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**STEPHEN PELLECCCHIA**

v.

**PATRICK RILEY AND DAWN PARKS**  
***BERKELEY TOWNSHIP BOARD OF***  
***EDUCATION***  
***OCEAN COUNTY***

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: **BEFORE THE SCHOOL**  
: **ETHICS COMMISSION**  
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:  
: **Dkt. No. C15-11**  
: **DECISION ON**  
: **MOTION TO DISMISS**  
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## **PROCEDURAL HISTORY**

This matter arises from a complaint filed on April 8, 2011 by Stephen Pellecchia alleging that Patrick Riley and Dawn Parks, members of the Berkeley Township Board of Education (“Board”), violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. Specifically, the complainant alleges that the respondents violated N.J.S.A. 18A:12-24.1(b) and (c) of the Code of Ethics for School Board Members when they filed a complaint against him and another Board member, John Bacchione.

On May 16, 2011, a Motion to Dismiss in Lieu of Answer was filed on behalf of the respondent. The motion included an allegation that the complaint was frivolous. A responsive statement was filed on behalf of the complainant on June 13, 2011 in accordance with N.J.A.C. 6A:28-8.2(a). The parties were notified by letter dated May 17, 2011 that this matter would be placed on the agenda for the Commission’s meeting on June 28, 2011 in order to make a determination regarding the respondent’s Motions to Dismiss, along with the allegation of frivolousness. At its meeting on June 28, 2011, the Commission voted to grant the respondents’ Motions to Dismiss the complaint. The Commission further found that the complaint was not frivolous in accordance with the standard set forth at N.J.A.C. 6A:28-1.2.

## **SUMMARY OF THE PLEADINGS**

The complainant alleges that the respondents filed two cases, docketed as C47-10<sup>1</sup> and C48-10<sup>2</sup> before the School Ethics Commission, in an effort to prevent him and another board member, John Bacchione, from exercising their votes for the appointment of the Superintendent of Schools. According to Pellecchia, the respondents acted in their official capacity in attempting to eliminate board member votes and thus influence the balance of the Board to prevent the appointment of Joseph Vicari as Superintendent of Schools (Complaint at p. 3) In so doing, Pellecchia contends that Riley and Parks asserted untrue facts against him so as to “advance their collective scheme and to achieve their desired goals,” contrary to their obligations as school board members (Id. at p. 2) Specifically, Pellecchia contends that in C48-10, Riley and Parks

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<sup>1</sup>The complaint docketed as Patrick Riley and Dawn Parks v. John A. Bacchione, Berkeley Township Bd. of Ed., Ocean County, C47-10 was administratively dismissed on February 22, 2011 pursuant to N.J.A.C. 6A:28-10.2 after the complainants, despite several opportunities, failed to amend the complaint to comply with the Commission’s regulations.

<sup>2</sup> The complaint docketed as C48-10 is pending before the Commission.

asserted that he had a conflict of interest when he became involved with discussions involving the return of Mr. Vicari as Superintendent of Schools because Vicari is on the Board of Chosen Freeholders of Ocean County and Pellecchia is employed by the Board of Elections in the same county. However, Pellecchia asserts this claim of conflict of interest is contrary to case law and legal opinion. (Complaint at pp. 4-6) The complainant further alleges that Riley and Parks “sought to encumber the right of two Board representatives to vote for fiscal responsibility by trimming budgetary requirements no less than \$140,000 and to represent the people with whom they are charged to represent.” (*Id.* at p. 6)<sup>3</sup> Thus, Pellecchia contends that Riley and Parks violated N.J.S.A. 18A:12-24.1(b) by attempting to eliminate his vote for a more qualified Superintendent at a lesser salary and N.J.S.A. 18A:12-24.1(c) by engaging in conduct that would affect programs contrary to the proper management of the Board. (*Id.* at p. 7)

## ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the complainant and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3.

Because the complainant has the burden to factually establish a violation 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), in order to prevail on a Motion to Dismiss, the complaint must allege facts, which if true, would be sufficient to support a finding that the respondent violated N.J.S.A. 18A:12-24.1(b) and (c) of the Code of Ethics for School Board Members.

In their Motion to Dismiss, the respondents initially argue that any and all claims against Patrick Riley are moot, since he no longer serves on the Board. (Motion Brief at p. 1). The respondents further contend that there is no factual evidence on the record to support a finding that they violated N.J.S.A. 18A:12-24.1(b) and (c) of the Code of Ethics for School Board Members. Rather the respondents assert that they are “being attacked for exercising their legal rights under N.J.S.A. 18A:12-29 for the filing of Ethics Complaints for perceived violations of the Ethics Act by Pellechia [sic] (C48-10 and Bacchione (C47-10).” (*Id.* at p. 6) On this, the respondents argue, “The creation of the School Ethics Commission and the statutory scheme enacted by the Legislature provides a comprehensive system for assessing the merits of [c]omplaints as well as punishing those filed that are frivolous.” (*Id.* at pp. 7-8) Moreover, the respondents contend that the aforementioned C48-10 raised a viable cause of action. (*Id.* at p. 8)

Preliminarily, the Commission finds that its decisions amply demonstrate that it focuses on the respondent’s status at the time the alleged violation occurred; the Commission has adjudicated numerous complaints on their merits where the respondent was no longer in office when the matter was decided. Accordingly, it does not find the claims as to Respondent Riley to be moot.

