

with respect to the proposed withdrawal, thus compromising the positions of both the Oradell Board and the RDRBOE. Mr. Beslow stated that the letter sent to the County Superintendent took a position that was inconsistent with the Oradell Board of Education, which had already voted to make application to the County Superintendent for an investigation as to the advisability of withdrawal by the Oradell School District from the River Dell Regional School District.

In this connection, Mr. Beslow testified that the RDRBOE had already voted against the respondent's request to send a letter to the Commissioner of Education that advocated for a different approach, rather than withdrawal of Oradell School District for the River Dell Regional School District. Furthermore, Mr. Beslow stated that the respondent's letter to the County Superintendent was sent prior to the release of his report which presents a "prima facie conflict of interest" for the respondent.

Pursuant to N.J.A.C. 6A:28-6.9(c), upon completion of complainants' case, and prior to the respondent's testimony, the respondent moved to dismiss the complaint. After hearing arguments from the parties, the Commission deliberated and determined to deny the motion.

Ms. Norian testified that she has been a resident of Oradell for 24 years. She was a member of the RDRBOE from 2001 until 2007; she served as president of the RDRBOE in her final year, 2006-2007. She has been a member of the Oradell Board since 1992.

Ms. Norian affirmed that the Oradell Board of Education passed a resolution in January 2007 to make application to the Bergen County Superintendent of Schools for an investigation as to the advisability of withdrawal by the Oradell School District from the River Dell Regional School District. The initial proposal, according to Ms. Norian, had come from the PTA to seek a referendum; the Oradell Town Council adopted a resolution in December 2006. When the matter was discussed by the Oradell Board, Ms. Norian recused herself from the deliberation and vote.

Ms. Norian testified that a feasibility study was thereafter prepared and Dr. Aaron Graham, Bergen County Superintendent of Schools acknowledged receipt of that study in a letter dated February 14, 2007 addressed to Vito A. Gagliardi, Esq. This letter was accepted into evidence as Respondent's Exhibit, R-1. Ms. Norian testified that she questioned the feasibility study and whether there would be financial benefit to Oradell.

Ms. Norian testified that she drafted a letter to the Commissioner that was dated April 4, 2007. She stated that, in light of everything that was happening in the news and, specifically, the push for regionalization of schools, she felt she needed to reach out to come to some kind of a positive resolution. She testified that, at the time, she did not know what was happening with the application for Oradell's withdrawal. She wanted to open up discussion. To that end, the respondent sent a draft of a letter addressed to the Commissioner of Education to the RDRBOE members and asked for open discussion at an upcoming meeting. The letter was discussed at the meeting on April 9, 2007. Ms. Norian testified that she knew Dr. Graham's decision on the application would be due in April 2007. According to the respondent, the RDRBOE was not willing to discuss a different approach before it received Dr. Graham's

response. Therefore, the RDBOE did not authorize sending the proposed letter to the Commissioner.

Ms. Norian testified that, after the April 9th RDRBOE meeting, she attended an Oradell Board meeting and learned of a letter dated April 11, 2007 that had been sent to the Oradell Board President by four individuals, including the complainants. The letter raised concerns about Ms. Norian's statements; it referenced the draft letter to the Commissioner that Ms. Norian had prepared. The April 11th letter, according to Ms. Norian, was read at the Oradell Board meeting, although the Oradell Board President did not allow for public discussion. Thereafter, Oradell's board secretary acknowledged receipt of the April 11th letter stating that no further action needs to be taken.

Because of the comments made in the April 11th letter, Ms. Norian stated that she felt it was important to let Dr. Graham know what might be coming. She testified that she spoke with Dr. Graham on April 12th or 13th. The letter that she sent to him, which enclosed a copy of the proposed letter to the Commissioner, was dated April 12, 2007. Ms. Norian testified that she was told that Dr. Graham was done with the application report. On cross-examination, the respondent stated that she did not discuss her letter to Dr. Graham with the Oradell Board, although she called the Superintendent of Oradell to let him know about it.

