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| J.E.T., Jr. and J.L.T. <sup>1</sup>            | : | <b>BEFORE THE SCHOOL</b> |
|  | : | <b>ETHICS COMMISSION</b> |
| v.   | : |                          |
|  | : |                          |
| WILLIAM J. STONIS, H.I.,                       | : |                          |
| JOHN J. MITCHELL AND TERENCE JOHNSON           | : | <b>DOCKET NO. C09-10</b> |
| <i>CUMBERLAND REGIONAL BOARD OF EDUCATION:</i> | : | <b>DECISION ON</b>       |
| <i>CUMBERLAND COUNTY</i>                       | : | <b>MOTION TO DISMISS</b> |
|  | : |                          |

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on March 10, 2010 by J.E.T. and J.L.T. asserting that William J. Stonis, Superintendent of the Cumberland Regional School District, H. I., President of the Cumberland Regional Board of Education, John J. Mitchell, Principal, and Terence Johnson, Vice Principal of Cumberland Regional High School, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Specifically, the complainants assert that the respondents violated N.J.S.A. 18A:12-24(d) when they failed to communicate with them regarding what punishment, if any, was meted out to the Board President’s child in connection with a disciplinary incident that involved the complainants’ child.

On June 14, 2010, after being granted an extension for good cause shown, a Motion to Dismiss was filed on behalf of the respondents; the motion included an allegation that the complaint was frivolous. Pursuant to N.J.A.C. 6A:28-8.2(a), a responsive statement was filed on behalf of the complainants on July 19, 2010. The parties were notified by letter dated July 28, 2010 that this matter would be placed on the agenda for the Commission’s meeting on August 31, 2010 in order to make a determination regarding the respondents’ Motion to Dismiss the complaint, together with the respondents’ allegation of frivolousness.

At its meeting on August 31, 2010, the Commission voted to grant the respondents’ Motion to Dismiss all allegations in the complaint, The Commission further found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2.

**SUMMARY OF THE PLEADINGS**

Attachments to the complaint allege that on October 9, 2009, the complainants’ child was the victim of offensive contact by the child of the respondent Board President. According to the complaint, the complainants were told that they were not permitted to know what punishment the offender would receive. The complainants assert that because the perpetrator is the child of the Board President, “the non-communication with the victim’s parents and the stonewalling of information regarding the punishment, if any, meted out to the perpetrator certainly gives the appearance of prejudiced treatment and impropriety on the part of the school officials...” (Complaint at p. 2)

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<sup>1</sup> Initials are used herein to protect the identity of the parties’ children, who are students.

## ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the complainants and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. Thus, the question before the Commission was whether the complainants alleged facts which, if true, could support a finding that the respondents violated N.J.S.A. 18A:12-24(d), which states:

No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

In their Motion to Dismiss, the respondents assert that the complaint should be dismissed because the matter is moot, since the information requested by complainants' counsel was, indeed, provided on May 28, 2010. Respondents also assert that the complaint should be dismissed because this matter implicates statutes outside of the Commission's jurisdictional purview, including the Family Educational Rights and Privacy Act (FERPA). Moreover, the respondents assert that the complainants fail to set forth any facts that would indicate a violation of N.J.S.A. 18A:12-24(d).<sup>2</sup>

As a preliminary matter, and granting all inferences in favor of the complainants, the Commission takes the position that this matter is not moot, if, indeed, the complainants are seeking an adjudication relative to the respondents' conduct, versus relief in the form of the disciplinary information undisputedly provided by the District on May 28, 2010. (See, Complainants' Response to Motion at p. 2, Exhibit E). Additionally, the Commission concurs with the respondents that it has jurisdiction only over matters arising under the School Ethics Act and may not, therefore, determine whether the respondents' actions violated FERPA. Consequently, the analysis that follows considers whether the complainants set forth sufficient facts that, if proven true, would support a finding of a violation of N.J.S.A. 18A:12-24(d).

