

grant the respondents' Motion to Dismiss the complainant's allegation that the respondents violated N.J.S.A. 18A:12-24.1(f) and to deny the respondents' Motion to Dismiss the complainant's allegations that the respondents violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members. The Commission notified the parties of its decision and accorded the respondent 20 days to submit an answer to the complainant's allegations that the respondents violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members. The respondents, through their attorney, filed an answer on May 23, 2008. The parties were invited to attend and provide testimony at the Commission's September 23, 2008 meeting. The parties did not attend the hearing; however the respondents' attorney, Douglas Sanchez, Esq., attended the meeting and made a statement before the Commission. During the public portion of the September 23, 2008 meeting, the Commission found that the complainant failed to factually prove that the respondents violated N.J.S.A. 18A:12-24.1(e) and (g) and dismissed the matters.

THE PLEADINGS ¹

By way of background, there is no dispute on the record that, at all times relevant to these complaints, Frank Madden and Dr. Joseph Scarpa were members of the Board.

The complainant initially alleges that on July 13, 2005 the Board met to interview four final candidates for the position of principal and after the candidates were interviewed the Board went into executive session to discuss the interviews and make a decision on hiring a new principal. (Complaints at paragraph 1)

The complainant further alleges that, after a discussion in executive session, the Board selected its candidate and Geraldine Pierro was not chosen. On October 12, 2005 Ms. Pierro, a teacher in the district, filed a lawsuit claiming age and sex discrimination. (Id. at paragraph 2) The complainant alleges that the Board attorney visited the Board and warned all members not to discuss executive session issues outside the proper setting. (Id., at paragraph 3) Pursuant to the related matters filed in Superior Court, Ms. Pierro indicated in her answer to interrogatories that she had conversations with both respondents regarding the July 13, 2005 executive session. (Id. at paragraph 4) The complainant alleges that these conversations violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members. A set of interrogatories and answers to the interrogatories from the civil lawsuit were appended to both complaints.

The respondents admit that on July 13, 2005 the Board met to interview four final candidates for the position of principal and after the candidates were interviewed the Board went into executive session to discuss the interviews and make a decision on hiring a new principal. (Answers at paragraph 1) The respondents also admit that the Board voted to hire another candidate and did not vote to hire Ms. Pierro. (Id., at paragraph 2) The respondents admit that the Board attorney visited the Board and warned all members not to discuss executive session issues outside the proper setting. (Id., at paragraph 3)

¹ The allegations listed do not include those that were dismissed by the Commission at its April 1, 2008 meeting.

The respondents admit that the interrogatories reference a general conversation between Ms. Pierro and the respondents relative to the Board's vote for principal; however, the respondents note that in Ms. Pierro sworn statement she avers that "...she did not speak with both Respondents, but, rather spoke with 'either/or.'" (Id., at paragraph 4) The respondents deny that they violated N.J.S.A. 18A:12-24.1(e) and (g). (Id., at paragraph 4)

EVIDENCE

In making its final determination in this matter, the Commission considered the following exhibits that were brought to the record as attachments to the complaints and the Motion to Dismiss:

- The complaint and jury demand in the civil lawsuit;
- Ms. Pierro's answers to interrogatories in the civil action including the documents appended to the interrogatories;
- The October 30, 2006 and November 7, 2006 depositions of Ms. Pierro in the civil action;
- The November 9, 2006 and March 23, 2007 depositions of Dr. Scarpa in the civil action; and
- The November 21, 2006 deposition of Frank Madden in the civil action.

FINDINGS OF FACT

The Commission found the following facts based on the pleadings and documents on the record.

1. Both respondents Madden and Scarpa were members of the Board at all times relevant to the complaint.
2. Geraldine Pierro was a teacher in the district and was a candidate for the position of principal.
3. On July 13, 2005, the Board met to interview four final candidates for the position of principal, including Ms. Pierro.
4. After the candidates were interviewed, the Board went into executive session to discuss the interviews and make a decision on hiring a new principal. Ms. Pierro was not chosen for the principal position.
5. Subsequently, Ms. Pierro filed a civil lawsuit alleging discrimination against the Board and four members of the Board.
6. In Ms. Pierro's October 30 2006 deposition, in response to questions as to who told her what had happened during the executive session, Ms. Pierro indicated that it was

“Either Dr Scarpa or Frank Madden.” (Ms. Pierro’s October 30, 2006 deposition, page 21)

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members. The remaining allegations before the Commission were that the respondents violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members as set forth below:

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.

g. 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.

Here, the complainant provides no evidence to show that the respondents failed to recognize that authority rests with the Board or that the respondents made personal promises or took private action that may have compromised the Board. Rather the complainant relies solely on Ms. Pierro’s answers to the interrogatories and her depositions in the civil action which do not provide conclusive evidence that either of the respondents took private action that may have compromised the Board. Similarly, those documents do not provide conclusive evidence that either of the respondents failed to hold confidential all matters pertaining to the schools which, if needlessly disclosed, would injure individuals or the schools. It is apparent from the interrogatories and depositions that Ms. Pierro could not unambiguously identify who provided her with information from the executive session. Whereas, both respondents unequivocally deny having a conversation with Ms. Pierro regarding what transpired during the executive session.

DECISION

The Commission finds that the complainant failed to prove factually that the respondents violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members. Consequently, the complaint is dismissed. 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 – C40-06 & C41-06

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

Whereas, at its meeting on April 22, 2008, the Commission granted the respondent's Motion to Dismiss the complainant's allegation that the Mr. Madden and Dr. Scarpa violated N.J.S.A. 18A:12-24.1(f), of the School Ethics Act; and

Whereas, at its meeting on September 23, 2008, the Commission dismissed the complainant's allegations that Mr. Madden and Dr. Scarpa violated N.J.S.A. 18A:12-24.1(e) and (g) of the School Ethics Act; and

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

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as it decision in this matter and directs it 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 October 27, 2008.

Joanne Boyle
Executive Director