

<b>LISA A. DOREN, FRANK J. VALENTI</b>	:	<b>BEFORE THE SCHOOL</b>
<b>AND LAURA M. VALENTI</b>	:	<b>ETHICS COMMISSION</b>
	:	
<b>v.</b>	:	<b>Docket No. C11-06</b>
<b>RENAE LaPRETE</b>	:	
<b>HAZLET BOARD OF EDUCATION</b>	:	<b>DECISION</b>
<b>MONMOUTH COUNTY</b>	:	
	:	

This matter arises from a complaint filed on May 24, 2006 by Lisa A. Doren, Frank J. Valenti and Laura M. Valenti alleging that Renae LaPrete, superintendent of the Hazlet School District (District) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainants specifically allege that respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (e), (g) and (i) of the Code of Ethics for School Board.

On June 22, 2006, the Commission notified the complainants that they would have to amend their complaint because they had alleged only violations of the Code of Ethics for School Board Members, which does not apply to a superintendent, but applies only to board members. On July 10, 2006, the complainants filed an amended complaint wherein they maintained that the superintendent is a member of the Hazlet Board of Education (Board) and subject to the Code of Ethics for School Board Members by virtue of N.J.S.A. 18A:17-20, which provides that the superintendent has a seat on the board employing him and the right to speak on all educational matters at meetings of the board, but does not have the right to vote.

The respondent submitted an answer through her attorney, Michael J. Gross, Esquire, wherein she argued that the complaint was without merit and failed to state any valid ethics claim. The respondent also asked the Commission to find that the complaint is frivolous pursuant to N.J.S.A. 18A:12-29.

The Commission invited the parties to attend its August 22, 2006 meeting, but did not require that they attend. At the August 22, 2006 meeting, after discussion during executive session, the Commission advised the attorneys for both parties that it would entertain arguments addressing the initial issue of whether the Code of Ethics for School Board Members applies to a superintendent. Complainants' attorney, Kenneth B. Fitzsimmons, argued that N.J.S.A. 18A:17-20 provides that the superintendent has a seat on the board of education. He then argued that the superintendent leads the board and participates in board meetings. He further argued that there is a presumption that the Legislature was aware of N.J.S.A. 18A:17-20 and intended to include the superintendent within the purview of the Code of Ethics for School Board Members when it was adopted.

Respondent's attorney, Mr. Gross, argued that N.J.S.A. 18A:12-23 defines "board member" to mean "any person holding membership, whether by election or appointment,

on any board of education other than the State Board of Education.” Thus, he argued that the definition of “board member” does not include a superintendent because a superintendent is not elected or appointed, but rather hired by the board of education. He also noted that the definition of “administrator” at N.J.S.A. 18A:12-23, means any officer, other than a board member. Thus, he concluded that this definition distinguishes between board members and school administrators such as a superintendent. He then argued that N.J.S.A. 18A:12-24.1 could not apply to a superintendent because many of the provisions, such as N.J.S.A. 18A:12-24.1(c), (d), (h) and (j), refer to the board member’s duty not to interfere with the superintendent’s job. The respondent’s attorney requested the Commission to dismiss the complaint because the Code of Ethics for School Board Members does not apply to the superintendent, but only to board members. Complainants’ attorney then countered that N.J.S.A. 18A:12-24.1 deals with a number of people and some of the provisions do not apply to the superintendent.

After considering the arguments of counsel, the Commission agrees with the respondent that the definition of “board member” and “administrator” at N.J.S.A. 18A:12-23 make it clear that the superintendent is not considered a member of the board for purposes of the Act and the Code of Ethics for Board Members. The Commission also finds that the Code of Ethics for School Board Members does not apply to the superintendent, due to the provisions of the Code of Ethics that require board members to refrain from administrative duties. At the public session of its August 22, 2006 meeting, the Commission dismissed the complaint because it alleged only violations of the Code of Ethics for School Board Members, which does not apply to superintendents.

## **REQUEST FOR SANCTIONS**

The Commission considered the respondent’s request to find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29 at its September 26, 2006 meeting. In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the Commission must find on the basis of the pleadings, discovery, or the evidence presented that either:

- 1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) The nonprevailing party knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. [N.J.S.A. 2A:15-59.1]

The respondent argues that because the complainants did not keep the complaint confidential as required pursuant to N.J.A.C. 6A:28-6.2, that it clearly shows that the complainants are not truly concerned about any ethics violations, but rather are angry and vindictive and seek only to punish the school officials. The complainant’s breach of confidentiality alone does not show that the complaint was commenced, used or continued in bad faith solely for the purpose of harassment, delay or malicious injury.

The Commission can find no evidence that the complaint was filed in bad faith solely for the purpose of harassment, delay or malicious injury. It is apparent to the Commission from the amended complaint and the arguments of complainants' attorney that complainants believed that the Code of Ethics for School Board Members applied to the superintendent. Thus, complainants believed that there was a reasonable basis in law for the complaint. For the foregoing reasons, the Commission finds that the complaint was not frivolous and denies the respondent's request for sanctions against the complainant.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini  
Chairperson

**Resolution Adopting Decision – C11-06**

**Whereas**, the School Ethics Commission has considered the pleadings, documents and testimony; and

**Whereas**, the Commission hereby dismisses the complaint; and

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

**Whereas**, the Commission agrees with the proposed decision;

**Now Therefore Be It Resolved** that the Commission hereby adopts the proposed decision to dismiss the complaint as its final decision in this matter and directs its staff to notify all parties to this action of the Commission’s decision herein.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 26, 2006.

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Lisa James-Beavers  
Executive Director

PCG/LJB/MET/ethics/decisions/C05-06