

action and that Dr. Kinter was aware of almost every action before it was taken, and if he was unaware, it was because he was not available to be informed.

The parties were invited to appear and present testimony at the Commission's meeting of December 17, 2002. Both parties appeared and both were represented by counsel. Each presented testimony and witnesses to aid in the Commission's investigation.

At its meeting of December 17, 2002, the School Ethics Commission tabled the matter. At its meeting of January 28, 2003, the Commission found probable cause to credit the allegations in the complaint that Ms. Hankerson violated the Code of Ethics of the School Ethics Act. Respondent's attorney requested that the Commission clarify the issues upon which it found probable cause because the complaint was so voluminous. On February 25, 2003, the Commission determined that probable cause was found on each allegation of the complaint. Further, because Ms. Hankerson denied each allegation, the Commission determined that the material facts were in dispute. Therefore, in light of the requirement that Code of Ethics cases be heard within 90 days, the Commission decided to hold a full hearing at a public meeting to determine whether Ms. Hankerson violated the Act.

After numerous proposed dates were recommended and rejected by the parties, their attorneys or members of the Commission, the Commission scheduled a full hearing for June 3, 2003 and so advised the parties in a letter dated March 31, 2003. By letter of May 12, 2003, Ms. Hankerson's attorney advised that Ms. Hankerson requested that he withdraw his appearance on her behalf because she did not want to incur any additional expense to the District. On May 27, 2003, the Commission received a letter from Ms. Hankerson requesting an adjournment due to a conflict that she had with the date of June 3, 2003. When Commission staff called to inform her that the adjournment could not be granted, she informed the Commission that she needed additional time to prepare her case because she was now representing herself. The Commission denied Ms. Hankerson's request. The Commission believed that it would be patently unfair to the complainant to adjourn the matter so close to the hearing date when he had prepared for the June 3, 2003 date that all parties were informed of since the Commission's letter of March 31, 2003.

On June 3, 2003, Dr. Kinter appeared with his attorney, Robert Schwartz, Esq. and his witnesses, Ronald Sahli, Esq., Sharon Popper, Lynda Blank and Stephen Hensil. Ms. Hankerson appeared with Board member Gregory Palm as a witness, but he did not testify. Ms. Hankerson began by stating that she was representing herself because she could not ask the Woodbine School District to continue to pay for her representation. Although the Commission found probable cause to credit each of the allegations in the complaint, at the hearing of June 3, 2003, the complainant did not present evidence on each allegation.

The Commission voted at its public meeting of June 3, 2003 to find that Ms. Hankerson violated N.J.S.A. 18A:12-24.1(c), (d), (e), (g) and (h), set forth in the Code of Ethics of the School Ethics Act and recommended that the Commissioner of Education

impose a penalty of removal from her position as a Board member for these violations. The Commission adopted this decision with amendments at its meeting of June 24, 2003.

FINDINGS OF FACT

Based on the pleadings, the documents submitted and the testimony presented, the Commission finds the following facts to be undisputed. Julia Hankerson was elected to the Woodbine Borough Board of Education (Board) in April 2002. Due to dissatisfaction with the budget, only three incumbent board members remained after the election. Ms. Hankerson became part of a new board majority and was elected Board President at the 2002 reorganization meeting. She attended new board member training class in June 2002. Complainant Dr. Bruce Kinter has been the Superintendent since March 2000. Prior to that time, he was Assistant Superintendent. At the time of the hearing of this matter, Dr. Kinter was still being paid pursuant to his contract but he was not working in the District.

The remaining facts were determined by Commission after having heard the testimony of the witnesses and reviewed the documents submitted. They are presented in a loose chronological order.

I. Meetings after Budget Defeat

On May 7, 2002, the Fiscal Educational Improvement Team (FEIT) issued its report on the Woodbine School District. The FEIT report listed numerous deficiencies in the District and directed at page 43, among other things, that the superintendent should be more involved in the budget process. (C-1 in evidence) The Administration put together a budget for 2002-2003 that included a \$.19 tax increase. The tax increase became an issue in the Board elections, as set forth above, many incumbents were defeated in the April 2002 elections. The Board and the municipality had to discuss the tax increase. Dr. Kinter alleges that Ms. Hankerson held meetings on this subject without inviting him. He became informed when specific people told him that such meetings were taking place. He discussed this matter with Ms. Hankerson in late spring and early summer, but with no results. He alleges that he was not involved until the budget was completed. As superintendent, he is required to sign the Statement of Assurances that the budget meets the educational needs of the District, but he called the county business administrator and asked what he should do because the budget was not the one he proposed. He eventually signed it on June 20, 2002 noting, "Signed with serious reservations (ex. FEIT, special education, surplus)" (C-2 in evidence). The revised budget called for only a \$.04 increase. Dr. Kinter was opposed to specific cuts in the budget and he was told, not consulted, about the cuts that were made.

