

***Before the School Ethics Commission  
OAL Docket No.: EEC 06498-22  
SEC Docket No.: C89-21  
Final Decision***

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**Laura Davey and Lynn Belletier,  
Complainants**

**v.**

**Michael Evans,  
Avon Board of Education, Monmouth County,  
Respondent**

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**I. Procedural History**

This matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on December 1, 2021,<sup>1</sup> by Laura Davey and Lynn Belletier (Complainants), alleging that Michael Evans (Respondent), a member of the Avon Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* The Complaint alleges that Respondent violated *N.J.S.A. 18A:12-24.1(d)*, *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).

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 Complainants' response thereto, the Commission voted to deny the Motion to Dismiss in its entirety, find the Complaint not frivolous, and deny Respondent's request for sanctions. In light of the fact that the Complaint only involved violations of the Code, the Commission additionally voted to transmit the matter to the Office of Administrative Law (OAL) following receipt of the Answer, which Respondent filed on July 18, 2022.

A hearing was held at the OAL on March 7 and April 8, 2024. Thereafter, the Administrative Law Judge (ALJ) issued an Initial Decision on September 3, 2024, finding that Respondent violated *N.J.S.A. 18A:12-24.1(e)*, but did not violate *N.J.S.A. 18A:12-24.1(d)* or *N.J.S.A. 18A:12-24.1(g)*, and recommending a penalty of reprimand. Complainants and Respondent filed exceptions to the Initial Decision, in accordance with *N.J.A.C. 1:1-18.4*.

At its meeting on October 22, 2024, the Commission considered the full record in this matter. Thereafter, at its meeting on November 26, 2024, the Commission voted to adopt the

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<sup>1</sup> On December 1, 2021, Complainants filed a deficient Complaint; however, on December 20, 2021, Complainants cured all defects and filed an Amended Complaint that was deemed compliant with the requirements detailed in *N.J.A.C. 6A:28-6.3*.

Initial Decision's legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24.1(e), but did not violate *N.J.S.A.* 18A:12-24.1(d) or *N.J.S.A.* 18A:12-24.1(g), and the recommended penalty of reprimand.

## II. Initial Decision

This matter stems from a teacher's resignation on July 14, 2021, effective August 31, 2021. *Initial Decision* at 3. The teacher sent a text message to Respondent and a District parent that said, "I just sent a copy of my exit form to all the board members. Please keep me posted." *Ibid.* Respondent replied, "Received. Thanks for your honesty and bravery. Are you ok to have it read publicly, or do you want to attend the meeting Monday? Otherwise, the majority may bury it in executive session..." *Ibid.*

Thereafter, on September 10, 2021, Respondent replied to the text thread, which included the teacher and the parent, stating, "Did you ever receive a Rice<sup>2</sup> notice? (required notification of executive session and opportunity for you [sic] demand it be public)? I could accuse the board president or secretary or CSA of malfeasance if you did not receive the notice and they want to discuss you in Exec[utive] Session. BOE may try to discuss you again Monday unless you demand it be public." *Id.* at 3-4.

On October 29, 2021, a part-time Supervisor of Instruction sent a letter to the Board, attaching the September 10, 2021, text message from Respondent, advising:

Today a staff member shared the attached screen shot of a text from a BOE member to a colleague who is no longer here. The staff member shared a feeling of extreme discomfort to discover that BOE members attempt to manipulate employees to suit their own agenda. Though this person wishes to remain anonymous (which I respect), the message in the text is clear and reveals extreme dysfunction and impropriety existing among the board.

I feel compelled to share this with you in the hope that it will help to shine a light on the truth.

[*Id.* at 4.]

