
PETER KARPIAK

v.

**FRANK P. FARRUGGIA,
HOPATCONG BOROUGH
BOARD OF EDUCATION,
SUSSEX COUNTY**

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**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No. C57-14

DECISION

PROCEDURAL HISTORY

This matter arises from a Complaint filed on December 9, 2014 by the Complainant Peter Karpiak alleging that the Respondent Frank P. Farruggia, a member of the Hopatcong Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By letters dated December 18, 2014 and December 31, 2014, the Complainant was advised that his Complaint was deficient. On January 22, 2015, he filed a 2nd Amended Complaint, curing all defects. The Complainant asserted that the Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), and (j) of the Code of Ethics for School Board Members (Code).

By letter dated January 29, 2015, the School Ethics Commission (Commission) notified the Respondent of the charges against him and advised him that he had 20 days to answer the Complaint. The Respondent's counsel requested and received a brief extension of time to submit his responsive pleading. The Respondent filed a Motion to Dismiss in lieu of an Answer on March 11, 2015, and alleged that the Complaint was frivolous. The Complainant's counsel filed a response to the Respondent's Motion to Dismiss and to the allegation of frivolousness on April 20, 2015.

The Commission notified the Complainant and the Respondent that this matter was scheduled for discussion before the Commission on April 28, 2015, for determination of the Respondent's Motion to Dismiss and the allegation of frivolousness. At its meetings on April 28, 2015 and May 26, 2015, the Commission found the Complaint not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2, and voted to grant Respondent's Motion to Dismiss the allegations in the sole Count of Complaint as to alleged violations of N.J.S.A. 18A:12-24.1(a), (b), (j), and the first prong of (f) and (g). However, the Commission voted to deny the Respondent's Motion as to the alleged violations of N.J.S.A. 18A:12-24.1(c), (d), (e), and the second prongs of both (f) and (g). Pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to retain the matter for plenary hearing before the Commission. On June 16, 2015, the Respondent filed his Answer, Exhibits and Certificate of Service.

By letter dated July 8, 2015, the parties were notified that this matter would be scheduled for hearing before the Commission at its meeting on August 25, 2015. Both parties were represented by counsel: Mark Gruber, Esq. for the Complainant and Robert J. Fettweis, Esq. for the Respondent. Shortly before the scheduled hearing, Mr. Gruber advised the Commission that

the crossing guard, Maryann Melillo, an essential witness subpoenaed to testify on behalf of Mr. Karpiak, was unavailable for the hearing. The Commission adjourned the hearing. By letters of August 25, 2015 and October 23, 2015 the Commission advised the parties that the matter was rescheduled to November 24, 2015 and that the subpoenas served on their witnesses for the earlier hearing would remain in force until the new hearing date. At the hearing on November 24, 2015, Complainant's attorney advised the Commission and his adversary that he had just been informed that the same essential witness could not attend the hearing because she was needed at the school. When Mr. Gruber contacted the witness's supervisors, he was told that they would not release her to testify. (File 1, 27:39) Counsel for the Complainant did not request a second adjournment of the hearing in order to compel the witness to testify.

After hearing all testimony, as summarized below, the Commission found that the Complainant failed to meet his burden to prove by preponderance of the relevant, credible evidence that the Respondent took photos of Complainant's son so as to violate the Code and voted to dismiss the Complaint in its entirety during the public portion of its meeting.

SUMMARY OF THE PLEADINGS

Complainant alleged that sometime during the week of October 13, 2014, the Respondent took unauthorized photos of the Complainant's minor son as he emerged from a car at the school bus stop, alarming and frightening the parents who were also present. When the crossing guard told the Respondent to stop, the Complainant alleged that the Respondent stated that he was with the Board of Education and that he was conducting a study to determine if students were improperly using transportation services. The Complaint further asserts that at the October 13, 2014 public meeting of the Board, the Board President and Superintendent both stated that no such study was being conducted. The Complainant contended that the Respondent's actions were politically motivated and violated N.J.S.A. 18A:12-24.1(c), (d), (e), (f), and (g) of the Code.

In his Answer, the Respondent argued that the Complaint was politically motivated, arising from a hotly contested election, and further denied that he ever took pictures of Complainant's son or any student at the bus stop. Moreover, he asserted that there was no proof that any photos existed or that anyone was endangered. The Respondent maintained that there was no evidence that he made use of or published the photos he is alleged to have taken. Respondent contended that the claims asserted against him lack factual support and sought dismissal of the entire matter.

