

***Before the School Ethics Commission
Docket No.: T25-19
Decision for Failure to Complete Mandatory Training
Requirement in a Timely Manner***

***I/M/O Thomas Bardinas,
Bradley Beach Board of Education, Monmouth County***

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) in connection with the above-captioned matter at its meeting on April 21, 2020, and served on April 21, 2020, via electronic mail. The OTSC directed Thomas Bardinas (Respondent), a “board member” 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 Respondent in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

In the OTSC emailed on April 21, 2020, the Commission notified Respondent that he had twenty (20) days to respond to the OTSC, and further advised that failure to respond would be deemed an admission of the facts set forth in the OTSC. Respondent was also 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.

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. *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 require every board member to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA).

Respondent is a member of a board of education located in Bradley Beach, Monmouth County (Board). As a result of his position on the Board, and in accordance with the statute and regulation cited above, Respondent is required to complete a mandated training program on an annual basis. For convenience and ease, the training is offered online so any board member may complete it at any time, from anywhere. Respondent was required to complete the Governance 4 training program by December 31, 2019.

On April 20, 2020, NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2019, and the list provided included Respondent. Prior to this time, multiple communications about mandated training were sent to Respondent from NJSBA. More specifically, NJSBA sent emails to *all* board members and *all* Business Administrators (BAs) on August 21, 2019, September 4, 2019, September 12, 2019, September 18, 2019, September 20, 2019, September 26, 2019, October 3, 2019 and October 10, 2019, about mandated training. NJSBA sent additional notices to the Board’s BA on December

13, 2019, December 20, 2019, December 27, 2019, January 17, 2020, January 24, 2020, February 18, 2020 and February 26, 2020, advising that Respondent had not completed mandated training. In addition, on December 11, 2019, December 23, 2019, January 3, 2020, February 18, 2020 and February 26, 2020, NJSBA communicated with Respondent via email, and provided the link and instructions to complete mandated training. Notwithstanding all of these communications, Respondent did not complete mandated training.

In addition to the communication efforts undertaken by NJSBA, the Monmouth County Office of Education (County) also communicated with the Respondent regarding his failure to complete the mandated training requirement. More specifically, in mid-March 2020, the Commission's staff notified the County that Respondent was identified as a school official who failed to complete training by December 31, 2019. As a result, the County sent correspondence to Respondent, with a copy to the Business Administrator, advising that Respondent remained delinquent in completing training. Notwithstanding this correspondence from the County, Respondent did not complete training as directed.

As a final warning, the Commission sent a letter to Respondent dated April 6, 2020, via electronic mail, advising him that the Commission requires completion of the training to avoid the issuance of an OTSC for non-compliance. This final warning letter provided instructions to Respondent on how to complete training. Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was served on Respondent, via electronic mail, on April 21, 2020.

To date, there is no dispute that Respondent did not complete his required training by December 31, 2019, and did not complete the training prior to the issuance of the Commission's OTSC. After having been served with the OTSC, Respondent failed to respond to the Commission's OTSC as to why he did not complete training by December 31, 2019, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1.

III. Decision/Penalty Recommendation

N.J.A.C. 6A:28-4.2(d) provides that school board members and charter school trustees who fail to comply with their training mandate shall be considered in violation of *N.J.S.A.* 18A:12-33. Based on the record as set forth above, at its meeting on May 19, 2020, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33. Respondent received repeated notifications of his training requirement, and had ample opportunity to complete the mandated training in a timely fashion; nonetheless, he failed to complete training as required. Where a violation of the Act is found by the Commission, the Commission may recommend to the Commissioner of Education that a penalty be imposed. 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 **removal**, with such removal to become effective immediately upon issuance of the Commissioner of Education's decision. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be forty-five (45) days after the mailing date of the within decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a **thirty (30) day suspension**, with such suspension to become effective immediately upon issuance of the Commissioner of Education's decision.

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 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." 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 briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: May 19, 2020

***Resolution Adopting Decision for Failure to Complete
Mandatory Training Requirement in a Timely Manner
Docket No.: T25-19***

Whereas, Thomas Bardinas (Respondent) is a “board member” as defined in *N.J.S.A.* 18A:12-23 of the School Ethics Act (Act); and

Whereas, as a board member, Respondent is required to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis; and

Whereas, Respondent failed to complete his training program by December 31, 2019; and

Whereas, at its meeting on April 21, 2020, the School Ethics Commission (Commission) issued an Order to Show Cause (OTSC) directing Respondent to show cause as to why he failed to complete his mandatory training by December 31, 2019, as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, after having been served with the OTSC, Respondent failed to respond to the Commission’s OTSC as to why he did not complete training by December 31, 2019, and also failed to complete training as required by *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1; and

Whereas, at its meeting on May 19, 2020, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1 by failing to complete the training requirement he was obligated to complete; and

Whereas, at its meeting on May 19, 2020, the Commission recommended that the Commissioner of Education impose a penalty of removal, with such removal to become effective immediately upon issuance of a final decision by the Commissioner of Education. However, if Respondent completes training before the Commissioner of Education adopts a final decision (which will be forty-five (45) days after the mailing date of the within decision), then the Commission recommends that the Commissioner of Education, in lieu of removal, impose a thirty (30) day suspension, with such suspension to become effective immediately upon issuance of a final decision by the Commissioner of Education; and

Whereas, at its meeting on May 19, 2020, 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 certify that the within Resolution was duly adopted by the School Ethics Commission at its public meeting on May 19, 2020.

Kathryn A. Whalen, Director