
**I/M/O CARVALHO, NERON,
AND NINA,
ELIZABETH BOARD
OF EDUCATION,
UNION COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

**OAL DKT. NO. EEC 13553-16
SEC DKT. NO. C10-16**

-AND-

**I/M/O NINA, CARVALHO,
NERON, AND RODRIGUEZ,
ELIZABETH BOARD
OF EDUCATION,
UNION COUNTY**

**OAL DKT. NO. EEC 12222-16
SEC DKT. NO. C11-16**

CONSOLIDATED

FINAL DECISION

PROCEDURAL HISTORY

This consolidated matter arises from two separate but related Complaints. The first Complaint, C10-16, was filed with the School Ethics Commission (Commission) on February 22, 2016, by Rafael Fajardo, and alleged that Maria Carvalho (Carvalho), Stanley Neron (Neron), and Daniel Nina (Nina), board members on the Elizabeth Board of Education (Board), violated the School Ethics (Act), N.J.S.A. 18A:12-21 et seq. Complainant asserted that Carvalho, Nina, and Neron – all employees of the City of Elizabeth (City) – violated N.J.S.A. 18A:12-24(b) and (c) when they, as Board members, voted to appoint Frank Cuesta (Cuesta), a sitting Councilman on the governing body of the City (their employer), to the position of Assistant Superintendent in the Elizabeth Public Schools District (District). At its July 26, 2016, meeting, the Commission voted to find probable cause to credit the allegations as asserted, and transmitted the matter to the Office of Administrative Law (OAL) for a plenary hearing.

The second Complaint, C11-16, was filed with the Commission on March 2, 2016, by Donald Goncalves (Goncalves), and alleged that Carvalho, Nina, Neron, and Jose Rodriguez (Rodriguez), all members of the Board, violated the Act. More specifically, Count I of the Complaint alleged that Nina violated N.J.S.A. 18A:12-22(a), N.J.S.A. 18A:12-24(b), and N.J.S.A. 18A:12-24(c) when he voted to terminate the position of Assistant Board Secretary. Count II of the Complaint alleged that Carvalho, Nina, Neron, and Rodriguez violated N.J.S.A. 18A:12-22(a), N.J.S.A. 18A:12-24(b), and N.J.S.A. 18A:12-24(c) when they voted to appoint Cuesta to the position of Assistant Superintendent. At its meeting on June 21, 2016, the Commission voted to find probable cause to credit the allegation that Nina violated N.J.S.A. 18A:12-24(b) as asserted in Count I; Carvalho, Nina, Neron, and Rodriguez violated N.J.S.A. 18A:12-24(b) as asserted in Count II; and Carvalho, Nina, and Neron violated N.J.S.A. 18A:12-24(c) as asserted in Count II. However, the Commission did not find probable cause for the allegation that Carvalho, Nina, Neron or Rodriguez violated N.J.S.A. 18A:12-22(a) as asserted in Count I or Count II, that Nina violated N.J.S.A. 18A:12-24(c) as asserted in Count I, or that Rodriguez violated N.J.S.A. 18A:12-24(c) as asserted in Count II. The Commission then transmitted the remaining allegations to the OAL for a plenary hearing.

By motion dated October 19, 2016, Petitioner filed a motion to consolidate C10-16 and C11-16. Respondents also filed a motion to consolidate on October 25, 2016. By Order dated October 26, 2016, Administrative Law Judge Thomas R. Betancourt (ALJ Betancourt) consolidated the matters as requested. Thereafter, Petitioner filed a Motion for Summary Decision dated December 23, 2016, and Respondents filed a Cross-Motion for Summary Decision dated February 1, 2017. Respondents later submitted a revised brief dated February 14, 2017. Petitioner filed a reply brief to Respondent's Cross-Motion for Summary Decision on February 17, 2017.