Dr. Kinter admitted that he had no direct knowledge of who arranged the budget meetings or whether Ms. Hankerson attended them.

Ms. Hankerson testified that she attended one budget meeting that she thought was scheduled and arranged by Dr. Kinter. She denied making any unilateral decisions. She

said that the Board discussed the issues and made decisions. She said that she is not the Board. She denied any knowledge of how the Board reached a \$.04 tax increase from the \$.19 increase recommended by the superintendent.

II. Hiring of Business Administrator

Regarding the hiring of a business administrator, the District's business administrator resigned in February 2002 in the middle of the FEIT inquiry. Dr. Kinter, after conducting interviews, recommended that the Board appoint applicant J.S. Dr. Kinter sent J.S. a letter on April 30, 2002 congratulating him and stating that he will begin working on May 6, 2002 upon approval of the Board. At the May 2, 2002 Board meeting, at which the recommendation was to be discussed, Ms. Hankerson commented that the Board was going to hire people from the community and sent Dr. Kinter back to review resumes. She said that the hiring should reflect the racial makeup of the school. Applicant Judson Moore was hired by the Board and given a contract, into which the superintendent had no input. Mr. Moore is the former mayor of a town not far from Woodbine.

Board Attorney Ronald Sahli testified that he drafted a contract for Mr. Moore working with him and Dr. Kinter, the term of which was from May 20, 2002 to June 30, 2003. (Exhibit C-26). However, the contract that was placed before the Board was for three years, which would automatically give Mr. Moore tenure. The contract was also changed to give Mr. Moore three substantial pay increases of 10% each year of the contract and vacation days that could be accumulated to allow him to be out long stretches of time. Mr. Sahli testified that this would cause hardship to the District. Mr. Sahli testified that he wrote Ms. Hankerson on June 17, 2002 pointing out the problems with the revised contract and noting that the contract as prepared could not be terminated during the three-year period unless mutually agreed to by the business administrator and the Board. He never received a reply from Ms. Hankerson. The revised contract was approved by the Board. Mr. Sahli's contract was terminated at the Board's last meeting in June 2002. At the direction of Ms. Hankerson, Mr. Moore asked Mr. Sahli not to attend the June meetings.

Ms. Hankerson testified that she did not put together the contract for Mr. Moore that was ultimately approved by the Board.

III. Giving Orders to District Employees and Observing Teachers without Signing-in

L.B. testified that she was employed by the Board as confidential secretary to the School Business Administrator before Mr. Moore. She testified that Ms. Hankerson began coming to the Business Office and asking her to perform certain tasks. She said that in April 2002, she came in the office and told her to drop what she was doing and make copies of a document that she had and fax it to someone. She testified that Ms. Hankerson was frequently in the office, hallway, and cafeteria talking to students and teachers and she never signed the sign-in sheet required of anyone entering the building.

Ms. Hankerson testified that she never directly gave a staff person an order to do anything. She recommends that staff go to the administration if there is a problem.

IV. Removal of Two Employees by Reduction in Force

On the evening of June 11, 2002, Dr. Kinter was advised that the School Board President scheduled a School Board Meeting for June 13, 2002, without his knowledge and instructed the Business Administrator to give a *Rice*¹ notice to non-classroom personnel that their possible termination by reduction in force would be discussed. Dr. Kinter testified that N.J. and L.B. were recommended for a reduction in force at the meeting. He testified that he had no input into their termination and in fact, was vehemently against it because it violated the recommendations in the FEIT report. Dr. Kinter wrote a memorandum to Assistant Commissioner Albert Monillas to this effect dated June 12, 2002 (Exhibit C-19), but he did not receive a response. The Board Solicitor did not attend this meeting. The employees were terminated by the Board.

V. Hiring of Technology Specialist

In July 2002, Dr. Kinter interviewed applicants for a part-time technology position. There were ten applicants, eight of whom were scheduled for interviews. The interviews were held on July 11, 2002 before a committee consisting of Dr. Kinter, Business Administrator Mr. Moore and Supervisor of Student Services, Stephen Hensil. The interviews resulted in a ranking of the six that were actually interviewed. After two rounds, the recommendation from the committee was for applicant D.S. to receive the position. Applicant A.T. was ranked third of three in the second round by Dr. Kinter and Mr. Hensil and second by Mr. Moore. (Exhibit C-4) Despite the superintendent's recommendation based upon the committee interviews, the Board agenda had applicant A.T. as the recommended person for the job, at its July 11, 2002 meeting. (Exhibit C-5) At its August 2002 meeting, Ms. Hankerson suggested that A.T. become a full-time employee without any recommendation from the superintendent.

Ms. Hankerson testified that the Board hired A.T. She said she voted for him because she wanted the best person for the job.