SUMMARY OF THE RECORD

Opening Remarks

Each party was invited to make an opening statement. Complainant's counsel contended that on October 13, 2014, the Respondent exceeded his authority as a Board member when he investigated alleged abuse of the Aid in Lieu of Transportation Program (Program) on his own without Board approval and then attempted to cover up his actions with misstatements and

falsehoods. He also asserted that the Respondent took pictures of the Complainant's son for possible political purposes.

In response, Respondent's attorney argued that as a member of the Facilities and Finance Committees, the Respondent learned of possible abuses in the Program from a resident, and decided to look into them. On his way to work one morning, he visited a bus stop to observe the situation before reporting the concern to the Superintendent. While there, he spoke briefly to the crossing guard and explained that he was a Board member on the District's Finance Committee checking out a Complaint regarding busing to out of district schools. Counsel argued that the Respondent did not tell the guard that he was conducting a study on behalf of the Board nor did he take a photo of any child. After five minutes time, he left the area and continued to his place of business. Later that day, the Respondent requested that the Superintendent investigate whether anyone was abusing the Program. Counsel contended that the Complaint was filed for political reasons to force the resignation of the Respondent from the Board.

COMPLAINANT'S CASE

COMPLAINANT'S TESTIMONY: Peter Karpiak—Board Member January 2015—Present

Complainant Karpiak testified that at the time of the incident on October 13, 2014, he was not yet a Board member, but was running for what was an ultimately successful election for office in the November 2014 election to the Board, in the hope that his service would improve the school district and stem the outflow of students in the system to other schools. He stated that he felt that the then current Board and administration had failed to properly manage the schools and to meet the students' educational needs. His children never attended the District's schools, except for a brief one-year period when his son attended kindergarten. The Complainant stated that he had limited contact with the Respondent until the incident that forms the crux of the Complaint. He explained that he was at the Elba Avenue bus stop that morning with his children for transport to a Choice school in adjacent town, and though he saw the Respondent speaking with the crossing guard, he did not know the purpose of their conversation until he learned of the event from a Board member some time later that week. Mr. Karpiak testified that he then questioned the crossing guard, Maryann Melillo, who told him that his child was the target of an investigation by the Respondent. The Complainant surmised that Respondent's actions were politically motivated, as the election was approximately two weeks away.

The Respondent's counsel objected to the Complainant's testimony concerning the hearsay statements of Ms. Melillo. Counsel for the Complainant's then advised the Commission and his adversary that Ms. Melillo did not comply with the subpoena and would not attend the hearing to testify on behalf of the Complainant. As she was the only witness with first-hand knowledge of the conversation at the bus stop on October 13, 2014 besides the Respondent. The Chairman cautioned the Complainant about relying solely on hearsay testimony and documents, but allowed counsel, over the objection of the Respondent, to continue to present his case, subject to the Commission's determination of the weight of that evidence.

The Complainant testified that some time later that week, he spoke with the guard, who told him that she saw the Respondent standing in the clearing at the bus stop. The guard told the Complainant that she received text messages from parents advising her of the Respondent's activities. She said she was aware of the political conflicts in town and pending election and that the Respondent stated he was conducting a study of the activities at the bus stop. The Complainant stated that the guard told him that the Respondent was there for "NK,"¹ the Complainant's son.

Prior to filing an ethics Complaint, the Complainant inquired at a public Board meeting whether there was a Board-approved study regarding the abuse of the Program.² The Complainant testified that the filing of the Complaint was not politically motivated and that he never brought up Respondent's name at any public meeting or meetings of Concerned Citizens in connection with the Complaint or the incident. Complainant stated that as a courtesy, he approached the President of the Board of Education, Clifford R. Lundin, before filing the ethics complaint and suggested that the President contact the Respondent to advise him that unless Respondent resigned his position on the Board, he would file a complaint. Complainant added that, in his conversation with President Lundin, he said that it would be unfortunate if the Respondent's employer learned of the ethics complaint.

