

G.M.B. ¹	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
CYNTHIA ZIRKLE	:	DOCKET NO. C44-10
CUMBERLAND REGIONAL BOARD OF EDUCATION:	:	DECISION
CUMBERLAND COUNTY	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on December 6, 2010 by G.M.B. asserting that Cynthia Zirkle, a member of the Cumberland Regional Board of Education (“Board”) violated the School Ethics Act (“Act”). Specifically, the complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g), (i) and (j) of the Code of Ethics for School Board Members when she called the District’s Business Administrator and told him to change the bus pass of the complainant’s child to another residence without the complainant’s consent. (Complaint at p. 1) The respondent filed an answer on December 29, 2010. At its meeting on February 22, 2011, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission found the complaint was not frivolous in accordance with the standard set forth at N.J.A.C. 6A:28-1.2 and voted to retain this complaint for hearing at a later date. Thereafter, by letter dated March 22, 2011, the Commission was notified that Samuel J. Serata, Esq., had been retained to represent the respondent.

By letter dated May 5, 2011, the parties were notified that this matter would be scheduled for hearing at the Commission’s meeting on August 23, 2011. The parties attended the meeting on August 23, 2011. The complainant appeared pro se and the respondent appeared with counsel. After hearing all testimony as summarized below, the Commission voted during the public portion of its meeting to find that the respondent violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members and to dismiss the allegations that the respondent violated N.J.S.A. 18A:12-24.1(a), (c), (d), (f), (g), (i) and (j).

SUMMARY OF THE RECORD

The complainant, G.M.B., testified that on October 27, 2010, the respondent, Cynthia Zirkle, “took it upon herself” to change her child’s bus pass to the residence of the child’s paternal grandfather, J.V., without Mrs. B.’s knowledge or consent, notwithstanding that she, as the child’s mother, has a court order for custody and the child primarily resided with the complainant and her husband, J.B., who is the child’s stepfather. The complainant explained that she and J.V. had an agreement that if the child lived with J.V. for six weeks, they would request that the child’s bus pass be changed to accommodate residence at J.V.’s home. For this reason, she was disturbed to learn from her child that, after living with J.V. for a period of about three weeks, the child’s bus pass was changed to the home of J.V. without the complainant’s consent.

¹ Initials are used herein to protect the identity of the student.

The complainant introduced Exhibit C-1, a copy of an email from the Superintendent, William Stonis, to the complainant, explaining the events of October 27, 2010. The complainant explained that the day after she learned of the change, she and her husband went to the school and had a conversation with Mr. McIlvaine, the Business Administrator, who apologized for making the change without the complainant's consent. According to the complainant, Mr. McIlvaine would not tell her who made the call to his office to request the change, but he informed her that it was a "credible" person. The complainant testified that she initially believed that it was J.V. who requested the change. However, she learned from the Superintendent in another email that it was the respondent who called the District to request the change. The complainant stated that she did not speak to the respondent about this matter.

J.B., the complainant's husband, testified that when he and his wife learned that the child's bus pass was changed without their knowledge, they went to the school the next day and spoke with the Business Administrator. Mr. B. stated that Mr. McIlvaine came out of his office and said a mistake was made and it would be fixed. The complainant exchanged emails with the Superintendent on this issue. Mr. B. stated that it was his understanding that the change was made because it was inconvenient for J.V. to pick up the child at school and bring the child back to J.V.'s home, where the child was living at the time of the change. Mr. B. testified that J.V. works for the Township and, specifically, Ernie Zirkle, the respondent's husband. According to Mr. B., J.V. let Ernie Zirkle know that he might be late for work or might have to leave work early because he needed to transport the child to/from school.

On cross-examination, Mr. B. acknowledged that, after he and the complainant went to the school on this matter, they had "a lengthy conversation" with J.V. and the complainant agreed that the child's bus pass should be changed to J.V.'s home as this arrangement was convenient for everyone. In response to a question from the Commission, Mr. B. testified that it was his understanding that J.V. spoke with Ernie Zirkle about the matter but did not speak with the respondent. It was also his understanding that J.V. did not specifically request that the respondent change the child's transportation arrangements.

Pursuant to N.J.A.C. 6A:28-8.3(d), upon completion of complainant's case, the respondent's counsel moved to dismiss the complaint. After hearing arguments from the parties, the Commission asked the parties to leave the room so that it could deliberate. The Commission denied the Motion to Dismiss. Upon resumption of the hearing, the respondent's counsel called his witnesses, as summarized below.

Andrew McIlvaine is the Business Administrator and the Board Secretary for the Cumberland Regional School District. He testified that among his other responsibilities, he oversees the transportation of pupils in the District. As the Board Secretary, he is the custodian of the Board's policies and he is also the liaison to the Board's Policy Committee. Mr. McIlvaine testified that the respondent telephoned him; she made him aware of "a domestic situation" and explained why the complainant's child was staying with J.V., the child's grandfather. According to Mr. McIlvaine, the respondent asked him to check into whether the child could be picked up at a different location. There were no other conversations with the respondent. As a result of this conversation, Mr. McIlvaine testified that he called the transportation coordinator and asked if the child could be picked up at the home of the

grandfather. Mr. McIlvaine stated that he did not conduct an independent investigation into the facts surrounding this issue. The change was immediately effectuated and the next day, the child was being picked up by a different bus which accommodated the residence of J.V. Mr. McIlvaine testified that it was his decision to talk with the transportation coordinator and then have the child picked up at the home of J.V. Mr. McIlvaine had no subsequent contact with the respondent on this issue.

Mr. McIlvaine testified that the next morning, Mr. and Mrs. B. came to the Board office and were very angry and wanted to know who had authorized the change. Mr. McIlvaine told them that he authorized the change. Mr. and Mrs. B. were under the impression that Mr. McIlvaine took this action at the direction of J.V. Mr. McIlvaine disavowed them of this notion, but stated that he could not tell them who requested the change. Mr. and Mrs. B. were very agitated. He apologized and saw to it that the child's bus pass was reinstated to the B.'s home the next day. Mr. McIlvaine reiterated that the changes were made at his direction. He was not aware of any subsequent changes to the child's bus pass.

Mr. McIlvaine testified that Board Policy 142 outlines what Board members are allowed to do. He stated that any Board member may make an inquiry on behalf of a constituent and that is what he understood that the respondent was doing when she called the Business Office. He stated that there have been no specific changes to the transportation policies as a result of this incident. Mr. McIlvaine explained that most students in the District are transported and there have been other instances where the District had requests for a temporary change of bus pick-up. He stated that, in general, he does not give a lot of thought to, or investigate, these requests. Most requests are benign and his interest is to get the children to school. Mr. McIlvaine acknowledged that, in hindsight, he would have inquired more carefully, but it is not something that he routinely does.

On cross-examination, Mr. McIlvaine stated that if a parent made a request to change a bus route, he would likely make the change. To the extent that he was, in this instance, called by a non-parent who provided him with "a story," Mr. McIlvaine stated that he would not have made the change had it not been for the fact that he knew the respondent and that she is a credible person. Mr. McIlvaine reiterated that he knows the respondent through the Board as a concerned individual who has the right to call and ask if he could do anything. He did not verify the information or reach out to the parent.

In response to questioning from the Commission, Mr. McIlvaine reiterated that the respondent only asked him to check and see what could be done; he acted on her credible inquiry. He further stated that he would do the same for other Board members. As a liaison to the Finance and Facilities Committees, Board members sometimes ask him to follow up on committee matters. Mr. McIlvaine also explained that he did not tell the complainant and her husband that it was the respondent who contacted the Board office because he believed this might be a privacy issue and he was concerned with what he, as a school official, was permitted to reveal to members of the public. Mr. McIlvaine testified that the District does not have a specific protocol or require a parent's signature for a transportation change, but he is not likely to make such a change again without a signature. Mr. McIlvaine underscored that because the

respondent was a credible source, he made the change. However, if there was a call from someone else (other than a Board member), he might investigate further.