VI. Hiring of Behavior Specialist

Referring back to the FEIT report, Dr. Kinter noted that the report recommended that the District maintain the position of Supervisor of Students for Discipline. (Exhibit C-1, page 34) However, against his recommendation, the Board eliminated the position. The employee holding the title was laid off pursuant to a reduction in force and the position of Behavior Specialist was created. Dr. Kinter was directed to make a job description for the new position, which he did. (Exhibit C-7) He submitted it to the county office for approval. However, the Board adopted a different job description with different

¹ "Rice" refers to the case, *Rice v. Union County Regional High School Bd. of Ed.*, 155 N.J. Super. 64 (App. Div. 1977), *certif. den.* 76 N.J. 238 (1978), which held that when a board intends to discuss the termination of an employee in closed session, it must provide the employee with reasonable notice of its intention to do so in order to allow her to exercise her statutory right to request a public hearing.

qualifications. Instead of a teaching certificate, the new job description requested a certificate of school social work or school psychologist certificate. (Exhibit C-8)

Ms. Hankerson admits that she called the county office to determine the qualifications for a school psychologist, but denies that her inquiry had to do with the Behavior Specialist. She testified that the District never hired a school psychologist, but she just wanted to know. Ms. Hankerson denied that she put together a job description. The new job description was adopted by the Board and submitted to the county office.

At the August 8, 2002 meeting of the Board, the Board hired A.W. as Behavior Specialist. (Exhibit C-10) The item is listed under personnel, but does not indicate a recommendation by the superintendent. However, Dr. Kinter admitted to being present when Ms. Hankerson interviewed A.W. A.W. was the organist in the church to which Ms. Hankerson attended. He had no teaching certificate and no school psychologist certificate. On April 24, 2002, A.W. had been issued a summons in Middle Township for lewdness. He pleaded guilty to N.J.S.A. 2C:14-4A on July 16, 2002 and was sentenced to a \$500.00 fine and one-year probation. (Exhibit C-12) On September 16, 2002, Dr. Kinter met with A.W. and advised him that he had to be suspended with pay. (Exhibit C-11)

Ms. Hankerson testified that the vote to hire A.W. was unanimous because he was bilingual. She testified that she only knew “of him” and that she had just started attending the church in which he played.

VII. Hiring of Teachers

At the beginning of the 2002-2003 school year, there were still vacancies for teachers in the District. Ms. Hankerson called an emergency meeting of the Board, which was held on September 2, 2002 for the purpose of discussing these vacancies. The minutes of the meeting set forth that five teachers without tenure were not notified that they were returning for the 2002-2003 school year and as a result, two of the five were not returning. The minutes go on to note that a physical education teacher also resigned and no arrangements had been made for the start of school on Tuesday, September 3, 2002. The minutes further note:

Ms. Hankerson discussed the hiring of one teacher with Ms. Rinck, a current teacher for special education at WSD. Ms. Hankerson called this person by telephone and learned that she was bilingual. Ms. Hankerson offered Ms. Pownall, this position at step 2 as a 3rd grade teacher. (Exhibit C-13).

Dr. Kinter testified that he never spoke to Ms. Pownall or heard of her. He said he had no involvement in hiring her or setting her salary. He was planning to interview people the day after the meeting.

The minutes go on to discuss the opening for a school nurse saying:

Ms. Hankerson discussed the nurse opening. Ms. Hankerson said that the school district has been out of compliance and that the district is illegal with just having an LPN according to the Department of Health. Ms. Hankerson said she new [sic] a nurse from a prior experience to recommend for this position. Ms. Hankerson said we cannot be illegal when hiring a nurse and informed the superintendent and business administrator to adjust salaries of the nursing position for the proper hiring of this person. (Exhibit C-13)

Dr. Kinter testified that he never interviewed this person and had no involvement in the setting of her salary. He met her when she came in and was filling out paperwork with the secretary of the office and was introduced to her as the “new nurse.”

After the initial hearing before the Commission, Ms. Hankerson’s attorney advised by letter of January 3, 2003 that the minutes of September 2, 2002 had been revised. He set forth, “Dr. Kinter knew or should have known that these minutes had been subsequently revised,” although he gave no date that they were revised. (Exhibit J-1) The attorney attached the revised minutes which now set forth, “Ms. Hankerson interviewed candidates with Dr. Kinter.” and “Ms. Hankerson discussed this with Dr. Kinter who thought this was a good recommendation.” (Exhibit C-22) However, the revised minutes were not placed on the agenda for approval until January 9, 2003. (Exhibit C-24) At the January 9, 2002 Board meeting, the motion to approve the revised minutes was tabled. Other revised minutes for October 21, 2002, November 4, 2002 and November 21, 2002 were approved at the meeting. The revised minutes sent to the Commission were never approved by the Board.

Ms. Hankerson testified that she never hired anyone; the Board did. She said she talked to Dr. Kinter about Ms. Pownall, but when it was time to hire her because classrooms were not all covered at the start of the year, she could not reach Dr. Kinter. She testified that the ethics regulations say that if the administration is not performing its duty, then the Board can perform the duty. She said she had to make arrangements for an emergency meeting. Dr. Kinter was present at that meeting and endorsed the hires. She denied any knowledge about the revisions to the September 2, 2002 minutes submitted by her attorney. She testified that she does not know who asked that they be revised, who put them on the agenda to be approved or why they were tabled.

VIII. Teacher Orientation September 3, 2002

The first day of school for teachers was scheduled for September 3, 2002. The first day for students was to be September 4, 2002. Dr. Kinter prepared an agenda for the teachers’ orientation on their first day of school. He was scheduled to give opening remarks, along with Ms. Hankerson, and then give a presentation on the faculty handbook and provide general information. (Exhibit C-15) However, Custodian of Records Mr. Cheesman’s secretary gave Dr. Kinter an alternate orientation agenda in which Ms. Hankerson was scheduled to give opening remarks alone and Dr. Kinter was removed from the agenda altogether. (Exhibit C-16) Mr. Cheesman told him that Ms. Hankerson

put the new agenda together. Dr. Kinter said he was told by Ms. Hankerson that he was to conduct interviews during the orientation. He attended the orientation, but only to explain that Mr. Hensil would be taking over.

IX. Removal of Superintendent

Dr. Kinter testified that in June 2002 he began to hear rumors that Ms. Hankerson wanted a new superintendent. Dr. Kinter heard it from Mr. Hensil, who said that the Board was going to act at its June 6, 2002 meeting. Dr. Kinter wrote a memorandum to Assistant Commissioner Albert Monillas to ask him to have a Department of Education representative present at that night's meeting. He said that the request was made because, among other reasons, the Board Solicitor was asked not to attend. (Exhibit C-18) At that meeting, Dr. Kinter's contract was nonrenewed and he was to cease working on June 30, 2002; however, he said that he had already received a new contract in January 2002. Dr. Kinter said that did not receive a response from Mr. Monillas. On or about September 18, 2002, Dr. Kinter was suspended from his duties, although he is still being paid and is still holding the title of Superintendent. Mr. Robert Manning was appointed to serve as Interim Superintendent on September 26, 2002.

Sharon Popper, WEA President, testified that Ms. Hankerson told her on May 15, 2002 that she had the contracts for the nontenured employees, but she would not be issuing one to Dr. Kinter. Ms. Hankerson assured Ms. Popper that all the teachers would be getting such contracts. Board member, David Zweigenbaum, was present during the conversation.

Mr. Stephen Hensil, former Supervisor of Student Services, testified that on June 13, 2002, Ms. Hankerson told her that she wanted to release a certain staff member, N.J., to make it so difficult for Dr. Kinter that he would leave. She said that she wanted Dr. Kinter out by September 2002. On July 22, 2002, Ms. Hankerson told Mr. Hensil that she was going to offer Dr. Kinter a buyout and asked whether Mr. Hensil would want to be interim superintendent. Mr. Hensil told her that he would not be eligible because he is not certified to be a chief school administrator. On July 26, 2002, Mr. Hensil confirmed with the County Educational Specialist that he would not be able to be a chief school administrator without certification. On that same day, he advised the superintendent of his conversation with Ms. Hankerson. Later that day, he related his conversation with the county office to Ms. Hankerson and she said that he was not supposed to have discussed the offer with anyone. Ms. Hankerson testified that she recalled the July 22nd conversation, but did not recall any subsequent conversations.

Mr. Hensil further testified that when he was waiting outside of the Board's executive session meeting on September 26, 2002 with others, when someone in the group asked Mr. Manning, who was also waiting, who might become the next superintendent and Mr. Manning said that he had been waiting for the job since June.

Last, Mr. Hensil testified that he appeared before the Commission on December 17, 2002 and presented testimony on behalf of Dr. Kinter. Mr. Hensil testified that he was

given *Rice* notices on March 24 and 25, 2003 that his position would be discussed. At the March 27, 2003 Board meeting, his position was part of a reduction in force and he was given notice that his position would be abolished on May 1, 2003. He was reassigned to replace a long term substitute in a sixth grade class.

Ms. Hankerson testified that she did not know Mr. Manning prior to September 2002. She said that Mr. Manning submitted a resume for whatever position was available. She gave his resume to Mr. Hensil and they discussed it briefly. Mr. Manning's title was changed from Interim Superintendent to Assistant Superintendent in October 2002.

APPLICABLE LAW AND DISCUSSION

The Commission found probable cause to credit each of the allegations in the complaint. However, at the hearing of June 3, 2003, the complainant did not present evidence as to each of the allegations. The Commission will address the allegations in the order set forth above. The Commission notes at the outset that the complainant has the burden of proving factually that a violation of the Code of Ethics has occurred. N.J.S.A. 18A:12-29(b).

