

***Before the School Ethics Commission
OAL Docket No.: EEC-06483-22
SEC Docket No.: C98-21
Final Decision***

**Tyrone Jon Tarver,
Complainant**

v.

**Jeffrey Wingfield,
Orange Board of Education, Essex County,
Respondent**

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on December 24, 2021, by Tyrone Jon Tarver (Complainant), alleging that Jeffrey Wingfield (Respondent), a member of the Orange Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code) in Counts 1-51.

At its meeting on June 28, 2022, and after reviewing Respondent's Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and Complainant's response thereto, the Commission adopted a decision at its meeting on June 28, 2022, finding that the Complaint was timely filed, granting the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g) in Counts 1-45 (including those already voluntarily withdrawn by Complainant), and denying the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g) in Counts 46-51. The Commission also adopted a decision finding the Complaint not frivolous and denying Respondent's request for sanctions. Based on its decision, the Commission also directed Respondent to file an Answer to Complaint (Answer) as to the remaining allegations in the Complaint (Counts 46-51), and to transmit the above-captioned matter to the Office of Administrative Law (OAL) following receipt of the Answer, which he filed on July 18, 2022.

At the OAL, a hearing was held on January 30, 2023. Following the conclusion of Complainant's case-in-chief, Respondent requested leave to file a motion for Summary Decision, which the Administrative Law Judge (ALJ) granted. Thereafter, Respondent filed a motion for Summary Decision and the ALJ issued an Initial Decision on August 1, 2023. The parties did not file exceptions to the Initial Decision.

At its meeting on September 26, 2023, the Commission considered the full record in this matter. Thereafter, at its meeting on October 17, 2023, the Commission voted to modify the Initial Decision by adopting the Initial Decision’s conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c) but modifying the Initial Decision to find Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g). The Commission also voted to recommend a penalty of reprimand.

II. Initial Decision

This matter stems from a National Football League (NFL) initiative to film a show at Bell Stadium. On October 1, 2020, the Superintendent sent Complainant (Board President) an email regarding a “facilities request form” that NFL Films submitted and inquiring whether the Board will allow for retroactive approval. *Initial Decision* at 3. On the same date, Complainant forwarded the Superintendent’s email to the Board and indicated:

A facilities request form was submitted, but only yesterday, which is well after our deadline to consider a Facilities Request. In addition, a Hold Harmless Agreement, and other paperwork, were reviewed by Atty. Kleen, and she approved all of the paperwork for our consideration.

A \$5,000 donation to the district was also agreed upon by NFL Films.

. . . NFL needs to know of our anticipated approval no later than tomorrow morning.

Please do not reply to this email with “Yes” or “Absolutely” or any positive comments. I am doing my best to avoid this becoming a meeting via email.

Please only reply if you anticipate voting “**NO**” for this retroactive Facilities Request Resolution during our October 13 Board Meeting. But I need any “**NO**” replies before the end of this evening.

[*Id.* at 3-4.]

Also on the same date, Respondent copied and pasted Complainant’s email and sent it to officials for the Township of Orange (Township), including the Mayor, counsel, and a Councilwoman, and added the text “I HAVE COPIED AND PASTED FROM MY BOARD EMAIL TO YOU . . . You should know the following.” *Id.* at 4. At some point that day, the NFL Films location scout sent an email to the Board’s Athletic Director to confirm the donation amount and thank him for the opportunity to use the stadium, which the Superintendent forwarded to the Board the following morning. *Id.* at 4-5. Respondent copied and pasted the email chain and sent it to the Township attorney. *Id.* at 5. The NFL completed filming on October 5, 2020, and the Board retroactively approved the request on October 13, 2020. *Ibid.*

Respondent argues the content of the emails shared was not confidential because the information in the email was “public and not deliberated,” and the Board had already decided on the date, location, hold harmless agreement and donation amount by October 1, 2020. *Id.* at 9-10. Complainant counters that the emails were not public, the matter was still under deliberation as of October 1, 2020, and the matter should have remained confidential until the Board voted on October 13, 2020. *Id.* at 9. Additionally, according to Complainant, Respondent’s actions put the “public safety in ‘jeopardy,’” as the Board was not publicizing the event due to COVID restrictions, and this could have negatively impacted the Board. *Ibid.*