The respondent entered into evidence a Report of the County Superintendent of Schools on the request for an investigation into the advisability of the withdrawal of the Oradell School District from the River Dell Regional School District. (Exhibit R-2) The cover memorandum to the report is dated April 12, 2007; the report was date-stamped on April 19, 2007 by the Oradell Board of Education. On cross-examination, Ms. Norian maintained that April 19th was the date she received the report.

With respect to the interview which Ms. Norian gave to the newspaper, she testified that the newspaper requested "a bio" when she was running for reelection and asked the candidates to respond to questions. Ms. Norian addressed the tax inequity issue and stated that she hoped the boards would be cooperative and not confrontational. She avers that this was her personal opinion and was she not saying that Oradell was being confrontational.

FINDINGS OF FACT

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

1. At its meeting on January 10, 2007, the Oradell Board of Education voted to "make application to the Bergen County Superintendent of Schools for an investigation as to the advisability of withdrawal by the Oradell School District from River Dell Regional School District, in accordance with N.J.S.A. 18A:13-51 et seq." (Complaint Attachment B)
2. In the April 4, 2007 edition of Town News, in response to the question, "What do you think is the most urgent problem facing the district?" Ms. Norian replied, in relevant part,

“Additionally, I would be remiss if I did not address the tax inequity issue. I believe that the tax equity [sic] will only be resolved through state intervention. To that end, I would advocate a cooperative approach rather than a confrontational one in the hope that the River Dell Regional School District can become a partner in meeting state goals of reduced government, as well as providing financial relief to the community. I will be proposing to the board a program to enlist state support in resolving this issue.” (Complaint at Attachment C)

3. The respondent drafted a proposed letter addressed to Commissioner Davy dated April 2, 2007 stating that she was the President of the RDRBOE. The letter states, in relevant part, “The governor and the legislature have expressed a desire to encourage regionalization and consolidation of levels of government while being fair to the stakeholders...River Dell is offering itself as a test site to work closely with the state to achieve the desired objectives of regionalization and tax equity. As much of the groundwork has been completed and the tax apportionment is currently a 51% to 49% split, River Dell is a perfect beta site.” (Complaint at Attachment D)
4. At its meeting on April 9, 2007, the RDRBOE did not authorize the respondent to send the letter to the Commissioner of Education.
5. The complainants were a party to a letter dated April 11, 2007 which was sent to the Oradell Board President. That letter indicates that the writers were present at the RDRBOE meeting on April 9, 2007. The letter references the respondent’s draft letter to the Commissioner, asserting that Norian’s proposed letter “contradicts the consensus resolution passed by the Oradell BOE.” (Complaint at Attachment F).
6. By letter dated April 12, 2007, Ms. Norian wrote to Dr. Aaron Graham, Bergen County Superintendent of Schools. She enclosed a copy of the draft letter to the Commissioner which she states was discussed at the RDRBOE meeting on April 9, 2007. She also enclosed a copy of the complainants’ April 11th letter. The letter is signed, “M. Katherine Norian, President, River Dell Board of Education.”
7. The letter to Dr. Graham states, in relevant part:

It is also important to note that after heated comments by one member of the River Dell Board at the meeting of the 9th, the discussion was closed and no action was taken. I suggested that the Board might want to entertain the concept represented to the Commissioner at a future date but that it was obvious that it could not be entertained presently. This sentiment was echoed by at least two other board members.

Please understand that I did not intend to interfere with any work done by your office in preparing the report in response to the resolution presented by the Borough of Oradell and supported by the Oradell Board of Education. I intentionally waited until I felt

that the advisability of [the] withdrawal question had been determined and would be forthcoming in a document to the parties. (Complaint at Attachment G).

8. The Report of the County Superintendent of Schools on the request for an investigation into the advisability of the withdrawal of the Oradell School District from the River Dell Regional School District was issued on April 12, 2007. The cover memorandum to the report, dated April 12, 2007, is from Dr. Graham to the Oradell Board, the River Edge Board of Education, the RDRBOE, and the Oradell and River Edge Town Councils. The report was date-stamped as received on April 19, 2007 by the Oradell Board of Education. (Exhibit R-2)
9. By letter dated May 7, 2007, the Board Secretary in Oradell responded to complainant Shinevar, one of the signatories to the April 11, 2007 letter to the Oradell Board President, stating that the letter had been discussed by the Oradell Board and the Board “has decided that no further action needs to be taken.” (Complaint at Attachment F).

