
**IN THE MATTER OF
STERLING WATERMAN
JERSEY CITY BOARD OF
EDUCATION,
HUDSON COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

**Docket No. C10-12
OAL Dkt. No. EEC 13641-12
DECISION**

PROCEDURAL HISTORY

This matter arises from a complaint filed before the School Ethics Commission (Commission) on March 21, 2012 by complainant, Terry Watkins-Williams. By letter dated March 26, 2012, the Commission notified the complainant that the complaint lacked certain requirements in that she failed to set out specific violations of the School Ethics Act in separate paragraphs as required. On April 2, 2012 the complainant filed an amended complaint, alleging that respondent, Sterling Waterman, a member of the Jersey City 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(b), as well as N.J.S.A. 18A:12-24.1(c), (d), (i), and (j) of the Code of Ethics for School Board Members (Code). Complainant's narrative includes dates of violations that exceeded the 180-day filing requirement provided in N.J.A.C. 6A:28-6.5(a). Consequently, the Commission dismissed that part of her complaint, which included events beyond the 180-day limit and commenced its review with events occurring after September 23, 2011.

On April 30, 2012, the respondent filed an answer, which did not include a Certification under Oath. On May 18, 2012, the respondent amended his answer, alleging that the complaint was frivolous. By letter dated July 3, 2012, the complainant and respondent were notified that the Commission would review this matter at its meeting on July 24, 2012 in order to make a probable cause determination, in accordance with procedures set forth at N.J.A.C. 6A:28-10.9, as well as a determination on the allegation of frivolousness. The complainant was accorded an opportunity to respond to the claim of frivolousness, pursuant to N.J.A.C. 6A:28-7.2(b), but she did not do so.

At its July 24, 2012 meeting, the Commission found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b). The matter was revisited again at its next meeting on August 28, 2012 to review alleged violations of the Code of Ethics for School Board Members. In addition to its prior determination, the Commission also found cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(d) and dismissed all other allegations. Moreover, the Commission found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2. Finally, the Commission voted to transmit the matter to the Office of Administrative Law (OAL) for a *de novo* hearing where the Commission prosecuted those allegations in the complaint, for which it found probable cause.

Thereafter, this matter was scheduled for hearings on October 30, 2013 and October 31, 2013 before the Administrative Law Judge (ALJ). Although the respondent's attorney appeared on both days, the respondent failed to report on either day, and as of November 4, 2013, he did not provide a reason for his non-appearance. The ALJ issued an Initial Decision dismissing the matter on November 1, 2013 and mailed same to the parties on November 4, 2013. Pursuant to N.J.A.C. 1:1-3.3(b) and N.J.A.C. 1:1-14.4, the ALJ returned the file to Commission to determine whether a violation of the Act occurred in accordance with N.J.S.A. 18A:12-29. Additionally, the Commission requested and obtained an extension of time until January 30, 2014 in which to consider the full record of this matter.

The Deputy Attorney General, prosecuting the complaint on behalf of the Commission, submitted exceptions on November 13, 2013. He maintains that a dismissal of the complaint was inappropriate since there had been no adjudication on the probable cause finding. Respondent argued in his reply exceptions, received November 25, 2013, that his non-appearance should not be construed as a waiver of defenses or his Answer as there is no provision to support such a penalty. He further argues that any of the alleged violations, on which the Commission did not previously find cause should be considered dismissed, and the Commission's decision considered final as to those issues.

At its meeting on November 26, 2013, the Commission rejected the ALJ's Initial Decision, dismissing the complaint and instead issued a default against the respondent for his failure to appear at the hearings. For his conduct as alleged in the complaint and pursuant to N.J.A.C. 6A:28-10.7(c)(2)(i), the Commission voted to find that Sterling Waterman violated N.J.S.A. 18A:12-24(b) of the Act and N.J.S.A. 18A:12-24.1(d) of the Code. In so finding, the Commission recommended a penalty of reprimand.

ANALYSIS

Pursuant to N.J.S.A. 18A:12-29(b) and N.J.A.C. 6A:28-10.7 et seq., upon a finding of probable cause, the complainant shall no longer be a party to the complaint. Where the Commission transmits a complaint to the OAL pursuant to N.J.A.C. 6A:28-10.1(c)2, the attorney for the Commission shall prosecute those allegations in the complaint which the Commission found probable cause to credit.

Where a matter is transmitted to the OAL and the respondent fails to appear before the OAL, the matter is returned to the Commission for disposition. At such time, the allegation(s) that the Commission found probable cause to credit shall be deemed admitted and the Commission may proceed to a determination of a violation on a summary basis. N.J.A.C. 6A:28-10.7(c)(2)(i). N.J.A.C. 1:1-14.4(a).

In early November 2013, the ALJ returned the case to the Commission, noting the respondent failed to appear for the hearings scheduled on October 30, 2013 and October 31, 2013. The Commission's review of the record also reveals that the respondent failed to respond to requests from his counsel and refused to participate in the preparation of his defense. N.J.A.C. 1:1-14.4(a) states that the sanction for unreasonable failure to comply with any order from a judge or with any requirements of this chapter warrant, *inter alia* the suppression of a defense, exclusion of evidence or the imposition of any other appropriate case-related action. Respondent's conduct during the hearing process warrants the imposition of these sanctions.

Moreover, the respondent's failure to appear is deemed an admission of the factual allegations asserted in support of the two claims transmitted to the OAL for hearing. Consequently, the Commission finds a violation of N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A: 12-24.1(d).

DECISION

For the reasons set forth above, the Commission rejects the Initial Decision of the ALJ dismissing the complaint and issues a default against the respondent for his failure to appear at the hearings. The Commission also determines that by his conduct, the respondent has admitted the facts as alleged in the complaint and establishes a finding that the respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A: 12-24.1(d).

PENALTY

The Commission recommends that the Commissioner of Education impose a penalty of reprimand.

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: January 29, 2014

Resolution Adopting Decision – C10-12

Whereas, the Commission found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(d) 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, pursuant to N.J.A.C. 1:1-14.4(a), the OAL returned the matter to the Commission, advising that the respondent did not provide an explanation for his failure to appear; and

Whereas, the Administrative Law Judge erred in dismissing the matter for respondent's failure to appear at the hearings; and

Whereas, after consideration of the full record, at its meeting on November 26, 2013, the Commission rejected the Initial Decision of the ALJ and issued a default judgment against the respondent; and

Whereas, at its meeting on November 26, 2013, the Commission voted to find that Sterling Waterman violated N.J.S.A. 18A:12-24(b) of the Act and N.J.S.A. 18A:12-24.1(d) of the Code and recommended a penalty of reprimand; and

Whereas, the Commission finds that the within decision accurately memorializes its adoption of the ALJ's recommendations;

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

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on January 28, 2014.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission