
BARBARA FRASCELLA

v.

**RON TOLA AND PATRICIA DELGIUDICE,
HAMILTON TOWNSHIP BOARD OF EDUCATION
MERCER COUNTY**

**: BEFORE THE SCHOOL
: ETHICS COMMISSION
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**DOCKET NO. C42-11
DECISION ON
MOTION TO DISMISS**

PROCEDURAL HISTORY

This matter arises from a complaint filed on September 19, 2011 by Dr. Barbara Frascella, against Ron Tola and Patricia DelGiudice, members of the Hamilton Township Board of Education (“Board”), alleging violations of the School Ethics Act. (“Act”). By notice dated September 21, 2011, the complainant was notified that the complaint was deficient and, therefore, not accepted. On October 11, 2011, the complainant submitted an amended complaint alleging that the respondents violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) of the Code of Ethics for School Board Members.¹

After having been granted an extension for good cause shown, a Motion to Dismiss in lieu of an Answer was filed on November 22, 2011 behalf of the respondents. The motion included an allegation that the complaint was frivolous, pursuant to N.J.S.A. 18A:12-29(e). Pursuant to N.J.A.C. 6A:28-8.2(a), the complainant was accorded an opportunity to submit a response to the motion. The parties were notified by letter dated November 23, 2011 that this matter would be placed on the agenda for the Commission’s meeting on December 20, 2011 in order to make a determination regarding the respondents’ Motion to Dismiss the complaint, together with the allegation of frivolousness. Thereafter, counsel for the complainant requested an extension of time in which to file the complainant’s responsive brief. The request, granted by the Commission, necessitated that this matter be removed from the Commission’s agenda for its meeting on December 20, 2011 and rescheduled for January 24, 2012.

At its meeting on January 24, 2012, the Commission voted to grant the respondents’ Motion to Dismiss 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.

¹ In Counts 2 and 3 of the complaint, the complainant also alleged that the respondents violated a privately-issued advisory opinion. Notably, both statute (N.J.S.A. 18A:12-28(a)) and regulation (N.J.A.C. 6A:28-6.1(a)) require that any complaint filed before the Commission allege a violation of *the School Ethics Act*. Citing to an advisory opinion as a potential violation does not meet this technical requirement.

SUMMARY OF THE PLEADINGS

In Count 1 of the complaint, the complainant, the Director of Special Services in the District, asserts that soon after the former Superintendent announced his retirement in March 2010, Respondent Tola began to interfere with the Special Services Department for which the complainant had responsibility. The complainant claims that Respondent Tola sought to undermine her candidacy for the Superintendent's position. Beginning in June 2010, he began questioning her professional services contracts; on June 23, 2010 he had two professional services contracts associated with the Special Services Department removed from the agenda; July 21, 2010, Tola had 10 such professional services contracts removed from the agenda. The complainant further asserts that during this time, Respondents Tola and DelGiudice began to directly contact the complainant's office and direct that she engage in a competitive bidding for professional services contracts, notwithstanding that the complainant had followed the same procedures for years. According to the complainant, Respondents Tola and DelGiudice demanded information from the complainant's office, sought to pressure her to alter procedures and ultimately suggested that she be investigated. Thereafter, the Superintendent directed that she obtain comparables, as requested by respondents. The complainant asserts that these actions violated N.J.S.A. 18A:12-24.1(b), (c), (d), (h) and (i). (Complaint at pp. 2-5)²

