

DEBBIE MYERS	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	Docket No. C05-08
PATRICIA BARKSDALE, BRIDGET RIVERS, RASHEED ABDUL HAQQ, WILMA CAMPBELL, MARTIN COX, CHRISTIAN ESTEVEZ, VICKY SHEPPARD and LISA LOGAN-LEACH	:	DECISION ON
PLAINFIELD BOARD OF EDUCATION	:	MOTION TO DISMISS
UNION COUNTY	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on February 19, 2008 by Debbie Meyers, alleging that Patricia Barksdale, Bridget B. Rivers, Rasheed Abdul Haqq, Wilma Campbell, Martin Cox, Christian Estevez, Vicky Sheppard and, Lisa Logan-Leach all members of the Plainfield 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 respondents violated N.J.S.A. 18A:12-24.1(a) of the Code of Ethics for School Board Members.¹ The respondents filed an answer through their attorney, Ronald C. hunt, Esq., on April 9, 2008.

On March 20, 2009, the respondents, pursuant to N.J.A.C. 1:1-12 et seq., filed a Motion to Dismiss and to Quash the Subpoenas issued by Ms. Meyers. On March 20, 2009, the complainant filed a response to the Motion to Dismiss and to Quash the Subpoenas. The Commission invited the parties to attend its March 24, 2009 meeting for a hearing pursuant to N.J.A.C. 6A:28-6.9. Prior to presentation of the complainant’s case, the Commission considered the complaint, the Motion to Dismiss and to Quash the Subpoenas, the complainant’s response to the Motion to Dismiss and to Quash the Subpoenas and the parties arguments at its meeting on March 24, 2009, at which time the Commission voted to grant the respondents’ Motion to Dismiss the complaint and to deny the respondents’ Motion to Quash the Subpoenas.

SUMMARY OF THE PLEADINGS

The complainant alleges that the respondents held an emergency meeting on June 8, 2007 which violated the Open Public Meetings Act, (OPMA) N.J.S.A. 10:4-6 et seq., in violation of N.J.S.A. 18A:12-24.1(a). (Complaint at page 4, paragraph 2) The complainant charges that the Board failed to give a 48 hour notice of the meeting, failed to timely announce the meeting in a newspaper and failed to post notice of the meeting in

¹ The Commission notes that the complainant alleges violations of N.J.S.A. 18A:12-24(a), but cites to the text of N.J.S.A. 18A:12-24.1(a). In its February 25, 2008 correspondence, the Commission notified the parties that, unless it heard otherwise, the Commission would move forward on the complaints as alleging violations under N.J.S.A. 18A:12-24.1, the Code of Ethics for School Board Members. Since neither party responded to the Commission’s correspondence, the Commission made its determination on this matter based upon allegations of violations of N.J.S.A. 18A:12-24.1(a).

the designated places. The complainant alleges that the Board's action also violated Board policy. (Id., at page 4 paragraph 2)

The complainant also alleges that, at a November 20, 2007 meeting, the Board failed to inform the community of the Office of Fiscal Accountability and Compliance's (OFAC) October 31, 2007 report as required by OFAC. (Id., at page 5 paragraph 2) The complainant maintains that the Board failed to place this item on the agenda, but rather "walked this item in." (Id., at page 5 paragraph 2) The complainant contends that the entire OFAC report was not presented at the meeting. (Id., at page 5 paragraph 2) The complainant maintains that the Board failed to call for a motion to accept and/or reject the OFAC report, failed to vote on the report and failed to vote to appeal the OFAC report. (Id., at page 5 paragraph 2) The complainant alleges that these actions violated N.J.S.A. 18A:12-24.1(a) and Board policy.

The following Exhibits were attached to the complaint:

Exhibit 1 – October 31, 2007 Office of Fiscal Accountability and Compliance investigation report pages 2-3.

Exhibit 2 – Board policy #9325.4.

Exhibit 3 – Board minutes from its November 20, 2007 meeting.

Exhibit 4 – January 15, 2008 Office of Fiscal Accountability and Compliance 1st level appeal determination.