I. Respondent held Meetings on the Budget to Which Complainant Was Not Invited

Complainant alleges that in May 2002, Ms. Hankerson had meetings with the Board Auditor, the School Business Administrator, the Mayor of Woodbine and other Borough official. He was not included in those meetings in violation of N.J.S.A. 18A:12-24.1(a) and (c) of the Code of Ethics. The Commission determined that there were meetings between the Board and the Borough Council that occurred without the knowledge of the superintendent as he testified, resulting in the reduction of the budget tax assessment from the \$.19 increase that the superintendent proposed to the \$.04 cent increase that the Board eventually approved. However, the Commission is without sufficient evidence to sustain a finding that Ms. Hankerson had a role in the scheduling of such meetings or attended such meetings with the knowledge that Dr. Kinter was not invited. Therefore, the Commission must dismiss this allegation of the complaint.

II. Hiring of Business Administrator

Complainant alleges that on or about May 2, 2002, at a public meeting of the Board, Ms. Hankerson ignored and dismissed his recommendation for the appointment of a School Business Administrator/Board Secretary in violation of N.J.S.A. 18A:12-24.1(h). Complainant had already sent a letter to an applicant congratulating him and saying that he would begin work after Board approval. Complainant alleges that at the meeting following May 2, 2002, Ms. Hankerson rejected his recommendation and said that the District should hire people from the community. Judson Moore, who is the former mayor of a town not far from Woodbine, was hired by the Board.

Board Attorney Ronald Sahli, Esq. testified that the contract that he drafted for Mr. Moore was not the contract that was placed before the Board. The contract that he

drafted was for one year; the contract before the Board was for three years, which would automatically give Mr. Moore tenure. Mr. Sahli testified that the contract was also changed to give Mr. Moore three substantial pay increases of 10% each year of the contract and vacation days that could be accumulated to allow him to be out long stretches of time, which would cause hardship to the District. Mr. Sahli testified that the letter that he wrote to Ms. Hankerson on June 17, 2002 pointing out the problems with the revised contract was not acknowledged and the revised contract was approved by the Board. Mr. Sahli's legal services contract was terminated at the Board's last meeting in June 2002. He had been asked not to attend the June meetings. Mr. Moore told him that Ms. Hankerson said that he was not to attend.

The issue is whether Ms. Hankerson violated N.J.S.A. 18A:12-24.1(h) in connection with the above conduct. This section requires a board member to "vote to appoint the best qualified personnel available after consideration of the recommendation of the Chief Administrative Officer." Ms. Hankerson testified that she did not put together the contract that was ultimately approved by the Board and that she did not want Mr. Sahli to attend the meetings due to the cost to the Board.

As set forth above, there was no recommendation from Dr. Kinter to hire Judson Moore. N.J.S.A. 18A:27-4.1 makes clear that:

A board of education shall appoint, transfer or remove a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the board. The board shall not withhold its approval for arbitrary and capricious reasons. [N.J.S.A. 18A:27-4.1(a)]

Section (h) of the Code of Ethics allows board members to reject the recommendation of the Superintendent, but implicitly requires that the board give the Superintendent an opportunity to present another recommendation. This was not done here. Rather, Ms. Hankerson, as Board President, had Mr. Moore come up for a vote before the Board without any recommendation from the Superintendent to hire him. Ms. Hankerson bypassed the superintendent and brought the vote for Mr. Moore before the Board without a superintendent recommendation. The Commission therefore concludes that Ms. Hankerson did not vote to appoint the best qualified personnel available after consideration of the recommendation of the superintendent in violation of N.J.S.A. 18A:12-24.1(h). In so concluding, the Commission makes no determination about Mr. Moore's qualifications, but finds there was no consideration of a recommendation by the superintendent.

III. Giving Orders to District Employees and Observing Teachers without Signing in

Complainant alleges that Ms. Hankerson gave direction to employees of the District without consulting him in violation of N.J.S.A. 18A:12-24.1(c), which requires a board member to confine her board action to policy making, planning and appraisal and (d), which requires that board members carry out their responsibility not to administer the

schools, but, together with their fellow board members, see that they are well run. Lynda Blank testified that while she was confidential secretary to the School Business Administrator, Ms. Hankerson began coming to the Business Office and asking her to perform certain tasks. She said that in April 2002, Ms. Hankerson came in the office and told her to drop the work that she was doing (payroll) and immediately copy and fax documents that Ms. Hankerson handed her. She testified that Ms. Hankerson was frequently in the office, hallway and cafeteria talking to students and teachers and she never signed the sign-in sheet required of persons entering the building.

Ms. Hankerson testified that she never directly gave a staff person an order to do anything. She recommends that staff go to the administration if there is a problem.

The School Ethics Commission was given the charge of determining whether a violation of the Code of Ethics exists based on the proof submitted by the complainant. This necessarily requires that the Commission make determinations of credibility. The Commission finds the testimony of Ms. Hankerson to be less than credible. Even in the face of overwhelming evidence, her only response was denial of such conduct. The Commission finds that Ms. Hankerson spoke directly to the secretary Ms. Blank, and gave her orders without the knowledge of the complainant. The Commission also finds that she was engaged in the schools without following the protocol of signing-in upon entering the school building. The Commission finds such conduct to be in violation of N.J.S.A. 18A:12-24.1(c) and (d) as alleged.