In Count 2, the complainant asserts that Respondent Tola was told that he "needed to recues [sic] himself from participating in the superintendent search." (Id. at p. 5) According to the complaint, the Commission issued Advisory Opinion A12-10 so stating, because Respondent Tola's daughter, who was recommended for employment by the complainant, was an employee in the District and the complainant was a candidate for the position of Superintendent. Thereafter, Respondent DelGiudice became the chair of the search committee. According to the complainant, there were approximately 15-22 applicants, which were later reduced to six candidates, one of whom was the complainant. In May 2011, the complainant was identified as one of two finalists. A final interview was arranged for the two finalists on June 1, 2011. According to the complainant, Respondent Tola was in the school board offices on the day of the interview. Although he did not participate in the interview process, he remained in a room next to where the interviews occurred. On June 2, 2011, the complainant was informed that she was not the finalist. The complainant alleges that, "[o]n information and belief," Tola contacted members of the search committee and sought to influence the outcome of the vote to preclude the complainant from being the finalist." The complainant asserts that Tola violated N.J.S.A. 18A:12-24.1(a), (b), (c), and (i). (Id. at pp. 5-7)

In Count 3, the complainant alleges that on June 9, 2011, the Board convened a special confirmation meeting of the alleged finalist for the position; Tola was present at the meeting. The Board went into Executive Session to discuss the alleged finalist. One hour later, the Board came back into public session and indicated that they had not reached a consensus on the finalist and again voted to go into Executive Session. The complainant further contends that "[o]n or about June 15, 2011, the Hamilton Board of Education chose not to go further in the search process for a permanent superintendent and determined to begin the search for an interim superintendent." (Ibid.) The complainant claims that Respondent Tola's participation in the June

² The complaint actually cites to "N.J.S.A.18A:12-4.1(b), (c), (d), (h) and (i)." (Complaint at p. 5)

9 and 15th meetings and in the decision to discontinue the superintendent search and DelGiudice's allowance of the same was a violation of N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g) and (i). (Id. at pp. 7-9)

In Count 4 of the complaint, the complainant contends that on or about June 15, 2011, Respondent Tola was appointed by Respondent DelGiudice to head the new search for an Interim Superintendent and to head the selection of an "agency" to conduct the search for a permanent Superintendent. No one contacted the complainant about her availability for the position. The complainant alleges that the respondents' actions were in violation of N.J.S.A. 18A:12-24.1(a) and (c). (Id. at p. 9)

In Count 5 of the complaint, the complainant contends that at the June 15, 2011 meeting, the Board was to act on a number of professional services contracts, including some for the Department of Special Services. According to the complainant, Respondent Tola challenged only the contracts associated with the complainant's department and "[i]n challenging the professional services contracts associated with the Special Services Department, Respondent Tola publicly attacked, admonished, embarrassed and sought to undermine [the] complainant." The complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g), (i) and (j). (Id. at pp. 9-10)

ANALYSIS

As a preliminary matter, the Commission initially finds that the allegations set forth in Count 1 of the complaint are time-barred, in that the Commission's regulations provide a 180-day limitation period for filing a complaint. The Commission's regulations provide, in relevant part:

(a) Complaints shall be filed within 180 days of notice of the events which form the basis of the alleged violation(s). A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known.

1. For complaints alleging a violation of N.J.S.A. 18A:12-24.1(a), the complaint shall be filed within 180 days of the issuance of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures. (N.J.A.C. 6A:28-6.5(a))

The Commission recognizes that limitation periods of the type herein serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. Kaprow v. Berkley Township Bd. of Educ., 131 N.J. 571, 587 (1993). Thus, "notice of the alleged violation" must

be interpreted in a manner that anticipates the reasonable diligence of the complainant(s). In addressing potential violations of the School Ethics Act, the Commission must balance the public's interest in knowing of potential violations against the important policy of repose and a respondent's right to fairness. The time limitations set forth in the regulations must be enforced if it is to operate in a fair and consistent manner. Philips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County, C19-03 (June 24, 2003).

Further, although the Commission recognizes that this regulatory time period may be relaxed, in its discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice, N.J.A.C. 6A:28-1.8, it finds no extraordinary circumstances in this matter that would compel relaxation. Accordingly, Count 1 is dismissed as untimely pursuant to N.J.A.C. 6A:28-6.5(a).

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) set forth in the complaint, 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.

