



BEFORE THE SCHOOL ETHICS COMMISSION

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

State of New Jersey  
DEPARTMENT OF EDUCATION  
PO Box 500  
TRENTON, NJ 08625-0500

DAVID C. HESPE  
Commissioner

DATE: June 17, 2016

CASE TITLE: MATTHEW SCHAPIRO V. LORENZO  
RICHARDSON, JERSEY CITY BOARD OF  
EDUCATION, HUDSON COUNTY, SCHOOL ETHICS  
COMMISSION DOCKET #C25-16

**FOR THE COMPLAINANT**

Matthew Schapiro  
260 9<sup>th</sup> St.  
Jersey City, NJ 07302

**FOR THE RESPONDENT**

Lorenzo Richardson  
66 Danforth Ave.  
Jersey City, NJ 07305

Dear Parties:

Document filed by: ☒ Complainant

☐ Respondent

This will acknowledge receipt of the following document(s) filed with the School Ethics Commission on June 15, 2016 in the above-titled matter.

☒ **Complaint Alleging Violations of  
N.J.S.A. 18A:12-24 (g)  
N.J.S.A. 18A:12-24.1(a) (e)**

Each respondent shall have 20 days from receipt of the complaint within which to file an answer in accordance with N.J.A.C. 6A:28-7.<sup>1</sup> An answer must be signed under oath by the respondent, must include an original and two copies and proof of service upon each complainant. N.J.A.C. 6A:28-1.7. A respondent may file a motion to dismiss in lieu of an answer, which must also include an original and two copies and proof of service upon each complainant, within 20 days of receipt of the complaint. N.J.A.C. 6A:28-8.

☐ Answer to Complaint with allegation of frivolous filing  
Pursuant to N.J.A.C. 6A:28-7.2(b) when an answer alleges that a complaint is frivolous, the complainant shall have 20 days from receipt of the answer to respond to the allegation and provide an original and two copies along with proof of service upon the respondent.

☐ Answer to Complaint  
Pursuant to N.J.A.C. 6A:28-1.7(a) an original and two copies and proof of service upon each complainant are required.

☐ Response to Motion to Dismiss  
Pursuant to N.J.A.C. 6A:28-8.2(a), within 20 days from receipt of the motion to dismiss in lieu of an answer, the complainant shall file an original and two copies of a responsive brief. The complainant shall serve a copy of the response on the respondent and submit proof of service pursuant to N.J.A.C. 6A:28-1.7.

☐ Motion to Dismiss in lieu of an Answer  
Within 20 days from receipt of the motion, the complainant shall file an original and two copies of a responsive brief, including a response to any allegations of frivolous filing together with proof of service. N.J.A.C. 6A:28-8.2(a).

☐ Response to Allegation of Frivolous Filing

☐ Other: \_\_\_\_\_

Failure to adhere to due dates for the filing of documents may result in a default judgment.

<sup>1</sup> "Receipt" shall be deemed to be three days from the date of this notice.



The following deficiencies **must be addressed within 10 days of the date of this notice**. If the deficiencies concern a complaint, the complaint may be administratively dismissed, pursuant to N.J.A.C. 6A:28-10.2, if the deficiencies are not addressed according to instructions.

