

KEVIN BRISTER

**BEFORE THE SCHOOL
ETHICS COMMISSION**

v.

**SHALONDA TANNER
ROSELLE BOROUGH BOARD OF
EDUCATION
UNION COUNTY**

**Dkt. No. C09-09
DECISION**

PROCEDURAL HISTORY

This matter arises from a complaint filed on April 8, 2009 by Kevin Brister alleging that Shalonda Turner, a former member of the Roselle Borough Board of Education (“Board”), violated the School Ethics Act.¹ Specifically, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(j) in connection with her actions taken at, and following, a Board meeting on January 26, 2009. The respondent filed an answer on June 3, 2009, asserting, *inter alia*, that the matter of State v. Brister was pending in Municipal Court. According to the respondent, the Municipal Court matter concerned the same underlying incident as that in C09-09 pending before the Commission. Moreover, the respondent asserted that C09-09 was frivolous in that it was filed by Mr. Brister in retaliation for the criminal complaint that she filed against him.

The within matter was scheduled to be heard at the Commission’s meeting on March 23, 2010. Both parties appeared. As a preliminary issue, and noting that the respondent had informed the Commission by letter dated March 18, 2010 that the criminal matter(s) in Municipal Court were still active, the Commission determined to accept limited testimony from the parties in order to: (1) assess its responsibility under N.J.S.A. 18A:12-32 to place C09-09 in abeyance and (2) to determine, prior to the hearing, whether the complaint is frivolous, in accordance with N.J.S.A. 18A:12-29(e).

In his complaint, Kevin Brister alleges that after the January 26, 2009 Board meeting, the respondent “rudely used profanity and left the bench shouting that people in the audience were political cronies of the mayor.” Thereafter, the respondent filed “fictitious charges” against him. (Complaint/Attachment/March 30, 2009 Letter) The complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(j) because the respondent did not consult with the chief school

¹ On April 15, 2009, the State Board of Education adopted amendments to N.J.A.C. 6A:28, the regulations governing matters that come before the School Ethics Commission. These rules became effective on May 18, 2009. However, because the complaint in this matter was filed before that date, the Commission followed procedures and rendered its determinations herein in accordance with the rules that were in effect at the time the complaint was filed. To the extent this decision cites to regulations, they are the regulations that were in effect when the complaint was filed.

administrator.² Mr. Brister testified before the Commission that he was concerned that the respondent, who was, at the time, the Board president, had acted unprofessionally on the night of January 26, 2009, as she was “yelling at the top of her lungs.” Such an outburst, according to the complainant, was unethical.

The complainant further testified that the criminal complaint that was filed by the respondent was “all lies.” He affirmed that he did not harass or assault anyone. There were differences of opinion. The complainant stated, “I thought it was unethical of her to file a criminal complaint against a parent.” However, believing that he did not have a basis to file a counter-criminal complaint against Ms. Tanner, Mr. Brister testified that he filed the within complaint, since Ms. Tanner was a Board member. When asked specifically by the Commission how the complainant believed Ms. Tanner violated N.J.S.A. 18A:12-24.1(j), the complainant responded that he believed Ms. Tanner should have addressed her problems with him through either the Superintendent or the Board, rather than “concoct a story” and file a criminal complaint. Mr. Brister denied that his actions were criminal and stated that Ms. Tanner’s allegations pending against him in Municipal Court are false.

Respondent Shalonda Tanner testified that at the Board’s January 26, 2009 meeting, discussion was getting heated and the Board recessed. According to Ms. Tanner, she went out to the hallway where Mr. Brister was walking up and down the hall cursing at her; she stated that Mr. Brister also swung at her but someone blocked him from hitting her. The police were summoned; the Board later resumed its meeting. Ms. Tanner noted that the Superintendent was present that evening.

Ms. Tanner testified that she was advised to go to the Police Department as a result of the events on January 26, 2009 and file a complaint, which she did on February 3, 2009.³ According to Ms. Tanner, her complaint and statement resulted in the State bringing charges against Mr. Brister for Simple Assault and Harassment. Ms. Tanner stated that the Roselle Municipal Court transferred the matter to the Garwood Municipal Court on or about March 30, 2009. Thereafter, on April 8, 2009, the complainant filed the matter docketed as C09-09 before the School Ethics Commission. Ms. Tanner reasoned that the within complaint was filed in order to retaliate against her for the criminal complaint which she filed against Mr. Brister. According to Ms. Tanner, Mr. Brister could not file a counter-criminal complaint because he had no basis for doing so; therefore, he filed the instant complaint before the Commission. Ms. Tanner informed the Commission that she and Mr. Brister were in Garwood Municipal Court as recently as March 10, 2010 and were scheduled to appear again on May 6, 2010.