Cynthia Zirkle has been a member of the Cumberland Regional Board of Education for 30 years; she was President of the Board for 16 years. Her husband is Dr. Ernest Zirkle, who is the Deputy Mayor of Fairfield Township and a committee member. J.V. is an administrator in Fairfield Township. The respondent testified that one morning, J.V. telephoned her home because he was late to work; J.V. called her husband to explain why. J.V. relayed an incident concerning the child and the child's stepfather, Mr. B. According to the respondent, J.V. explained the difficulty he was having taking the child to school and picking the child up from school. The respondent stated that she did not tell J.V. that she would do anything about this. However, she called the school and asked to whom she could relay a concern of a constituent in Fairfield, whose grandfather lived in Deerfield. She relayed that the child was living with the grandparents in Deerfield and that it was a hardship for the grandparents to provide transportation. She was transferred to the Business Administrator. She explained the situation to Mr. McIlvaine and asked what could be done about it. The respondent stated that Mr. McIlvaine's testimony as to this conversation was accurate.

The respondent affirmed that she did not direct Mr. McIlvaine to take any action. She asked him to look into the fact that the child was actually residing in Deerfield Township at the home of J.V. She had no subsequent conversation with the Business Administrator. She testified that J.V. called the next day and he thanked her. This is how the respondent learned that the bus route was actually changed. The respondent stated that she is aware of the District's policy providing that when there are problems with constituents, Board members must refer any issues to the school. The respondent stated that she does not believe she did anything beyond that.

On cross-examination, the respondent stated that she did not believe that the conversation that she had with J.V. was to remain confidential. She told the Business Administrator about her conversation with J.V. In response to questions from the Commission, the respondent further testified that J.V. did not ask her to take any action; he merely explained the situation and she "stupidly" thought she could help. The respondent explained that, in the past, she has taken information from people and gone to the Business Administrator. Usually, the respondent stated, she hears from people who want their children to be picked up by the bus in a better location. She has asked that a bus request be put on the agenda to be addressed by the Board. The respondent testified that the Board answers constituent concerns; it might intervene and see if a bus route could be changed. She added that there is a standing committee of the Board that handles these issues. When asked if she was surprised to learn that the bus route had been changed, the respondent replied that if she was surprised, it was because the change was made so quickly.

J.V. is the paternal grandfather of the child. He testified that he is familiar with the events leading up to the filing of this complaint. The child was living with J.V. and his wife for a number of weeks. J.V. explained that he is an administrator for Fairfield Township and the respondent's husband is the Deputy Mayor, Dr. Zirkle. J.V. needed to leave work in the afternoon and pick up the child from school because the complainant had not consented to having the child's bus route changed and the bus, therefore, was not dropping the child off at

J.V.'s home. J.V. stated that he reported this to the Mayor and to Dr. Zirkle; he assumed that Dr. Zirkle said something to his wife, the respondent, because when he called their home, the respondent asked J.V. how things were working out. J.V. stated that he was working on it. The next day, the child had a bus pass to J.V.'s house. J.V. denied that he telephoned the respondent and thanked her for doing anything. However, he testified that, after the bus pass was changed, the respondent called him and asked him if he told anyone that he had asked the respondent to intervene on his behalf. J.V. told the respondent that he did not ask this of anyone. J.V. further testified that after the change was made, there was a meeting at the school. He spoke with the complainant outside the building and the complainant agreed that while the child was living with J.V., bus transportation should be to/from J.V.'s home.

On cross-examination, J.V. stated that he did not ask the respondent to notify anyone at school or to take any action. He told the complainant that he did not ask the respondent to do anything. He did not know that the respondent was involved until the complainant told him. J.V. stated that he never had a conversation with the Business Administrator on this issue. J.V. reiterated that he did not call the respondent to thank her. In response to questions from the Commission, J.V. testified that Dr. Zirkle was aware that J.V. had to leave work to pick up his grandchild and J.V. had to inform him and the Mayor why he had to leave. J.V. underscored that he was trying to work out the transportation, but he could not get the complainant to agree to the change.

Complainant's Exhibits²

C-1	November 1, 2010 email from Superintendent Stonis to the complainant
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FINDINGS OF FACT

As the trier of fact in this matter, the Commission had the opportunity to observe the demeanor of the witnesses and to judge their credibility. The following are the facts based on the credible testimony and documents on the record.

