

their witnesses were present at the Board meeting and all were privy to the events conducted under the protection of confidentiality.

The tribunal was certain that it could navigate around the restrictions posed by confidentiality by focusing the testimony on the events of the two meetings further limited by the narrow issue of whether the Board gave Respondent Smallwood permission to contact the two candidates for Superintendent. The Commission did not agree, however, that the confidentiality it enjoys in Executive Session transfers to the Board and vice versa. The Commission has determined in Messner & Condo v. Gray, Deptford Twp. Board of Education, Gloucester County, C16-13, 12/19/13 and Berglund v. Gray, Deptford Twp. Board of Education, Gloucester County, C22-13, 12/19/13 (Consolidated) that the protections afforded to the entity and its members in Executive Session are unique to that body and the individuals of which it is comprised. The protections of confidentiality cannot be expanded or transferred to include another person or group even though there exists in that relationship a different and separate protection.

In order to protect the confidentiality of Board members' discussion, the Commission limited testimony and confined the witnesses to the issue of whether they gave the respondent the permission to contact potential candidates for the positions of Interim Superintendent and Interim Director of Curriculum.

COMPLAINANT: Barbara A. Lesinski—Board Member

Barbara Lesinski testified that during Executive Session on February 11, 2014, the Board President, Respondent Smallwood, introduced the idea of two temporary positions to satisfy both factions of the Board. The members discussed her idea of hiring an Interim Superintendent and creating a second position of Interim Director of Curriculum as well as the two individuals under consideration to fill those positions. The respondent was directed to contact the State Monitor to see if she approved of the plan and report back to the Board at the next meeting. At the next meeting on February 25, 2014, the respondent advised the Board members that she had telephoned both candidates to see if they were still interested in the positions. The respondent objected to this testimony, which the Commission overruled, determining that details raised in the testimony were already reflected in the facts mentioned in the complaint. Nothing confidential was disclosed. Ms. Lesinski asserted that on February 11, 2014, the Board did not grant Respondent Smallwood the authority to contact the candidates.

On cross examination, Ms. Lesinski affirmed that she was in attendance at the two meetings in February. When questioned by the Commission, Ms. Lesinski testified that the Superintendent search had begun in January 2013, and the Board hired an individual whose selection the State Monitor overturned.¹ She restated that at no time did the Board authorize the respondent to contact the candidates.

¹The Board sued the Monitor. In July 2014, five members of the Board again voted to appoint the same individual whose appointment was overturned without prior notice to four of the nine Board members that the vote would be taking place, without advising the County Superintendent for approval and without a background check.

Angela Ahbez-Anderson—Board Member

Regarding the February 11, 2014 meeting, Ms. Ahbez-Anderson testified emphatically that the Board did not authorize Respondent Smallwood to contact the two candidates. She was simply directed to contact the State Monitor. At the February 25, 2014 meeting, the witness stated that the respondent was “thinking out of the box” and when asked who authorized her to speak to the candidates, the respondent said the Board directed her to do so. Ms. Ahbez-Anderson affirmed that the Board did not grant Respondent Smallwood the authority to contact the candidates. On cross-examination, Ms. Ahbez Anderson maintained that the Board members who heard the respondent’s reply were uniformly surprised.

Moreover, when questioned by the Commission, Ms Ahbez-Anderson stated that when she was Board President², she was never authorized to personally contact candidates for positions of employment.

Corey Lowell—Board Member

Ms. Lowell testified that on February 11, 2014, the respondent discussed with the Board her “out of the box” idea to try out an individual as Interim Superintendent and another individual as Assistant Superintendent, Director of Curriculum on a temporary basis as a compromise of sorts to assuage both factions of the Board. The candidate for Interim Superintendent was the same individual who the State Monitor had rejected. Ms. Lowell further testified that the Board directed the respondent to contact the State Monitor for review of her idea, but nothing more. She was not asked to contact the individuals in any manner at any time.

