
IN THE MATTER OF

OBDULIA GONZALEZ, ISRAEL VARELA,
MILADY TEJEDA, SAMUEL LEBREAULT,
AND KENNETH PUCCIO,

PERTH AMBOY BOARD OF EDUCATION,
MIDDLESEX COUNTY

:
: BEFORE THE SCHOOL
: ETHICS COMMISSION
:
: SEC DKT. NO.: C08-15
:
: OAL DKT. NO.: EEC-19282-15
:
: FINAL DECISION
:
:

I. PROCEDURAL HISTORY

This matter arises from a Complaint filed on February 11, 2015, by Charles Simmons alleging that Obdulia Gonzalez (“Respondent Gonzalez”), Israel Varela (“Respondent Varela”), Milady Tejada (“Respondent Tejada”), Samuel Lebreault (“Respondent Lebreault”), and Kenneth Puccio (“Respondent Puccio”) (collectively referred to as “Respondents”), members of the Perth Amboy Board of Education (Board), violated the School Ethics Act (the “Act”), N.J.S.A. 18A:12-21 et seq. By correspondence dated February 27, 2015, and March 26, 2015, Mr. Simmons was notified that his Complaint was deficient, and required amendment before the School Ethics Commission (the “Commission”) could accept his filing. On April 15, 2015, Mr. Simmons cured all defects, and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in N.J.A.C. 6A:28-6.3. The Complaint alleged that Respondents violated N.J.S.A. 18A:12-22(a), N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-24(e), and N.J.S.A. 18A:12-24(f).

On April 21, 2015, the Complaint was served on Respondents, via regular and certified mail, notifying them that charges had been filed against them with the Commission, and advising that they had twenty (20) days to file a responsive pleading. On June 1, 2015, and after receiving an extension, Respondents filed a Motion to Dismiss in Lieu of Answer (“Motion to Dismiss”). On June 5, 2015, Mr. Simmons filed a Response to the Motion to Dismiss.

By correspondence dated June 3, 2015, the parties were advised that this matter would be placed on the Commission’s agenda for its meeting on June 30, 2015, to make a determination regarding the Motion to Dismiss. At its meeting on June 30, 2015, the Commission discussed this matter, and at its meeting on July 28, 2015, the Commission voted to grant the Motion to Dismiss as to the alleged violations of N.J.S.A. 18A:12-22(a) and N.J.S.A. 18A:12-24(a); to deny the Motion to Dismiss as to the alleged violations of N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-24(e), and N.J.S.A. 18A:12-24(f); and to direct Respondents to file an Answer to the remaining allegations in the Complaint.

On August 28, 2015, and after receiving an extension, Respondents filed an Answer as directed. Following receipt of the Answer, the parties were advised, by correspondence dated September 1, 2015, that this matter would be placed on the Commission’s agenda for its meeting on September 22, 2015, to make a determination regarding probable cause on the remaining

allegations. At its meeting on September 22, 2015, the Commission discussed this matter, and at its meeting on October 27, 2015, the Commission voted to find probable cause for the alleged violation of N.J.S.A. 18A:12-24(c); to find no probable cause for the alleged violation of N.J.S.A. 18A:12-24(e) or the alleged violation of N.J.S.A. 18A:12-24(f); and to transmit the matter to the Office of Administrative Law (“OAL”) pursuant to N.J.A.C. 6A:28-10.7(c)(2).

At the OAL, Respondent Puccio was dismissed from the above-captioned matter with prejudice, and Respondent Lebreault agreed to accept the penalty of a censure as part of a settlement agreement; with the dismissal of Respondent Puccio and the settlement of Respondent Lebreault, only Respondent Gonzalez, Respondent Varela, and Respondent Tejada remain as named Respondents. After stipulating to a set of facts, both parties filed cross-motions for summary decision. Following review of the parties’ submissions, on September 11, 2018, Administrative Law Judge Barry E. Moscowitz, (“ALJ Moscowitz”) issued an Initial Decision. He concluded that by discussing and then voting to approve a settlement agreement that resulted in a personal benefit(s) to Respondents, they violated N.J.S.A. 18A:12-24(c). Based on this legal conclusion, ALJ Moscowitz recommended that the Respondents “be suspended from their positions as members of the” Board.