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<sup>3</sup> Complainant so reasons because Vicari offered to fill the position “for a minimum salary of \$18,500.00 as required by the State of New Jersey instead of the cost of \$180,000.00 for [the Board’s other candidate].” (Complaint at p. 3)

As noted above, in order to prevail on this motion, the complainant must allege facts, which if true, would be sufficient to support a finding that the respondent violated N.J.S.A. 18A:12-24.1(b) and (c). The Commission first considers the allegation that the respondents violated N.J.S.A. 18A:12-24.1(b), which provides:

I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(b) shall include evidence that the respondent(s) willfully made a decision contrary to the educational welfare of children, or evidence that the respondent(s) took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing. N.J.A.C. 6A:28-6.4(a)2.

The complainant contends that Riley and Parks violated N.J.S.A. 18A:12-24.1(b) by attempting to eliminate his vote for a more qualified Superintendent at a lesser salary. (Complaint at p. 7) Even assuming the complainant can demonstrate that the respondents schemed "to eliminate opposition to their selected candidate" for the position of Superintendent (id. at p. 1), the Commission finds such facts are insufficient to support a finding that Parks and Riley willfully made a decision contrary to the educational welfare of children, or that they took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing by virtue of filing a complaint against Pellecchia. Consequently, the Commission finds that even if true, the facts alleged in this complaint are insufficient to establish that the respondents violated N.J.S.A. 18A:12-24.1(b).

The Commission next considers the allegation that the respondents violated N.J.S.A. 18A:12-24.1(c), which provides:

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.

The complainant contends that Riley and Parks violated N.J.S.A. 18A:12-24.1(c) by engaging in conduct that would affect programs contrary to the proper management of the Board. (Id. at p. 7) However, the complaint alleges no specific “board action” taken by the respondents. Although the complainant asserts Riley and Parks “acted in their official capacity in attempting to eliminate the votes of Bacchione and Pellecchia and thus influence the balance of the Board to prevent the appointment of Joseph Vicari as Superintendent of Schools” (id. at p. 3), he offers no facts to show how, in filing a complaint before the Commission, Riley and Parks used their offices to this end. Consequently, the Commission finds that even if true, the facts alleged in this complaint are insufficient to establish that the respondents failed to confine their Board action to policy making, planning, and appraisal, or took Board action to effectuate policies and plans without consulting those affected by such policies and plans so as to violate N.J.S.A. 18A:12-24.1(c).

In dismissing the within complaint, the Commission states its concurrence with the respondents’ view that Complainant Pellecchia is actually asking the Commission to find that the respondents violated the Code of Ethics for School Board Members *because* they filed a complaint against him (i.e., C48-10). However, as respondents argue, “The creation of the School Ethics Commission and the statutory scheme enacted by the Legislature provides a comprehensive system for assessing the merits of [c]omplaints as well as punishing those filed that are frivolous.” (Answer at pp. 7-8) The Commission underscores that it has the sole authority to determine whether a complaint has merit, or whether it is frivolous in accordance with the standard set forth at N.J.A.C. 6A:28-1.2.

## **REQUEST FOR SANCTIONS**

At its meeting on June 28, 2011, the Commission considered the respondents’ 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 does not find that the complainant “[c]ommenced, used or continued [this matter] in bad faith, solely for the purpose of harassment, delay or malicious injury;” or that the complainant “knew, or should have known,” that the matter “was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.” N.J.A.C. 6A:28-1.2. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondents’ request for sanctions against the complainant.

## **DECISION**

Based on the foregoing, the Commission grants the respondents' Motion to Dismiss the complaint. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender  
Chairperson

Mailing Date: July 27, 2011

**Resolution Adopting Decision – C15-11**

**Whereas**, the School Ethics Commission has considered the complaint and the Motion to Dismiss filed on behalf of the respondents and the reply thereto; and

**Whereas**, at its meeting on June 28, 2011, the Commission determined to grant the respondents' Motion to Dismiss the complaint; and

**Whereas**, the Commission found that the complaint was not frivolous in accordance with the standard set forth at N.J.A.C. 6A:28-1.2; and

**Whereas**, the Commission has reviewed and approved the decision memorializing said action;

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

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 26, 2011.

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Joanne Boyle  
Executive Director