. However, the Commission notes that its dismissal of a violation of N.J.S.A. 18A:12-24.1(i) in Spicer, was based on the specific facts presented in that matter. In Spicer, the allegation was that the board president openly expressed resentment of the superintendent's role as chief school administrator and ordered the superintendent to stop the work she was doing. This matter can be distinguished from Spicer. The respondent's e-mail was not only highly critical of the superintendent, it was also threatening and intimidating because the respondent asked the superintendent for an accounting of her personal leave and sent the e-mail to all of the Board members and the business administrator, assistant superintendent and his subordinate. The respondent also indicated that he took the superintendent's action toward his spouse as personal and his e-mail was a personal and highly critical expression of his anger towards the superintendent in the proper performance of her duties. Furthermore, the Commission agrees with the complainant's reply wherein she notes that, in Spicer, the Commission reasoned that "an administrator should never be made to feel that she is being intimidated into taking certain actions." Id., page 6. In this matter, as noted above, the respondent's e-mail was threatening and intimidating. Because it was sent just hours before the meeting between the superintendent and the respondent's wife and based on the content of the e-mail, it is reasonable for the superintendent to assume that the respondent wanted her to give preferential treatment to his wife.

The respondent next argues that, because the e-mail was not made public, the respondent should not be found in violation of N.J.S.A. 18A:12-24.1(i). The respondent refers to I/M/O Karen Jackson, C08-05, (December 20, 2005) where the Commission found a board president violated N.J.S.A. 18A:12-24.1(i) for publicly criticizing a student Holocaust project proposed by a teacher. This matter can be distinguished from Jackson because it involves the superintendent who reports directly to the Board. The respondent's e-mail, even though it was not made public, rises to the level of a violation of N.J.S.A. 18A:12-24.1(i) because the respondent copied all of the Board members on the e-mail and expressed criticism of how the superintendent was performing in her job duties. Therefore, the Commission agrees with the ALJ's finding that the respondent violated N.J.S.A. 18A:12-24(b) and (c).

DECISION

For the foregoing reasons, the Commission accepts the conclusions of the Administrative Law Judge and finds that David Kanaby violated N.J.S.A. 18A:12-24(b) and (c) and N.J.S.A. 18A:12-24.1(c) and (i) of the Code of Ethics for School Board Members when he sent an e-mail to the superintendent and copied the entire Board.

In considering the penalty, the Commission does not agree with the respondent that the respondent's conduct is a trivial matter and a *de minimis penalty* should be imposed. The Commission agrees with the complainant's reply wherein she argues that N.J.S.A. 18A:12-29 requires the Commission to recommend to the Commissioner of Education the reprimand, censure, suspension or removal of a school official found to have violated the Act. The Commission takes note of the ALJ's suggestion that the Commission consider "that the

respondent's intercessions were both unnecessary as well as understandable in making a determination as to the penalty." See, Initial Decision, page 4. However, the Commission agrees with the ALJ that, because of Mr. Kanaby's obligation to the public as a Board member, his natural support of his wife cannot involve his position as a member of the Board. Therefore, rather than recommending a penalty of removal, the Commission recommends to the Commissioner of Education that David Kanaby be suspended for three-months.

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 13 days from the date on which the Commission's decision was mailed to the parties, Mr. Rubin 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 – C53-05

Whereas, the Commission found probable cause to credit the allegations that David Kanaby violated N.J.S.A. 18A:12-24(b) and (c) and N.J.S.A. 18A:12-24.1(c) and (i) of the Code of Ethics for School Board Members when he sent an e-mail to the superintendent and copied the entire Board; and

Whereas, the Commission transmitted the matter to the Office of Administrative Law for a hearing; and

Whereas, the Administrative Law Judge concluded that the probable cause finding was sustained and found that David Kanaby violated N.J.S.A. 18A:12-24(b) and (c) and N.J.S.A. 18A:12-24.1(c) and (i) of the Code of Ethics for School Board Members when he sent an e-mail to the superintendent and copied the entire Board; and

Whereas, the respondent filed exceptions to the ALJ's decision and complainant replied; and

Whereas, the Commission fully considered all of the documentation filed in response to the ALJ's decision and voted to accept the conclusions of ALJ's decision; and

Whereas, the Commission agrees with the written decision of its staff finding that David Kanaby violated N.J.S.A. 18A:12-24(b) and (c) and N.J.S.A. 18A:12-24.1(c) and (i) of the Code of Ethics for School Board Members and recommending to the Commissioner of Education that Mr. Kanaby be suspended for three months;

Now Therefore Be It Resolved that the Commission hereby adopts the decision 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 the School Ethics Commission adopted this decision at its public meeting on July 24, 2007.

Mary E. Torres, Acting Executive Director