



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

(CONSOLIDATED)

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EEC 10551-22

AGENCY DKT. NO. #C64-22

SHAUNA WILLIAMS,

Petitioner,

v.

ROBERT CIANCIULLI, ET AL, BERKELEY

HEIGHTS BOE, UNION COUNTY,

Respondent.

DOUGLAS GROBER,

Petitioner,

v.

ROBERT CIANCIULLI, ET AL, BERKELEY

HEIGHTS BOE, UNION COUNTY,

Respondent.

IN THE MATTER OF PAMELA STANLEY,
BERKELEY HEIGHTS BOE, UNION COUNTY.

OAL DKT. NO. EEC 00171-23

AGENCY DKT. NO. #C77-22

OAL DKT. NO. EEC 03852-23

AGENCY DKT. NO. #C92-22

Walter M. Luers, Esq., for Complainant Douglas Grober and Shauna Williams
(Cohn, Lifland, Pearlman, Herrmann & Knopf, LLP, attorneys)

Ryan J. Silver, Deputy Attorney General, for Complainant, School Ethics Commission c/o Department of Education (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Mark A. Wenczel, Esq., for respondent, Berkeley Heights Board of Education members Robert Cianciulli, Angela Penna, Joy Young, Pamela Stanley and Jordan Hyman, and former Board member Michael D'Aquila (Cleary, Giacobbe, Alfieri, Jacobs, LLC, attorneys)

Record Closed: March 15, 2024

Decided: November 7, 2024

BEFORE **WILLIAM COURTNEY**, ALJ:

STATEMENT OF THE CASE

Robert Cianciulli, Jordan Hyman, Pamela Stanley, Michael D'Aquila, Angela Penna and Joy Young (collectively "Respondents") oppose the motions for summary decision of the School Ethics Commission (the "Commission"), Shauna Williams and Douglas Grober (collectively "Complainants"). Each motion requests for the Court to find that Respondents' conduct violated the Act and Code of Ethics for Board Members, notably N.J.S.A. 18A:12-24(b), (c), and (f) and N.J.S.A. 18A:12-24.1(c), (e), and (f), when the Board voted on a resolution to have the Board's Attorney draft an ethics complaint against another Board member and when Board member Stanley, chosen to submit the complaint on behalf of the Board, voted against a motion to strike the language authorizing the Board's counsel to draft and litigate the complaint.

PROCEDURAL HISTORY

These consolidated matters arises from three separate but related complaints filed by citizens Shauna Williams, Doug Grober, and Edmund Maciejewski against members of the Berkeley Heights Board of Education (specifically Robert Cianciulli, Jordan Hyman,

Pamela Stanley, Michael D'Aquila, Angela Penna and Joy Young) regarding a resolution they approved to file ethics charges against another Board member, Sai Bhargavi Akiri, and to have the Board's attorney draft said ethics charges. Thereafter, they voted to have board member Stanley file the charges on behalf of the Board. The complaints also alleged ethics violations arising from Respondents' voting against a motion to strike the resolution after it was made.

In the OAL Docket No. EEC 10551-22 matter, Williams filed a complaint (School Ethics Commission Docket No. C64-22), on or around June 8, 2022, against Respondents Cianciulli, Hyman, Penna, Stanley and D'Aquila (collectively "Respondents"), members of the Berkeley Heights Board of Education, alleging their conduct violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically N.J.S.A. 18A:12-24.1(c), (e), (f) and (g) of the Code of Ethics for School Board Members. The School Ethics Commission ("Commission") reviewed the complaint and issued a decision on October 17, 2022. The contested matter was transmitted to the OAL where it was filed under OAL Dkt. No. EEC 10551-22.

In the OAL Docket No. EEC 00171-23 matter, Grober filed a complaint (School Ethics Commission Docket No. C77-22), on or around July 25, 2022, against Respondents Cianciulli, Stanley, D'Aquila, Penna and Young (collectively "Respondents"), members of the Berkeley Heights Board of Education, alleging their conduct violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically N.J.S.A. 18A:12-24.1(c), (e) and (f) of the Code of Ethics for School Board Members. The Commission reviewed the complaint and issued a decision on November 22, 2022. The contested matter was transmitted to the OAL where it was filed under OAL Dkt. No. EEC 00171-23.

In the OAL Docket No. EEC 03852-23 matter, Maciejewski originally filed a complaint (School Ethics Commission Docket No. C92-22), on or around October 5, 2022, against Stanley (a member of the Berkeley Heights Board of Education), alleging that her conduct violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically

N.J.S.A. 18A:12-24(a) (Count 1), N.J.S.A. 18A:12-24(b) (Count 2), N.J.S.A. 18A:12-24(c) (Count 3), N.J.S.A. 18A:12-24(f) (Count 4), N.J.S.A. 18A:12-24(g) (Count 5), as well as N.J.S.A. 18A:12-24.1(a) (Count 6), N.J.S.A. 18A:12-24-1(c) (Count 7), N.J.S.A. 18A:12-24-1(e) (Count 8) and N.J.S.A. 18A:12-24-1(f) (Count 9) of the Code of Ethics for School Board Members. In its December 20, 2022 meeting, the Commission reviewed the complaint. In its March 31, 2023 meeting, the Commission found probable cause for the allegations of violations of N.J.S.A. 18A:12-24(b) (Count 2), N.J.S.A. 18A:12-24(c) (Count 3), N.J.S.A. 18A:12-24(f) (Count 4), N.J.S.A. 18A:12-24.1(c) (Count 7), N.J.S.A. 18A:12-24.1(e) (Count 8), and N.J.S.A. 18A:12-24.1(f) (Count 9), and the matter was referred to the OAL. Since the Commission found probable cause to at least one violation of N.J.S.A. 18A:12-24 and transmitted the case to the OAL for a hearing, pursuant to N.J.S.A. 18A:12-29(b), the attorney for the Commission was designated to litigate the allegations in Maciejewski complaint for which the Commission found probable cause. N.J.A.C. 6A:28-9.8(a)(2). On April 25, 2023, the Commission filed the Probable Cause Notice. The contested matter was then transmitted to the OAL where it was filed under OAL Dkt. No. EEC 03852-23.

Consolidation of EEC 10551-22 and EEC 00171-23 (the Williams and Grover Complaints) was ordered on March 22, 2023,¹ as it appeared that the consolidation standards set forth in N.J.A.C. 1:1-17.3 in terms of the identity of the parties,² the nature of all questions of fact and law involved, the advisability to dispose of all aspects of this controversy in a single proceeding, and that consolidation would promote a prompt and fair resolution of the issues raised by the pleadings.