<input type="checkbox"/>	Complaint does not include a person as the complainant. A complaint may not be submitted on behalf of an organization or entity. <u>N.J.A.C. 6A:28-6.1</u> .	<input type="checkbox"/>	Complaint does not include a statement as to whether any other action has been instituted in the matter which is the subject of the complaint or is pending in any court of law or administrative agency of this State. <u>N.J.A.C. 6A:28-6.3(b)6</u> .
<input type="checkbox"/>	Complaint does not include the date(s) of the occurrence(s) of each specific allegation. <u>N.J.A.C. 6A:28-6.3(b)4</u> .	<input type="checkbox"/>	Complaint alleges a violation of the Code of Ethics for School Board Members against a respondent who is not a school board member. <u>N.J.A.C. 6A:28-6.3(c)</u> .
<input type="checkbox"/>	Complaint does not include the section(s) of the School Ethics Act claimed to be violated for each specific allegation. <u>N.J.A.C. 6A:28-6.3(b)5</u> .  Note: <u>N.J.S.A. 18A:12-22</u> is the provision of the School Ethics Act which sets forth the Legislature's findings and declarations and does not contain standards that are enforceable by the Commission.	<input type="checkbox"/>	Complaint does not include a brief statement, in individually numbered paragraphs, setting forth the <u>specific</u> allegation(s) and describing how the facts supporting them give rise to a violation of <u>each</u> alleged subsection of the School Ethics Act. <u>N.J.A.C. 6A:28-6.3(b)3</u>
<input type="checkbox"/>	Complaint does not include a notarized signature and certification under oath for each complainant. <u>N.J.A.C. 6A:28-6.3(b)7</u> .	<input type="checkbox"/>	No proof of service provided. Filings cannot be accepted until the Commission receives proof of service, pursuant to <u>N.J.A.C. 6A:28-1.7</u> .
<input type="checkbox"/>	Complaint does not include an original plus two copies, together with a copy for each respondent. <u>N.J.A.C. 6A:28-6.2(a)</u> .	<input type="checkbox"/>	Answer does not include a certification under oath, as required by <u>N.J.A.C. 6A:28-7.2(c)</u> .
<input type="checkbox"/>	Complaint does not include the full name, home address and phone number of each complainant ( ) and/or each respondent ( ). <u>N.J.A.C. 6A:28-6.3(b)1 and 2</u> .	<input type="checkbox"/>	Answer does not include an original and two copies as required by <u>N.J.A.C. 6A:28-7.1(a)</u> .
<input type="checkbox"/>	Other: _____ _____ _____ _____	<input type="checkbox"/>	Answer does not fully and completely advise the parties and the Commission as to the nature of the respondent's defenses for each allegation, as required by <u>N.J.A.C. 6A:28-7.2(a)</u> .

Subject to the exceptions set forth at N.J.A.C. 6A:28-6.6(g), the Commission shall hold all information confidential regarding any pending matter until it first takes action at a public meeting to determine probable cause, or violation, or until the matter is settled, withdrawn or dismissed. **Questions** regarding this acknowledgement may be directed to the School Ethics Commission at (609) 984-6941. All submissions may be sent to: **School Ethics Commission, c/o Department of Education, P.O. Box 500, Trenton, NJ 08625.**

Sincerely,



Joanne M. Restivo  
Acting Executive Director  
School Ethics Commission



RECEIVED BY  
SCHOOL ETHICS COMMISSION

NAME OF :  
2016 JUN 15 A 11: 20  
COMPLAINANT(S), Matthew Schapiro : BEFORE THE SCHOOL  
v. : ETHICS COMMISSION  
OF NEW JERSEY  
NAME OF RESPONDENT(S) : SCHOOL ETHICS ACT  
Jersey City Board of Education Member, : COMPLAINT FORM  
Lorenzo Richardson

I, Matthew Schapiro, residing at 260 9<sup>th</sup> Street, Jersey City NJ 07302 with phone number (201)417-1966, requests the School Ethics Commission to consider a complaint against the above-named Respondent(s) whose home address is 66 Danforth Avenue, Jersey City, NJ 07305 in accordance with the authority of the School Ethics Commission to entertain such complaints under N.J.S.A. 18A:12-21 et seq.

### 1. Background

On February 29, 2016, Lorenzo Richardson, acting in his capacity as a member of the Jersey City Board of Education, filed an action against the Board's President, Vidya Gangadin, and the Board's Counsel, Ramon Rivera, Esq., requesting that the Commissioner of Education compel the Board to hold a Special meeting and place an item of his choosing on the Agenda. The resolution in question is a "resolution to renew the Superintendent's Contract." He also requested that the Commissioner make a ruling as to the meaning of a contract between the Superintendent and the Board of Education. And, lastly, he requested that the Commissioner set aside the contractual language and extend the statutory deadline applicable to renewal of the Superintendent's contract until the next scheduled meeting of the Board of Education and compel the Board to place his resolution on the Agenda and take a vote on March 17, 2016.

At the time and place appointed to publicly vote or voice opposition to the vote on the resolution regarding renewal of the Superintendent's Contract on December 17, 2015, Mr. Richardson did not appear. He did not call in to the meeting, or otherwise give a statement at the meeting. This matter was again brought to the Board at the January and February 2016 Board Meetings, where Mr. Richardson's Motion to add the resolution he now seeks the Commission to intervene in forcing on the Board's Agenda did not receive a seconding vote. Here, the Board as a whole has acted within its authority pursuant to N.J.S.A. 18A:11-1.

This matter was transmitted by the Commissioner to the Office of Administrative Law, Administrative Law Judge McGill for a hearing on the Order to Show Cause, which he denied.

This decision was adopted by the Commissioner of Education on April 6, 2016. However, the Petition of Appeal and a Motion to Dismiss are still pending.

## **2. Analysis**

### **A. Unilateral Action**

Mr. Richardson is a Member of the Board of Education and resident of Jersey City. Mr. Richardson does not represent the Board as a whole, nor is he party to the employment contract between the District and Dr. Lyles. Mr. Richardson, as he himself states in the Caption of his Complaint is a singular Board of Education Member, and has taken unilateral private action in instituting this Petition of Appeal. This is contrary to the Board's Operational Norms and there is no indication that Mr. Richardson sought authorization from the Board of Education to bring the Petition before the Commissioner, which is a violation of the School Ethics Act, N.J.S.A. 18A:12-21 to 34.

N.J.S.A. 18A:12-24(g) provides that:

**No school official or business organization in which he has an interest shall represent any person or party other than the school board or district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district.**

Here, Mr. Richardson has clearly stated that he has filed an action, on his own and is also a Member of the Board of Education. This is directly contrary to the express language of the School Ethics Act, as highlighted above.

N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members provides that: "I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board." The act of sending legal notices concerning has been held to be private action that has the potential to compromise the board in violation of N.J.S.A. 18A:12-12.1(e). Persi v. Woska, Brick Bd. Of Education Ocean County, Agency Dkt. No. 3-3/12A (48-2/12 on remand); SEC Dkt. No. C03-14 (C25-08 on remand) App. Di. Dkt. No. A-6038-11T4 (2013). In Persi a board member was found in violation of the School Ethics Act having taken the "private action, [which] means action taken by a Board member that is beyond the scope of the duties and responsibilities of a Board member." Persi v. Woska, No. A-6038-11T4, 2013 N.J. Super. Unpub. LEXIS 2915, at \*6 (App. Div. Dec. 11, 2013). There, a board member had unilaterally directed the Board Secretary to issue a Rice Notice to the Superintendent. The School Ethics Commission, after a lengthy procedural history finding that the Board President and the Board as a whole maintains the authority to issue a Rice Notice, concluded that:

the respondent's singularly self-serving actions compromised the Board and left it at risk for litigation and the concomitant expenditure of public funds such exposure occasions. Consequently, the Commission finds that the complainant has adequately established that the respondent violated N.J.S.A. 18A:12-24.1(e).

As noted by Judge McGill's Initial Decision, Adopted by the Commission on April 6, 2016, the employment contract is between the Superintendent and the Board of Education; Mr. Richardson's actions expose the District to potential litigation on behalf of the Superintendent.

The powers of the board of education are to:

"Make, amend and repeal rules, not inconsistent with this title or with the rules of the state board, for its own government and the transaction of its business and for the government and management of the public schools and the public school property of the district and for the employment, regulation of conduct and discharge of its employees...; and

Perform all acts and do all things, consistent with law and the rules of the state board, necessary for the lawful and proper conduct, equipment and maintenance of the public schools of the district."

See N.J.S.A. 18A:11-1(c)(d). Further the power to sue or to be sued, or to request a ruling as to any controversy, including those arising out of the application of New Jersey's Educational laws rests with the Board Of Education as a whole. N.J.S.A. 18A:11-2.

