

***Before the School Ethics Commission***  
***OAL Docket No.: EEC-08196-18***  
***SEC Docket No.: C01-18***  
***Final Decision***

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**D. Lynn Schwartz,  
Complainant**

v.

**James Gallagher,  
Avalon-Stone Harbor Board of Education, Cape May County,  
Respondent**

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**I. Procedural History**

This matter arises from a Complaint filed on January 2, 2018, by D. Lynn Schwartz (Complainant), alleging that James Gallagher (Respondent), a member of the Stone Harbor Board of Education (SHBOE) and the SHBOE representative on the Avalon Board of Education (ABOE), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 et seq. By correspondence dated January 10, 2018, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On January 24, 2018, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:38-6.7. The Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *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 January 29, 2018, the Complaint was sent to Respondent, via regular and certified mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading. On February 9, 2018, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). On February 27, 2018, Complainant filed a response to the Motion to Dismiss.

After review, and at its meeting on April 24, 2018, the Commission voted to grant the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(j), but to deny the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(i). The Commission also directed Respondent to file an Answer to Complaint as to the remaining allegations, which he did on May 2, 2018.

The parties were notified by correspondence dated May 14, 2018, that this matter would be placed on the Commission's agenda for its meeting on May 22, 2018. At its meeting on May 22, 2018, and after considering the parties' filings, the Commission voted to transmit the matter to the Office of Administrative Law (OAL) for a plenary hearing on the remaining allegations in

the Complaint, namely the alleged violations of *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(i)*. By correspondence dated May 30, 2018, the above-captioned matter was transmitted to the OAL.

At the OAL, an initial telephone conference was conducted on August 2, 2018, during which discovery issues were discussed. *Initial Decision* at 2. On August 31, 2018, Respondent faxed a letter to Administrative Law Judge Catherine A. Tuohy (ALJ Tuohy), and advised that “he was withdrawing from the proceeding based on the advice of his physician.” *Id.* By correspondence dated September 11, 2018, Respondent was advised that because he is the Respondent, and not the Complainant, he is not permitted to “withdraw” from the matter. *Id.* Respondent was further advised that, because he was unable to withdraw, it was expected that he would participate in the next telephone conference, which was scheduled for October 3, 2018. *Id.* Despite this advisement, Respondent failed to participate in the telephone conference on October 3, 2018. *Id.* The matter was ultimately scheduled for a hearing on May 2, 2019, but, once again, Respondent failed to appear. *Id.* Nonetheless, ALJ Tuohy conducted a hearing on May 2, 2019, and the record closed. *Id.*

On May 9, 2019, ALJ Tuohy issued an Initial Decision detailing her findings of fact and legal analysis. Based on her findings of facts and legal analysis, ALJ Tuohy concluded that Complainant had proven, by a preponderance of the competent and credible evidence, that Respondent’s actions violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(i)*. Based on her legal conclusions, ALJ Tuohy recommended a penalty of reprimand. *Initial Decision* at 5-7.

The Commission acknowledged receipt of ALJ Tuohy’s Initial Decision on May 9, 2019; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was June 24, 2019. Prior to June 24, 2019, 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 August 8, 2019. Respondent filed Exceptions to the Initial Decision on or about May 23, 2019. Complainant did not file her own Exceptions, and did not file a reply to Respondent’s Exceptions.

The Commission considered the full record in this matter, including ALJ Tuohy’s Initial Decision and Respondent’s Exceptions, at a special meeting on June 19, 2019. At its regular meeting on July 23, 2019, and for the reasons more fully detailed below, the Commission voted to adopt ALJ Tuohy’s findings of fact; to adopt the legal conclusion that Respondent violated *N.J.S.A. 18A:12-24.1(e)*; to adopt the legal conclusion that Respondent violated *N.J.S.A. 18A:12-24.1(i)*; and to accept the recommended penalty of a reprimand.

## **II. Initial Decision**

As set forth in the Initial Decision, ALJ Tuohy issued the following findings of facts:

1. Complainant has been a member of the ABOE for twenty (20) years, the last eight (8) of which she has served as Board President. *Initial Decision* at 2.

