

process for conducting a hearing for complaints such as this one, that allege a violation of only the Code of Ethics for School Board Members, had changed. The complainant was notified that, if he still wished to proceed with the complaint, the Commission would hold a *de novo* hearing in accordance with N.J.A.C. 1:1, to determine if a violation of the Code of Ethics for School Board Members had occurred, and, if it determined that a violation had occurred, it will then determine what sanction to recommend to the Commissioner of Education. The complainant informed the Commission that he wished to proceed with the complaint.

Thereafter, the parties were notified that the matter was rescheduled for December 18, 2007. The complainant attended the meeting; the respondent did not. Testimony was heard, as set forth below. During the public portion of the meeting, and recognizing that the December 18, 2007 hearing was *de novo*, the Commission voted to find that the respondent violated N.J.S.A. 18A:12-24.1(e) and (i), and voted to recommend a penalty of censure. The Commission also found that the complaint was not frivolous.

THE PLEADINGS

The complainant asserts that he witnessed the respondent, Ms. Grimsley, assault the Superintendent, Ms. Darlene Roberto, at the conclusion of the March 1, 2004 hearing. The complainant alleges that Ms. Grimsley's verbal abuse and hostile actions caused the Superintendent to fear imminent bodily harm. The complainant contends that Ms. Grimsley pushed her way toward Ms. Roberto while Mr. Aubourg, a board member, escorted Ms. Roberto to her car so that she could leave the scene. He further alleges that the actions of Ms. Grimsley, according to the complainant, were totally unprofessional, lacked proper decorum, and violated the expected standards of a public official. He alleges that this behavior was a violation of N.J.S.A. 18A:12-24.1(e) and (i). (Complaint at page 1)

In her answer, Ms. Grimsley denies the allegations in the complaint, and attributes the allegations to the fact that she was selected as Board President. Ms. Grimsley affirms that she did not assault the Superintendent. Rather, she avers that at the March 1, 2004 meeting, the Board considered an extension of the Superintendent's contract and/or a salary increase for her. The respondent states, "The Superintendent and certain members of the Board, including the Complainant herein, disagreed with my rationale that prior to voting on the issue of the Superintendent's contract we should evaluate her performance." (Answer at page 1, paragraph 3) The respondent argues that her reasons for requesting an evaluation were supported in law.

The respondent further affirms:

Aside from making various comments on the record, the Superintendent approached me after the meeting to express her disdain for my position. She did so in a threatening manner causing me to fear that she would physically

assault me in retaliation for the manner in which I voted and the statements that I made on the record. At no time did I assault her or threaten her. Nor did I ever intend to do so. (Id. at paragraph 4)

As to the complainant's allegation that she violated N.J.S.A. 18A:12-24.1(e), the respondent reasons that her "suggestion during the vote that sparked this Complaint was a general statement of the law that the Board must follow." (Answer at page 2, paragraph 6) The respondent further contends that the complainant fails to allege any facts that would demonstrate that she made personal promises or took private action that may compromise the Board. Rather, she asserts that "[t]he exchanges between the Superintendent and myself did not have any affect on the Board." (Id.)

As to the complainant's allegation that she violated N.J.S.A. 18A:12-24.1(i), she asserts that the complainant fails to allege any facts that would demonstrate that she failed to support and protect any of the Board's employees in properly performing their duties. In this connection, the respondent argues,

I do not believe that the Commissioner of Education would interpret the instigation of a verbal assault upon a Board member by a superintendent as a '...proper performance of their duties.' Nor does that provision require a Board member to refrain from responding while under such a verbal attack which could lead to physical assault upon the Board Member. (Id. at paragraph 7)

In support of her position, the respondent attaches documentation to show that the Board approved a merit increase for the Superintendent on March 1, 2004.

EVIDENCE

In his testimony, at the December 18, 2007 meeting, Mr. Esposito expressed his concern that this matter was not properly transmitted to the OAL after the probable cause hearing. He stated that he believed the respondent assaulted the Superintendent and that such conduct violated N.J.S.A. 18A:12-24.1(e) and (i). Mr. Esposito acknowledged that the Board was in the process of considering a pay increase for Darlene Roberto. He attested that Ms. Grimsley did not want to approve a pay increase for the Superintendent; the Board, however, did approve the increase. He further stated that at the end of the meeting, as the Board members were leaving the building, the respondent "snapped." The complainant testified that Ms. Grimsley "went into a rage and went after Darlene Roberto in a very threatening manner." Mr. Esposito testified that Ms. Grimsley was holding some books, which she threw to the ground and she confronted the Superintendent, calling her a liar. The complainant acknowledges that the Superintendent filed charges in municipal court which were later withdrawn. Additionally, since that time, the Superintendent has resigned from her position with the Board. The complainant referred in his testimony to statements that were made by the

Superintendent, himself and other Board members to the Roselle Police Department following this incident.² He attests that these statements establish that an assault occurred.

