
NATHALIE EVE YAFET,	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	Docket No. C24-07
ELBERT SMITH	:	
HILLSIDE BOARD OF EDUCATION	:	DECISION
UNION COUNTY	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on May 18, 2007 by Nathalie Eve Yafet alleging that Elbert Smith, a member of the Hillside Board of Education (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The complainant specifically alleges that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e), (g), (i) and (j) of the Code of Ethics for School Board Members.

Through his attorney, Allan Roth, Esquire, and after receiving an extension of time in which to file an answer, the respondent filed a Motion to Dismiss the Complaint. Through her attorney, Philip E. Stern, Esquire, and after receiving an extension of time in which to file a response, the complainant filed a response to the Motion to Dismiss. The Commission considered the complaint, the Motion to Dismiss and the complainant’s responses at its October 30, 2007 meeting, at which time the Commission voted to grant the respondent’s Motion to Dismiss the complainant’s allegation that the respondent violated N.J.S.A. 18A:12-24.1(g) and to deny the respondent’s Motion to Dismiss the complainant’s allegations that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e), (i) and (j) of the Code of Ethics for School Board Members. The Commission provided the respondent with 20 days in which to file an answer to the remaining allegations. After receiving an extension of time in which to file, the respondent, through his attorney, filed an answer to the complaint.

The parties were invited to appear at the Commission’s September 23, 2008 meeting to present testimony. The complainant and her attorney attended the hearing and Dr. Raymond Bandlow, former Superintendent of Schools, testified for the complainant. The respondent and his attorney also attended the hearing and the respondent and his witness, Robert Quinlan, Chief of Police, presented testimony. At its public meeting on September 23, 2007, the Commission found that the respondent violated N.J.S.A. 18A:12-24.1(d), (e), (i) and (j), but that the complainant did not factually prove that the respondent violated N.J.S.A. 18A:12-24.1(c). The Commission tabled the determination of a penalty recommendation. At its October 27, 2008 meeting the Commission voted to recommend that the Commissioner of Education suspend the respondent for six months and it adopted this written decision.

THE PLEADINGS ¹

The complainant states that the respondent's wife, Mrs. Nancy Maloney-Smith, is employed as a physical education teacher at the high school and reports to Mrs. Raleigh. The complainant alleges that, after Memorial Day 2006, the respondent emailed all Board members regarding the senior prank incident. The complainant excerpts from the email wherein the respondent states, in part "Where was the leadership in the high school? To prevent this from happening... where was the adult supervision from any department? Whether it was from the principal's office... vice principal's office... security... classroom teachers... et al?" (Complaint at paragraph 1) The complainant alleges that this conduct violates N.J.S.A. 18A:12-24.1(c), (d), (e), (i), and (j). (Id., at paragraph 1)

The complainant alleges that on June 9, 2006, the respondent met with Chief of Police, Robert Quinlan. The complainant asserts that the discussion centered on Mrs. Raleigh's handling of the senior prank incident. (Id. at paragraph 2) The complainant next alleges that the respondent delivered a letter dated June 9, 2006 to the homes of eight board members. The complainant excerpts from the June 9th letter wherein the respondent states, in part "Whenever there is any problem that occurs in a school setting and the administrators in charge are not able to effectively cope with the situation" (Id., at paragraph 2) The complainant alleges that this conduct violates N.J.S.A. 18A:12-24.1(c), (d), (e), (i), and (j). (Id., at paragraph 2)

The complainant further alleges that the respondent delivered a letter dated September 17, 2006 to the homes of eight board members. Therein, the respondent states, "I have a number of concerns about the way Mrs. EvaMarie Raleigh has been doing her job as principal of the Hillside High School." The complainant alleges that this letter refers to "administrative tenure" and states that the board needs to determine its next course of action. (Id., at paragraph 3) The complainant alleges that this conduct violates N.J.S.A. 18A:12-24.1(c), (d), (e), (i), and (j). (Id., at paragraph 3)

Finally, the complainant alleges that the respondent delivered a letter dated March 18, 2007 to the homes of eight board members. According to the complainant, the March 18th letter states, in part, "I have a number of concerns about the way Mrs. EvaMarie Raleigh is doing her job as principal of the Hillside High School." The complainant asserts that the letter cautions the board to be careful about granting administrative tenure. (Id., at paragraph 4) The complainant alleges that this conduct violates N.J.S.A. 18A:12-24.1(c), (d), (e), (i), and (j). (Id., at paragraph 4)

¹ The allegations listed do not include those that were dismissed by the Commission at its October 30, 2007 meeting.

Attached to the complaint were the following Exhibits:

- A. Copy of a May 30, 2006 email from Mrs. Raleigh to Superintendent, Dr. Raymond Bandlow, with a copy to Ralph Rotando regarding the respondent's letter to the Board about the senior prank with a reply to each of the respondent's contentions. A copy of a May 26, 2006 confidential memorandum from Dr. Bandlow to the Board with a copy to the Board attorney and the business administrator regarding 1) Change in special education class at Calvin Coolidge; 2) Incident at Hillside High School; and 3) Senior class prank;
- B. Copy of a June 9, 2006 letter to the Board from the respondent regarding his discussion with the Hillside Chief of Police with a copy of N.J.A.C. 6A:16-1.1 et seq. attached;
- C. Copy of a September 17, 2006 confidential memorandum to the Board from the respondent regarding his concerns with Mrs. Raleigh; and
- D. Copy of a March 18, 2007 confidential memorandum from the respondent to the Board regarding his concerns with ongoing or recent issues related to the High School.

The respondent denies that he violated N.J.S.A. 18A:12-24.1(c), (d), (e), (i) and (j). (Answer at paragraph 4) The respondent acknowledges that he emailed all of the Board members sometime after May 26, 2006 to give them notice of his concerns regarding safety and security issues which had occurred at the school in connection with the senior prank on May 26, 2006. (Id., at paragraph 5a) The respondent indicates that he shared these concerns for further vetting and discussion in the proper forum. (Id., at paragraph 5a) The respondent does not deny that he went to the Hillside Police Department to inquire about the senior prank incident to determine if a police report was issued. (Id., at paragraph 5b) The respondent did, however, acknowledge that he spoke with the Chief of Police on the phone to inquire as to the events of May 26, 2006, but he denied that he attempted to direct or influence the Chief of Police to file a police report. The respondent acknowledges that he sent a letter dated June 9, 2006 to eight board members' homes and to the superintendent, but claims that he wrote the letter "...in an effort to give notice of the information he had received from the Chief of Police and to indicate that a formal school incident report would be forthcoming." (Id., at paragraph 5b) The letter also included a copy of N.J.A.C. 6A:16-1.1 et seq.

The respondent acknowledges that he sent correspondence dated September 17, 2006, but maintains that he did so in order to inform the other Board members of information he and three other Board members had received in a letter from a high school teacher regarding the teacher's concerns about the high school. (Id., at paragraph 5c) The respondent specifies that, after receipt of the letter from the teacher, he spoke with the superintendent regarding the issues raised in the letter, and he then sent a confidential memorandum to the Board members dated September 17, 2006 because he believed that the entire Board should be aware of the information. (Id., at paragraph 5c) The respondent acknowledges that he sent correspondence dated March 18, 2007, but indicates that he did so in order to inform the other Board members of information he had

discussed with the superintendent regarding multiple incidents which had occurred at the high school. (Id., at paragraph 5d) The respondent maintains that he sent the September and the March correspondence in order to inform the Board members of information that may have directly or indirectly impacted any decisions that the Board would have made as a collective body. (Id., at paragraphs 5c and 5d)

EVIDENCE

Dr. Bandlow testified that he is now the Superintendent of Fort Lee School District, but was with the Hillside School District (District) for 7 ½ years. He testified that in May 2006 he received an email from the respondent regarding a high school senior prank incident that occurred in late spring when students, during lunch, got in their cars and drove around the District's track. He testified that the high school administration stopped it quickly. Dr. Bandlow then identified Exhibit A from the complaint, the respondent's May 30, 2006 email, and said that he forwarded the email to the principal who inserted her responses, which are in parenthesis. This was marked as Exhibit C1. Dr. Bandlow testified that he was aware, from others, that the respondent was dissatisfied with the principal and was speaking to other people who also were not happy with the principal. He testified that the respondent was encouraging those other people to go to Dr. Bandlow with their complaints. Dr. Bandlow testified that the respondent never went to him with the complaints, but went to other administrators who then came to him. Those administrators were concerned because they had supervisory responsibility and because the complaints were undermining the principal. Dr. Bandlow testified that the respondent's email about the senior prank incident did not arise out of Board discussions or any prior discussions with him. He testified that he discussed the senior prank and the respondent's email with the principal and he was satisfied that the administration had dealt with the incident because they were on the track within minutes and the senior prank incident was stopped as soon as it started. Dr. Bandlow testified that he did not talk with the respondent about the email; he did advise the Board about the incident in a confidential memorandum dated May 26, 2006.