IV. Removal of Two Employees by Reduction in Force

Complainant alleges that on June 13, 2002, Ms. Hankerson proposed the termination of two employees without consulting him in violation of N.J.S.A. 18A:12-24.1(c). Dr. Kinter testified that Ms. Hankerson scheduled a School Board Meeting for June 13, 2002 without his knowledge and instructed the Business Administrator to give a *Rice* notice to non-classroom personnel that their possible termination by reduction in force would be discussed. Noelle Jacquelyn and Lynda Blank were recommended for reduction in force at the meeting without his recommendation. Not only did Dr. Kinter have no input into their termination; he spoke against it because he believed the terminations violated the recommendations in the FEIT report.

The Commission finds that Ms. Hankerson had the positions of two employees terminated without any recommendation from the superintendent, thus greatly exceeding her authority as board president to confine her board action to policy making, planning and appraisal as required by N.J.S.A. 18A:12-24.1(c). Although Ms. Hankerson argues that the Board took the action and she did not act alone, as Board president, she is to act upon personnel matters upon the recommendation of the superintendent. In the present case, she was well aware that there was no such recommendation and even further, that the superintendent was opposed to the terminations. Therefore, the Commission concludes that Ms. Hankerson violated N.J.S.A. 18A:12-24.1(c) in connection with the above conduct.

V. Hiring of Technology Specialist

Complainant alleges that Ms. Hankerson hired a technology specialist in violation of N.J.S.A. 18A:12-24.1(h), which requires a board member to appoint the best qualified personnel available after consideration of the recommendation of the Chief Administrative Officer. Complainant alleges that on July 9, 2002, Ms. Hankerson advised a board employee that she was going to hire a specific person to the technology position in the District. Dr. Kinter and his appointed committee Business Administrator Judson Moore and Supervisor of Student Services Mr. Hensil, interviewed and rated applicants for the part-time position. The recommendation from the committee was for applicant D.S. to receive the position. However, despite the Superintendent's recommendation, the Board agenda had applicant A.T. as the appointee at its July 11, 2002 meeting. At its August 2002 meeting, Ms. Hankerson suggested that A.T. become a full-time employee, although A.T. was rated last by the interviewing committee and was not the recommendation of the superintendent.

Although Ms. Hankerson testified that the Board, rather than she alone, hired A.T. and that she voted for him because she wanted the best person for the job, the Commission finds that the procedure for the hire was flawed. It is not appropriate for the Board to simply appoint someone without taking into consideration the superintendent's recommendation. As previously set forth, the Board may reject the superintendent's recommendation and direct him to present another recommendation for board approval under N.J.S.A. 18A:12-24.1(h). Once again, this was not done. Rather, Ms. Hankerson substituted her preference without consideration of the Superintendent's recommendation and thereby did not vote to appoint the best qualified personnel available after consideration of the chief administrative officer's recommendation in violation of N.J.S.A. 18A:12-24.1(h).

VI. Hiring of Behavior Specialist

Complainant alleges that Ms. Hankerson had the position of Supervisor of Students for Discipline eliminated contrary to the recommendations in the FEIT report in violation of N.J.S.A. 18A:12-24(a), and, without consultation or recommendation from him, created the position of Behavior Specialist in violation of N.J.S.A. 18A:12-24.1(c) and (g). The FEIT report recommended that the District maintain the position of Supervisor of Students for Discipline. (Exhibit C-1, page 34) Although Dr. Kinter had no input in the termination, the employee holding the title was laid off pursuant to a reduction in force. Dr. Kinter was told to make a job description for the new position, which he did. (Exhibit C-7) He made it and submitted it to the county office for approval. However, the Board adopted a different job description with different qualifications. (Exhibit C-8) Instead of a teaching certificate, the new job description requires a certificate of school social work or school psychologist certificate. Ms. Hankerson denied drafting the new job description, but admits to calling the county office to determine the qualifications for a school psychologist, not the behavior specialist. Dr. Kinter admits to being present when Ms. Hankerson interviewed A.W. for the position.

The Commission finds Ms. Hankerson's testimony that she called the county office regarding the qualifications for a school psychologist, when there was no employment issue pending about a school psychologist, to be lacking in credibility. Once again, Ms. Hankerson denied taking the action, but never could explain how the resultant action came about, in this instance the changed job description. She denies that she put together the new job description, which was adopted by the Board and submitted to the county office, but does not dispute that the superintendent's version of the job description was substituted with the Board's own version.

