

FACTS

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted, testimony and its investigation.

Doris Graves has been a member of the Pleasantville Board of Education for 14 years. She has served in the capacity of vice president and president during her membership on the Board. In April 2002, Ms. Graves was replaced as Board president by complainant, Belinda Manning. Dr. Andrew T. Carrington was at all times relevant to this complaint the district's superintendent of schools. Augustus Harmon is a former Board member, who served on the Board for 3 years.

At the request of the Board, Dr. Carrington attended the Board's May 14, 2002 regularly scheduled meeting, for which he had been "Riced"². Dr. Carrington was represented by counsel. During its executive session, the Board discussed his job performance and voted to place him on administrative leave from his position as superintendent. Dr. Carrington's attorney requested that the suspension be voted upon in executive session, to prevent unnecessary injury to him, and disclosed during the public session. The Board voted that he be placed on administrative leave during its executive session. Dr. Carrington's administrative leave was effective May 20, 2002 through June 3, 2002. However, the official minutes from the May 14, 2002 Board meeting do not reflect that the Board's decision was disclosed during the public session meeting. Dr. Carrington testified before the Commission that the Board did not disclose the suspension during public session.

On May 18, 2002 a newspaper article entitled, "Pleasantville superintendent may or may not be suspended" was published. In the article, Ms. Graves was quoted as disclosing that, "the Board suspended Dr. Carrington because he took too long to prepare some financial reports that some Board members had asked for". She also told reporters that the suspension violated State statutes.

ANALYSIS

Complainant urges the Commission to find that Ms. Graves violated N.J.S.A. 18A:12-24.1(e), (g) and (i).

First complainant alleges that Ms. Graves violated N.J.S.A. 18A:12-24(e) and (g) when she disclosed information discussed in a closed, executive session of the Board to local government officials and other members of the community. N.J.S.A. 18A:12-24(e) provides:

² This term refers to the case, *Rice v. Union Cty Reg. High School Bd. of Ed.*, 155 N.J. 69, 73-74 (App. Div. 1977)(employee has a right to advance notice that a board of education intends to discuss him or her in closed session.)

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.

The Commission notes that under the School Ethics Act, N.J.S.A. 18A:12-29(b), the complainant has the burden of proving that the respondent's conduct is in violation of the Code of Ethics. Pursuant to N.J.S.A. 18A:12-24.1(e), the complainant must demonstrate that Ms. Graves failed to recognize the authority of the Board and took private action by disclosing information from a closed, executive session Board meeting that could have compromised the Board. Complainant has not met this burden.

The Commission has no basis with which to credit the allegation that Ms. Graves violated N.J.S.A. 18A:12-24.1(e), when the complainant does not offer information, other than her own testimony, that would support a finding that Ms. Graves made personal promises or took private action that could compromise the Board. Complainant refers to a newspaper article published on May 18, 2002 wherein Ms. Graves disclosed that the Board had suspended Dr. Carrington due to his failure to submit timely reports. At the Commission's September 24, 2002 meeting, Ms. Graves admitted the aforementioned disclosure, but denied that she disclosed information to the public that would be considered confidential under the OPMA.

The Commission notes that the legislative intent underlying the OPMA was for the Act to be liberally construed to effectuate the public policy in favor of open public meetings. N.J.S.A. 10:4-21. As a result, the courts and Commissioner of Education have often declared private final actions of a board to be violative of the OPMA.³ However, the Commission acknowledges that a public body may exclude the public from discussion of any matter involving the employment, evaluation of performance, promotion or disciplining of any prospective public officer or employee or current public officer or employee, employed or appointed by the public body, unless the individual whose rights could be adversely affected requests in writing that such matter be discussed at a public meeting. N.J.S.A. 10:4-12(b)(8).

In *Toplansky v. Bd. of Ed. of the Borough of Kenilworth*, 1989 S.L.D. 2708, the board read aloud a letter of reprimand in public session. The Commissioner of Education held that the personnel exception to the Open Public Meetings Act, N.J.S.A. 10:4-12(b) prohibits the public disclosure of discipline of a public employee, because safeguarding individual privacy is a significant consideration in resolving personnel matters that come before a board of education.

³ *Gannett Satellite Infor. Network v. Manville Bd. of Ed.*, 201 N.J. Super. 65, 69-70 (App. Div. 1984) and *Donnelly v. Maurice River Bd. of Ed.*, 1980 S.L.D., (slip op. at 4), (May 8)(taking a final vote in closed session to fill a board vacancy was found to be a violation of the Act.) *Buff v. North Bergen Bd. of Ed.*, 1981 S.L.D. 340, 353, voting in closed session to authorize the superintendent to terminate a teaching staff member was no action at all for the purpose of terminating the teacher's contract. *Mann v. Cherry Hill Bd. of Ed.*, 1987 S.L.D. 1506, 1519-1520, *aff'd* 1987 S.L.D. 1522 (private and final board action directing the administration to formulate and implement a reduction in force policy and later final and private board action permitting the administration to conduct a RIF also violated the Act.)

