

JENNIFER DERICKS, MAUREEN SHARPE,	:	
DARYL SAVAGE, SHIRLEY BOUSHELL,	:	BEFORE THE SCHOOL
ARMEN KOOCHAGIAN, RONALD	:	ETHICS COMMISSION
BASSANI, GUNNER FRAUENPREIS AND	:	
DOUGLAS CHESNULOVITCH	:	
	:	
	:	
v.	:	
	:	
PAUL JOHNSON, MICHAEL SCHIAVONI,	:	
MICHAEL SCHILL, KAREN SCOTT,	:	
AND RICHARD SULLIVAN	:	
SPARTA BOARD OF EDUCATION,	:	DOCKET NO. C01-08
SUSSEX COUNTY	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on January 3, 2008 by complainants Jennifer Dericks, Maureen Sharpe, Daryl Savage, Shirley Boushell, Armen Koochagian, Ronald Bassani, Gunner Frauenpreis and Douglas Chesnulvotich against Paul Johnson, Michael Schiavoni, Michael Schill, Karen Scott and Richard Sullivan, members of the Sparta Board of Education (“Board”). By letter dated January 7, 2008, the Commission requested amendments to the complaint. The amendments were filed on February 15, 2008. The complainants alleged that the respondents violated N.J.S.A. 18A:12-24.1(a), (g) and (i) the Code of Ethics for School Board Members when, at the November 26, 2007 Board meeting, they voted in support of a resolution to censure the Superintendent and at a work session meeting on January 23, 2008, they voted to rescind the resolution. In so doing, the complainants do not assert that the respondent Board members had a conflict of interest when they voted; rather, the complainants challenge the legitimacy and substance of the resolution itself, as well as the strategy employed by the respondents by supporting the resolution. An Answer to the complaint docketed as C01-08 was filed on March 20, 2008.

In March 2008, the Commission learned that Mr. Schiavoni filed a matter in Superior Court, which appeared to necessitate that the complaints be placed in abeyance, as per N.J.S.A. 18A:12-32. The parties were so notified by letter dated April 3, 2008; after providing an opportunity to comment, at its meeting on May 27, 2008, the Commission determined to place the within complaint in abeyance pending resolution of the matter filed in Superior Court.

The lawsuit pending in Superior Court was dismissed in September 2008; the parties were immediately contacted to arrange for a telephone conference in order to set hearing dates. A conference call was conducted on October 21, 2008 with lead complainant, Ms. Maureen Sharpe¹, complainant Jennifer Dericks and counsel for the respondents, Howard Mankoff, Esq.

¹ Where a complaint is submitted by more than one person, a lead complainant may be designated by the Commission for the purpose of communication.

The parties did not object to consolidating this matter with Dericks et al. v. Schiavoni et al., Sparta Township Bd. of Ed., C40-07 and Dericks et al. v. Curcio et al., Sparta Township Bd. of Ed., C45-07.

At its January 27, 2009 meeting, the Commission heard testimony from both the complainants and the respondents with regard to all allegations contained in the matter docketed as C40-07. The Commission also heard testimony with regard to the allegations contained in counts one, two and three in the matter docketed as C45-07. On April 28, 2009, the Commission issued a final decision in those matters wherein it dismissed the matter docketed as C40-07 and, in the matter docketed as C45-07, it found respondent Schiavoni violated N.J.S.A. 18A:12-24.1(c) and (d) and recommended a penalty of censure. Dericks et al. v. Schiavoni et al., Sparta Township Bd. of Ed., C40-07; Dericks et al. v. Curcio et al., Sparta Township Bd. of Ed., C45-07 (consolidated) (April 28, 2009) The Commissioner of Education affirmed the Commission's decision on September 15, 2009. Commissioner of Education Decision No. 294-09 SEC.

