

Before the School Ethics Commission
OAL Docket No.: EEC-01469-21
SEC Docket No.: C67-20
Final Decision

**William Junker,
Complainant**

v.

**Richard Quelch,
Barnegat Board of Education, Ocean County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on October 30, 2020, by William Junker (Complainant), alleging that Richard Quelch (Respondent), member of the Barnegat Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(i), and *N.J.S.A.* 18A:12-24.1(j) of the Code of Ethics for School Board Members (Code). On December 29, 2020, Respondent filed an Answer.

At its meeting on January 26, 2021, and after reviewing the Complaint and the Answer filed by the parties, the Commission voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing on the alleged violations of the Code. The matter was filed at the OAL on February 9, 2021. The Honorable Dorothy Incarvito-Garrabrant, Administrative Law Judge (ALJ Garrabrant) issued a prehearing Order on May 26, 2021. The matter was reassigned to the Honorable Carl V. Buck III, Administrative Law Judge (ALJ Buck), and Complainant filed a motion for summary decision on September 17, 2021. Subsequently, on September 30, 2021, Respondent filed an answer to the motion with a cross-motion for summary decision, Complainant filed a surreply to Respondent's cross-motion on October 8, 2021, and the oral argument on the motion and cross-motion was held on October 18, 2021.

On November 30, 2021, ALJ Buck issued an *Initial Decision* detailing his findings of fact and legal conclusions on the motion. The Commission acknowledged receipt of ALJ Buck's *Initial Decision* on the date it was issued (November 30, 2021); therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was January 14, 2022. Prior to January 14, 2022, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to receive and review the full record, including the parties' Exceptions (if any). Pursuant to *N.J.S.A.* 52:14B-10(c) and *N.J.A.C.* 1:1-18.8, and for good cause shown, the Commission was granted an extension until February 28, 2022.

On December 1, 2021, Respondent filed Exceptions to ALJ Buck's *Initial Decision*. On December 9, 2021, Complainant filed a response to Respondent's Exceptions.

At its meeting on January 25, 2022, the Commission considered the full record in this matter, including the filed Exception and the filed reply. Thereafter, and at a special meeting on February 25, 2022, the Commission voted to adopt the findings of fact from ALJ Buck's *Initial Decision*; to adopt the legal conclusion that, based on the admissible evidence, there is sufficient credible evidence to establish a violation of *N.J.S.A.* 18A:12-24.1(d) and (j) of the Code; and to adopt the recommended penalty of censure.

II. Initial Decision

In the *Initial Decision*, ALJ Buck offered the following *findings of fact* based on the testimony and documentary evidence:

1. Complainant is employed as a teacher by the Board;
2. Complainant is the Barnegat Education Association (BEA) President, the BEA represents members of the Association on various matters;
3. Respondent is a member of the Board and has been a member since January 2020;
4. Respondent is currently the Board Vice President;
5. Dr. Brian Latwis is the Superintendent of Schools for the District and was employed in that role at the time of the incident;
6. Robert Davis is a teacher employed by the Board;
7. Mr. Davis served as the head coach of the varsity football team at Barnegat High School during the fall 2020 football season;
8. Prior to the game on October 2, 2020, several Barnegat football team members knelt during the national anthem;
9. On October 3, 2020 at 7:01 a.m., Respondent sent an email to Coach Davis, and copied the Superintendent, which contained a photograph of the team showing some players kneeling. Respondent stated in the email:

I would like a full explanation for what some of our players did last night. This is not who we are in Barnegat! I am outraged and saddened by this and there are hundreds more people like myself that have the same feelings.

*Rick Quelch
Barnegat Board of Education Member*

10. The Superintendent responded to Respondent's email that same day at 7:31 a.m. (October 3, 2020) stating:

I saw your text when I got home from the game last night.^[1]

¹ Information about a text on October 2, 2020, was not presented to the tribunal.

The New Jersey Football Coaches Association and the New Jersey Football Officials Association released a joint statement prior to the start of the fall sports season permitting peaceful protests, such as kneeling, citing they “will treat those participants with the utmost dignity and respect as we support and recognize an individual’s freedom to peacefully express their personal, social and political views.”

We recognize their authority over what happens on the field and although Rob [Davis] and myself [(sic)] may not agree with “how” those students chose to advocate for their beliefs the fact is we do not have the authority to mandate otherwise. Having had parents and grandparents that served I can assure you it bothers us when anyone kneels during the National Anthem. [(sic)] However, it is within their freedom to do so and not a violation of the code of conduct.

*Thanks,
Brian*

11. That same day (October 3) at 8:04 a.m., Respondent replied to the Superintendent and copied the football coach, stating:

These young men have no idea the harmful affect [sic] they are displaying for our town and themselves. Most of them have no idea what they are kneeling for or why. I had members of our local PD, fire, EMS and veterans asking what the hell is going on!!!! Coach you need to speak to this team before it gets out of hand and Barnegat football loses respect in this town.

