
IN THE MATTER OF : **BEFORE THE SCHOOL**
JOSEPH RAINES : **ETHICS COMMISSION**
 :
ASBURY PARK BOARD OF : **Docket No. C36-11**
EDUCATION : **DECISION**
MONMOUTH COUNTY :
 :
 :

PROCEDURAL HISTORY

This matter arises from a complaint filed on July 21, 2011 by Corey J. Lowell alleging that Joseph Raines, a member of the Asbury Park Board of Education (“Board”), violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. Specifically, the complainant asserted that the respondent violated N.J.S.A. 18A:12-24(c) when he voted to reappoint his mother, a teacher in the District, and her supervisor. After being granted an extension for good cause shown, the respondent filed his answer on October 7, 2011.

By letter dated October 12, 2011, the parties were advised that the Commission would review this matter at its meeting on October 25, 2011. At that meeting, the Commission voted to find probable cause to credit the allegation that the respondent violated the Act. A probable cause notice was issued to the complainant and respondent on November 23, 2011. Pursuant to N.J.A.C. 6A:28-7.1(c)1, because the respondent admitted the material facts in this matter, he was accorded 20 days to submit a statement setting forth the reasons he should not be found in violation of the Act, after which time the Commission would 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 January 24, 2012, the Commission voted to find that the respondent violated N.J.S.A. 18A:12-24(c) and to recommend a penalty of reprimand.

FINDINGS OF FACT

The following facts are deemed to be undisputed:

1. The respondent was at all relevant times a member of the Board.
2. The respondent’s mother is employed in the District as a teacher.
3. The respondent did not dispute that he voted for the reappointment of his mother, an elementary school teacher in the District, and his mother’s supervisor, the school principal. (Answer) The initial vote took place on May 11, 2011. (Board Minutes from May 11, 2011 at pp. 8 and 10; attachment B.1) At its meeting on May 25, 2011, there was a motion to rescind the reappointment list presented on May 11, 2011; the Board thereafter voted on a revised reappointment list for 2011-2012. (Board Minutes from May 25, 2011 at pp. 3, 4, 10; attachment B.1) The respondent asserted, and this record

confirms, that the Board voted on a large list of reappointments on both occasions. (Answer)

4. The respondent affirmed that his vote was in error and the vote was amended on August 10, 2011 to show an abstention. (Answer)
5. Thus, the amendment of the vote was effectuated after the complaint herein was filed.
6. By letter dated October 13, 2011, the Business Administrator/Board Secretary submitted the following statement to the Commission:

At a meeting of the Asbury Park Board of Education on May 11, 2011, Mr. Raines voted in the affirmative on resolution item 1: "Reappointments" in error. At a subsequent meeting of the Asbury Park Board of Education on August 10, 2011, a motion to amend the affirmative vote cast by Mr. Raines to an abstention due to inadvertence and/or mistake was approved. (Hastings Letter, October 13, 2011)

ANALYSIS

The Commission previously found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c) in connection with his actions, now set forth above in the factual findings. N.J.S.A. 18A:12-24(c) provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

In order to find a violation of N.J.S.A. 18A:12-24(c), the Commission must find that the respondent has either: 1) taken action in his official capacity in a matter where he, or a member of his immediate family had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment or 2) acted in his official capacity in a matter where he or a member of his immediate family had a personal involvement that is or creates some benefit to him or the member of his immediate family.

The School Ethics Act at N.J.S.A. 18A:12-23 defines "member of the immediate family" as the spouse or dependent child of a school official residing in the same household. Therefore, the respondent's mother is not a member of the immediate family, but rather a "relative," defined by the Act as a spouse, natural or adopted child, parent or sibling of a school official.

Nevertheless, the Commission has applied this provision to situations where Board members voted on, or were otherwise involved in, matters pertaining to their relatives.

Specifically, in I/M/O James Russo and Thomas Scarano, Woodbridge Twp. Bd. of Ed., Middlesex County, C12-97 (January 27, 1998) Commissioner of Education Decision No. 22-1/98, decided April 16, 1998, the Commission found a conflict of interest under N.J.S.A. 18A:12-24(c) when a board member negotiated a sibling's contract when the sibling was in the local bargaining unit. In I/M/O Carmelo Garcia, Hoboken Bd. of Ed., Hudson County, C41-05 (October 24, 2006) Commissioner of Education Decision No. 436-06SEC, decided December 8, 2006, the Commission concluded that a board member violated N.J.S.A. 18A:12-24(c) when he participated in discussions with the superintendent regarding the employment of his brother and then voted for the appointment of his brother to a paid position. Additionally, in I/M/O Dino Pettinelli, Alpha Bd. of Ed., Warren County, C01-04, (July 27, 2004), Commissioner of Education Decision No. 266-7/04, decided September 8, 2004, the Commission found that a board member violated N.J.S.A. 18A:12-24(c) when he was present at, and participated in, two executive session discussions regarding the hiring of his sibling. There, the Commission found that there is a benefit of intrinsic value in the personal satisfaction that a board member receives in ensuring that a sibling obtains employment.

In Advisory Opinion A16-00 (December 1, 2000) the Commission advised that a board member would violate N.J.S.A. 18A:12-24(c) if he were to participate in negotiations or vote on a contract with the local education association when his brother held a position in the maintenance department and was a member of the local education association of the district where he serves as a board member. The Commission therein found that the benefit set forth in N.J.S.A. 18A:12-24(c) need not be financial; otherwise, the "personal involvement" provision of N.J.S.A. 18A:12-24(c) would be redundant. Also, in A16-00, the Commission advised that it considered "...an involvement to be personal whenever a school official has a relationship that the public may perceive as being predominant to the best interest of the district. Therefore, a benefit can be something of intrinsic value, but no monetary worth." Id. page 2. Thus, the Commission finds that when the respondent voted to reappoint his mother, albeit in error, he acted in his official capacity in a matter where he had a personal involvement that created a benefit to him, in violation of N.J.S.A. 18A:12-24(c).

DECISION

For the reasons set forth above, the Commission finds that Joseph Raines violated N.J.S.A. 18A:12-24(c).

PENALTY

The Commission recommends a penalty of reprimand, as it did in similar matters where Board members were found to have violated N.J.S.A. 18A:12-24(c) for voting on matters that involving their relatives. See, Pettinelli, supra, Garcia, supra.

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: February 29, 2012

Resolution Adopting Decision – C36-11

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof; and

Whereas, at its meeting on October 25, 2011, the Commission found probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act; and

Whereas, the respondent failed to submit a written statement in response to the Probable Cause Notice issued on November 23, 2011;

Whereas, at its meeting on January 24, 2012, the Commission determined that the respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act and recommended a penalty of reprimand; and

Whereas, at its meeting on February 28, 2012, the Commission agreed that the within decision accurately memorializes its findings and recommendations;

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 the Resolution was duly adopted by the School Ethics Commission at its public meeting on February 28, 2012.

Joanne Boyle, Executive Director
School Ethics Commission