There were no other questions on cross or from the Commission, except to reaffirm that the Board did not authorize the respondent to contact the candidates

Geoffrey Hastings—Business Administrator

Mr. Hastings, the Business Administrator for nine years, testified that the Board was looking for options to find an individual to fill the position of Superintendent. At a meeting, the witness stated that Respondent Smallwood suggested a plan to temporarily hire an Interim Superintendent with a mentor or Assistant Superintendent and another as someone to help with the Director of Curriculum duties on a trial basis. When asked if the Board authorized the respondent to contact the candidates, he said that there was no formal action directing the respondent to call the candidates. The Board did not establish any course of action at the February 11, 2014. At the February 25, 2014, Mr. Hastings testified that Respondent Smallwood advised the Board members that she had been in contact with the two candidates, and they were amenable to some type of arrangement. (CD File 3, 31:01)

When questioned by the Commission, Mr. Hastings advised that the District now has a Superintendent as of September 11, 2014, pending contract approval. The witness was not sure if the State Monitor was present for the February 11, 2014 meeting, but was certain that she knew

² Ms. Ahbez Anderson’s presidency ended January 2014.

about the proposed plan and that she was present for one of the meetings.³ The Monitor advised that she would review the plan and return her findings to the Board. He had no recollection if the Board directed Respondent Smallwood to contact the State Monitor.

RESPONDENT: Geneva Smallwood—Board President

Geneva Smallwood testified that minutes of the meetings of February 11, 2014 and February 25, 2014 are scant. She does recall that she was “pushing the Board to complete the process” on the overturned superintendent candidate and also pushing the Board for other solutions, to “think outside the box” and offer different modules. (CD File 3, 48:20—29) She suggested having a Superintendent and Assistant Superintendent and would discuss it with the State Monitor when she was present at the next meeting. There were no other options on the table. She stated that the Board did not authorize her to contact the candidates at this meeting but did so at either the meeting on February 25, 2014 or at a meeting on March 18, 2014. Further, she stated that when the Board asked her to contact the candidates it was to determine if they were interested in filling the vacancies during this second round of the search. The respondent believes that the complainant and her witnesses have the wrong dates. (R-1) She further stated that when she contacted the candidates, she had no conversation with the candidates about the dual positions or trial period nor did she reveal any confidential information discussed in Executive Session.

Respondent sought to introduce R-2 to establish that a site visit of the candidate was a part of the selection process. As such, the respondent believes that the respondent’s actions were consistent with the process recommended by NJSBA. Over the complainant’s objection, the Commission admitted the document into evidence, but would accord it only the weight it deemed appropriate. The Respondent also identified an e-mail dated March 9, 2014 from Gregory Allen to the respondent to set up a site visit. (R-3) This is the same individual whom the State Monitor rejected. It is the respondent’s position that all that she did was at the Board’s direction.

On cross examination, when asked who had the responsibility to contact the candidates during the first round of the search, Respondent Smallwood stated that Board members did reference checks and that during the second round of the search the Board continued to use the same process as in the first round. She also testified that the BA gave her the phone numbers to contact the individuals to fill the vacancies to see if they were still interested. In addition, she also testified that the Board gave her permission to meet with candidate Gregory Allen in Atlantic City to complete the site visit from the first round. She had contacted all of the members of the personnel committee, but none could attend with her, except Ms. Simmons. She was not sure of the date on which the Board asked her to contact the State Monitor to discuss her “out of the box” plan and asserts that the Board asked her to negotiate with the State Monitor sometime in April. She never discussed her trip to Galloway Township (Atlantic City) with the State Monitor.

When the Commission attempted to resolve respondent’s confusion about the date on which she was requested by the Board to contact the candidates, she responded that the dates are muddled and described the dates she has heard in the testimony as “mixy.” (CD File 3, 1:20:14—23)

³ Minutes of the February 11, 2014 meeting indicate that the State Monitor was absent, but that she was present for the February 25, 2014 meeting.

