



school-provided e-mail accounts. (Initial Decision at p. 2) Although the text of the respondent's e-mail was not available, the respondent at no time disputed that the text of the e-mail that she sent to school employees was consistent with Exhibit P-2, the e-mail sent by her running mate, Mr. Rubrecht. That e-mail stated:

As we begin our campaign we find ourselves in need of many things. We are hoping you, our valued supporters, can help us once again.

The days of simply placing signs on lawns, shaking hands and hoping that it will be enough to win an election are gone. Yes, our signs are a great help but we have found, after many campaigns that flyers, signs, magnetic reminder cards and postcards (along with postage) are all essential when trying to get the word out.

We are at a critical crossroad in this district, needing to make some critical changes. With your continued help we can accomplish so much. As board members we will show support of our new Superintendent and help to ease his transition. We will move forward and do what's best for our children and not get caught up in the day-to-day micromanagement of the district. We will work to educate every child at every level so all of our children can reach their highest potential. We will show our community, and its organizations, that we respect and value their input and opinions and support their efforts on behalf of our children.

Simply stated, we need your support of time, effort and money to run an efficient, effective and successful campaign. Only with your support can we win the election and dedicate our efforts to making the Matawan Aberdeen School District an environment where all of our children will thrive.

We are currently soliciting monetary contributions to get this campaign moving in the right direction. We can no longer afford to do it alone and need your help to raise the money that will allow us to run this campaign the best way possible.

Thank you in advance for whatever you can give. We promise to work hard to win this election for all of you.

Jan Rubino and Marty Ruprecht

P.S. of course, any contribution will be greatly appreciated but...

A donation of \$25.00 will pay for 6 signs. (we need 200)

A donation of \$50.00 will pay for 200 postcard stamps (we need 3000)

Please make checks out to: J.R. and M.R. for Board of Education Election. We have opened an account at Commerce, by law, for any and all donations and expenditures.

[Home addresses omitted.] (Exhibit P-2)

The ALJ found that the respondent “sought contributions from three district [employees] using the school email system, and they contributed to her campaign.” (Id. at p. 5) The Commission notes in this regard that the ALJ’s findings of fact must be accorded deference.<sup>2</sup> Like the ALJ, the Commission is not assuaged by the respondent’s assertion that the staff members were “long-time friends” of hers. (Id. at p. 3) They were still employees of the Board of Education.

With respect to the ALJ’s conclusions of law, the Commission first notes that it has determined that N.J.S.A. 18A:12-24(e) requires a showing that when the school official accepted the contribution, s/he did so based upon the understanding that it was given for the purpose of influencing him/her, directly or indirectly, in the discharge of his/her official duties. I/M/O Meera Malik and Elizabeth Vasil, C06-98 & C08-98 (September 22, 1998). In this connection, the Commission recognizes that current technology affords candidates direct and immediate access to District staff; this benefit carries with it a concomitant burden to avoid any language or conduct that may even subtly hint at reciprocity or *quid pro quo*.

Even granting that for a full year the respondent recused herself from voting on “any matters involving hiring, rehiring, tenure, contracts, collective bargaining, or other staffing matters for all district employees” (initial decision at p. 4), this does not alter the fact that *at the time of the solicitation*, the respondent: (1) requested a donation from three school employees (2) by using their school-provided e-mail accounts (3) when she was in a position to directly or indirectly affect their employment (4) and where the text of the e-mail solicitation states that the (solicited) contributions will enable the candidates “to make some critical changes.” As the ALJ found, the employees contributed to her campaign. (Initial Decision at p. 4) As such, the Commission finds sufficient support in the record to concur with the ALJ that a violation of N.J.S.A. 18A:12-24(e) is established.

