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<b>SUSAN DUNBAR BEY</b>	:	<b>BEFORE THE SCHOOL</b>
	:	<b>ETHICS COMMISSION</b>
	:	
v.	:	
	:	
<b>SEAN BROWN</b>	:	<b>Dkt. No. C25-11</b>
<b>CAMDEN BOARD OF EDUCATION</b>	:	<b>DECISION</b>
<b>CAMDEN COUNTY</b>	:	

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**PROCEDURAL HISTORY**

This matter arises from a complaint filed on May 16, 2011 by Susan Dunbar Bey alleging that Sean Brown, a member of the Camden Board of Education (“Board”) violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 *et seq.* Specifically, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(g) and (i) of the Code of Ethics for School Board Members in connection with statements made on his Facebook page and in a newspaper article. The respondent filed an answer on June 8, 2011. The answer alleged that the complaint was frivolous. Pursuant to N.J.A.C. 6A:28-7.2(b), the complainant was accorded the opportunity to submit a reply to the frivolous allegation, but did not.

The parties were notified by letter dated June 22, 2011 that the Commission would consider this matter at its meeting on July 26, 2011 in order to make a determination pursuant to N.J.A.C. 6A:28-10.8(a) as well as to consider the allegation of frivolousness. At its meeting on July 26, 2011, the Commission voted to find that the above-captioned complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2. Additionally, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to retain this complaint for hearing.

By letter dated October 12, 2011, the parties were notified that this matter would be scheduled for hearing at the Commission’s meeting on November 22, 2011. Both parties appeared *pro se*. After hearing all testimony, as summarized below, the Commission voted during the public portion of its meeting to find that the respondent had violated the Act, as set forth below.

**SUMMARY OF THE RECORD**

The complainant, who is President of the Board, testified that the respondent was present at the Board’s meeting on January 25, 2011 and, after the meeting, he stated on his Facebook page that the Board President does not let students speak. In this instance, the complainant explained that a student representative was going to make statements at the meeting which the complainant believed would be detrimental, so she, as Board President, did not allow the student representative to speak. Exhibit C-1, a printout of the respondent’s Facebook page, was accepted into evidence. In response to questions from the Commission, the complainant stated that the student was, indeed, a student representative and not a voting member of the Board. The

complainant further testified that the Board's counsel was present at the meeting, but did not raise a concern about not letting the student speak.

The complainant testified that on May 2, 2011, the respondent posted a statement on his Facebook page wherein he compared the Superintendent to a terrorist. Exhibit C-2 was accepted into evidence and the complainant read from the text of the posting, which also included a picture of the Superintendent. The complainant testified that such writings hurt the students who grapple with constant negative publicity about the District. Moreover, when Board members say such things, the complainant testified that there is an assumption that the Board member has some insight, which is not true.

The complainant testified that the media frequently attend Board meetings in pursuit of a story. Based on her training, she believes that she, as the President, is the spokesperson for the Board. The complainant read from a newspaper article published on May 8, 2011, which was accepted as Exhibit C-3. Therein, the respondent is quoted stating there has been no improvement in the graduation rate for years. The complainant testified that she particularly objected to the respondent's statement in the article that the Board and the administrators believe that minorities cannot perform better than they are performing. In response to questions from the Commission, the complainant could not point to any specific inaccuracy with respect to the respondent's statement about graduation rates, but added that the official graduation rates were not available when he made this statement. The complainant questioned the basis for the respondent's statement about the Board and the administration being satisfied with the students' performance.

The respondent, Sean Brown, has been a member of the Board since May 2010. He stated that he believes the basis of these charges is an ideological difference of opinion. As to his comments on Facebook, the respondent questioned how any such statements were any different from him making statements to a group of his friends at his home. In the instance following the January 25<sup>th</sup> Board meeting, the respondent said that he merely posted what happened at that meeting. The respondent testified that the complainant did not let the student representative speak. He explained that at the Board meeting, there was a proposed after school program and the Board was being asked to approve the teachers for the program. The respondent testified that the student's question was essentially challenging the wisdom of an afterschool program and whether it would be effective, but the complainant did not let the student finish. Maybe, the respondent posited, the student was going to make a statement about a teacher, but he affirmed that it irritates him when students are not able to speak. This was the essence of his statement on his Facebook page. He also referred to the fact that the District did not, after six months, have a District plan. Thus, he stated that parents and students needed to be scared because the District was not providing a thorough and efficient education. The respondent testified that the forthcoming QSAC<sup>1</sup> report will verify his admonition. The respondent stated that he has an obligation to let the community know this information.

