
IN THE MATTER OF

**CARMINE CIMINO
LITTLE EGG HARBOR TOWNSHIP
BOARD OF EDUCATION,
OCEAN COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No. C31-14

**DECISION
SUMMARY DISPOSITION**

PROCEDURAL HISTORY

This matter arises from a complaint filed on July 28, 2014 by Gina M. Frasca, alleging that Carmine Cimino, a fellow member of the Little Egg Harbor Township Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., specifically alleging that Respondent Cimino violated N.J.S.A. 18A:12-24(c) of the Act, as well as N.J.S.A. 18A:12-24.1(a) and (e) of the Code of Ethics for School Board Members (Code).

On August 20, 2014, counsel for the Respondent requested and received an extension of time to file a responsive pleading, and on October 10, 2014, filed a Motion to Dismiss in Lieu of an Answer. Thereafter, the School Ethics Commission (Commission) notified the parties by letter dated October 10, 2014 that this matter would be placed on the Commission's agenda for its meeting on October 28, 2014, in order to make a determination regarding the Respondent's Motion to Dismiss the Complaint. On October 27, 2014, the Complainant filed a reply to the Motion to Dismiss. At its meeting on October 28, 2014 the Commission voted to deny the Motion to Dismiss and directed the Respondent to file an Answer on all violations alleged in the Complaint. On December 17, 2014, the Respondent filed his Answer to the Complaint.

By letter of March 4, 2015, the parties were advised that the matter would be placed on the agenda for the next regular meeting of the Commission on March 24, 2015, in order to make a probable cause determination, in accordance with procedures set forth at N.J.A.C. 6A:28-10.9. At its meeting on March 24, 2015, the Commission found probable cause to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(c) of the Act as alleged in the sole Count of the Complaint, but found no probable cause to credit the allegations that the Respondent violated N.J.S.A. 18A:12-24.1(a) and (e) of the Code and voted to decide the matter by summary decision before the Commission, pursuant to N.J.A.C. 6:28-10.7(c)1, since there was no genuine issue of material fact that would require an evidentiary hearing. The Respondent did not object to the resolution of this matter on a summary basis.

The Respondent was granted 20 days to submit a statement why he should not be found in violation of the School Ethics Act. After a short extension, the Respondent filed his statement on June 1, 2015 and served a copy on the Complainant, pursuant to N.J.A.C. 6A28-1.7. The parties were notified by letter of June 3, 2015 that the Commission would review the matter on summary disposition at the regular meeting scheduled on June 30, 2015.

At its meeting on June 30, 2015, the Commission reviewed the record and the Respondent's Statement and found that he had violated N.J.S.A. 18A:12-24(c), but due to the totality of the circumstances, pursuant to N.J.A.C. 6A:28-10.12, declined to issue a penalty.

SUMMARY OF THE RECORD

Following the Commission's dismissal of the alleged violations of N.J.S.A. 18A:12-24.1(a) and (e) at its March 24, 2015 meeting, the remaining issue before the Commission is limited to the alleged violation of N.J.S.A. 18A:12-24(c). In the sole Count of the Complaint, Complainant/Board member alleged that at the meeting on June 10, 2014, Respondent Cimino participated in the hiring process for the new Superintendent even though his wife is an employee of the District in the same District in which he sits as a Board member. The Complainant contends that the Respondent's involvement violates the ruling in Martinez v. Albolino et al., Hackensack Board of Education, Bergen County, SEC Dkt. No. C45-11 (June 26, 2012) (Martinez), which prohibits a conflicted Board member's pre-hire and post-employment involvement regarding the Superintendent. Specifically, the Complainant asserts that the Respondent participated in the search for a new Superintendent by voting to affirm the choice for the Agency which would guide the non-conflicted Board members in their search for a new Superintendent. The Complainant maintains that because of the Respondent's conflict, he should have recused himself from all participation in the hiring process and abstained from the vote. The Complaint asserts this to be a violation of N.J.S.A. 18A:12-24(c).

The record shows that at Respondent Cimino was sworn in as a Board member at the January 7, 2014 Reorganization meeting of the Little Egg Harbor Board of Education. At the January 27, 2014 meeting, the Respondent Cimino, along with all present Board members, received training on school ethics. During the meeting, he placed on the record that he was a conflicted Board member. (Complaint, p.1) After the resignation of the Superintendent on March 25, 2014, the Board began the process in search of his successor.

