

of the term “hand check” on its registry.² Afterward, the respondent sent an email to the Business Administrator on September 22, 2010 stating:

Hi Mike,

Why does the board need to know that we cut a single check? I think that too much information causes problems. Hand check should not appear on the report. But next time you will know that answer. The girls that work in you [sic] office having [sic] been doing a fine job all these years, I have every confidence in them. (Exhibit C-1 at p. 1)

The complainant asserted that in sending this email, the respondent was directing the Business Administrator to withhold information from the Board as a whole.

On cross-examination, when asked why he waited until January 25, 2011 to file a complaint when he had knowledge of the email in September 2010, the complainant replied that after he really thought about it and talked to other Board members, he thought the respondent’s response to the Business Administrator was wrong. The complainant maintained that he thought the email contained a directive for the Business Administrator to withhold information from the Board, although he acknowledged that the respondent’s use of the words, “I think” in the second sentence of the email signaled that she was giving her opinion. Mr. Campbell further acknowledged that the respondent’s email on September 22, 2010 followed a clarification provided by the Business Administrator in response to the Board’s confusion about the check designations. That is, Board member Stevenson sought the clarification from the Business Administrator in an email dated September 21, 2010 and the respondent replied to the Business Administrator’s email. The complainant further stated that the designation “hand check” continues to appear on the Board’s registries and he believes that this indicates that vendors are appearing at the Board office to get their checks in advance of the Board approving the payments. According to the complainant, this has been a long-standing concern, particularly as it relates to payments for contracted work.

Board member Paul Castelli testified for the complainant. He stated that he is entering his sixth year as a Board member and he had been the Chair of the Finance Committee. He is familiar with the check registry brought to the Board each month. Mr. Castelli was at the September 2010 meeting when the question about the check designations arose and no answer was provided that evening. The Business Administrator told the Board that he would get the information they needed.

On cross-examination, Mr. Castelli testified that although he was copied on the email clarification provided by the Business Administrator on September 21, 2010, he did not see the email because he was either too busy or he had problems with his computer. He could not recall whether the business office was still using the “hand check” designation on its registries, although he thought it was not. The witness was shown a copy of a registry that was provided to the Board at its meeting on May 23, 2011; the designation “hand check” was still being used.

² The term “paid hand” appeared to be used interchangeably with the “hand check” term. (Respondent’s Answer at p. 2)

Pursuant to N.J.A.C. 6A:28-8.3(d), upon completion of complainant's case, the respondent's counsel moved to dismiss the complaint. After hearing arguments from the parties, the Commission asked the parties to leave the room so that it could deliberate. The Commission denied the Motion to Dismiss. Upon resumption of the hearing, the respondent's counsel called his witnesses, as summarized below.

The respondent, Bernadette McDonald testified that she has been a member of the Board for 11 years. During that time, she has served as President and she has also served on the Finance Committee. She recalled the September meeting when the question of the check designation arose; there was confusion among the Board members. At the time, the Business Administrator was relatively new and he had difficulty explaining the procedure to the Board. The respondent was copied on the email from Mr. Stevenson to the Business Administrator asking for clarification the next day.³ She read the Business Administrator's email to mean that the "hand check" designation is used when a separate check is issued and is not included in a "check run." It would be printed out separately for reasons determined by the Business Administrator.

As to the substance of her responsive email to the Business Administrator that is the subject of this complaint, the respondent testified that she never intended the Business Administrator to withhold information from the Board. Rather, because the designation of "hand check" does not impact on whom the payee is and does not impact the dollar amount, it was her opinion that it was not needed. The respondent testified that she never followed up any further with the Business Administrator; she did not place a call and there was no further communication on this issue.

On cross-examination, the respondent stated that she did not know why she did not send her responsive email to the full Board. As to the last sentence of her email where she refers to "the girls" in the office, she explained that because the Board was confused about the check designation issue, they were attributing some responsibility to the District staff. According to the respondent, sometimes the Board's conversation moved in the direction of micromanaging what happens in the business office. The respondent stated in her email that the staff does a fine job. The respondent further clarified that when she said "hand check" should not appear on the report," she meant the words "hand check" need not appear in the report.

Michael DeVita is the Business Administrator and Board Secretary. He testified that he began working for the District in December 2009. He recalled the meeting where the Board was confused by the term "hand check" being used on the reports. The next day, September 21, 2010, he received an email from Board member Stevenson, as shown on page two of Exhibit C-1, asking what "hand check" actually meant. He replied to Mr. Stevenson and the Board: "It just means that the check was printed as a single check and not in a group of checks. The check is still in the system and still gets printed like all other checks." (Exhibit C-1)

Mr. DeVita explained that usually at the end of the month, his office prints all checks at once. Ordinarily, those designated as "hand checks" are for architects or contractors who are

³ The respondent testified that, with the knowledge and permission of her employer, the emails from the Board go to her work address so that she may promptly respond, as needed.

paid the day after the meeting, and not necessarily in the same cycle. While some are paid every month, others may be paid on a quarterly basis, or in accordance with the terms of the contract. Mr. DeVita testified that, ordinarily, the contractor comes into the office the next day (after the Board meeting) and picks up the check. He clarified that the check is printed only after approval by the Board. Therefore, the designation of “hand check” is just to differentiate between checks that are printed as a group and those that are printed as a single check and may be issued at a different time. Mr. DeVita testified that he is a certified school business administrator and he has the authority to review vouchers, warrants, etc. and to make sure they do not exceed contract amounts. If a Board member has a question about any check, s/he may contact him. Requests for a copy of a specific item must go through the Superintendent.