Again, she was not clear about the dates. Also, the record shows that there was no meeting between February 25, 2014 and March 18, 2014, for her to seek approval for the site visit she had planned during this time as indicated in R-3. She does not remember when she contacted the BA for the candidates' phone numbers and testified that she only asked them if they were still interested. She asserted that at no time did she discuss the terms of the "out of the box" idea. She could not recall exactly who directed her to contact the candidates, but said that it was the consensus of the Board members present. She said the other Board members are confused about the dates. (CD File 3, 1:31:34)

Christian Hall—Board Member

Respondent's attorney directed Mr. Hall's attention to the meeting of February 25, 2014. The witness testified that he did not recall the respondent's disclosure that she spoke to any candidates on any date although he did recall a discussion about a replacement candidate after the State Monitor overturned the Board's selection on the first round. He recalled Ms. Smallwood's statement about "thinking outside the box," at the February 11, 2014 meeting in the context of brainstorming of ideas to search for and select a Superintendent. He testified that the Board members divided duties of checking references, backgrounds and work ethic among themselves and that Respondent Smallwood and Ms. Simmons agreed to perform these checks. He did not recall anyone telling the respondent to make phone calls to the candidates or any discussion about contacting the candidates.

On cross-examination, Mr. Hall remembered that he suggested that the State Monitor develop a checklist of items for the Board to follow on the second round search to improve the Board's relationship with the Monitor. The Monitor did create a checklist, which included parts of the earlier process to follow in this second round, but he was not sure if the entire Board complied. He was not sure about the dates of the meetings.

When the Commission inquired whether all those present agreed to the process discussed, Mr. Hall stated that there was no objection to the process, which included performing reference and background checks. He did not remember, however, whether the Board took any affirmative action to revoke the NJSBA process, but that the State Monitor outlined a plan for the Board to follow. He did not remember if the members followed her plan. In response to a question from the Commission, Mr. Hall stated that the Board did not direct the respondent to call the candidates at any time at any meeting for any reason.

Felicia Simmons—Board Member

Ms. Simmons was asked to draw her attention to the February 11, 2014 meeting and whether there was a proposal regarding two candidates to fill the superintendent vacancy. She testified that the idea was suggested by Board member Connie Breech⁴ to select one individual for Interim Superintendent and another to fill a new position of Assistant Superintendent. After the proposal, Ms. Simmons testified that the Board advised the respondent to contact the State Monitor to see if

⁴ The minutes of the Board meeting of February 11, 2014 and February 25, 2014 indicate that Connie Breech was not present for the meeting nor do they indicate that Ms. Breech appeared by telephone. No one else attributed Respondent Smallwood's proposal to Board member Connie Breech.

she approved of the plan, as well as the candidates to see if they were still interested and willing to accept the proposal. Ms. Simmons stated that all of the members present, including the complainant and her Board witnesses accepted the plan. The respondent was directed to investigate a compromise deal with the candidates and report back. Ms. Simmons accompanied the respondent on one such meet and greet. Ms. Simmons reported her findings to the Board and was confused why certain Board members were surprised that the respondent had spoken to the candidates. Ms. Simmons testified that at the February 11, 2014, there was an affirmative, unanimous, straw vote to have the respondent seek approval of her proposal and to contact the candidates to move forward in its search as suggested. When Ms. Smallwood reported back the results of her contact with the candidates on February 25, 2014, Ms. Simmons testified that some of the Board members were shocked that Ms. Smallwood contacted the candidates and appeared to forget about the straw vote. Ms. Simmons testified that Ms. Lesinski asked, “Who told you to do that?”

On cross-examination, Ms. Lesinski asked Ms. Simmons if the State Monitor reported back to the Board regarding her approval of the plan. The witness testified that she never did and the proposal “fizzled.” (CD File 4, 12:23) When asked which Board members directed the respondent to contact the candidates, Ms. Simmons said they all did.

The Commission inquired about the nature of the motion on the straw vote. Ms. Simmons testified the Motion was to have the respondent contact the State Monitor to see if the suggestion of two positions was a viable solution and to contact the candidates, and that the members responded with a unanimous show of hands. She maintained that she did not know that the Board had to get the State Monitor’s approval to advance the plan. Ms. Simmons stated that the respondent did not discuss the terms of the plan at the meet and greet with the candidate whose appointment had previously been overturned.