Consolidation of EEC 10551-22, EEC 00171-23 and EEC 003852-23³ was ordered on August 25, 2023 on the same grounds.

¹ The order is incorrectly dated March 22, 2022, instead of March 22, 2023.

² Although the named Respondent(s) in each matter is different, the named Respondent(s) are represented by the same attorney.

³ The order incorrectly repeats EEC 00171-23 and captions Pamela Stanley v. Berkeley Heights Board of Education, Union County instead of EEC 003852-23 in the matter of Pamela Stanley, Berkeley Heights Board of Education, Union County. In the records, revised orders dated September 8, 2023 and September 29, 2023 corrected the captions, but incorrectly listed OAL Docket No. EEC 003852-22 instead of EEC 03852-23.

Discovery was completed in October 2023. All dispositive motions were submitted on December 11, 2023. All oppositions were submitted by December 29, 2023. All replies to oppositions were submitted on January 12, 2024. Oral Argument was held on March 15, 2024 and the record closed that day.

FACTUAL BACKGROUND

During the Berkeley Heights Board of Education meeting of May 25, 2022, board members Cianciulli, Hyman, Penna, Stanley and D'Aquila, voted to file an ethics complaint against another Board member, Sai Bhargavi Akiri ("Akiri"), and to have the Board's attorney draft the charges of the ethics complaint.

The Board's actions during that meeting gave rise to complaint C64-22 dated June 3, 2022 (received by the Commission on or around June 8, 2022), wherein Complainant Williams alleged Respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically N.J.S.A. 18A:12-24.1(c), (e), (f) and (g) of the Code of Ethics for School Board Members when they voted to file ethics charges against Akiri and approved the Board's attorney to draft said charges.

During the Board's meeting of June 16, 2022, Respondents Cianciulli, Hyman, Stanley, D'Aquila, Penna and Young voted to authorize Stanley to file the complaint against Akiri on behalf of the Board, and that the Board's attorney draft the charges of the complaint. Respondents, including Respondent Stanley, also voted against a separate motion striking language and requiring Stanley to obtain her own legal counsel to draft the charges and to bring the ethics complaint against Board member Akiri.

The ethics complaint filed by Stanley (on behalf of the Board) against Akiri was received and filed by the School Ethics Commission on or around June 21, 2022 under Docket No. C67-22. In this complaint, Stanley alleged that Akiri violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically N.J.S.A. 18A:12-24.1(c) through (g), then (i) and (j) of the Code of Ethics for School Board Members, when she questioned and/or

inquired about school related matters, published a news article regarding the budget approval process, publicly criticized in a meeting how the minutes presented for approval “violated legal requirements”, and accused the school administration and the Board’s counsel to be in “collusion” on social media.

On or around July 2, 2022, Respondents filed a motion to dismiss C64-22, asserting that their action in voting to pass a resolution authorizing the Board attorney to draft an ethics complaint was “in accordance with their sworn duties and ethical obligations as Board [m]embers.”

On or around July 14, 2022, Williams filed a response to the motion to dismiss, arguing that Respondents failed to provide adequate reasons for the dismissal of the complaint.

While the motion to dismiss C64-22 was still pending, Douglas Grober filed his complaint on or around July 19, 2022 (and received by the School Ethics Commission on or around July 25, 2022 under Docket No. C77-22), alleging that Respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically N.J.S.A. 18A:12-24.1(c), (e) and (f) of the Code of Ethics for School Board Members when they voted to file ethical charges against another Board member, and for approving the resolution to have the Board’s attorney draft said charges.

On or around August 1, 2022, Akiri filed a motion to dismiss C67-22. On or around August 22, 2022, Complainant Stanley filed a response to the motion to dismiss.

On or around August 18, 2022, Respondents filed a motion to dismiss C77-22. On or around September 7, 2022, Complainant Grober filed a response to the motion to dismiss.

On or around August 24, 2022, Akiri requested the Board’s attorney’s law firm to withdraw from representation upon an alleged conflict of interest pursuant to R.P.C.

1.8(k). In a letter dated September 13, 2022, the Board's law firm denied the request, advising that, although both parties were members of the Board of Education the lawyer represented, the claim was filed on behalf of the Board through Complainant, not through Respondent, thus negating any conflicts of interest.

On or around October 5, 2022, Edmund Maciejewski filed his ethics complaint (School Ethics Commission Docket No. C92-22) against Stanley alleging that she violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically N.J.S.A. 18A:12-24(a) (Count 1), N.J.S.A. 18A:12-24(b) (Count 2), N.J.S.A. 18A:12-24(c) (Count 3), N.J.S.A. 18A:12-24(f) (Count 4), N.J.S.A. 18A:12-24(g) (Count 5), as well as N.J.S.A. 18A:12-24.1(a) (Count 6), N.J.S.A. 18A:12-24-1(c) (Count 7), N.J.S.A. 18A:12-24-1(e) (Count 8) and N.J.S.A. 18A:12-24-1(f) (Count 9) of the Code of Ethics for School Board Members. When the Commission found probable cause for at least one of the allegations of violations of N.J.S.A. 18A:12.24 and transmitted the case to the OAL, the Commission's counsel replaced Maciejewski to litigate the claim.

During its October 17, 2022 meeting, the Commission denied the motion to dismiss C64-22 in its entirety, finding that

if the facts as pled in the complaint are proven true by sufficient credible evidence and Respondents, among other things, publicly discussed and then directed the Board attorney to engage in legal work that the Board is not authorized to file, they may support a determination(s) that the named Respondents took action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondents' duties as Board members (N.J.S.A. 18A:12-24.1(c)); made personal promises or took action beyond the scope of their duties such that, by its nature, had the potential to compromise the Board (N.J.S.A. 18A:12-24.1(e)); used the schools in order to acquire some benefit for themselves, a member of their immediate family or a friend (N.J.S.A. 18A:12-24.1(f)); and/or took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices, and/or provided inaccurate information (N.J.S.A. 18A:12-24.1(g)).

[Sch. Ethics Comm'n, Dkt. No. C64-22, Decision (Oct. 17, 2022)]

On or around October 31, 2022, Respondent filed a motion to dismiss C92-22 and also alleged the complaint was frivolous.

C64-22 was transmitted as a contested case to the OAL where it was filed under OAL Docket No. EEC 10551-22 on November 22, 2022.

In its November 22, 2022 meeting, the Commission reviewed and partly granted and partly denied Respondent's motion to dismiss C67-22. It addressed that a complaint could not be filed by a board of education so it could only consider the individual who filed complaint C67-22 as the sole complainant, not accepting the complaint filed on behalf of the Board.