On cross-examination, the Complainant stated that he was not an adversary of the Respondent, but that he is a founding member of the Concerned Citizens for a Better Hopatcong Education (Concerned Citizens), formed in August 2014, which sought to remove or replace Board members that the organization identified and considered to be ineffective. He testified that the Respondent may have been named as one of the ineffective members. Complainant confirmed that he asked Mr. Lundin to advise the Respondent that he would not file a Complaint if the Respondent agreed to resign. He also admitted that he told Mr. Lundin that he "would not want the knowledge of an ethics violation to come to Mr. Farruggia's employer." (File 1 at 59: 16). According to the Complainant, he mentioned the Respondent's employer to Mr. Lundin just to explain his reasoning for the courtesy heads up, and that if Mr. Lundin repeated the warning about Respondent's employer, then that was Mr. Lundin's decision.

The Complainant admitted that he never saw any photographs of his son or of any other child allegedly taken by Respondent at the bus stop, nor is he aware of any such photos. And he admitted that he has no personal knowledge of what happened at the bus stop, or at a subsequent meeting between the Respondent, Mr. Lundin and Board Vice President Margaret Buongiorno. The only first-hand knowledge that he could confirm was that there was no Board-approved study of the Program pending at the time of the incident at the bus stop. On redirect, the Complainant testified that he never used the Respondent's name in any derogatory or political manner at any Concerned Citizens' meetings.

In response to questioning from the Commission about the alleged picture taken by the Respondent, the Complainant offered no opinion as to what the Respondent hoped to gain from taking the alleged photos except to opine that it was for political reasons or that Respondent

¹ Initials of Complainant's child.

² The Respondent stipulated that at the time of event neither the Superintendent nor the Board authorized any study of this nature.

wanted to use them to discredit the Complainant in the eyes of the public. The Complainant also testified that he did not run against the Respondent in the recent election and that his son attends a Choice school in a nearby town.

WITNESS—Patrolman Edward Janosko—Hopatcong Police Department

Patrolman Edward Janosko, of the Hopatcong Police Department, testified that on October 20, 2014, the Complainant came to the police station and asked to give a statement regarding the incident at the bus stop. The Complainant told him that he was running against the Respondent in the November 2014 school Board elections and that he learned from the crossing guard that the Respondent was taking pictures of kids. Patrolman Janosko also testified that the Complainant told him that he learned from the crossing guard that the Respondent was checking out reported abuses of the Program. Patrolman Janosko later telephoned the crossing guard whose story “was consistent with what was told to me by Karpiak.” (C-1 at p.2). Patrolman Janosko confirmed that the crossing guard said that she had spoken with the Respondent at the bus stop and that her story was consistent with what Mr. Karpiak had told him in the report.

On cross examination, Patrolman Janosko confirmed that Complainant stated that he wanted to document an incident that occurred with a rival school Board member and that he was running for election against this Board member. He also testified that he told the Complainant that the Respondent did nothing illegal by taking pictures on public property. The Complainant told Patrolman Janosko that he had no intention of going to court over this; he just wanted to document the incident. Patrolman Janosko did not attempt to contact the Respondent for his response and took no further action on the matter.

WITNESS—CLIFFORD R. LUNDIN—Board Member and Former Board President

Mr. Lundin, Board President at the time of the incident, testified that the Complainant advised him that a Board member was taking pictures of children getting on the bus and demanded that Mr. Lundin take some action. Mr. Lundin recommended that he file a Complaint with the School Ethics Commission, which had jurisdiction over the matter. On election evening, the Complainant told Mr. Lundin that he had filed a report with the police, interviewed the crossing guard and again demanded that some Board action be taken. Once again, Mr. Lundin said he told the Complainant that he could file an ethics Complaint with the Commission. Sometime later, the Complainant contacted him again, provided a copy of the Complaint and recommended that Mr. Lundin meet with the Complainant to inform him that a complaint would be filed. On December 2, 2014, Mr. Lundin had a meeting with Board Vice President Buongiorno and the Respondent. During the meeting, the Respondent stated that he was on public property, but insisted that there were no pictures from the bus stop in his camera.

