

***Before the School Ethics Commission
Docket No.: T10-21
Decision for Failure to Complete Mandatory Training
Requirement in a Timely Manner***

***In the Matter of Joseph DiFeo,
Dr. Lena Edwards Academic Charter School, Hudson County***

I. Procedural History

This matter arises from an Order to Show Cause (OTSC) that was issued by the School Ethics Commission (Commission) at its meeting on July 27, 2021, directing 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 him in violation of the Act, for failing to complete training as required by *N.J.S.A.* 18A:12-33, *N.J.A.C.* 6A:28-4.1, and *N.J.A.C.* 6A:11-3.1(a).

In the OTSC that was served on July 28, 2021, 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.¹ 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 in local school administrators. By virtue of *N.J.S.A.* 18A:12-23.1, the breadth of the Act was expanded to include charter school trustees.

Respondent is a trustee of the Dr. Lena Edwards Academic Charter School, located in Hudson County. Pursuant to *N.J.S.A.* 18A:12-23.1, the provisions of the Act were made applicable to administrators and members of a board of trustees of a charter school. As a result of his position as a charter school trustee, Respondent is required, pursuant to *N.J.S.A.* 18A:12-33, *N.J.A.C.* 6A:28-4.1, and *N.J.A.C.* 6A:11-3.1(a), to complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) on an annual basis. For convenience and ease, the training is offered online so any charter school trustee may complete it at any time, from anywhere. Respondent was required to complete the Governance 4 training program by June 30, 2021.

On July 1, 2021, the NJSBA provided the Commission with the names of those charter school trustees who failed to complete mandated training by June 30, 2021, and the list provided by the NJSBA included Respondent. Prior to this time, multiple communications about mandated

¹ Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

training were sent to Respondent from the NJSBA through a variety of means, including targeted e-mail messages and postings in *School Board Notes*. More specific information detailing the outreach efforts of the NJSBA to communicate with Respondent and/or the charter school lead about mandated training is set forth in the attached Certification from the NJSBA. *See* Exhibit 1. Notwithstanding all of these communications, Respondent did not complete mandated training.

In addition to the communications from the NJSBA, the Commission's staff also sent electronic correspondence to *all* charter school leads on July 2, 2021, and July 21, 2021, advising that charter school trustees who failed to complete training prior to the Commission's meeting on July 27, 2021, would be the subject of an Order to Show Cause.² Again, notwithstanding this correspondence, Respondent did not complete the required training. As a result, an OTSC was issued by the Commission on July 27, 2021, and served on Respondent thereafter.

To date, there is no dispute that Respondent did not complete his required training by June 30, 2021, and did not complete the training prior to the issuance of the Commission's OTSC. After having been served with the OTSC, Respondent completed his training requirement on August 16, 2021, but did not respond to the Commission's OTSC as to why he did not complete training by June 30, 2021.

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 special meeting on August 30, 2021, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33, as well as *N.J.A.C.* 6A:28-4.1 and *N.J.A.C.* 6A:11-3.1(a). 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.

In addition, the Commission readily acknowledges and is sympathetic to the fact that the Coronavirus (COVID-19) has had a significant impact on the daily lives of all people, and believes that reasonable accommodations and extensions of deadlines are appropriate and warranted in certain circumstances. However, the Commission notes that training is completed annually, can be completed from any computer or device with an internet connection, and that the Commission was only required to issue an OTSC to thirty-six (36) charter school trustees throughout the State for failure to comply with the statutory obligation to complete training. As such, there is no reasonable basis for Respondent, based on the current record, to have failed to comply with this mandate.

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 **reprimand**.

² Again, due to the ongoing Coronavirus (COVID-19) pandemic, this communication was also sent via electronic transmission.

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.”³ A copy of any comments filed must 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: August 30, 2021

³ An electronic submission may also be sent to controversiesdisputesfilings@doe.nj.gov.

**Resolution Adopting Decision for Failure to Complete Mandatory Training
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Whereas, pursuant to *N.J.S.A.* 18A:12-23.1, all charter school trustees, including Respondent, are subject to the provisions of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*; and

Whereas, Joseph DiFeo (Respondent) is a charter school trustee of the Dr. Lena Edwards Academic Charter School; and

Whereas, the Act requires Respondent 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 Governance 4 training program by June 30, 2021; and

Whereas, at its meeting on July 27, 2021, 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 June 30, 2021, as required by *N.J.S.A.* 18A:12-33, *N.J.A.C.* 6A:28-4.1, and *N.J.A.C.* 6A:11-3.1(a); and

Whereas, after having been served with the OTSC, Respondent completed his training requirement, but did not respond to the Commission's OTSC as to why he did not complete training by June 30, 2021; and

Whereas, at its special meeting on August 30, 2021, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33, *N.J.A.C.* 6A:28-4.1, and *N.J.A.C.* 6A:11-3.1(a) by failing to complete the training requirement he was obligated to complete; and

Whereas, at its special meeting on August 30, 2021, the Commission recommended that the Commissioner of Education impose a penalty of reprimand on Respondent; and

Whereas, at its special meeting on August 30, 2021, 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
School Ethics Commission

I certify that the within Resolution was duly adopted by the School Ethics Commission at a special meeting on August 30, 2021.

Kathryn A. Whalen, Director