As to the allegations of *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e), the ALJ asserts Complainant did not present any evidence other than his own testimony that Respondent’s actions jeopardized the safety of the public or may have caused unwanted public reaction. *Id.* at 13. Therefore, the ALJ concludes violations of *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e) have not been established. *Ibid.*

Regarding a violation of *N.J.S.A.* 18A:12-24.1(g), the ALJ contends the issue remains whether the information contained in the email that Respondent forwarded was (1) public, and (2) if not, whether the information contained in the email was deliberative. *Id.* at 14. According to the ALJ, the record reveals that the emails Respondent forwarded disclose that the parties negotiating the “facilities request form” were the NFL and the Athletic Director (not a Board member). Per the ALJ, as the negotiations for the “facilities request form” were not confined to the capacities of the Board, they were not confidential. *Id.* at 14-15. Moreover, the ALJ contends the information that was in the shared email was not confidential because it was not being deliberated by the time Respondent forwarded it to the Mayor, counsel and the Councilwoman on October 1. *Id.* at 15. The ALJ asserts the donation price, hold harmless agreement, and location for the request were already agreed upon, and the facts show the only thing needed was the Board’s “anticipated approval” by October 2. *Id.* at 17. Therefore, the ALJ concludes the Board’s “negotiative process” concerning the approval for the NFL filming was finalized on October 1, 2020, which was before the time Respondent forwarded the email from the Superintendent, so the alleged violation of *N.J.S.A.* 18A:12-24.1(g) should be dismissed. *Id.* at 17-18.

III. Analysis

Upon a careful, thorough, and independent review of the record, the Commission agrees with the ALJ that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c), but finds Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g). As such, the Commission modifies the Initial Decision and recommends a penalty of reprimand.

Pursuant to *N.J.S.A.* 18A:12-24.1(c), board members must confine board action to “policy making, planning, and appraisal” and “frame policies and plans only after the board has consulted those who will be affected by them.” The Commission finds Respondent’s actions in copying and pasting from his Board email, while inappropriate, does not constitute Board action to effectuate policies and plans without consulting those affected by such policies and plans. As

Complainant did not meet his burden of establishing that Respondent sought to effectuate policy, the Commission finds a violation of *N.J.S.A. 18A:12-24.1(c)* has not been established.

Pursuant to *N.J.S.A. 18A:12-24.1(e)*, a board member must recognize that authority rests with the board and a board member shall not make any personal promises or take any action that may compromise the board. The ALJ found that Respondent did send the emails to the Township officials. *Initial Decision* at 4, n.3. In copying and pasting from his Board email and sending the information to Township officials, Respondent took action beyond the scope of his duties as a Board member that had the potential to compromise the Board. *See Arthur Jacobs v. Raymond Delbury, Sussex Wantage Regional Board of Education, C44-07* (November 25, 2008) (finding a violation of *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(g)* and *N.J.S.A. 18A:12-24.1(i)* when a board member posted an email sent to the board “word for word” on an internet chat room and bulletin board). The scheduled filming had not been publicized, and Respondent took it upon himself to spread information that he learned about solely because of his position as a Board member. Revealing the inner communications of the Board is not only inappropriate but, by its nature, has the potential to compromise the Board. Accordingly, the Commission finds Respondent violated *N.J.S.A. 18A:12-24.1(e)*.