The Commission acknowledged receipt of ALJ Moscowitz’s Initial Decision on September 11, 2018; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was October 26, 2018. Prior to October 26, 2018, 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 December 10, 2018. Respondents filed Exceptions on October 8, 2018, and Complainant filed a Reply to Respondents’ Exceptions on October 12, 2018.

The Commission considered the full record in this matter, including the exceptions filed by the parties, at its meeting on October 30, 2018. At its meeting on November 27, 2018, and for the reasons more fully detailed below, the Commission voted to adopt ALJ Moscowitz’s findings of fact; to adopt the legal conclusion that Respondents violated N.J.S.A. 18A:12-24(c) when they discussed and then voted to approve a settlement agreement that resulted in a personal benefit(s) to each Respondent; to modify the recommended penalty for Respondents from “suspension” to suspension for sixty (60) days; to modify the recommended penalty for any Respondent who is no longer a currently seated Board member from “suspension” to censure; and, in order to avoid disruption of the Perth Amboy School District’s operations, and in recognition of the fact that the suspension of multiple Board members may cause hardship to the Board for quorum purposes, to recommend that the Commissioner of Education (“Commissioner”) stagger the imposition of the penalties for the remaining Respondents, with Respondent Tejada serving her suspension first, Respondent Gonzalez serving her suspension second, and Respondent Varela serving his suspension last.

II. INITIAL DECISION

As set forth in ALJ Moscowitz's Initial Decision, the parties stipulated to the following set of facts:

1. In February 2015, the Commission received a complaint alleging that five (5) members of the Board, specifically, Respondents, violated the Act.

2. The Commission subsequently found probable cause to credit the allegation that Respondents violated N.J.S.A. 18A:12-24(c), which prohibits school officials from acting in any matter where they have an interest or direct or indirect financial involvement or where they have a personal involvement that is or creates some benefit to themselves. On November 16, 2016, the Commission transferred the matter to the OAL for a hearing, pursuant to N.J.A.C. 6A:28-10.7(c)(2).

3. In 2014, Respondents were potential Defendants in a civil action contemplated by former Perth Amboy Superintendent Janine Caffrey ("Caffrey"). Additionally, Caffrey had brought school-ethics complaints against Respondent Varela (C30-12); Respondents Varela, Lebreault, Gonzalez, and Tejada (C02-13); and Respondent Varela (C35-13) (collectively referred to as the "Caffrey litigation").

4. Board members are school officials pursuant to N.J.S.A. 18A:12-23.

5. N.J.S.A. 18A:12-24(c) prohibits any school official from acting "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 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."

6. The Board held a regularly scheduled meeting on June 19, 2014, which lasted until the early morning hours of June 20, 2014 ("June 2014 Meeting").

7. As reflected in its minutes, the Board went into executive session twice during the June 2014 Meeting, with the second session taking place between the hours of 12:00 a.m. and 12:55 a.m.

8. Respondent Gonzalez, Respondent Varela, Respondent Tejada, and Respondent Lebreault all participated in the second executive session.

9. As reflected in the Board minutes, upon the return to regular session, the Board attorney read a resolution to approve the settlement of the Caffrey litigation.

10. Although not specified in the resolution, the settlement included payment of \$184,000 to Caffrey, as well as the withdrawal of the pending ethics charges she had filed

against Respondent Varela (C30-12); Respondents Varela, Lebreault, Gonzalez, and Tejada (C02-13); and Respondent Varela (C35-13).

11. Respondent Gonzalez, Respondent Varela, Respondent Tejada, and Respondent Lebreault all participated in a discussion of the proposed settlement during the second executive session.

12. Respondent Gonzalez, Respondent Varela, Respondent Tejada, and Respondent Lebreault all voted in favor of the resolution.

13. The Board did not invoke the doctrine of necessity to approve the resolution.

14. Respondent Gonzalez, Respondent Varela, Respondent Tejada, and Respondent Lebreault attended the next Board meeting, which was on July 24, 2014, and voted to accept the minutes of the June 19, 2014, meeting.

15. Respondent Gonzalez, Respondent Varela, Respondent Tejada, and Respondent Lebreault did not contribute any personal funds toward the \$184,000 settlement.

16. Respondent Puccio was dismissed from this matter with prejudice on or about January 3, 2017.

17. Respondent Lebreault acknowledged that his conduct violated N.J.S.A. 18A:12-24(c) and accepted a censure on February 17, 2018.