Nicole Harris---Board Vice President

Ms. Harris’s attention was drawn to the February 11, 2014 Board meeting and testified that the Respondent discussed the need “to think outside the box”; however, there was no clear direction that night about how to proceed with the plan. Moreover, there was no straw vote to direct the respondent to do anything, but the respondent on her own initiative took action.

The complainant did not cross-examine this witness.

The Commission inquired if she remembered if a straw vote had taken place on February 11, 2014, and the witness testified that she did not remember the vote.

Respondent’s Exhibits

R-1	List of Board Meetings January—December 2013
R-2	NJSBA Manual for Superintendent’s Search January 22, 2013
R-3	Respondent’s E-mail of March 12, 2014 to Gregory Allen Scheduling a Meeting

FINDINGS OF FACT

As the Trier of Fact in this matter, the Commission had the greatest opportunity to observe the demeanor of the witnesses and was qualified to assess their credibility. Based on the credible,

relevant testimony and documents in the record, the Commission makes the following factual findings on the limited issue of whether the Asbury Park Board authorized Respondent Smallwood to contact two candidates for the positions of Superintendent and Assistant Superintendent:

1. The complainant, respondent, and the witnesses were at all times, relevant to this matter, members of the Asbury Park Board of Education (Board) or employed by the District.
2. The Asbury Park Board has been subject to the oversight of a fiscal State Monitor, pursuant to N.J.S.A. 18A:7A-54 *et seq.* since September 2013.
3. The Board's search for a new Superintendent since early 2013 has been unsuccessful.
4. In November 2013, the State Monitor overturned the Board's appointed candidate for Superintendent, citing, *inter alia*, his lack of experience and concerns about his qualifications for the position.
5. Under the leadership of Respondent Smallwood, she and the Board abandoned the NJSBA process, outlined in R-2, which it utilized in its search in 2013 and resorted to "out of the box" proposals to appoint a new Superintendent.
6. The Board meetings at the center of the controversy were held on February 11, 2014 and February 25, 2014. (R-1)
7. No Board meetings took place between February 25, 2014 and March 18, 2014.
8. The parties to this complaint and the witnesses who testified were all present for the February 11, 2014 meeting.
9. Seven of the nine members, who comprise the Board, as well as the Business Administrator, testified at the hearing and had personal knowledge of the events, which took place during Executive Session at both meetings.
10. The discussion on the evening of February 11, 2014 included a proposal advanced by Respondent Smallwood to "think outside the box" and appoint one candidate as Interim Superintendent and the other candidate as Assistant Superintendent on a trial basis to see if either would work out.
11. The candidate under consideration for Interim Superintendent was the same individual whose appointment had been overturned by the State Monitor late in 2013.
12. After she overturned the Board's selection for Superintendent, the State Monitor and the Commissioner of Education established a process for the Board to follow to reopen its search for a new Superintendent.

13. On the evening of February 11, 2014 the Board directed Respondent Smallwood to contact the State Monitor for approval to proceed with her proposal to appoint the two candidates on a trial basis.
14. There was no straw vote of the members in attendance at the meeting of February, 11, 2014, authorizing Respondent Smallwood to contact the candidates to see if they were still interested in the position.
15. The respondent contacted the candidates between the dates of February 11, 2014 and February 25, 2014 without Board or State Monitor approval and at the February 25, 2014 meeting reported back to the members the results of her efforts.
16. At the meeting of February 25, 2014, the respondent was made aware that the Board did not approve of her contacting the candidates.
17. In an email, initiated by the candidate whose appointment was overturned, the candidate invited Respondent Smallwood to conduct a site visit even though his appointment had failed.
18. Respondent's reply on March 9, 2014 to this earlier email from the previously rejected candidate, attempting to schedule a site visit, establishes that the respondent engaged in an expanded conversation beyond merely gauging his interest in the position.
19. Respondent Smallwood and Felicia Simmons conducted the site visit without advising the State Monitor of their plan.
20. After the meeting, Respondent Smallwood wrote to the unsuccessful candidate saying, "I'm doing everything I can to resolve this CSA situation." (Respondent's Exhibit R-3)
21. The Respondent testified that she was "pushing the Board to complete the process" on the overturned candidate and also pushing the Board for other solutions. (CD File 3, 48:20—29)