1. The respondent was at all times relevant to this matter a member of the Board of Education.
2. The complainant, G.M.B., lives in Fairfield Township with her husband, J.B., who is the child's stepfather. The complainant has a court order for custody and, at the time of these events, the child primarily resided with the complainant and her husband.
3. The child's paternal grandfather, J.V., lives in Deerfield Township.
4. The child attends school in the Cumberland Regional School District.
5. On October 27, 2010, the child was living at the home of J.V. and had been living there for a matter of weeks.
6. J.V. is an administrator for Deerfield Township.

² The respondent did not introduce any exhibits into evidence.

7. The respondent's husband, Dr. Ernie Zirkle, is the Deputy Mayor in Deerfield Township.
8. The child's living arrangements on October 27, 2010 made it necessary for J.V. to transport the child to/from school because the child's bus pass, at that time, was for the B.'s home. Therefore, J.V. informed Dr. Zirkle that this was the reason for his being late for work and/or for having to leave work early.
9. Dr. Zirkle informed the respondent about this transportation concern.
10. J.V. had a conversation with the respondent about the transportation issue when he telephoned the Zirkle residence and the respondent answered the phone. The respondent asked J.V. how it was working out, referring to the transportation of the child.
11. After the conversation with J.V., the respondent telephoned the Board office and asked to whom she could speak about a transportation problem that concerned a constituent in Fairfield and a constituent in Deerfield. She was directed to the Business Administrator.
12. The respondent explained the situation involving the complainant's child and asked what could be done about the fact that transportation was being provided to the B.'s home rather than J.V.'s home, where the child was currently residing and this was a hardship to J.V. The respondent did not direct the Business Administrator to take any particular action and did not have any additional conversations with him.
13. The Business Administrator conducted no independent investigation of the facts relayed by the respondent. Because Mr. McIlvaine knew the respondent as a Board member, he believed her to be a credible source of information. Therefore, Mr. McIlvaine contacted the transportation coordinator and the child was immediately issued a bus pass to accommodate J.V.'s home.
14. The Business Administrator did not notify the complainant or obtain her consent. The complainant and her husband learned of the change after it had been effectuated.
15. By email dated November 1, 2010, William Stonis, the Superintendent of Schools, notified the complainant:

On October 27, 2010 a phone call was received in the Business Office of CRHSD requesting to speak with Mr. McIlvaine. The purpose of the call was to request a bus route change for the [child] of M/M [B.] from the home of M/M [B]. to the home of Mr. [V.]. Mr. [V.] is the grandparent to the [child] of M/M [B.]. Mr. McIlvaine identifying the source as credible contacted the transportation coordinator requesting the change. The change did take place as requested.

The following morning, M/M [B.] came to the BOE Office to speak to Mr. McIlvaine in regard to the change in bus route. It was clear from the conversation that the parents (M/M [B.]) had not made the request and asked that the bus route of their [child] be switched back to a drop off at the home of the [B.]'s. This was done immediately.

ANALYSIS

The complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a). See also, N.J.S.A. 18A:12-29(b). The complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g), (i) and (j) of the Code of Ethics for School Board Members. The Commission first considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(a), which states:

I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures. N.J.A.C. 6A:28-6.4(a)1.

The complainant did not produce a copy of a final decision from a court of law or administrative agency of this State that demonstrates this respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondents brought about changes through illegal or unethical means. See, David Hollander v. Judith Millman, et al., Springfield Twp. Board of Education, Union County, C33-07 (January 22, 2008); Denise Bouyer v. Rita Owens and Oscar McCoy, Willingboro Board of Education, Burlington County, C37-09 (December 15, 2009); Martha Oramas-Shirey v. Peter Gallo et. al., Bethlehem Twp. Bd. of Ed., Hunterdon County, C43-10 (March 22, 2011). Accordingly, the complainant failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(a).

The Commission next considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(c), which states:

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.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the respondent(s) took board 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 or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- iii. Ascertain the value or liability of a policy. N.J.A.C. 6A:28-6.4(a)3.

The complainant presented no evidence that the respondent took any particular "board action" so as to implicate this provision of the statute. Rather, respondent's conduct implicates N.J.S.A. 18A:12-24.1(e), as set forth below.³ Accordingly, the complainant failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(c).