Pursuant to N.J.S.A. 18A:12-29, "Any person ... may file a complaint alleging a violation of the provisions of this act" Consequently, and because the Commission cannot accept a filing of behalf of a public body or entity, including from a board of education, the only named Complainant in the above-captioned matter is the "person" who filed the Complaint – Ms. Stanley.

...

As a seated and voting member of the Board, Respondent [Akiri] is free to, among other things, ask questions, make requests, offer a statement or opinion, make inquiries about Board issues/matters, and to raise issues regarding the business of the Board. This kind of behavior and conduct is inherent in the duties and responsibilities of a Board member, and helps to ensure sound decision-making. The fact that the members of the administration did not appreciate the nature of Respondent's questions, or may have regarded them as nettlesome and vexatious, does not mean Respondent's conduct, based on the facts and circumstances pled in the Complaint, was unethical.

[Sch. Ethics Comm'n, Dkt. No. C67-22, Decision (Nov. 22, 2022)]

During the same November 22, 2022 meeting, the Commission denied the motion to dismiss C77-22 in its entirety, finding that

if the facts as argued in the Complaint are proven true by sufficient credible evidence and Respondents engaged in certain actions including, but not limited to, authorizing and/or directing Respondent Stanley to take certain action on behalf of the Board that the Board, as a public body, is not authorized to take, and/or authorizing and/or directing the expenditure of District funds and the appointment of the Board's attorney to prosecute a matter(s) that the Board, as a public body, is not permitted to file, they may support a determination(s) that the named Respondents took action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondents' duties as Board members (N.J.S.A. 18A:12-24.1(c)); made personal promises or took action beyond the scope of their duties such that, by its nature, had the potential to compromise the Board (N.J.S.A. 18A:12-24.1(e)); and/or used the schools in order to acquire some benefit for themselves, a member of their immediate family or a friend (N.J.S.A. 18A:12-24-1(f)).

[Sch. Ethics Comm'n, Dkt. No. C77-22, Decision (Nov. 22, 2022)]

On or around November 23, 2022, Complainant Maciejewski filed a response to the motion to dismiss and allegation of frivolous filing, and voluntarily withdrew the claims in Count 1 and Count 6.

C77-22 was transmitted as a contested case to the OAL where it was filed under Docket No. EEC 00171-23 on January 4, 2023.

In its January 31, 2023 meeting, the Commission adopted the decision of its December 20, 2022 meeting, where it denied the motion to dismiss C92-22 as to the stated violations of N.J.S.A. 18A:12-24(b) (Count 2), N.J.S.A. 18A:12-24(c) (Count 3), N.J.S.A. 18A:12-24(f) (Count 4), N.J.S.A. 18A:12-24.1(c) (Count 7), N.J.S.A. 18A:12-24.1(e) (Count 8), and N.J.S.A. 18A:12-24.1(f) (Count 9). The Commission also voted that the complaint was not frivolous and denied Respondent's request for sanctions. It found that

if the facts as enumerated in the Complaint are proven true by sufficient credible evidence, and Respondent voted on a matter(s) which authorized and/or directed the Board to provide her with a Board-appointed attorney in connection with the filing and prosecution of a personal matter (at no personal cost to Respondent), and/or voted against a motion to strike which might have resulted in Respondent bearing personal financial responsibility for the filing and prosecution of a personal matter, they may support a finding(s) that Respondent used or attempted to use her official position to secure unwarranted privileges, advantages or employment for herself, members of her immediate family or others (N.J.S.A. 18A:12-24(b)); acted in her official capacity in a matter where she, a member of her immediate family, or a business organization in which she has an interest, had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment, or in a matter where she or a member of her immediate family had a personal involvement that is or creates some benefit to her or a member of her immediate family (N.J.S.A. 18A:12-24(c)); and/or used, or allowed to be used, her public office for the purpose of securing financial gain for herself, any member of her immediate family, or any business organization with which she is associated (N.J.S.A. 18A:12-24(f)).

Similarly, the facts as asserted in the Complaint may additionally support a determination(s) that Respondent, by engaging in the action(s) further detailed herein, took action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to her duties as a Board member (N.J.S.A. 18A:12-24.1(c)); made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the Board (N.J.S.A. 18A:12-24.1(e)); and/or used the schools in order to acquire some benefit for herself, a member of her immediate family, or a friend (N.J.S.A. 18A:12-24.1(f)).

Notwithstanding with the above, the Commission finds that even if the facts as pled in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated N.J.S.A. 18A:12-24(g).

[Sch. Ethics Comm'n, Dkt No. C92-22, Decision (Jan. 31, 2023)]

At its March 21, 2023 meeting, the Commission voted to find probable cause for the allegations of violations of N.J.S.A. 18A:12-24(b) (Count 2), N.J.S.A. 18A:12-24(c) (Count 3), N.J.S.A. 18A:12-24(f) (Count 4), N.J.S.A. 18A:12-24.1(c) (Count 7), N.J.S.A. 18A:12;24.1(e) (Count 8), and N.J.S.A. 18A:12-24.1(f) (Count 9). The matter was referred to the OAL for a hearing, pursuant to N.J.S.A. 18A:12-29(b). Further, when the Commission finds probable cause and transmits the case to the OAL, the Complainant is no longer a party and “[t]he attorney for the Commission shall litigate the allegations in the complaint for which the Commission found probable cause to credit.” N.J.A.C. 6A:28-9.8(a)(2).

On March 22, 2023⁴, at Complainants Williams and Grober’s request, due to the actions arising from the same course of events, the ALJ ordered the consolidation of School Ethics Commission Docket No. C64-22 / OAL Docket No. 10551-22 and School Ethics Commission Docket No. C77-22 / OAL Docket No. 00171-23, to promote a prompt and fair resolution of the issues raised by the pleadings.

On April 25, 2023, the Commission filed the Probable Cause Notice.

On April 26, 2023, the Commission transmitted the matter to the OAL, where it was received and filed under Docket No. EEC 003852-23 on May 2, 2023.

On August 25, 2023, at the Commission’s request, due to the actions arising from the same course of events, the ALJ ordered the consolidation of School Ethics Commission Docket No. C64-22 / OAL Docket No. 10551-22, School Ethics Commission Docket No. C77-22 / OAL Docket No. 00171-23, and School Ethics Commission Docket No. C92-22 / OAL Docket No. 03852-23, to promote a prompt and fair resolution of the issues raised by the pleadings.

⁴ The order of consolidation is incorrectly dated March 22, 2022, instead of March 22, 2023.

On December 11, 2023, Complainants Williams and Grober filed a motion for summary decision against Respondents; the Commission filed a motion for summary decision against Respondent Stanley; Respondents filed a motion to dismiss all claims.

