

district build a new playground and basketball courts at the H.W. Mountz School and then cast the deciding votes as Board Members in support of the same committee's final ground-building proposal to the Board of Education. The complainant further alleges that the two board members failed to obtain input from the Spring Lake residents prior to their vote in support of the *ad hoc* committee's recommendation and that respondent Dr. Petrosini further surrendered his independent judgment by serving both as a member of the Spring Lake Board of Education and as a trustee of the Spring Lake Education Foundation, which donated funds to build the district's playground and basketball courts. The complainant asserts that the respondents violated N.J.S.A. 18A:12-24.1(c), and (f). (Complaint at pp. 1-2)

ANALYSIS

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). A complaint must include, among other requirements, specific allegations and the facts supporting them, which gave rise to the alleged violation(s) of the Act. N.J.A.C. 6A:28-6.3(b)3. Regulations further provide that the Commission may, in its discretion, dismiss complaints entirely or specific allegations in complaints, where the complaint, on its face, fails to allege facts sufficient to maintain a claim under the Act. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5.

The Commission first considers the allegations that both respondents violated N.J.S.A. 18A:12-24.1(c) and (f), which state, respectively:

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.¹

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.²

¹ 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.

² The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(f) shall include evidence that the respondent(s) took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend.

Even assuming the facts as alleged in the complaint are true, the Commission does not find that the respondents' actions in serving on an *ad hoc* committee that put forth changes and recommendations for the project to the full Board is a surrender of their duties and functions as Board members sufficient to characterize their conduct as "board action" within the intent of N.J.S.A. 18A:12-24.1(c). Rather, the Commission found that the respondents were not taking any "board action" but were acting within the scope of their duty as board members when they served on an *ad hoc* committee that brought its recommendations to the full Board.

Board members are frequently on *ad hoc* or subcommittees that investigate issues, then report and recommend action to the Board as a whole. The allegation that the respondents should have independently consulted with the residents who "live near H.W. Mountz School" as members of the *ad hoc* committee is also without merit. Any such action by the respondents as members of the *ad hoc* committee without authorization by the Board would have been "board action" beyond the scope of their duties. The Commission finds that there are no facts set forth in the complaint that would support a conclusion that respondents actions were of such a nature that they had acted beyond the scope of their duties or that they surrendered their "independent judgment" so as to violate N.J.S.A. 18A:12-24.1(c) and (f). Finally, complainant's allegation that Respondent Petrosini again surrendered his independent judgment as a board member because he is a trustee of the Spring Lake Foundation is also without merit because respondent Petrosini is not a trustee of the Foundation, but rather serves as the Board liaison to the Foundation. Thus, the Commission finds that the complaint, on its face, fails to allege facts sufficient to maintain a claim that the respondents violated N.J.S.A. 18A:12-24.1(c) or (f).

REQUEST FOR SANCTIONS

The respondents alleged that the complaint herein is frivolous. At its meeting on August 28, 2012, 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 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. 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. N.J.A.C. 6A:28-1.2. Therefore, the Commission finds that the complaint is not frivolous and denies the respondents' request for sanctions against the complainant.

DECISION

Based on the foregoing, and pursuant to its discretion, the Commission dismisses the within complaint for failure to allege facts sufficient to maintain a claim that would be a violation of the Act. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5. 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: September 26, 2012

Resolution Adopting Decision – C22-12

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

Whereas, at its meeting on August 28, 2012, the Commission determined to dismiss the complaint for failure to state a claim upon which relief could be granted for a violation of the Act; and

Whereas, the Commission further found that the complaint was not frivolous; and

Whereas, at its September 25, 2012 meeting, 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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 25, 2012.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission