

PAULA KINSEY	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
THOMAS FOLEY	:	Docket No. C28-06
MILLSTONE TOWNSHIP	:	
BOARD OF EDUCATION	:	DECISION
MONMOUTH COUNTY	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on June 23, 2006 by Paula Kinsey alleging that Thomas Foley, a member of the Millstone Township Board of Education (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainant specifically alleges that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members when he revealed confidential information from executive sessions of the Board. Mr. Foley filed a response in which he denied that he violated the Act.

The Commission invited, but did not require, the parties to attend its December 19, 2006 meeting. The parties were advised of their right to bring counsel and witnesses. The complainant was advised that, pursuant to N.J.S.A. 18A:12-29(b), she had the burden of proving violations of the Code of Ethics for School Board Members. Complainant attended the hearing and testified before the Commission. Complainant’s witnesses, Gina Marrone, Nancy Grbelja, Kathy Winecoff and Charles Denardo, also testified. The respondent also attended the hearing with his attorney, John P. Duggan, Esquire, and testified before the Commission. After hearing testimony, the Commission tabled the complaint in order to review complainant’s documentation that had not previously been reviewed by the Commission. Both parties then submitted closing statements and the Commission considered the complaint, the additional documentation and the closing statements at its January 23, 2007 meeting. During the public portion of that meeting, the Commission voted to find that the respondent did not violate N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members and dismissed the complaint.

FACTS

The Commission was able to discern the following facts based on the pleadings, testimony and the documents submitted.

Complainant was previously a member of the Board and is now a member of the local parent teacher organization. Respondent has been a member of the Board for the past 10 years. Ms. Winecoff is a member of the Board and was Board President at all times relevant to this complaint. Ms. Marron is also a member of the Board. Mr. DeNardo is the husband of a teacher who was non-renewed by the Board. Ms. Grbelja is a member of the Town Council.

During the April 17, 2005 executive session of the Board, the Board discussed the payout of sick leave and unused sick time of the resigning superintendent and the search for a new superintendent. Respondent did not attend the April 17, 2005 meeting because he was in Florida at the time. Then Board President, Ms. Weincoff, spoke with the respondent on April 18, 2005 and discussed what happened at the April 17, 2005 executive session. She indicated to the respondent that there would be additional Board meetings regarding the new superintendent and that the newly elected Board member would be included in those meetings. The new Board member was not sworn in at that time. On April 19, 2005, respondent sent an e-mail regarding the upcoming Board meetings and the hiring of a new superintendent to all members of the Board including the newly elected Board member. Subsequently, various community members sent e-mails regarding the terms concerning pay for unused sick leave and the hiring of a new superintendent.

At the May 16, 2005 executive session of the Board, a straw vote was taken regarding the superintendent's recommendation not to rehire Debbie Denardo, the wife of Charles Denardo. The straw vote was four to four with one abstention. On May 17, 2005, the day after the straw vote, the respondent had a conversation with Mr. Denardo regarding the straw vote. The respondent certified in his answer that he offered his "...cordial apologies...as the outcome was unfortunate" to Mr. Denardo and indicated that in his opinion "...the Board acted more to protect the superintendent than on the facts..." See Respondent's answer page 3. The respondent further certified that he told Mr. Denardo that he had supported the position to rehire Ms. Denardo. The respondent also certified that he told Mr. Denardo that, given his relationship with the complainant, Mr. Denardo should know the complainant's position and also that of another Board member. The respondent testified that he did not tell Mr. Denardo the breakdown of the votes. Mr. Denardo certified and testified that the respondent told him that the vote was four to four with one abstention and also told him how each Board member voted. Mr. Denardo testified that on May 18, 2005, he spoke to Ms. Grbelja about his conversation with the respondent. Mr. Denardo then testified that he spoke with the complainant a few days after he spoke with Ms. Grbelja about the respondent's conversation with him.

ANALYSIS

The Commission notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members.

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members when he discussed an executive session discussion on May 17, 2005 with Mr. Denardo.

Pursuant to N.J.A.C. 6A:28-6.1(b), all complaints must be filed within one year of notice of the alleged violation. The Commission notes that Mr. Denardo notified the complainant of his conversation with the respondent a few days after Mr. Denardo's May

18, 2005 conversation with Ms. Grbelja. Thus, complainant had notice of the respondent's alleged violation in late May of 2005, and she filed the complaint on June 23, 2006, which is beyond one year of her notification of the alleged violation. In her closing statement, the complainant, pursuant to N.J.A.C. 6A:28-6.1(b)1, asks the Commission, in its discretion, to relax the filing requirement in N.J.A.C. 6A:28-6.1(b), because she waited to file the complaint until she was no longer a member of the Board. However, the Commission does not find this a persuasive argument for relaxing the filing requirement. The Commission notes that the complainant could have filed the complaint while she was a Board member, but waited until she was not re-elected to the Board on April 18, 2006. If she had intended to file a complaint, but did not do so because she was a member of the Board, she could have prepared the complaint prior to the elections. However, it was only after she was not re-elected that she began to prepare the complaint and then filed it. Therefore, because the complaint was not timely filed, the Commission dismisses the allegation that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members when he discussed an executive session discussion on May 17, 2005 with Mr. Denardo.

The complainant next alleges that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members when he sent the April 18, 2005 e-mail containing information regarding executive session discussions, which was later disseminated to the community.

N.J.S.A. 18A:12-24.1(e) provides:

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.

Complainant alleges that respondent violated N.J.S.A. 18A:12-24.1(e) because he failed to recognize that authority rests with the Board and took private action that could have compromised the Board when he disseminated his April 18, 2005 e-mail to the public. However, the complainant did not provide any factual evidence that respondent disseminated the April 18, 2005 e-mail to the public. The facts show that the respondent sent the e-mail to all members of the Board including a newly elected Board member who was not yet sworn in. Even though the newly elected Board member was not sworn in at the time that the respondent sent the e-mail, the Commission notes that the respondent relied on his conversation with the Board President that the newly elected Board member would be included in additional Board meetings scheduled to address the issues in the respondent's e-mail. The Commission cannot find that the respondent failed to recognize that authority rests with the Board or took private action that could have compromised the Board, since the respondent was acting in his role as a member of the Board when he sent the e-mail, and he was also acting pursuant to information given him by the Board President. Therefore, the Commission finds that the respondent did not violate N.J.S.A. 18A:12-24.1(e) and dismisses this allegation.

Complainants next allege a violation of N.J.S.A. 18A:12-24.1(g), which provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

To prove a violation of N.J.S.A. 18A:12-24.1(g), the complainant alleges that the respondent's April 18, 2005 e-mail containing confidential information regarding an executive session of the Board was disseminated to the public by the respondent. However, as noted above, the complainant failed to provide factual evidence to show that the respondent disseminated the e-mail to the public. The evidence shows that the respondent only sent the e-mail to the members of the Board. Therefore, the Commission finds that the respondent did not violate N.J.S.A. 18A:12-24.1(g) and dismisses this allegation.

DECISION

For the reasons expressed above, the Commission finds that Thomas Foley did not violate the School Ethics Act and dismisses the allegations against him.

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).

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C28-06

Whereas, the School Ethics Commission has considered the pleadings and the response filed by the parties, the documents submitted in support thereof and the testimony of the parties; and

Whereas, the Commission finds that the respondent did not violate N.J.S.A. 18A:12-21 et seq.; and

Whereas, the Commission has reviewed the proposed decision of its staff dismissing the complaint; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision to dismiss as its final decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on February 27, 2007.

Lisa James-Beavers
Executive Director