The ALJ noted that Respondent believed the Board improperly discussed certain matters during public session and did not comply with the mandatory Rice notice procedures. *Id.* at 9. Although Respondent did not know if the teacher's rights were violated, he had a "general belief that the Board failed to comply with its obligations," and the impacted individuals were unaware of the failure. *Ibid.* The ALJ further noted, Respondent's text to the teacher did not reveal confidential information, but instead inquired whether "she wanted her exit survey read publicly and suggested that the Board might not disclose her survey responses publicly." *Ibid.* Further,

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<sup>2</sup> *Rice v. Union County Regional High School Board of Education*, 155 N.J. Super. 64 (App. Div. 1977), certif. denied, 76 N.J. 238 (1978).

Respondent asked if she received a Rice notice, and suggested if she did not, the Board may not have proceeded properly. Respondent also suggested a course of action that the teacher could take if the Board did not follow proper procedures. *Ibid.*

The ALJ asserted that even if Respondent communicated with District personnel, which he maintains he did not, Respondent “did not issue a directive concerning the duties of school personnel or the day-to-day operations” of the District. *Id.* at 15. The ALJ found there is not any evidence to demonstrate that Respondent “issued a directive or became directly involved with specific [District] duties or operations.” *Ibid.* Therefore, the ALJ concluded that Complainants have not demonstrated by a preponderance of evidence that Respondent violated *N.J.S.A.* 18A:12-24.1(d). *Ibid.*

According to the ALJ, “the substance and tone of” Respondent’s text message indicated that he “made more than simple statements of fact.” *Id.* at 16. The ALJ contended that Respondent “attempted to direct or influence the former employee’s actions” regarding the Board by suggesting that the Board would discuss her during an upcoming meeting. *Ibid.* Moreover, this “was bolstered by his statement that he could take action on her behalf if she had not received a Rice notice.” *Ibid.* The ALJ maintained that Respondent’s “apparent intention was to compromise the Board by influencing the actions of the former employee who was subject to discussion by the Board,” and therefore, the ALJ concluded that Complainants have established by a preponderance of evidence that Respondent violated *N.J.S.A.* 18A:12-24.1(e). *Ibid.*

Finally, as to a violation of *N.J.S.A.* 18A:12-24.1(g), the ALJ found that Respondent did not disclose confidential information, such as something that was discussed in executive session, but rather, “speculated about the Board’s potential actions” with respect to the teacher, and the texts do not contain confidential information. *Id.* at 17. Therefore, the ALJ concluded that Complainants have not demonstrated by a preponderance of evidence that Respondent violated *N.J.S.A.* 18A:12-24.1(g). *Ibid.*

Finally, in recommending an appropriate penalty for the violation of *N.J.S.A.* 18A:12-24.1(e), the ALJ noted that Respondent violated one out of three of the alleged provisions, he acknowledged that he was motivated by his suspicion that a Rice notice was not properly being issued, and he was also motivated by his concern about the Board’s compliance with proper procedures. *Id.* at 18. To this end, the ALJ found that Respondent’s actions were misguided and that a reprimand is appropriate. *Ibid.*

### **III. Exceptions**

#### ***Complainants’ Exceptions***

Complainants argue, “a reprimand is not sufficient given [Respondent’s] inappropriate text communications to two individuals (a former teacher and a parent in the community).” Complainants further argue the Initial Decision noted that Respondent “attempted to direct or influence the former employee’s actions,” that Respondent stated he “could take action on her behalf,” and that “[h]is apparent intention was to compromise the Board.” Complainants assert, “[w]hatever [] Respondent’s alleged motivation was should not influence the assessed penalty.”

According to Complainants, if Respondent was concerned whether the teacher received a Rice notice, he could have confirmed that with the Business Administrator or confidentially with the former employee, rather than having “inappropriate discussions with a former employee as well as a parent in the community.” Complainants contend Respondent’s actions put the District at risk. Therefore, Complainants request that the Commission issue a censure or remove Respondent.

Additionally, Complainants disagree with the ALJ’s finding that they did not “demonstrate by a preponderance of credible evidence that Respondent violated *N.J.S.A. 18A:12-24.1(g)*.” Complainants argue Respondent’s text messages stated, “. . . and they want to discuss you in Exec Session. BOE may try to discuss you again Monday unless you demand it be public.” Per Complainants, Respondent disclosed confidential information about what was being discussed in executive session to the two individuals who are not Board members. Therefore, Complainants request that the Commission also find that Respondent violated *N.J.S.A. 18A:12-24.1(g)*.

