

JOHN O'BREZA, MARSHA PECKER,	:	
EDWARD CANZANESE, BARRY	:	BEFORE THE SCHOOL
ADLER, ROBERT SWEENEY and	:	ETHICS COMMISSION
ELIZABETH McLEESTER	:	
	:	
v.	:	
	:	Docket No. C01-06
SUSAN BADARACCO,	:	
CHERRY HILL TOWNSHIP	:	
BOARD OF EDUCATION	:	DECISION
CAMDEN COUNTY	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on December 15, 2005 by John O’Breza, Marsha Pecker, Edward Canzanese, Barry Adler, Robert Sweeney and Elizabeth McLeester who are all employed as administrators in the Cherry Hill Township School District (District). The complainants allege that Susan Badaracco, a member of the Cherry Hill Township Board of Education (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21, et seq. The complainants specifically allege that the respondent violated N.J.S.A. 18A:12-24.1(d), (e), (f) (g), (h) and (i) of the Code of Ethics for School Board Members when she had various communications, including e-mails, with the superintendent and the principal of Cherry Hill High School West (West) regarding the math department at West.

For good cause shown and with the consent of the complainants, the Commission granted the respondent an extension of time to file a response. On February 24, 2006, the respondent, through her attorney, Joseph R. Lang, Esquire, filed an answer to the complaint wherein she admitted having conversations with the superintendent and the principal, including an e-mail to the principal, regarding her concerns with the math department. However, the respondent maintains that all communications were in her capacity as a parent of a high school student who attended West.

The Commission invited the parties to attend its April 25, 2006 meeting to present witnesses and testimony, but did not require that they be present. The Commission advised the parties that it would make a determination as to whether the Code of Ethics for School Board Members was violated. Due to a schedule conflict with respondent’s attorney the hearing was adjourned to the May 23, 2006 Commission meeting. Due to a scheduling conflict with Commission members, the meeting was postponed until June 1, 2006. Complainants Marsha Pecker, Edward Canzanese and Elizabeth McLeester and their attorney Robert Schwartz, Esq. attended the hearing. The respondent attended the hearing with her attorney Joseph Lang, Esq. and witnesses Ann Einhorn, Tim Brennan, Mark Pinzur, George Munyan and Cindy Trubin. At the outset, the Commission discussed with both attorneys the fact that Mr. Schwartz failed to advise the Commission or the opposing attorney of his appearance, the appearance of witnesses and the presentation of new documentation. Mr. Lang objected to the use of the new documents

and the testimony of the witnesses. The Commission decided that Mr. Schwartz could present the witnesses and the Commission would allow Mr. Lang time before the cross examination of each witness. The Commission also decided that no new documentation could be submitted. After presentation of the complainants' testimony, Mr. Lang made a motion to dismiss the complaint because the complainants failed to meet their burden of proof. During the public portion of the June 1, 2006 meeting, the Commission voted to grant the motion to dismiss the complaint.

FACTS

The Commission was able to discern the following facts based on the pleadings, testimony and the documents submitted. In considering whether to grant a motion to dismiss, the Commission reviews the facts in the light most favorable to the complainant.

The respondent was elected to the Board in April 2005 and is a member of the Curriculum and Instruction Committee. The respondent is also the parent of a student who attends West. Ms. Pecker has worked for the District for 28 years and she is an assistant principal and math supervisor. Her immediate supervisor is the assistant superintendent. Mr. O'Breza is the principal of Cherry Hill High School East. Mr. Adler is the principal of Knight Elementary School. Mr. Sweeney is principal of Horace Mann Elementary School. Mr. Canzanese is principal of Rosa Intermediate School.

Sometime in June 2005, the respondent met with the assistant superintendent to discuss her concerns regarding her daughter's performance in math. During that meeting, respondent admits that, in response to a question from the assistant superintendent, she shared her concerns regarding the math department. She addressed the issue of several math teachers leaving the District in the last ten months, comments from math teachers of an oppressive atmosphere, and letters from departing math teachers indicating that the reason for their departure was due to the math department's supervisor.

The respondent also admitted meeting with the principal of West and sharing her concerns as a parent regarding the math department that her daughter was entering and the fact that the department had lost ten teachers in ten months. Respondent also admits that she sent an e-mail to the West principal in which she asked him to look into the situation in the math department and to have a meeting with the teachers.

Ms. Pecker testified that the assistant superintendent told her that the respondent wanted a certain math teacher reassigned.

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of proving factually any violations of the Code of Ethics for School Board Members.

The complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(d), (e), (f), (g), (h), (i) and (j) of the Code of Ethics for School Board Members when she met with the assistant superintendent and discussed the math department and Ms. Pecker's supervision of the math department, when she told the assistant superintendent that a certain math teacher should be reassigned to teach Statistics, when she discussed the morale of the West math department with the principal of West, and suggested that a certain math teacher should be reassigned, and when she sent an e-mail to the West principal regarding the math department stating that the principal should meet with the teachers. The Commission will address each subsection in turn below.

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.

The Commission can find no factual evidence to prove that the respondent attempted to administer the schools in her conversations with the assistant superintendent and the principal of West and in her e-mail to the principal of West. The respondent admits that she met with both the superintendent and the principal of West to discuss her daughter's performance and, in that conversation, she raised concerns regarding the math department. While the complainants allege that the respondent spoke to both the assistant superintendent and the principal of West regarding the transfer of a certain math teacher, the complainants failed to provide any factual evidence to prove the allegation. The complainants presented hearsay evidence; however, hearsay alone without a residuum of legally competent evidence cannot sustain a violation of the Code of Ethics for School Board Members. See N.J.A.C. 1:1-15.5(b).