Following submission of the papers as detailed above, ALJ Betancourt issued an Initial Decision on March 20, 2017, in which he granted, in part, and denied, in part, Petitioner's Motion for Summary Decision. ALJ Betancourt's analysis focused on the following: (1) Did the affirmative votes of Carvalho, Nina, Neron, and Rodriguez to hire Cuesta as Assistant Superintendent while they (Carvalho, Nina, and Neron) and Rodriguez's brother were employed by the City and Cuesta was a sitting Councilman violate the Act? (2) Did the affirmative vote of Nina to abolish the position of Assistant Board Secretary while his aunt was an employee of the Board and subject to the supervision of this position violate the Act? ALJ Betancourt ultimately concluded that Carvalho, Nina, and Neron violated N.J.S.A. 18A:12-24(c) when they voted to appoint Cuesta to the position of Assistant Superintendent; Carvalho, Nina, Neron, and Rodriguez violated N.J.S.A. 18A:12-24(b) for this same action; and Nina did not violate N.J.S.A. 18A:12-24(b) or N.J.S.A. 18A:12-24(c) when he voted to abolish the position of Assistant Board Secretary. Based on these conclusions, ALJ Betancourt recommended a penalty of censure for Carvalho, Nina, Neron and Rodriguez.

The Commission acknowledged receipt of ALJ Betancourt's Initial Decision on March 20, 2017; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was May 4, 2017. Prior to May 4, 2017, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to receive and review the full record, including the parties' Exceptions. Pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, and for good cause shown, the Commission was granted an extension until June 19, 2017. However, because the Commission's May 23, 2017, meeting was cancelled, the Commission requested, with consent of the parties, a second forty-five (45) day extension of time to file its Final Decision. Pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, and for good cause shown, the Commission was granted an extension until August 2, 2017.

By correspondence dated March 21, 2017, the parties submitted a joint request for an extension of time to file Exceptions to ALJ Betancourt's Initial Decision. The Commission considered this request at its meeting on March 28, 2017, and, thereafter, advised the parties that the deadline to file Exceptions was extended until April 13, 2017. On April 13, 2017, Petitioner filed Exceptions to the Initial Decision and, with consent from Petitioner, Respondents requested a second brief extension to file Exceptions. Ultimately, Respondents filed Exceptions on April 18, 2017. Petitioner filed a reply to Respondents' Exceptions on April 25, 2016, and Respondents filed a reply to Petitioner's Exceptions on April 26, 2017 (after obtaining a short extension).

At its meeting on June 27, 2017, the Commission considered the record of this matter, ALJ Betancourt's Initial Decision, the parties' Exceptions and the replies to Exceptions. At its

meeting on July 25, 2017, and for the reasons more fully detailed below, the Commission voted to adopt ALJ Betancourt's findings of fact; to adopt the conclusion that Carvalho, Nina, and Neron violated N.J.S.A. 18A:12-24(c); to reject the conclusion that Carvalho, Nina, Neron and Rodriguez violated N.J.S.A. 18A:12-24(b); to adopt the conclusion that Nina did not violate N.J.S.A. 18A:12-24(b) or N.J.S.A. 18A:12-24(c); and to adopt the recommended penalty of censure for Carvalho, Nina, and Neron.

ANALYSIS

Upon careful and independent review, the Commission adopts ALJ Betancourt's factual findings, namely: Carvalho, Nina, Neron, and Rodriguez's brother are employed by the City; Nina's aunt was employed by the Board, and subject to the tenuous supervision of the Assistant Board Secretary; Carvalho, Nina, Neron, and Rodriguez were all in attendance at the reorganization meeting on January 7, 2016; Neron made a motion, seconded by Nina, to approve a resolution abolishing the position of Assistant Board Secretary; the resolution to abolish the position of Assistant Board Secretary was adopted by the Board with Neron, Nina and Rodriguez voting in the affirmative, and Carvalho abstaining; Rodriguez made a motion, seconded by Neron, to approve a resolution appointing Cuesta as Assistant Superintendent; and the resolution to appoint Cuesta was adopted by the Board with Carvalho, Nina, Neron, and Rodriguez voting in the affirmative.

Based on the findings of fact as set forth above, the Commission adopts the legal conclusion that by voting to appoint Cuesta, a sitting Councilman for the City (their employer), to the position of Assistant Superintendent *while* they were employed by the City, Carvalho, Nina, and Neron had a direct or indirect financial involvement in the vote, i.e., their employment, that might reasonably be expected to impair their objectivity or independence of judgment in violation of N.J.S.A. 18A:12-24(c). Because the vote to appoint Cuesta was tantamount to a vote for their employer, a reasonable member of the public could conclude that this employee-employer relationship impaired their objectivity and independence of judgment.