Rick

12. That evening at 7:59 p.m., Respondent sent a third email to the Superintendent and copied the coach, stating:

I am still waiting to hear from you Mr. Davis about this matter. If you think for one minute I am going to let this disrespectful stunt go you are wrong.

As an elected official you are disrespecting me for not giving me your side of the story. I am giving this until Monday.

*Richard Quelch
Barnegat BOE Member*

13. Shortly thereafter at 8:23 p.m., the Superintendent responded to Respondent's email, stating:

Good Evening,

Respectfully, Mr. Davis will not be giving you an explanation. As a parent you are more than welcome to express your displeasure. As a board member you are not to give a directive to my staff.

As superintendent you are well within your right to request information from me ... which you received this morning.

*Thanks,
Brian*

14. Immediately following at 8:25 p.m., Respondent sent another email to the Superintendent stating:

I think you are forgetting who is your boss. I will see you Monday morning!²

15. Shortly thereafter at 8:36 p.m., the Superintendent sent an email to Respondent (with copy to Board President Michael Hickey), stating:

Ill [sic] see you then.

16. At 9:01 p.m. on October 3, 2020, Respondent sent an email to the Superintendent (with a copy to the Board President), stating:

Dina McGowan this is not my picture but a picture posted on a Pinelands [Facebook] group. Not 1 kid, coach, or parent behaved as disrespectful as the Barnegat football team did last night. They should have been made to forfeit for their actions and not allowed to play. So as a taxpayer and parent of 2 Wildcat children we may have lost the game score wise but morally we won by raising respectful children. Im [sic] absolutely embarrassed by these kids['] behavior. I was born and raised in Barnegat and still have property there this is an embarment [sic] display of disrespect. The field is no place for politics or political statements, they need to choose another better way to raise awareness.

17. Shortly thereafter, at 9:21 p.m., the Board President sent an email to the Superintendent and Respondent, stating:

² Coach Davis was not copied on this email from Respondent.

Rick,

I understand this is an emotional issue for everyone involved right now, but we will discuss this Monday morning. We'll see you at the office in the morning.

Respectfully,

*Michael Hickey
Board President
Barnegat Township Board of Education*

18. On Wednesday, October 7, 2020, at 8:43 a.m., Respondent sent an email to the Board President (with copy to the Superintendent), stating:

I still have not received any response since we spoke Monday morning?

During the debate last night you heard right out of Mrs. Bivins['] mouth that the coaches were responsible for this entire debacle. I would still like a statement from the coaches about this matter. Pushing there [sic] political views on these students definitely warrants suspension and an apology to this community.

*Thank you
Rick*

19. At 1:50 p.m., on October 7, 2020, the Superintendent responded to Respondent (with copy to the Board President), stating:

Good Afternoon Rick – I can circle back with Rob and John again but as I stated Monday when we spoke – they conveyed the students brought this to the coaches and not the other way around. I was there last night and also heard what she said. I stated Monday there is zero ground to go further and I am not going to recommend suspension. I will ask Rob and let you know if their stance changed. As discussed –I am not sure if you saw this article – [URL omitted]

Brian

20. At 1:59 p.m., on October 7, 2020, Respondent sent an email to the Superintendent, stating:

Thank you for getting back to me.

I was only recommending the suspension based on what I heard last about the coach pushing his views.

*Thank you
Rick*

21. At 2:09 p.m., that same day, Respondent sent another email to the Superintendent, stating:

I would still like a written statement from Davis and Villez regarding what happened because I am hearing different versions of this story from both sides.

22. On Wednesday, October 7, 2020, at 3:19 p.m. the Superintendent sent an email to Respondent (with copies to Board counsel and the Board President), at 3:40 p.m., Respondent sent an email to the Superintendent (with copies to Board counsel and the Board President) and at 4:01 p.m., the Superintendent sent an email to Respondent copying the same. All of these emails were redacted.

23. On October 7, 2020, at 5:50 p.m., the Board President sent an email to the Superintendent (with a copy to Respondent), stating:

Rick,

Also, just because Ms. Bevins made that statement, that does not make the [sic] it a fact nor does it compel us to move forward with any action.

She was very upset about social media. Has she made peace with the comments Chrysta made on uncensored about the students yet?

*Respectfully,
Michael Hickey
Board President
Barnegat Township Board of Education*

24. On October 7, 2020, at 5:59 p.m., Respondent sent an email to the Board President (with copy to the Superintendent), stating:

Well you can leave my wife out of this ... Thank you for your concern.