In viewing the facts in the light most favorable to the complainant, the Commission can find no factual evidence that the respondent attempted to administer the schools. Therefore, the Commission grants the motion to dismiss the allegations that the respondent violated N.J.S.A. 18A:12-24.1(d).

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

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 a violation of N.J.S.A. 18A:12-24.1(e), the complainants argue that, when the respondent spoke with the superintendent and the principal of West, she failed to recognize that authority rests with the Board. However, when the respondent spoke to the superintendent and the principal of West, it was unrefuted that she approached the administrators to discuss her daughter who was a West student. The details of the conversation were not provided by any other party to the conversation. Therefore, the

complainants have provided no factual evidence to prove that the respondent failed to recognize that authority rests with the Board.

In viewing the facts in the light most favorable to the complainant, the Commission can find no factual evidence that the respondent failed to recognize that authority rests with the Board. Therefore, the Commission grants the motion to dismiss the allegations that the respondent violated N.J.S.A. 18A:12-24.1(e).

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

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

The complainants make no arguments as to why the respondent's conversations and e-mail violate N.J.S.A. 18A:12-24.1(f). The complainant offers no factual evidence to substantiate a violation of N.J.S.A. 18A:12-24.1(f). Therefore, the Commission cannot determine how N.J.S.A. 18A:12-24.1(f) would apply to the facts presented by the complainant.

In viewing the facts in the light most favorable to the complainant, the Commission can find no factual evidence that the respondent surrendered her independent judgment to special interest or partisan political groups or used the schools for personal gain or for the gain of friends. Therefore, the Commission grants the motion to dismiss the allegations that the respondent violated N.J.S.A. 18A:12-24.1(f).

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

The complainants argue that the respondent has breached issues of confidentiality. However, the complainants have provided no factual evidence to show what confidential matter was disclosed when the respondent spoke with the superintendent and the principal of West regarding her concerns with the math department in light of her daughter's attendance at West. The complainants have also failed to provide any evidence to show that an individual or the schools were needlessly injured by the respondent's alleged disclosure of confidential information. The Commission is unable to find an allegation of any matter that the respondent should have kept confidential.

In viewing the facts in the light most favorable to the complainant, the Commission can find no factual evidence that the respondent failed to hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure

individuals or the schools. Therefore, the Commission grants the motion to dismiss the allegations that the respondent violated N.J.S.A. 18A:12-24.1(g).

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

I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief school administrator.

The complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(h) because she circumvented the authority of the chief school administrator with respect to personnel matters. In order to prove a violation of N.J.S.A. 18A:12-24.1(h), the complainants argue that the respondent told both the assistant superintendent and the principal of West that a certain math teacher should be reassigned. Ms. Pecker testified that the assistant superintendent told her that the respondent wanted a certain math teacher reassigned. However, the assistant superintendent did not testify. Therefore, the complainants have presented no factual evidence to prove that the respondent discussed the reassignment of any math teacher. As noted above, hearsay alone without some residuum of competent evidence is insufficient to prove a violation of the Code of Ethics for School Board Members.

In viewing the facts in the light most favorable to the complainant, the Commission can find no factual evidence that the respondent failed to appoint the best qualified personnel after consideration of the recommendation of the chief school administrator. Therefore, the Commission grants the motion to dismiss the allegations that the respondent violated N.J.S.A. 18A:12-24.1(h).

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

I will support and protect school personnel in proper performance of their duties.

To prove a violation of N.J.S.A. 18A:12-24.1(i), complainants argue that, by having the conversations with the administrators, the respondent has failed to support and protect school personnel in the proper performance of their duties. The Commission cannot determine how respondent's conversation with the superintendent and the principal of West failed to support and protect school personnel in the proper performance of their duties. The Commission first notes that the respondent engaged in conversations seeking guidance as to her daughter. The Commission then notes that the complainants failed to provide any factual evidence to show how these conversations failed to support and protect school personnel in proper performance of their duties.

In viewing the facts in the light most favorable to the complainant, the Commission can find no factual evidence that the respondent failed to support and protect school personnel in proper performance of their duties. Therefore, the Commission grants the motion to dismiss the allegations that the respondent violated N.J.S.A. 18A:12-24.1(i).

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

I will refer all complaints to the chief school administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

To prove a violation of N.J.S.A. 18A:12-24.1(j), the complainants allege that the respondent did not refer her complaints to the chief school administrative officer, but went directly to the assistant superintendent and the principal of West with her concerns regarding the math department. The Commission notes that there was no competent evidence to refute that respondent went to the assistant superintendent and the principal of West with concerns about her daughter's performance in math. Neither administrator testified. Respondent went to them to discuss her concerns regarding the education of her daughter. The respondent's concerns were specifically related to her daughter's education.

In viewing the facts in the light most favorable to the complainant, the Commission can find no factual evidence that the respondent failed to refer all complaints to the chief school administrator officer and that the respondent failed to act on the complaints at public meetings only after failure of an administrative solution. Therefore, the Commission grants the motion to dismiss the allegations that the respondent violated N.J.S.A. 18A:12-24.1(j).

DECISION

For the reasons expressed above, the Commission grants the respondent's motion to dismiss the complaint.

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 – C01-06

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

Whereas, the Commission grants the respondent's motion to dismiss the complaint; 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 grant the respondent's motion 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 July 25, 2006.

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C01-06