

members and undertaking the duty of the Superintendent. The complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(c) and (d).

In Count 3 of the Complaint, the complainant avers that since the respondent was precluded from the interview process for the Principal of two elementary schools, he voted against the Superintendent's recommended candidate and blocked the appointment. The complainant also alleges that upon the appointment of the Interim Superintendent, the respondent actively took part in the interviewing of candidates for the position of Principal in another school. The complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(c), (d), and (h).

The respondent argues that all the claims asserted against the respondent lack the factual bases to support the claims and that in all of his Board action, he has performed within the guidelines provided in the Act.

In her reply, the complainant contends that the Interim Superintendent attended and asked questions of the candidates for these positions but not for any others, that the Interview Committee did not provide a schedule of meeting dates and times to the Board and that the New Jersey School Boards Association Board Member Training advised that members should not be involved in the interview process as it would violate the Code.

ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the alleged 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. Thus, the question before the Commission was whether the Complaint alleged facts, which, if true, could support a finding that Respondent Perry violated N.J.S.A. 18A:12-24.1(c), (d), and (h) of the Code.

In its review, the Commission considers the allegations that the Respondent Perry violated N.J.S.A. 18A:12-24.1(c), (d), and (h) of the Code, which state, respectively:

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

To prove that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), and (h) of the Code, the complainant would have to provide the following, respectively, pursuant to N.J.A.C. 6A:28-6.4, et seq.:

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.

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(d) shall include, but not be limited to, evidence that the respondent(s) 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. N.J.A.C. 6A:28-6.4(a)4.

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(h) shall include evidence that the respondent(s) acted on a personnel matter without a recommendation of the chief administrative officer. N.J.A.C. 6A:28-6.4(a)8.

The Commission finds that each Count of the Complaint is devoid of any particular factual allegations that would support findings of such violations. Specifically:

- The complainant has set forth no specific facts that, if proven true, could demonstrate that the respondent 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 in violation of N.J.S.A. 18A:12-24.1(c). N.J.A.C. 6A:28-6.4(a)3.
- The complainant has set forth no specific facts that, if proven true, could demonstrate that the respondent 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 in violation of N.J.S.A. 18A:12-24.1(h). N.J.A.C. 6A:28-6.4(d)4.
- The complainant has set forth no specific facts that, if proven true, could demonstrate that the respondent acted on a personnel matter without a recommendation of the chief

administrative officer as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(h). N.J.A.C. 6A:28-6.4(a)8.

In contrast to the allegations in the Complaint, the Commission finds that Respondent Perry conducted Board business in concert with the other Board members and the Interim Superintendent, commensurate with his Board member duties. Subject to limitations arising from a conflict, any Board member may vote as he chooses from the moment the member is sworn in. Moreover, Board members are not under any obligation to accept the Superintendent's recommended candidate for any position and may vote to select another candidate.

As indicated in the Complaint, the respondent was appointed to the Selection Committee by the Board President, which is not in and of itself a violation of the Code. Further, the Commission recognizes 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. 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).

The Commission finds, therefore, that there are no facts set forth in the Complaint that would support a conclusion that respondent violated the Code under any of these subsections. Thus, even accepting as true all facts alleged by the complainant in all Counts of the Complaint, the Commission finds that the Complaint, on its face, fails to allege facts sufficient to maintain a claim that the respondent violated N.J.S.A. 18A:12-24.1(c), (d) and (h) of the Code and hereby dismisses the Complaint for failure to state a claim upon which relief could be granted.

The Commission cautions the Board, however, that a Selection Committee which permits four members of a nine-member Board to conduct interviews is precipitously close to establishing a quorum in potential violation of the New Jersey Open Public Meeting Act. Additionally, allowing Board members to interview the applicants upon whose employment they will ultimately vote may have a chilling effect on these candidates and ultimately thwart a free and honest exchange of responses. Moreover, a policy that interferes with the selection process may be considered a usurpation of the superintendent's authority in her role as chief school administrator in violation of the Act.

Finally, the Commission reminds the Board that in adopting the School Ethics Act, the Legislature found:

[I]t is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated. N.J.S.A. 18A:12-22(a)

A selection process such as the one exercised in this District may be viewed by the public as the Board's unnecessary and unwarranted intrusion into a course of action beyond the scope

of the Board's authority. Such conduct may damage the people's confidence in the Board, its members and its actions, thereby creating the justifiable impression that the public trust has been violated.

REQUEST FOR SANCTIONS

At its meeting on November 25, 2014, 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, and pursuant to its discretion, the Commission dismisses the within Complaint in its entirety for failure to state a claim upon which relief could be granted. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5. 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: December 17, 2014

Resolution Adopting Decision – C38-14

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 November 25, 2014, the Commission determined to grant the respondent's Motion to Dismiss the Complaint for failure to state a claim upon which relief could be granted. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5; 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, at its meeting on December 16, 2014, 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 December 16, 2014.

Joanne M. Restivo
Acting Executive Director