

material fact challenged and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. N.J.A.C. 1:1-12.5(b).

Upon careful and independent review, the Commission finds that the record supports the ALJ's conclusion that Count 3 is ripe for summary dismissal. In so finding, the Commission concurs that the papers and discovery, together with the affidavits in this matter, show that there is no genuine issue as to any material fact and the respondent is entitled to prevail as a matter of law inasmuch as the facts fail to demonstrate that the respondent: (1) gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district so as to violate N.J.S.A. 18A:12-24.1(d) (see, N.J.A.C. 6A:28-6.4(a)4); (2) made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the board so as to violate N.J.S.A. 18A:12-24.1(e) (see, N.J.A.C. 6A:28-6.4(a)5); or (3) acted on, or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint prior to referral to the chief administrative officer or at a time or place other than a public meeting and prior to the failure of an administrative solution so as to violate N.J.S.A. 18A:12-24.1(j) (see, N.J.A.C. 6A:28-6.4(a)10).

DECISION

The Commission determines to adopt the ALJ's Interim Order of April 19, 2011 dismissing Count 2,¹ as well as the Initial Decision dismissing Count 3 and denying the respondent's application for sanctions. 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: February 29, 2012

¹ The ALJ's Order states that it is reviewable either pursuant to a request for interlocutory review (N.J.A.C. 1:1-14.10), which did not occur in this matter, or at the end of the contested case (N.J.A.C. 1:1-18.6).

Resolution Adopting Decision – C11-10

Whereas, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to transmit this matter to the Office of Administrative Law for hearing; and

Whereas, the Administrative Law Judge concluded in her Initial Decision that summary decision should be granted to the respondent and the complaint should be dismissed; and

Whereas, the Commission considered the documentation filed in response to the ALJ's decision; and

Whereas, at its meeting of February 28, 2012, the Commission determined to adopt the Initial Decision of the ALJ as well as to affirm her Order dated April 19, 2011; and

Whereas, the Commission finds that the within decision accurately memorializes its adoption of the Initial Decision;

Now Therefore Be It Resolved, 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 this Resolution was duly adopted by the School Ethics Commission at it public meeting on February 28, 2012.

Joanne Boyle, Executive Director
School Ethics Commission