Based on the findings of facts as set forth above, the Commission additionally adopts the conclusion that Nina's vote to abolish the position of Assistant Board Secretary did not violate the Act. Petitioner's Exceptions argue that the Commission has previously found a violation of N.J.S.A. 18A:12-24(b) if a board member votes on matters involving individuals who have the capacity to affect their own, or their family member's, employment. However, based on his review of the record, ALJ Betancourt found that the supervisory relationship between Nina's aunt and the position of Assistant Board Secretary was, at best, too tenuous. Additionally, Petitioner bears the burden of proving the violation at issue and did not suggest, in the Motion for Summary Decision and/or Exceptions, that other facts existed to prove the unwarranted privilege, advantage, or employment received, or possibly received, by Nina's aunt for Nina's vote to abolish this position. Without more evidence detailing the supervisory authority over Nina's aunt, and evidence indicating how the vote to abolish the position could have resulted in an unwarranted privilege, advantage, or employment inuring to Nina's aunt, the Commission accepts ALJ Betancourt's conclusion that a violation of the Act did not occur.

However, based on the findings of facts as set forth above, the Commission rejects ALJ Betancourt's legal conclusion that Carvalho, Nina, Neron and Rodriguez violated N.J.S.A. 18A:12-24(b) because there is no evidence in the record that Carvalho, Nina, Neron, and/or

Rodriguez used or attempted to use their position as Board members to secure an unwarranted privilege, advantage, or employment for themselves, members of their immediate families, or others.

At the time they voted to appoint Cuesta to the position of Assistant Superintendent, Carvalho, Nina, Neron, and Rodriguez's brother were already employed by the City. Therefore, the vote to appoint Cuesta could not have resulted in the securing of initial employment for Carvalho, Nina, Neron, and/or Rodriguez's brother. Petitioner did not prove, and the record does not suggest, that Carvalho, Nina, Neron, or Rodriguez's brother secured a new job (or promotion) following the vote, or that their employment status would be negatively affected if they did not vote to appoint Cuesta to the position. Petitioner also did not provide, and the record does not suggest, that, as a result of their vote, Cuesta, Carvalho, Nina, Neron, and/or Rodriguez's brother would prospectively receive a specific, identifiable future unwarranted privilege, advantage, or employment. In short, the link between the vote and an unknown, potential unwarranted privilege, advantage, or employment is far too speculative to find a violation of the Act, without more.

In their Exceptions to the Initial Decision, Respondents argue that, in finding that Carvalho, Nina, Neron, and Rodriguez violated N.J.S.A. 18A:12-24(b), ALJ Betancourt failed to consider Cuesta's "exceptional" qualifications and, in doing so, failed to properly apply the "reasonable person" standard. Respondents also argue that ALJ Betancourt disregarded "critical" information about the employment relationship between Cuesta and Respondents, or how the public would perceive those facts, including that Cuesta agreed to recuse himself from matters affecting their employment. The Commission agrees that Cuesta's qualifications undermine any suggestion that the votes by Carvalho, Nina, Neron, and Rodriguez secured an unwarranted privilege, advantage, or employment for Cuesta. The Commission also finds Cuesta's written recusal to be of importance. More specifically, the fact that Cuesta filed a written recusal with the City confirming that he would recuse from all votes which affected the employment of these Board members militates against any argument that the vote to appoint Cuesta would result in the securing of a *future* unwarranted privilege, advantage, or employment for themselves, members of their immediate families, or others.

DECISION

For the reasons more fully discussed above, the Commission adopts the findings of fact issued by ALJ Betancourt, and also adopts the conclusion that Carvalho, Nina, and Neron violated N.J.S.A. 18A:12-24(c) by voting to appoint Cuesta to the position of Assistant Superintendent, and the conclusion that Nina did not violate N.J.S.A. 18A:12-24(b) or N.J.S.A. 18A:12-24(c) when he voted to abolish the position of Assistant Board Secretary. However, the Commission rejects the conclusion that Carvalho, Nina, Neron and Rodriguez violated N.J.S.A. 18A:12-24(b) by voting to appoint Cuesta.

