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**KIERAN WHITE**

**v.**

**DR. PATRICIA L. MCGEEHAN,  
LEO SMITH, JR. AND WILLIAM LAWSON  
BAYONNE BOARD OF EDUCATION,  
HUDSON COUNTY**

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**BEFORE THE SCHOOL  
ETHICS COMMISSION**

**Docket No. C51-14**

**DECISION ON MOTION  
TO DISMISS**

## **PROCEDURAL HISTORY**

This matter arises from a Complaint filed on September 30, 2014 by Kiernan White alleging that William Lawson, President of the Bayonne Board of Education (Board), Dr. Patricia L. McGeehan, Superintendent of the Bayonne School District (District), and Leo Smith, Jr., Assistant Superintendent of Business/School Business Administrator of the District, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The Complainant specifically asserted that the Respondents violated N.J.S.A. 18A:12-24.1(a), (b) and (f) of the Code of Ethics for School Board Members (Code).

The Commission notified the Respondents by letter dated October 14, 2014 that charges were filed against them and advised that they had 20 days to answer the Complaint. Respondents filed a Motion to Dismiss in lieu of an Answer on November 5, 2014. The Complainant did not file a response thereto, pursuant to N.J.A.C. 6A:28-8.2.

By letter dated April 2, 2015, the Commission notified the Complainant and Respondents that this matter was scheduled for discussion before the Commission on April 28, 2015, in order to make a determination regarding the Respondent's Motion to Dismiss. The Commission voted at its April 28, 2015 meeting and revised its determination in a vote at its meeting on May 26, 2015 in order to grant the Respondent's Motion to Dismiss on all claims alleging violations of N.J.S.A. 18A:12-24.1(a), (b) and (f) of the Code and further dismissed the matter with prejudice.

## **SUMMARY OF THE PLEADINGS**

Complainant alleges that in February 2014, the Respondents, the Superintendent, Assistant Superintendent and Board President, respectively, held a "welcoming party" for the incoming freshman of the Bayonne Academy for Academics and the Arts, but had never treated any other incoming class to a similar party. Complainant states that he did not learn of the source of the expenditure until the meeting on June 11, 2014. The Complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(b).

The Complainant also asserts that although he was led to believe that the cost of the party was paid for by an autonomous parent organization, it was not until after a special Board meeting on June 16, 2014 that the Complainant learned that the money for the party was drawn from the Bayonne High School Account. Further, Complainant's OPRA search revealed that the Board used District funds to pay for the Arts Academy event. The Complainant contends that the Respondents lied in public about how the cost of the party was paid. The Complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(a).

The Complainant alleges that Respondent Leo Smith used his influence to secure the venue for the party since his brother, the former mayor, held all of his campaign parties there. The Complainant contends that by using his influence to have a party at that venue the Respondent was “in effect” using district funds to hold a tax-payer funded campaign party for his brother. The Complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(f).

The Respondents argue there is no factual support for any of the allegations, and the Complainant failed to provide documentary evidence to prove the claims. They assert that the event was primarily paid for through the aegis of the H.S. Drama Club and supplemented by the Board’s scrap metal and vending machine accounts, which were within the Board’s discretionary authority to disburse. Finally, the Respondents explain that the then Mayor’s daughter was a member of the incoming freshman program and he, as her father, had the right to attend the event. The Respondents argue that the claims asserted against them lack the factual bases to support the allegations and fail to be corroborated by documentary evidence required to prove the allegations. They seek the dismissal of the Complaint in its entirety, with prejudice.

## **ANALYSIS**

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts asserted in the light most favorable to the Complainant and determine whether the allegation(s) set forth in the Complaint, if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3.

Because 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), in order to prevail on a Motion to Dismiss, the Complaint must allege facts, which if true, would be sufficient to support a finding that the Respondents violated N.J.S.A. 18A:12-24.1(a), (b) and (f) of the Code of Ethics for School Board Members.