Here, in Counts 2 through 5, the complainant asserts that the respondents have violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), (i) and (j) of Code of Ethics for School Board Members, as set forth below:

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.
- b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.
- c. 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.
- d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.
- e. 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.

f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

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

j. 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.

Count 2

In Count 2, the complainant essentially contends that although Respondent Tola was advised by the Commission pursuant to (privately-issued) Advisory Opinion A12-10 not to participate in the search, interview or hiring of the superintendent because of his daughter's familiarity with an internal candidate (i.e., the complainant), Tola surreptitiously participated by contacting members of the search committee and attempting to influence their vote. (Complaint at pp. 6-7). The complainant contends that Respondent Tola violated N.J.S.A. 18A:12-24.1(a), (b), (c), and (i).

As a preliminary matter, the Commission is cognizant that the Courts have established that "[a]n administrative agency has broad authority to adopt rules and mold its procedures in a manner best suited to perform its statutory responsibilities. Sloan ex rel. Sloan v. Klagholtz, 342 N.J.Super. 385, 394 (App. Div. 2001)³ Here, the Commission is particularly concerned that the complainant offers in her complaint no basis of knowledge or factual support for her allegation that Tola "surreptitiously participated" by contacting members of the search committee and attempting to influence their vote. (Complaint at pp. 6-7). Rather, she merely frames her claim "[o]n information and belief."

³ In Sloan, supra, the Appellate Division determined that the Commissioner of Education properly dismissed a petition of appeal where the appellant school board and students challenged the amount of aid distributed to the District, yet failed to present any factual support for their contentions, as specifically requested by the Commissioner. Following a Motion to Dismiss filed by the Department of Education, the Court found that "it is within the Commissioner's authority to treat a motion to dismiss on the ground that 'no sufficient cause for determination has been advanced' as encompassing not only a claim that the petition on its face fails to set forth a basis for relief, but also that petitioners have failed to provide any factual support for the general allegations in their petition." Sloan ex rel. Sloan v. Klagholtz, 342 N.J.Super. 385, 394 (App. Div. 2001)

The Commission first considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(a). The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures. N.J.A.C. 6A:28-6.4(a)1.

The complainant does not provide, nor indeed assert that, a final decision has been rendered with respect to Respondent Tola from any court of law or administrative agency of this State finding that Respondent Tola failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondents brought about changes through illegal or unethical means. See, David Hollander v. Judith Millman, et al., Springfield Twp. Board of Education, Union County, C33-07 (January 22, 2008); Denise Bouyer v. Rita Owens and Oscar McCoy, Willingboro Board of Education, Burlington County, C37-09 (December 15, 2009); Martha Oramas-Shirey v. Peter Gallo et. al., Bethlehem Twp. Bd. of Ed., Hunterdon County, C43-10 (March 22, 2011), G.M.B. v. Cynthia Zirkle, Cumberland Regional Bd. of Ed., Cumberland County, C44-10 (September 27, 2011). To the extent the complainant is alleging that the advisory opinion constitutes a "final decision," as set forth in this regulation, the Commission finds that it does not. Accordingly, even assuming that the facts set forth by the complainant are true, these facts would not support a finding that Respondent Tola violated N.J.S.A. 18A:12-24.1(a).

Further, Count 2 is devoid of any particular factual allegations that would support findings of violations of N.J.S.A. 18A:12-24.1(b), (c) or (i). Specifically:

- (1) The complainant has set forth no specific facts that, if proven true, could demonstrate that Respondent Tola willfully made a decision contrary to the educational welfare of children, or took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(b). (N.J.A.C. 6A:28-6.4(a)2).
- (2) The complainant has set forth no specific facts that, if proven true, could demonstrate that Respondent Tola took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to his duty to:
 - (i) develop the general rules and principles that guide the management of the school district or charter school;
 - (ii) formulate the programs and methods to effectuate the goals of the school district or charter school;
 - or (iii) ascertain the value or liability of a policy, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(c). (N.J.A.C. 6A:28-6.4(a)3).