With respect to the email sent to him by the respondent, Mr. DeVita stated that he recalled receiving the email and he did not interpret the respondent’s words to constitute a directive to withhold information from the Board. There were no changes in policy as a result of the email and there was no follow-up from the respondent. Mr. DeVita further stated that he did not feel pressured or intimidated by anything in the respondent’s email.

On cross-examination, Mr. DeVita explained that a Board resolution provides him with the authority to issue particular vendors’ checks before they are actually placed on the register for Board approval. These checks may be for things like athletic events. The designation of “hand check” may be used in that instance. However, he clarified that although this procedure is permitted for in-house purposes, “usually” all contractor and architect payments go to the Board for approval first. The day after the meeting, the contractor comes in to pick up the check.

Complainant’s Exhibits⁴

C-1	Email exchange dated September 21 and 22, 2010
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FINDINGS OF FACT

The Commission is the trier of fact in this matter. As such, it notes that the meaning and intent of the respondent’s email is central to its findings. Having had the opportunity to observe the demeanor of the witnesses and to judge their credibility, the Commission determines that respondent’s testimony was credible and, therefore, makes the following findings:

1. The respondent was at all times relevant to this matter a member of the Board of Education.
2. At the Board’s meeting on September 20, 2010, there was confusion among the Board members about use of the designation “hand check” on the registry.
3. By email dated September 21, 2010, Board member Stevenson wrote to Mr. DeVita asking, “Mike, What does ‘hand check’ actually mean?” The Board was copied on this email. (Exhibit C-1 at p. 3)

⁴ The respondent did not enter any exhibits into evidence.

4. The same day. Mr. DeVita responded to Mr. Stevenson and the Board, “It just means that the check was printed as a single check and not in a group of checks. The check is still in the system and still gets printed like all other checks.” (Exhibit C-1 at p. 2)

5. On September 22, 2010, the respondent sent an email to Mr. DeVita which states, in full:

Hi Mike,

Why does the board need to know that we cut a single check? I think that too much information causes problems. Hand check should not appear on the report. But next time you will know that answer. The girls that work in you [sic] office having [sic] been doing a fine job all these years, I have every confidence in them. (Exhibit C-1 at p. 1)

6. There was no additional communication between the respondent and Mr. DeVita on the issue.

ANALYSIS

The complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a). See also, N.J.S.A. 18A:12-29(b).

The complainant asserts that on September 22, 2010, the respondent directed the School Business Administrator, via email, to withhold financial information from the Board, in violation of N.J.S.A. 18A:12-24.1(c). (Complaint at p. 1) The respondent contends that the email provided to the Business Administrator was a follow-up communication to questions raised at the September 20, 2010 Board meeting and reflected her opinion as to a course of action. (Answer at pp. 1-2) N.J.S.A. 18A:12-24.1(c) states:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The Commission’s regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the respondent(s) took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent’s duty to:

- i. Develop the general rules and principles that guide the management of the school district or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or

iii. Ascertain the value or liability of a policy. N.J.A.C.
6A:28-6.4(a)3.

Assuming that the respondent's email constitutes "board action" so as to implicate this statute, the Commission is persuaded that the respondent, in sending the email to Mr. DeVita, intended to offer her opinion in furtherance of a procedure that had been called into question by the Board. As such, the Commission finds that the respondent's action was fairly within her policy making function and conferring with Mr. DeVita on the issue was not inappropriate, under these circumstances. Based on the respondent's credible testimony, the Commission finds that the complainant has not shown that the respondent's actions violated N.J.S.A. 18A:12-24.1(c).

DECISION

The Commission finds that the complainant did not factually establish that the respondent violated N.J.S.A. 18A:12-24.1(c) 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).

Robert W. Bender
Chairperson

Mailing Date: June 29, 2011

Resolution Adopting Decision – C05-11

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 from its hearing on May 24, 2011; and

Whereas, at its meeting on May 24, 2011, the Commission found that the complainant did not factually establish that the respondent violated N.J.S.A. 18A:12-24.1(c) of the Code of Ethics for School Board Members and therefore, dismissed the complaint; and

Whereas, at its meeting on June 28, 2011, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on June 28, 2011.

Joanne Boyle
Executive Director