

are well run is confined to making appraisals, referrals and recommendations to the administration for implementation in accordance with established policies. He argues that non-compliance on the part of the administration cannot be treated as an ethical violation by the Board. Mr. Dzwilewski also submits that respondents have provided all appropriate and accurate information while maintaining the confidentiality required by N.J.S.A. 18A:12-24.1(g). He further submits that respondents have ensured that the schools are well run, which is demonstrated by the fact that the District has followed up on all the special education issues and has kept the Board members informed of the status of these matters.

Complainant responded to the respondent's answer in correspondence received by the Commission on January 31, 2005. Therein she notes that the District's procedures for her communication with her son's teachers are not based on District policy, procedures or common practice. She claims that those procedures violate N.J.A.C. 6A:14-3.7(d)14, which she maintains provides the parents of disabled children with the same channels for communication afforded parents of nondisabled children and that parental rights to provide feedback to teachers is also inherent in the spirit of the provision. Complainant further maintains that the District has created a justifiable impression that the public trust is being violated by its failure to follow their own policies and procedures in relation to the disciplinary record of her son.

In her response, complainant further alleged that respondents have failed to see that the schools are well run because of unethical conduct on the part of the District's Special Services Department and because the Board has not shared certain information with the public. She also maintains that respondents are not acting to see that the schools are well run because of the manner in which it has proceeded to review her complaints. Complainant maintains that respondents have not provided accurate information because it failed to correct certain misrepresentations and inaccuracies, presented during public Board meetings, by the Superintendent and the Supervisor of Special Services. She further maintains that this was compounded by the Board's approval of minutes containing the inaccuracies.

On February 3, 2005, Complainant filed what was purported to be an amended complaint. However, the complainant did not allege any new facts constituting violations of the Code of Ethics for School Board Members (Code of Ethics). The documents that she provided were communications from her to the board that did not set forth how the board violated the Code of Ethics. The documents included disputes over medical bills and requests for a Board response to prior communications. While not relevant to the complaint, the Commission did review this additional documentation prior to reaching its decision.

The Commission invited the parties to attend its January 25, 2005 meeting. The parties were advised of their right to bring counsel and witnesses. However, the January 25, 2005 meeting was cancelled due to inclement weather. By correspondence of January 27, 2005, the Commission notified the parties that the matter was rescheduled to February 22, 2005. In that correspondence, the Commission also requested complainant

to provide a description of the civil rights claim complainant had stated she might be filing relative to this matter. On February 3, 2005, the Commission received complainant's response, which indicated that a complaint had been filed with the Office for Civil Rights in the United States Department of Education. At its February 7, 2005 meeting, the Commission discussed this filing and was advised by the Executive Director that it could move forward with the matter since N.J.S.A. 18A:12-32 provides that the Commission may not process any complaint on a matter actually pending in any court of law or administrative agency of this State, and the filing was with an entity outside of New Jersey.

Therefore, the Commission did not cancel the hearing scheduled for February 22, 2005. The complainant did not appear at the start of the meeting. Since the complainant had notified the Commission that she would attend, the Commission adjourned the matter for an hour to allow time for complainant to appear. However, complainant failed to appear after that hour and the Commission proceeded to hear the matter. The respondent Superintendent and his attorney, Allan P. Dzwilewski, Esquire, attended the February 22, 2005 meeting and the respondent answered questions posed by the Commission. Complainant did not attend the meeting. At its public meeting on February 22, 2005, the Commission voted to find no probable cause that respondents violated N.J.S.A. 18A:12-24.1(a), (d), (g) or (j). The Commission adopted this decision at its April 4, 2005 meeting.

FACTS

The Commission was able to discern the following facts based on the pleadings, documents submitted and the testimony.

At all times relevant to this complaint, Mr. Gratz was Superintendent and the remaining respondents were members of the Board.

Complainant's son was injured on March 18, 2004 in or around the Newton High School building and he sustained a traumatic brain injury. He returned to the school on May 21, 2004 and complainant began working with the child study team on May 24, 2004. Complainant began corresponding with the District administration on June 24, 2004 and she copied the Board on most of her communications. She also corresponded directly with the Board.