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29b, the complainants bear the burden of factually proving any violations of the Code of Ethics for School Board Members. The complainants assert that the respondent’s conduct violated N.J.S.A. 18A:12-24.1(c) and (e) of the Code of Ethics for School Board Members.

N.J.S.A. 18A:12-24.1(c) states:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

Here, the record shows that the respondent was interviewed as a candidate for reelection in April 2007 and she responded to a question which specifically sought her opinion about the most urgent problem facing the River Dell Regional School District. She responded by giving her opinion. The Commission finds that this is not “board action” and cannot, therefore, be a violation of N.J.S.A. 18A:12-24.1(c). Similarly, there is no evidence on this record that the respondent’s April 12, 2007 letter to Dr. Graham was “board action.” Although Ms. Norian signed the letter as President of the RDRBOE, the letter does not purport to be an official statement. Notably, the letter to Dr. Graham speaks in the first person. As such, this was not “board action.” Accordingly, the Commission finds that the complainants have failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(c).

The complainants next contend that the respondent violated N.J.S.A. 18A:12-24.1(e), which provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

“Private action” means any action taken by a member of a district board of education that is beyond the scope of the duties and responsibilities of the member. N.J.A.C. 6A:28-7.1. Although the respondent’s interview with the Town News was indeed private action, there is no showing whatsoever that this statement was of such a nature that it could have compromised either the Oradell Board of Education or the RDRBOE.

Further, although in her arguments before the Commission, the respondent conceded that her letter to Dr. Graham was private action, the Commission finds that the respondent made no personal promises and did not purport to speak on behalf of either Board, notwithstanding the use of her title, Board President. In Dressel v. Kolupanowich, Monroe Township Board of Education, C11-07 (June 24, 2008), the Commission found that while the respondent’s letter to the editor began with “As President of the Monroe Township Board of Education...,” the respondent credibly testified that she used her title of Board President in the letter because she expected the newspaper to follow a practice common in the industry by putting her name and title at the end of the letter. The Commission also found that the respondent *did not* state in the letter that it was being written on behalf of the Board and that she used first person pronouns throughout the letter, as did Ms. Norian in her letter to Dr. Graham. In Dressel, the Commission dismissed the allegation that the respondent board member was in violation of N.J.S.A. 18A:12-24.1(e), noting also that the record does not show and the complainant does not establish how the respondent’s clarification of the Board’s position on the construction issue in the letter to the editor may have compromised the Board.

Similarly, in the instant matter, respondent’s letter to Dr. Graham appears to be an explanation of events, inasmuch as the respondent testified that she felt she had to address the concerns which the complainants raised in their April 11th letter which was discussed at the Oradell Board meeting. To the extent that the complainants argue that the letter to Dr. Graham was a “vehicle to make known to Dr. Graham her position that had been contained in the proposed form of letter to Commissioner Davy that the River Dell BOE refused to authorize,” (Complaint at paragraph 10), the Commission finds this allegation to be unsubstantiated. The timing of the letter to Dr. Graham and the date of the County Superintendent’s report sufficiently coincide so as to undercut any argument that the respondent was attempting to unduly influence the county office in its investigation, thus potentially compromising the position of the Oradell Board of Education. Therefore, the Commission finds that the complainants have failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(e).

REQUEST FOR SANCTIONS

At its February 24, 2009 meeting, the Commission considered the respondent’s 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. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondent's request for sanctions against the complainant.

DECISION

Based on the testimonial and documentary evidence, the Commission finds that the complainants failed to prove that the respondent violated N.J.S.A. 18A:12-24.1(c) and (e) of the Code of Ethics for School Board Members. 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
Acting Chairperson

Resolution Adopting Decision – C25-07

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; and

Whereas, at its meeting of February 24, 2009, the Commission found that the complainants had not established that M. Katherine Norian violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against her; and

Whereas, the Commission directed that its staff prepare a decision consistent with the aforementioned conclusion; and

Whereas; the Commission has reviewed the decision and agrees with the decision;

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

Robert W. Bender, Acting Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on March 24, 2009.

Joanne Boyle, Executive Director