

Technician effective July 1, 2008 and placed on the non-instructional pay salary guide with an increase in salary. (Id., at paragraph 2 under Brief History)

The complainant argues that she is the best qualified person to implement the SEMI/MAC programs for the district because she was trained in January 2005 and has been the sole administrator of the program which includes, “staff training, maximizing the participation in the SEMI program, and the creation in June 2008 of the district’s SEMI Action Plan for the 2008-2009 school year; which was approved and deemed “Exemplary” by the office of the County Superintendent.” (Id., at paragraph 1 under Best Qualified for position) The complainant further argued that her evaluations attest to her performance in the position. (Id., at paragraph 2 under Best Qualified for position)

The complainant explained that, after a new superintendent arrived in June 2008, in her role as the Plainfield Education Association Representative, she questioned the new superintendent regarding the status of a copier that had been removed from the department of Special Services; the new superintendent directed the Vice Principal, Special Services to write her up. (Id., at paragraph 1 under Current Status) The complainant stated that “By October 22, 2008 I was removed from my position by the Board and transferred out of the Department of Special Services, even after my presenting [sic] documentation to the Board informing them that the district is in jeopardy of losing funding if the SEMI action plan isn’t implemented and participation in the SEMI program is not maximized.” (Id., at paragraph 2 under Current Status)

The complainant notes that the Vice Principal and three secretaries in the Department of Special Services are being trained in SEMI. (Id., at paragraph 3 under Current Status) The complainant maintains that the board’s action of removing her was retaliatory in nature, especially since the SEMI/MAC work still remains. (Id., at paragraph 4 under Current Status) She argues that the board did not support and protect school personnel in proper performance of their duties. (Id., at paragraph 4 under Current Status) The complainant requests the Commission to remove the board members. (Id., at paragraph 5 under Current Status)

The following Exhibits were attached to the complaint:

Exhibit 1 – October 6, 2005 memorandum from the Director of Special Services to the complainant in her position as Secretary, Office of Special Services requesting the complainant’s attendance at workshops for SEMI and MAC.

Exhibit 2 – Unfair Labor Practice Charge with supporting documentation.

Exhibit 3 – Resolution of complainant’s appointment to Administrative Systems Support Technician position effective July 1, 2008.

Exhibit 4 – Special Education Medicaid Initiative Action Plan dated August 29, 2008.

Exhibit 5 – November 14, 2008 letter from the Executive Union County Superintendent of Schools to the Plainfield Superintendent indicating that the SEMI action plan was exemplary.

Exhibit 6 – Complainant’s evaluation form dated April 28, 2006.

Exhibit 7 – August 4, 2008 letter of reprimand-insubordination from the Vice Principal of the Department of Special Services to the complainant. August 5, 2008 memorandum from the complainant to the Vice Principal regarding the letter of reprimand-insubordination.

September 12, 2008 notification to the complainant that the letter of reprimand-insubordination was being placed in her personnel file.

Exhibit 8 – September 18, 2008 letter to the board from the complainant with attached information for the board to consider in its discussions of the terms and conditions of the complainant's employment for the 2008-2009 school year.

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 the Act when they voted at the October 21, 2008 board meeting to transfer her from the Administrative Systems Support Technician to her previous position as a Secretary.

The question before the Commission was whether the complainant alleged facts which, if true, could support a finding that the respondents violated N.J.S.A. 18A:12-24.1(h) and (i) 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(h) provides:

I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

To prove a factual violation of N.J.S.A. 18A:12-24.1(h), the complainant must include evidence that the respondents acted without a recommendation of the chief administrative officer. N.J.A.C. 6A:28-6.9(b)3. The complainant asserts no particular facts which, if true, would show that the respondents acted without a recommendation of the chief administrative officer. The complainant maintains that she was the best qualified person to serve as the Administrative Systems Support Technician because she was the only person who was trained to coordinate SEMI/MAC and the board failed to appoint the best qualified person when they voted to remove her from the position. Previously in Janis Lee Chasmer v. Leonard Calvo et al., C39-04 (February 7, 2005), the Commission found that board members did not violate N.J.S.A. 18A:12-24.1(h) when they voted to adopt a resolution of non-renewal for an administrative clerk. The Commission noted that the board was under a statutory obligation to appoint, transfer or remove an employee only upon the recommendation of the chief school administrator. See: N.J.S.A. 18A:27-4.1(a). In Chasmer, the Commission also clarified that N.J.S.A. 18A:12-24.1(h) requires a board to vote only upon consideration of the chief school administrator's recommendation. (Id., at page 5) Here, the Board considered the recommendation of the chief school administrator and then voted at the October 21, 2008

meeting to transfer the complainant from the Administrative Systems Support Technician position to the Secretary position.

The complainant also argues that the board failed to appoint the best qualified person when they voted to remove her from the position because she had received positive evaluations. However, the Commission notes that, in Chasmer, it reasoned that it “cannot conclude that even with outstanding evaluations the Board failed to appoint the best qualified personnel when they voted on the resolution of non renewal.” (Id., at page 5) Therefore, even accepting as true all facts as alleged, the Commission finds that such facts would not constitute a violation of N.J.S.A. 18A:12-24.1(h).

N.J.S.A. 18A:12-24.1(i) provides:

I will support and protect school personnel in proper performance of their duties.

The complainant asserts no particular facts which, if true, would support the allegation that the respondents failed to support and protect school personnel in the proper performance of their duties. The respondents’ removal of the complainant from her position as Administrative Systems Support Technician upon the recommendation of the chief school administrator simply does not rise to the level of a violation of N.J.S.A. 18A:12-24.1(i). Therefore, even accepting as true all facts as alleged, the Commission finds that such facts would not constitute a violation of N.J.S.A. 18A:12-24.1(i).

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
Acting Chairperson

Resolution Adopting Decision – C39-08

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

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

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

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision granting the respondents' Motion to Dismiss as the final decision of an administrative agency and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Acting Chairperson

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

Joanne Boyle
Executive Director

PCG/JB/MET/decisions/C39-08