- (3) The complainant has set forth no specific facts that, if proven true, could demonstrate that Respondent Tola took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(i). N.J.A.C. 6A:28-6.4(a)9.

Finally, in this count, the complainant also alleged a violation of Advisory Opinion A12-10. As footnoted above, both statute and regulation require that a complaint allege a violation of *the Act*. However, even assuming that the complainant properly alleged a violation of N.J.S.A. 18A:12-24(c), which was the provision discussed by the Commission in Advisory A12-10, the Commission finds insufficient facts set forth in Count 2 to establish that Respondent Tola had either: 1) taken action in his official capacity in a matter where he, or a member of his immediate family had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment or 2) acted in his official capacity in a matter where he or a member of his immediate family had a personal involvement that is or created some benefit to him or the member of his immediate family.⁴

Thus, even accepting as true all facts alleged by the complainant in Count 2, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(a), (b), (c), or (i) or N.J.S.A. 18A:12-24(c), if plead. Count 2, therefore, is dismissed.

Count 3

In Count 3, the complainant alleges that because Respondent Tola attended the special meeting on June 9, 2011 and a subsequent meeting on June 15, 2011, he and Respondent DelGiudice violated N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g) and (i). Notably, the complainant does not allege that Respondent Tola participated in the closed session discussions on either June 9, 2011 or June 15, 2011. Moreover, the complaint itself alleges that the Superintendent search in which Respondent Tola was conflicted and, therefore, barred from participation, ended on June 15, 2011 when the Board decided not to go further in the search for a permanent Superintendent and, instead, decided to begin the search for an Interim Superintendent. (Complaint at p. 8) At no time does the complainant contend that she applied for, or was in consideration for, the position of Interim Superintendent so as to suggest a potential conflict for Respondent Tola. Thus, the Commission finds that Count 3 is similarly devoid of any particular factual allegations that would support findings of such violations. Specifically:

- (1) The complainant does not include, nor does she even assert that there has been, a final decision from any court of law or administrative agency of this State demonstrating that the respondents failed to enforce all laws, rules and regulations of the State Board of

⁴ The School Ethics Act at N.J.S.A. 18A:12-23 defines “member of the immediate family” as the spouse or dependent child of a school official residing in the same household. Therefore, Respondent Tola’s daughter is not a member of the immediate family, but rather a “relative,” defined by the Act as a spouse, natural or adopted child, parent or sibling of a school official. Nevertheless, the Commission has applied this provision to situations where Board members voted on, or were otherwise involved in, matters pertaining to their relatives.

Education, and/or court orders pertaining to schools or that the respondents brought about changes through illegal or unethical procedures, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(a) (N.J.A.C. 6A:28-6.4(a)1).

- (2) The complainant has set forth no specific facts that, if proven true, could demonstrate that the respondents took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to their duty to: (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(c) (N.J.A.C. 6A:28-6.4(a)3) Indeed, it appears that all actions alleged in this count were attendant to the Board's selection of its Superintendent. See, LeMunyon v. Loughlin, Cape May City BOE, Cape May County, C23-08 (May 27, 2009).
- (3) The complainant has set forth no specific facts that, if proven true, could demonstrate that respondents gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(d). (N.J.A.C. 6A:28-6.4(a)4).
- (4) The complainant has set forth no specific facts that, if proven true, could demonstrate that the respondents made personal promises or took action beyond the scope of their duties such that, by its nature, had the potential to compromise the board as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(e). (N.J.A.C. 6A:28-6.4(a)5).
- (5) The complainant has set forth no specific facts that, if proven true, could demonstrate that the respondents took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that they used the schools in order to acquire some benefit for themselves, a member of their immediate family or a friend, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(f). (N.J.A.C. 6A:28-6.4(a)6)
- (6) The complainant has set forth no specific facts that, if proven true, could demonstrate that the respondents took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices or that the respondents failed to provide accurate information and, in concert with their fellow board members, interpret to the staff the aspirations of the community for its school as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(g). (N.J.A.C. 6A:28-6.4(a)7); and
- (7) The complainant has set forth no specific facts that that, if proven true, could demonstrate that the respondents took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(i). N.J.A.C. 6A:28-6.4(a)9.