2. The ABOE and SHBOE, although separate boards of education, share the services of the Chief School Administrator (CSA) (Ms. Stacey Tracey) and the Supervisor of Curriculum (Dr. Renee Murtaugh). *Id.*

3. Respondent was a member of the SHBOE for approximately one year, and was the Stone Harbor representative on the ABOE. *Id.*

4. Prior to the start of the December 20, 2017, ABOE meeting, Respondent waived Dr. Murtaugh into the hallway and asked her if she would be interested in becoming the CSA of the SHBOE. *Id.*

5. Dr. Murtaugh said no, and Respondent said he was glad he asked. The two then returned to the ABOE's meeting room. *Id.*

6. Dr. Murtaugh subsequently advised Ms. Tracey (the CSA) what Respondent had asked. *Id.*

7. After Dr. Murtaugh disclosed her conversation with Respondent to Ms. Tracey, Ms. Tracey then reported it to Complainant. *Id.*

8. After conferring with counsel, Complainant filed an ethics complaint against Respondent. *Id.*

9. On February 2, 2018, Respondent sent an email to Complainant admitting that his actions on December 20, 2017, were completely outside of the scope of his authority as a board member, and decided that he would not challenge the ethics complaint. *Id.* at 3.

10. Respondent also apologized and indicated that, as a former school district administrator for over thirty (30) years, he should have been aware his actions were not within his authority. *Id.*

11. Respondent requested a second chance to serve the students of ABOE and SHBOE, but if that request was not possible, he would submit a letter of resignation. *Id.*

12. Complainant replied to Respondent's email by thanking him for his apology, and indicating that any decision about resignation from the Board was completely his own. *Id.*

13. During her testimony as a witness for Complainant, Dr. Murtaugh confirmed that, at the ABOE meeting on December 20, 2017, she was waived out of the meeting room by Respondent. *Id.*

14. Dr. Murtaugh's testimony further confirmed that while speaking with Respondent in the hallway, he asked her if a position of CSA was created for the SHBOE, would she be interested in the position. *Id.*

15. Dr. Murtaugh also testified that she replied no to Respondent's inquiry, and Respondent replied that he was glad he asked. *Id.*

16. Dr. Murtaugh acknowledged that, upon returning to the meeting room, she told Ms. Tracey about the conversation with Respondent. *Id.*

17. During her testimony as a witness for Complainant, Ms. Tracey stated that she watched Respondent waive Dr. Murtaugh into the hallway, and confirmed that Dr. Murtaugh advised her (Ms. Tracey) about her (Dr. Murtaugh's) conversation with Respondent when she returned to the meeting. *Id.* at 4

18. Ms. Tracey acknowledged that she subsequently advised Complainant about the conversation that took place between Dr. Murtaugh and Respondent. *Id.* at 4.

19. Respondent submitted his letter of resignation (as a Board member) to the Board on or about November 14, 2018. *Id.*

20. Respondent did not appear at the hearing on May 2, 2019, and did not otherwise offer any testimony or witnesses in support of his defense. *Id.*

Based upon due consideration of the testimonial and documentary evidence presented at the hearing, and after having had the opportunity to observe the demeanor of the witnesses and assess their credibility, ALJ Tuohy found the testimony of Complainant and her witnesses, namely Dr. Murtaugh and Ms. Tracey, to be fact. *Initial Decision* at 4.

In light of the facts offered by Complainant, Dr. Murtaugh, and Ms. Tracey, ALJ Tuohy found that Respondent's actions at the ABOE meeting, specifically, initiating a conversation with Dr. Murtaugh about her interest in serving as the CSA of the SHBOE, was beyond the scope of his duties as a Board member and had the potential to compromise the Board. *Initial Decision* at 5. As a Board member, ALJ Tuohy noted that Respondent could only act with the remainder of the Board and vote on matters properly presented to the Board as a whole. *Id.* Importantly, none of these issues discussed with Dr. Murtaugh at the ABOE meeting were before the Board. *Id.* Not only was there no position to fill, as Ms. Stacey Tracey was the current CSA of both the ABOE and SHBOE, but Dr. Murtaugh was Ms. Stacey's subordinate. *Id.* By inquiring of Dr. Murtaugh whether she was interested in her boss's job, Respondent undermined the CSA, thwarted the chain of command, and compromised the CSA in the proper performance of her duties. *Id.* Respondent's actions also compromised Dr. Murtaugh in the proper performance of her duties as the Director of Curriculum, and as someone who reported to Ms. Tracey, the CSA. *Id.* Respondent owed both Dr. Murtaugh and Ms. Tracey his support in the proper performance of their respective duties, and his inquiry of Dr. Murtaugh undermined and harmed both of them in the performance of their duties. *Id.* As such, ALJ Tuohy **found** that Complainant had proven, by a preponderance of the competent and credible evidence, that Respondent's actions violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(i). *Id.* at 5-6.

