

SEC #C17-99
C #184-00SEC
SB # 37-00

IN THE MATTER OF FREDERICK :
CONFESSORE, BOARD OF EDUCATION : STATE BOARD OF EDUCATION
OF HARRISON, HUDSON COUNTY. : DECISION ON MOTION

Decided by the School Ethics Commission, April 25, 2000

Decided by the Commissioner of Education, June 16, 2000

For the Respondent-Appellant, Michael J. Pecklers, Esq.

For the Petitioner-Respondent, Thomas Russo, Deputy Attorney General
(John J. Farmer, Jr., Attorney General of New Jersey)

On July 15, 2000, Frederick Confessore (hereinafter "respondent"), an assistant superintendent of schools, filed an appeal to the State Board of Education from a determination by the School Ethics Commission that he had violated N.J.S.A. 18A:12-24(b) of the School Ethics Act in connection with his part ownership of Study Hall, Inc., a daycare facility located in the district, and from a determination by the Commissioner of Education that the appropriate penalty for such violation was a one-month suspension. The Ethics Commission concluded that the respondent had used or attempted to use his official position in the district to secure unwarranted privileges or advantages for himself.

On November 20, 2000, the respondent filed the instant motion to supplement the record on appeal, pursuant to N.J.A.C. 6A:4-1.9(b). The respondent seeks to

supplement the record with an executed copy of a provider agreement between Study Hall and the Urban League of Hudson County. The respondent also seeks access to a number of documents included in the statement of items comprising the record in this matter, which he claims were never provided to him. The respondent requests to supplement the record with his response to those documents.

The School Ethics Commission filed a brief in opposition to the respondent's motion, and the briefing schedule has been placed in abeyance pending our determination of this motion.

After a review of the parties' submissions, we grant the respondent's request to supplement the record with a copy of the provider agreement between Study Hall and the Urban League, finding such document to be material to the issues on appeal.

In addition, we direct that the Ethics Commission provide the respondent with a copy of the requested documents included in the statement of items, i.e., Items 3, 22, 25, 32 and 34, Statement of Items Comprising the Record on Appeal, dated October 20, 2000, prepared by Thomas Russo, Deputy Attorney General. In so doing, we reject the Ethics Commission's contention that the respondent had no entitlement to have received certain documents generated during the proceedings below. We are particularly troubled by the fact that the respondent was never provided with a copy of the "position paper," containing the complainant's arguments and allegations against him, which was submitted to the Ethics Commission by the counsel for the complainant in March 2000. Id., item 32.¹

¹ We note in that regard that the Ethics Commission provided a copy of the respondent's letter brief to the complainant. Id., items 33 and 34.

Certainly, the right of a respondent to confront the accusations against him is basic, and although nothing requires the School Ethics Commission to accept submissions from complainants after it has determined that probable cause exists to credit the allegations in the complaint, see N.J.S.A. 18A:12-21 et seq.; In the Matter of Frank Pannucci, decided by the State Board of Education, March 1, 2000 (the Ethics Commission, rather than the complainant, is charged with acting as the guardian of the public interest), the requirements of due process mandate that respondents in proceedings before the Ethics Commission be provided with all materials relied upon by the Commission in deciding the case, including any documents filed by the complainant.

Under the circumstances, however, we deny the respondent's request to supplement the record on appeal with an additional submission responding to those documents. Respondent will have a full opportunity to address the complainant's arguments, including those contained in the complainant's March 8, 2000 "position paper," in his brief in support of the instant appeal.

We direct that the briefing schedule be reestablished and that the respondent file a brief in support of his appeal within 20 days after his receipt of the above-mentioned items from the School Ethics Commission.

February 7, 2001

Date of mailing _____