On September 2, 2004, complainant attempted to communicate with her son's teachers by having letters from her placed in their mailboxes. At that time, the Superintendent informed her that it was inappropriate for her to place communications in the teachers' mailboxes. Complainant sent the Superintendent several communications requesting a copy of the policy or procedures related to her contact of her son's teachers, and whether his teachers received her September 2, 2004 correspondence. On September 10, 2004, the Superintendent responded and provided her with copies of Board policies related to communications between the Board and the public. He also informed her that any issue regarding her son's overall progress should be communicated through her son's

case manager. He further informed her that her September 2, 2004 communication was pulled from the teachers' mailboxes and forwarded to the case manager. Through correspondence dated September 14, 2004, the Superintendent further clarified the chain of communication for the complainant to follow in her communication with her son's teachers. In his correspondence, the Superintendent indicated that academic progress and discipline issues were to be directed to the classroom teacher while IEP implementation issues were to be directed to the case manager. He further advised that the chain of communication was established to insure that the proper staff members were contacted on the issues which they could address.

In August 2004, through complainant's extensive correspondence and through several communications from the Superintendent, the Board was informed of complainant's concerns with the Child Study Team. Board counsel advised the Superintendent and the Board to keep public comments regarding Complainant's correspondence general without reference to specific personnel and/or student(s). At the August 24, 2004 Board meeting, the Superintendent reported to the Board that he had received correspondence from a parent regarding an IEP implementation and that a complaint had been filed with the State and a complaint investigation would be performed. He also reported to the Board that a consultant was hired to review the processes and procedures and that an in-house review of Child Study Team services would be conducted. The Board President thanked him for the update and asked him to continue the review and update the Board as necessary.

The Office of Special Education in the Department of Education (Office of Special Education) investigated the District's special education services and issued a Complaint Investigation Report. The District was found noncompliant with federal and state statutes and regulations in six areas and a corrective action plan was included for each area of noncompliance. At the September 28, 2004 Board meeting, the Superintendent updated the Board and informed them that the Office of Special Education had found areas of noncompliance and that the district was required to submit a corrective action plan. The District implemented a Corrective Action Plan, which was presented by the Supervisor of Special Services at the November 9, 2004 Board meeting.

ANALYSIS

As an initial matter, the Commission notes that Mr. Gratz is not a member of the board and therefore, he is not subject to the Code of Ethics for School Board Members. Complainant has not set forth any other provision of the School Ethics Act that applies to an administrator. Therefore, the Commission must dismiss the complaint against Mr. Gratz because the complainant has only alleged violations of the Code of Ethics, which does not apply to him.

The Commission notes that the complainant bears the burden of proving any violations of the Code of Ethics for School Board Members under N.J.S.A. 18A:12-29. Complainant first alleges that respondents violated N.J.S.A. 18A:12-24.1(a) because the Board had knowledge that her parental right to communicate with her son's teachers had

been violated and the Board did not rectify the situation and uphold her right to communicate with her son's teachers.

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

I will uphold and enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Desired changes shall be brought about only through legal and ethical procedures.

Complainant alleges that through copying the Board on all her correspondence with the District and through correspondence to the Board, they had knowledge that her September 2, 2004 letter was pulled from her son's teachers' mailboxes. She also alleges that the Board did nothing to uphold her right to communicate with her son's teachers. She further alleges that the District's procedures for her to communicate with her son's teachers violated N.J.A.C. 6A:14-3.7(d)14. Complainant argues that N.J.A.C. 6A:14-3.7(d)14 provides the parents of disabled children with the same channels for communication afforded parents of nondisabled children and that parental rights to provide feedback to teachers is also inherent in the spirit of the provision. N.J.A.C. 6A:14-3.7(d)14 provides:

(d) With the exception of an IEP for a student classified as eligible for speech-language services, the IEP shall include, but not be limited to:

14. A statement of how the student's parents will be regularly informed of their student's progress toward the annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year. The parents of a student with a disability shall be informed of the progress of their child at least as often as parents of a nondisabled student are informed of their child's progress.

The Commission notes that the above provision is a requirement for what should be included in an IEP. The provision does not establish a parental right to communicate with their children's teachers. The provision only requires that the parents of a student with a disability should be informed of the progress of their child at least as often as parents of a nondisabled student are informed of their child's progress. The provision addresses the requirements for communication from the district to the parents of students with an IEP. The provision does not address, either directly or indirectly, communication from parents to the district or the teachers.