25. On Friday, October 9, 2020, at 2:37 p.m., Board counsel sent an email to the Superintendent and Respondent (with copy to the Board President), which was redacted, with the exception at the end of the message:

If I can be of additional assistance on this matter to any of you gentlemen, let me know.

*Have a nice weekend,
Marty*

26. On October 9, 2020, at 2:40 p.m., Respondent sent an email to Board counsel (with copies to the Superintendent and the Board President), stating:

I thought you should of [sic] been attached to this. I will not in the future.

Initial Decision at 2-9.

After outlining the findings of facts, ALJ Buck presents his conclusions of law. Regarding the motions for Summary Decision, ALJ Buck asserts that a genuine issue as to the material facts does not exist and the only issues presented are whether the respondent's conduct rose to the level of a violation of the Code of Ethics or whether it should be considered as an appropriate display of concern by a Board member. *Initial Decision at 10.*

ALJ Buck notes Respondent's position as a Board member "holds a position of public trust." *Id.* ALJ Buck further notes a "full understanding of the parameters of ethical conduct for board members can be achieved only with training and experience" and although some "conflicts of interest and ethical constraints are obvious" the "complex distinction between the role of a board member and that of administration is not a matter that a board member can easily intuit." *Id.*

ALJ Buck notes Respondent "points out that [C]omplainant is the Association representative at the BOE" and was not part of the email exchange that transpired among Respondent, the Superintendent, the Board President, the coach and/or Board counsel. *Id.* at 11. Respondent further "points out" "none of the email recipients filed a complaint ... However, this nexus is not sufficient to demonstrate a disingenuous intent." *Id.*

In evaluation of a violation of *N.J.S.A.* 18A:12-24.1(c), ALJ Buck cites the administrative Code and asserts, "Although he requested, nay, demanded action and responses to his inquiries, [R]espondent did not effectuate policy. He attempted to, but the effort was dealt with, judiciously and successfully, by other communicants. Notwithstanding [R]espondent's attempt, the charge brought under this section has not been proven by a preponderance of the evidence." *Id.* at 12.

As to a violation of *N.J.S.A.* 18A:12-24.1(d), ALJ Buck contends Respondent "demanded action and responses to his inquiries. He did not do so as a parent, but as a Board member, leaving no inference as to his intent unspoken." *Id.* at 13. Therefore, ALJ Buck further contends, "Such statements document that the charge brought under this section has been proven by a preponderance of the evidence." *Id.*

Regarding a violation of *N.J.S.A.* 18A:12-24.1(e), ALJ Buck contends Complainant did not provide proof that Respondent made “any personal promises or took any private action that might have compromised the Board.” *Id.* at 14. Although Respondent “made statements in his emails that may have cast the Board in a negative light if made public,” his statements “as far as the tribunal is aware, were not transmitted to the public.” *Id.* Moreover, ALJ Buck notes, “While [R]espondent’s statements were inappropriate and may have been distressing to the email recipients, there was nothing in them to indicate that [R]espondent’s statements had the potential to compromise the Board.” *Id.* ALJ Buck further contends, “no action on any perceived ‘threat’ by [R]espondent could be taken without the vote of the entire Board.” *Id.* Since Respondent “had no capacity to act alone to bring about any change in personnel,” ALJ Buck maintains the “charge brought under this section has not been proven by a preponderance of the evidence.” *Id.*

As to a violation of *N.J.S.A.* 18A:12-24.1(i), ALJ Buck asserts that although Complainant maintains that Respondent’s comments were “intimidating” ALJ Buck notes “they were inappropriate, but were not such deliberate action that could undermine, oppose, compromise or harm him [(Complainant)] in the performance of his duties.” *Id.* ALJ Buck further asserts Respondent did not have the “authority to change [C]omplainant’s position; only the Board could do that.” *Id.* Therefore, “the charge brought under this section has not been proven by a preponderance of the evidence.” *Id.*

Regarding a violation of *N.J.S.A.* 18A:12-24.1(j), ALJ Buck contends Respondent “did not attempt to resolve a complaint, but arguably did attempt to conduct an investigation before any administrative action was taken through his demands for statements.” *Id.* at 15. Even after the Superintendent informed Respondent about the State’s position on conduct that occurs during a sporting event, Respondent “continued to demand a statement and explanation” from the coach; therefore, ALJ Buck contends, “the charge brought under this section has been proven by a preponderance of the evidence.” *Id.*

Turning to the penalty, ALJ Buck asserts “the violation in question clearly cannot be said to be de minimis; the entire chain of communication, tenor of the communication, and presumption of superiority over the other communicants evidences a serious lack of judgement.” *Id.* at 16. ALJ Buck further asserts, “Ameliorating this position, to an extent, is [R]espondent’s statement in his affidavit as to his state of mind in expectation of how the students’ actions would reflect negatively on the school and show a lack of deference to military and service individuals, and his presumption that the action was promoted by the team coaches.” *Id.* ALJ Buck maintains, although Respondent issued a “statement of remorse, imposition of one of the enumerated sanctions is appropriate.” *Id.* ALJ Buck concludes Respondent has “exhibited remorse and has pledged to curtail his actions in the future to the correct venue” and, therefore, ALJ Buck concludes the appropriate sanction is censure. *Id.*

In summary, ALJ Buck orders, based on the findings of facts and conclusions of law, that the Complaint filed by Complainant against Respondent be affirmed to the extent of the violations of *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(j), and orders the Complaint be dismissed to the extent of the violations of *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i).

