

LEO ALSTON,	:	
V.	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
JAMES DUDA, Principal, GEORGE SHARP,	:	SEC Docket No.: C42-02
Superintendent, and EACH MEMBER of the	:	
DELRAN BOARD OF EDUCATION,	:	DECISION
<i>BURLINGTON COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint alleging that Delran Middle School Principal James Duda, Superintendent Dr. George Sharp and each member of the Delran Township Board of Education (Board) violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., in connection with their handling of the a United States Department of Education (USDOE) civil rights complaint filed by the complainant. The complaint alleges that the respondents allowed the Board attorney and USDOE representatives to access his child’s pupil file without his consent and misrepresented the contents of that file and the nature of his USDOE complaint to the parents of Delran Middle School students in violation of N.J.S.A. 18A:12-24(b) and (f) and N.J.S.A. 18A:12-24.1(a), (b) and (g) of the Code of Ethics for School Board members.

The respondents filed answers to the complaint setting forth first, that the Commission has no jurisdiction over this matter since it a pupil records issue and second, that the respondents took appropriate action in relation to the USDOE complaint and engaged in no conduct that violated the School Ethics Act.

The parties were invited to attend the Commission’s meeting on January 28, 2002, at which their case was discussed. Board Attorney John T. Barbour appeared on behalf of the respondents. Complainant Leo Alston appeared without counsel. At its public meeting on that date, the Commission voted to find no probable cause to credit the allegations in the complaint. The Commission adopted this decision at its meeting of May 1, 2003.

FACTS

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

At all times relevant to this complaint, the respondents were employees or members of the Delran Township Board of Education.

On April 7, 2001, the complainant filed a civil rights complaint with the United States Department of Education against the Board for incidents regarding his child. The USDOE undertook an investigation of his complaint in October 2001. The superintendent for the Delran Township School District provided the pupil file of complainant's son to the Board attorney.

The Board's attorney is a part-time employee of the Delran School District and as such is appointed by the Board and compensated solely on a fixed annual salary for providing legal advice to the Board. The Board pays him no additional fees for the services that he renders. He has a private law firm as well.

In connection with the investigation, Mr. James Duda, Delran Middle School Principal, allowed USDOE representatives to view the pupil records of complainant's child without the complainant's consent. Although complainant alleges that some of the correspondence regarding the civil rights complaint was not included when the file was provided to USDOE representatives, the USDOE issued a decision dated March 20, 2002 indicating that the correspondence referenced by the complainant was reviewed in the course of its investigation.

On January 2, 2002, the Board attorney drafted a letter to parents of Delran Middle School students advising them that a complaint had been filed and the USDOE investigator wished to interview the students, but that he would have to acquire their permission first. He described the nature of the complaint and asked that they respond whether they did or did not give their permission.

ANALYSIS

Complainant first alleges that the principal of the middle school, Mr. Duda, violated N.J.S.A. 18A:12-24(b) by sharing his child's pupil records with USDOE representatives and persons outside the school without his consent and by editing those records so that they did not include various incidents of harassment documented by complainant. Complainant urges the Commission to find that, as custodian of the records, the principal used his position to gain an unwarranted privilege or advantage in the investigation for himself or others. Mr. Duda denies that he allowed any unauthorized parties to have access to the records in question or did anything to gain an unwarranted privilege or advantage for himself or others.

Assuming the facts set forth by complainant to be true, the Commission cannot find that Mr. Duda used his position to secure unwarranted privileges for himself or others based on the information before it. Mr. Duda was complying with a May 8, 2001 notice of complaint from the USDOE that required the Board to permit access to all sources of information that may be pertinent to ascertain compliance with Title VI of the Civil Rights Act of 1964. The notice sets forth, “Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this part.” The USDOE’s decision, which issued in March 2002 indicates that the USDOE reviewed all of the documents referenced by complainant that he said should have been part of his child’s pupil file. The only issue before the Commission is whether, in allowing access to the records, Mr. Duda used his position to secure unwarranted privileges or advantages for himself or others. Based on the facts before it, the Commission cannot draw that conclusion and therefore, finds no probable cause to credit the allegations that Mr. Duda violated N.J.S.A. 18A:12-24(b) in conjunction with the records in question.

The complainant next alleges that Superintendent Dr. George Sharp allowed the Board attorney access to his child’s pupil file to secure a financial gain for the Board attorney, which he alleges is a business organization, in violation N.J.S.A. 18A:12-24(f), which provides:

No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated.

As set forth above, the Commission determined that the Board’s attorney is appointed by the Board as an employee of the Delran School District. As such, he is compensated solely on a fixed annual salary for providing legal advice to the Board. He is paid no additional fees for the services that he renders. Pursuant to N.J.S.A. 18A:12-23, the School Ethics Act defines a business as any corporation, partnership, firm, enterprise, franchise, association, trust, sole proprietorship, union, political organization, or other legal entity. Although Mr. Barbour has a law firm as indicated by his stationery on which he sent the letter to parents, he is an employee of the District. Because the Board’s attorney receives no extra fees as a direct employee of the District, he is not a business organization with which Dr. Sharp is associated. Therefore, the Commission finds this section to be inapplicable to the present facts and finds no probable cause to credit the allegation that Dr. Sharp acted to secure a financial gain for the attorney in violation of N.J.S.A. 18A:12-24(f).