The Commission finds that the job description for Behavior Specialist and the hiring of A.W. as Behavior Specialist on August 8, 2002 should have been recommended by the superintendent. Ms. Hankerson's interview of a candidate in the presence of Dr. Kinter clearly demonstrates her overstepping her role as a board member. For the foregoing reasons, the Commission concludes that Ms. Hankerson again violated her duty to confine her action to policy making, planning and appraisal in violation of N.J.S.A. 18A:12-24.1(c). Because the FEIT report was not a law, rule or regulation of the State Board of Education or a court order, the Commission cannot conclude that the elimination of the position violated N.J.S.A. 18A:12-24.1(a). Also, although A.W. was hired by the Board after he pleaded guilty to a disqualifying criminal offense, the Commission did not hear any evidence that Ms. Hankerson knew of A.W.'s disqualification status before she recommended him such that it could find that she failed to provide accurate information in violation of N.J.S.A. 18A:12-24.1(g). The Commission cannot infer such a fact solely because A.W. was Ms. Hankerson's church organist.

VII. Hiring of Teachers

Complainant also alleges that Ms. Hankerson violated N.J.S.A. 18A:12-24.1(d) by recommending the hiring of staff for the 2002-2003 school year. Complainant presented minutes of an emergency meeting of the Board that was held on September 2, 2002 for the purpose of discussing remaining vacancies. The minutes of the meeting note that there were vacancies at the start of the school year. Ms. Hankerson said that she had to act to fill those vacancies because Dr. Kinter was not acting. The minutes of the meeting are clear that Ms. Hankerson offered Ms. Pownall a teaching position and even determined the step at which she was to be placed. She also selected and recommended the hiring of an individual for the position of school nurse.

Even if it were true that Dr. Kinter had been less than diligent in filling all the vacancies for September 2002, the Commission would have to conclude that Ms. Hankerson overstepped her bounds as a Board member when she actually hired personnel. The Board minutes showed that she nominated, interviewed and recommended the hiring of candidates for employment. The submission to the Commission of unapproved revised minutes with changes that would be favorable to Ms. Hankerson further undermines Ms. Hankerson's credibility. The Commission therefore finds Dr. Kinter's statement that there was no emergency requiring Ms. Hankerson to take such actions to be more credible in this regard.

The Commission believes that Ms. Hankerson is well aware that she acted outside her authority on September 2, 2002 and that is why she submitted, through her attorney, unapproved revised minutes to replace the actual ones. Ms. Hankerson had attended new board member training in June 2002 and was aware of the standards set forth in the Code of Ethics. Based on the foregoing, the Commission concludes that Ms. Hankerson administered the schools in a clear attempt to subvert the superintendent in violation of N.J.S.A. 18A:12-24.1(d).

VIII. Teacher Orientation September 3, 2003

Complainant alleges that Ms. Hankerson violated N.J.S.A. 18A:12-24.1(e) when she removed him from the agenda that he had prepared for the teachers' orientation on their first day of school. N.J.S.A. 18A:12-24.1(e) requires a board member to recognize that authority rests with the board of education and make no personal promises nor take any private action that may compromise the board. Dr. Kinter was scheduled to give opening remarks to the teachers, along with Board President Hankerson and then give a presentation on the faculty handbook and provide general information. (Exhibit C-15) However, Ms. Hankerson directed the superintendent to conduct interviews rather than attend the orientation.

Ms. Hankerson testified that Dr. Kinter was pulled from the agenda and directed to conduct interviews because of the emergency resulting from not having all positions filled at the start of the year. She noted that she did not fill in for him on the agenda, but rather had another administrator, Mr. Hensil, substitute for Dr. Kinter at the orientation.

As set forth above, Ms. Hankerson's testimony is less than credible in this regard. The Commission recognizes a clear pattern of Ms. Hankerson to discredit the superintendent at every opportunity. Pulling Dr. Kinter from the teachers' orientation clearly undermines his authority with his staff and thereby compromises his ability to serve as chief school administrator. The Commission therefore concludes that in setting her own agenda for the teachers' orientation, Ms. Hankerson took private action that may compromise the Board in violation of N.J.S.A. 18A:12-24.1(e).

IX. Removal of Superintendent

Complainant last alleges that Ms. Hankerson violated N.J.S.A. 18A:12-24.1(g) by discussing with District employees her intent to remove him as superintendent before giving him any official notice. Prior to the June 6, 2002 meeting at which Dr. Kinter had his contract non-renewed, Ms. Hankerson informed the President of the WEA, Ms. Popper and Mr. Hensil that Dr. Kinter's contract would not be renewed. She made the unsolicited comment to Ms. Popper in May 2002 and to Mr. Hensil just prior to the meeting. Although Dr. Kinter's contract was nonrenewed at the June 6, 2002 meeting and he was to cease working on June 30, 2002, Dr. Kinter said that he had already received an extended contract in January 2002. This is the subject of litigation to which the Commission does not offer any opinion. However, it is undisputed that on or about September 18, 2002,

Dr. Kinter was suspended from his duties, although he was still being paid and was still holding the title of Superintendent. Mr. Manning was appointed to serve as Interim Superintendent on September 26, 2002.