On cross examination, Mr. Lundin testified that he had a discussion with the Complainant, who told him that if the Respondent resigned he would not file the Complaint. Mr. Lundin also testified that the Complainant told him that the Respondent’s employer would not look favorably on the filing of an ethics Complaint and that the Complainant wanted Mr. Lundin to relay that message as well. Mr. Lundin testified that he never saw any pictures of any child

taken that day by the Respondent used for any purpose in the Borough. He also stated that the October incident was never publicly mentioned during the 2014 election. When asked by the Commission, and on redirect, Mr. Lundin recollected that when questioned about the alleged photographs, the Respondent stated that no one would find any pictures on his camera.

WITNESS—MARGARET BUONGIORNO—Board Member

Ms. Bongiorno testified that she is a Board Member. Mr. Lundin asked her to attend a meeting with the Respondent to discuss the Complainant's ethics allegations in order to hear his side of the events and to see how he wanted to handle the matter. She stated that when confronted with Complainant's accusations, the Respondent explained that he had the right to be on public property, that nothing happened and that no one is going to find pictures on his camera. Ms. Bongiorno asked the Respondent what happened and he responded that nothing happened, that he did not talk to anyone and that there were no pictures.

On cross examination, Ms. Bongiorno stated that she arrived late to the meeting and that Mr. Lundin recapped in substance what had happened before she arrived; therefore, she never heard first hand that the Respondent denied wrongdoing. She testified that she had no first-hand knowledge of what happened at the bus stop and that she never saw any photos.

Upon completion of Complainant's case, Respondent's counsel moved to dismiss the Complaint, pursuant to N.J.A.C. 6A:28-8.3. The Commission reserved decision on the Motion. Upon resumption of the hearing, the Respondent's counsel called his witnesses, as summarized below.

RESPONDENT'S CASE

WITNESS—CYNTHIA RANDINA—Superintendent of Schools, Hopatcong Board of Education

Cynthia Randina, the Superintendent of the Hopatcong School District, explained the purpose of the Program and testified that in mid October 2014, she received a phone call from the Respondent informing her that he had been speaking to parents who were concerned that students were using bus services to which they were not entitled. He further advised that he had visited a bus stop to observe students entering their buses. He then asked her to make sure that the students receiving aid from the Program were legitimately entitled to do so. She testified that the Respondent did not mention any names of anyone he had seen at the bus stop that day, nor did he tell her that he had any photos that he had taken at the bus stop, nor did she ever see photos allegedly taken at the bus stop that day. Sometime later, Ms. Randina contacted the Respondent to advise him that her investigation revealed that the students receiving the aid were entitled to the reimbursement. She stated that no further action was taken.

On cross examination, Ms. Randina testified that the Respondent calls her regularly to inform her of any issues that arise within his purview as a member of the Finance and Facilities Committees. She testified that she had not personally received any complaints from parents

regarding Program abuses and confirmed that there were no Board-approved studies into Program abuses in existence at that time. She further stated that the Respondent never told her that he was conducting a study or that he had taken a photo and deleted it. He did mention his conversation with the crossing guard and that he had told the guard that he had received complaints about the busing abuses. When asked why she thought the Respondent was at the bus stop, she testified that he had told her that he stopped there on his way to work to observe the activity after receiving complaints. Ms. Randina did admit that the Respondent could have instead gone to the Business Office, as she did, to settle the issue of inappropriate use of the Program.

When questioned by the Commission, Ms. Randina testified that she advises Board members to speak with her about concerns in the District so she can investigate them, but that sometimes the Board members look into the matters first before referring the issue to her. She stated that when the Respondent receives complaints he will typically look into the matter first and that she has never had a conversation with him about contacting her first before investigating on his own. She stated that she has never had a problem with him as he is always very forthcoming about what he likes and dislikes in the District and he shares that with her. She added that it is a frequent practice for Board members to look into a complaint first before reporting to her as Superintendent. She made a distinction between “investigation” and “looking into” a complaint. In answer to a question about how parents would know if there were transportation abuses, she offered that individuals share information among each other, which ultimately comes to the attention of a Board member and then to the Superintendent. Ms. Randina testified that her investigation confirmed that those students using the Program were entitled to the transportation they were receiving and the aid in lieu reimbursement payment.

On re-cross examination, Ms. Randina stated that she does not know where the Respondent lives or if there were other bus stops on his way to work. She stated that she had a conversation with the Respondent after his meeting with Mr. Lundin and Ms. Bongiorno at which he was told that the Complainant wanted him to resign or face an ethics Complaint.

