

The respondent argues that she had a duty to bring a complaint to the Superintendent and did not engage in an investigation.

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 the respondent violated N.J.S.A. 18A:12-24.1(c), (e) and (j), which state, respectively:

c. 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

e. 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.²

j. 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.³

Even assuming the facts as alleged in the complaint are true, the Commission does not find that respondent's actions in advising the Superintendent of complainant's alleged misuse of a school vehicle was a violation of the Code. Rather, the Commission found that the respondent acted within the scope of her duty as a Board member under subsection (j) when, upon receiving a complaint

¹ The Commission's regulations require that:

(c) 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 (e) 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.

³ (j) 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.

from a member of the public that the complainant was shoveling snow outside of his home while leaving a school vehicle on with the engine running, reported the matter to the Superintendent for resolution. The complainant does not contend that the respondent took any Board action or in any way participated further in the dispute other than to report his conduct.

The complainant asserts that the respondent conducted an investigation when she asked for corroboration in the form of photos of the complainant's conduct before reporting the matter to the Superintendent. The Commission determines that without such evidence, the allegation could have been considered rumor and without support, and the respondent may have risked a claim of defamation.

Additionally, the Commission finds that there are no facts set forth in the complaint that would support a conclusion that the respondent 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). Complainant's supporting documents do not aver that the respondent made a personal promise to anyone and convey only that the respondent received a report of complainant's potential misuse of the school vehicle assigned to him and further that she requested photos to corroborate the conduct. As discussed, *supra*, the respondent had a duty to report a constituent's concerns to the Superintendent for resolution. Finally, complainant's allegation that the respondent took board action to effectuate policies and plans without consulting those affected by such policies and plans has no merit. Thus, the Commission finds that the complaint, on its face, fails to allege facts sufficient to maintain a claim that the respondent violated N.J.S.A. 18A:12-24.1(c), (e) or (j).

REQUEST FOR SANCTIONS

The respondent alleged that the complaint herein is frivolous. At its meeting on October 28, 2014, the Commission considered the respondent's 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 respondent's 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: November 26, 2014

Resolution Adopting Decision – C21-14

Whereas, the School Ethics Commission has considered the complaint, the Answer filed on behalf of respondent and the complainant's reply thereto; and

Whereas, at its meeting on October 28, 2014 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 November 25, 2014 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 November 25, 2014.

Joanne M. Restivo
Acting Executive Director
School Ethics Commission