The Commission again notes that the complainant alleged a violation of Advisory Opinion A12-10 in Count 3. However, even assuming that the complainant properly alleged a violation of N.J.S.A. 18A:12-24(c), which was the provision discussed by the Commission in Advisory A12-10, the Commission finds insufficient facts set forth in Count 3 to establish that the respondents had either: 1) taken action in their official capacity in a matter where they, or a member of their immediate family had a direct or indirect financial involvement that might reasonably be expected to impair their objectivity or independence of judgment or 2) acted in his official capacity in a matter where they or a member of their immediate family had a personal involvement that is or created some benefit to them or to a member of their immediate family.

Thus, even accepting as true all facts alleged by the complainant in Count 3, the Commission determines that these facts would not constitute a violation of N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g) and (i) or N.J.S.A. 18A:12-24(c), if plead. Count 3, therefore, is dismissed.

Count 4

In Count 4 of the complaint, the complainant contends that on or about June 15, 2011, Respondent Tola was appointed by Respondent DelGiudice to head the new search for an Interim Superintendent and to head the selection of an “agency” to conduct the search for a permanent Superintendent. According to the complainant, no one contacted the complainant about her availability for the position. The complainant alleges that the respondents’ actions were in violation of N.J.S.A. 18A:12-24.1(a) and (c). (Complaint at p. 9) The Commission again notes that the complainant does not allege that she applied for, or was in consideration for, the position of Interim Superintendent. Nor does she allege that she applied for, or was in consideration for, the position of Superintendent *during the second search* so as to suggest a potential conflict for Respondent Tola. Consequently, the Commission finds that Count 4 is similarly devoid of any particular factual allegations that would support findings of such violations. Specifically:

- (1) The complainant does not include, nor does she even assert that there has been, a final decision from any court of law or administrative agency of this State demonstrating that the respondents failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondents brought about changes through illegal or unethical procedures, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(a) (N.J.A.C. 6A:28-6.4(a)1).
- (2) The complainant has set forth no specific facts that, if proven true, could demonstrate that the respondents took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to their duty to: (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(c) (N.J.A.C. 6A:28-6.4(a)3).

Thus, even accepting as true all facts alleged by the complainant in Count 4, the Commission determines that these facts would not constitute a violation of N.J.S.A. 18A:12-24.1(a) and (c). Count 4, therefore, is dismissed.

Count 5

In Count 5, the complainant alleges that at the June 15, 2011 meeting, the Board was to act on a number of professional services contracts, including some for the Department of Special Services. According to the complainant, Respondent Tola challenged only the contracts associated with the complainant's department and "[i]n challenging the professional services contracts associated with the Special Services Department, respondent Tola publicly attacked, admonished, embarrassed and sought to undermine [the] complainant." The complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g), (i) and (j). (Id. at pp. 9-10) (Complaint at pp. 9-10) The Commission finds that Count 5 fails to allege sufficient facts that would support findings of such violations. Specifically:

- (1) The complainant does not include, nor does she even assert that there has been, a final decision from any court of law or administrative agency of this State demonstrating that Respondent Tola failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that that he brought about changes through illegal or unethical procedures, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(a) (N.J.A.C. 6A:28-6.4(a)1).
- (2) The complainant has set forth no specific facts that, if proven true, could demonstrate that Respondent Tola took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to his duty to:
(i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(c) (N.J.A.C. 6A:28-6.4(a)3). Rather, the respondent's review of professional services contracts at a Board meeting is wholly consistent with his duty to confine his board action to policy making, planning, and appraisal.
- (3) The complainant has set forth no specific facts that, if proven true, could demonstrate that Respondent Tola gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(d). (N.J.A.C. 6A:28-6.4(a)4). In so finding, the Commission specifically notes that the complainant states that the issue of professional services contracts was before the Board on the evening of June 15, 2011. Thus, the respondent's questions relative thereto would not suggest that he was improperly involved in the administration of the schools.