After taking testimony on these preliminary matters, the parties exited the room. Upon deliberation, the Commission found: (1) that C09-09 should not be placed in abeyance; and (2) that C09-09 is not frivolous. The Commission also determined, in light of the parties’

²Although the complainant also asserted that the respondent violated N.J.S.A. 18A:12-22(a) and (b), this provision of the School Ethics Act which sets forth the Legislature’s findings and declarations does not contain standards that are enforceable by the Commission, notwithstanding that it provides guidance to the Commission on how to interpret N.J.S.A. 18A:12-24 and N.J.S.A. 18A:12-24.1. (See, I/M/O Wesley Smith, C28-97, (April 28, 1998)) Consequently, the Commission cannot accept those portions of a complaint which allege violations of N.J.S.A. 18A:12-22(a) and (b); the complainant was so notified by the Commission in its notice dated April 9, 2009.

³ A copy of the February 3, 2009 complaint was included in both the complainant’s and the respondent’s papers.

testimony and granting all inferences to the complainant, that C09-09 is properly dismissed, for the reasons set forth below.

ANALYSIS

As a threshold matter, the Commission considered whether it was required, pursuant to N.J.S.A. 18A:12-32, to place C09-09 in abeyance, pursuant to N.J.S.A. 18A:12-32, which states:

The commission shall not process any complaint, issue a final ruling or issue any advisory opinion on a matter actually pending in any court of law or administrative agency of this State.

According to notice from the Garwood Municipal Court, the criminal charges stemming from the January 26, 2009 incident are as follows:

1. State v. Brister, SC-2009-007474- 2C:12-1a(1) Simple Assault and
2. State v. Brister, SC-2009-007475- 2C:33-4c Harassment (Answer/Attachment/Letter dated March 25, 2009 from Garwood Municipal Court Administrator)

Thus, in State v. Brister, SC-2009-007474, the Simple Assault matter, the Court will determine whether Mr. Brister attempted “to cause or purposely, knowingly or recklessly” caused bodily injury to another in violation of N.J.S.A. 2C:12-1a(1). Similarly, in State v. Brister, SC-2009-007475, the Harassment matter, the Court will determine whether Mr. Brister engaged “in any other course of alarming conduct or of repeatedly committed acts with [the] purpose to alarm or seriously annoy another person” in violation of N.J.S.A. 18A:2C:33-4c. Whereas, the sole issue before the Commission is whether Ms. Tanner failed to refer all complaints to the chief administrative officer and acted on the complaints at public meetings only after failure of an administrative solution in violation of N.J.S.A. 18A:12-24.1(j). The Commission finds, therefore, that both the fact-finding and the legal issues before it are different from those before the Garwood Municipal Court. See, Horvath et al. v. Rosenwald, Freehold Regional High School District Bd. of Ed. and Rosenwald v. Horvath et al., Freehold Regional High School District Bd. of Ed., Commissioner of Education Decision No. 459-08, decided November 24, 2008. As such, it does not find that N.J.S.A. 18A:12-32 compels that the matter docketed as C09-09 be placed in abeyance.

Next, the Commission considered the respondent’s allegation that the complaint herein was frivolous, in that it was filed in retaliation to her criminal complaint against Mr. Brister. Because this allegation was factually linked to the threshold abeyance question, the Commission accepted testimony on this issue as well, as a preliminary matter. In so doing, the Commission notes that N.J.S.A. 18A:12-29(e) of the School Ethics Act provides:

If prior to the hearing the commission determines, by majority vote, that the complaint is frivolous, the commission may impose on the complainant a fine not to exceed \$500. ***

A “frivolous complaint” is defined as a complaint determined by the Commission to be *either*:

- 1) Commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) One which the complainant knew, or should have known, 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.A.C. 6A:28-1.2.

As per the language of the regulation, the Commission need only find that one prong is applicable to support a finding of violation. In so doing, the Commission considers the totality of the circumstances in determining whether a complaint meets the above standard. See, Patricia Lee v. Barri Beck, Union Township Bd. of Education, C01-05 (September 27, 2005). Here, the Commission does not find that this complaint satisfies either prong of the standard set forth above. In so doing, the Commission is persuaded by the complainant’s testimony that he believed that the complaint herein was proper recourse for what he believed to be unethical conduct on the part of the respondent.

