
JANINE WALKER CAFFREY

BEFORE THE SCHOOL ETHICS COMMISSION

v.

KENNETH PUCCIO
PERTH AMBOY BOARD OF EDUCATION,
MIDDLESEX COUNTY

SEC Docket No. 28-12 OAL Dkt. No. EEC 13635-12 FINAL DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed by Janine Walker Caffrey, Superintendent of the Perth Amboy Board of Education on July 6, 2012 and amended on July 13, 2012, alleging that the respondent violated N.J.S.A. 18A:12-24.1(a) (c) (d) (f) (g) (h) (i) and (j) of the Code of Ethics for School Board Members. On August 15, 2012, the respondent filed an Answer, alleging that the complaint was frivolous. Pursuant to a predecision determination, at its meeting on August 28, 2012, the Commission voted to find that the above-captioned complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2 and to dismiss Counts 1 and Count 3 in their entirety for lack of jurisdiction, pursuant to N.J.S.A. 18A:12-22 et seq. and N.J.A.C. 6A:28-1.4(a). In accordance with N.J.A.C. 6A:28-10.8(a), the Commission voted to transmit this complaint to the Office of Administrative Law (OAL) for a plenary hearing on Count 2 of the amended complaint. The complainant had the burden to prove factually any violations of N.J.S.A. 18A:12-24.1 (c), (f), (g), (h), and (i) under the Code of Ethics for School Board Members within the standards set forth at N.J.A.C. 6A:28-6.4.

The complaint was transmitted to the OAL on September 28. 2012.

While at the OAL, the respondent filed a Motion for Summary Decision, to which the complainant filed her opposition on February 12, 2013, pursuant to N.J.A.C. 1:1-12.5. The ALJ granted the Motion for Summary Decision and electronically transmitted the Initial Decision to the Commission on May 30, 2013 and mailed it to the parties the same day. On May 31, the Commission requested an extension of time to review the full record, including exceptions. The extension was granted until August 28, 2013. Neither party filed exceptions to the Initial Decision. At its meeting on June 25, 2013, the Commission adopted the findings and conclusions of the ALJ for the reasons expressed in the Initial Decision and dismissed the matter.

ANALYSIS

The complainant bears the burden of factually proving any violations 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). See also, N.J.S.A. 18A:12-29(b). The Commission recognizes that summary decision may be granted:

if the papers and discovery, which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any 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 2 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: (1) respondent, by voting against the complainant's recommendations, acted beyond the scope of his authority so as to violate N.J.S.A. 18A:12-24.1(c) (see, N.J.A.C. 6A:28-6.4(a)3); (2) respondent ceded his independent judgment to a special interest or political group for personal gain so as to violate N.J.S.A. 18A:12-24.1(f) (see, N.J.A.C. 6A:28-6.4(a)6); (3) respondent made a public disclosure of confidential information so as to violate N.J.S.A. 18A:12-24.1(g) (see, N.J.A.C. 6A:28-6.4(a)7); (4) respondent failed to hire the best qualified personnel when he did not accept the Superintendent's recommendation so as to violate so N.J.S.A. 18A:12-24.1(h) (see, N.J.A.C. 6A:28-6.4(a)8); or (5) respondent failed to support and protect school personnel voting contrary to the Superintendent's recommendation so as to violate N.J.S.A. 18A:12-24.1(i) (see, N.J.A.C. 6A:28-6.4(a)9).

DECISION

The Commission determines to adopt the ALJ's Initial Decision, granting summary decision to the respondent and dismissing Count 2. 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: July 31, 2013

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¹ The School Ethics Commission has recognized that the Commission lacks jurisdiction to consider *Rice* notice violations. To the extent that this issue arose during the pendency of this matter at the OAL, the Commission concurs with the ALJ that same is dismissed.

Resolution Adopting Decision – C28-11

Whereas, pursuant to <u>N.J.A.C.</u> 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 his Initial Decision that summary decision should be granted to the respondent and the complaint should be dismissed; and

Whereas, neither party filed exceptions in response to the ALJ's decision; and

Whereas, at its meeting of June 25, 2013, the Commission determined to adopt the Initial Decision of the ALJ as the Final Decision; 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 as a Final 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 July 30, 2013.

Joanne M. Restivo Interim Executive Director School Ethics Commission