Dr. Bandlow testified that the police responded to the incident and refused the principal's request to issue warnings. He testified that he discussed the incident with the Chief of Police who said that it was a harmless senior prank and, since no one was hurt and there was no damage, there would be no police report. Dr. Bandlow identified a copy of a June 6, 2006 letter from the Hillside Chief of Police, which was entered into the record and marked as Exhibit C5.

Dr. Bandlow identified Exhibit B from the complaint as the June 9, 2006 letter to the Board from the respondent regarding his discussion with the Hillside Chief of Police with a copy of N.J.A.C. 6A:16-1.1 et seq. attached. This was marked as Exhibit C2. He testified that the respondent did not provide him with a copy of the June 9, 2006 letter, but that he received a copy from other Board members who called him to ask if he had seen the letter. Dr. Bandlow was very upset when he saw the letter; he thought the matter was behind them and did not deserve this kind of attention. Dr. Bandlow was also concerned that it went to Board members because it was critical of the administration and

the respondent did not contact him or give him a copy. Dr. Bandlow stated that he then spoke with the respondent after a committee meeting and he told the respondent that he was concerned that, by writing letter, the respondent was causing potential trouble for himself and Board, and he was undermining the principal who was new and following a long-time principal. Dr. Bandlow asked the respondent not to write letters like this because he was influencing opinions and affecting how Dr. Bandlow could deal with the situation. When Dr. Bandlow spoke with the respondent about the letter, the respondent said little except that he disagreed with Dr. Bandlow. Dr. Bandlow confirmed that the Board had never authorized the respondent to meet with the Chief of Police and that no police report was ever issued as a result of the senior prank incident.

Dr. Bandlow identified Exhibit C from the complaint, a September 17, 2006 confidential memorandum to the Board from the respondent regarding his concerns with the principal. This was marked as Exhibit C3. Dr. Bandlow confirmed that he was not copied on this memorandum, but received a copy when Board members called him to ask if he had received a copy. Dr. Bandlow claimed that the letter was prompted by a letter that was written by teacher to the Board about the principal. The teacher was unhappy with the principal and wrote a long letter to Board members with complaints and an accusation that there was not good leadership at the High School. Dr. Bandlow was copied on the teacher's letter. Dr. Bandlow stated that, after he received the respondent's September 17, 2006 letter, he was disappointed because the respondent did not discuss his concerns with Dr. Bandlow. He testified that he learned of the impact of the respondent's letter from other administrators who were concerned that the principal was being undermined by the teachers who were encouraged by the respondent. Dr. Bandlow did not discuss his concerns about the letter with the respondent because he did not think that sitting down would help. He consulted with the Board attorney and asked him to talk to the Board. The Board attorney spoke with the full Board about conflicts of interest and the Code of Ethics.

Dr. Bandlow identified Exhibit D from the complaint, a March 18, 2007 confidential memorandum from the respondent to the Board regarding the respondent's concerns with issues related to the High School. This was marked as Exhibit C4. Dr. Bandlow testified that the respondent did not copy him on the letter; he received a copy of the letter from other Board members. Dr. Bandlow stated that he believed that teachers were getting the impression that they did not have to worry about the principal or do what she said because they were getting support from the respondent. He testified that the respondent did not consult him about the letter.

Dr. Bandlow confirmed that he did not recommend the principal's reappointment because she had worked for the District for 2½ years and he had concerns about her performance. He testified about how the respondent's actions impacted the principal. He felt that the principal did not have a fair chance to improve herself due to undermining and the encouragement of criticism, which poisoned the atmosphere making it difficult for the principal to make any changes. Dr. Bandlow confirmed that he believed that the principal did not have the support from the people she needed and he knew that he did not have five votes for her reappointment.

On cross examination, Dr. Bandlow claimed that the respondent was President of a non-functioning PTA with only a couple of members. Dr. Bandlow could not recall if the June 9, 2006 letter came before or after his conversation with the Chief of Police. Dr. Bandlow testified that, in his conversation with the respondent about the June 9th letter, he told the respondent that he had gone “way over the line.” He stated that he spoke with the respondent before going to the Board and he felt he had a good working relationship with the respondent. He averred that the respondent became angry about Dr. Bandlow having the letter and said he disagreed with Dr. Bandlow about the significance of the events. When questioned about the administrative code requirement for reporting violence and vandalism attached to Exhibit C, Dr. Bandlow testified that he did not remember if the respondent said anything specifically about reporting the senior prank incident. Dr. Bandlow stated that the incident was not something that should be on the report because there was no damage, no vandalism and no ticket was issued; it was just a harmless prank. Dr. Bandlow stated that he had the Board attorney speak generally with the Board about interfering with the supervision of administrators. Dr. Bandlow confirmed that the respondent did not vote on the principal’s reappointment.

Robert Quinlan, the Hillside Chief of Police testified that he had been employed by Hillside for 5 ½ years and had known the respondent for 10-15 years. He testified that he spoke to the respondent in June of 2006, but did not believe he met with the respondent. He confirmed that the topic of the conversation was the senior prank incident at the high school. Referring to his June 5, 2006 letter to the principal, he stated that he had a conversation with principal and possibly with Dr. Bandlow. The witness noted that it struck him as a minor incident. The witness confirmed that the respondent never instructed him to take any action, but only inquired about incident.

The respondent testified that he has been a Board member for 8 ½ years. He confirmed that his wife works at the high school and he was on the interview committee and voted to bring her on the Board, but he did not vote for her reappointment; he recused himself. The respondent claimed that his intent when talking with the Chief of Police was to determine if the senior prank incident merited a report because of the Violence and Vandalism reporting requirements. The respondent stated that he spoke with Dr. Bandlow on several occasions about his general concerns with the high school; they had a good rapport. The respondent stated that he wrote the June 9, 2006 letter because he was concerned about the safety of students and a number of people in the community had complained to him because nothing was done. He also wanted Board members to know. He averred that he made no motions before the Board and asked for no actions. He stated that he did not send a copy of the June 9th letter to Dr. Bandlow because of Dr. Bandlow’s history with the incident. He had spoken with Dr. Bandlow about this issue and he attempted or wanted to downplay the matter or not bring it to the full Board’s attention. The respondent intended to speak to Dr. Bandlow about the letter. The respondent testified that he did not ask the Board to take action nor did he ask Dr. Bandlow to take action against principal.

The respondent stated that he sent the September 17, 2006 memorandum because it seemed that there were a number of incidents that were given short shrift or not appropriately handled by the administration and he wanted to communicate with the Board. The respondent did not copy Dr. Bandlow on the letter, but intended to speak to him about it. The respondent testified that he had spoken with Dr. Bandlow in passing about events at High School and Dr. Bandlow responded that he would take care of it.

The respondent claimed that Dr. Bandlow told him twice that he was running afoul of ethics violations because of micro-management and Dr. Bandlow asked the respondent to cease and desist. He stated that Dr. Bandlow first spoke with him about the June 9th letter and told him that he was “going down a slippery slope” and asked the respondent to stop sending letters. The respondent averred that he was not certain what Dr. Bandlow was speaking about, but he stopped micro-managing. He stated that he did not speak with the Chief of Police after the June 9th letter. The respondent maintained that, the second time Dr. Bandlow spoke with him was around the time of the September 17, 2006 letter.

The respondent testified that he did not talk to any teachers about activities in the high school. He further stated that he was at the high school because he was President of the PTA and he had three children in the school. The respondent confirmed that he sent the March 18, 2007 letter to the Board to reiterate the ongoing difficulties at the high school with the school climate and morale. He stated that, “in my travels” in the high school, people would come up to him and tell him about what was going on. He spoke with Dr. Bandlow about the complaints. The respondent testified that he never spoke to Board attorney about the letters he sent. In his meeting with Dr. Bandlow about the senior prank incident, the respondent stated that he disagreed with Dr. Bandlow about the significance of the incident.

In response to a question from a Commission member, the respondent confirmed that he never received a report from the police and he learned about the police department’s view of the incident from Dr. Bandlow. He also stated that he sent the other letters after Dr. Bandlow had asked him not to because he believed there was a potential for physical harm. In response to a question regarding the incident in the halls referenced in the March 18th letter, the respondent claimed that a student had told him about the incident and his wife verified it. He also confirmed that if the incidents had been raised in closed session he would have recused himself because they involved a family member, but he felt that it was okay to inform other Board members about the incidents. The respondent testified that the information in the March 18th letter was only informational.

In response to a question from a Commission member, the respondent stated that he had a lot of opportunities to speak with Dr. Bandlow and, when he saw that Dr. Bandlow was not addressing the matter with open disclosure to the Board, the respondent decided to write to the entire Board. When asked by a Commission member if he spoke to Dr. Bandlow before he wrote the three letters to the Board, he responded that he could not recall, but thought that he may have spoken to Dr. Bandlow before he wrote maybe two of the three letters. The respondent maintained that he did not bring the matters to a

Board meeting because he felt there was no need to since Dr. Bandlow said he would take care of the problems. When Dr. Bandlow said that he would take care of a matter, the respondent testified he didn't pursue further; but when he heard it was not taken care of, he then advised the Board. The respondent stated that he did not copy Dr. Bandlow on the letters because he believed that Dr. Bandlow was not addressing the problem. The respondent claimed that he did not believe that he was micro-managing and felt that Dr. Bandlow was overly concerned about this and in error. When asked by a Commission member if Dr. Bandlow's evaluation reflected the respondent's opinion, he replied yes, but that in some areas Dr. Bandlow did an outstanding job. The respondent confirmed that his wife, a physical education teacher, was upset about the senior prank. In response to a question from a Commission member, the respondent confirmed that he had attended board member training. The respondent also confirmed that he received a copy of the June 5, 2006 letter from the Chief of Police in his June 2006 Board packet.

MOTION TO DISMISS

Pursuant to N.J.A.C. 6A:28-6.9(c), upon completion of the complainant's case, and prior to the respondent's testimony, as set forth above, the respondent moved to dismiss the complaint.² After hearing arguments from counsel, the Commission asked the parties to leave the room so that it could deliberate. It is the complainant's burden to factually establish violation(s) of the Code of Ethics for School Board Members. In considering a motion to dismiss, the Commission considers the facts in the light most favorable to the non-moving party. The question before the Commission was whether the complainant alleged facts and provided testimony which, if true, could support a finding that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e), (i) and (j) of the Code of Ethics for School Board Members. The Commission determined that, if the facts set forth in the complaint and the testimony were proven, these facts could support a violation of N.J.S.A. 18A:12-24.1(c), (d), (e), (i) and (j). Thus, the Commission denied the respondent's motion.

FINDINGS OF FACT

As the trier of fact in this matter, the Commission had the opportunity to observe the demeanor of the witnesses and to judge their credibility. As such, the Commission found Dr. Bandlow to be a credible witness who offered consistent testimony which was not weakened by cross-examination. Whereas, the Commission found the respondent's testimony was inconsistent with the June 9th, September 17th and March 18th correspondence he sent to the Board. Insofar as the respondent's testimony conflicted with the testimony of Dr. Bandlow, the Commission found Dr. Bandlow's testimony to be more credible. Thus, following are the facts based on the pleadings, testimony and documents on the record.

² N.J.A.C. 6A:28-6.9(c) provides that all hearings shall be conducted in accordance with the rules of the OAL. Such rules permit a party to make an oral motion during a hearing and to state the grounds for the motion. N.J.A.C. 1:1-12.1(a)1 and 2.

1. At all times relevant to the complaint, the respondent was a member of the Board and his wife was employed in the District as a physical education teacher reporting to Principal EvaMarie Raleigh.
2. At all times relevant to the complaint, Dr. Bandlow was superintendent of the District.
3. At all times relevant to the complaint, Ms. Raleigh was employed by the District as principal of the high school.
4. On or about May 26, 2006, a “senior prank” took place at the high school, at which time a group of students drove their cars around the track in the back of the school.
5. On or about May 26, 2006, the respondent emailed all of the Board and Dr. Bandlow about the May 26, 2006 senior prank incident. The respondent related his safety concerns and stated in part: “Where was the leadership in the high school? To prevent this from happening... where was the adult supervision from any department? Whether it was from the principal’s office... vice principal’s office... security... classroom teachers... et al?” (Exhibit C1)
6. On May 30, 2006, the principal emailed Dr. Bandlow, which email included an excerpt of the respondent’s email about the senior prank incident. The principal inserted her responses to the respondent’s concerns in parenthesis throughout the excerpt of the respondent’s email. (Exhibit C1)
7. On May 26, 2006, through a confidential memo to the Board, Dr. Bandlow informed the Board about the senior prank incident. (Exhibit A)
8. Dr. Bandlow spoke with the principal about the senior prank incident and was satisfied that the administration had responded appropriately because they were on the track within minutes and the incident was stopped as soon as it started.
9. The police responded to the senior prank incident and refused the principal’s request to issue warning tickets to the students who drove their cars around the track.
10. The Chief of Police spoke with Dr. Bandlow and the principal about the senior prank incident. The Chief of Police thought that it was a harmless prank since no one was hurt and there was no damage. A police report regarding the incident was never filed.
11. The respondent spoke with the Chief of Police regarding the senior prank incident. The respondent did not pressure the Chief to file a police report.