In this connection, the complainant testified that he believed that the respondent, as Board President acted unprofessionally on the night of January 26, 2009, as she was “yelling at the top of her lungs.” Such an outburst, according to the complainant, was unethical. Moreover, the complainant stated that he believed Ms. Tanner violated N.J.S.A. 18A:12-24.1(j) because she should have addressed any problems or differences with him by going through either the Superintendent or the Board, rather than filing a complaint with the Roselle Police Department. He maintained that it was unethical of Ms. Tanner to concoct a story about him.

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29b, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members. As noted above, the sole question before the Commission is whether Ms. Tanner violated N.J.S.A. 18A:12-24.1(j), which provides:

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

In this inquiry, the Commission refers to its regulations at N.J.A.C. 6A:28-7.1, which provide the following definitions:

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Thus, in order to establish a violation of N.J.S.A. 18A:12-24.1(j), the complainant would have to establish that the respondent acted on, or attempted to resolve a concern, issue or dissatisfaction that a member of the public or a member of the school personnel brought to the respondent's attention prior to referral to the chief administrative officer or at a time or place other than a public meeting and prior to the failure of an administrative solution. For example, in I/M/O William Lahn, Delsea Regional Bd. of Ed., C25-05 (December 20, 2005) Commissioner of Education Decision No. 25-06, decided January 23, 2006, the respondent Board member admitted that he received a complaint from a parent and took that complaint directly to the Principal, instead of the Superintendent, which, the Commission found, created confusion in the administration of the school. Thus, the Commission found that Mr. Lahn violated N.J.S.A. 18A:12-24.1(j). Similarly, in Yafet v. Elbert Smith, Hillside BOE, C24-07 (October 27, 2008) Commissioner of Education Decision No. 156-09A, decided May 15, 2009, the Commission found that the respondent violated N.J.S.A. 18A:12-24.1(j) when he failed to report concerns about how the administration handled a senior prank incident directly to the Superintendent but, instead, went to other administrators who took those complaints to the Superintendent.

By contrast, at no time in his complaint does Mr. Brister specify *what* "concern, issue or dissatisfaction" was brought to the respondent's attention by a member of the public or a member of the school personnel. He merely stated that he "had the opportunity to speak on issues that were not in concert with the Board President, Shalonda Tanner." (Complaint/March 30, 2009 Letter) However, even assuming, *arguendo*, that a specific concern, issue or dissatisfaction was fairly brought to the respondent's attention that night which ultimately resulted in her filing a criminal complaint against Mr. Brister with the Roselle Police Department, the complainant has not alleged that Ms. Tanner attempted to resolve "the concern, issue or dissatisfaction" in her role as a Board member. In this regard, the Commission finds that it was respondent's right to file a criminal complaint with the Police Department and it has no authority to circumscribe that right. Indeed, the papers appended to Mr. Brister's complaint in C09-09 include Ms. Tanner's statements to the Roselle Police Department and an expressed disclaimer that they were her "personal statements and personal opinions and do not reflect the opinions of the Board of Education nor the position of the Board as a whole." (Complaint/Attachment/Tanner's February 3, 2009 written statement to Roselle Police Department at page 7). Therefore, the Commission ascertained that the within complaint must be dismissed in that the complainant failed to allege conduct which the Commission could find to be a violation of the Act.

DECISION

At its meeting on March 23, 2010, the Commission found: (1) that the within complaint should not be placed in abeyance, as per N.J.S.A. 18A:12-32; (2) that the within complaint is not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2; and (3) granting all inferences to the complainant, the within complaint must be dismissed because the complainant failed to allege conduct which the Commission could find to be a violation of the Act.

Consequently, the complaint is dismissed. 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).

Robert W. Bender
Chairperson

Mailing Date: April 21, 2010

Resolution Adopting Decision – C09-09

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and the testimony of the parties from the meeting on March 23, 2010; and

Whereas, at its meeting of March 23, 2010, the Commission found that the within complaint should not be placed in abeyance, as per N.J.S.A. 18A:12-32; that the within complaint is not frivolous, and that the within complaint must be dismissed since the complainant failed to allege conduct which the Commission could find to be a violation of the Act; and

Whereas, at its meeting on April 20, 2010, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of the decision.

Robert Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on April 20, 2010.

Joanne Boyle, Executive Director