The Commission finds that the action taken by the Board in the present case can be distinguished from *Toplansky*. In *Toplansky*, the board of education merely voted to place a letter of reprimand in the personnel file of an employee. The Pleasantville Board voted to place the superintendent of schools on administrative leave, which necessitated the appointment of an interim superintendent. The Commission finds that an action of such magnitude affects not only the superintendent personally, but impacts upon the administration of the entire school district. The Commission further notes that Dr. Carrington's attorney specifically requested that the final decision of the Board be reported in public session, which is his right under N.J.S.A. 10:4-12(b)(8). The Commission finds that public disclosure in such circumstances is precisely the intent of OPMA. For the foregoing reasons, the Commission finds that the Board's action warranted public disclosure and concludes that there is no probable cause to credit the allegation that Ms. Graves' disclosure of the information constituted private action that could compromise the Board in violation of N.J.S.A. 18A:12-24.1(e).

Complainant also alleges that Ms. Graves violated N.J.S.A. 18A:12-24(g), which provides:

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.

As set forth above, the complainant must prove that Ms. Graves disclosed confidential information that injured certain individuals or the schools and misinformed the public regarding the information disclosed.

The Commission has determined that Ms. Graves' disclosure was consistent with the legislative intent underlying OPMA and related case law. It therefore finds that there is insufficient information to demonstrate that her disclosure that Dr. Carrington had been suspended was a disclosure of information that should have remained confidential. The Commission further notes that Dr. Carrington requested that the Board's vote to place him on administrative leave be disclosed in public session. Thus, the Commission finds that Ms. Graves' disclosure was consistent with Dr. Carrington's request and did not present an injury to him. Regarding any injury to Dr. Carrington, the Commission finds it significant that Dr. Carrington testified on behalf of Ms. Graves.

Regarding the allegation that Ms. Graves did not provide accurate information, the Commission notes the discrepancy between Ms. Graves' disclosure that Dr. Carrington had been "suspended" from his position and the official minutes of the Board's May 14, 2002 meeting indicating that the Board voted to place Dr. Carrington on "administrative leave." However, based on the testimony and information provided by the parties, the Commission finds the terms "administrative leave" and "suspension" to be synonymous in the present matter in that they both resulted in his absence and the

need to appoint an interim superintendent while he was prevented from serving as superintendent.

For the foregoing reasons, the Commission cannot conclude that Ms. Graves' disclosure constitutes a failure to hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or a failure to provide accurate information, when there is insufficient information to show that Ms. Graves' disclosure was either confidential or inaccurate. For the foregoing reasons, the Commission finds that there is no probable cause to credit the allegation that Ms. Graves violated N.J.S.A. 18A:12-24.1(g).

Next, Complainant urges the Commission to find that Ms. Graves violated N.J.S.A. 18A:12-24.1(i), which requires a board member to support and protect school personnel in proper performance of their duties.

Under N.J.S.A. 18A:12-24.1(i), the complainant must prove that Ms. Graves failed to support and protect Dr. Carrington in the proper performance of his duties. Complainant sets forth that Ms. Graves encouraged members of the public to attend a special meeting of the Board to protest the Board's decision to suspend the superintendent. Although Complainant alleges that Ms. Graves encouraged members of the community to protest the Board decision regarding the superintendent, insufficient information has been provided to the Commission to demonstrate that a protest occurred or was even organized. More importantly, there is no information to show that such conduct constituted failure to support school personnel when it actually would be helpful to such personnel. Dr. Carrington's appearance as a witness for Ms. Graves contradicts a finding that her conduct was not supportive of him. Therefore, the Commission must find that there is no probable cause to credit the allegation that Ms. Graves violated N.J.S.A. 18A:12-24.1(i).

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegation that Ms. Graves violated the School Ethics Act and dismisses the complaint against her.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C23-02

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, testimony and the information obtained from its investigation; and

Whereas, at its meeting of October 29, 2002, the Commission found no probable cause to credit the allegations that Ms. Graves violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against her; and

Whereas, the Commission requested that its staff prepare a decision consistent with the aforementioned conclusion; and

Whereas, the Commission has reviewed the decision and agrees with the decision;

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

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on January 28, 2003.

Lisa James-Beavers
Executive Director