12. On June 5, 2006 the Chief of Police wrote a letter to the principal regarding the senior prank incident and he stated, "Because there was no property damage and no crime(s) committed, there were no police reports filed in connection with the incident."
13. The respondent received a copy of the June 5, 2006 letter from the Chief of Police in his June 2006 Board packet.
14. The respondent sent a letter dated June 9, 2006 to all Board members regarding his conversation with the Chief of Police wherein he elaborated on the established formal procedure for the filing of a police report. In the letter, he indicated that "an objective Police Report is dispatched to the police department with a hard copy forwarded to the school superintendent. The Superintendent will then submit the Police Incident Report to the authorities at the State Department of Education in Trenton." (Exhibit C2) Attached to the letter was a copy of N.J.A.C. 6A:16-1.1 et seq. The respondent did not provide a copy of the June 9, 2006 letter to Dr. Bandlow because when he had spoken with Dr. Bandlow about the incident, Dr. Bandlow downplayed the incident and did not want to bring it to the attention of the full Board.
15. Dr. Bandlow obtained a copy of the respondent's June 9, 2006 letter from a Board member. Dr. Bandlow "thought that the matter was behind us and did not deserve this kind of attention."
16. Upon receipt of the letter and after a Board committee meeting, Dr. Bandlow spoke with the respondent and told the respondent that he was concerned that the respondent was causing potential trouble for the Board and undermining the principal. Dr. Bandlow told the respondent that he had gone way over the line. He then asked the respondent to refrain from writing any such letters because the letters were affecting how he could deal with the situation.
17. The respondent sent a confidential memo dated September 17, 2006 to five Board members regarding information he and three other board members had received from a teacher who was unhappy with the principal. In the letter he states, "As everyone on the Board knows...I have a number of concerns about the way Mrs. EvaMarie Raleigh has been doing her job as principal at Hillside High School." (Exhibit C3 page 1) The respondent then listed his concerns with what happened in connection with the music entertainer who performed at the high school, the senior prank incident and the concerns raised by the teacher in the teacher's letter to certain Board members. The respondent went on to state, "...from an administrative tenure perspective concomitant with the fact that... we as a school board need to examine in greater detail what's going on at the high school and... as a point of discussion... as per specific aforementioned concerns that pertain to Ms. Raleigh..." (Exhibit C3 page 2) The respondent ends the letter indicating that, "it is not meant to pass

judgment... it is merely intended as an FYI to let you know what I know.”
(Exhibit C/C3 page 2)

18. The respondent sent the September 17th letter because there were a number of incidents that were not properly handled by the administration and he wanted to communicate with the Board.
19. Dr. Bandlow was not copied on the respondent’s September 17, 2006 confidential memo, but was given a copy of it from a Board member.
20. Dr. Bandlow learned of the impact of the respondent’s letter from administrators who were concerned that the principal was being undermined by the teachers who were being encouraged by the respondent.
21. Dr. Bandlow did not discuss his concerns about the respondent’s letter with the respondent; rather he spoke with the Board attorney who then spoke with the full Board about conflicts of interest.
22. The respondent sent a confidential memorandum dated March 18, 2007 to Board members regarding the school climate, principal performance district wide and the performance of Ms. Raleigh. (Exhibit C4) In the letter, the respondent wrote, “...I have a number of concerns about the way Ms. EvaMarie Raleigh is doing her job at Hillside High School.” He indicates that employees repeatedly brought to his attention that they are in a hostile working environment and are publicly humiliated by Ms. Raleigh. He shares his concerns regarding a breach in security during HSPA testing and Ms. Raleigh’s oversight of the situation. He raises his concerns about Ms. Raleigh’s involvement with a cell phone incident involving a female student. He states, “I am not making aspersions... I am just saying very loud and clear... given all the problems we have had over recent years (despite the great gains we have made with less money to work with) we... as a board had better be very careful who we grant administrative tenure to.” (Exhibit C4)
23. Dr. Bandlow was not copied on the respondent’s March 18, 2007 letter.
24. Dr. Bandlow did not recommend the principal’s reappointment because he had concerns about her performance and felt that she did not have a fair chance to improve herself because of the Board encouraging criticism which poisoned the atmosphere making it difficult for the principal to make any changes. He also knew that he did not have 5 votes for her reappointment.
25. The respondent did not vote on the reappointment of the principal.