Mr. Esposito testified that once the Board made its decision to approve the Superintendent's pay increase, no further action should have been taken by the respondent. He asserted that this event was unsettling and the incident altered the momentum of the board. He testified that under Ms. Roberto's leadership, the Board was able to accomplish some necessary building expansion, thereby reducing classroom sizes and improving education. Because Ms. Roberto has since left the district, he regrets that she did not have the opportunity to see the fruits of her labor.

The record includes the following sworn statements provided to the Roselle Police Department:³

(1) A statement provided by Darlene M. Roberto, Superintendent dated March 4, 2004 indicating that after the March 1 Board meeting, she was leaving the Board of Education building when she was approached by Ms. Grimsley. The two exchanged words about the Superintendent's contract. Ms. Roberto stated, in relevant part:

I was about to get in my car, [Ms. Grimsley] yelled "wait a minute" and slammed my car door closed. She took all the papers in her hands and slammed them down on the ground and said "I've had enough of this [expletive]! Don't you [expletive] blame me for --" and then I don't remember what she said. Her hands were flying in my face and she was just about nose-to-nose with me. She was saying "this is [expletive] and we're going to setting [sic] this right now." I think this is where Cecilia came over and tried to get in between us and then Ethylene pushed Cecelia out of the way with her hands. She just pushed Cecilia very hard with both hands. She was very loud, Cecelia came back to try and restrain her and she pushed Cecelia again. Cecilia told me to get in my car but I couldn't. Then Toni Burrell and Yves pulled up in their cars, saw what was going on and jumped out of their cars. Yves went to help Cecelia hold Grimsley back. As I attempted to get in my car, Grimsley broke loose and she came at me again in a physically aggressive manner. At that point, it took Esposito, Aubourg, and Ricks to hold her back for me to get in my car. I got in my car and locked the door. She

² The record indicates that Ms. Roberto submitted these statements to the Commission for its consideration. Later, the complainant requested copies which were simultaneously forwarded to him and to the respondent.

³ Throughout the police statements, the name of the respondent and some of the witnesses are misspelled. The citations herein are as they appear in the statements, with these misspellings.

broke loose from them and came right up to my car. I pulled off, I floored it. I kept backing away when she first came at me. (Roberto Statement at page 3)

Lastly, Ms. Roberto reported feeling that her safety was jeopardized and as such, she would not stay in her office later than 4 pm. (Id. at 4) She also indicated she was fearful of repercussions. (Id. at 5)

(2) A statement provided by Mr. Yves Aubourg, member of the Roselle Board of Education, on March 4, 2004 indicated that after the meeting, he was talking to some of the Board members and they were out in the parking lot. Mr. Aubourg stated, in relevant part:

I heard a melee going on and I saw Toni got out of her car and go towards the melee. Then I got out of my car. Right in front of Darlene's car were a lot of papers, in front of the driver's side tire. I could see Darlene with her arms crossed in front of her and Mrs. Grimsley going after her. Mrs. Grimsley was saying "I'm [expletive] tired of people saying I hate you. I need to talk to you!" Cecelia was trying to stop Mrs. Grimsley from going after Darlene. I got in between them and told Darlene to get in her car and get out of here. As I took her to her car, I realized that my car was blocking her. When I got back to my car to let her out, I heard Mrs. Grimsley say to her, "You're [expletive] lucky that I didn't tell the community that you were drunk at the convention". Then Darlene rolled down her window but I didn't hear what she said. As she pulled out, Mrs. Grimsley threw a bottle of water at her car. (Aubourg Statement at page 3)

(3) A statement provided by J. Alan McGarry, member of the Roselle Board of Education, on March 8, 2004 indicated that after the meeting, six or seven people walked out at once, *i.e.*, himself, Ms. Grimsley, Cecilia Ricks, Toni Burrill, Anthony Esposito and Yves Aubourg. Mr. McGarry states Ms. Grimsley attempted to have a conversation with Ms. Roberto about her contract, but Ms. Roberto indicated that she had no intention of discussing it and put up her hand to so indicate. Mr. McGarry stated that Ms. Roberto then opened her car door and was attempting to get in. Mr. McGarry reported, in relevant part:

Ethylene's voice got louder and Darlene told her she did not want to discuss it. At that point Ethylene threw her papers down and slammed Darlene's car door shut and then put her body between Darlene and the door. Ethylene stated "I'm sick of this", and that is all I can recall. Darlene started backing up. She wanted to put some

distance between her and Ethylene and then Cecelia Ricks can [sic] from around the car and just placed herself between the two women. Ms. Grimsley pushed Ms. Ricks aside in an attempt to get closer to Ms. Roberto several times. Then Ms. Burrill arrived and the two positioned themselves between Ms. Roberto and Ms. Grimsley. (McGarry Statement at page 3)

Mr. McGarry further stated that Ms. Roberto was eventually able to get to her car and leave. He stated, "Ethylene then yelled something to Ms. Roberto about not telling anybody about her inappropriate behavior at the convention. Ms. Roberto rolled down her window and yelled something back and stated she didn't tell anybody about Ethylene embezzling money from the school board. Then Ethylene then swung her water bottle at Ms. Roberto's car." (Id. at page 4)

(4) A statement provided by Cecelia Ricks, member of the Roselle Board of Education, on March 9, 2004 affirmed that after the Board meeting on March 1, 2004, all nine members left together, along with the Superintendent. Ms. Ricks stated that Ms. Grimsley said something to Ms. Roberto when leaving; Ms. Roberto responded "I don't want to hear it, I know you don't like me." Further accusations followed; Ms. Ricks stated that "At this point Ethylene was enraged as Darlene attempted to get into her mini-van. Ethylene threw her papers on the ground and slammed the superintendent's door closed. Darlene backed up about 5 feet and at this point I was behind Ethylene and stepped between the two." (Ricks Statement at page 2) She stated that she came between the two women because she thought Ms. Grimsley was going to attack Ms. Roberto, and she wanted to prevent her from doing so. Ms. Ricks reported that she got "shoved aside" by Ms. Grimsley "so that she could continue charging Darlene." (Id.) Ms. Ricks further stated, in relevant part:

I again ran in front of the two of them and Yves Auborg had pulled up at this point and I looked at him and requested he get out of the car to help me. I motioned for him to get out of the car but he was unaware I was asking him for help. He got out of the car when he saw me being pushed a second time. Yves got out, Toni Burrill and I surrounded Ethylene and I yelled for Darlene to get into her car and get out of here. When Darlene started to move towards her vehicle, Yves went over and blocked her body with his, so she could safely get into her car. Then he realized his car was blocking hers so he moved his vehicle and Darlene proceeded out of the driveway. Before she could get out Ethylene was still yelling at her. (Id. at pages 3 and 4)

Ms. Ricks stated that Ms. Grimsley yelled "I didn't tell anybody you were drunk" and Darlene rolled down her window and said "I didn't tell anybody you embezzled money."

Ms. Ricks states that when Ms. Roberto began to drive away, Ms. Grimsley swung her water bottle at the car, but it did not hit the car. (Id. at page 4)

(5) A statement provided by Anthony Esposito, member of the Roselle Board of Education, on March 10, 2004 indicated that after the meeting on March 1, he left with some Board members. He reported, in relevant part:

I was walking to my car and got into my car. I saw Ms. Grimsley and Ms. Roberto arguing and it seemed like Ms. Grimsley was getting rather close to Ms. Roberto. I pulled my car around and got out of the car and Ms. Roberto said to Ethelyne, "I don't have to take this, I don't have to listen to this, I'm going home." Ethelyne kept saying "you are always lying on me, always lying on me." Ms. Roberto was under the impression that Ms. Grimsley was out all over town discussing her contract, cause Ethelyne kept saying "it's not you, it's the process, it's the process". Darlene stated "it is you, you don't like me, and whatever I try to get done, you block it". Ms. Grimsley kept saying you keep lying on me. Ms. Roberto opened her driver's side door and Ms. Grimsley threw all her books and things on the ground and as Ms. Roberto tried to get into her car, Ethelyne slammed the car door shut and went at her. Ms. Roberto backed up and Ethelyne kept pushing towards Ms. Roberto in a threatening manner. At this point, Ms. Burrill and Ms. Ricks intervened and tried to calm Ethelyne down. Ms. Grimsley was trying to push Ms. Ricks and Ms. Burrill off her to get to Ms. Roberto. (Esposito Statement at pages 2-3)