ANALYSIS

During his closing arguments, respondent's attorney renewed his Motion to Dismiss on the grounds that the subject matter and the discussions which took place in Executive Session were protected by the principle of confidentiality which attaches to closed session deliberations.

As discussed, *supra*⁵, the Commission has previously determined that the protection of confidentiality inures only to the body as a whole and to its members, who are sworn to safeguard it. Here, Respondent Smallwood argues that this complaint must not be heard because to do so would breach the confidentiality of the Board's Executive Session. Yet she maintains that the Board authorized her to contact the two candidates under consideration. If it is true that the Board gave her license to contact the candidates to inquire if they were still interested in the position, then

⁵ Messner & Condo v. Gray, Deptford Twp. Board of Education, Gloucester County, C16-13, 12/19/13 and Berglund v. Gray, Deptford Twp. Board of Education, Gloucester County, C22-13, 12/19/13 (Consolidated),

whatever protection that this portion of the discussion, regarding the proposal advanced by the respondent, had been waived by the Board. Once a third party—the candidate—was inserted into the conversation, confidentiality evaporated. Moreover, by injecting a third party into the discussion, the respondent's contact of the candidate by phone is a public act and also not protected by the confidentiality of closed session. Similarly, when Respondent Smallwood reported the results of her conversations, she was sharing an event already made public and, therefore, not protected by the principle of confidentiality.

Conversely, if the Board did not authorize Respondent Smallwood to contact the candidates, and, by her admission, she did, then Respondent Smallwood breached the protection of confidentiality of discussions in Executive Session by insinuating a third party into the Board's protected conversation. She cannot now cloak herself with the very protection she rendered invalid.

For the reasons stated above, the Commission hereby denies Respondent Smallwood's Motion to Dismiss on the grounds of confidentiality.

Although respondent's attorney did not make his Motion to Dismiss the case after the complainant rested, he did so during his closing arguments. He argued that the complainant did not meet her burden of proof nor did she establish a violation of any of the subsections of the Act as alleged in her complaint. Based on the foregoing Findings of Fact, the Commission has determined that the complainant met her burden and established that Respondent Smallwood violated the Code. Consequently, the Commission denies respondent's Motion to Dismiss based on failure to prove a violation of the Code.

The relevant, credible testimony in the case now before the Commission revealed that the respondent, without Board authority and without the approval of the State Monitor, took private action, which had the potential to compromise the Board. She shared the confidential deliberations with at least one of two outsiders, who themselves were not parties to the Executive Session discussion and who would not have been permitted to attend the meeting or be privy to the Board's deliberations. Once shared with these individuals, confidentiality was breached. Consistent with this foregoing reasoning, the Commission reviewed these actions to determine the manner in which the respondent violated the Code.

The Commission again notes that 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). The complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(a), (c), (d), (e), and (g) of the Code of Ethics for School Board Members.

The Commission first considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(a), which states:

I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures. N.J.A.C. 6A:28-6.4(a)1.

The complainant did not produce a copy of a final decision from a court of law or administrative agency of this State which demonstrates that this respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondents brought about changes through illegal or unethical means. See, David Hollander v. Judith Millman, et al., Springfield Twp. Board of Education, Union County, C33-07 (January 22, 2008); Denise Bouyer v. Rita Owens and Oscar McCoy, Willingboro Board of Education, Burlington County, C37-09 (December 15, 2009); Martha Oramas-Shirey v. Peter Gallo et. al., Bethlehem Twp. Bd. of Ed., Hunterdon County, C43-10 (March 22, 2011). Accordingly, the complainant failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(a).