Next, the Commission agrees with the ALJ that the record supports the conclusion that the respondent violated N.J.S.A. 18A:12-24.1(e), as set forth in the Initial Decision, by taking private action that was of such a nature that it might have compromised the Board. (Id. at p. 7) “Private action” means any action taken by a member of a district board of education that is beyond the scope of the duties and responsibilities of the member. N.J.A.C. 6A:28-7.1. The respondent’s actions, as an incumbent candidate, may certainly be viewed as private action. As noted in the Initial Decision, there need not be a demonstration that the respondent, in fact, compromised the Board. Here, the Commission notes that as a result of the respondent’s actions, the Board attorney issued a memorandum on April 4, 2008 to all Board members

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<sup>2</sup> The Commission “may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record.” N.J.S.A. 52:14B-10(c).

regarding the solicitation and/or receipt of campaign contributions from individual employees and the need for subsequent recusal on the individual's employment issues. (Exhibit P-4) One could reasonably conclude that the Board was sufficiently concerned about the implications of the respondent's actions and, therefore, turned to its counsel who quickly sought to thwart any potential violations.

Finally, the Commission agrees with the ALJ that the record supports the conclusion that the respondent violated N.J.S.A. 18A:12-24.1(f), as set forth in the Initial Decision, when she used the school e-mail for District employees as a means to solicit donations to her campaign, which yielded contributions for her campaign.

## **DECISION**

For the reasons set forth above, the Commission adopts the Initial Decision of the ALJ finding that the respondent violated N.J.S.A. 18A:12-24(e), and N.J.S.A. 18A: 12-24.1(e) and (f).

## **PENALTY**

The Commission further adopts the ALJ's recommended penalty of a six-month suspension, finding precedent for such a penalty where there are multiple findings of violations. (See, Yafet v. Elbert Smith, Hillside Bd. of Ed., Union County, C24-07 (October 27, 2008), aff'd, Commissioner of Education Decision No. 156-09A, decided May 15, 2009 wherein the Commission found that the respondent violated N.J.S.A. 18A:12-24.1(e), (d), (i) and (j) and recommended a six-month suspension, which was affirmed by the Commissioner; Jacobs v. Delbury, Sussex Wantage Reg'l Bd of Ed., Sussex County, C44-07 (November 23, 2008) Commissioner of Education Decision No. 7-09SEC, decided January 9, 2009, wherein the Commission found that the respondent violated N.J.S.A. 18A:12-24.1(e), (g), and (i) and recommended a six-month suspension, which was approved by the Commissioner.) The Commission also notes that in a series of cases where Board members were found in violation of N.J.S.A. 18A:12-24(e) and 24(b) after soliciting campaign donations from a vendor, the Commission specifically noted that it would have recommended removal of those Board members, but, at the time of its determinations, they were no longer on the Board. I/M/O Hugh Gallagher, Keansburg Bd. of Ed., Monmouth County C03-01 (July 23, 2002), Commissioner of Education Decision No. 387-02SEC decided November 6, 2002; I/M/O Judy Ferraro, Keansburg Bd. of Education, Monmouth County, C04-01 (July 23, 2002), Commissioner of Education Decision No. 348-02SEC decided September 23, 2002); I/M/O Thomas Keelen, Keansburg Bd. of Ed., Monmouth County, C06-01 (June 24, 2003), Commissioner of Education Decision No. 549-03SEC decided September 22, 2003. Thus, on balance, and in consideration of the mitigating factors in this matter, the Commission finds that the ALJ's recommendation for penalty is appropriate.

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 W. Bender  
Chairperson

Mailing Date: September 29, 2010

## **Resolution Adopting Decision – C16-08**

**Whereas**, the Commission found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(e) and N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics for School Board Members; and

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

**Whereas**, the Administrative Law Judge concluded in her Initial Decision that the respondent violated N.J.S.A. 18A:12-24(e) and N.J.S.A. 18A:12-24.1(e) and (f) and recommended a penalty of six month's suspension; and

**Whereas**, after consideration of the full record, at its meeting on August 31, 2010, the Commission adopted the Initial Decision of the ALJ; and

**Whereas**, the Commission finds that the within decision accurately memorializes its affirmance of the ALJ's 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.

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Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on September 28, 2010.

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Joanne Boyle, Executive Director  
School Ethics Commission