
DR. EDWARD A. KLISZUS

v.

RHONDA WILLIAMS BEMBRY
HACKENSACK BOARD OF EDUCATION
BERGEN COUNTY

: **BEFORE THE SCHOOL**
: **ETHICS COMMISSION**
:
:
:
:
: **DOCKET NO. C45-10**
: **DECISION ON**
: **MOTION TO DISMISS**
:

PROCEDURAL HISTORY

This matter arises from a complaint filed on December 7, 2010 by Dr. Edward A. Kliszus, Superintendent of Schools, against Rhonda Williams Bembry, a member of the Hackensack Board of Education alleging that the respondent violated N.J.S.A. 18A:12-24.1(c), (g) and (i) of the Code of Ethics for School Board Members.

After being granted an extension for good cause shown, on January 19, 2011, a Motion to Dismiss in Lieu of Answer was filed on behalf of the respondent. 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), a responsive statement was filed on behalf of the complainant on February 3, 2011. 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 the complaint, together with the allegation of frivolousness.

At its meeting on February 22, 2011, the Commission voted to grant the respondent’s Motion to Dismiss. 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.

SUMMARY OF THE PLEADINGS

The complainant, the Superintendent of Schools, alleges that on October 26, 2010 during a Board meeting, the respondent discussed a confidential personnel matter when she publicly criticized his job performance with a large audience present. Additionally, the complainant alleges:

During the public portion of the meeting, the Respondent stated that she is “appalled by the ethics charges against [another Board member]. Dr. Padavano was commented on at a Board meeting and she did not file a complaint. Dr. Kliszus is a petty tyrant and is mean spirited.” (Complaint at p. 2)

The complainant attaches a copy of the Board minutes at Exhibit A of the complaint and asserts this is a violation of N.J.S.A. 18A:12-24.1(c), (g) and (i). (Id.)

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 respondent violated N.J.S.A. 18A:12-24.1(c), (g) and (i) of the Code of Ethics for School Board Members.

The complainant alleges that on October 26, 2010 during a Board meeting, the respondent discussed a confidential personnel matter when she publicly criticized his job performance with a large audience present. Exhibit A is a copy of the minutes from the meeting. Under the “Comments by Public” portion of the meeting, the minutes state:

Ms. Bemby is appalled by the charges against [another Board member]. Dr. Padavono was commented on at a Board meeting and she did not file a complaint. Dr. Klizus is a petty tyrant and is mean spirited. (Complaint at Exhibit A, p. 18).

In her Motion to Dismiss, the respondent generally contends that the complaint does not include any of the statutorily required evidence in support of its frivolous charges. (Motion to Dismiss at p. 5) The respondent denies that she has attempted to obstruct any program or policy, but, rather, has sought to improve every program and policy in place. Neither has she attempted to effectuate policies or plans without the required consultation or act outside the parameters for Board members. The respondent argues that she has proposed suggestions to benefit the schools and the community. (Id.) The respondent does not deny that she made the statement, but affirms that all comments that she made on that date were made in response to a public document. (Certification of Rhonda Williams Bemby at paragraph 36).

The Commission first considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(c), which provides:

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.

The Commission’s regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the respondent(s) took board action to effectuate policies and plans without consulting those affected by

such policies and plans, or took action that was unrelated to the respondent's 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. N.J.A.C. 6A:28-6.4(a)3.

The respondent does not deny that she made the public comment attributed to her. It appears from the minutes provided by the complainant that the respondent's statement followed a public comment that was critical of the Superintendent's actions. While the respondent's comment undoubtedly took place within the context of a Board meeting, the Commission finds that, under these circumstances, the comment alone, however imprudent, would be insufficient to establish that she took board action to effectuate policies and plans without first consulting those affected by such policies and plans. (Contrast, I/M/O Marlene Polinik, Wayne Twp Bd. of Ed., Passaic County C45-06 (January 22, 2008), Commissioner of Education Decision No.112-08SEC, decided March 10, 2008, wherein the Commission found that a board member violated N.J.S.A. 18A:12-24.1(c) when she went beyond policy making, planning and appraisal by actively attempting to locate candidate resumes while she was at the district office when the chief school administrator was absent; Jennifer Dericks et al., v. Michael Schiavoni, Sparta Township Board of Education, Sussex County, C45-07 (April 28, 2009), Commissioner of Education Decision No. 294-09SEC, decided September 15, 2009, where the Commission found the respondent violated N.J.S.A. 18A:12-24.1(c) and (d) when he took candidate resumes for the position of Principal home to review over the weekend and then passed the resumes on to another Board member for her review.) Accordingly, the Commission grants the respondent's motion to dismiss the allegation that she violated N.J.S.A. 18A:12-24.1(c).

The Commission next considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(g), which states:

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.

The Commission's regulations require that:

Factual evidence of a violation of the confidentiality provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that the respondent(s) 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. Factual evidence that the respondent violated the inaccurate information provision of N.J.S.A. 18A:12-24.1(g) shall

include evidence that substantiates the inaccuracy of the information provided by the respondent(s) and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. N.J.A.C. 6A:28-6.4(a)7.

Assuming for the purposes of this motion that the respondent made the comment attributed to her, as noted above, the statement followed a public comment that was critical of the Superintendent's actions. Although the complainant asserts that the respondent "discussed confidential personnel matters" by publicly criticizing his job performance on October 26, 2010, the Commission does not find that the comment, in this particular context, may be fairly characterized as "discussing confidential personnel matters." Accordingly, the Commission grants the respondent's Motion to Dismiss the allegation that she violated N.J.S.A. 18A:12-24.1(g).

Finally, the Commission considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(i), which states:

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

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(i) shall include evidence that the respondent(s) took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties. N.J.A.C. 6A:28-6.4(a)9.

The Commission notes that it 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, 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, where the Commission found that a board member violated N.J.S.A. 18A:12-24.1(i) when he called an employee at home and became angry when she refused to provide him with the reports that he had requested; 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, where the Commission found that the respondent Board member violated N.J.S.A. 18A:12-24.1(i) when he sent an email to the Superintendent, along with all Board members and some administrators, which was both "threatening and intimidating" in that it asked the Superintendent for an accounting of her personal leave; and Brown et al. v. David Matthews, City of Englewood Bd. of Ed., Bergen County, C13-07 (October 27, 2008), *aff'd*, Commissioner of Education Decision No. 123-09A, April 14, 2009, where the Commission found the respondent in violation of N.J.S.A. 18A:12-24.1(i) when he refused to cooperate with the District's affirmative action officer (AAO) and, in so doing, engaged in offensive comments so upsetting to the employee that she resigned as the District's AAO.)

However, 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). Under the circumstances in this matter, the Commission does not find that the respondent’s statement, alone, would support a finding of violation of N.J.S.A. 18A:12-24.1(i). Accordingly, the Commission grants the respondent’s Motion to Dismiss the allegation that she violated N.J.S.A. 18A:12-24.1(i).

REQUEST FOR SANCTIONS

At its meeting on February 22, 2011, 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 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 respondent’s request for sanctions against the complainant.

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
Chairperson

Mailing Date: March 23, 2011

Resolution Adopting Decision – C45-10

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

Whereas, at its meeting on February 22, 2011, the Commission granted the respondent's Motion to Dismiss all allegations in the complaint; and

Whereas, at its meeting on February 22, 2011, 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, Chairperson¹

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

¹ 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.