When a board member unilaterally takes action without the full knowledge and consent of the board, this is beyond the scope and duties of a board member and may be private action in violation of N.J.S.A. 18A:12-24.1(e). See e.g. In the Matter of Freilich, Docket Nos. C18-04 and C-19-04 (Sch. Ethics Comm'n April 4, 2005; Comm'r Decision No. 156-05, decided May 2, 2005), available at <http://www.nj.gov/education/legal/ethics/2005/c18-04c19-04v.pdf>, (finding that the respondent engaged in private action by sending a letter, in his capacity as chair of the Technology Department, to a private donor, as the Board did not authorize the letter, and had not reviewed or approved it). See also Dericks v. Schiavoni, Docket No. C41-07 (Sch. Ethics Comm'n February 24, 2009; aff'd Comm'r Decision No. 260-09SEC, decided August 18, 2009), available at <http://www.nj.gov/education/legal/ethics/2009/C41-07%20C46-07C47-07.pdf>, (board member improperly sent a letter to the editor without the full knowledge and consent of the board).

Here, Mr. Richardson has engaged in private action usurping the Board President's prerogative to set the Board's Agenda and the Board's Authority to seek a declaratory ruling as to the application of a statute or regulation.

#### **B. Disclosure of Confidential Information**

N.J.S.A. 18A:12-24.1(a) provides that "I will uphold and enforce all laws rules and regulations of the State Board of Education and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures." Additionally, N.J.S.A. 18A:12-24.1 (e) requires all board members to:

...hold confidential all matters pertaining to the schools which, if disclosed would needlessly injure individuals or the schools. In all other matters, I will provide accurate information, and in concert with my fellow board members, interpret to the staff the aspirations of the community for its schools.

Mr. Rivera provided a legal opinion regarding the Superintendent's contract renewal that was discussed in closed session, which Mr. Richardson attended, at the Board's Caucus Meeting on December 15, 2015. The contract renewal process and competing resolutions regarding this personnel matter were discussed in closed session, consistent with the Open Public Meetings Act ("OPMA") N.J.S.A. 10:4-6. A summary of the legal opinion was again given on the record at the Board's Regular Meeting December 17, 2015. Mr. Richardson or any other member of the public had opportunity to publicly disagree with either the resolution or the legal opinion in that forum. See e.g. Noonan v. Greenwood (Mount Ephraim Borough Bd. Of Ed) SEC Dkt. No. C30-15 (January 26, 2016).

In Noonan, the School Ethics Commission dismissed a complaint brought against the Board President finding that it is within the Board President's authority to give factual information concerning a vote on a Superintendent's Contract renewal in a public board meeting where anyone may voice opposition.

Here, rather than accept the actions of the Board, and the legal opinion of Counsel, Mr. Richardson filed a Petition of Appeal that not only disclosed the voting process with respect to placement of resolutions on the Agenda, which are confidential pursuant to the Deliberative Process Privilege, but additionally provides his own legal opinion regarding the validity of the contract. This personal opinion was found not to hold water by Administrative Law Judge McGill. Therefore, Mr. Richardson's Petition of Appeal discloses otherwise privileged information and additionally provides an incorrect interoperation of the law, which compromises the Board in violation of N.J.S.A. 18A:12-24.1(a).

### **C. Conflict of Interest**

Singular board members maintaining unauthorized litigation has also been held to be a violation of the OPMA and to create a conflict of interest between the board member and a board of education. Rivera v. Elizabeth Board of Educ., 65 A.3d 263 (N.J. May 13, 2013). Rivera affirmed that a board may act only by resolution at a public meeting and failure to do so with respect to bringing a suit by an individual board member advanced only that individual's interests.

