
SHARON SIMON	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
CHRISTOPHER STORCELLA AND	:	
LINDA LEVITT DOYLE	:	
MARGATE CITY BOARD OF EDUCATION	:	Dkt. No. C49-10
ATLANTIC COUNTY	:	DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed on December 21, 2010 by Sharon Simon alleging that Christopher Storcella, the Board President, and Linda Levitt Doyle, the Vice President of the Margate City 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(a), (e), (g) and (j) of the Code of Ethics for School Board Members. On January 19, 2011, an answer was filed on behalf of the respondents.

The parties were notified by letter dated January 26, 2011 that this matter would be placed on the agenda for the Commission’s meeting on February 22, 2011 for review in accordance with N.J.A.C. 6A:28-10.8. Therein, the parties were specifically advised that the Commission may take one of several actions: decide to retain the complaint for a hearing by the Commission at a later date; decide to refer the matter to the Office of Administrative Law for a hearing; table the matter to request additional information or legal advice; or dismiss the complaint where the allegations in the complaint, on their face, are insufficient, even if true, to warrant review by the Commission as possible violations of the School Ethics Act. At its meeting, the Commission voted to dismiss the complaint for failure to state a claim that would be a violation of the Act. (N.J.A.C. 6A:28-10.8(a)5). 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

In Count 1, the complainant alleges that, in response to a request made pursuant to the Open Public Records Act (OPRA), the respondents have failed to investigate the potential misrepresentation of credentials by the Superintendent. The complainant asserts that after she made a request for a copy of the Superintendent’s doctoral transcript, she was informed by Board Counsel by letter dated June 24, 2010 that the document in question was not in the District’s possession and, therefore, could not be provided to her. The complainant asserts that the Board has “used this letter to imply that legally, I do not have the right to ask for a transcript or question the Superintendent’s credentials without supporting facts, that the Board has the right to tell me to stop making these inquiries and that I am defaming the Superintendent’s reputation by

continuing to do so.” (Complaint at p. 2) The complainant asserts that the respondents violated N.J.S.A. 18A:12-24.1(a), (g) and (j).¹

In Count 2, the complainant asserts that under the respondents’ leadership, the Board has failed to investigate the potential misrepresentation of credentials and the Board has created a hostile environment at its meetings, disregarding her questions and otherwise retaliating against her for her request. As factual support for this allegation, the complainant states that at the July 28, 2010 meeting, Mr. Storcella read aloud from one of her email communications to the Superintendent, but would not allow her the opportunity speak or respond to questions. (Id. at p. 4) The complainant asserts that the respondents violated N.J.S.A. 18A:12-24.1(a), (g) and (j).

In Count 3, the complainant asserts that under the respondents’ leadership, the Board is not answering her questions, harassing her and failing to investigate her complaint against the Superintendent. Here, the complainant states that on November 30, 2010, she received a letter from Board Counsel which she feels was another attempt to harass her. (Id. at p. 5) The complainant asserts that the respondents violated N.J.S.A. 18A:12-24.1(a), (g) and (j).

In Count 4, the complainant asserts that the minutes of the Board’s meetings are not being properly maintained in accordance with New Jersey Statutes. (Id. at p. 5) The complainant asserts that the respondents violated N.J.S.A. 18A:12-24.1(a), (g) and (j).

In Count 5, the complainant asserts that the respondents attended a meeting of the Margate City Commission on December 2, 2010 and, in response to a question as to “why the Board denied the request for the transcript when it could be obtained from the University within 3 to 5 business days for \$10.00, Mr. Storcella responded that the Board discussed and considered providing the transcript but had been advised by outside counsel not to provide the document because another request might be made for a tax return (a Superintendent’s tax return is not an open public record per the GRC).” (Id. at p. 6) The complainant asserts that the respondents violated N.J.S.A. 18A:12-24.1(a), (e) and (g).

In Count 6, the complainant asserts that at the December 8, 2010 meeting, Mr. Storcella “was taunting and bullying” her. Referring to the December 2, 2010 Margate City Commission meeting, the complainant alleges that Respondent Storcella stated, “I said what I said, it is on tape, listen to the tape.” (Id.) The complainant asserts that the respondents violated N.J.S.A. 18A:12-24.1(a), (e) and (g).

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 have given rise to the alleged violation(s) of the Act. N.J.A.C. 6A:28-

¹To the extent that this complainant alleges violations of statutes outside of the Act, the Commission has jurisdiction only over matters arising under the School Ethics Act, and will not consider allegations that a respondent has violated statutes other than the School Ethics Act. N.J.A.C. 6A:28-1.4

6.3(b)3. Regulations further provide that the Commission may, in its discretion, dismiss complaints or specific allegations in complaints, where the complaint, on its face, fails to state 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.