Mr. Esposito further reported that during the incident, he was out of his car and close by, but he was not going to intervene because Ms. Burrill and Ms. Ricks were already there. (Id. at page 3) As to what happened when Ms. Roberto pulled away, Mr. Esposito affirmed that Ms. Grimsley stated she never told anybody that Ms. Roberto was drunk at one of the conventions and Ms. Roberto replied "I didn't tell anybody that you took \$900.00 from the Board". Mr. Esposito said that Ms. Grimsley held a water bottle in her hand as if she was going to throw it, but she did not. (Id. at page 4)

(6) A statement provided by Toni Burrill, member of the Roselle Board of Education, on March 16, 2004 indicated that after the meeting on March 1, 2004, she stopped briefly to speak with other Board members and proceeded to her car. She reported that she started her car and made a turn to leave the parking lot; she pulled over to say good bye and realized that Ms. Grimsley was yelling. Ms. Burrill also stated, in relevant part:

I saw Cecelia step between Ethelyne and Darlene. I jumped out of the car and ran over and at that point

Ethelyne had slammed her papers down to the ground and she was screaming something “I’m sick and tired of people saying I said things that I didn’t say, I didn’t say that”. Darlene had gone to open her car while Ethelyne was yelling and she slammed Darlene’s car shut. Ethelyne kept getting closer to Cecelia and she grabbed her and shoved her for the purpose of getting her out of the way so she could get to Darlene. Ethelyne shoved Cecelia at least three times because Cecelia was trying to be a body blocker between the two of them. Yves saw what was going on and got out of his car to come to the assistance of Darlene and Cecelia. (Burrill Statement at pages 3-4)

Ms. Burrill reports that there was then an exchange of words between herself and Ms. Grimsley. Thereafter, Mr. Aubourg escorted Ms. Roberto to her car and told her to drive away. She continues,

Darlene was inside her car pulling out and Cecelia was behind me. I was close to Darlene’s car. Ethelyne yelled to Darlene “I didn’t tell anybody about you [sic] behavior in Atlantic City” and Darlene replied, “And I didn’t tell anybody about you embezzling money.[”] Ethelyne had a water bottle in her hand and turn [sic] around and tried to hit Darlene with the bottle in the car and again I questioned what she was doing and told her she was completely out of control. I then left after Darlene pulled away.” (Id. at page 4)

FINDINGS OF FACT

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

1. On March 1, 2004, the complainant and respondent were members of the Board of Education of Roselle. The respondent is no longer a Board member.
2. On March 1, 2004, the date of the incident Ms. Roberto was the Superintendent; however, she no longer works for the district.
3. Following a Board meeting on March 1, 2004, the complainant, respondent and fellow members of the Board exited the building to the parking lot.
4. In the parking lot the respondent and Ms. Roberto exchanged words concerning the Superintendent’s contract which had just been the subject of a Board vote; this exchange became heated and intense.

5. When Ms. Roberto attempted to get into her car, respondent prevented her from doing so.
6. Specifically, the respondent threw her papers to the ground, slammed Ms. Roberto's car door closed, and blocked Ms. Roberto's entry to her car.
7. Ms. Cecilia Ricks, a Board member, placed herself between Ms. Roberto and the respondent in an attempt to prevent the respondent from physically assaulting Ms. Roberto.
8. Ms. Grimsley twice pushed Ms. Ricks aside to get to Ms. Roberto. It was only with the assistance of fellow Board members that Ms. Roberto was able to get into her car and drive away.
9. Upon driving away, Ms. Grimsley yelled to Ms. Roberto that she had not told anyone that Ms. Roberto was drunk at a convention.

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 complainant contends that the respondent violated N.J.S.A. 18A:12-24.1(e), which 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.

Pursuant to N.J.A.C. 6A:28-7.1, "private action" is defined as action taken by a member of a district board of education or a member of a charter school board of trustees that is beyond the scope of the duties and responsibilities of a member of a district board of education or a member of a charter school board of trustees. Here, there is no dispute on the record that the Board approved Ms. Roberto's merit increase at its March 1, 2004 meeting. To the extent there was any objection to this action, once the vote was taken, it was not appropriate for the respondent to unilaterally engage in further discussion with Ms. Roberto about the contract, as she did upon exiting the building, let alone to engage in a heated exchange. Moreover, there can be no doubt that respondent's physical intervention between Ms. Roberto and her car in the parking lot, respondent's pushing aside of another board member, and respondent's parting words to Ms. Roberto as she drove away, constituted private action *significantly* beyond the scope of her duties as a Board member.

