

YASCHE GLASS, et al.	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
v.	:	
	:	
AUDRA POLITE-CABALLERO,	:	Docket No. C36-04
SCHOMBURG CHARTER SCHOOL	:	
BOARD OF TRUSTEES,	:	
HUDSON COUNTY	:	
	:	DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed on May 25, 2004, by Yasche Glass, Rebecca Posey, Crencenthia Brown, and Sheila Wilson-Tamborra alleging that respondent, Audra Polite-Caballero, a member of the Schomburg Charter School Board of Trustees (Board), failed to attend board member training as required by N.J.S.A. 18A:12-33, and that she violated N.J.S.A. 18A:12-24(b) of the School Ethics Act (Act), and N.J.S.A. 18A:12-24.1(d) of the Code of Ethics for School Board Members in the School Ethics Act by appointing a certified administrator as the acting Chief School Administrator at an emergency meeting on Monday May 24, 2004, that was not publicized. The respondent answered the complaint and certified that she attended board member training. Respondent also answered that the Board president asked a certified administrator to serve as acting Chief School Administrator because the Chief School Administrator had to go out of town for a few days for a family emergency. She said that this action was ratified by the Board at the June meeting.

On August 3, 2004, the Commission notified the parties that the complaint had been placed on the agenda for the August 24, 2004 Commission meeting. Respondent and her attorney, Tonya M. Smith, Esq., attended the meeting and respondent testified before the Commission. Complainants advised the Commission that they were unable to attend the meeting. At its public meeting on August 24, 2004, the Commission dismissed the allegation that respondent did not attend training as required pursuant to N.J.S.A. 18A:12-33. The Commission also voted to find no probable cause to credit the allegations that the respondent violated either the Act or the Code of Ethics for School Board Members and dismissed the complaint. The Commission adopted this decision at its meeting of September 30, 2004.

FACTS

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

At all times relevant to the complaint, the respondent was a member of the Board. Respondent attended training in January 2002. At a Board meeting on May 18, 2004, Karen Jones, the Chief School Administrator, presented a resolution to the Board for approval, which provided a list of teachers that would be in charge of the charter school in the event of Ms. Jones' absence. The Board raised concerns that properly certificated staff needed to be in charge and the resolution was tabled. The Board president asked Mrs. Hatchett to serve as acting Chief School Administrator because Ms. Jones was absent due to a family emergency. Mrs. Hatchett served as acting Chief School Administrator for the week beginning May 24, 2004. At the next regularly scheduled Board meeting after her appointment, a resolution was approved by the Board, which ratified Mrs. Hatchett's appointment and authorized payment for her services. The Board did not hold an emergency meeting on May 24, 2004, to appoint Mrs. Hatchett.

ANALYSIS

Complainants allege that respondent did not fulfill the requirement of N.J.S.A. 18A:12-33 by attending board member training. However, respondent did attend training in January 2002. Therefore, the Commission finds no probable cause to credit this allegation.

Complainants also allege that respondent violated N.J.S.A. 18A:12-24(b) of the School Ethics Act and N.J.S.A. 18A:12-24.1(d) of the Code of Ethics for School Board Members in the School Ethics Act by appointing Mrs. Hatchett as the acting Chief School Administrator at an emergency meeting on Monday, May 24, 2004, that was not publicized.

N.J.S.A. 18A:12-24(b) provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

At the outset, the Commission notes that Mrs. Hatchett was not appointed acting Chief School Administrator at an emergency meeting on Monday, May 24, 2004. The Board did not hold an emergency meeting on that date. To find a violation of subsection 24(b), the Commission must find that the respondent used her official position to secure unwarranted employment for Mrs. Hatchett. There is no evidence to show that Mrs. Hatchett's employment as acting Chief School Administrator was unwarranted. She was certified as a principal and was qualified to serve as acting Chief School Administrator. Furthermore, the appointment was made due to an emergency created by Ms. Jones' notification, on a Sunday night, that she would not be in school the next morning. Therefore, the Commission cannot find that respondent used her official position to secure unwarranted employment for Mrs. Hatchett.

N.J.S.A. 18A:12-24.1(d) provides:

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.

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. The facts show that the Board did not hold an emergency meeting on May 24, 2004. Mrs. Hatchett was asked by the Board president to serve as acting Chief School Administrator because Ms. Jones was absent due to a family emergency. That action was later ratified by the Board at the June meeting. There is no evidence that respondent engaged in any activity that could be considered administering the schools. Therefore, the Commission cannot find that respondent failed to carry out her responsibility, not to administer the schools, but to see that they are well run.

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 used her official position to secure unwarranted employment for Mrs. Hatchett in violation of N.J.S.A. 18A:12-24(b).

DECISION

For the reasons expressed above, the Commission finds no probable cause to credit the allegations that respondent violated the Act or 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 – C36-04

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.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on September 30, 2004.

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C35-04