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**IRANDOKHT TOORZANI**

v.

**RICHARD D. TOMKO, DAVID WARNER,  
AND CORRINE DIMARTINO  
ELMWOOD PARK BOARD OF EDUCATION  
BERGEN COUNTY**

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: **BEFORE THE SCHOOL**  
: **ETHICS COMMISSION**  
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:  
: **Docket No. C29-11**  
: **DECISION ON**  
: **MOTION TO DISMISS**  
:

### **PROCEDURAL HISTORY**

This matter arises from a complaint filed on June 13, 2011 by Irandokht Toorzani alleging that Richard D. Tomko, Superintendent, David Warner, High School Principal and Corrine DiMartino, Director of Curriculum and Instruction, violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. Specifically, the complainant alleges that the respondents violated N.J.S.A. 18A:12-24(a), (b), (d) and (e).

After being granted an extension for good cause shown, on July 28, 2011, a Motion to Dismiss in Lieu of Answer was filed on behalf of the respondents, which included an allegation that the complaint was frivolous. The complainant filed a reply to the motion on September 14, 2011. N.J.A.C. 6A:28-8.2. The parties were notified that this matter would be placed on the agenda for discussion by the School Ethics Commission at its meeting on September 27, 2011 in order to make a determination regarding the respondents’ Motion to Dismiss the complaint and allegation of frivolousness. At its meeting on September 27, 2011, the Commission voted to grant the respondents’ Motion to Dismiss the complaint. 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.

### **SUMMARY OF THE PLEADINGS**

In Count 1 of the complaint, the complainant asserts that the respondents “who [are] under the influence of the current superintendent and for personal gain” have been placing false information on her observation and evaluation reports in her personnel file. Specifically, Respondent DiMartino, who observed the complainant’s class on February 24, 2011, provided a false narrative; she placed false information in the evaluation report. The complainant asserts that the respondents have been attempting to damage her reputation for years and that such conduct has continued until the last incident on June 2, 2011. The complainant alleges that this was a violation of N.J.S.A. 18A:12-24(a), (b), (d) and (e).<sup>1</sup> (Complaint at pages 1-3)

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<sup>1</sup>The complainant was advised that any allegations that were untimely pursuant to N.J.A.C. 6A:28-6.5 would not be considered by the Commission.

In Count 2 of the complaint, the complainant again alleges that Respondent DiMartino placed false information in the complainant's personnel file regarding her performance and that she did so under the influences of the Superintendent. She further alleges that in December 2010, after the complainant had spent hours preparing Academic Progress and Classroom Behavior Reports for mailing to her students' parents, she was told by Respondent Warner that the school could not spend the money to mail the reports out. The complainant alleges that this was a violation of N.J.S.A. 18A:12-24(a), (b), (d) and (e). (Id. at p. 4)

## ANALYSIS

In addition to arguing that the Commission does not have jurisdiction in this matter since the complainant is fundamentally challenging her prior evaluations and the Board's subsequent action to withhold her increment, the respondents alternatively contend that this complaint should be dismissed since a related tenure matter is pending before the Commissioner of Education. Finally, the respondents contend that the complainant has failed to allege any facts that would establish a violation of the Act. (Motion at pp. 1-6)

Initially, the Commission notes that the complainant submitted a duly-filed complaint alleging that school officials violated the School Ethics Act, as is permitted by N.J.A.C. 6A:28-6.1(a). Notwithstanding that the complainant is involved in a tenure matter before the Commissioner of Education, the Commission finds no cause to place this matter in abeyance pursuant to N.J.S.A. 18A:12-32. See, Horvath et al. v. Rosenwald, Freehold Regional High School District Bd. of Ed., Monmouth County and Rosenwald v. Horvath et al., Freehold Regional High School District Bd. of Ed., Monmouth County, Commissioner of Education Decision No. 459-08SEC, decided November 24, 2008.

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the complainant 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. The Commission first considers the allegation that the respondents violated N.J.S.A. 18A:12-24(a), which provides:

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

The Commission notes that "interest" is defined by the Act as the ownership or control of more than 10% of the profits, assets or stock of a business. N.J.S.A. 18A:12-23. This record includes no indication that the respondents, or members of their immediate family, had an interest in a business organization which is in substantial conflict with the proper discharge of their duties. Nor does the record include evidence of any business, transaction, or professional activity undertaken by the respondents which is in "substantial conflict" with the proper discharge of their duties in the public's interest. See, Lackland v. Graves, Pleasantville Bd. of Ed., Atlantic County, C04-05 (April 25, 2006). Accordingly, even assuming the facts set forth by the complainant are true, these facts would not be sufficient to find a violation of N.J.S.A. 18A:12-24(a).

The Commission next considers N.J.S.A. 18A:12-24(b), which provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

In order to credit this allegation, the Commission must find some indication that the respondents used, or attempted to use, their respective positions to secure an unwarranted privilege, advantage or employment for themselves, members of their immediate family or others. (See, I/M/O Doris Graves, Pleasantville Bd. of Ed., Atlantic County, C47-05 (May 27, 2008), Commissioner of Education Decision No. 301-08SEC, decided July 10, 2008, rejecting a claim of violation of N.J.S.A. 18A:12-24(b) because the record did not demonstrate that the respondent Board member's relative did not deserve the continued appointment to the position of head custodian.) Here, the complainant has failed to allege any facts that would establish that the respondents received any unwarranted privileges, advantages or employment as a result of the observations and evaluations of the complainant. Accordingly, even assuming the facts set forth by the complainant are true, these facts would not be sufficient to find a violation of N.J.S.A. 18A:12-24(b).

The Commission next considers the allegation that the respondents violated N.J.S.A. 18A:12-24(d), which provides:

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 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 the Board as Business Administrator in a Type I school district while he served as Mayor for the Township. By contrast, the complainant herein does 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. Accordingly, even assuming the facts set forth by the complainant are true, these facts would not be sufficient to find a violation of N.J.S.A. 18A:12-24(d).

Finally, the Commission considers whether the respondent violated N.J.S.A. 18A:12-24(e), which provides:

No school official, or member of his immediate family, or business

organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

The Commission notes that the complaint is devoid of any factual allegations specific to the respondents that, if true, would support a finding that they, or members of their immediate family, or any business organizations in which they have an interest, solicited or accepted a gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing them directly or indirectly, in the discharge of their official duties. Accordingly, even assuming the facts set forth in the complaint are true, the Commission does not find that these facts would support a finding that the respondent violated N.J.S.A. 18A:12-24(e).

### **REQUEST FOR SANCTIONS**

Pursuant to N.J.A.C. 6A:28-8.2, the respondents alleged in their Motion to Dismiss that the complaint herein is frivolous. Thus, at its meeting on September 27, 2011, 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 does not find that the complainant "[c]ommenced, used or continued [this matter] in bad faith, solely for the purpose of harassment, delay or malicious injury;" or that the complainant "knew, or should have known," that the matter "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. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondents' request for sanctions against the complainant.

### **DECISION**

At its meeting on September 27, 2011, the Commission granted the respondents' 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: October 26, 2011

**Resolution Adopting Decision – C29-11**

**Whereas**, the School Ethics Commission has considered the complaint and the Motion to Dismiss filed on behalf of the respondents; and

**Whereas**, at its meeting on September 27, 2011, the Commission determined to grant 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 October 25, 2011.

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Joanne Boyle  
Executive Director