Summary of Motions

Williams and Grober v. Respondents, Berkeley Heights BOE

Complainants Williams and Grober state that all evidence provided point to the fact that Respondents acted unethically by (1) directing Board counsel to draft an ethics complaint on behalf of the Board against another Board member, and (2) approving one of the Respondents to file an ethics complaint on behalf of the Board against another Board member.

Complainants argue that pursuant to N.J.A.C. 6A:28-6.1(a), any person may file a complaint with the Commission alleging a violation of the Act. The language in N.J.A.C. 6A:28-1.2 clearly excludes “boards of education, labor organizations or school districts” from the definition of “person.” Since Boards of Education cannot file ethics complaints, the ethics complaint that Respondents authorized and filed was a nullity, and by authorizing and filing that complaint, they committed several ethics violations.

Complainants assert that, by authorizing Board counsel to draft, file, and represent a board member on an ethics complaint against another Board member, all Respondents failed to confine their actions to policy making, planning and appraisal. They concluded that the filing of an ethics complaint as a board majority violated N.J.S.A. 18A:12-24.1(c). They further asserted that filing ethics complaints against other Board members has nothing to do with policy or the formulation of programs or the ascertainment of policy.

Complainants also denounce the fact that Respondents are using taxpayer funds to have general counsel prepare, file and prosecute an ethics complaint against one of their own when one Board member dissents from the majority. They maintained that

making their internal dysfunction public, airing their grievances, showing that internal disfunction or disagreement could not be managed internally and creating tension between the Board's general counsel and the Board member who was the target of the ethics complaint were acts that compromised the Board, therefore violated N.J.S.A. 18A:12-24.1(e).

Complainants argue that because Respondents could only have filed an ethics complaint against Board Member Akiri in their personal capacities, they all conferred a benefit on themselves by utilizing Board counsel to file the ethics complaint. at no cost to them. Complainants explain that by using the Board's general counsel to represent Respondents, they spare either the time, effort and expense of having to hire an attorney to represent them in an ethics complaint against their political rival; or (2) the time and effort to do it themselves or they shifted all the burdens and work of preparing, filing and litigating an ethics complaint onto the Berkeley Heights taxpayers. In doing so, they violated N.J.S.A. 18A:12-24.1(f). Id., pp.10-11

Complainants thus request summary decision to be granted and for the Court to hold that (1) Respondents failed to confine their "board action to policy making, planning, and appraisal," in violation of N.J.S.A. 18A:12-24.1(c); (2) failed to refrain from taking private action that "may compromise the board," in violation of N.J.S.A. 18A:12-24.1(e); and (3) used the schools for personal gain, by directing Board general counsel to prepare, file and litigate the ethics complaint against Board member Akiri, in violation of N.J.S.A. 18A:12-24.1(f). Complainants also request for the Court to proceed with determining an appropriate sanction.

The Commission v. Stanley

The Commission asserts that Respondent Stanley's conduct violated the School Ethic Act and the Code of Ethics for Board Members. She breached her duty to uphold the public trust in the ethical operation of the schools when she voted on resolutions in which she had a personal interest. N.J.S.A. 18A:12-22(a) requires that board members

and administrators avoid conduct which is in violation of the public trust or which creates a justifiable impression among the public that such trust is violated. The Commission claims Respondent Stanley specifically violated N.J.S.A. 18A:12-24(b), (c), and (f), as well as N.J.S.A. 18A:12-24.1(c), (e), and (f), when she admittedly voted on resolutions which secured her legal services by the Board's counsel and ensured that all associated costs and fees she incurred when she filed an ethics complaint against another Board member would be paid by the Board.

The Commission applies the Wyzykowski standard to determine whether there has been a violation of the Act's conflict of interest provision.⁵ Wyzykowski v. Rizas, 132 N.J. 509, 525-26 (1993). It asserts that the case at bar is likely a situation of "direct pecuniary interest" that would have required Respondent Stanley to disqualify herself from voting, and she did not. Not only did Respondent Stanley vote on a resolution which directed the Board to provide her with a Board-appointed attorney, but she also voted against a motion to strike which resulted in the Board bearing all costs and expenses related to the filing and prosecution of Stanley's ethics complaint against Akiri. By being involved in a matter where the school board member stands to gain a benefit not generally available to the public or reap a financial benefit is a violation of the Act, the Commission maintains she violated N.J.S.A. 18A:12-24(b), (c), (f). In support of its position, the Commission cites IMO Shawn Giordano, Lacey Twp. Bd. of Educ., Ocean Cnty., No. C04-20, 2023 N.J. AGEN LEXIS 265, *3-4 (Apr. 27, 2023) (initial decision finding board member "used school resources for his own personal gain, and would not have had access to such

⁵ Four types of situations require disqualification: (1) "Direct pecuniary interests," when an official votes on a matter benefitting the official's own property or affording a direct financial gain; (2) "Indirect pecuniary interests," when an official votes on a matter that financially benefits one closely tied to the official, such as an employer, or family member; (3) "Direct personal interest," when an official votes on a matter that benefits a blood relative or close friend in a non-financial way, but a matter of great importance, as in the case of a councilman's mother being in the nursing home subject to the zoning issue; and (4) "Indirect Personal Interest," when an official votes on a matter in which an individual's judgment may be affected because of membership in some organization and a desire to help that organization further its policies. See Michael A. Pane, Conflict of Interest: Sometimes a Confusing Maze, Part II, New Jersey Municipalities, March 1980, at 8, 9.
[Wyzykowski v. Rizas, 132 N.J. 509, 525-26 (1993)]

resources but for his position on the Board” in violation of the Act when he requested personal legal services from board’s attorney); IMO Obdulia Gonzalez, Israel Varela, Milady Tejada, Samuel Lebreault, and Kenneth Puccio, C08-15 (Sept. 11, 2018), aff’d, (Nov. 27, 2018) (violation occurred where board members voted to approve settlements of litigation that involved them personally); Scotch Plains-Fanwood Bd. of Educ. v. Syvertsen, 251 N.J. Super. 566, 568-70 (App. Div. 1991) (barring a Board member from meetings at which a private cause of action he instituted was discussed); Tighe v. Local Fin. Bd., 97 N.J.A.R.2d (CAF) 76, 79-81 (violation occurred when zoning board member voted to approve a project in which he had a direct financial interest). Comm’n’s br., pp.15-16.

The Commission states that N.J.A.C. 6A:28-6.1(a) implies that individuals who file complaints must only represent their own interests, not that of a district board or other organization. See 41 N.J.R. 26(a); 55 N.J.R. 359(b). It reiterated that complaints filed “on behalf of” a board of education are generally prohibited.⁶ Accordingly, when Respondent Stanley voted to direct the Board’s counsel to draft the ethics complaint against Akiri, she violated the Act’s prohibition on using her position to secure a benefit and voting on matters in which she had a direct financial interest. N.J.S.A. 18A:12-24(b), (c), and (f).