Preliminarily, the authority of the School Ethics Commission is limited to enforcing the School Ethics Act, a set of minimum ethical standards by which all school officials must abide. While the provisions of the Act are broad in their scope, they simply do not prohibit all conduct by a school official, which might be considered as unprofessional, inappropriate or in violation of other State or Federal laws or regulations. Because the School Ethics Commission has jurisdiction *only* over matters arising under the Act, it shall not receive, hear, or consider any pleadings, motion papers, or documents of any kind relating to any matter that does not arise under the Act. N.J.A.C. 6A:28-1.4.

Moreover, pursuant to N.J.S.A. 18A:12-24.1 *et seq.*, the Code of Ethics for School Board Members governs the conduct of school board members only and does not oversee the actions of school officials who are not Board members.

Count 1 of the Complaint alleges that the entire Board acted to hold a party for the incoming freshmen class of the Bayonne Academy for Academics and the Arts, but no Board member specifically. The Complaint challenges actions taken by the Board acting as a body politic. The School Ethics Commission has long determined that it *will not* review actions taken by a board of education as a whole. The Commission has decided that the legislative purpose of the School Ethics Act does not speak to the need for it to address actions taken by a board as a whole, where a

complainant is not alleging that a board member was conflicted when s/he voted, pursuant to N.J.S.A. 18A:12-24 et seq., but, rather, where a complainant alleges that the substance or subject matter of the action was in some manner inappropriate. 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); Lovett et al. v. Bret Asbury et al., Freedom Academy Charter School Board of Trustees, Camden County, C01-09 (April 28, 2009). Consequently, the Commission cannot review the action taken by the Board to hold a party for the incoming freshmen class of the Bayonne Academy for Academics and the Arts and dismisses Count 1 in its entirety for lack of jurisdiction to consider the allegation.

Counts 2 and 3 of the Complaint allege Code violations against the Superintendent and the Assistant Superintendent/School Business Administrator. While they are both school officials subject to the Act, they are not Board members and therefore their conduct is not circumscribed by the Code. As their actions are not reviewable by this Commission, their alleged violations of the Code in Count 2 are dismissed for lack of jurisdiction to consider the allegation. As Count 3 only had an allegation of a Code violation against the Assistant Superintendent/School Business Administrator, this Count is dismissed in its entirety.

The only remaining allegation, which affects a Board member, is articulated in Count 2 of the Complaint in which the Complainant asserts that Board President Lawson “repeatedly lied at board meetings about how the party was paid for.” For this, the Complainant cites a violation of N.J.S.A. 18A:12-24.1(a).

The Commission considers the allegation that Respondent Lawson violated N.J.S.A. 18A:12-24.1(a), which states:

a. 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.

To prove a violation of N.J.S.A. 18A:12-24.1(a), the Commission requires that the Complainant provide factual evidence 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 respondent brought about changes through illegal or unethical procedures by providing a copy of a final decision from any court of law or administrative agency of this State demonstrating that these Respondent violated that final decision. 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 Respondent Lawson from any court of law or administrative agency of this State finding that Respondent Lawson 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 means. Consequently, the Commission dismisses this allegation against this Respondent for failure to state a claim upon which relief could be granted.

Accordingly, granting all favorable inferences to the Complainant, the Commission grants the Respondent's Motion to Dismiss these allegations as set forth in the Complaint, and further dismisses the matter, with prejudice.

**DECISION**

Based on the foregoing and granting all facts in the light most favorable to the Complainant, the Commission voted to grant the Respondent's Motion to Dismiss on all claims alleging violations of N.J.S.A. 18A:12-24.1 (a), (b) and (f). 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).

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Robert W. Bender, Chairperson

Mailing Date: May 27, 2015

## **Resolution Adopting Decision – C51-14**

**Whereas**, the School Ethics Commission has considered the Complaint and the Motion to Dismiss filed on behalf of the Respondents; and

**Whereas**, the Commission voted on the matter at its meeting on April 28, 2015, and then voted to revise its determination at its May 26, 2015 meeting in order to grant the Respondent's Motion to Dismiss on all claims alleging violations of N.J.S.A. 18A:12-24.1(a), (b) and (f) of the Code and further dismissed the matter with; and

**Whereas**, at its meeting on May 26, 2015, 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.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on May 26, 2015.

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Joanne M. Restivo  
Acting Executive Director