The Commission next considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(c), which states:

I will confine my board action to policymaking, planning, and appraisal and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the respondent(s) took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to:

- i. Develop the general rules and principles that guide the management of the school district or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- iii. Ascertain the value or liability of a policy. N.J.A.C. 6A:28-6.4(a)3.

The complainant presented no evidence that the respondent took any particular "board action" so as to implicate this provision of the statute. Rather, respondent's conduct implicates N.J.S.A. 18A:12-24.1(e), as set forth below. Accordingly, the complainant failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(c).

The Commission next considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(d), which states:

I will carry out my responsibility, not to administer the schools, but together with my fellow board members, to see that they are well run.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(d) shall include, but not be limited to, evidence that the respondent(s) gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school. N.J.A.C. 6A:28-6.4(a)4.

Based on the testimony and in accordance with the Commission's findings of fact, the Commission finds insufficient evidence to conclude that the respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district. Accordingly, the complainant failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(d).

The Commission next considers the complainant's allegation that the respondent violated N.J.S.A. 18A:12-24.1(e), which provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

In finding a violation of N.J.S.A. 18A:12-24.1(e), it is not necessary for the Commission to find that the respondent's action, in fact, compromised the Board. Rather, it is sufficient that the action was of such a nature that it might have compromised the Board. See, Tony John et al. v. Ken Gordon, Willingboro Bd. of Ed., Burlington County, C34-08 (October 27, 2009), *aff'd* Commission of Education Decision No. 102-10ASEC, decided March 30, 2010.

The Commission determines that based on the preponderance of the relevant, credible evidence, Respondent Smallwood took private action when she contacted the candidates to inquire whether they were still interested in the positions of Superintendent and Assistant Superintendent. Respondent's testimony reveals that she and the Board were frustrated that the process to select a

new Superintendent and all of their efforts to accomplish the task proved unfruitful. She asserted that she was “pushing the Board to complete the process” on the overturned candidate and also pushing the Board for other solutions, to “think outside the box” and offer different modules. (CD File 3, 48:20—29) The credible testimony reflects that at the meeting of February 11, 2014, the Board gave the respondent permission to contact the State Monitor to determine if her plan were viable since one of candidates was the same failed contender whose appointment the State Monitor overturned in November 2013. Of the eight who testified, six witnesses stated that the Board did not authorize the respondent, whether formally or informally, to contact the candidates. Only Felicia Simmons testified that a straw vote was taken that evening to permit the respondent to contact the candidates. According to Ms. Simmons, the vote was unanimous and in the affirmative. This Commission finds her testimony lacks credibility since no one, not even the respondent, testified that such a vote took place at any meeting at any time.

Moreover, the respondent set her sights on bringing the old candidate back and arranged for a site visit at the candidate’s urging (R-3), accompanied by Ms. Simmons. In her email reply to the candidate, Ms. Smallwood stated to him, “I’m doing everything I can to resolve this CSA⁶ situation.” When the respondent was asked on cross examination if she contacted the State Monitor for approval of her visit, Ms. Smallwood stated that she had not. Further, the Commission determines that there was no need for the site visit, since this candidate’s appointment had already been rejected months ago.

Based on the foregoing, the Commission finds that Respondent Smallwood took private action when she contacted the candidates for Interim Superintendent and conducted a site visit without the approval of the Board. Accordingly, the Commission finds that Respondent Smallwood took private action, which was of such a nature that it had the potential to compromise the Board in violation of N.J.S.A. 18A:12-24.1(e).

The Commission last considers the allegation that the respondent violated 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 regulation requires 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.

⁶ CSA is the acronym for the Chief School Administrator or Superintendent.

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 purpose of executive session is to allow the Board to openly deliberate on select issues without the public being privy to those discussions. It is clear that the topics discussed during that portion of the meeting were confidential and it fell upon those individuals present in executive session ensure those discussions remain confidential.