As a threshold matter, it is important to note that this complaint essentially challenges the Board's response to the complainant's OPRA request for documents. In this connection, the Commission maintains that the School Ethics Act does not empower it to supplant the decisions of duly elected or appointed local board members when they are acting in their capacities as board members. To the extent the complainant believes that the Board has acted in a manner that is arbitrary and capricious, or otherwise contrary to law or regulation, any such claim must be brought before the Commissioner of Education. Solar-Snyder v. Rose et al., Sussex Wantage Board of Education, Sussex County, C32-03 (December 16, 2003). See, also, Dericks et al. v. Johnson et al., Sparta Board of Education, Sussex County, C01-08 (October 27, 2009). Consequently, the Commission does not have the authority to review decisions rendered by local boards of education, as opposed to allegations that *individually-named school officials* violated the School Ethics Act. Lovett et al. v. Bret Asbury et al., Freedom Academy Charter School Board of Trustees, Camden County, C01-09 (April 28, 2009). However, as noted below, this complaint is devoid of factual allegations specific to the named respondents that would support a claim of violation of the Act.

In Counts 1 through 6, the complainant asserts that the respondents violated N.J.S.A. 18A:12-24.1(a), which provides:

I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures. N.J.A.C. 6A:28-6.4(a)1.

The complainant does not provide, nor indeed assert that, a final decision has been rendered with respect to these respondents from any court of law or administrative agency of this State finding that the respondents failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondents brought about changes through illegal or unethical means. Therefore, the Commission finds that the complainant has failed to set forth facts in Counts 1 through 6 which would support a claim that the respondents violated N.J.S.A. 18A:12-24.1(a).

In Counts 1 through 6, the complainant asserts that the respondents violated N.J.S.A. 18A:12-24.1(g), which provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

The Commission's regulations require that:

Factual evidence of a violation of the confidentiality provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that the respondent(s) took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that the respondent violated the inaccurate information provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by the respondent(s) and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. N.J.A.C. 6A:28-6.4(a)7.

There is no claim that these respondents took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices so as to implicate the "confidentiality" provision of this statute. Neither does the complainant provide any facts to support a claim that the respondents failed to provide accurate information and, in concert with their board members, interpret to the staff the aspirations of the community for its school. To the extent this complaint suggests, in Count 5, that Mr. Storcella provided inaccurate information at the December 2, 2010 Margate City Commission meeting, nothing in this complaint substantiates such an inaccuracy; indeed, Mr. Storcella's statement does not necessarily conflict with Board Counsel's letters to the complainant dated June 24, 2010 and November 30, 2010 presenting the Board's position that the District is not in possession of the document. Therefore, the Commission finds that the complainant has failed to set forth facts in Counts 1 through 6 which would support a claim that the respondents violated N.J.S.A. 18A:12-24.1(g).

In Counts 1 through 4, the complainant asserts that the respondents violated N.J.S.A. 18A:12-24.1(j), which provides:

I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(j) shall include evidence that the respondent(s) acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint:

- i. Prior to referral to the chief administrative officer; or
- ii At a time or place other than a public meeting and prior to the failure of an administrative solution. N.J.A.C. 6A:28-6.4(a)10.

There is no claim that these respondents 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, as would be required to establish a violation of N.J.S.A. 18A:12-24.1(j). Indeed, the complainant's submissions show that the Superintendent has been addressing this matter in concert with the Board by meeting with community members and the complainant (Board Counsel's June 24, 2010 letter) and directly responding to the complainant's emails. (Complaint at p. 4) Therefore, the Commission finds that the complainant has failed to set forth facts in Counts 1 through 4 which would support a claim that the respondents violated N.J.S.A. 18A:12-24.1(j).

In Counts 5 and 6, the complainant asserts that the respondents 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.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

There is no claim that these respondents made personal promises or took action beyond the scope of their duties such that, by its nature, had the potential to compromise the board. To the extent that the complainant asserts in Count 5 that the respondents' appearance at the Margate City Commission meeting on December 2, 2010 constituted private action, there are no facts set forth in the complaint that would support the conclusion that this action was of such a nature that it had the potential to compromise so as to violate N.J.S.A. 18A:12-24.1(e).

Further, Count 6 alleges that Respondent Storcella, at the December 8, 2010 meeting, "was taunting and bullying" her; then, referring to the Margate City Commission meeting, Storcella stated, "I said what I said, it is on tape, listen to the tape." (Complaint at p. 6.) Action which took place while the respondent was serving in his role as the Board President is not likely to be considered "private action." However, even assuming that his comments constituted "action beyond the scope of his or her duties," the Commission does not find that the comments

set forth in this complaint were of such a nature that they had the potential to compromise the Board. Therefore, the Commission finds that the complainant has failed to set forth facts in Counts 5 and 6 which would support a claim that the respondents violated N.J.S.A. 18A:12-24.1(e).

REQUEST FOR SANCTIONS

At its meeting on February 22, 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, and pursuant to its discretion, the Commission dismisses the within complaint for failure to state 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: March 23, 2011

Resolution Adopting Decision – C49-10

Whereas, the School Ethics Commission has considered the complaint and answer; and

Whereas, at its meeting on February 22, 2011, the Commission determined to dismiss the complaint for failure to state a claim that would be a violation of the Act; 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.

Robert W. Bender, Chairperson²

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on March 22, 2011.

Joanne Boyle
Executive Director

² Although Chairperson Bender did not attend the February 22, 2011 meeting and participate in the decision, his signature affirms that the decision was reviewed and duly adopted by the Commission at its meeting on March 22, 2011.