III. Exceptions

Respondent's Exceptions

In his Exceptions, which were filed on December 1, 2021, Respondent contends he does not “challenge any of the factual findings,” nor the conclusions of law; however, Respondent “submit[s] that for all the reasons the [ALJ] identified as warranting leniency in this matter, the penalty should be reduced from censure to reprimand.”

Complainant's Reply to Respondent's Exceptions

Complainant asserts, “For the reasons cited in the [I]nitial [D]ecision,” the Commission should adopt the ALJ’s recommended penalty of censure.

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission **adopts** ALJ Buck’s findings of fact, and **adopts** the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(j), but did not violate *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i).

In finding a violation of *N.J.S.A.* 18A:12-24(d), ALJ Buck correctly determined that certain communications from Respondent to school personnel, wherein Respondent demanded action and responses to inquiries, constituted a violation as they were signed by Respondent and patently included a reference to himself as a board member in his signature. The Commission further concurs that Respondent violated *N.J.S.A.* 18A:12-24.1(j). Through his demands for statements, Respondent attempted to conduct an investigation before any administrative action was taken.

V. Decision

The Commission adopts ALJ Buck’s *Initial Decision* finding that Respondent violated *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(j), but did not violate *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i).

VI. Penalty

For the reasons set forth by ALJ Buck in his *Initial Decision*, the Commission **adopts** the recommended penalty of **censure**.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner for review of the Commission’s recommended sanctions. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission’s findings of violations of the Act; or 3) file both exceptions to the recommended sanction and an appeal of the Commission’s findings of violations of the Act.

Parties taking exception to the recommended sanctions of the Commission but *not disputing* the Commission’s findings of violations may file, within **thirteen (13) days** from the date the Commission’s decision is forwarded to the Commissioner, written exceptions regarding the recommended sanctions to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked “Attention: Comments on Ethics Commission Sanction.” A copy of any comments filed must be sent to the Commission and all other parties.

Parties seeking to appeal the Commission’s findings of violations *must* file an appeal pursuant to the standards set forth at *N.J.A.C. 6A:4, et seq.* within **thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the mailing date to the parties, as indicated below. In such cases, the Commissioner’s review of the Commission’s recommended sanctions will be deferred and incorporated into the Commissioner’s review of the findings of violations on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission’s recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant’s brief on appeal.

Robert W. Bender, Chairperson

Mailing Date: February 25, 2022

***Resolution Adopting Decision
in Connection with C67-20***

Whereas, by correspondence dated February 9, 2021, the School Ethics Commission (Commission) transmitted the above-referenced matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, at the OAL, both Respondent and Complainant filed Motions for Summary Decision; and

Whereas, the Honorable Carl V. Buck III, Administrative Law Judge (ALJ Buck) issued an *Initial Decision* dated November 30, 2021; and

Whereas, in his *Initial Decision*, ALJ Buck ordered the Complaint filed by Complainant against Respondent be affirmed to the extent of the violations of *N.J.S.A. 18A:12-24.1(d)* and *N.J.S.A. 18A:12-24.1(j)*, and ordered the Complaint be dismissed to the extent of the violations of *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(i)*; and

Whereas, on December 1, 2021, Respondent filed Exceptions to the *Initial Decision*; and

Whereas, on December 9, 2021, Complainant filed a reply to Respondent's Exceptions; and

Whereas, at its meeting on January 25, 2022, the Commission reviewed and discussed the record, including ALJ Buck's *Initial Decision*, the filed Exception, and the filed reply; and

Whereas, at its meeting on January 25, 2022, the Commission discussed adopting the findings of fact from the *Initial Decision*, adopting the legal conclusion that Respondent violated *N.J.S.A. 18A:12-24.1(d)* and *N.J.S.A. 18A:12-24.1(j)*, but did not violate *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(i)*, and adopting the recommended penalty of censure; and

Whereas, at a special meeting on February 25, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on January 25, 2022; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at a special meeting on February 25, 2022.

Kathryn A. Whalen, Esq.,
Director, School Ethics Commission
(For Submission Only)