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<sup>1</sup> "QSAC" refers to the New Jersey Quality Single Accountability Continuum. NJQSAC is a system for evaluating and monitoring all public school districts in the State. It is designed to be a single, comprehensive accountability system that consolidates and incorporates the monitoring requirements of applicable State and Federal programs. Under NJQSAC, districts are evaluated in the areas of instruction and program, personnel, fiscal management,

In response to cross-examination from the complainant, the respondent explained that Facebook is a tool for him to share information with his friends and his only limitation in doing so should be that he cannot discuss matters that were discussed in closed session. In response to questions from the Commission, the respondent stated that, as of today, his Facebook account is not public. However, he stated that most of the things that he has on his page are accessible to the public and he has about 1,200 Facebook friends.

With respect to Exhibit C-2, the respondent testified that he wrote this statement at about 1:00 in the morning. Noting that he is always careful in choosing his words, he posted, “Now if we could only do something about our local terrorists that destroy dreams and burn futures.” The respondent notes that in this posting, he did not directly mention a particular person. He testified that the reason the picture of the Superintendent is there is because when he posted the link to the Camden City Public Schools, the Superintendent’s picture came up. The respondent was clear in his testimony that he saw the Superintendent’s picture before allowing the statement to “go live,” but he did not remove it. He affirmed that he does not regret the posting. He stated that it was “possibly mean,” but “not inappropriate.” The respondent explained that there was so much attention on May 1, 2011 about the killing of Osama Bin Laden, he could not help but think how “off-focus” people were in that there are so many people struggling in the City of Camden. On cross-examination, the respondent further explained that he did not take down the picture of the Superintendent because he was claiming that there are certain people who are terrorists for their own District and the Superintendent was included in that group.

With respect to his comments to the press as shown in Exhibit C-3, the respondent’s testimony addressed the complainant’s concern with his statement in the article that the Board and the administrators believe that minorities cannot perform better than they are performing. On this, the respondent testified that meeting after meeting, he believes there is an ideology exhibited by some that a 50% graduation rate is the best they can do in a poor minority community. He stated that he hears this all the time and maintains there is a philosophical difference about education and how the Board chooses to use its power to meet its duty to provide a thorough and efficient education. The respondent acknowledged that he cannot speak for the Board and that the better practice is to allow the Board President to be the spokesperson. However, the statements in Exhibit C-3 represent his opinion; he chose to talk to the media because he maintains that parents need to know that not everyone wants to be a cheerleader or blind supporter of poor management. When cross-examined about the basis for this statement, the respondent replied that this is the way the District is governed. He based his statement on comments from the Superintendent and from other Board members. He testified that he believes the students suffer because of the poor management in the District.

**Complainant’s Exhibits<sup>2</sup>**

C-1	Facebook posting about the January 25, 2011 Board meeting.
C-2	Facebook posting from May 2, 2011.
C-3	Article published in May 8, 2011.

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operations and governance, so as to determine the extent to which they are providing a thorough and efficient education. N.J.A.C. 6A:30-1.1.

<sup>2</sup> The respondent did not offer any exhibits into evidence.

## **FINDINGS OF FACT**

The Commission finds the following facts:

1. The complainant is the President of the Board.
2. The respondent has been a member of the Board since May 2010.
3. At the Board's meeting on January 25, 2011, the complainant believed that a student representative was going to make inappropriate statements, so she, as Board President, did not allow the student representative to speak.
4. The respondent posted the following statement on his Facebook page after the January 25, 2011 Board meeting:

The school board President doesn't let students speak; the board votes for programs that are not effective; six months is not long enough to write a plan. PARENTS AND STUDENTS - BE SCARED. (Exhibit C-1)

5. The respondent posted the following statement on his Facebook page on May 2, 2011:

Now if we could only do something about our local terrorists that destroy dreams and burn futures. (Exhibit C-2)

Under this statement is a link to the Camden City Public Schools and a picture of the Superintendent. The respondent acknowledged that he saw the photo, but did not remove it.