Complainant further argues that the areas of noncompliance found in the Complaint Investigation Report are proof that the Board did not uphold and enforce all laws, rules and regulations and thus violated N.J.S.A. 18A:12-24.1(a). The Commission notes that the Board is under an obligation to refer all complaints to the chief administrative officer and to act on complaints at a public meeting only after the failure of an administrative solution. See, N.J.S.A. 18A:12-24.1(j). In August 2004, the Board

became aware of complainant's concerns with the Child Study Team through complainant's extensive correspondence and through several communications from the Superintendent. At that point, the Board was under an obligation to refer the matter to the Superintendent. At the August 24, 2004 Board meeting, the Superintendent reported to the Board the commencement of an internal review and the hiring of an outside consultant to review processes and procedures. Also, at the August 24, 2004 Board meeting, the Superintendent reported to the Board that a complaint had been filed with the Office of Special Education. At that time, the Board President appropriately thanked the Superintendent for his update and asked him to continue to review and update the Board as necessary.

At the September 28, 2004 Board meeting, the Superintendent updated the Board and informed them that the Office of Special Education had found areas of noncompliance and that the District was required to submit a corrective action plan that would be presented at the November 9, 2004 meeting. It would have been inappropriate for the Board to have attempted to resolve the matter until after it allowed for an administrative solution. There was no evidence presented to show that the administrative solution had failed. Thus, the Board acted appropriately by allowing the administration to address the matter.

Complainant also maintains that the Board violated N.J.S.A. 18A:12-24.1(a) because it failed to follow its own policies and procedures in relation to the disciplinary record of her son and because the District's procedures for her to communicate with her son's teachers were not based on District policy. The Commission notes that N.J.S.A. 18A:12-24.1(a) requires the Board to uphold all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Board policies and procedures are not laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Therefore, if the Board fails to follow its own policy or if it establishes a procedure that is not based on policy, it has not violated N.J.S.A. 18A:12-24.1(a).

The Commission can find no evidence to support the allegations that the Board failed to uphold and enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Therefore, the Commission finds no probable cause to credit the allegations that the Board violated N.J.S.A. 18A:12-24.1(a).

Complainant next alleges that the Board violated N.J.S.A. 18A:12-24.1(d) because of unethical conduct on the part of the District's Special Services Department and because the Board has not shared with the public the findings of the internal review, the findings of the educational consultant and the fact that there is a second investigation by the Office of Special Education. She also maintains that respondents are not acting to see that the schools are well run because, in their review of this matter, they have never progressed past the reviewing component into evaluation and recommendation. She further maintains that the Board has not made any appraisals, referrals or recommendations to the administration, has not completed a review of policies and their

effectiveness, and has not attempted to bring about changes through a deliberate and collaborative process. N.J.S.A. 18A:12-24.1(d) 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.

As N.J.S.A. 18A:12-24.1(d) indicates, it is not the role of the Board to administer the schools. Thus, the Board should not become involved in the day to day operation of the schools. However, it is the role of the Board to fulfill their responsibility to see that the schools are well run. In fulfilling that responsibility, the Board must remain mindful that it is also required to confine board action to policy making, planning and appraisal. See, N.J.S.A. 18A:12-24.1(c). Because the role of the Board in seeing that the schools are well run is limited to policy making, planning and appraisal, alleged unethical conduct on the part of a Department within the District cannot be attributable to the Board. The Commission can find no evidence to show that an administrative solution regarding the unethical conduct on the part of a Department within the District has failed.

Further, N.J.S.A. 18A:12-24.1(d) does not require the Board to share any specific information with the public. Nor does it require the Board to act under any specific timeline in conducting a Board review of any matter. Thus, even if proven, the Board's failure to move past the reviewing component into evaluation and recommendation is not a violation of N.J.S.A. 18A:12-24.1(d). The evidence shows that the Board has properly deferred complainant's concerns to the Superintendent for an administrative solution. The Board has requested to be updated on the matter. As noted above, it is not the role of the Board to administer the schools and the Board could violate N.J.S.A. 18A:12-24.1(j) if it attempted to bring about a change through a deliberate process that did not occur only after failure of an administrative solution.

