

***Before the School Ethics Commission
Docket No.: T07-21
Decision for Failure to Complete Mandatory Training
Requirement in a Timely Manner***

***I/M/O Mark Winterbottom,
Mullica Township Board of Education, Atlantic 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 April 26, 2022, and also served on April 26, 2022, via electronic mail.¹ The OTSC directed Mark Winterbottom (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 and *N.J.A.C.* 6A:28-4.1.

In the OTSC served on April 26, 2022, 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 the Mullica Township Board of Education (Board), located in Atlantic County. As a result of his position on the Board, and in accordance with *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1, 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, 2021.

On or about April 15, 2022, NJSBA provided the Commission with the names of those board of education members who failed to complete mandated training by December 31, 2021, and the list provided included Respondent. Prior to this time, multiple communications about mandated

¹ As a result of the ongoing Coronavirus (COVID-19) pandemic, and the implementation of electronic filing, service of process was effectuated by the Commission through electronic transmission only.

training were sent to Respondent from 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 NJSBA to communicate with Respondent and/or the charter school lead about mandated training is set forth in the attached Certification from NJSBA. Notwithstanding all of these communications, Respondent did not complete mandated training.

In light of Respondent's failure to complete mandated training, an OTSC was issued by the Commission, and served on Respondent, via electronic mail, on April 26, 2022.

To date, there is no dispute that Respondent did not complete his required training by December 31, 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 April 28, 2022, and also filed a response to the Commission's OTSC. More specifically, Respondent stated, he was unable to previously complete training due to "personal reasons." Importantly, Respondent did not deny that he did not complete training in a timely fashion.

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 24, 2022, the Commission found that Respondent violated *N.J.S.A.* 18A:12-33 and *N.J.A.C.* 6A:28-4.1. 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, and because training is regularly completed annually and can be completed from any computer or device with an internet connection, the Commission recommends that the Commissioner of Education impose a penalty of **censure**.

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."² A copy of any comments filed must be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

² An electronic submission may also be sent to controversiesdisputesfilings@doe.nj.gov.

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 24, 2022

***Resolution Adopting Decision for Failure to Complete
Mandatory Training Requirement in a Timely Manner
Docket No.: T07-21***

Whereas, Mark Winterbottom (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, 2021; and

Whereas, at its meeting on April 26, 2022, 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, 2021, 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 completed his training requirement, and also filed a response to the Commission’s OTSC that did not dispute that he did not complete training in a timely fashion; and

Whereas, at its meeting on May 24, 2022, 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 24, 2022, the Commission recommended that the Commissioner of Education impose a penalty of censure on Respondent; and

Whereas, at its meeting on May 24, 2022, 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 24, 2022.

Kathryn A. Whalen, Esq., Director