

(Corrected Copy)

IN THE MATTER OF	:	BEFORE THE
VALERIE JORDAN	:	SCHOOL ETHICS COMMISSION
HIGH BRIDGE BOARD OF	:	
EDUCATION	:	Docket No. C03-09
HUNTERDON COUNTY	:	DECISION
	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on March 3, 2009 by Robert Imhoff, alleging that Valerie Jordan, a former member of the High Bridge Board of Education, Hunterdon County, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. An answer was filed on behalf of the respondent on April 9, 2009.¹ The matter was scheduled for a probable cause determination by the Commission on December 15, 2009, at which time the Commission voted to find probable cause that the respondent violated N.J.S.A. 18A:12-24.1(g) when, on October 3, 2008, she transmitted to the Interim County Superintendent of Schools confidential correspondence from Board counsel and when, on January 30, 2009, she posted on NJ.com inaccurate information regarding the salary negotiations for the Interim Superintendent. The Commission also found that the complaint was not frivolous. The Commission determined to resolve this matter on a summary basis pursuant to N.J.A.C. 6A:28-6.8(b), in that the material facts in this matter are not in dispute.²

The Commission adopted its Probable Cause Notice at its meeting on January 26, 2010 and mailed the notice to the respondent, via regular and certified mail, on January 27, 2010.³ Pursuant to N.J.A.C. 6A:28-6.8(b), the respondent was accorded 30 days from the mailing date of the Probable Cause Notice to submit a written statement of the reasons she should not be found in violation of the Act based on the undisputed facts set forth in this Probable Cause Notice.⁴ Respondent was therein notified that after expiration of the time for submission of her statement, the Commission may make a determination of violation on a summary basis. The respondent did not submit a statement in response to the Probable Cause Notice. At its meeting on March 23, 2010, the Commission found that the respondent violated N.J.S.A. 18A:12-24.1(g) and recommended a penalty of reprimand.

¹ By letter dated June 26, 2009, the respondent notified the Commission that she was no longer represented by counsel.

² On April 15, 2009, the State Board of Education adopted amendments to N.J.A.C. 6A:28, the regulations governing matters that come before the School Ethics Commission. These rules became effective on May 18, 2009. However, because the complaint in this matter was filed before May 18, 2009, the Commission followed procedures and rendered its determinations herein in accordance with the rules that were in effect at the time the complaint was filed. To the extent this decision cites to regulations, they are the regulations that were in effect when the complaint was filed.

³ The “green card” returned to the Commission shows delivery on January 29, 2010.

⁴ The respondent was therein also advised that if she disputed the facts set forth in the Probable Cause Notice, she should set forth the facts with which she disagreed and state why they are material to the case.

FINDINGS OF FACT

The following facts are deemed to be undisputed:

1. At all times relevant, the respondent was a Board member.
2. On or about the beginning of 2009, the Board was interviewing two final candidates for an Interim Superintendent's position. Responding to a Board member's concern that the per-diem salary could be further negotiated, Board member Robert Imhoff, during a Board meeting, called both finalists and both finalists agreed to a lower per-diem rate than that which was previously given in the interviews.
3. The respondent acknowledged that she posted information on NJ.com as "CodeRedd1."
4. On January 30, 2009, the respondent posted a statement on NJ.com as "CodeRedd1" regarding the salary negotiations of the Interim Superintendent. That posting states: "[Word omitted] are correct. Jeff wanted to negotiate, but the interim would not take less. The range between all potential candidates was \$600-620 a day." (Complaint attachment).
5. The January 30, 2009 posting by the respondent was an inaccurate statement.
6. The February 9, 2009 Board minutes state, in relevant part:

Mr. Imhoff also pointed out that Mrs. Jordan had inaccurately posted on the NJ Forum that "Jeff Raefski wanted to negotiate, but the interim would not take less." Mr. Imhoff pointed out that again Mrs. Jordan was lying to the public, when in fact Mr. Raefski did want to negotiate with the final candidates, and as a result of his request, the Board authorized, Mr. Imhoff, with the entire BOE present, to call the top 2 candidates and negotiate salary. Mr. Imhoff stated that both candidates made salary concessions, which Mrs. Jordan agreed and stated "oh yeah \$5.00". Mr. Imhoff pointed out that it was actually a \$10.00 per day concession for the CSA the BOE ultimately hired. *** (February 9, 2009 Board Minutes at p. 7)

7. A memorandum from the Superintendent of Schools, Patricia Ash, to the Board, dated September 11, 2008 states, in full:

Please find attached confidential correspondence from Nick Celso, Board Attorney regarding an analysis and opinion of the type of language used for executive session resolution.

This is not an agenda item. (Answer/Ash Memo, September 11, 2008)

8. On October 3, 2008, the respondent sent via telefax from her home to the office of the Interim County Superintendent the letter from the Board attorney that was marked "ATTORNEY-CLIENT PRIVILEGED – CONFIDENTIAL." The attorney's letter, dated September 3, 2008, is addressed to the High Bridge Superintendent and contains legal advice.
9. The respondent acknowledged that the fax number shown on the banner of the letter was from her fax machine.