Since the Board is comprised of seven members, three of whom are conflicted, occasioned by a family member's employment in the District (Complaint, p.1), the Board Attorney issued his initial advice regarding the conflicted Board members' ability to participate in the process of selecting the new Superintendent. On March 31, 2014, he advised the Board that based on the Commission's ruling in Martinez, that conflicted Board members should "now recuse themselves from the search and selection process for a new superintendent (interim and permanent), and similarly recuse themselves from voting on whether to hire the new superintendent." (Board Attorney e-mail March 31, 2014)

On April 8, 2015, in response to another Board member's inquiry whether a conflicted Board member could participate in the process to select and appoint the consulting firm to conduct the search for the superintendent, the Board attorney concluded and advised that it would be "unlikely that the SEC would find a violation of the Act if the conflicted Board members participated in discussion to develop and establish objective criteria to be employed by the professional consulting firm in its search for the District's next Superintendent."

On April 21, 2014, Board member Daleo filed a request for an Advisory Opinion with the Commission, which it docketed as A24-14, inquiring whether the conflicted Board members could participate in the selection of the professional consulting firm to conduct the search for the Superintendent. While the request was pending before the Commission, at the meeting on June 10,

2014, Respondent Cimino engaged in the discussions regarding the three potential agencies that evening and voted to select the successful consulting firm.

On June 25, 2014, the Commission, after having discussed the A24-14 request at its May 27, 2014 meeting, advised Board member Daleo that the holding in Martinez was sufficient and adequately binding on conflicted Board members not to participate in any aspect of the Superintendent's search or risk a violation of the Act. Moreover, although the Commission did not believe it needed to comment further, it did so by clarifying that the conflicted Board members could not engage in any discussion or vote and must leave the session where such Board actions are conducted.

The Minutes of the August 14, 2014 Board meeting show that the Board voted to amend the agenda of June 10, 2014, for the purpose of rescinding the previous vote to select the consulting firm and for the purpose of appointing a different firm to guide the search. The vote was only conducted by non-conflicted Board members. The Respondent was absent from the meeting that evening and did not participate in the vote.

The Complainant asserts that Respondent Cimino, by his failure to adhere to the advice as set forth in Martinez, violated N.J.S.A. 18A:12-24(c).

In his sworn affidavit, Respondent Cimino states that his wife is employed in the same District in which he sits as a Board member and that he voted to select the agency which would guide the non-conflicted Board members involved in the search for a new Superintendent. He asserts, however, that his participation and vote were in good faith and in reliance on the advice Board counsel provided to its members. He states further that neither he nor his wife benefitted from his actions and that his objectivity or independence of action was never compromised. He also recognizes that he would not have any involvement in the search or selection of the Superintendent as the process advances. (Affidavit, pp.1-2)

Complainant's Documents

Exhibit A	Excerpt of the Board Minutes for the January 7, 2014 Meeting
Exhibit B	Excerpt of the Board Minutes for the January 27, 2014 Meeting
Exhibit C	Superintendent's Resignation Letter of March 25, 2014
Exhibit D	Board Counsel's e-mail of March 31, 2014 to Board President Perrino
Exhibit E	Board Counsel's Ethics Letter of April 8, 2014 to Board President Perrino
Exhibit F	Entire Board Minutes for the April 30, 2014 Meeting
Exhibit G	Excerpt of the Board Minutes for the June 10, 2014 Meeting
Exhibit H	Advice of the School Ethics Commission on Advisory Opinion A24-14

Respondent's Documents

Exhibit A	Respondent's Letter Brief filed June 1, 2015
Exhibit B	Respondent's Affidavit
Exhibit C	Excerpt of the Board Minutes for the August 14, 2014 Meeting Rescinding Vote

FINDINGS OF FACT

The Commission finds the following to be undisputed facts:

1. The Little Egg Harbor Board of Education is comprised of seven Board members.
2. For all the time mentioned in this Complaint, Respondent Cimino was a duly elected, seated Board member.
3. Respondent Cimino was sworn in as a new Board member at the January 7, 2014 Reorganization meeting of the Little Egg Harbor Board of Education.
4. At the January 27, 2014 meeting, during which the Board received training on school ethics(although he arrived late), Respondent Cimino placed on the record that he is a conflicted Board member as his wife is an employee of the same District in which the Respondent sits as a Board member.
5. At the Board meeting of March 25, 2014, the Superintendent submitted his resignation effective June 30, 2014.
6. In order to commence its search, the Board decided to pick a committee to determine the qualifications for the new Superintendent and then to hire a professional consulting firm to select the candidates for the position.
7. In an e-mail to Board President Perrino on March 31, 2014, the Board attorney advised that the conflicted Board members were prohibited from "...participation in the Superintendent's pre-employment/selection and hiring process or any post-employment discussions, [and] that a conflicted Board member should "now recuse themselves from the search and selection process for a new superintendent (interim and permanent), and similarly recuse themselves from voting on whether to hire the new superintendent."
8. In a second communication on April 8, 2014, at the behest of Board President Perrino, the Board Attorney issued his advice, stating that it was "unlikely that the SEC would find a violation of the Act if the conflicted Board members participated in the discussion to develop and establish objective criteria to be employed by the professional consulting firm in its search for the District's next Superintendent."
9. The Commission received a request for an Advisory Opinion on April 21, 2014, docketed as A24-14, from Board member Daleo, inquiring whether the conflicted member could participate in the development of the criteria for the new Superintendent's qualifications and in the process to select the search firm.
10. Before the Commission could respond to the A24-14 inquiry, Respondent Cimino voted to select the consulting firm, which won the contested vote, to lead the search for the new Superintendent.

11. The Commission issued its advice in A24-14 on June 25, 2014, and determined that the ruling in Martinez applied, and further clarified the intent of that determination to apply to all aspects of the vetting process and vote.
12. At its meeting on August 14, 2014, the non-conflicted Board members voted to rescind its action of June 10, 2014 and selected a different consulting firm to lead the search.

ANALYSIS

In cases involving the application of N.J.S.A. 18A:12-24(c), the Commission considers the language in N.J.S.A. 18A:12-24(c), which provides:

- c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

The gravamen is whether the Respondent took action in his official capacity in a matter where he, or a member of his immediate family had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment, or whether he had a personal involvement that is or creates some benefit to his or his immediate family. Whether direct or indirect, a violation of N.J.S.A. 18A:12-24(c) is determined by what a reasonable member of the public would believe. (Statement, p.9) See I/M/O Patricia Haines, Haddonfield Board of Education, Camden County, Docket No. C07-00, (September 27, 2000), Commissioner of Education Decision, Docket No. 389-00SEC (November 27, 2000) and Commission Advisory Opinion, A17-04 (July 26, 2004).

Here there is no such quandary. As a conflicted Board member, Respondent Cimino would not be able to participate in the selection of, or vote for, any person who is in the supervisory chain of the family member employed by the same District in which he sits as a Board member. The Respondent argues that he should not held accountable for his action since he followed advice of counsel and there was not prevailing authority to prohibit his voting for the firm to conduct the search.

The Commission stated the following in the Martinez decision:

The Commission recognizes that the Legislature has made it clear that Board members "... must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated." N.J.S.A. 18A:12-22. As such, it now finds that the same concerns which give rise to a post-employment conflict of interest also have the potential to taint the Superintendent's pre-employment/selection and hiring **process (Emphasis added)** where the Board member has an immediate family member or relative employed in the District. Recognizing that the Superintendent has general supervision over all aspects of the schools, N.J.S.A. 18A:17-20, which allows for a

variety of managerial actions or decisions that *could* affect the employment of a Board member's immediate family member or relative, the Commission determines that such Board members would have a direct or indirect financial involvement that might reasonably be expected to impair their objectivity or independence of judgment. Accordingly, henceforth, a Board member who has an immediate family member (as defined in N.J.S.A. 18A:12-23) or a relative (as defined in N.J.S.A. 18A:12-23) employed in the district may not participate in the search, selection and/or vote for a new Superintendent.

The Commission referenced the "process" of selecting and hiring a new Superintendent or the re-hiring of an incumbent. Then or now, the Commission is not inclined to advise a District as to what that "process" should be or what form it should take, but, however the "process" unfolds, the Commission envisioned a complete bar from the beginning to the end of the process. The Commission stated clearly and unequivocally in Martinez and its progeny that a conflicted Board member must recuse from any participation, discussion or involvement in the pre- and post-hiring of the District's Superintendent and must abstain from the vote to hire the candidate. The Commission further stated that involvement in the search, discussion and/or vote for a new Superintendent under such circumstances would constitute a violation of the Act. At the time of the vote for the consulting firm there was controlling authority that prohibited such activity extant.