The Commission next considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(d), which states:

I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(d) shall include, but not be limited to, evidence that the respondent(s) gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school. N.J.A.C. 6A:28-6.4(a)4.

Based on the testimony of Mr. McIlvaine and in accordance with the Commission's finding that the respondent did not direct the Business Administrator to take any particular action and did not have any additional conversations with him beyond her initial phone call on October 27, 2010,

³ It is noted that in Marc Sovelove v. Paul Breda, Mine Hill Twp. Bd. of Ed., Morris County, C49-05 (September 26, 2006), the Commission found that a Board member's action cannot be both board action *and* private action.

the Commission finds insufficient evidence to conclude that the respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district. Accordingly, the complainant failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(d).

The Commission next considers the complainant's allegation that the respondent violated N.J.S.A. 18A:12-24.1(e), which provides:

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.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

The Commission notes that J.V. testified that he *did not* ask the respondent to take any particular action to address the child's transportation situation so as to potentially implicate the Board's policy permitting its members to make an inquiry on behalf of a constituent. Instead, it appears to the Commission that the respondent was reacting to a situation that not only impacted J.V. and the child, but impacted her husband as the Deputy Mayor, inasmuch as J.V. testified that transporting the child to/from school was affecting his attendance at work. Thus, while the Commission fully recognizes that the respondent's actions were limited to a telephone conversation with the Business Administrator who was ultimately responsible for effectuating the change, it is also persuaded that, in making the call, the respondent was aware that once she spoke to the Business Administrator, he would be influenced accordingly. Indeed, the respondent testified that she was not actually surprised to learn that the change had been effectuated, but only that it was done so quickly. Thus, the Commission concludes that the respondent took private action, or action that was outside the scope of her duties as a Board member. In so finding, the Commission notes that the respondent's own testimony revealed that the Board has a standing committee to address such student transportation issues and, therefore, this matter could have been addressed by that committee.

In finding a violation of N.J.S.A. 18A:12-24.1(e), it is not necessary that the Commission finds that the respondent's action, in fact, compromised the Board. Rather, it is sufficient that the action was of such a nature that it may have compromised the Board. See, Tony John et al. v. Ken Gordon, Willingboro Bd. of Ed., Burlington County, C34-08 (October 27, 2009), *aff'd* Commission of Education Decision No. 102-10ASEC, decided March 30, 2010. Here, the Commission again notes that the respondent's status as a Board member placed her in a position to have credibility in a matter where she had no relationship to the child and where she was not making a request on behalf of anyone who was related to the child, or on behalf of a guardian for the child. Indeed, whatever information the respondent believed she may have been privy to,

family relationships are fraught with complexities, including legal considerations. Meddling in a transportation arrangement could have serious consequences if the information is faulty and the child's safety is compromised. As it happened in this matter, the complainant was quite angry.

In this analysis, the Commission does not diminish the District's complicity in failing to verify the information provided by the respondent or obtain parental consent to change the student's bus pass. However, the Business Administrator's failure to conduct any due diligence does not absolve the respondent of her duty to refrain from taking private action that could have had serious consequences for the Board. The Commission is persuaded that the respondent lost sight of her duty to recognize that authority rests with the Board. It is likely that the respondent has realized that her conduct breached ethical standards, since she testified that she "stupidly" thought she could help. Accordingly, the Commission finds that the respondent took private action which was of such a nature that it had the potential to compromise the Board in violation of N.J.S.A. 18A:12-24.1(e).

The Commission next considers the complainant's allegation that the respondent violated N.J.S.A. 18A:12-24.1(f), which provides:

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.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(f) 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 in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend. N.J.A.C. 6A:28-6.4(a)6.

The Commission can find no evidence that the respondent surrendered her independent judgment to a special interest or partisan political groups or used the schools for personal gain or for the gain of his friends. Although the Commission noted, above, that the respondent likely acted in a matter that impacted J.V. and her husband, it does not find that this action rose to the level of a violation of this provision. Accordingly, the Commission finds that the complainant failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(f).

The Commission next considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(g), which provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in

concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

The Commission's regulations require that:

Factual evidence of a violation of the confidentiality provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that the respondent(s) 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. Factual evidence that the respondent violated the inaccurate information provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by the respondent(s) and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. N.J.A.C. 6A:28-6.4(a)7.