6. The following statement appeared in the press on May 8, 2011:

School board member Sean Brown said he had been unable to secure information from the district about how the graduation rate is calculated and how newly funded police officers would be assigned in the schools. "There is no improvement in high school graduation in many years, nor are there many initiatives to address that issue," Brown said. "What happened in Newark is exactly what needs to happen in Camden," Brown said. "The difference between some of the school board members and school administrators and me is that they believe that poor, minority students can't do any better than this." (Exhibit C-3)

## ANALYSIS

The complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a). See also, N.J.S.A. 18A:12-29(b). Here, the complainant asserts that the respondent's actions violated N.J.S.A. 18A:12-24.1(g) and (i) of the Code of Ethics for School Board Members.

### Count 1

In Count 1 of the complaint, the complainant asserts that after the January 25, 2011 Board meeting, the respondent made inaccurate statements pertaining to the Board president and Board business on his Facebook page, which was in violation of 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's regulations require that:

Factual evidence of a violation of the confidentiality provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that the respondent(s) took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that the respondent violated the inaccurate information provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by the respondent(s) and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. N.J.A.C. 6A:28-6.4(a)7.

The respondent does not deny that he made the statement in Exhibit C-1 on his Facebook page. Although the complainant claims the statement was inaccurate, she also testified that she did, indeed, prohibit the student from speaking at the January 25, 2011 meeting. As to the remainder of the posting, the complainant has offered no evidence that substantiates that the respondent posted inaccurate information. Rather, it appears that the respondent was offering his personal opinion. Accordingly, the Commission finds that the complainant failed to factually establish that the respondent violated N.J.S.A. 18A:12-24.1(g) and Count 1 is, therefore, dismissed.

## Count 2

In Count 2 of the complainant, the complainant asserts that on May 2, 2011, the respondent compared the Superintendent to a terrorist on his Facebook page, which was in violation of N.J.S.A. 18A:12-24.1(i), which provides:

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

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(i) shall include evidence that the respondent(s) took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties. N.J.A.C. 6A:28-6.4(a)9.

The respondent does not deny that he was responsible for the Facebook posting in Exhibit C-2. In this connection, the Commission notes that it has found violations of N.J.S.A. 18A:12-24.1(i) where the comments made to or about a school employee were direct, confrontational and intimidating. For instance, in I/M/O Charles Fischer, Eatontown Bd. of Ed., Monmouth County, C30-03 (February 24, 2004), Commissioner of Education Decision No. 157-04SEC, April 12, 2004, the Commission found that a board member violated N.J.S.A. 18A:12-24.1(i) when he called an employee at home and became angry when she refused to provide him with the reports that he had requested. In I/M/O David Kanaby, Hillsborough Bd. of Ed., Somerset County, C53-05 (July 24, 2007), Commissioner of Education Decision No. 350-07SEC, September 10, 2007, the Commission found that the respondent Board member violated N.J.S.A. 18A:12-24.1(i) when he sent an email to the Superintendent which was both "threatening and intimidating" in that it asked the Superintendent for an accounting of her personal leave. The Board member sent the email to all Board members, as well as the Business Administrator, the Assistant Superintendent and his subordinate. The Commission found the respondent's email to be "a personal and highly critical expression of his anger towards the superintendent in the proper performance of her duties." (Kanaby at slip op. page 3)

In I/M/O David Hollander, Springfield, Bd. of Ed., Union County C49-07 (February 24, 2009), aff'd, Commissioner of Education Decision No. 62-10ASEC, decided March 5, 2010, the respondent Board member wrote a letter to the State complaining about his Superintendent. The Commission found that the letter was not a mere statement of disagreement or dissatisfaction with the Superintendent's handling of matters. The respondent accused the complainant of allowing his administrative staff to violate Board policy, then directed his recriminations to the attention of State officials. Finally, in Brown et al. v. David Matthews, City of Englewood Board of Education, Bergen County, C13-07 (October 27, 2008), aff'd, Commissioner of Education Decision No. 123-09A, April 14, 2009, the Commission found the respondent in violation of N.J.S.A. 18A:12-24.1(i) when he refused to cooperate with the District's affirmative action officer (AAO) and, in so doing, engaged in offensive comments so upsetting to the employee that she resigned as the District's AAO.