It is the Commission’s position that voting on a resolution which directed the Board’s attorney to provide Respondent Stanley with counsel to draft and litigate an ethics complaint gave Stanley a benefit that no other member of the public could receive, therefore creating a conflict of interest. See IMO John Harrison, 1996 N.J. AGEN LEXIS 427, *15 (Mar. 6, 1996) (Finding violation of the Act where board member voted to extend the time to complete a construction project based on his partnership with a firm subcontracted by the project’s architect, which “created a public impression that such vote

⁶ See Frequently Asked Questions About Filing and Responding to a Complaint Filed with the School Ethics Commission, <https://www.nj.gov/education/ethics/home/2%20-%20FAQs.pdf> (last visited December 10, 2023). While the current version of the Commission’s responses to frequently asked questions was updated to reflect amendments to N.J.A.C. 6A:28 that were adopted on February 1, 2023, no changes were made to the requirements that only a “person” could file an ethics complaint as directed by N.J.A.C. 6A:28-6.1(a), or to the definition of “person” under N.J.A.C. 6A:28-1.2. See R. 2023 d. 032, eff. March 6, 2023; see also 54 N.J.R. 1360(a); 55 N.J.R. 359(b).

was case in self-interest rather than in public interest”); Advisory Opinion A24-16 (“[A] conflict would present itself requiring absolute recusal from that matter and abstaining from all votes”). The Commission further concludes that by voting against the motion to strike the resolution that would grant her free legal services from the Board’s counsel, a benefit not generally available to the public, Respondent Stanley clearly violated N.J.S.A. 18A:12-24(b), (c), and (f).

The Commission asserts that Respondent Stanley used her position to seek the benefit of free legal counsel to file the ethics complaint against another board member. She “did not “confine [her] board action to policy making,” N.J.S.A. 18A:12-24.1(c), when she failed to “refuse to surrender [her] independent judgment,” and, more specifically, failed to “refuse to . . . use the schools for personal gain,” N.J.S.A. 18A:12-24.1(f). By using the Board for personal gain, Stanley compromised the Board. N.J.S.A. 18A:12-24.1(e). Stanley’s conduct violated the Code of Ethics for Board Members, specifically N.J.S.A. 18A:12-24.1(c), (e), and (f). Id., pp.21-22.

Since Respondent Stanley’s conduct is not disputed, and it is in violation of the Act and the Code Ethics for Board Members, the Commission claims that such conduct warrants an appropriate penalty, pursuant to N.J.S.A. 18A:12-29(c). Censure has routinely been imposed in cases where board members do not recuse themselves from matters in which they have a personal or financial interest. See, e.g., IMO Pirillo, Washington Twp. Bd. of Educ., C12-04 (Sept. 30, 2004)(censure imposed for violation of N.J.S.A. 18A: 12-24(c) where board member attended and participated in discussions during committee meeting when bids for the purchase of new copiers were discussed and one of the vendors that had submitted a bid was a company in which her husband possessed a financial interest); IMO Rhon, South Amboy Bd. of Educ., C03-97 (Oct. 28, 1997) (censure imposed where board member voted on a resolution to hire outside counsel to investigate the district superintendent when board member was involved in a legal dispute with superintendent and was the adversary to him); IMO Sheila Brogan, Ridgewood Bd. of Educ., Bergen Cnty., C71-20 (Feb. 25, 2022) (censure imposed where

a board member did not recuse herself from a matter in which she had a conflict.)
Comm'n's br., pp.24-25.

For the foregoing reasons, the Commission requests summary decision to be granted and for the Court to hold that Respondent Stanley violated N.J.S.A. 18A:12-24(b), (c), and (f), as well as N.J.S.A. 18A:12-24.1(c), (e), and (f). The Commission also requests Respondent Stanley to be penalized, pursuant to N.J.S.A. 18A:12-29(c).

Respondents' motion for summary decision to dismiss all claims made by Complainants

Respondents assert that complainants are unable to produce credible evidence of school ethics act violations. Respondents, the Superintendent and the Business Administrator spoke with Board Member Akiri about her conduct⁷ before proceeding with the vote on the resolution to approve the filing of the School Ethics complaint. Respondent Stanley filed the complaint on behalf of the Board, and such complaint was filed as a valid complaint by the Commission.

Respondents first claim that their actions "were directly related to their duty to develop the general rules and principles that guide the management of the school district." Accordingly, any claims alleging a violation of N.J.S.A. 18A:12-24.1(c) cannot be sustained.

Second, Respondents claim their actions did not compromise the Board. They compare their actions to the actions taken in IMO Michael Schiavoni, Sparta Twp. Bd. of Educ., C41-07 & C46-07 & C47-07 consolidated, Commission Decision No. 260-09, Aug. 18, 2009, where the Board President acted without bringing the matter to the attention of the Board. They claim that in this action; in making and passing of the motion, action was taken as a Board. No personal promises were made nor was any private action taken. The action taken was to seek to address the private and compromising actions of Board

⁷ Respondents explained why they perceived Akiri's constant inquiries and comments, as well as media interaction, as "critical", "harmful", "adversarial", provocative and uncooperative, and presented each instance as undisputed material facts.

Member Akiri. Accordingly, any claims alleging a violation of N.J.S.A. 18A:12-24.1(e) cannot be sustained and are ripe for dismissal by summary decision.

Third, Respondents claim their actions were not taken “on behalf of a political group but rather on behalf of the Board and the Administration and for [the] purpose of supporting and protecting school employees. They further claim that no evidence has been produced to support the contention that the action was taken for the benefit of the Respondent or members of their immediate families or friends. Respondents take the position that the evidence clearly demonstrates that their actions were taken solely to “fulfill a duty to support and protect school employees.” They maintain that any claims alleging a violation of N.J.S.A. 18A:12-24.1(f) cannot be sustained and are ripe for dismissal by summary decision.

Fourth, they claim there was no credible evidence that Respondent Cianciulli “disclosed [any] confidential information in making the motion,” and/or that any Respondent “provided inaccurate information.” Therefore, they maintain that any claims alleging a violation of N.J.S.A. 18A:12-24.1(g) cannot be sustained and are ripe for dismissal by summary decision. Id., p. 17, pp.22-23.