18. On April 18, 2018, then Acting Commissioner Lamont O. Repollet executed a Consent Order to effectuate the settlement with Respondent Lebreault.

Based on the stipulated set of facts as set forth above, and following the filing of cross-motions for summary decision, ALJ Moscowitz concluded that Respondents violated N.J.S.A. 18A:12-24(c). Initial Decision at 6-7. As noted by ALJ Moscowitz, Respondents “all but acknowledge” they violated the public trust, as they stipulated that they acted in their official capacity when they discussed the settlement agreement regarding the Caffrey litigation and then approved the settlement agreement. *Id.* at 6. Respondents also stipulated to the terms of the settlement agreement, which, as reasoned by ALJ Moscowitz, “reveals just how [R]espondents violated the public trust.” *Id.* at 6-7. Pursuant to the terms of the settlement agreement, Caffrey agreed not to sue Respondents, not to testify against them, to withdraw the then-pending ethics complaints (C30-12, C02-13, and C35-13), and “never discuss them in any way, shape, or form.” *Id.* at 7. In exchange for the dismissal of her claims and complaints, Caffrey was “to receive \$184,000, leave town, and never come back.” *Id.* at 7. Based on these facts, ALJ Moscowitz concluded that Respondents “acted in their official capacity in a matter in which they had personal involvement and in violation of N.J.S.A. 18A:12-24(c). *Id.* at 7.

ALJ Moscowitz did not find persuasive Respondents’ argument that they did not violate N.J.S.A. 18A:12-24(c) because Caffrey “voluntarily” agreed to dismiss the ethics charges against them, and “it was in the personal interest of Caffrey to do so.” Initial Decision at 7. To conclude

otherwise would be, according to ALJ Moscowitz, “to lose ‘the respect and confidence of the people,’ and to create a ‘justifiable impression among the public’ that their trust had been violated.” *Id.* at 7. By first discussing and then approving a settlement agreement that “would end and forever bar the ethical charges against them,” Respondents received a benefit that created a justifiable impression among the public that their trust had been violated.” *Id.* at 7.

Respondents argued that they sought legal advice as to whether they could discuss and then vote on the settlement agreement, and that Board counsel advised them that they could do so. Initial Decision at 7. However, ALJ Moscowitz found that, “[t]he minutes of the meeting...do not document this exchange” and, therefore, “this advice is not a fact...upon which either [R]espondents or [he] could rely.” *Id.* at 7. Even if such advice was given, however, ALJ Moscowitz reasoned that it would not change his conclusion and, instead, would only serve to mitigate the penalty. *Id.* at 7-8 (citing I/M/O Garcia, Hoboken Board of Education, C41-05). The only advice that could have shielded Respondents from liability for violating N.J.S.A. 18A:12-24(c) would have been “the invocation of the doctrine of necessity”; however, ALJ Moscowitz found that although the doctrine of necessity was invoked in connection with another agenda item, “the minutes of the meeting do not indicate that this advice was given [relative to the discussion and vote on Caffrey’s settlement agreement], and the parties stipulate[d] this doctrine [of necessity] was not invoked.” *Id.* at 8. There is also nothing in the minutes to corroborate that any Respondent expressed concern with discussing and/or voting on the settlement agreement, either before or after the vote occurred. *Id.* at 8.

Having found that the Respondents violated N.J.S.A. 18A:12-24(c), ALJ Moscowitz recommended the penalty of suspension. Initial Decision at 10. He based that recommendation on the following factors: (1) Respondents did not seek or receive legal advice from counsel as to whether they could participate in the discussion and vote on the settlement agreement; (2) they knew of the doctrine of necessity and did not invoke it; (3) they were not new board members; and (4) they twice discussed and then twice voted on a matter with which they had an extremely close connection. In recommending the penalty of suspension, which was for an unspecified duration, ALJ Moscowitz noted that Respondents’ involvement in the discussion and vote on a matter involving ethics charges “make this case more disturbing than ironic.” *Id.* at 10.