PENALTY

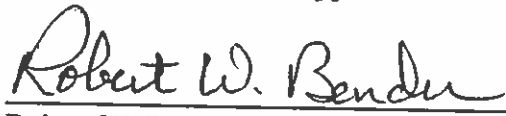
The Commission further adopts the ALJ Betancourt's recommended penalty of **censure** for Carvalho, Nina, and Neron. In their Exceptions, Respondents argue that censure is inappropriate because Carvalho, Nina, and Neron have never been found in violation of the Act. However, and as noted by Petitioner in the reply, the Commission has recommended censure in

other cases involving a violation of N.J.S.A. 18A:12-24(c), and has also recommended such a penalty for first time violators, e.g., I/M/O Pirillo, Washington Township Board of Education, Gloucester County, C12-04 (September 30, 2004); I/M/O Rone, South Amboy Board of Education, Middlesex County, C03-97 (October 28, 1997). The Commission believes that it should have been more than self-evident to Carvalho, Nina, and Neron that, as employees of the City, they should have recused themselves from voting on the appointment of a sitting City Councilman.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education (Commissioner) 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 a violation may file, within **thirteen (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, New Jersey 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 a violation *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4, et seq. within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) 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 (thirteen (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
School Ethics Commission

Mailing Date: July 26, 2017

Resolution Adopting Decision – C10-16 and C11-16

Whereas, pursuant to N.J.A.C. 6A:28-10.8(a), the School Ethics Commission (Commission) voted to transmit C10-16 to the Office of Administrative Law (OAL) for a plenary hearing on July 26, 2016; and

Whereas, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to transmit C11-16 to the OAL for a plenary hearing on June 21, 2016; and

Whereas, by Order dated October 26, 2016, Administrative Law Judge Thomas R. Betancourt (ALJ Betancourt) consolidated C10-16 and C11-16; and

Whereas, Petitioner filed a Motion for Summary Decision dated December 23, 2016, and Respondents filed a Cross-Motion for Summary Decision dated February 1, 2017; and

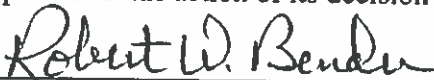
Whereas, in his Initial Decision dated March 20, 2017, ALJ Betancourt concluded that Maria Carvalho (Carvalho), Daniel Nina (Nina), and Stanley Neron (Neron) violated N.J.S.A. 18A:12-24(c) when they voted to appoint Frank Cuesta (Cuesta) to the position of Assistant Superintendent; Carvalho, Nina, Neron, and Rodriguez violated N.J.S.A. 18A:12-24(b) for this same action; Nina did not violate N.J.S.A. 18A:12-24(b) or N.J.S.A. 18A:12-24(c) when he voted to abolish the position of Assistant Board Secretary; and Carvalho, Nina, Neron and Rodriguez should receive a censure; and

Whereas, following extensions, Petitioner and Respondents filed Exceptions, and replies to Exceptions; and

Whereas, at its meeting on June 27, 2017, the Commission considered the record of this matter, ALJ Betancourt's Initial Decision, the parties' Exceptions, and the replies thereto; and


Whereas, at its meeting on July 25, 2017, the Commission voted to adopt ALJ Betancourt's findings of fact; to adopt the conclusion that Carvalho, Nina, and Neron violated N.J.S.A. 18A:12-24(c) when they voted to appoint Cuesta to the position of Assistant Superintendent; to reject the conclusion that Carvalho, Nina, Neron and Rodriguez violated N.J.S.A. 18A:12-24(b) for this same action; to adopt the conclusion that Nina did not violate N.J.S.A. 18A:12-24(b) or N.J.S.A. 18A:12-24(c) when he voted to abolish the position of Assistant Board Secretary; and to adopt the recommended penalty of censure for Carvalho, Nina, and Neron; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision as a Final 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 July 25, 2017.



Kathryn A. Whalen, Director
School Ethics Commission