Here, the Commission finds that the respondent's action in posting the "terrorist" message was, indeed, deliberate. He candidly testified that, even though he did not mention a particular person in the text, when the Superintendent's photo came up as a result of posting a link to the District's website, he saw the picture and did not remove it. The respondent explained that he did not take down the picture of the Superintendent because he was claiming that there are certain people who are terrorists for their own District and the Superintendent was included in that group. In so stating, the respondent explained that there was much attention focused on the killing of Osama Bin Laden, but not enough attention focused on the struggles of the students in the City of Camden. The respondent testified that he does not regret the posting; he stated that it was "possibly mean," but "not inappropriate."

The Commission disagrees. While it recognizes the respondent's right to express his difference of opinion with the Board and the administration, it must also find, under these circumstances, that the respondent's chosen method and manner for doing so was inappropriate. Comparing the Superintendent to a terrorist, on a social media outlet which allowed for access by many people, was an intentionally confrontational act. In this connection, the Commission acknowledges the complainant's observation that members of the community assume that Board members have insight that others do not have. Thus, when a sitting Board member makes such a judgmental proclamation, it is likely to be credited far more than a statement offered by an ordinary citizen. As such, the Commission finds that the statement may reasonably be considered as undermining, opposing, compromising or harming the Superintendent in the proper performance of her duties. Accordingly, the Commission finds that the complainant has established that the respondent violated N.J.S.A. 18A:12-24.1(i).

### Count 3

In Count 3 of the complainant, the complainant asserts that the respondent was quoted in a newspaper article in which he made inaccurate statements concerning fellow board members and school administration. The complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(g) and (i), as set forth above. The respondent does not deny that he made the statements to the media that are in Exhibit C-3. To the extent that the complainant claimed that the graduation statement was inaccurate, she offered no evidence to substantiate the alleged inaccuracy. The complainant's testimony on this count essentially focused on the respondent's statement that the school board members and school administrators believe that poor, minority students cannot do any better. While this may be a loaded statement, the Commission finds that absent any evidence to the contrary, it appears that the respondent was, again, offering his personal opinion. Accordingly, the Commission finds that the complainant failed to factually establish that the respondent violated N.J.S.A. 18A:12-24.1(g). Neither does the Commissioner find that the complainant's statements to the media rise to the level of a violation of N.J.S.A. 18A:12-24.1(i). Accordingly, Count 3 is, therefore, dismissed.

## DECISION

For the reasons set forth above, the Commission dismisses Counts 1 and 3 in the complaint, but finds that Sean Brown has violated N.J.S.A. 18A:12-24.1(i) of the Code of Ethics for School Board Members as set forth in Count 2.

## PENALTY

The Commission recommends a penalty of censure in this matter. In so doing, the Commission notes that this is essentially a matter of first impression. That is, while there have been incidents of Board members posting inappropriate information online at NJ.com, (see, I/M/O Valerie Jordan, High Bridge Bd. of Ed., Hunterdon County, C03-09 (April 20, 2010) Commissioner of Education Decision No. 173-10SEC, decided June 7, 2010; Jacobs v. Delbury, Sussex Wantage Reg'l Bd. of Ed., Sussex County, C44-07 (November 25, 2008) Commissioner of Education Decision No. 7-09 SEC, decided January 9, 2009), this is the first time the Commission has found a violation of the Act for a Board member's postings on Facebook. As such, the Commission declines to necessarily be guided by the penalties designated in those online cases (reprimand and six-month suspension, respectively) or even by the penalties issued in the matters cited in this decision (i.e., I/M/O Charles Fischer, *supra*; I/M/O David Kanaby, *supra*; I/M/O Hollander, *supra*; and Brown et al. v. David Matthews, *supra*.) Rather, the Commission takes this opportunity to impress upon this respondent, as well as other Board members, that in using social media, the affirmative duties within the Code of Ethics for School Board Members may not be overlooked. The Commission finds that a censure is an appropriate sanction to convey this cautionary message.

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: December 21, 2011

## **Resolution Adopting Decision – C25-11**

**Whereas**, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and the testimony of the parties from its hearing on November 22, 2011; and

**Whereas**, at its meeting on November 22, 2011, the Commission dismissed Counts 1 and 3 in the complaint, but found that the respondent violated N.J.S.A. 18A:12-24.1(i) of the Code of Ethics for School Board Members as set forth in Count 2 and recommended a penalty of censure; and

**Whereas**, at its meeting on December 20, 2011, 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.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on December 20, 2011.

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Joanne Boyle, Executive Director