

Agency Dkt. No. 2-5/18A
SEC Dkt. No. D07-17

New Jersey Commissioner of Education
Final Decision

In the Matter of Kenyatta Stewart,
College Achieve Paterson Charter School,
Passaic County.

This matter involves an appeal of the School Ethics Commission's (SEC) March 28, 2018 determination that respondent Kenyatta Stewart – a newly appointed charter school trustee for the College Achieve Paterson Charter School – violated the School Ethics Act (Act) for failure to timely file his Personal/Relative and Financial Disclosure Statements (disclosure statements) in accordance with *N.J.S.A.* 18A:12-25 and 26. Respondent ultimately filed his disclosure statements after the issuance of the SEC's February 27, 2018 Order to Show Cause (OTSC), but prior to its March 27, 2018 meeting. The SEC recommended a penalty of reprimand for the violation. Having carefully reviewed the SEC's decision and the record in its entirety, the Commissioner finds that the SEC's decision is supported by sufficient, credible evidence, and that respondent failed to establish that the decision is arbitrary, capricious or contrary to law. *N.J.A.C.* 6A:4-4.1(a). Additionally, the Commissioner finds that a penalty of reprimand is appropriate.

By way of background, the Commissioner notes that pursuant to *N.J.A.C.* 6A:28-3.1, school officials must file disclosure statements with their local board secretaries annually, on or before April 30th. Additionally, after April 30th, newly elected or newly appointed board members or administrators must file their disclosure statements within thirty days of appointment or taking office. *N.J.A.C.* 6A:28-3.1(c), (d), (e), and (f). In this matter,

respondent was appointed to the board of trustees in May 2017. He failed to file his disclosure statements within thirty days. Therefore, on February 5, 2018, the Passaic County Office of Education sent a reminder to respondent by regular mail and e-mail – with a copy to the charter school designee – that his disclosure statements had not yet been filed. Respondent points out that the address used on this correspondence was unfortunately not his home address, nor was it the charter school’s address. Respondent also alleges that the reminder was sent to an old e-mail address, even though he had updated the charter school with his new e-mail address in September 2017. The SEC sent a letter on February 14, 2018 to the same incorrect address, with an e-mailed copy to the Business Administrator, informing respondent that failure to file his disclosure statements by February 21, 2018 would result in the SEC voting to issue an Order to Show Cause (OTSC). Accordingly, the SEC issued an OTSC at its meeting on February 27, 2018, sent again to the incorrect address with a copy to the Business Administrator. Thereafter, on March 5, 2018, respondent filed his disclosure statements. Respondent maintains that he never received any of the notifications or the OTSC, and that he only became aware of the OTSC when he was notified by the Business Administrator. In its decision dated March 28, 2018, the SEC found that respondent violated the Act for failure to timely file disclosure statements in accordance with *N.J.S.A.* 18A:12-25 and 26, and recommended a penalty of reprimand for the violation.

In his appeal to the Commissioner, respondent argues that the SEC was out of time in filing its OTSC as it was more than 250 days after the disclosure statements were due, and *N.J.A.C.* 6A:28-6.5(a) places a 180-day filing deadline on complaints before the SEC. Additionally, respondent contends that language in the rule proposal and in response to a comment in the rule adoption for *N.J.A.C.* 6A:28-3.3 demonstrates that the SEC intends to send a warning notice letter prior to issuance of an OTSC for failure to file disclosure statements. 41 *N.J.R.* 26(a);

41 *N.J.R.* 2095(a). As such, respondent argues that he was deprived of due process because he was not provided with notice and an opportunity to correct any deficiencies before the issuance of the OTSC. He also maintains that he did not willfully violate the Act. Respondent further argues that the 30-day period provided for newly elected or newly appointed board members to submit disclosure statements in *N.J.A.C.* 6A:28-3.1 is only set forth in regulation, not statute, whereas *N.J.S.A.* 18A:12-33 allows one year for new board members to complete the training program. Finally, respondent argues that even if respondent is found to have violated the Act, no penalty should be issued because his actions were *de minimis*.

In opposition, the SEC argues that its decision that respondent violated the Act was not arbitrary, capricious, or unreasonable, as respondent admitted he failed to file his disclosure statements within the required timeframe. The SEC contends that the Commissioner should reject respondent's argument that this matter is out of time because *N.J.A.C.* 6A:28-6.5(a) places a 180-day filing deadline on complaints alleging violations of the Act. The SEC explains that this matter was not initiated by a complaint, but rather by issuance of an OTSC pursuant to *N.J.A.C.* 6A:28-1.6, which does not have a filing timeframe. Additionally, the SEC argues that respondent was provided with due process as he was given notice and an opportunity to respond to the OTSC – which he in fact utilized, as he did respond to the OTSC. The SEC contends that there is no requirement that it issue “warning letters” before the issuance of an OTSC. Nevertheless, the SEC maintains that it did issue two warning notices to respondent, and that his argument that he did not receive them is “undermined by the fact that Respondent did receive and respond to the OTSC, which was sent to him and copied to the charter school’s designee in exactly the same manner as to the two prior correspondence(s).” (SEC opposition brief at 8). Finally, the

SEC notes that its recommended penalty of a reprimand – the lowest level of penalty – is justified, as respondent failed to timely file his disclosure statements.