Fifth, Respondent Stanley’s complaint against Board member Akiri was entirely initiated and pursued as a fully disclosed board action. The ethics complaint was signed by Respondent Stanley “solely on behalf of the Board” as authorized and clearly stated in the Board resolution dated June 16, 2022, the Respondents’ certified answers to interrogatories, and the transcripts of the Board discussions surrounding the votes on the subject resolutions passed at the May 15, 2022 and June 16, 2022 Board meetings. N.J.A.C. 6A:28-6.1(a) indicates that while a board of education could not file an ethics complaint against a board member, such complaint could be initiated by another board member. The same interpretation was repeated in the Frequently Asked Questions of the Commission’s website. Respondents therefore concluded that a board member on behalf of the board could file an ethics complaint against another board member. The Board’s counsel drafting and litigating of the ethics complaint against Akiri was, therefore, not a

personal and/or financial benefit conferred to Respondent Stanley. Claiming there was no credible evidence supporting the allegations of violations of the Act and Code made by the Commission against Respondent Stanley, they should not be substantiated and are thus ripe for dismissal by summary decision. Id., pp.23-31.

For the foregoing reasons, Respondents request that all claims against Respondents must be dismissed by summary decision.

LEGAL ANALYSIS

Under N.J.A.C. 1:1-12.5(a), “[a] party may move for summary decision upon all or any of the substantive issues in a contested case.” A motion for summary decision may be granted “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). And, if “a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid. In determining whether a genuine issue exists, the appropriate test is “whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995).

The School Ethics Act recognizes that school board members must “hold the respect and confidence of the people,” and is thus designed to prevent school officials from engaging in “conduct which is in violation of their public trust, or which creates a justifiable impression among the public that such trust is being violated.” N.J.S.A. 18A:12-22(a). The act further declares that “[t]o ensure and preserve public confidence, school board members . . . should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards among them.” N.J.S.A. 18A:12-22(b). The act therefore prohibits certain conducts that

would give the impression of conflicts of interest, including those listed in N.J.S.A. 18A:12-24, that provides, in part, that:

b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

. . .

f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated; [N.J.S.A. 18A:12-24(b), (c), (f)]

The specific standards guiding the conduct of school board members is the Code of Ethics set forth at N.J.S.A. 18A:12-24.1. The Code of Ethics requires board members to comply with several ethical standards, including “I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them,” N.J.S.A. 18A:12-24.1(c); “I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board,” N.J.S.A. 18A:12-24.1(e); and “I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends,” N.J.S.A. 18A:12-24.1(f).

The School Ethics Act created the Commission “for the purpose of enforcing those ethical standards through a procedure for reviewing complaints of ethical violations,

investigating those complaints and ultimately rendering recommendations to the Commissioner [of Education] as to the imposition of sanctions when violations are demonstrated.” N.J.A.C. 6A:28-1.1(b). The Commission’s rules implementing the School Ethics Act, N.J.A.C. 6A:28-1.1 to -10.1, include provisions for complaints alleging Code of Ethics violations.

Under N.J.A.C. 6A:28-6.4, the complainant has the burden to factually establish a violation . . . N.J.A.C. 6A:28-6.4(a). And he or she must present particular evidence for to show a violation of a Code of Ethics standard. Ibid.

To establish a violation of N.J.S.A. 18A:12-24.1(c):

Factual evidence . . . shall include evidence that the respondent(s) took official action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent’s duty to: i. Develop the general rules and principles that guide the management of the school district, the charter school, or the renaissance school project; ii. Formulate the programs and methods to effectuate the goals of the school district, the charter school, or the renaissance school project; or iii. Ascertain the value or liability of a policy.
[N.J.A.C. 6A:28-6.4(a)(3).]

For N.J.S.A. 18A:12-24.1(e):

Factual evidence of a violation . . . shall include evidence that the respondent made personal promises or took action beyond the scope of the respondent’s duties such that, by its nature, had the potential to compromise the district board of education or the board of trustees.
[N.J.A.C. 6A:28-6.4(a)(5).]

Finally, for N.J.S.A. 18A:12-24.1(f):

Factual evidence of a violation . . . shall include evidence that the respondent(s) took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools to acquire some benefit for the

respondent(s), a member of the respondent's immediate family or a friend. [N.J.A.C. 6A:28-6.4(a)(6).]

If the Commission finds probable cause for a violation of the Code of Ethics, the matter may be transmitted to the OAL for a hearing. N.J.A.C. 6A:28-9.8. Ultimately, a school official who is determined to have violated the Code of Ethics may be subject to "reprimand, censure, suspension, or removal." N.J.A.C. 6A:28-9.11.

I FIND that the evidence presented supports that Stanley violated the Act when she voted in favor of the Board's attorney to draft the charges for the ethics complaint against another Board member, and against a resolution to hire her own counsel to do so.

In the School Ethics Act, N.J.S.A. § 18A:12-21 et seq., the Legislature declared its intention to ensure and preserve public confidence in local school board members by providing local board members with advance guidance on ethical conduct so that such members might conduct their personal affairs appropriately and within the bounds ethically expected. Accordingly, N.J.S.A. § 18A:12-24(a)-(g) list seven specific prohibitions applicable to all school officials, including members of boards of education. Nonetheless, N.J.S.A. § 18A:12-24(j) provides that nothing shall prohibit any school official, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests.

More than intent, the appearance of a conflict of interest will trigger a violation of the Act. See In re Perrino, Little Egg Harbor Twp. Bd. of Educ., Ocean Cnty., C30-14 (July 28, 2015) ("Whether direct or indirect, a violation of N.J.S.A. 18A:12-24(c) is determined by what a reasonable member of the public would believe.") (citing In re Haines, Haddonfield Bd. of Educ., Camden Cnty., C07-00 (Sept. 27, 2000), *aff'd*, (Nov. 27, 2000)). See also Advisory Opinion A24-16 ("[A] conflict would present itself requiring absolute recusal from that matter and abstaining from all votes").

In Wyzykowski v. Rizas, 132 N.J. 509 (1993), the New Jersey Supreme Court found four types of situations that require disqualification, including a situation of ““direct pecuniary interests”, when an official votes on a matter benefitting the official's own property or affording a direct financial gain”. Wyzykowski v. Rizas, 132 N.J. 509, 525 (1993).

Here, Respondents voted on a motion that would authorize Board’s counsel to draft the charges against another Board member. Because a board of education cannot file an ethics complaint, pursuant to N.J.A.C. 6A:28-6.1(a), board’s counsel should not have been involved in such proceedings – even under the pretext that it is a board’s action. Voting in favor of such motion would fall beyond the scope any board member duties. When Respondent Stanley agreed to file the ethics complaint against Akiri on behalf of the board, and voted against a motion that would strike her requirement to seek her own counsel to pursue the claim (perhaps unbeknownst to her and under the Board’s counsel’s guidance) she used her official position as a Board member to secure an unwarranted advantage for herself: free legal representation, a benefit not generally available to the public. She also acted in her official capacity in a matter that conferred some benefit to herself, in that, she would not have to pay any legal expenses in the action. In doing so, **I CONCLUDE** she violated N.J.S.A. 18A:12-24(b), (c) and (f).