In cases involving the application of N.J.S.A. 18A:12-24(d), the Commission has considered whether a school official's "other" employment or service would conflict with his/her official duties so as to be prohibited under the Act. For instance, in I/M/O David W. Fuller, Irvington Twp. Bd. of Ed., Essex County, C32-95 (November 25, 1997), Commissioner of Education Decision No. 472-12/97 decided January 21, 1998, the Commission found that a board member violated N.J.S.A. 18A:12-24(d) by serving on the Board while also serving as the Township Business Administrator based on the extent to which the duties can overlap in a Type I district; and in Irvington Municipal Council v. Michael Steele and the Irvington Board of Education, Essex Co., 95 N.J.A.R. 2d (EDU) 123, aff'd, State Bd. Dkt. #30-95, the Commission found that the respondent violated N.J.S.A. 18A:12-24(a), (c) and (d) when he was employed by

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<sup>2</sup> Respondents erroneously cite to "N.J.S.A. 18A:12-34(d)" at page four of their motion.

the Board as Business Administrator in a Type I school district while he served as Mayor for the Township.<sup>3</sup>

By contrast, the within complainants do not point to dual employment or other service on the part of these school officials which is in conflict with their official duties so as to implicate the Act, but, rather argue that “[t]he impropriety is the appearance of withholding of the information which further appears to be caused by the relationship of the student with [the student’s] father and the influence then on the administration.” (Complainants’ Response to Motion at p. 3) Whether the administration improperly withheld information from the parents is not a matter for the Commission’s review. To the extent the complainants sought to challenge the District’s non-communication as arbitrary and capricious or otherwise contrary to State law or regulation, a petition of appeal could have been filed before the Commissioner of Education, in accordance with N.J.A.C. 6A:3-1 et seq., and consistent with the Commissioner’s authority to hear and determine all disputes arising under school law. However, the bare allegation that such non-communication on the part of these respondents “appears to be caused by the relationship of the student with [the student’s] father...” is insufficient to defeat the respondents’ motion. Accordingly, because the complainants failed to allege any specific facts as to these respondents that, if true, would support a finding that they violated N.J.S.A. 18A:12-24(d), the Commission grants the respondents’ Motion to Dismiss.

## **REQUEST FOR SANCTIONS**

The respondents alleged that the complaint herein is frivolous. At its meeting on August 31, 2010, the Commission considered the respondents’ request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence which might show that the complainants filed the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also has no information to suggest that the complainants should have known that the complaint was without any reasonable basis in law or equity or that it 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. Therefore, the Commission finds that the complaint is not frivolous and denies the respondents’ request for sanctions against the complainants.

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<sup>3</sup>See also, I/M/O Susan Ciallella, Spring Lake Hts. Bd. of Ed., Monmouth County, C01-98 (May 26, 1998); I/M/O James Famularo, Asbury Park Bd. of Ed., Monmouth County, C04-98 (September 22, 1998); I/M/O Abdi Gass, Chesilhurst Bd. of Ed., Camden County, C13-98 (November 24, 1998); Gunther v. Alberti, Howell Twp Bd. of Ed., Monmouth County, C08-99 (July 27, 1999); Reggio et al., v. Randazzo & Stead, Berlin Borough Bd. of Ed., Camden County, C24-99 (May 23, 2000); Graham v. Roman, East Newark Bd. of Ed., Hudson County, C25-02 (November 26, 2002).

## **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).

Robert W. Bender  
Chairperson

Mailing Date: September 29, 2010

**Resolution Adopting Decision – C09-10**

**Whereas**, the School Ethics Commission has considered the complaint, the Motion to Dismiss and the response thereto filed by the parties; and

**Whereas**, at its meeting on August 31, 2010, the Commission granted the respondents' Motion to Dismiss the complaint; and

**Whereas**, the Commission found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2; and

**Whereas**, the Commission has reviewed and approved the decision memorializing said action;

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

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 28, 2010.

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Joanne Boyle  
Executive Director