The sole issue before the Commission concerning Dr. Kinter's removal is whether Ms. Hankerson "failed to hold confidential matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools" in violation of N.J.S.A. 18A:12-24.1(g). The Commission finds it reprehensible that Ms. Hankerson would discuss her intent to get rid of Dr. Kinter with his subordinates in the District. Personnel matters are confidential and fall within an exception to the Open Public Meetings Act, N.J.S.A. 10:4-12(b)(8), yet Ms. Hankerson casually discussed Dr. Kinter's contract with members of the staff. The Commission finds that her unsolicited comments clearly constitute a failure to hold confidential matters pertaining to the schools, which would needlessly injure Dr. Kinter and the schools.

CONCLUSIONS OF LAW

For the foregoing reasons, the School Ethics Commission hereby **CONCLUDES** that Julia Hankerson violated the Code of Ethics for School Board Members in the following ways: 1) Ms. Hankerson ignored the recommendation of the superintendent and allowed a business administrator to be hired without any recommendation in violation N.J.S.A. 18A:12-24.1(h); 2) Ms. Hankerson gave orders to a District employee to perform tasks for her in violation of N.J.S.A. 18A:12-24.1(c); 3) Ms. Hankerson had *Rice* notices sent to employees proposing the termination of two employees without consulting the superintendent in violation of N.J.S.A. 18A:12-24.1(c); 4) Ms. Hankerson hired a technology specialist contrary to the superintendent's recommendation in violation of N.J.S.A. 18A:12-24.1(h); 5) Ms. Hankerson created the position of Behavior Specialist and had a candidate appointed to the position without recommendation from the superintendent in violation of N.J.S.A. 18A:12-24.1(c); 6) Ms. Hankerson interviewed and hired a teacher and a nurse for the 2002-03 school year without the superintendent's recommendation in violation of N.J.S.A. 18A:12-24.1(d); 7) Ms. Hankerson removed the superintendent from the agenda of the teacher in-service orientation and directed him to conduct interviews in violation of N.J.S.A. 18A:12-24.1(e); and 8) Ms. Hankerson advised the President of the WEA and an administrator that the contract of the superintendent would not be renewed in violation of N.J.S.A. 18A:12-24.1(g).

The Commission further **CONCLUDES** that there is insufficient evidence that she scheduled budget meetings in violation of the N.J.S.A. 18A:12-24.1(a) and (c). Moreover, although Ms. Hankerson acted contrary to the report of the Fiscal and Education Intervention Team (FEIT) when she terminated the position of Supervisor of Students for Discipline and created the position of Behavior Specialist, the Commission **CONCLUDES** that her action did not violate the alleged provisions N.J.S.A. 18A:12-24.1(a) because no law, rule or regulation of the State Board or court order was violated or (g) since there was no evidence that she provided inaccurate information.

ORDER

For the foregoing reasons, the Commission concludes that respondent Julia Hankerson violated N.J.S.A. 18A:12-24.1(c), (d), (e), (g) and (h), set forth in the Code of Ethics for School Board Members of the School Ethics Act and recommends that the Commissioner of Education impose a penalty of removal from her position as a Board member for these violations. The Commission finds that Ms. Hankerson continued to act in blatant disregard of the Code of Ethics even after she had been trained as to its provisions. Ms. Hankerson's submission of false revised minutes in order to defend herself in this action undermined her credibility. Further, the Commission heard testimony that the positions of employees who testified against her in the first hearing of this matter were terminated subsequent to the December hearing. Such retaliatory conduct makes the argument for removal even more compelling. Because the Commission finds Ms. Hankerson's conduct to be so egregious, if the Commission had the authority to do so, it would further recommend that Ms. Hankerson be barred from holding a position on a school board in the future.

This decision, having been adopted by the Commission, shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation for sanction only, pursuant to N.J.S.A. 18A:12-29. Within thirteen (13) days from the date on which the Commission's decision was mailed to the parties, the respondent may file written comments on the recommended sanction with the 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.

Paul C. Garbarini, Chairperson

Resolution Adopting Decision – C36-02

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof and the testimony of the parties; and

Whereas, the Commission found probable cause to credit the allegations that Ms. Hankerson violated N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g), (h), (i) and (j) of the Code of Ethics for School Board Members; and

Whereas, the Commission held a full hearing to determine whether Ms. Hankerson violated the Code of Ethics for School Board Members as alleged in the complaint; and

Whereas, the Commission now finds that respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e), (g) and (h) of the Code of Ethics and concludes that removal would be the appropriate penalty for the reasons set forth;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter finding Julia Hankerson in violation of the Act and recommending that the Commissioner of Education impose a penalty of removal.

Paul C. Garbarini, Chairperson

I hereby certify that the School Ethics Commission adopted this decision at its public meeting on June 24, 2003.

Lisa James-Beavers
Executive Director