III. EXCEPTIONS

On October 8, 2018, Respondents filed Exceptions, arguing that ALJ Moscowitz inaccurately focused on the text of the statute and should have considered “interpretative case law” that makes it clear that the Board members’ vote in favor of the Caffrey settlement is not actionable under the Act. In support of their argument, Respondents cite I/M/O Rhonda Williams Bembry, Hackensack Board of Education, C49-12 (“Bembry”) (quoting Friends Retirement Concepts v. Board of Education of the Borough of Somerville, 356 N.J. Super. 203, 214 (Law Div. 2002) (“Friends”), which states that the question turns on “whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty.” In addition, a conflict of interest arises when “the public official has an interest not shared in common with the other members of the public.” As applied here, Respondents argue that Caffrey’s settlement offer did not tempt them to “depart from their sworn public duties,” and that they voted for it because the Board attorney advised

them that doing so was in the District's best interest. By approving the settlement agreement, Respondents contend they avoided expensive and protracted litigation with Caffrey, as well as public attention and outcry. Respondents also assert that while they received an incidental benefit, namely dismissal of ethics charges, the dismissal of those charges is insufficient to warrant a finding that they violated N.J.S.A. 18A:12-24(c). Finally, Respondents argue that even if the Board members violated the Act, the recommended suspension is "grossly disproportionate" to the violation, as they did not act "outrageously, out of unadulterated selfishness, and with stark disregard for the school district." Instead, Respondents argue that they acted in the best interest of the Perth Amboy School District.

In reply to Respondents' Exceptions filed on October 12, 2018, Complainant argues that ALJ Moscowitz correctly found that the dismissal of personal ethical charges against Respondents (as part of a settlement agreement) resulted in a benefit to them; correctly applied the law in determining that the Respondents took action in a matter where they had a personal involvement that created some benefit to them; and correctly found that school administrators must avoid conduct that creates a justifiable impression among the public that their trust is being violated. Complainant also contends that reliance on Bembry and Friends is misplaced because neither case can be reasonably interpreted to mean what Respondents construe it to mean.

Moreover, Complainant agrees with the recommended penalty of suspension because Respondents were not new board members; they participated in and then voted on a matter with which they were closely connected without invoking the doctrine of necessity; and, most importantly, they received a personal benefit(s) by accepting the settlement agreement, namely the dismissal of multiple ethics complaints. Complainant asserts that Respondents' actions demonstrate a "flagrant disregard" for the public trust and their obligation as Board members to preserve that trust; therefore, their conduct warrants the penalty of suspension.

IV. ANALYSIS

Upon careful and independent review of the record, the Commission adopts ALJ Moscowitz's findings of fact, and also adopts the legal conclusion that Respondents violated N.J.S.A. 18A:12-24(c) when they discussed and then voted to approve a settlement agreement that resulted in a personal benefit(s) to Respondents. In adopting ALJ Moscowitz's legal conclusion, the Commission finds wholly unpersuasive any argument that Respondents' involvement in the discussion and vote on the settlement agreement was, somehow, in the best interest of the school district and/or the public. Even if the settlement agreement did avoid protracted, expensive, and potential unsavory or embarrassing litigation between the Board and Caffrey, Respondents conveniently ignore the fact that the approval of the settlement agreement also dismissed multiple ethics charges against each of them – specifically, three (3) cases against Respondent Varela, one case (1) against Respondent Gonzalez, and one (1) case against Respondent Tejada. The purpose of the Act was to ensure and preserve public confidence in the conduct of school officials, and by voting to approve an agreement that undermined these very principles, Respondents acted in a way that is the antithesis of ethical conduct, and the definition of self-serving behavior. Moreover, by characterizing the dismissal of the ethics charges as "incidental," it is clear that Respondents fail to fully appreciate the importance of the standards

to which their conduct as school officials must adhere, or the penalties that can be imposed for failure to comply.

In addition, and as noted by ALJ Moscowitz, there is nothing in the Board's minutes to indicate that Respondents sought, obtained, or relied upon legal advice when they chose to discuss, and then vote upon, the settlement agreement that resulted in the dismissal of ethics charges against each of them. Therefore, the Commission finds this argument equally unpersuasive.

V. DECISION

The Commission determines to adopt the ALJ's Initial Decision finding that Respondents violated N.J.S.A. 18A:12-24(c) when they discussed and then voted to approve a settlement agreement that resulted in a personal benefit(s) to each Respondent, namely the dismissal of ethics charges against each Respondent.