Filing a Petition of Appeal with the Commissioner of Education, which advances only an individual interest, has been held to be sufficient cause to remove a board of education member. Board of Educ. Of City of Sea Isle City v. Kennedy, 196 N.J. 1 (2008). In Kennedy, the Supreme Court held that "N.J.S.A. 18A:12-21 to -34, and N.J.S.A. 18A:12-2. N.J.S.A. 18A:12 prohibits board of education members from having a direct or indirect interest in any claim against their board." The Court went on to reason that a school board member's Petition of Appeal concerning special education services for his son against the district created a conflict of interest sufficient to disqualify him from continued service on the board. The Court stated that:

[A] board member should not be removed from office merely because he or she has advanced any claim "in a proceeding" against a school district involving that individual or an immediate family member's interests. Substantial, disqualifying conflicts of interest should be identified either by type of claim, i.e. specific monetary claims by the member or a family member as in a tort claim, or by type

of proceeding...Ultimately, however, the line between acceptable and prohibited activities by board members, in respect of the advancement of personal or a family member's interests in proceedings against a board of education, may be resolved through the prism of a fact-specific inquiry.

Id at 17-18

Although the nature and type of the claim must be analyzed, where, as here, a claim has been brought by an individual against the board, and not on behalf of the public, it is likely that the Commission would find this litigation to be a disqualifying offense from continued service on the Board. Given the other violations of the School Ethics Act and the potential exposure of the Board to suit as a result of the institution of this Petition, Mr. Richardson's actions could be viewed by the Court to have created a conflict of interest.

Date of occurrence: **February 29, 2016.**

I assert this to be a violation of:

**N.J.S.A. 18A:12-24(g)**

**N.J.S.A. 18A:12-24.1(a)**

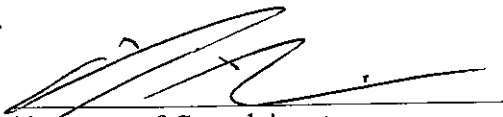
**N.J.S.A. 18A:12-24.1(e)**

For Agency Use Only  
Docket Number: \_\_\_\_\_

WHEREFORE, I, as Complainant, request that the School Ethics Commission find and determine that the above-named Respondent(s) has violated the School Ethics Act and that he or she be subject to such penalty as provided by the Act.

Date

6/13/16

  
Signature of Complainant  
or his or her Attorney

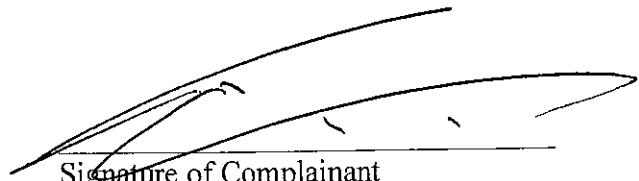
### CERTIFICATION UNDER OATH

(Name of Complainant), of full age, being duly sworn upon his or her oath according to law deposes and says:

1. I am the complainant in this matter.
2. I have read the complaint and aver that the facts contained therein are true to the best of my knowledge and belief and I am aware that the statute that created the School Ethics Commission authorizes the School Ethics Commission to impose penalties for filing a frivolous complaint. N.J.S.A. 18A:12-29(e). I am aware that if the respondent alleges that the complaint is frivolous, I shall have 20 days from receipt of the answer to respond to the allegation.
3. The subject matter of this complaint is not pending in any court of law or administrative agency of this State. I will advise the School Ethics Commission if I subsequently become aware that it is pending elsewhere.

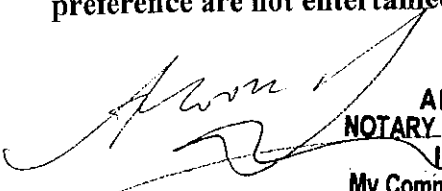
Date:

6/13/16

  
Signature of Complainant

Sworn and subscribed to before me this 13 day of June, 16.

**Notice:** All final decisions issued in connection with complaints that come before the School Ethics Commission for review and determination are public records uniformly posted on the Department of Education's website at <http://www.nj.gov/education/legal/>. As a general rule, selective requests to remove a particular decision for reasons of personal preference are not entertained.

  
**AROON S. DASS**  
NOTARY PUBLIC OF NEW JERSEY  
I.D. # 2401160  
My Commission Expires 10/7/2020