- (4) The complainant has set forth no specific facts that, if proven true, could demonstrate that Respondent Tola made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the board as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(e). (N.J.A.C. 6A:28-6.4(a)5). Indeed, there is not a single fact alleged in this count that Respondent Tola took any action outside of the June 15, 2011 Board meeting.
- (5) The complainant has set forth no specific facts that that, if proven true, could demonstrate that Respondent Tola took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that he used the schools in order to acquire some benefit for himself, a member of his immediate family or a friend, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(f). (N.J.A.C. 6A:28-6.4(a)6).
- (6) The complainant has set forth no specific facts that that, if proven true, could demonstrate that Respondent Tola took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices or that Tola failed to provide accurate information and, in concert with his fellow board members, interpret to the staff the aspirations of the community for its school as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(g). (N.J.A.C. 6A:28-6.4(a)7).
- (7) The complainant has set forth no specific facts that, if proven true, could demonstrate that Respondent Tola took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(i). (N.J.A.C. 6A:28-6.4(a)9).
- (8) The complainant has set forth no specific facts that that, if proven true, could demonstrate that Respondent Tola acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint: i). Prior to referral to the chief administrative officer; or ii). At a time or place other than a public meeting and prior to the failure of an administrative solution, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(j). (N.J.A.C. 6A:28-6.4(a)10).

It appears to the Commission that the complainant is essentially contending that she was embarrassed by Respondent Tola's inquiries at the June 15, 2011 Board meeting and that such conduct should rise to the level of an ethical violation. Notwithstanding the myriad of alleged violations set forth in this count, such allegations typically arise as potential violations of N.J.S.A. 18A:12-24.1(i). The Commission has found violations of N.J.S.A. 18A:12-24.1(i) where the comments made to or about the school employee were direct, confrontational and intimidating. (See, for instance, I/M/O Charles Fischer, Eatontown Bd. of Ed., Monmouth County, C30-03 (February 24, 2004), Commissioner of Education Decision No. 157-04SEC, April 12, 2004; I/M/O David Kanaby, Hillsborough Bd. of Ed., Somerset County, C53-05 (July 24, 2007), Commissioner of Education Decision No. 350-07SEC, September 10, 2007; Brown et al. v. David Matthews, City of Englewood Board of Education, Bergen County, C13-07 (October

27, 2008), *aff'd*, Commissioner of Education Decision No. 123-09A, April 14, 2009) However, the Commission declined to find a violation of this provision when a Board member questioned a school principal, albeit in a demanding manner, where it was for the purpose of gathering information. (See, Annie D. Jackson v. Reginald Davis, East Orange Bd. of Ed., Essex County, C09-07 (April 1, 2008), wherein the complainant alleged that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (g), (i) and (j) of the Code of Ethics for School Board Members when, at a Curriculum Committee meeting, the respondent Board member aggressively questioned the complainant.) In this connection, the Commission has stated that it does not believe that the purpose of the Code of Ethics was to “allow the Commission to become involved in every dispute between a [board member] and [District personnel].” Spicer v. Della Vecchia et al., Pleasantville Charter School for Academic Excellence, Atlantic County, C31-04 (February 22, 2005).

Thus, even accepting as true all facts alleged by the complainant in Count 5, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f), (g), (i) and (j). Accordingly, Count 5 is properly dismissed.

REQUEST FOR SANCTIONS

At its meeting on January 24, 2012, 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 complainants “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 complainants.

DECISION

Based on the foregoing, the Commission grants 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: February 29, 2012

Resolution Adopting Decision – C42-11

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

Whereas, at its meeting on January 24, 2012, the Commission determined to grant the respondent’s Motion to Dismiss; and

Whereas, the Commission also 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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on February 28, 2012.

Joanne Boyle
Executive Director