To prove that the Board failed to see that the schools are well run, in her correspondence of November 2, 2004, complainant referred the Commission to her voluminous correspondence with the district and the Board. She also provided a list of dates with information after each date. However, there is no connection made between the information and how it proves that the Board failed to see that the schools are well run. The Commission can find no evidence that proves that the Board failed to see that the schools are well run. Therefore, the Commission finds no probable cause to credit the allegations that the Board violated N.J.S.A. 18A:12-24.1(d).

Complainant next alleges that the Board violated N.J.S.A. 18A:12-24.1(g) when it did not correct the Superintendent's misrepresentation to the public of her correspondence with the Board and did not correct those inaccuracies when it approved the August 24, 2004 Board minutes. She further maintains that the Board violated N.J.S.A. 18A:12-24.1(g) when the Board failed to correct misinformation that the Supervisor of Special Services provided in a public meeting during presentation of the Corrective Action Plan to the Board, and when the Board failed to correct a

misrepresentation by the Superintendent of the Complaint Investigation report. N.J.S.A. 18A:12-24.1(g) provides:

I will 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 school.

Complainant maintains that the manner in which her correspondence was described by the Superintendent at the August 24, 2004 Board meeting and the minutes from that meeting did not properly reflect her correspondence to the Board. She further maintains that the Board failed to correct the inaccuracies when they approved the minutes. The Commission notes that under N.J.S.A. 18A:12-24.1(g) the Board was under a requirement to hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. The Commission also notes that the Board counsel advised the Superintendent and the Board to keep public comments regarding Complainant's correspondence general without reference to specific personnel and/or student(s). If the minutes had been corrected to specifically describe complainant's correspondence in any more detail, the Board could have disclosed matters that should have been held confidential. The description provided by the Superintendent and approved by the Board in the minutes provided a general description of the correspondence, which was fairly accurate. Therefore, the Commission has insufficient evidence to find that the Board did not provide accurate information.

Complainant also maintains that the Board did not provide accurate information to the public when it failed to correct misleading statements made by the Supervisor of Special Services during her presentation of the Corrective Action Plan at a November 9, 2004 Board meeting. The Commission found no evidence to prove that the Supervisor of Special Services made misleading statements to the Board at the November 9, 2005 Board meeting. Even if the Supervisor made misleading statements, the Commission found no evidence that the Board was aware that any of the statements made by the Supervisor of Special Services were misleading. Therefore, the Commission cannot find that the Board did not provide accurate information.

Complainant also maintains that the Board did not provide accurate information to the public when it failed to correct a misrepresentation by the Superintendent of the Complaint Investigation report. The complainant maintains that the Superintendent was inaccurate when he reported to the Board at the September 28, 2004 meeting that there were "findings of noncompliance." The Commission fails to see how this is an inaccurate portrayal of the Complaint Investigation report. The report states that there were findings of noncompliance. The Board was under no obligation to require the Superintendent to provide a detailed description of the entire report. Therefore, the Commission finds no probable cause to credit the allegations that the Board violated N.J.S.A. 18A:12-24.1(g).

Finally, complainant alleges that that the Board violated N.J.S.A. 18A:12-24.1(j) when they failed to conduct a board level review of the issues that she raised in connection to the District's handling of her son's special education requirements, but, instead, have relied entirely upon information provided by an administrator. N.J.S.A. 18A:12-24.1(j) 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 Board is required to refer all complaints to the chief administrative officer and to act on complaints at a public meeting only after the failure of an administrative solution. As noted above, the Board referred the matter to the Superintendent and allowed for an administrative solution. Board action can only be taken upon the failure of an administrative solution. The Complainant has not sustained her burden to prove that an administrative solution has failed. Therefore, the Commission finds no probable cause to credit the allegation that the Board violated 18A:12-24.1(j).

DECISION

For the reasons expressed above, the Commission finds no probable cause to credit the allegations that respondent violated the School Ethics Act and dismisses the allegations against them.

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 – C50-04

Whereas, the School Ethics Commission has considered the pleadings and the response filed by the parties and the documents submitted in support thereof; and

Whereas, the Commission finds no probable cause to credit the allegations that Respondent violated N.J.S.A. 18A:12-21 et seq.; 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 as its final decision in this matter and directs its staff to notify all parties to this action of the Commission's 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 April 4, 2005.

Lisa James-Beavers
Executive Director