On redirect, Ms. Randina also testified that the Respondent told her unequivocally that he would never take a picture of a child because she would be very concerned if he had. She later clarified that she understood the Respondent’s comments to mean that the Respondent took no pictures of children at the bus stop.

WITNESS—Robert Nicholson—Board Member, Sworn in January 2015

Mr. Nicholson, a Board member who was elected in the November 2014 election, testified that he was familiar with Concerned Citizens and had attended an open house event in June 2014 hosted by the group. At that event, he heard the Complainant and another individual lead discussions about “coming after” the Respondent, the Superintendent Ms. Randina, and another Board member, who chose not to run again in the 2014 election. The conversation revolved around the need for a forensic audit to investigate alleged improprieties that occurred when the Respondent was Board President. The audit was never conducted.

Mr. Nicholson also testified that he was approached sometime before he became a Board member by a number of parents who were concerned about the excessive expenditures for the Program. In mid-September, Mr. Nicholson contacted the Respondent to advise him of the parents' concerns. In response, the Respondent suggested that Mr. Nicholson make an OPRA request for the information.

On cross examination, Mr. Nicholson clarified that it was the Complainant and another individual, Sarah Schindelar, who spoke about the need for the forensic audit due to alleged improprieties from a time when Mr. Farruggia was Board President. A forensic audit was never conducted.

RESPONDENT'S TESTIMONY: Frank Farruggia—Board Member

Respondent, Frank Farruggia, testified on direct that he has lived in Hopatcong for 46 years and all his children had attended District schools. He has served continuously since 2002 on the Board of Education. At the time of the event, the Respondent served on the Finance and Facilities Committees. He stated that the duties of the Finance Committee included reviewing expenditures, overseeing preparation of the budget, and investigating concerns of District residents regarding the budget and expenses. He added that the Finance Committee is also responsible for reviewing payments for the Program and that he had noticed that payments were high for June 2014. Therefore, in preparation for 2015-2016 school year, he wanted to find out the reason for the higher reimbursements. The Respondent testified that at that time Mr. Nicholson told him that he had heard concerns about abuses in the Program from a number of residents, and asked the Respondent to look into the matter. The Respondent testified that on his way to work at 7 a.m. on October 13, 2014, he parked near the Elba Point bus stop, which was about 400 -500 yards from his home. He left his car in the Ambulance Squad lot and walked behind the bus shelter and stood in a clearing to the left of the shelter where he took the single photo of the area of parked cars waiting for the bus to arrive. The Respondent offered a photograph, marked R-1, taken two weeks before the hearing, which he maintained accurately represented the conditions he saw at the bus stop on October 13, 2014. He testified that he drove into the lot adjacent to the bus shelter because he did not want to hinder the bus operations that morning. He testified that he deleted the photo he took on October 13 as it was of poor quality. He maintained that he did not take a photo of any child.

The Respondent stated that after about five minutes at the stop, the crossing guard yelled over to him, and they met behind the shelter. He introduced himself, said he was on the Board of Education, and that he was observing possible abuses of the Program at that bus stop. He testified that he never told her that he was conducting a study or that he was conducting an investigation for the Board. He then left the area and went to work. That afternoon, he contacted the Superintendent to tell her that he was at the bus stop that day and to request that she investigate the alleged Program abuses. He never gave her the name of any student or parent who may have been the subject of the inquiry, he never gave her the name of any child or parent he saw at the bus stop that day and he never showed her any photos since he had destroyed the only one he took that day because it was inconclusive. The Respondent testified that he told the Superintendent that there were no pictures. Moreover, he never produced any pictures of the bus stop to anyone at any time in any setting.