### ***Respondent’s Exceptions***

Respondent initially notes that Complainants “did not offer any witness or other evidence at the hearing that proved the allegations contained” in the Complaint. Specifically, Respondent argues the Initial Decision did not provide any “reference or citation to any testimony or other piece of evidence to support the assertions and conclusions” that Respondent violated *N.J.S.A. 18A:12-24.1(e)*. According to Respondent, despite the ALJ’s reliance on the “substance and tone” of the text message, as well as Respondent’s “apparent intention” to compromise the Board, the ALJ did not discuss “the basis upon which she [drew] these conclusions regarding” a violation of *N.J.S.A. 18A:12-24.1(e)*. Furthermore, Respondent maintains the ALJ did “not address any of the witness[es]’ testimony in her decision, and she [did] not make any statement whatsoever that she did not find [Respondent’s] testimony credible.”

Respondent asserts that the ALJ would not allow him to present relevant material evidence at the hearing. According to Respondent, the ALJ was “interested only in the most-narrow reading of the charges against” Respondent. More specifically, Respondent asserts that although he provided evidence to support his contentions, specifically Exhibit R9, a petition and two District climate surveys, the ALJ “displayed little interest in the testimony or evidence relating to the morale or culture of the district, or the departure of 25% of the teaching staff, including [the teacher].” Respondent notes the context of the morale of the District “is crucial to the understanding for why he made the statements that he did to the former employee,” and the ALJ’s “obvious disinterest in evidence regarding the climate or morale of the [s]chool district” did not allow him to present a “complete case in his defense.” Respondent notes he had “serious concerns about” how the Superintendent was managing the District; however, he was unable to provide the context to the Court. Per Respondent, the “culture of the district at that time was critical to explaining [Respondent’s] actions,” and the ALJ’s “decision not to admit this evidence was a clear abuse of discretion that resulted in the denial of justice,” and therefore, the conclusion that Respondent violated *N.J.S.A. 18A:12-24.1(e)* should be reversed.

Furthermore, Respondent asserts the ALJ's failure to consider the circumstances of the situation was a "clear abuse of discretion and resulted in an arbitrary finding that [Respondent] acted in a way to compromise the Board." Respondent maintains that the ALJ provided "conflicting statements" about his intentions, first noting his intention was to compromise the Board and then concluding that he was "motivated by his suspicion that Rice notices were not properly issued." Respondent further maintains that he testified that his intention was "to see if the district administration was following proper procedures" and that he testified that he did not make any personal promises.

Finally, Respondent provides that the ALJ's conclusion is not supported by testimony or physical evidence. Respondent reiterates that the only evidence that Complainants provided was their own testimonies. They did not have any documentary evidence to support their claims. Respondent argues that the ALJ's conclusion that he violated *N.J.S.A. 18A:12-24.1(e)* was "solely based on opinions and not facts." Ultimately, the ALJ "relied upon her interpretation of the 'substance and tone' of the text message, and that [Respondent's] 'apparent intention' was to compromise the Board"; however, the ALJ did not discuss "the basis upon which she [drew] these conclusions" related to *N.J.S.A. 18A:12-24.1(e)*, and therefore, Respondent asserts the Initial Decision should be vacated.

#### **IV. Analysis**

Upon a careful, thorough, and independent review of the record, the Commission agrees with the ALJ's legal conclusions that Respondent violated *N.J.S.A. 18A:12-24.1(e)*, but did not violate *N.J.S.A. 18A:12-24.1(d)* or *N.J.S.A. 18A:12-24.1(g)*, and the recommended penalty of reprimand.

