

Before the School Ethics Commission
Docket No.: D03-19
Decision for Failure to File Personal/Relative and Financial Disclosure Statements

I/M/O Zandile Nkabinde,
Jersey City Community Charter School Board of Trustees, Hudson County

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) issued by the School Ethics Commission (Commission) at its meeting on July 23, 2019, and mailed on July 24, 2019, through regular and electronic mail, directing Respondent, a “school official” as defined in *N.J.S.A. 18A:12-23* of the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.*, to show cause as to why the Commission should not find her in violation of the Act for failing to file Personal/Relative and Financial Disclosure Statements (Disclosure Statements) as required by *N.J.S.A. 18A:12-25*, *N.J.S.A. 18A:12-26*, and *N.J.A.C. 6A:28-3.1*.

The OTSC issued by the Commission provided notification to Respondent that she had twenty (20) days to respond to the OTSC, and that failure to respond would be deemed an admission of the facts set forth in the OTSC. Respondent was further notified that, upon receipt of the response or upon expiration of the twenty (20) day time period for so filing, the Commission may proceed to a determination of a violation on a summary basis (i.e., without a hearing or further proceedings) in accordance with *N.J.A.C. 6A:28-1.6(c)*, which so permits when material facts are not in dispute. The Commission discussed this matter at its special meeting on August 30, 2019.

II. Analysis

The Act was enacted by the New Jersey State Legislature to ensure and preserve public confidence in members of local boards of education and local school administrators. Annually, on or before April 30th of each year, all school officials, as defined in *N.J.S.A. 18A:12-23*, must file Disclosure Statements with their local board secretaries or charter school designees. *N.J.A.C. 6A:28-3.1(a)*. In addition, after the April 30th filing date, all newly elected board members or board members appointed to fill vacancies, newly appointed members of a board of trustees of a charter school, and administrators appointed to fill a vacancy must file their Disclosure Statements within thirty (30) days of appointment or taking office. *N.J.A.C. 6A:28-3.1(c)*, *N.J.A.C. 6A:28-3.1(d)*, *N.J.A.C. 6A:28-3.1(e)*, and *N.J.A.C. 6A:28-3.1(f)*.

Respondent is a returning school official and, therefore, was required to file her Disclosure Statements by April 30, 2019. Respondent failed to file her Disclosure Statements within the statutorily required timeframe.

By correspondence dated July 1, 2019, from the Hudson County Office of Education, Respondent was reminded that her Disclosure Statements had not yet been filed with the Commission. This correspondence further advised Respondent that if she failed to file her Disclosure Statements by July 10, 2019, the Commission had the authority to issue an OTSC, find her in violation of the Act, and recommend a penalty up to and including removal for her non-compliance.

When the correspondence from the Hudson County Office of Education failed to cause Respondent to file her Disclosure Statements, the Commission sent her another letter dated July 11, 2019, and informed Respondent that failure to file her Disclosure Statements by July 19, 2019, would result in the Commission voting to issue an OTSC. The Commission further advised that, if an OTSC was issued, Respondent would be assessed a penalty, up to and including removal.

When Respondent failed to file her Disclosure Statements as required by *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1 by July 19, 2019, and despite receiving multiple reminders and opportunities to file her Disclosure Statements, an OTSC was issued by the Commission at its meeting on July 23, 2019. After being served with the OTSC, Respondent filed her Disclosure Statements on August 15, 2019. However, Respondent has not disputed that her Disclosure Statements were not timely filed, or otherwise submitted anything, in writing, explaining why a penalty should not be imposed.

III. Decision/Penalty Recommendation

Based on the record as set forth above, at its special meeting on August 30, 2019, the Commission found that Respondent violated *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1.

Where a violation of the Act is found by the Commission, it may recommend to the Commissioner of Education that a penalty be imposed on the school official. The recommended penalty can include a reprimand, censure, suspension or removal of the school official. *N.J.A.C.* 6A:28-10.12. For the reasons set forth above, the Commission recommends that the Commissioner of Education impose a penalty of **suspension for sixty (60) days**, with such suspension to become effective immediately upon adoption by the Commissioner of Education. The Commission's recommended sanction is predicated on the fact that, not only is Respondent's filing nearly four (4) months late, Respondent was also sanctioned in 2017 (suspension for thirty (30) days) for failing to comply with the statutory requirement to complete ethics training. Respondent's repeated failure to abide by, and comply with, her statutory obligations as a trustee, must be met with an appropriate sanction.

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. Respondent 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 penalty 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." A copy of any comments filed must be sent to the 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:4-1 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 brief on appeal.

Robert W. Bender, Chairperson

Mailing Date: August 30, 2019

***Resolution Adopting Decision for Failure to File Personal/Relative and
Financial Disclosure Statements
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Whereas, Respondent is a “school official,” as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act), at the Jersey City Community Charter School; and

Whereas, as a returning school official, Respondent was required to file her Personal/Relative and Financial Disclosure Statements (Disclosure Statements) by April 30, 2019; and

Whereas, Respondent failed to file her Disclosure Statements within the statutorily required timeframe; and

Whereas, at its meeting on July 23, 2019, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause why she failed to file her Disclosure Statements as required by *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1; and

Whereas, Respondent filed her Disclosure Statements on August 15, 2019, although they were required to be filed no later than April 30, 2019; and

Whereas, Respondent did not dispute that her Disclosure Statements were not timely filed; and

Whereas, at its special meeting on August 30, 2019, the Commission found that Respondent violated *N.J.S.A.* 18A:12-25, *N.J.S.A.* 18A:12-26, and *N.J.A.C.* 6A:28-3.1 by failing to file her Disclosure Statements; and

Whereas, at its special meeting on August 30, 2019, the Commission recommended that the Commissioner of Education impose a penalty of suspension for sixty (60) days, with such suspension to become effective immediately upon adoption by the Commissioner of Education; and

Whereas, at its special meeting on August 30, 2019, 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 its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I hereby certify that the within Resolution was duly adopted by the School Ethics Commission at its special meeting on August 30, 2019.

Kathryn A. Whalen, Director