

485-04SEC

AGENCY DKT. NO. 381-10/04

(School Ethics Commission Decision: <http://www.state.nj.us/njded/legal/ethics/disclosure/d05-04censure.pdf>)

IN THE MATTER OF HARRY CIABATONI, :
BOARD OF EDUCATION OF THE :
WOODBINE SCHOOL DISTRICT, :
CAPE MAY COUNTY. :
_____:

COMMISSIONER OF EDUCATION
DECISION

The Commissioner has reviewed the record of this matter, wherein the School Ethics Commission acted pursuant to the authority granted to it by *N.J.S.A.* 18A:12-21 *et seq.* to recommend a penalty against the above-named school official (Mr. Ciabatoni) for failure to file a personal/relative disclosure statement, pursuant to *N.J.S.A.* 18A:12-25 and/or an annual financial disclosure statement required by *N.J.S.A.* 18A:12-26. The deadline to file these disclosure statements was April 30, 2004 for school officials in office since January 30, 2004, or 30 days from swearing-in or start of service for newly elected or appointed board members and administrators, and the School Ethics Commission was advised by the County Superintendent that Mr. Ciabatoni did not file a disclosure statement with his school district and the County Superintendent's office, as required by the Act. The Commission sent a reminder letter to Mr. Ciabatoni on August 20, 2004, indicating that if the completed statement was not filed by September 10, 2004, the Commission would issue an Order to Show Cause that could result in disciplinary action. With no indication that such statement had been filed, pursuant to *N.J.A.C.* 6A:28-1.5(j), the Commission issued an Order on September 17, 2004 directing Mr. Ciabatoni to Show Cause why the Commission should not find him in violation of the Act for failing to file the necessary statement(s).

At its meeting of October 26, 2004, the Commission determined that Mr. Ciabatonì filed the completed disclosure statement after issuance of the Commission's Order, but did not otherwise respond to the Order; that failure to file a disclosure statement within the designated timeline constituted a clear violation of *N.J.S.A.* 18A:12-25 and 26; and that Mr. Ciabatonì did not provide any reason why he failed to comply with the requirement under *N.J.S.A.* 18A:12-25 and 26. Accordingly, the Commission voted on October 26, 2004 to recommend that Mr. Ciabatonì be censured for his failure to respond to the Commission's reminder letter before the September 10, 2004 deadline, memorializing such decision through a resolution forwarded to the Commissioner pursuant to *N.J.S.A.* 18A:12-29. By letter dated October 28, 2004 from the School Ethics Commission, Mr. Ciabatonì was advised of his opportunity to provide comments to the Commissioner in response to the Commission's recommendation, and Mr. Ciabatonì's exceptions were duly filed pursuant to *N.J.A.C.* 1:6C-18.3(b).

In that context, Mr. Ciabatonì submitted to the Commissioner a notarized affidavit stating that he did, in fact, file the appropriate disclosure form with the local district Board office prior to the April 30, 2004 deadline (although his attached letter to the Commission, referenced below, states that he filed it "to the best of [his] recollection" notwithstanding that no copy can be found), and that, not having received the Commission's August 20 warning letter, he did not learn until he received the Commission's Order in September 2004 that his disclosure form had not been forwarded to the County Superintendent of Schools. Mr. Ciabatonì states that upon receiving the Order, he filed "another" disclosure statement at the Board office, together with correspondence, dated October 8, 2004 and attached to his affidavit as Exhibit A, to be forwarded to the Commission explaining what had happened; he was "shocked" to learn upon

receiving the Commission's decision that his letter had not been received. He suggests that the Board's failure to forward his disclosure form and letter to the Commission may be due to persistent animosity resulting from his "minority" status on the current Board and his history of opposition to the Board while serving as a municipal councilman, and he urges, in light of all that transpired without the Commission's knowledge, that this matter be remanded for a hearing before the Commission before any penalty is imposed.

Upon its receipt of this exception, the Commission submitted a letter indicating it stood by its recommendation of censure, since it never received Mr. Ciabaton's notarized response to the Order to Show Cause and the Order clearly stated that Mr. Ciabaton's response was to be filed with the *Commission*; whereas Mr. Ciabaton, by his own admission, submitted his response to the local district Board Secretary.

Upon careful consideration of the record, the Commissioner notes Mr. Ciabaton's own uncertainty as to whether he originally filed the requisite statement prior to the established deadline, and he finds that, even granting, *arguendo*, Mr. Ciabaton's contentions that he did not receive the Commission's August 2004 reminder notice and that he did provide a response to the Order to Show Cause to his district Board of Education office for forwarding to the Commission (to which the letter was addressed), Mr. Ciabaton was remiss, particularly under the circumstances, in not ensuring that his communications actually reached the Commission so as to obviate the need for further proceedings. Therefore, the Commissioner concurs that a penalty is warranted in this matter.

Notwithstanding this conclusion, however, the Commissioner cannot agree that the appropriate penalty is a censure. Indeed, such a penalty would be inconsistent with penalties recommended and imposed in previous matters involving delayed filings of disclosure

statements, including delays more serious than that of Mr. Ciabaton. *See, e.g., In the Matter of Denise Irvin-Johnson, Willingboro Township Board of Education, Burlington County*, decided by the Commissioner February 11, 2004 and *In the Matter of Joel Pabon, Sr., Perth Amboy Board of Education, Middlesex County*, decided by the Commissioner February 5, 2004, wherein the Commission recommended, and the Commissioner concurred, that where a school official completed and submitted the required disclosure statement after the issuance of an Order to Show Cause, but did not provide any reasons for failure to comply with the law in a timely manner, the appropriate penalty was a reprimand; and *In the Matter of Lynel Dunkins, Gateway Charter School, Hudson County*, decided by the Commissioner December 22, 2003, and *In the Matter of Beverly Evenson, Willingboro Township Board of Education, Burlington Township*, decided by the Commissioner December 22, 2003, wherein the Commission recommended, and the Commissioner concurred, that where a school official did not complete the required disclosure statement after the issuance of an Order to Show Cause and did not provide any reasons for failure to comply with the law, the school official was suspended until such disclosure statement was filed and automatically removed from the Board if he or she failed to file the required statement within 30 days, but was reprimanded if he or she filed the necessary statement prior to the filing date of the Commissioner's decision.

Because the Commission did not articulate its reasoning in recommending against Mr. Ciabaton the more severe penalty of censure, rather than a penalty more consistent with those imposed in prior matters of similar nature, the Commissioner declines to impose censure in this instance. However, the Commissioner *does* concur that Mr. Ciabaton is appropriately penalized for his failure to ensure the filing of his required disclosure statement in a timely manner and for his further failure to ensure that the Commission received his subsequent

communications, in that these omissions resulted in the waste of substantial administrative and adjudicative time at both the State and local levels.

Accordingly, for the reasons set forth above, the Commissioner rejects the Commission's recommended penalty of censure and directs that Mr. Ciabatonni be reprimanded as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: December 1, 2004

Date of Mailing: December 2, 2004

* This decision 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.* 6A:4-1.1 *et seq.*