
RONALD M. GOLDSTEIN

v.

**DEBRA LENT, ALICE COMER,
DAVID CHAN, MARIE PETIKAS
RAY WISS, MARILYN COATS-THOMAS,
AND LENNY ALBANESE,
NORTHERN VALLEY REGIONAL
HIGH SCHOOL
BOARD OF EDUCATION,
BERGEN COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

**Docket No. C37-12
DECISION ON MOTION
TO DISMISS**

PROCEDURAL HISTORY

This matter arises from a complaint filed on August 29, 2012 by complainant, Ronald M. Goldstein, alleging that respondents, Debra Lent, Alice Comer, Marie Petikas, Ray Wiss, Marilyn Coats-Thomas, and Lenny Albanese, members of the Northern Valley Regional Board of Education, violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. A letter dated September 5, 2012 was sent to the respondents notifying them that the charges against them had been filed with the Commission and advising them that they had 20 days to answer the complaint. On September 19, 2012, respondents’ attorney requested additional time to file a responsive pleading. Respondents filed a Motion to Dismiss in lieu of an answer on October 1, 2012, alleging that the complaint was frivolous. Complainant filed a response to the said allegation on October 11, 2012.

By letter dated November 7, 2012, the Commission notified the complainant and respondents that this matter was scheduled for discussion by the Commission at its meeting on December 18, 2012, in order to make a determination regarding the respondents’ Motion to Dismiss and allegation of frivolousness. At its meeting on December 18, 2012, the Commission granted the respondents’ Motion to Dismiss the complaint for failure to state a claim on which relief could be granted under the Code of Ethics for School Board Members. 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

Complainant alleges that the respondent board members did not fully investigate the Superintendent’s employment record during the vetting process in late 2010 and early 2011, but hired him nonetheless. The complainant further alleges that the Superintendent’s resumé is rife with inaccuracies and falsehoods, facts that were not discovered until June 2012. Moreover, complainant maintains that although he is not challenging the appointment of the Superintendent, he is disputing respondents’ current refusal to have an independent party conduct an investigation into the Superintendent’s potentially fraudulent employment application and statements. The Board asserts that these complaints are time-barred, factually without foundation and frivolous.

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) 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.

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 (j) of the Code of Ethics for School Board Members.

The Commission first considers whether the complaint is time barred. At first blush, it would appear that this complaint should be dismissed because the event complained of occurred in early 2011. However, N.J.A.C. 6A:26.5(a) provides that a complainant is deemed to be notified of an event, which forms the basis of the violation, when he knew of such events or when such events were made public so that one using reasonable diligence would know or should have known; therefore, under this provision the complainant may still have viable claims under the School Ethics Act. Here the complainant argues that the public did not learn of the deceit until June 2012, thus satisfying the element of timely “knowledge.”

The Commission next considers the allegation that the respondents violated N.J.S.A. 18A:12-24.1(j), which provides:

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.

The Commission’s regulations require:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(j) shall include evidence that the respondents acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint:

The complainant maintains that he is not seeking to unseat the Superintendent, but demands, instead, that the Board turn over this inquiry into his employment record to an unbiased third party because the public has a right to transparency. Here, the Commission makes a distinction between a complaint as envisioned by subsection (j) and a personnel matter, squarely the purview of the Board. On that night in June 2012, the Board could not discuss the Superintendent’s employment record without issuing a *Rice* notice¹ to him in advance. Moreover, personnel matters are discussed

¹*Rice* notice refers to the matter entitled, Rice v. Union County Regional High School Bd. of Ed., 155 N.J. Super. 64 (App. Div. 1977), certif. den. 76 N.J. 238 (1978) which established the right of employees to obtain notice when they will be discussed by the Board of Education.

in closed session and cannot be discussed in public without a waiver of the right of privacy from the individual.

In the end, the outcome of any sought after investigation is really an attempt to overturn the Board's action in hiring this candidate in June of 2011. To the extent that the complainant challenges the vote by the Board and the alleged lack of documentation to support the Board's action, the Commission finds that such claims are not properly within its jurisdiction. The Commission maintains that the School Ethics Act does not empower it to supplant the decisions of duly elected or appointed local board members when they are acting in their capacities as board members. To the extent the complainant believes that the Board has acted in a manner that is arbitrary and capricious, or otherwise contrary to law or regulation, any such claim must be brought before the Commissioner of Education. Solar-Snyder v. Rose et al., Sussex-Wantage Board of Education, Sussex County, C32-03 (December 16, 2003). See, also, Dericks et al. v. Johnson et al., Sparta Board of Education, Sussex County, C01-08 (October 27, 2009). Consequently, the Commission finds that the within complaint sets forth no factual allegations which, if true, could establish that respondents acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint in violation of N.J.S.A. 18A:12-24.1(j).

REQUEST FOR SANCTIONS

The respondents alleged that the complaint herein is frivolous. At its meeting on December 18, 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 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. Therefore, 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 in its entirety for failure to state a claim on which relief could be granted under the Code of Ethics for School Board Members. 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: January 23, 2013

Resolution Adopting Decision – C37-12

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

Whereas, at its meeting on December 18, 2012 the Commission granted the respondents’ Motion to Dismiss; and

Whereas, the Commission further found that the complaint was not frivolous; and

Whereas, at its January 22, 2013 meeting, 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 January 22, 2013.

Joanne M. Restivo
Interim Executive Director