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members. The complainant contends that the respondent violated N.J.S.A. 18A:12-24.1(c), which provides:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The complainant provided no evidence to factually establish that the respondent's actions constituted Board action. The respondent's actions in sending the email and all of the correspondence to the Board were not within the scope of the respondent's duties and responsibilities as a Board member. As noted below, the respondent's action in sending the email and the correspondence constituted private action. Previously, in Marc Sovelove v. Paul Breda, C49-05 (September 26, 2006), the Commission found that a Board member's action cannot be both board action and private action. The Commission stated that if the board member's action is found to be board action it cannot be private action. (Id., at page 4) Conversely, if a board member's action is found to be private action it cannot constitute board action. The Commission finds that the complainant did not factually establish that the respondent failed to confine his board action to policy making, planning, and appraisal or that he failed to help frame policies and plans only after the board has consulted those who will be affected by them. Therefore, the Commission dismisses the allegation that the respondent violated N.J.S.A. 18A:12-24.1(c).

The complainant contends that the respondent violated N.J.S.A. 18A:12-24.1(d), which provides:

I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

The respondent testified that he sent the June 9th letter because the superintendent had downplayed the senior prank incident and the respondent wanted to bring the incident to the full attention of the Board. In the June 9th letter, the respondent elaborated on the formal procedure for the filing of a police report and indicated that a report would be forthcoming. Meanwhile, the superintendent had informed the Board about the senior prank incident in a May 26, 2006 confidential memo; he had reviewed the administration's response and found that the response was appropriate; he had spoken with the Chief of Police who thought it was a harmless prank and a police report was never filed. The superintendent had managed the situation and thought that it did not deserve the attention that the respondent was giving it. Here, by sending the June 9th letter to the Board, the respondent was second guessing the superintendent and attempting to take on the superintendent's responsibility of reporting the senior prank

incident to the Board and indicating that a formal school incident report would be forthcoming. Once the respondent was provided with a copy of the June 5, 2006 letter from the Chief of Police, questions as to the handling of the senior prank incident should have ceased. Yet, the respondent continued to send correspondence regarding an incident that had been resolved by the superintendent. Furthermore, in his subsequent correspondence dated September 17, 2006 and March 18, 2007, the respondent provided the Board with information that was evaluative of the high school principal. The superintendent testified that these letters were affecting how he administered the district. Pursuant to N.J.A.C. 6A:28-7.1 to “administer the schools” means, in part, that a board member “...has become directly involved in activities or functions that are the responsibility of school personnel...” The Commission finds that the respondent became directly involved in functions that are the responsibility of the superintendent when he sent the June 9th, September 17th and March 18th correspondence to members of the Board. Therefore, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(d) when he attempted to administer the schools.

The complainant also contends that the respondent violated N.J.S.A. 18A:12-24.1(e), which provides:

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.

Pursuant to N.J.A.C. 6A:28-7.1 “private action means, in part, action taken by a board member “...that is beyond the scope of the duties and responsibilities...” of a member of the board. Here, it was not the duty or responsibility of the respondent as a board member to continually update the Board about situations occurring in the high school; this was the responsibility of the superintendent. In sending the correspondence to the Board, the respondent was taking private action. The respondent’s private actions could have compromised the Board because those actions were interfering with the superintendent in the proper discharge of his duties and undermining the principal. The superintendent testified that due to the respondent’s undermining and the encouragement of criticism, he felt that the principal did not have a fair chance to improve herself; the atmosphere was poisoned making it difficult for the principal to make any changes. Therefore, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(e) when he took private action by sending the three letters that may have compromised the Board.

The complainant further alleges that the respondent violated N.J.S.A. 18A:12-24.1(i), which provides:

I will support and protect school personnel in proper performance of their duties.

The evidence shows that the respondent was not supporting and protecting either the superintendent or the principal in the proper performance of their duties. The

correspondence dated September 17, 2006 and March 18, 2008 was highly critical of the principal and raised questions about granting the principal tenure. The superintendent testified that the respondent's letters were undermining the principal and affecting how he could deal with the situation. Therefore, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(i) when he failed to support and protect the superintendent and the principal in the proper performance of their duties.