The Respondent also argues that the legal advice the Board received insulates his from blame for his conduct. It does not. Each Board member undergoes ethics training as each is responsible for his own ethical conduct. That responsibility cannot be delegated or avoided. Respondent Cimino completed his training on ethics at the meeting on January 27, 2014, and it was his duty as an elected official to act prudently and cautiously, as is properly to be expected by a reasonable person under the particular circumstances so as not to compromise the Board. Given this situation, there was ample reason for caution: The Board Attorney gave conflicting advice, first instructing that the conflicted Board members were prohibited from participating in the search and the vote, then a week later counseled them they were allowed to engage in a part of the process. Further, the unconflicted Board members voiced concern about Respondent's actions, and a Board member filed a request for an Advisory Opinion with the Commission.

There were other warnings that should have suggested caution. The last line of the Martinez decision warns that if "any past advisories dealing with the search for and selection of a new Superintendent are inconsistent with this determination, those advisories are no longer considered valid guidance." As early as December 4, 2012, the Commission posted a caveat on its Advisory Opinion website stating that prior advisories may have been modified or overturned by subsequent advice. Finally, even Board Counsel was cautious in his letter of April 8, 2014. He couched his advice in tentative terms, stating that it was "unlikely" that the Commission would find the Respondent's actions in violation of the Act. There was no certainty in his advice. Still, without waiting for the Commission to render its advice sought in A24-14¹, the Respondent elected to participate in Board activity which a reasonable member of the public might believe that due to his

¹ When the Commission exercises its authority under N.J.A.C. 6A:28-5.2(c)(3) to decline to issue advice in response to a request, it does so because prior published opinions sufficiently address the issue. That predicate advice controls the prospective conduct and there is no purpose in restating the advice. Moreover, when the Commission further clarifies the issue, as it did in A24-14, it intends for that additional comment to bear the same weight as new advice.

personal conflict could impair the Respondent's objectivity or independence of judgment, creating a justifiable impression among the public that their trust is being violated. SEC v. Michael Kilmurray, Lacey Township Board of Education, Ocean County, C12-94 (February 24, 1998), *aff'd* Commissioner of Education Decision, Docket No. 155-98SEC, decided April 15, 1998. Consequently, the Commission finds that Respondent Cimino violated N.J.S.A. 18A:12-24(c).

However, the Commission recognizes that at its meeting on August 14, 2014, the non-conflicted Board members summarily took remedial action to rescind the vote of June 10, 2014, corrected the minutes and voted to select a different consulting firm to lead the search without the Respondent's involvement. In light of the totality of the circumstances, by a majority vote, pursuant to N.J.A.C. 6A:28-10.12, the Commission declines to issue a penalty.

DECISION

Based on the foregoing, although the Commission found that the Respondent violated N.J.S.A. 18A:12-24(c) of the Act, given the totality of the circumstances, by a majority vote, pursuant to N.J.A.C. 6A:28-10.12, the Commission declines to issue a penalty. The Complaint is, therefore, dismissed. This decision is a final decision of an administrative agency and, 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 29, 2015

Resolution Adopting Decision – C31-14

Whereas, the Commission found probable cause to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act; and

Whereas, at its meeting on March 24, 2015, the Commission voted to resolve this matter by summary decision, pursuant to N.J.A.C. 6:28-10.7(c)1; and

Whereas, the Commission has considered the pleadings filed by the parties, and the Respondent's statement; and

Whereas, at its meeting on June 30, 2015, the Commission found that the Respondent violated N.J.S.A. 18A:12-24(c) of the Act, but given the totality of the circumstances, by a majority vote, pursuant to N.J.A.C. 6A:28-10.12, declined to issue a penalty; and

Whereas, the Commission dismissed the Complaint; and

Whereas, at its meeting on July 28, 2015, the Commission reviewed the decision and finds that the within decision accurately memorializes the Commission's findings of fact and conclusions of law;

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

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on July 28, 2015.

Joanne M. Restivo
Acting Executive Director
Commission