As to whether private action of this kind "may compromise the board," the Commission finds that it does. In so finding, the Commission notes that Ms. Roberto reported that because of this incident she was fearful for her safety and afraid to stay at work beyond 4:00 p.m. Additionally, five board members gave statements under oath to

the Roselle Police Department which clearly establish that the respondent's conduct was inappropriate, unprofessional and extreme. It is not unreasonable to expect that when a Superintendent and five Board members are so affected by an event, there can be consequences for the district's operations. Indeed, Mr. Esposito testified that he believed this incident altered the momentum of the district. Thus, while there is no evidence on this record proving a causal connection between this incident and Ms. Roberto's departure, the Commission notes that it is only necessary to determine that Ms. Grimsley's conduct was such that it *may* compromise the board. Accordingly, the Commission finds that the complainant has demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members.

The complainant further contends that respondent's conduct violated N.J.S.A. 18A:12-24.1(i), which establishes a board member's obligation to support and protect school personnel in the proper performance of their duties. Here, the Commission again finds that the respondent's physical intervention between Ms. Roberto and her car in the parking lot, together with her pushing aside another board member in order to get to Ms. Roberto, sufficiently demonstrate that she was acting contrary to her duty in N.J.S.A. 18A:12-24.1(i). That the respondent exacerbated these physical actions with accusations about the Superintendent being drunk at a convention demonstrates an aggression that is completely antithetical to her duty as a Board member. Accordingly, the Commission finds that the complainant has demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(i) of the Code of Ethics for School Board Members.

DECISION

For the reasons expressed above, the Commission finds that Ethylene Grimsley violated N.J.S.A. 18A:12-24.1(e) and (i) of the Code of Ethics for School Board Members.

REQUEST FOR SANCTIONS

At its December 18, 2007 meeting, the Commission considered the respondent's request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission notes that it can find no evidence which might show that the complainant filed the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. To the contrary, as noted above, the Superintendent and four other Board members offered corroborating statements as to the respondent's behavior on March 1, 2004. The Commission also has no information to suggest that the complainant should have known that the complaint was without any reasonable basis in law or equity or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. The Commission's finding of a violation shows that the complaint was reasonably based in law. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondent's request for sanctions against the complainant.

PENALTY

The Commission recommends that the Commissioner of Education impose a penalty of censure. In so doing, the Commission finds instructive the matter entitled I/M/O Charles Fischer, C30-03. Therein, the Commission found the Board member in violation of N.J.S.A. 18A:12-24.1(e) and (i) when he contacted the complainant, a business office employee, at her home on Friday evening to obtain copies of reports which he said he needed for a meeting on Sunday. The Board member admitted to raising his voice at the complainant, albeit that he claimed it was in response to her yelling, rather than out of anger. The Commission determined that when the respondent requested that the complainant return to the office to obtain the information he was seeking, such conduct was private action that may compromise the Board. The Commission noted that if the respondent was dissatisfied with the complainant's responses, he should have hung up and called the Superintendent, rather than raise his voice at a Board employee. Moreover, the respondent's insistence that the complainant provide the reports, together with his request that she return to work to obtain them, were not supportive of her as an employee performing her duties. In Fischer, the Commission recommended a penalty of reprimand. In the instant matter, the record is clear that the respondent's conduct toward the Superintendent after the meeting of March 1, 2004 was more intense, more aggressive and indeed more flagrant than the respondent's conduct in Fischer. As noted above, however, the respondent is no longer a Board member. Therefore, the Commission is constrained to recommend a penalty other than suspension or removal.

This decision has been adopted by a formal resolution of the School Ethics Commission. This matter shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation **for sanction only**, pursuant to N.J.S.A. 18A:12-29. Within 13 days from the date on which the Commission's decision was mailed to the parties, Ms. Grimsley may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C21-04

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

Whereas, at its meeting of December 18, 2007, the Commission found that Ethylene Grimsley violated N.J.S.A. 18A:12-24.1(e) and (i) of the Code of Ethics for School Board Members and recommended that the Commissioner of Education impose a sanction of censure; and

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 the Resolution was duly adopted by the School Ethics Commission at its public meeting on January 22, 2008.

Joanne Boyle
Executive Director

PCG/JB/decisions/C21-04