VI. PENALTY

Based upon the conclusion that Respondents violated N.J.S.A. 18A:12-24(c) when they discussed and then voted to approve a settlement agreement that resulted in a personal benefit(s) to each Respondent, the Commission concurs with ALJ Moscowitz that suspension is the appropriate penalty. As noted by ALJ Moscowitz, this penalty is appropriate because Respondents did not seek or receive legal advice from counsel as to whether they could participate in the discussion and vote on the settlement agreement; they knew of the doctrine of necessity (which would have permitted them to vote) but did not invoke it; they were not new board members; they twice discussed and then twice voted on a matter with which they had an extremely close connection; and they received a personal, and direct, benefit as a result of the settlement agreement.

Notwithstanding its agreement with the recommended penalty of suspension, the Commission **modifies** the recommended penalty to clarify that **the duration of the suspension shall be for sixty (60) days**. The Commission further modifies the recommended penalty to note that, to the extent a remaining Respondent may no longer serve as a board member, his or her suspension shall be reduced to a censure, the maximum penalty authorized for individuals who no longer serve as board members. Finally, and in order to avoid disruption of the Perth Amboy School District's operations, and in recognition of the fact that the suspension of multiple Board members may cause hardship to the Board for quorum purposes, the Commission recommends that the Commissioner stagger the imposition of the penalties for the remaining Respondents, with Respondent Tejada serving her suspension first, Respondent Gonzalez serving her suspension second, and Respondent Varela serving his suspension last.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner for review of the Commission's recommended sanctions. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's findings of violations of the Act; or 3) file both exceptions to the recommended sanction and an appeal of the Commission's findings of violations of the Act.

Parties taking exception to the recommended sanctions of the Commission but *not disputing* the Commission's findings of violations may file, within **thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended sanctions to the Commissioner. The forwarding date shall be the mailing date to the parties, as 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 Commission and all other parties.

Parties seeking to appeal the Commission's findings of violations *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 mailing date to the parties, as indicated below. In such cases, the Commissioner's review of the Commission's recommended sanctions will be deferred and incorporated into the Commissioner's review of the findings of violations 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 brief on appeal.

Robert W. Bender, Chairperson
School Ethics Commission

Mailing Date: November 28, 2018

RESOLUTION ADOPTING DECISION IN CONNECTION WITH C08-15

WHEREAS, pursuant to N.J.A.C. 6A:28-10.7(c)(2), the School Ethics Commission (“Commission”) voted to transmit the above matter to the Office of Administrative Law for a hearing; and

WHEREAS, Barry E. Moscowitz, Administrative Law Judge (“ALJ Moscowitz”) issued his Initial Decision on September 11, 2018; and

WHEREAS, in his Initial Decision, ALJ Moscowitz noted that the parties stipulated to a set of facts which, ultimately, served as the basis for each party’s motion for summary decision; and

WHEREAS, in his Initial Decision, ALJ Moscowitz found that Respondents violated N.J.S.A. 18A:12-24(c) when they discussed and then voted to approve a settlement agreement that resulted in a personal benefit(s) to each Respondent, and recommended that Respondents “be suspended from their positions as members of the” Perth Amboy Board of Education; and

WHEREAS, on October 8, 2018, Respondents filed Exceptions to ALJ Moscowitz’s Initial Decision; and

WHEREAS, on October 12, 2018, Complainant filed a Reply to Respondents’ Exceptions; and

WHEREAS, at its meeting on October 30, 2018, the Commission reviewed and discussed the record, including the Initial Decision, Respondents’ Exceptions, and Complainant’s Reply to Respondent’s Exceptions, and

WHEREAS, at its meeting on October 30, 2018, the Commission discussed adopting the findings of fact from the Initial Decision; adopting the legal conclusion that Respondents violated N.J.S.A. 18A:12-24(c) when they discussed and then voted to approve a settlement agreement that resulted in a personal benefit(s) to each Respondent; modifying the recommended penalty for Respondents from “suspension” to suspension for sixty (60) days; modifying the recommended penalty for any Respondent who is no longer a currently seated Board member from “suspension” to censure; and recommending that that the Commissioner of Education stagger the imposition of the suspensions, with Respondent Tejada serving her suspension first, Respondent Gonzalez serving her suspension second, and Respondent Varela serving his suspension last; and

WHEREAS, at its meeting on November 27, 2018, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from October 30, 2018; 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
was duly adopted by the School Ethics Commission
at its public meeting on November 27, 2018.

Kathryn A. Whalen, Director
School Ethics Commission