The Respondent testified that during the half hour meeting on December 2, 2014 with Board President Lundin and Board Vice President Bongiorno³ he learned of the ethics Complaint that the Complainant was about to file against him if he did not resign from the Board. (R-2, Email to Mr. Farruggia). The Respondent explained that this meeting took place after the November election, at which two candidates of the Concerned Citizens group were elected, but that they would be the minority faction on the Board. The Respondent said that Mr. Lundin showed him an envelope saying, "Mr. Karpiak would like you to read this." The enclosed letter from the Complainant stated that the Respondent must resign by Friday, December 5, 2014 to avoid the filing of the Complaint against him. The Respondent denied the allegations in the Complaint and told Mr. Lundin that he would never take pictures of a child because he did not want his own children photographed. He asked Mr. Lundin to convey that to the Complainant. The Respondent also told Mr. Lundin and Ms. Bongiorno that he would not be able to pick out the Complainant's child from a line up. Mr. Lundin then advised the Respondent that the Complainant wanted him to know that if the Complaint was filed, it would probably impact his job. The Respondent considered this to be a threat. He stated that he refused to resign because he believed that he did nothing wrong. After the meeting, Mr. Lundin kept the envelope and letter. The next day, the Respondent sent an email to Mr. Lundin, requesting a copy of the document. (R-3) Later on, Mr. Lundin told the Respondent that the Complainant refused to release it to the Respondent (R-3)

On cross examination, the Respondent testified that he never conducted an investigation at the bus stop and only sought to observe the activity there so he could report the facts to the Superintendent. He said that it was a "spur of the moment" decision to stop that morning. When asked what he hoped to learn from his visit, he replied that he wanted to "check out" the volume of cars that morning. As soon as he arrived on the scene, he testified that he took one photo of the lot, which revealed only one car as the buses and other parents had not yet arrived. Sometime later, he erased the one photo he had taken as it was inconclusive and unhelpful. When asked why he did not go to the Business Office beforehand to determine if there were individuals inappropriately using the services, the Respondent replied that Hopatcong's procedure is for Board members to refer problems to the Superintendent first, for her to investigate.

The Respondent testified that he has never seen Complainant's child and does not even know the age of the child. He stated that the guard told him that parents were concerned over his presence, but never mentioned that she had received text messages from parents. The Respondent observed that the guard looked visibly upset, so he left.

The Respondent reiterated that at the meeting with Mr. Lundin and Ms. Bongiorno, he saw a document in which the Complainant stated that he would file a Complaint against him unless the Respondent resigned from the Board. When asked about an attempt to retrieve a copy of the Complainant's letter through OPRA, he stated that the request was denied because Mr. Lundin reported that the letter was no longer in his possession. As to the discussion about the incident, the Respondent said that he never told Mr. Lundin and Ms. Bongiorno that he took a picture and then deleted it because they never asked if there were any pictures, but said, "There

³ Ms. Bongiorno arrived 20 minutes late.

are no pictures of children and no pictures existed.” Respondent also testified that there were no students in the lot when he arrived at the bus stop because they do not emerge from their parents’ cars until the buses appear for pick up, as he knew from his experience dropping off his children for 12 years.

When questioned by the Commission, the Respondent explained that the Finance Committee reviews the vouchers for the Program. He stated that he did not believe that it was his duty to investigate; however, if he learns something is wrong, he should report to the Superintendent. He said there are no other bus stops on his way to work but that there are others in the District, which he did not visit. In answer to the question as to how a photograph would help him prove the Program’s abuse, the Respondent stated that he just wanted to show the volume at the stop.

Respondent rested.

On rebuttal the Complainant denied writing a letter that requested the Respondent’s resignation, but admitted that he did ask Mr. Lundin to advise to advise the Respondent that as a courtesy he would not file the Complaint if the Respondent resigned.

Complainant rested.

In closing statements, Respondent’s counsel argued that the Complainant had political animus against Mr. Farruggia, as evidenced by the Complainant’s threat to file an ethics Complaint against him and to alert his employer. He pointed out that the Complainant did not bring his Complaint until a couple of months after the incident when the balance of power on the new Board was in contention. Once the Complainant’s slate failed to garner three seats in the November 2014 election, he notified the Respondent that if he resigned, no ethics Complaint would be filed against him. The Respondent’s departure from the Board would have altered the majority of the Board, potentially in the Complainant’s favor. Counsel also pointed out that the Respondent never attempted to use his visit to the bus stop as leverage in the campaign. And no evidence was produced to substantiate the Complainant’s claim that the Respondent took pictures of children at the bus stop. For all of these reasons, the Respondent’s counsel argued that the Complainant had failed to prove a violation of the Code and that the Complaint should be dismissed.

