
**IN THE MATTER OF
JOSE YBARRA,
PASSAIC CITY BOARD OF
EDUCATION
PASSAIC COUNTY**

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:
: **BEFORE THE**
:
: **SCHOOL ETHICS COMMISSION**
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: **Docket No. C20-09**
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: **DECISION**
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PROCEDURAL HISTORY

This matter arises from a complaint filed on May 18, 2009 by Omar Ledesma alleging that Jose “Alex” Ybarra, a member of the Passaic City Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Despite two notices being sent to the respondent, he did not file an answer.¹ Therefore, pursuant to N.J.A.C. 6A:28-7.3(b), each allegation in the complaint was deemed admitted and the Commission proceeded to a probable cause determination on a summary basis at its meeting on July 28, 2009.² The Commission found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b), but dismissed the allegations that respondent violated N.J.S.A. 18A:12-24(c), (f) and (g).

The Commission adopted its probable cause notice at its meeting on August 25, 2009 and mailed the notice to the complainant, via regular and certified mail, on August 26, 2009.³ Pursuant to N.J.A.C. 6A:28-10.7(c), the respondent was accorded 20 days to submit a statement setting forth the reasons he should not be found in violation of the Act. Respondent was therein notified that after expiration of the time for submission of the respondent’s statement, the Commission may make a determination of violation on a summary basis. The respondent did not submit a statement in response to the probable cause notice. At its meeting on September 22, 2009, the Commission found that the respondent violated N.J.S.A. 18A:12-24(b) and recommended a penalty of reprimand.

¹ The initial notice, dated May 18, 2009, was sent via certified and regular mail. The certified mail copy was returned as “unclaimed.” The copy sent by regular mail was not returned and is, therefore, deemed received. The second notice was sent by letter dated June 11, 2009, via regular and certified mail. The certified mail copy was returned to the Commission’s office on July 28, 2009 as “unclaimed.” The copy sent by regular mail was not returned and is, therefore, deemed received.

² By letter dated July 7, 2009, both the complainant and the respondent were notified that the complaint would be discussed at the Commission’s meeting on July 28, 2009 in order to make a probable cause determination. This notice was also sent to the respondent via regular and certified mail. The copy sent via regular mail was returned to the Commission’s office as “undeliverable.” The Commission’s staff thereafter determined that the respondent changed his address.

³ The probable cause notice was sent to the respondent via regular and certified mail to his new address. The respondent signed for the certified mail on August 27, 2009.

FINDINGS OF FACT

The following facts are undisputed and, therefore, deemed to be true:

- 1) The respondent is a member of the Passaic City Board of Education.
- 2) The respondent served as the campaign manager for Mayor Blanco's opponent in the May 2009 mayoral election.
- 3) Mayor Blanco's children attended school in Passaic City.
- 4) The respondent posted the following message online:

From: Jose 'Alex' Ybarra
Sent: 4/11/2009 11:15:52 PM
To: PassaicToday@yahoogroups.com
Subject: Re: [Passaic Today] City Defers Pension Payment, saddles taxpayers with future whopping tax hike

That "responsible" leadership that you so wonderfully tout... (notice the Candidates never answered, just Blanco's Campaign Press Officer and a member of the DOPOR group, an out of town PAC, which endorsed the Mayor) will instead of costing taxpayers \$2.8 million this year will cost \$3,182,077.77 plus the adjusted \$3.2 million regular payment three years from now...socking it to the already oppressed taxpayers.

As far as the Board of Education, maybe if the GOOD Mayor paid the \$700.00+ he owes for his children's lunches and hiring his wife and 8 other relatives that live off your dime.

Why not come out on Monday at 7 pm, when Mayor Blanco is having a press conference with out of town Latino Leaders to endorse him, and ask these questions in front of the media.

I know I'l [sic] be there!

Jose "Alex" Ybarra

ANALYSIS

According to the complaint, the information disclosed by the respondent concerned the children of Mayor Alex Blanco in an effort to discredit the Mayor prior to the May 12, 2009 mayoral election to the benefit of the Mayor's opponent, for whom the respondent served as campaign manager. The complaint contends, and the respondent does not dispute, that the respondent disclosed this information with the intent to secure an advantage for a candidate in

the May 12th election, in violation of N.J.S.A. 18A:12-24(b). (Complaint at paragraph 2) The Commission notes that N.J.S.A. 18A:12-24(b) provides:

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;

Noting again that the facts alleged in the complaint are deemed to be true, the Commission finds that respondent posted online “private” information about monies owed by Mr. Blanco to the District. A school board member would have access to such information. The Commission finds that the posting of this information in the context of a message that challenged Mr. Blanco during the mayoral election may fairly be read as an attempt by the respondent to use his position as a Board member to the advantage of Mr. Blanco’s opponent, for whom the respondent was working. Accordingly, the Commission finds that the respondent violated N.J.S.A. 18A:12-24(b).

DECISION

For the reasons set forth above, the Commission finds that Jose “Alex” Ybarra violated N.J.S.A. 18A:12-24(b).

PENALTY

The Commission recommends a penalty of reprimand. The Commission similarly found a Board member in violation of N.J.S.A. 18A:12-24(b) and recommended a penalty of reprimand when the Board member endorsed a candidate for the municipal council through a mailing of letters to members of the community where the letterhead, envelope and contents of the letter could have mislead recipients to believe that the endorsement was made in his official capacity as Board president. IMO Alphonse DeMao, Belleville Bd. of Ed., Essex County, C09-04, (September 30, 2004), Commissioner of Education Decision No. 354-10/04. The Commissioner of Education also found reprimand to be the appropriate penalty where a Board member was found in violation of N.J.S.A. 18A:12-24(b) for soliciting signatures for a Board of Education candidate’s petition from teachers and other registered voters employed in a school within the District. Ronald Dilzer v. Karen Sweet, Board of Education of the Township of Readington, Hunterdon County, 96 N.J.A.R.2nd (EDU) 132.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the School Ethics Commission’s recommended sanction. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission’s finding of violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission’s finding of violation may file, within **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,

indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics 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 within **30 days** of the filing date of the decision from which the appeal is taken. The filing date shall be three 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 (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 Bender
Chairperson

Mailing Date: October 28, 2009

Resolution Adopting Decision – C20-09

Whereas, the School Ethics Commission has considered the pleadings filed by the complainant which include factual allegations deemed to be true in that the respondent failed to file an answer in accordance with N.J.A.C. 6A:28-7.3(b); and

Whereas, at its meeting of July 28, 2009, the Commission found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b) of the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.*, but found no cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(c), (f) and (g) of the Act; and

Whereas, the respondent did not respond to the Commission’s Notice of Probable Cause; and

Whereas, at its meeting on September 22, 2009, the Commission found that the respondent violated N.J.S.A. 18A:12-24(b) and recommended a penalty of reprimand; and

Whereas, the Commission has reviewed and approved the decision memorializing said action;

Now Therefore Be It Resolved that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

Robert Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on October 27, 2009.

Joanne Boyle, Executive Director
School Ethics Commission