Complainant next alleges that the nine members of the Board secured an unwarranted privilege in violation of N.J.S.A. 18A:12-24(b) and used their office to secure financial gain for the Board attorney in violation of N.J.S.A. 18A:12-24(f) in connection with the letter the Board attorney sent to parents of Delran Middle School

students asking their permission to be interviewed by the USDOE investigator. Complainant alleges that the attorney used the Board member's position to obtain a financial gain by saying that he is representing the Board in the letter. Complainant argues that the Board members must be held accountable for his actions. Assuming, for the sake of argument, that there was wording in the letter that was biased in favor of the Board's position, the Commission cannot base a finding against the Board members on the conduct of the Board attorney. The Commission has no information from which to conclude that the respondent Board members used their position to secure unwarranted privileges or used their position to secure financial gain for the attorney. The Commission therefore finds no probable cause to credit the allegations that the respondent Board members violated N.J.S.A. 18A:12-24(b) or (f).

Complainant next alleges that the Board members violated Code of Ethics for Board Members, N.J.S.A. 18A:12-24.1(a), (b) and (g). Complainant admits that the three Code of Ethics sections cited were not directly violated by the Board members, but by the Board attorney. However, he alleges that by not taking action to uphold their Code, which he says would include giving notice of the Board attorney's conduct to him and his wife as the parents of the child, the USDOE and possibly the Attorney Ethics Board, the Board members are in direct violation of the Code.

N.J.S.A. 18A:12-24.1(a) requires that board members uphold and enforce all laws, rules and regulations of the State Board of Education. The Commission acknowledges that a failure to act may sometimes give rise to such a Code of Ethics violation. However, the Commission would have to determine a clear duty to act on the part of the Board members. The Commission is without sufficient information from which to conclude that the Board members were required to take any action to uphold or enforce a State Board law, rule or regulation as a result of the Board member's letter to the parents.

N.J.S.A. 18A:12-24.1(b) requires that Board members make decisions in terms of the educational welfare of children and maintain schools that meet the individual needs of all children regardless of their ability, race, etc. Complainant has not set forth any facts that indicate that the respondent Board members failed to abide by this section of the Code. The Commission cannot find Board members vicariously liable for the action of the Board's attorney.

N.J.S.A. 18A:12-24.1(g) requires board members to hold matters confidential when required and to provide accurate information when disclosure is permitted. If the Board attorney failed to provide accurate information as alleged, the Commission cannot attribute the conduct to the respondent Board members. The Board was advised of a complaint by the USDOE. As most superintendents would do, Dr. Sharp forwarded the complaint to the Board attorney for handling. Even if the Board attorney sent a letter to parents that complainant perceived as biased, the Commission cannot attribute that act to the respondent Board members. Complainant has not set forth any instance of the respondent Board members themselves revealing confidential information or providing inaccurate information.

For all the foregoing reasons, the Commission finds no probable cause to credit the allegations that the respondent Board members violated N.J.S.A. 18A:12-24.1(a), (b) or (g) of the Code of Ethics for School Board Members.

At the Commission's meeting, the complainant raised an additional allegation that respondent Mr. Duda violated N.J.S.A. 18A:12-24(c), which provides:

No school official shall act in his official capacity in any matter in which he, a member of his immediate family, or a business organization in which he holds an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family.

Although all allegations should be made in the complaint or an amendment to the complaint, the Commission will nonetheless address this allegation. Complainant argued before the Commission that Mr. Duda should have recused himself from his duties as custodian of the pupil records in light of his involvement with the circumstances of the case pending before the USDOE. Since there is clearly no financial involvement involving the records in question, the issue is whether Mr. Duda had a personal involvement with the pupil records that constituted a benefit to him thus requiring his recusal. The Commission does not discern such an involvement with the records that is in any way personal. Further, the Commission does not have information to suggest that Mr. Duda could acquire any benefit from serving as custodian of pupil records. The Commission was unable to find any conflict of interest between Mr. Duda's duties as principal and his duties as custodian of pupil records for the middle school. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Duda violated N.J.S.A. 18A:12-24(c).

DECISION

For the foregoing reasons, the School Ethics Commission finds no probable cause to credit the allegations and dismisses the complaint against the respondents.

This decision constitutes final agency action and thus may be directly appealed to the Appellate Division of the Superior Court.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C42-02

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof and the testimony before it; and

Whereas, at its meeting of January 28, 2003, the Commission found no probable cause to credit the allegations that the respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against them; 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 on May 1, 2003 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 decision was adopted by the School Ethics Commission at its public meeting on May 1, 2003.

Lisa James-Beavers
Executive Director