The purpose of Executive Session is to allow the Board members to openly deliberate on select issues without the public being privy to those discussions. It is clear that the topics discussed during that portion of the February 11, 2014 meeting were confidential, and it fell upon those individuals present in Executive Session to ensure those discussions remained confidential. The Commission determines that Respondent Smallwood breached this duty.

The Commission confines its review to the first portion of this regulation, which requires evidence that the respondent took action to make public, reveal or disclose information that was not otherwise public. It is clear from respondent's actions in telephoning the two candidates to discuss her plan for their potential employment and in further pursuing the site visit for one of them revealed protected discussions. Given the circumstances of her testimony about her "out of the box" plan, it is illogical for her to simply have inquired by phone if they were still interested and then after receiving an affirmative reply, hung up. The conversation would logically require more information to the candidates since her plan envisioned a short-term paradigm to test their skills. One of the candidates was already employed, and the plan would have required him to leave his secure position for an uncertain future. The Commission does not find respondent's testimony credible. By telephoning the candidates, Respondent Smallwood made public Board discussions with individuals who could never be privy to the Board's deliberations without Board approval. In doing so, she took private 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.

As discussed *supra*, Respondent Smallwood was not authorized to contact the candidates to gauge their interest in the Superintendent position in violation of N.J.S.A. 18A:12 24.1(e). The Commission's analysis of Respondent's Exhibit R-3 supports the conclusion that she divulged Executive Session conversations and shared far more information, including her "out of the box" proposal as well as the means by which the candidates would be vetted by the Board. There is no other way to explain how the candidate would have known to advocate for his own site visit. The Commission determines that this was a violation of N.J.S.A. 18A:12 24.1(g) and advances its conclusion supported by the following:

1. At the February 25, 2014 meeting, Ms. Smallwood was put on notice that on February 11, 2014, the Board did not grant her the authority to contact the candidates nor did the members do so at any time.

2. R-1 establishes that there were no meetings between February 25, 2014 and March 18, 2014; therefore, there would have been no opportunity for Ms. Smallwood to have received Board authorization for continued contact with the candidates, including a site visit.
3. The email trail in R-3 commences with a suspiciously undated email from the superintendent candidate the State Monitor rejected, reaching out to Ms. Smallwood to set up a site visit for his candidacy.
4. Ms. Smallwood responded on March 9, 2014, the period between the two meetings during which she was on notice that she did not have the authority to pursue the candidates or to unilaterally conduct the site visit, which occurred on Thursday, March 13, 2014, without the Board's authorization or the State Monitor's approval. As indicated in R-3, Ms. Smallwood planned to report back to the Board at its next meeting on Tuesday, March 18, 2014.

Based on the above, the Commission concluded that Respondent Smallwood discussed in her telephone call in greater detail than simply gauging the candidates' interest and disclosed confidential matters discussed in Executive Session in violation of N.J.S.A. 18A:12-24.1(g).

The Commission finds that sharing the deliberations of a closed meeting with any third party, who would not have been permitted to attend the meeting, is tantamount to a breach of trust and to the promise and expectation of confidentiality. Accordingly, the Commission finds that the complainant met her burden to establish a violation of the first part of N.J.S.A. 18A:12-24.1(g).

DECISION

The Commission finds that the complainant has proved by a preponderance of the relevant, credible evidence that Respondent Geneva Smallwood violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members, and the Commission dismisses the allegations that the respondent violated N.J.S.A. 18A:12-24.1(a), (c), and (d) of the Code.

PENALTY

The Commission recommends 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: October 29, 2014

Resolution Adopting Decision – C14-14

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 September 23, 2014; and

Whereas, at its meetings on September 23, 2014 and October 28, 2014, the Commission found that the complainant established that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members, but dismissed the allegations that the respondent violated N.J.S.A. 18A:12-24.1(a), (c), and (d); and

Whereas, at its meeting on September 23, 2014, the Commission voted to recommend to the Commissioner of Education a penalty of reprimand; and

Whereas, at its meeting on October 28, 2014, 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 the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 28, 2014.

Joanne M. Restivo
Acting Executive Director
School Ethics Commission