In light of her legal conclusions, and because Respondent – a former district administrator for more than thirty (30) years - “was aware” that his actions were not within his

authority, he issued an apology, and he resigned from the Board, ALJ Tuohy concluded that a penalty of reprimand was warranted. *Initial Decision* at 6.

### **III. Exceptions**

Although Respondent failed to attend the hearing before ALJ Tuohy, Respondent filed Exceptions with the Commission on or about May 23, 2019. In his Exceptions, Respondent admitted that his actions were beyond the scope of his authority, and that he should have notified Ms. Schwartz, in advance, of the decision (“conceived” by him (Respondent) and others) to approach Dr. Murtaugh to see if she would be interested in serving as the CSA of the Stone Harbor School District (SHSD). As for why he approached Dr. Murtaugh, Respondent explained that after the solicitor explained that the SHSD could have its own CSA, and after discussing it with the other Board members, they decided that the administrative costs of having a CSA would be “an issue of concern.” However, they discussed that Dr. Murtaugh is already receiving a salary from the SHSD, and she was currently doing a “fine job,” so they thought that if she would be willing to be the CSA of the SHSD, it would help with the costs. If she declined, then it would not be feasible to appoint a CSA to the SHSD. As it turned out, Dr. Murtaugh declined and no further action was taken. Respondent understands the Commission must issue a decision and that his actions constitute a violation; however, he “implores the members of the...Commission to consider that [his] reputation, which was built over decades, could come to ruin due to poor judgment in an instance which [he] regret[s].”

Complainant did not file her own Exceptions, and did not file a reply to Respondent’s Exceptions.

### **IV. Analysis and Decision**

Upon careful and independent review of the full record, the Commission **adopts** ALJ Tuohy’s findings of fact; **adopts** the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(e); and **adopts** the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(i). The Commission agrees that by inquiring about an employee’s willingness to serve as the CSA at a time when the CSA position was not vacant, and when the inquiry was made of the CSA’s subordinate, Respondent took action beyond the scope of his duties as a Board member in violation of *N.J.S.A.* 18A:12-24.1(e), and took action which compromised both Ms. Tracey and Dr. Murtaugh in the performance of their respective duties in violation of *N.J.S.A.* 18A:12-24.1(i).

### **V. Penalty**

Based upon the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(i), and in recognition of the fact that Respondent – a former district administrator for more than thirty (30) years - “was aware” that his actions were not within his authority, he issued an apology, and he resigned from the Board, ALJ Tuohy recommended a penalty of reprimand. After consideration, and for the reasons noted by ALJ Tuohy, the Commission **adopts** the recommended penalty of reprimand.

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.

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Robert W. Bender, Chairperson  
School Ethics Commission

Mailing Date: July 24, 2019

**Resolution Adopting Decision  
In Connection With C01-18**

*Whereas*, by correspondence dated May 30, 2018, the School Ethics Commission (Commission) transmitted the above-referenced matter to the Office of Administrative Law (OAL) for a hearing; and

*Whereas*, following a hearing on May 2, 2019, Catherine A. Tuohy, Administrative Law Judge (ALJ Tuohy) issued an Initial Decision dated May 9, 2019; and

*Whereas*, in her Initial Decision, ALJ Tuohy determined that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(i); and

*Whereas*, based on her legal conclusions, ALJ Tuohy determined that a penalty of reprimand was warranted; and

*Whereas*, Respondent, despite not appearing for the hearing, filed Exceptions with the Commission on or about May 23, 2019; and

*Whereas*, at a special meeting on June 19, 2019, the Commission reviewed and discussed the record, including ALJ Tuohy's Initial Decision and Respondent's Exceptions, and

*Whereas*, at a special meeting on June 19, 2019, 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(e); adopting the legal conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(i); and adopting ALJ Tuohy's recommended penalty of a reprimand; and

*Whereas*, at its regularly scheduled meeting on July 23, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on June 19, 2019; and

*Now Therefore Be It Resolved*, the Commission hereby adopts the within decision as a Final Decision and directs its staff to notify all parties to this action of its decision herein.

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Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its meeting on July 23, 2019.

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Kathryn A. Whalen, Director  
School Ethics Commission