Complainant’s Exhibits

C-1	Police Report of Ptl. Edward Janosko, Hopatcong Police Department
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Respondent’s Exhibit

R-1	Photo of Bus Shelter and Parking Lot (R-8)
R-2	Email of 12/2/14 from Mr. Farruggia to Board President Clifford Lundin
R-3	Email of 12/3/14 from Board President Clifford Lundin to Mr. Farruggia

FINDINGS OF FACT

The Complainant was not present during the incident in question and admitted that he had no personal knowledge of the events that formed the basis of his Complaint. In support of his allegations, the Complainant offered a police report, marked as C-1. This document is little more than the Complainant's second-hand account of the events of October 13, 2014, which he heard from another Board member and from the subpoenaed crossing guard, who did not appear to testify. Even though the Patrolman interviewed the crossing guard by phone, he did not provide sufficient, specific information about the conversation with the crossing guard either in his report or in his testimony to substantiate the Complainant's allegations. To the extent that the police report is hearsay, it is subject to the residuum rule, pursuant to N.J.A.C. 1:1-15.5, which requires that findings be supported by residuum of competent evidence. Matter of Tenure Hearing of Cowan, 224 N.J. Super. 737 (App. Div. 1988). Since the Complainant has not provided any other competent, reliable evidence or testimony to support his claims, as required by the residuum rule, he has failed to carry his burden of proof. To the extent that the police report may be admissible as a business record, the lack of specific facts in the report, regarding the Patrolman's conversation with the crossing guard, renders it inconclusive and unreliable as a business record and is, therefore, accorded no weight.

As such, the Commission finds:

1. At all times relevant to this Complaint, the Respondent, Frank Farruggia, was a member of the Board and a member of the Finance and Facilities Committees for the Hopatcong Board of Education.
2. At all times relevant to this Complaint, the Complainant, Peter Karpiak, was a founding member of the Concerned Citizens for a Better Hopatcong Education.
3. The founders of the Concerned Citizens for a Better Hopatcong Education sought to unseat incumbent members on the Board, as well as replace the Superintendent, whose management they assessed as ineffective.
4. The Complainant, Peter Karpiak, was a successful candidate for a seat on the Hopatcong Board of Education in the November 4, 2014 election.
5. On December 9, 2014, the Complainant filed a complaint against the Respondent, alleging that on October 13, 2014, the Respondent took unauthorized photos of the Complainant's minor son as he emerged from the car at the Elba Street bus stop. He also alleged that the Respondent told the crossing guard that he was with the Board of Education and was looking for students who improperly used transportation services as part of a Board study.
6. The Complainant was at the bus stop but did not witness the Respondent taking any pictures as alleged, nor did he speak with the Respondent or the crossing guard at the bus stop on the day of the incident.

7. The Respondent admits that he was present at the bus stop on October 13, 2014, but states that he never took a picture of any children, including the Complainant's son, and that he never said that he was conducting a Board study.
8. The parties stipulated that at the time of the incident, no study was being conducted at the request of the Board or the Superintendent.
9. Respondent admits that he took one picture of the parking lot but erased it that day since it was unclear and inconclusive. He maintains that he did not take a picture of any child.
10. The crossing guard with whom the Respondent spoke at the bus stop did not testify at the hearing, despite being served with a subpoena to appear.
11. Because of the crossing guard did not testify, the Respondent never had an opportunity to cross examine her.
12. The Complainant presented no eyewitness testimony to corroborate his allegations that the Respondent took pictures of children at the bus stop, or that he claimed to be conducting a traffic study on behalf of the Board.
13. The Respondent's testimony regarding his conduct at the bus stop that day stands unrefuted by any competent, credible evidence.
14. The Complainant did not produce any photographs of children allegedly taken by the Respondent at the bus stop on October 13, 2014. The Complainant did not produce any witnesses who saw any photographs of children allegedly taken by the Respondent at the bus stop on October 13, 2014.
15. The Complainant told the Board President to tell the Respondent that the Complainant would file an ethics complaint against him unless the Respondent resigned from the Board.

ANALYSIS

MOTION TO DISMISS

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). Here, the Complainant asserts that the Respondent's actions on October 13, 2014 violated N.J.S.A. 18A:12-24.1(c), (d), (e), and the second prongs of (f) and (g) of the Code of Ethics for School Board Members. Pursuant to N.J.A.C. 6A:28-8.1(d), upon completion of the Complainant's case, and prior to the Respondent's testimony, counsel for the Respondent moved to dismiss the Complaint. He argued that the entire matter and the testimony adduced at the hearing were based solely on hearsay testimony and that the Complainant failed to meet his burden of proof. The Commission reserved on its decision until

the Respondent presented his case and the parties rested. At the conclusion of the testimony, Respondent's counsel renewed the Respondent's request to dismiss the Complaint.