I FURTHER FIND that the evidence presented supports that Respondents’ actions were not related to policy making, planning, and appraisal.

Complainants Williams and Grober assert that Respondents violated N.J.S.A. 18A:12-24.1(c) for (1) directing Board counsel to draft an ethics complaint on behalf of the Board against another Board member; and (2) approving a motion for Board Member Stanley to file an ethics complaint on behalf of the Board. Complainants argue that only a “person” may file an ethics complaint against a board member, pursuant to N.J.A.C. 6A:28-6.1(a). The individual cannot file on behalf of a board of education because boards of education are not a person, as defined in N.J.A.C. 6A:28-1.2. Voting in favor of a

motion directing Board counsel to draft an ethics complaint against a board member is unrelated to school policy, the formulation of programs or the ascertainment of policy.

The Commission also claims that Respondent Stanley violated N.J.S.A. 18A:12-24.1(c) when she admittedly voted on resolutions which secured her legal services by the Board's counsel and ensured that all associated costs and fees she incurred when she filed an ethics complaint against another Board member would be paid for by the Board. Respondent Stanley did not confine her board action to policy making when she voted on getting the Board 's counsel to draft and litigate the ethics complaint against Akiri that she personally submitted to the Commission.

Respondents counter that the Board's actions were directly related to their duty to develop the general rules and principles that guide the management of the school districts. The conduct of board member Akiri was disruptive to the good operations of the school. The Board voted to file the ethics complaint against her. Since the actions were related to the development of general rules and principles that guide the management of the school district, Respondents contend that Complainants Williams and Grober and the Commission failed to provide factual evidence that Respondents violated N.J.S.A. 18A:12-24.1(c).

A plain reading of N.J.A.C. 6A:28-6.1(a) indicates that a board of education cannot file an ethics complaint against a board member. If a board member decides to file the complaint individually, as correctly interpreted by the School Ethics Commission, then the complainant should seek his or her own counsel. Even though the action was initiated after consultation of the Board, Respondents fail to explain how voting in favor of a resolution directing the Board's counsel to draft the charges against Akiri is related to the development of general rules and principles that guide the management of the school district, the formulation of programs and methods to effectuate the goals of the school district or to ascertain the value or liability of a policy. The Commission clearly indicated in previous decisions and reiterated its position in Sch. Ethics Comm'n Dkt. No. C67-22 that a board member "is free to, among other things, ask questions, make requests, offer

a statement or opinion, make inquiries about Board issues/matters, and to raise issues regarding the business of the Board. This kind of behavior and conduct is inherent in the duties and responsibilities of a Board member and helps to ensure sound decision-making.” Complaining that a board member disagrees with the majority of the board is not related to the development of general rules and principles that guide the management of the school district. Accordingly, when Respondents voted in favor of filing an ethics complaint and have the Board’s counsel to draft the charges against Akiri, they violated N.J.S.A. 18A:12-24.1(c).

I **FURTHER FIND** that Complainants have provided sufficient factual evidence that Respondents’ took action beyond their duties such that it compromised the Board.

Complainants Williams and Grober assert that Respondents violated N.J.S.A. 18A:12-24.1(e) when they (1) made their internal dysfunction public; (2) aired their grievances; (3) showed that any internal dysfunction or disagreement could not be managed internally; and (4) created tension between the board’s general counsel and the member of the Board subject to the ethics complaint. Turning the Board’s counsel against one of its own can only result in destroying the trust of the public and compromising the Board.

The Commission argues that Respondent Stanley compromised the Board when she voted on getting the Board ‘s counsel to draft and litigate the ethics complaint [against Akiri] that she personally submitted. The Commission addressed the fact that when it accepted the original complaint of Respondent Stanley against Akiri (Sch. Ethics Comm’n, Dkt No. C67-22), it considered that Respondent Stanley was the only complainant, pursuant to N.J.A.C. 6A:28-6.1(a), despite the language that it was submitted on behalf of the Board. The Commission further asserts that it has always been its position that a board member cannot file an ethics complaint against another member on behalf of the board. The regulation has not changed, contrary to Respondents’ claims. Respondent Stanley also compromised the Board when she voted against a resolution to strike using the Board’s counsel to draft the ethics complaint instead of hiring her own attorney.

Respondents counter with the facts that the Board supported the action with a majority of the votes, and that the Commission accepted the ethics complaint made against Akiri by Respondent Stanley on behalf of the Board. It is the duty of the Board's counsel to represent the interests of the Board, and while Respondent Stanley signed and submitted the complaint, it was a complaint on behalf of the Board. Respondents also argue that there are many ways to compromise a board, such as (i) publishing a flier with misleading information; (ii) engaging in singularly, self-serving actions that exposed the board of education to the risk of litigation and the concomitant expenditure of public funds (see Persi v. Woska, Sch. Ethics Comm'n Dkt. No. C03-14 (Oct. 28, 2014); and (iii) contacting employment candidates without board approval and sharing confidential information. Here, Respondents have not acted personally. None of these situations apply here.

Pursuant to N.J.A.C. 6A:28-6.1(a), a board of education cannot file an ethics complaint against another board member. While the action was supported by the board, the regulation indicates that only a person can file such complaint. Because the Board could not be a party in the action, the Board's resources, including the legal services of the Board's attorney, should not have been utilized. Voting on a motion that would authorize the Board's counsel to draft and litigate an ethics complaint against a board member while a board cannot file such ethics complaint is thus beyond the scope of a board member's duty and a violation of N.J.S.A. 18A:12-24.1(e).

I **FUTHER FIND** that Complainants have provided sufficient factual evidence that Respondents violated N.J.S.A. 18A:12-24.1(f).

Complainants Williams and Grober assert that Respondents used the schools for personal gain, when they authorized the Board's counsel to draft and litigate the ethics complaint against Board member Akiri, in violation of N.J.S.A. 12A:12-24.1(f). Since the Board cannot file ethics complaints, the Board's attorney should not be involved. Here,

Respondents shifted all the burdens of preparing, filing and litigating the ethics complaint onto the Berkeley Heights taxpayers.