*N.J.S.A. 18A:12-24.1(d)* requires a board member to carry out his responsibility not to administer the schools, and together with fellow board members, see that they are well run. The Commission agrees with the ALJ that by sending a text message to a former employee, without further evidence that Respondent directed school personnel to take any sort of action with respect to the substance of the text messages, Respondent did not give a direct order to school personnel or become directly involved in activities or functions that are the responsibility of school personnel, or the day to day administration of the District. Accordingly, a violation of *N.J.S.A. 18A:12-24.1(d)* 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. When Respondent sent a text message to the teacher that he could "accuse the board president or secretary or CSA of malfeasance if you did not receive the notice and they want to discuss you in Exec[utive] Session," he made a personal promise that he could take action if she did not receive a Rice notice. Further, by sending such a message, Respondent acted beyond the scope of his duty, and this conduct had the potential to compromise the Board. Respondent was, in essence, encouraging an individual to accuse the Board of wrongdoing, or offering to make that accusation on her behalf. As such, the Commission agrees with the ALJ that Respondent's actions violated *N.J.S.A. 18A:12-24.1(e)*.

*N.J.S.A.* 18A:12-24.1(g) requires a board member to hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools, and also to provide accurate information. The Commission agrees with the ALJ that Respondent's text message did not disclose any confidential information. Instead, Respondent inquired about a Rice notice and speculated about whether the Board would discuss the former teacher during the meeting. Respondent did not reveal any information that had been previously discussed in Executive Session. Therefore, Respondent's actions did not violate *N.J.S.A.* 18A:12-24.1(g).

The Commission does not find the parties' exceptions to be persuasive. Although Respondent argues that he could not provide a complete defense to the accusations against him, the Commission notes that Exhibit R9, which Respondent contends explained the morale of the District at the time of the text message and set the stage for the why he sent the text message, was ultimately admitted into evidence. Although Respondent also challenges the exclusion of several documents, including a petition and two District climate surveys, the Commission notes that regardless of the additional context that Respondent asserts these documents may have provided, the text message was inappropriate action beyond the scope of his duties that had the potential to compromise the Board. The Commission further notes that the Initial Decision did not have conflicting statements. The ALJ acknowledged, as Respondent also maintains, that he had concerns regarding the proper issuance of Rice notices.

Finally, the Commission agrees with the ALJ that a reprimand is the appropriate penalty for Respondent's violation of *N.J.S.A.* 18A:12-24.1(e). While Respondent's communication was inappropriate and compromised the Board, Respondent's communication stemmed from his concern that Rice notices may not have been properly issued.

#### **IV. Decision**

For all of the aforementioned reasons, the Commission adopts the Initial Decision's legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24.1(e), but did not violate *N.J.S.A.* 18A:12-24.1(d) or *N.J.S.A.* 18A:12-24.1(g), and the recommended 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 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 Office 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](mailto:ControversiesDisputesFilings@doe.nj.gov)). A copy must also be sent to the Commission ([school.ethics@doe.nj.gov](mailto: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.

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Robert W. Bender, Chairperson

Mailing Date: November 26, 2024

***Resolution Adopting Decision  
in Connection with C89-21***

***Whereas***, at its meeting on June 28, 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 September 3, 2024; and

***Whereas***, the ALJ found that Respondent violated *N.J.S.A.* 18A:12-24.1(e), but did not violate *N.J.S.A.* 18A:12-24.1(d) or *N.J.S.A.* 18A:12-24.1(g), and recommended a penalty of reprimand; and

***Whereas***, both Complainants and Respondent filed exceptions to the Initial Decision; and

***Whereas***, at its meeting on October 22, 2024, the Commission reviewed the record in this matter, and discussed adopting the ALJ's legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24.1(e), but did not violate *N.J.S.A.* 18A:12-24.1(d) or *N.J.S.A.* 18A:12-24.1(g), and the recommended penalty of reprimand; and

***Whereas***, at its meeting on November 26, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on October 22, 2024; and

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

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Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its meeting on November 26, 2024.

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Brigid C. Martens, Director  
School Ethics Commission