As the Complainant bears the burden that the Respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e), and the second prongs of (f) and (g) of the Code of Ethics for School Board Member, he must factually provide evidence according to the standards set forth at N.J.A.C. 6A:28-6.4(a), which require, respectively:

Evidence that the Respondent:

c. 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.

d. gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school. N.J.A.C. 6A:28-6.4(a)4.

e. made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

f. used the schools in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend. N.J.A.C. 6A:28-6.4(a)6. (Second prong)

g. substantiated the inaccuracy of the information provided by the Respondent and evidence that established 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.(Second prong)

The Complainant asserts that the Respondent violated these sections of the Code by taking unauthorized photos of the Complainant's minor son as he emerged from the car at the Elba Street bus stop, and by telling the crossing guard that he was with the Board of Education conducting a study regarding the Program. The Respondent testified that he never took a photo of the Complainant's child or any other child that day, and that the only picture he took was of the parking lot, which he then deleted. The Complainant did not demonstrate that the Respondent took, displayed or circulated any photos of children related to the bus stop. Further,

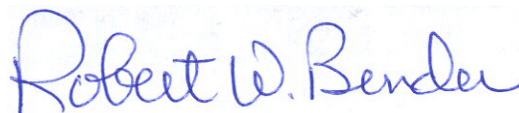
the Complainant has failed to provide any competent, relevant evidence or testimony, adduced from witnesses with first-hand, personal knowledge of the conversation with the crossing guard. Consequently, the Commission finds that the Complainant has failed to meet his burden of proof by relevant, credible evidence that the Respondent violated the Code. Accordingly, the Complaint is dismissed with prejudice.

The Commission also makes the following observations. First, N.J.S.A. 18A:12-24.1(j), requires all Board members to “refer all complaints to the chief administrative officer and . . . act on the complaints at public meetings only after failure of an administrative solution.” Upon referral, the Superintendent will decide if the issue requires investigation. A District practice that permits Board members to investigate a problem before referral to the Superintendent places the members at risk for a violation of N.J.S.A. 18A:12-24.1(c), (d) and (e) if proven by competent, relevant evidence.

Second, the public in the School District decides in the ballot booth the candidates, who will represent them. The seats that duly elected school officials occupy must not be threatened by individuals or outside groups seeking to change the balance of power in their favor through intimidation or coercion. And the School Ethics Commission must not be used as a tool in partisan battles to accomplish political ends. Such conduct sets a poor example for the children of the District and weakens the public’s trust and confidence in the electoral process.

DECISION

Based on evidence presented at the hearing, the Commission finds that the Complainant failed to meet his burden to establish by a preponderance of the credible, relevant evidence that the Respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e), and the second prongs of (f) and (g) of the Code of Ethics for School Board Members. Consequently, the Complaint is dismissed in its entirety. 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: February 2, 2016

Resolution Adopting Decision – C57-14

Whereas, at its meeting on April 28, 2015, the Commission voted to deny the Respondent's Motion as to the alleged violations of N.J.S.A. 18A:12-24.1(c), (d), (e), and the second prongs of both (f) and (g) as asserted in the Complaint; and

Whereas, at its meeting on April 28, 2015, the Commission voted to retain this Complaint for hearing on these allegations that the Respondent violated the Code; and

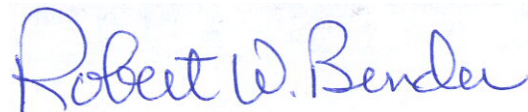
Whereas, at its meeting on November 24, 2015, the Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and the testimony of the parties; and

Whereas, at its meeting on November 24, 2015, the Commission found that the Complainant failed to meet his burden to establish that the Respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e), and the second prongs of both (f) and (g) of the Code of Ethics for School Board Members; and

Whereas, the Commission, therefore, dismissed the Complaint in its entirety; and

Whereas, at its meeting on January 26, 2016, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

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 the decision.



Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on January 26, 2016.



Joanne M. Restivo
Acting Executive Director