The Commission contends that Respondent Stanley used her position to benefit from free legal counsel from the Board in order to file and prosecute the ethics complaint against Akiri, a benefit not generally available to the public. By voting on matters which secured the benefit of free legal counsel, Respondent Stanley had a direct financial interest and violated the Act's conflict of interest prohibition as well as the Code of Ethics for Board Members N.J.S.A. (c), (e) and (f). Respondent Stanley cannot hide behind the fact that the action was sanctioned by a majority vote of the Board to receive the benefit of the Board's counsel representing her interest in the ethics complaint. The Commission has already addressed the fact that N.J.A.C. 6A:28-6.1(a) only permits individual actions and prohibits any complaints on behalf of a board of education. It reiterates that when it accepted it, it was considered a personal complaint from Respondent Stanley. As an individual action, she should not have used the school resources to process and litigate it.

Respondents argue that Complainants and the Commission failed to show that Respondents were involved with a special interest group or partisan political party and absent such involvement, there is no evidence that Respondents violated N.J.S.A. 18A:12-24.1(f).

To prove a violation of N.J.S.A. 18A:12-24.1(f), N.J.A.C. 6A:28-6.4(a)(6) states, in part, that complainants must provide "evidence that the respondent(s) used the schools to acquire some benefit for the respondent(s), a member of the respondent's immediate family or a friend." Respondent Stanley admittedly voted in favor of a motion to have the Board's counsel draft the charges for an ethics complaint against another board member, and against the motion to strike the requirement of hiring her own attorney to do so. Stanley, a board member, therefore used her position to secure free legal representation for the drafting and litigation of the complaint, a benefit generally not available to the public, and thus violated N.J.S.A. 18A:12-24.1(f). The argument that the violation did not occur because there was no involvement with a special interest group or partisan political

group does not stand, if complainants proved that respondent(s) used the schools to acquire some benefit for the respondent(s).

After the submission of the briefs and certifications in support and opposition to the pending motions, on July 18, 2024, counsel representing the Respondent Board of Education members submitted a copy of an Opinion of the Advisory Committee on Professional Ethics (ACPE Docket No. 07-2024, hereinafter the “Advisory Opinion”) and alleged that the Advisory Opinion contained issues that were “pertinent to the [pending] cross-motions for summary decision. On July 22, 2024, Attorney for Complainants Grober and Williams submitted a supplemental letter brief wherein he asserted the Advisory Opinion was not relevant to this case and that it should be disregarded.

I agree with Complainants’ position that the Advisory Opinion is not relevant to the issues in this case. The Advisory Opinion pertains to ethical rules governing attorneys and the instant matter deals with totally separate and distinct ethical rules which govern school board members. While the Advisory Opinion may indeed be relevant to whether the school board attorney in this matter violated his own professional conduct rules when he counseled the Board, **I FIND** that relevancy has no impact on whether respondent Stanley gained an unethical benefit by receiving free legal counsel at taxpayers’ expense or whether all respondents acted unethically when they authorized Stanley to file the ethics complaint against a fellow Board member.

Finally, N.J.S.A. 18A: 12-29 c requires that upon completion of the hearing a recommendation shall be made to the commissioner as to the reprimand, censure, suspension, or removal of the Board members found to have violated the Act or the Code of Ethics. While I find that Respondents have violated the Act and the Code of Ethics for Board Members, the fact that they were informed by counsel that their actions were appropriate is a mitigating factor to which I give substantial weight. Accordingly, I believe that a reprimand would be the appropriate sanction for their actions.

CONCLUSION

For the foregoing reasons, I **CONCLUDE** that Respondents' conduct violated the Act and the Code of Ethics for Board Members, notably N.J.S.A. 18A:12-24(b), (c), and (f), as well as N.J.S.A. 18A:12-24.1(c), (e), and (f). Respondents' motion should therefore be denied. The Commission's and Complainants Williams and Grober's motions for summary decision should be granted. I further **CONCLUDE** the appropriate sanction for Respondents' violations of the Act is a reprimand.

ORDER

1. The Commission's Motion for Summary Decision is **GRANTED**;
2. The Motion for Summary Decision filed by Complainants Williams and Grober is **GRANTED**;
3. Respondent's Motion for Summary Decision is **DENIED**;
4. The Commissioner shall issue a reprimand to each of the Respondents as a sanction for their conduct in violation of the Act and the Code of Ethics for Board Members.

I hereby **FILE** my initial decision with the **SCHOOL ETHICS COMMISSION**. Pursuant to N.J.S.A. 18A:12-29, the School Ethics Commission has jurisdiction to determine whether a violation of the School Ethics Act occurred. If it concludes that the conduct constitutes a violation of the School Ethics Act, it shall recommend an appropriate penalty to the Commissioner of Education. The Commissioner of Education shall issue the final decision in this matter.

If the School Ethics Commission determines that a violation has occurred, it shall issue a written decision recommending to the Commissioner of Education an appropriate penalty and shall forward the record, including this recommended decision and its decision, to the Commissioner of Education. The Commissioner of Education may

subsequently render a final decision as to the appropriate penalty. If the Commissioner of Education does not render a final decision within forty-five days of its receipt of this initial decision, and unless such time period is otherwise extended, the recommended decision of the School Ethics Commission shall become the final decision.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SCHOOL ETHICS COMMISSION, DEPARTMENT OF EDUCATION, PO Box 500, Trenton, NJ 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



November 7, 2024 _____

DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Moving Papers

For Complainants Shauna Williams and Douglas Grober:

Notice of Motion for Summary Decision Dated December 11, 2023

Letter Brief in support of the motion date December 11, 2023

Statement of Undisputed Material Facts dated December 11, 2023

December 11, 2023 Certification of Walter M. Luers, Esq.

Reply Brief dated January 12, 2024

Letter Brief in Opposition to Respondents' Motion for Summary Decision dated
December 29, 2023

December 29, 2023 Response to Respondents Statement of Material facts.

December 29, 2023 Certification of Walter M. Luers, Esq.

For School Ethics Commission:

December 11 , 2023 Certification of Ryan J. Silver, DAG

December 11, 2023 Letter Brief in Support of Motion of Motion for Summary
Decision

December 29, 2023 Letter Brief in Opposition to Motion for Summary Decision filed
by Pamela Stanley

For Respondents:

December 11, 2023 Certification of Mark Wenczel, Esq.

December 22, 2023 Certification of Mark A. Wenczel. Esq.(attaching a copy of an
unpublished decision)

December 22, 2023 Certification of Angela Penna

December 22, 2023 Certification of Jordan Hyman

December 22, 2023 Certification of Micheal D'Aquila

December 22, 2023 Certification of Pamela Stanley

December 22, 2023 Certification of Robert Cianciulli

December 22, 2023 Certification of Joy Young

Brief in support of Motion for Summary Decision

Letter Brief in Opposition to Motion for Summary Decision from Williams and

Grober