As set forth in *N.J.S.A. 18A:12-24.1(g)*, Board members must “hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools.” Establishing a violation 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 policies, procedures, or practices.” *N.J.A.C. 6A:28-6.4(a)(7)*. The Commission finds by copying and pasting from his Board email, Respondent took action to make public, reveal or disclose information that was not public. Contrary to the ALJ’s conclusion, the Commission finds the matter was not public when Respondent shared the Board correspondence. The October 1 email makes clear that the Board had not yet voted on the matter as it provides Board members the opportunity to indicate whether they “anticipate” voting against the “retroactive” facilities request. The NFL filming did not occur until October 5, 2020, and the Board did not officially vote on the matter until October 13, 2020. *Initial Decision* at 5. Moreover, Complainant sent the email at 5:39 p.m. on October 1 and asked the Board members to reply if they intended to vote “no” by the end of the evening. Respondent then forwarded the October 1 email at 9:20 p.m. that same evening to the Township officials, followed by sending a second email to Township officials on October 2 that had been sent to the Board from the Superintendent. The testimony cited by the ALJ shows that Board members could have weighed in on the proposal until the time the filming occurred on October 5. *Initial Decision* at 6-7. The fact that no further negotiations occurred does not mean that Respondent did not disclose information that was still being considered by the Board.

Contrary to the ALJ’s conclusion, the Commission finds *James Lynch v. Michael Skowronski, East Greenwich Township Board of Education, Commissioner’s Decision No. 284-20SEC* (December 15, 2020) instructive in this matter. There, the Commissioner of Education (Commissioner) found a violation of *N.J.S.A. 18A:12-24.1(g)* when a board member inadvertently shared an email with a parent, which discussed Board business. The Commissioner noted that the email contained deliberative material because it contained “tentative thoughts, suggestions, and questions,” which are all part of the deliberative process. *Id.* at 3-4. The

Commissioner also found that the disclosure of such deliberative material needlessly injures the schools. *Id.* at 4. Here, Respondent intentionally shared Complainant's email proposing how to handle the approval of the NFL filming with Township officials mere hours after receiving it. Certainly, Complainant's email could fall under the realm of deliberative material as Complainant made a suggestion to the Board as to the Board's action, and when Respondent shared the email, it was not clear whether the Board agreed or disagreed with the proposed plan. As such, the Commission finds Respondent violated *N.J.S.A.* 18A:12-24.1(g).

With respect to the violations of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g), the Commission finds a penalty of **reprimand** is appropriate. Copying and pasting directly from the Board email and sending its non-public contents to public officials is not a de minimis action. *See Lynch, supra*, (issuing a penalty of reprimand for a violation of *N.J.S.A.* 18A:12-24.1(g) when a board member inadvertently disclosed a Board email to a member of the public); *Jacobs, supra* (recommending a penalty of censure for violations of *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g) and *N.J.S.A.* 18A:12-24.1(i) resulting from the posting of a board email on NJ.com, when the respondent had previously been censured for ethics violations). Respondent's actions not only revealed Board communications regarding a suggested Board action, but also made public an event that had not yet been publicized. However, given that the disclosure was limited to two emails about a one-time event, the Commission recommends a penalty of reprimand for the violation.

IV. Decision

For the aforementioned reasons, the Commission modifies the Initial Decision of the OAL. Specifically, the Commission adopts the Initial Decision's conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c). However, the Commission modifies the Initial Decision to find Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g) and recommends a penalty of **reprimand** for the violation.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a 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, 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," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) 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:4:1 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

Mailing Date: October 17, 2023

***Resolution Adopting Decision
in Connection with C98-21***

Whereas, at its meeting on June 22, 2022, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing; and

Whereas, the Administrative Law Judge (ALJ) issued an Initial Decision dated August 1, 2023; and

Whereas, the ALJ found that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(g), and ordered the dismissal of the above-captioned matter; and

Whereas, the parties did not file exceptions to the Initial Decision; and

Whereas, at its meeting on September 26, 2023, the Commission reviewed the record in this matter, and discussed adopting the Initial Decision's conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c) but modifying the Initial Decision to find Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g), and recommending a penalty of reprimand; and

Whereas, at its meeting on October 17, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on September 26, 2023; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its regularly scheduled meeting on October 17, 2023.

Brigid C. Martens, Acting Director
School Ethics Commission