Finally, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(j), which provides:

I will refer all complaints to the chief school administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

The respondent admitted in his testimony that he did not provide the superintendent with a copy of the three letters because he did not like the way the superintendent managed the situations which were raised in the letters. There was nothing to show that the superintendent's administrative solutions had failed; the respondent merely disagreed with those solutions. While there was conflicting testimony as to whether the respondent went to the superintendent with his complaints prior to sending the correspondence, the Commission finds the superintendent's testimony more credible. The superintendent testified that the respondent never went to him regarding his complaints, but went to other administrators who took those complaints to the superintendent. Therefore, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(j) when he failed to refer his complaints to the superintendent and acted on his complaints at times other than public meetings because he disagreed with the superintendent's administrative solution.

DECISION

The Commission finds that the complainant has established that the respondent violated N.J.S.A. 18A:12-24.1(d), (e), (i) and (j) of the Code of Ethics for School Board Members. The Commission dismisses the allegation that the respondent violated N.J.S.A. 18A:12-24.1(c).

PENALTY

The Commission recommends that the Commissioner impose a penalty of suspension for six months. In so doing, the Commission finds the respondent's claims, both in his correspondence and his testimony, that he was merely providing the Board information to be disingenuous. The correspondence shows that the respondent was clearly trying to influence the Board about a matter where he had a conflict of interest because the high school principal supervised his wife. Despite this, the respondent continued to move forward, even after the superintendent had asked him not to write any more letters.

The Commission notes that the respondent has been found in violation of multiple provisions of the Code of Ethics for School Board Members. In considering the penalty, the Commission finds instructive I/M/O Rose L. Funches, C09-05 & C10-05 (September 27, 2005)³ (The Commission recommended removal and the Commissioner concurred due to flagrant violations of multiple provisions of the Code of Ethics for School Board Members.), and I/M/O Rudolph McCullers, C06-05 & C12-05 (September 27, 2005)⁴ (The Commission would have recommended removal for extensive violations of the Act except the respondent was no longer a board member.). Similar to this matter, the board members in those matters were found to have violated multiple provisions of the Act. However, in those matters the board members violated the Act on more occasions and through a variety of actions. The Commission finds that the respondent's actions do not rise to the level of the actions taken by the board members in Funches and McCullers. However, the Commission finds that the respondent's actions merit more than a censure. Here, all of the respondent's offending conduct centered around matters where he had a clear conflict of interest due to his wife's employment in the District. Furthermore, he had notice from the superintendent that he was "way over the line," yet he continued with his conduct. Therefore, as noted above, the Commission recommends that the Commissioner impose a penalty of suspension for six months.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the School Ethics Commission's recommended sanction. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of violation may file, within **13 days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, indicated below. Such exceptions must be forwarded to: 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.

³ In Funches, the board member was found in violation of the various provisions of the Act for failing to disclose information on her financial disclosure statement, for co-signing checks made out to her husband that had not been approved by the Board, for voting to approve the bid of a maintenance company in which her husband and son were employed, and for voting on bill lists that included payments to her husband's company.

⁴ In McCullers, the board member was found in violation of the Act when, including other actions, he dismissed the board secretary without the recommendation of the superintendent and without board approval, he contacted the board secretary directly about a scheduling mix-up, he went into the schools and intervened in a dispute between two students, he signed checks made out to himself without board approval, he hired a business administrator without board approval, he hired a maintenance professional without soliciting bids and without board approval, he acted as a purchasing agent and he hired a maintenance company without board approval.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4 within **30 days** of the filing date of the decision from which the appeal is taken. The filing date shall be three days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (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 briefs on appeal.

Paul C. Garbarini
Chairperson

Mailing Date: _____

Resolution Adopting Decision – C24-07

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

Whereas, at its September 23, 2008 meeting, the Commission found that Dr. Elbert Smith violated N.J.S.A. 18A:12-24.1(c), (d), (e), (i) and (j) of the School Ethics Act; and

Whereas, at its October 27, 2008 meeting, the Commission voted to recommend to the Commissioner of Education that Dr. Smith be suspended for six months; and

Whereas, the Commission has reviewed the proposed decision of its staff; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision. The Commission directs its staff to notify all parties to this action of its decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 27, 2008.

Joanne Boyle
Executive Director