Exhibit 5 – Board policy #9323, #9324 and #9326.

ANALYSIS

In considering a Motion to Dismiss, the Commission considers the facts in the light most favorable to the non-moving party. Here, the complainant alleges that the respondents violated N.J.S.A. 18A:12-24.1(a) and Board policy when they held an emergency meeting on June 8, 2007 without following OPMA requirements and when they failed to fully present and vote on the October 31, 2007 OFAC report and appeal of the report at the November 20, 2007 Board meeting.

The Commission initially notes that it does not have jurisdiction to enforce local board of education policies. The Commission's sole jurisdiction is limited to matters arising out of the School Ethics Act, N.J.S.A. 18A:12-21, et seq. Thus, the Commission will not reach to the complainant's allegations that the respondents violated Board policy.

The question before the Commission in this matter is whether the complainant alleged facts which, if true, could support a finding that the respondents violated N.J.S.A. 18A:12-24.1(a) of the Code of Ethics for School Board Members. Granting all inferences to the complainant, the Commission finds that the complainant has failed to meet this standard.

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.

The Commission notes that to prove a violation of N.J.S.A. 18A:12-24.1(a), a complainant must present a “copy of a final decision from any court of law or administrative agency of this State” that finds that the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education. See N.J.A.C. 6A:28-6.9(b)(1). As to the allegation that the respondents violated the OPMA when they held an emergency meeting on June 8, 2007, the Commission notes that matters arising out of the OPMA are not within the jurisdiction of the Commission which is limited to matters arising out of the School Ethics Act. Furthermore, as to the allegation that the October 31, 2007 OFAC report was “walked in” to the November 20, 2007 meeting, the Commission finds that this issue implicates the OPMA and, therefore, is not within its jurisdiction. Although the complainant alleges that, in failing to adhere to the OPMA, the respondents have violated N.J.S.A. 18A:12-24.1(a), at no time does the complainant assert that a final decision has been rendered with respect to these respondents from any court of law or administrative agency of this State as is the complainant’s burden when bringing forth an allegation under N.J.S.A. 18A:12-24.1(a). Therefore, even accepting as true all facts alleged by the complainant, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(a) and its implementing regulation at N.J.A.C. 6A:28-6.9(b).

The complainant also alleges that the respondents violated N.J.S.A. 18A:12-24.1(a) because they failed to fully present and vote on the October 31, 2007 OFAC report and appeal of the report at the November 20, 2007 Board meeting, when they were required to do so. Previously, in Iyanna Jones v. Paul Schaefer et al., C28-03 (February 3, 2004), the Commission found that the requirements to publicly read and distribute a similar report from the same office was merely a policy of that office.² In Jones v. Schaefer, the Commission noted that there was no law, rule or regulation of the State Board or court order that requires such a report to be read publicly or distributed. (Id., at page 3) Similarly, the Commission notes, as to this matter, that there was no law, rule or regulation of the State Board or court order in effect at the time of the October 31, 2007 report that required the report to be read publicly or distributed. Accordingly, even accepting as true all facts alleged by the complainant, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(a).

DECISION

Based on the foregoing, the Commission grants the respondent’s Motion to Dismiss the complaint. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini
Chairperson

² The Commission notes that the name of the office at the time of the determination of C05-08 was the Office of Compliance Investigation. The name of the office has since changed to the Office of Fiscal Accountability and Compliance.

Resolution Adopting Decision – C05-08

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the Motion to Dismiss and to Quash the Subpoenas filed by the respondent and the reply to the Motion to Dismiss and to Quash the Subpoenas filed by the complainant, together with the documents submitted and arguments in support thereof; and

Whereas, at its March 24, 2009 meeting, the Commission granted the respondents' Motion to Dismiss the allegations that respondent violated N.J.S.A. 18A:12-24.1(a) of the Code of Ethics for School Board Members and denied the respondents' Motion to Quash the Subpoenas; and

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

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision granting the respondents' Motion to Dismiss and denying the respondents' Motion to Quash the Subpoenas as the final decision of an administrative agency and 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 April 28, 2009.

Joanne Boyle
Executive Director