

AGENCY DKT. NO. 48-2/98

IN THE MATTER OF MICHAEL KILMURRAY, :

LACEY TOWNSHIP BOARD OF EDUCATION, : COMMISSIONER OF
EDUCATION

OCEAN COUNTY. : DECISION

_____:

The record of this matter and the decision of the School Ethics Commission have been reviewed. Counsel for Mr. Kilmurray requested and was granted two extensions of time within which to file Comments with respect to the recommended sanction in this matter. Such comments were filed on March 25, 1998.¹

Mr. Kilmurray's exceptions object to the Ethics Commission imposing the more severe sanction of censure rather than a reprimand as recommended by the Administrative Law Judge (ALJ). He proffers that, in making her penalty recommendation, the ALJ correctly determined that because Kilmurray was a new board member, did not cast a vote or have any influence on any vote being cast, previous decisions of the Commissioner supported a sanction of reprimand. (Kilmurray's comments at p. 2)

¹ It is noted that members of the public attempted to make submissions to the record in this matter. As there is no statutory or regulatory authorization for receipt or consideration of such submissions, these were neither reviewed nor taken into account in the Assistant Commissioner's within penalty determination.

Upon a thorough review of the record, the Assistant Commissioner² is unpersuaded by Mr. Kilmurray's comments. Rather, given that the Commission's decision found four ethics violations on the part of Mr. Kilmurray, as opposed to three found by the ALJ, and after fully considering all relevant existing mitigating factors, he concludes that censure is the appropriate penalty in this matter. As such, the Assistant Commissioner determines to accept the Commission's recommendation, in view of the Commission's determination, which is not reviewable by the Assistant Commissioner herein, that violations of the School Ethics Act occurred under the circumstances set forth in the decision.

Accordingly, IT IS HEREBY ORDERED that Michael Kilmurray be censured as a school official found to have violated the School Ethics Act.³

IT IS SO ORDERED.

ASSISTANT COMMISSIONER OF EDUCATION

² *N.J.S.A.* 18A:4-34 authorizes each assistant commissioner to hear and determine controversies and disputes which may arise under school laws, or the rules of the state board, or of the Commissioner of Education.

³ This decision, as the Assistant Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.

APRIL 15, 1998

IN THE MATTER OF MICHAEL KILMURRAY, :
LACEY TOWNSHIP BOARD OF EDUCATION, : RESOLUTION OF CENSURE
OCEAN COUNTY. :
_____ :

WHEREAS, Lacey Township Board of Education member, Michael Kilmurray, was found by the School Ethics Commission to have attended the private board session discussion of his sister-in-law's appointment; made comments concerning the appointment to his colleagues as they entered the private session; made a comment describing both his sister-in-law and another applicant as "good candidates"; and made and supported the motion to re-vote after the vote to hire his sister-in-law failed; and

WHEREAS, the School Ethics Commission that such conduct violated *N.J.S.A. 18A:12-24(c)* of the School Ethics Act; and

WHEREAS, after considering the record and the recommended decision of the Administrative Law Judge (ALJ) issued subsequent to a hearing of the matter conducted at the Office of Administrative Law, the School Ethics Commission, in a decision dated February 24, 1998, recommended to the Commissioner of Education that he impose upon Mr. Kilmurray the penalty of censure pursuant to *N.J.S.A. 18A:12-29(c)* and *N.J.A.C. 6:3-9.19(c)1*; and

WHEREAS, Mr. Kilmurray submitted comments to the Commissioner with regard to this penalty urging that the penalty of reprimand, as was recommended by the ALJ, is more appropriate in light of the mitigating factors existing here and prior Commission decisions; and

WHEREAS, the Assistant Commissioner* has concluded that given that the Commission, in its decision, found four ethics violations rather than the three found by the ALJ, and after having fully considered all relevant mitigating factors, censure is the appropriate penalty for the aforementioned violations for the reasons set forth in the Commission's decision; now therefore

BE IT RESOLVED, that Michael Kilmurray is hereby censured as a school official found to have violated the School Ethics Act; and

BE IT FURTHER RESOLVED, that the Lacey Township Board of Education is ordered to read this resolution at the next public meeting following its adoption by the School Ethics Commission and to post it in such places as the Board posts its public notices.

IT IS SO ORDERED.

ASSISTANT COMMISSIONER OF EDUCATION

APRIL 15, 1998

* *N.J.S.A. 18A:4-34* authorizes each assistant commissioner to hear and determine controversies and disputes which may arise under school laws, or the rules of the state board, or of the Commissioner of Education.