In reply, respondent argues that it is undisputed that he never received the notices sent by the SEC, as they were sent to the wrong street address and email address. Although the SEC claims they sent multiple notices, respondent contends that the argument is irrelevant because they sent them all to the same incorrect addresses. Additionally, respondent reiterates his argument about failing to meet the 180-day filing deadline. Finally, respondent argues that any violation of the Act should not warrant a penalty because he filed his disclosure statements three business days after the issuance of OTSC.

Upon a comprehensive review of the record, the Commissioner finds that the decision of the SEC as to a determination of a violation of the Act is supported by sufficient credible evidence, and the respondent has not established that the SEC's decision is arbitrary, capricious, or contrary to law. *N.J.A.C.* 6A:4-4.1(a). Pursuant to *N.J.A.C.* 6A:28-3.1, respondent – as a newly appointed charter school trustee in May 2017 – was required to file his disclosure statements within thirty days. It is undisputed that respondent did not file his disclosure statements until March 5, 2018, well beyond thirty days from May 2017. As such, respondent failed to timely file his disclosure statements in accordance with *N.J.S.A.* 18A:12-25 and 26.

The Commissioner does not find respondent's arguments as to whether a violation occurred to be persuasive. With respect to his timing argument, the Commissioner notes that this matter was initiated by way of an OTSC, not a complaint, and therefore the 180-day deadline for the filing of complaints does not apply in this case. *N.J.A.C.* 6A:28-1.6. Additionally, respondent had been in continual violation of *N.J.S.A.* 18A:12-25 and 26 at the time the SEC issued the OTSC, as he had not yet filed his overdue disclosure statements; therefore, a statute of limitations would

not apply in this circumstance, even if one existed. Furthermore, respondent's argument that the SEC waited more than 250 days after the disclosure statements were due to file its OTSC undermines his own argument that he did not violate the Act, because it clearly demonstrates how late respondent was in filing his disclosure statements. Regarding his argument that he did not receive any warning letters, such argument does not affect whether a violation occurred. It is undisputed that the disclosure statements were due many months before respondent ultimately submitted them. Finally, the Commissioner notes that this is not the proper forum for a challenge to the regulatory requirement that newly elected or appointed school officials have 30 days to file disclosure statements, set forth in *N.J.A.C. 6A:28-3.1*.

With respect to the appropriate penalty, while the Commissioner is sympathetic to respondent's argument that he did not receive the notices or the OTSC from the SEC, the Commissioner finds that a reprimand – the lowest penalty – is the appropriate penalty in this matter. The Commissioner notes that there is no requirement that the SEC issue warning notices prior to issuance of an OTSC; the SEC does so as a courtesy. With respect to service of the OTSC, it must be noted that the order was mailed to an address in Tinton Falls, Monmouth County, when the College Achieve Paterson Charter School is located in Paterson, Passaic County; yet the SEC failed to address this fact and instead argues that respondent must have received it because he did respond to the OTSC. However, respondent's argument that the Business Administrator alerted him to the OTSC is consistent with the fact that the Business Administrator was copied electronically. Nevertheless, as respondent received the OTSC – albeit not from the SEC – he had the opportunity to respond to it, which he did. The Commissioner must note that respondent was still months late in filing his disclosure statements. Given the lengthy time that respondent remained out of compliance with *N.J.S.A. 18A:12-25* and 26, the Commissioner finds that a

penalty of reprimand is warranted in this matter. Furthermore, the Commissioner finds that issuance of a reprimand here is consistent with penalties in prior cases where a school official filed disclosure statements after the issuance of an OTSC. *See, e.g., In the Matter of Johanna Lopez, East Newark Board of Education*, Commissioner Decision No. 361-17SEC (December 18, 2017); *In the Matter of David Eichenholtz, East Newark Board of Education, Hudson County*, Commissioner Decision No. 359-17SEC (December 18, 2017). Therefore, the SEC's recommended penalty will not be disturbed.

Accordingly, IT IS ORDERED that respondent is hereby reprimanded as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: September 5, 2019

Date of Mailing: September 9, 2019

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to P.L. 2008, c. 36. (N.J.S.A. 18A:6-9.1)