

ADRIENNE DENISE SANDERS	:	<b>BEFORE THE SCHOOL</b>
	:	<b>ETHICS COMMISSION</b>
	:	
v.	:	
	:	
RUDOLPH SMITH, ASBURY PARK BOARD OF EDUCATION, MONMOUTH COUNTY	:	<b>Docket No. C03-04</b>
	:	
	:	
	:	<b>DECISION</b>
	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on February 5, 2004 by Adrienne Denise Sanders alleging that Respondent, Rudolph Smith, a member of the Asbury Park Board of Education (Board), violated the Code of Ethics for School Board Members in the School Ethics Act at N.J.S.A. 18A:12-24.1 by interfering with the daily operations of the Asbury Park School District and making comments about security in the middle school. The respondent failed to answer the complaint within the required time established pursuant to N.J.A.C. 6A:28-1.10. On March 31, 2004, the Commission sent him a second notice that provided an additional 10 days to file an answer. N.J.A.C. 6A:28-1.10(e). The Commission received an answer from the respondent on April 21, 2004. However, it did not conform to the statutory requirement at N.J.S.A. 18A:12-29(b) because the written statement was not made under oath and it did not directly respond to each allegation. The Commission returned the answer to the respondent and provided him with an additional 10 days to file another answer that conformed to N.J.S.A. 18A:12-29(b). On May 17, 2004, the Commission notified the respondent that the time to answer the complaint, as well as the extension, had expired and, pursuant to N.J.A.C. 6A:28-1.10(e), notified him that each allegation in the complaint was deemed admitted.

Also, on May 17, 2004, the Commission notified the parties that the complaint had been placed on the agenda for the June 22, 2004 Commission meeting. The complainant notified the Commission that she would attend the meeting to present testimony. On June 14, 2004, the Commission provided another opportunity for Mr. Smith to respond when staff realized that the Commission’s previous letter had not been sent to the address that respondent had requested. Respondent still did not respond prior to the June 22, 2004 meeting. The Commission tabled the complaint at the June 22, 2004 meeting because the complainant failed to appear without giving a reason for her absence. The complainant has never explained to the Commission her failure to appear. The Commission also never heard from Mr. Smith.

At its public meeting on July 27, 2004, the Commission voted to find no probable cause to credit the allegations that the respondent violated the Code of Ethics for School

Board Members and dismissed the complaint. The Commission adopted this decision at its meeting of July 27, 2004.

## **FACTS**

The Commission was able to discern the following facts based on the pleadings and documents submitted.

At all times relevant to the complaint, the respondent was a member of the Board. The respondent's wife is a security guard at the middle school. The respondent visits the schools and tries to make determinations as to what the district needs. In one statement, respondent said he was concerned about security at the middle school.

## **ANALYSIS**

Complainant alleges that the respondent violated the Code of Ethics for School Board Members in the School Ethics Act at N.J.S.A. 18A:12-24.1 by interfering with the daily operations of the Asbury Park School District and making comments about security in the middle school. In making a determination as to the allegations, the Commission considered N.J.S.A. 18A:12-24.1(d) and (e), the only applicable provisions, which set forth:

(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.

To prove the allegations, the complainant provided the Commission with a report from the Office of Compliance Investigation (Office) in the Department of Education on the status review of the conditional certification of the Asbury Park School District. In preparing the report, the Office conducted a review of the actions of the Board members. One of the findings in the report was that some Board members have directly intervened in the administration of the schools. As an example, the report noted that the respondent stated that he visits the school on a somewhat regular basis to determine if security is adequate.

Complainant bears the burden of proving any violations of the Code of Ethics for School Board Members under N.J.S.A. 18A:12-29. In the present case, the complainant has failed to prove the allegations because the only evidence that she provided the Commission was hearsay with no corroborating evidence. Even this hearsay evidence fails to prove that the respondent violated N.J.S.A. 18A:12-24.1(d) and (e).

The facts that respondent goes into the schools to make determinations as to what the district needs and at one time made a statement regarding the security at the middle school, alone, do not show a violation of either subsection 24.1(d) or (e). The actions of a Board member going into the schools to determine what the district needs do not rise to the level of administering the schools. Furthermore, a Board member's statement regarding the security at a middle school when his wife is a security guard at the middle school does not constitute a private action that would compromise the Board. Based on the evidence presented, the Commission cannot find that the respondent administered the schools or made personal promises or took private actions that compromised the board in violation of N.J.S.A. 18A:12-24.1(d) and (e). Complainant did not raise any allegations under N.J.S.A. 18A:12-24.

In summary, the Commission finds no probable cause to credit the allegations that the respondent administered the schools in violation of N.J.S.A. 18A:12-24.1(d). The Commission further finds no probable cause to credit the allegations that respondent made personal promises or took private actions that compromised the Board in violation of N.J.S.A. 18A:12-24.1(e).

## **DECISION**

For the reasons expressed above, the Commission finds no probable cause to credit the allegations that respondent violated the Code of Ethics for School Board Members under the School Ethics Act and therefore dismisses the complaint in its entirety.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini  
Chairperson

### **Resolution Adopting Decision – C03-04**

**Whereas**, the School Ethics Commission has considered the pleadings and the response filed by the parties and the documents submitted in support thereof; and

**Whereas**, the Commission finds no probable cause to credit the allegations that Respondent violated N.J.S.A. 18A:12-21 et seq.; and

**Whereas**, the Commission has reviewed the proposed decision of its staff dismissing the complaint; and

**Whereas**, the Commission agrees with the proposed decision;

**Now Therefore Be It Resolved** that the Commission hereby adopts the proposed decision to dismiss as its final decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution  
was duly adopted by the School  
Ethics Commission at its public meeting  
on July 27, 2004.

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Lisa James-Beavers  
Executive Director

PCG/LJB/MET/ethics/decisions/C03-04