ANALYSIS

Based on the undisputed facts set forth above, the Commission previously found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(g), which states:

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.

As noted above, the respondent did not submit a written statement in response to the Probable Cause Notice and, therefore, did not challenge any of the facts set forth in the notice. With respect to the respondent's posting on NJ.com of inaccurate information regarding the salary negotiations for the Interim Superintendent on January 30, 2009, the Commission reflects on its decision in I/M/O Randie Zimmerman, Rocky Hill Bd. of Ed., (C49-02) (July 22, 2003), Commissioner of Education Decision No. 497-03SEC, decided August 21, 2003. There, the Commission found that a Board member violated N.J.A.C. 18A:12-24.1(g) when, after receiving a complaint from a parent about a classroom, she forwarded a letter to the Superintendent which referred to the "substandard kindergarten classroom" and stated that the room was an "obvious Fire Code Violation" because there must be two available exits to any classroom." The Superintendent challenged the accuracy of the correspondence, noting that the classroom had been approved by the county superintendent for instruction. The Commission found that Ms. Zimmerman did not provide accurate information; neither did she discuss these strong allegations with her Board or give the administration an opportunity to address the concerns raised. Therefore, the Commission reasoned, she did not act in concert with her fellow board members to interpret to the staff the aspirations of the community for its school.⁵

Similarly, in the instant matter, at the probable cause phase of the Commission's review, two Board members, Ms. Kay Daughters-Musnuff and Ms. Janice Stemple, testified that the Board was interviewing two final candidates for an interim Superintendent's position when one of the Board members wanted to negotiate the per-diem salary. Thus, during a Board meeting, Robert Imhoff called the candidates and negotiated down the daily rate that was previously given in the interviews. The respondent never denied that she was present at the meeting when these

⁵ The Commission also found that the respondent violated N.J.S.A. 18A:12-24.1(e).

calls were made. Yet, her posting on NJ.com did not accurately reflect this course of events. Although it is a mere couple sentences, the Commission is concerned that this communication was presented in a manner which was inconsistent with the respondent's duty to provide accurate information *and* to act in concert with her fellow board members to interpret to the staff the aspirations of the community for its school.⁶

With respect to the respondent's transmittal of a document on October 3, 2008 to the Interim County Superintendent of Schools which the Superintendent and Board attorney deemed confidential, the Commission specifically rejects the respondent's assertion that the letter was not confidential in nature (Answer at paragraph 23) and finds that a reasonable Board member would have known that a letter from the Board attorney marked "ATTORNEY-CLIENT PRIVILEGED – CONFIDENTIAL" should have been treated as a confidential correspondence. (See, Jacobs v. Delbury, C44-07 (November 25, 2008) Commissioner of Education Decision No. 7-09SEC, decided January 9, 2009, where the Commission found that respondent's public posting of a confidential email that included information about a District employee 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.)

In I/M/O Frank Pizzichillo, C17-02 (January 28, 2003), Commissioner of Education Decision No. 102-03SEC 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 (an employee's payroll records) were confidential due to the specific personal information contained in the documents; the Commission also noted that the release of the same could have subjected the Board to adverse consequences. Consequently, the Commission found that Pizzichillo violated N.J.A.C. 18A:12-24.1(e) and (g).

In the instant matter, the Commission finds that the respondent should not have transmitted counsel's confidential correspondence to anyone outside of the Board. The Commission further finds that the Board attorney's correspondence was of such a nature that its release could have needlessly injured the Board. Accordingly, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(g) when, on October 3, 2008, she transmitted to the Interim County Superintendent of Schools confidential correspondence from Board counsel and when, on January 30, 2009, she posted on NJ.com inaccurate information regarding the salary negotiations for the Interim Superintendent.

DECISION

For the reasons set forth above, the Commission finds that Valerie Jordan violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members.

⁶ The Commission notes that there is no allegation that the information in the posting was confidential. Nor does the record provide any support for such an assumption.

PENALTY

The Commission recommends a penalty of reprimand, as it did in Pizzichillo, *supra.*, and Zimmerman, *supra.*, since it finds Pizzichillo and Zimmerman to be both factually analogous and comparable in violation(s) to the matter herein, for the reasons set forth in the above analysis.

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 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.

Robert Bender
Chairperson

Mailing Date: April 21, 2010

Resolution Adopting Decision – C03-09

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, the testimony presented on December 15, 2009; and

Whereas, at its meeting on December 15, 2009, the Commission found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(g) as set forth in Counts II and IV of the complaint, but found no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(b), as set forth in Count III or N.J.S.A. 18A:12-24.1(a), as set forth in Counts I, II and IV and, therefore, dismissed those allegations;

Whereas, the respondent was so notified and accorded 30 days to submit a written statement setting forth the reasons why she should not be found in violation of the Act.

Whereas, the respondent failed to submit a written statement; and

Whereas, at its meeting on March 23, 2010, the Commission determined that the respondent violated N.J.S.A. 18A:12-24.1(g) of the School Ethics Act and recommended a penalty of reprimand; and

Whereas, at its meeting on April 20, 2010, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on April 20, 2010.

Joanne Boyle, Executive Director