J.V. testified that he made Dr. Zirkle aware of the child's living arrangements because these arrangements were impacting J.V.'s working schedule. To the extent these arrangements were somehow confidential, the Commission cannot find that the respondent violated this provision by sharing the information with the Business Administrator, since this would not be disclosing anything to the public. Moreover, the complainant offered no evidence to support a claim that the respondent violated the "inaccuracy" provision of N.J.S.A. 18A:12-24.1(g), in accordance with the standards set forth above. Accordingly, the Commission finds that the complainant failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(g).

The Commission next considers the complainant's allegation that the respondent violated N.J.S.A. 18A:12-24.1(i), which states:

I will support and protect school personnel in proper performance of their duties.

The Commission's regulations further provide:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(i) shall include evidence that the respondent(s) took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties. N.J.A.C. 6A:28-6.4(a)9.

On this record, the Commission does not find that the respondent's limited communication with Mr. McIlvaine in any way rises to the level of taking deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of

their duties. Accordingly, the Commission finds that the complainant has failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(i).⁴

Finally, the Commission considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(j), which provides:

I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(j) shall include evidence that the respondent(s) acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint:

- i. Prior to referral to the chief administrative officer; or
- ii At a time or place other than a public meeting and prior to the failure of an administrative solution. N.J.A.C. 6A:28-6.4(a)10.

As noted above, J.V. testified that he did not ask the respondent to take any particular action to address the child's transportation situation. Thus, the Commission does not find that the record supports the conclusion that the respondent was acting on a "complaint," so as to implicate this provision. Accordingly, the Commission finds that the complainant has not established that the respondent violated N.J.S.A. 18A:12-24.1(j).

DECISION

The Commission finds that respondent Cynthia Zirkle violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members and the Commission dismisses the allegations that the respondent violated N.J.S.A. 18A:12-24.1(a), (c), (d), (f), (g), (i) and (j).

PENALTY

The Commission recommends a penalty of reprimand. In so doing, it reflects on Tony John, *supra*, where the Commission found that the respondent, Ken Gordon, violated N.J.S.A. 18A:12-24.1(e) by directing a principal to contact other principals and tell them that a mock election was not a Board event and by directing a principal to tell other principals not to stand in

⁴ Contrast, I/M/O Charles Fischer, Eatontown Bd. of Ed., Monmouth County, C30-03 (February 24, 2004), Commissioner of Education Decision No. 157-04SEC, April 12, 2004; I/M/O David Kanaby, Hillsborough Bd. of Ed., Somerset County, C53-05 (July 24, 2007), Commissioner of Education Decision No. 350-07SEC, September 10, 2007; and Brown et al. v. David Matthews, City of Englewood Board of Education, Bergen County, C13-07 (October 27, 2008), *aff'd*, Commissioner of Education Decision No. 123-09A, April 14, 2009.

the way of the mock election, notwithstanding that the Interim Superintendent had already informed the principals that the mock election was cancelled. The Commission therein found that the respondent's private action resulted in the principals receiving mixed messages about the mock election.⁵ The Commission recommended a penalty of reprimand and, on appeal, the Commissioner affirmed the finding(s) of violation as well as the penalty of reprimand. In this matter, the Commission similarly recognizes that the respondent's actions may have been motivated by her misguided attempt to remedy a situation. Nevertheless, the respondent overstepped her role as a Board member.

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: September 28, 2011

⁵ The Commission also found that Respondent Gordon violated N.J.S.A. 18A:12-24.1(d) and (i).

Resolution Adopting Decision – C44-10

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and the testimony of the parties from its hearing on August 23, 2011; and

Whereas, at its meeting on August 23, 2011, the Commission found that the complainant established that the respondent violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members, but dismissed the allegations that the respondent violated N.J.S.A. 18A:12-24.1(a), (c), (d), (f), (g), (i) and (j); and

Whereas, at its meeting on August 23, 2011, the Commission voted to recommend to the Commissioner of Education a penalty of reprimand; and

Whereas, at its meeting on September 27, 2011, 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 it staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 27, 2011.

Joanne Boyle
Executive Director