
MARTHA ORAMAS-SHIREY

v.

**PETER GALLO, DAVID JONES,
HUGH SHANNON, JASON MOLZEN,
DONNA PEARSON AND MATTHEW
PANARELLA,
BETHLEHEM TOWNSHIP BOARD OF EDUCATION:
HUNTERDON COUNTY**

: **BEFORE THE SCHOOL**
: **ETHICS COMMISSION**
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: **Dkt. No. C43-10**
: **DECISION ON**
: **MOTION TO DISMISS**
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:

PROCEDURAL HISTORY

This matter arises from a complaint filed on December 1, 2010 by Martha Oramas-Shirey alleging that Peter Gallo, David Jones, Hugh Shannon, Jason Molzen, Donna Pearson and Matthew Panarella, members of the Bethlehem Township Board of Education (“Board”), Hunterdon County, violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. The complainant specifically alleges that the respondents violated N.J.S.A. 18A:12-24.1(a) of the Code of Ethics for School Board Members by coercing her into resigning from the Board.

After being granted an extension for good cause shown, on January 14, 2011, a Motion to Dismiss was filed on behalf of the respondents. The motion included an allegation that the complaint was frivolous. After being granted an extension, a responsive statement was filed by the complainant on February 16, 2010, in accordance with N.J.A.C. 6A:28-8.2(a). The parties were notified by letter dated January 26, 2011 that this matter would be placed on the agenda for the Commission’s meeting on February 22, 2011 in order to make a determination regarding the respondent’s Motion to Dismiss, along with the allegation of frivolousness. At its meeting on February 22, 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, the complainant asserts that she was threatened and directed to resign from the Board by Board President Peter Gallo, and Board members David Jones, Hugh Shannon, Jason Molzen, Donna Pearson and Matthew Panarella at the Executive Meeting on July 8, 2010. The complainant alleges that the Board President accused her of violating the Code of Ethics for School Board Members at the June 22, 2010 Board meeting and she was, thus, “verbally charged” after she expressed her opinion about concerns raised by the public. The complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(a).¹

¹ Although the complainant also alleges a violation of N.J.S.A. 18A:12-21 and 22(a), she was notified that these provisions are the title and the Legislative findings, respectively, of the School Ethics Act and do not contain standards that are enforceable by the Commission. Accordingly, the complaint was read to allege only a violation of N.J.S.A. 18A:12-24.1(a).

In Count 2, the complainant asserts that after the Board President “verbally accused” her of violating the Code of Ethics for School Board Members at the June 22, 2010 meeting, he asked her to leave the Executive Session meeting on July 8, 2010 and the respondents discussed her situation and plans to remove her from the Board, which the complainant believed they had the power and authority to do. According to the complainant, the respondents told her to resign or she would be removed by the Board and she resigned. The complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(a).

ANALYSIS

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.

Because the complainant has the burden to factually establish a violation of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a), in order to prevail on a Motion to Dismiss, the complaint must allege facts, which if true, would be sufficient to support a finding that the respondents violated N.J.S.A. 18A:12-24.1(a) of the Code of Ethics for School Board Members.

In support of their Motion to Dismiss, respondents offer a certification from Respondent Peter Gallo, the Board President. Gallo avers that the complainant was elected to the Board in April 2010 and immediately began publicly criticizing the Superintendent. He details actions taken by the complainant, such as improperly accessing and reviewing teachers’ personnel files, as well as contacting the high school receiving District, North Hunterdon Voorhees Regional, to demand the grades of the Bethlehem students, absent authorization from the Board. (Gallo Certification at paragraphs 1-10).

At the June 22, 2010 meeting, according to Gallo, the complainant again publicly evaluated and criticized the Superintendent. During the executive session, Board members expressed their displeasure to the complainant about her conduct. At the July 8, 2010 meeting, the Board discussed the complainant’s conduct in closed session and reminded her of her ethical obligations as a Board member. Gallo affirms that he led the discussion wherein he explained to the complainant how she acted inappropriately and explained that if she could not abide by the Code of Ethics for School Board Members, “she needed to seriously reconsider her position on the Board.” According to Gallo, he explained that all Board members’ opinions must be expressed within the confines of the Code of Ethics for School Board Members, Board policy and State law. Board counsel explained to the complainant that the Board did not have the authority to remove her. (Id. at paragraphs 11-16).

Gallo avers that he asked the complainant to leave the executive session briefly; she agreed to leave. It was the consensus of the Board that they did not want the complainant to resign, but, rather to abide by the Code of Ethics for School Board Members, policy and regulations. However, when the complainant returned to the room, according to Gallo, she

became irate and threatening; she stated that she was resigning. In public session, the remaining six members accepted her resignation. (Id. at paragraphs 18-24).

As noted above, in order to prevail on this motion, the complainant must allege facts, which if true, would be sufficient to support a finding that the respondent violated N.J.S.A. 18A:12-24.1(a), which states:

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.

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.

It is specifically noted in this connection that the complainant does not assert that a final decision has been rendered with respect to these respondents from any court of law or administrative agency of this State demonstrating that they 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. Nor does the complainant include a copy of a final decision from any court of law or administrative agency of this State that so demonstrates, as is her burden. See, David Hollander v. Judith Millman, et al., Springfield 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). Accordingly, even accepting as true all facts alleged by the complainant, such facts are insufficient to support a finding of violation of N.J.S.A. 18A:12-24.1(a).

REQUEST FOR SANCTIONS

Respondents allege that the complaint herein is frivolous. At its meeting on February 22, 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 can find no evidence which might show that the complainant 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 complainant 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. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondents' request for sanctions against the complainant.

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: March 23, 2011

Resolution Adopting Decision – C43-10

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

Whereas, at its meeting on February 22, 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.

Robert W. Bender, Chairperson²

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on March 22, 2011.

Joanne Boyle
Executive Director

² Although Chairperson Bender did not attend the February 22, 2011 meeting and participate in the decision, his signature affirms that the decision was reviewed and duly adopted by the Commission at its meeting on March 22, 2011.