At its January 27, 2009 meeting, the Commission, *sua sponte*, raised the issue with the parties that the matter docketed as C01-08 appeared to be outside of its jurisdiction in that the allegations appeared to largely implicate statutes other than the School Ethics Act. Pursuant to correspondence from the Commission dated January 29, 2009, a briefing schedule was established which provided the parties with an opportunity to submit primary and reply briefs as to the issue raised by the Commission.

The complainants argued that the Commission had jurisdiction in this matter because the allegations implicate N.J.S.A. 18A:12-24.1(g) in that the censure motion contained inaccurate information, and further implicated N.J.S.A. 18A:12-24.1(i) because the censure motion was damaging to the Superintendent. (Complainants' Primary Brief at page 6) However, in their rebuttal submission, the complainants conceded that they could not move forward with allegations of a violation of N.J.S.A. 18A:12-24.1(a) since they could not meet the necessary standard in regulation.²

In their primary brief, the respondents argued that the complainants' allegations in this matter concerned potential violations of the Open Public Records Act (OPRA) which is not within the jurisdiction of the Commission. (Respondents' Primary Brief at page 5) At its March 24, 2009 meeting, the Commission considered the parties' primary briefs and the complainants' reply brief as to the issue raised by the Commission that the allegations appear to be outside of its jurisdiction.³ Granting all inferences to the complainants, the Commission found that the complainants had alleged facts which fairly implicated the Code of Ethics for School

² The complainants at no time assert that a final decision from a court of law or administrative agency of this State has found that the respondents failed to uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to the schools as is their burden. See, N.J.A.C. 6A:28-6.9(b)1.

³ The respondents submitted their reply brief out of time and it was not considered by the Commission in rendering its decision.

Board Members. The Commission so notified the parties by letter dated April 16, 2009 and determined to schedule C01-08 for hearing.⁴

Although the hearing in this matter was originally scheduled for July 28, 2009, respondents' counsel requested an adjournment; the hearing was rescheduled for September 22, 2009. Jennifer Dericks, Maureen Sharpe, Daryl Savage and Ronald Bassani appeared for the complainants. Respondents Paul Johnson, Michael Schiavoni, Michael Schill, Karen Scott and Richard Sullivan appeared with counsel, Howard Mankoff, Esq. At the meeting, and prior to any testimony being heard, respondents' counsel moved to dismiss the complaint as it was a matter not properly before the Commission. Specifically, Mr. Mankoff asserted that the censure resolution in question was placed before the Board and it was up to the Board to make sure it was factually supportable. The Board could have tabled the resolution or rejected it; however, they passed the resolution. Mr. Mankoff argued that it is not the role of the Commission to "second guess" the actions taken by a Board. In this case, the complainants were unhappy with the motivation for the resolution.

In rebuttal, Ms. Dericks, on behalf of the complainants, argued that the resolution was not factual and the Board member who brought forward the resolution had the duty to determine that it was factual. The Board, however, did not bother to check [the veracity of the resolution]. Rather, one of the respondent Board members brought the motion to censure in order to accomplish a goal and the majority of the Board supported it.

After hearing the positions of the parties, the Commission requested that the parties leave the room so that it could deliberate. After deliberation, the Commission informed the parties that it had determined to grant the Motion to Dismiss.

ANALYSIS

An analysis of the Commission's determination herein begins with the enabling statute, the School Ethics Act ("Act"). The Act provides that:

Any person, including a member of the commission, may file a complaint alleging a violation of the provisions of this act or the Code of Ethics for School Board Members as set forth in section 5 of P.L.2001, c.178 (C.18A:12-24.1), by submitting it, on a form prescribed by the commission, to the commission. N.J.S.A. 18A:12-29a.

While it is not clear from this provision that a complaint could not consider Board activity, it is noted that the Act specifically sets forth the acts that are prohibited by school officials. In so doing, the Act frames these prohibitions as: "no school official shall" and "no elected member

⁴ On April 15, 2009, the State Board of Education adopted amendments to N.J.A.C. 6A:28, the regulations governing matters that come before the School Ethics Commission. These rules became effective on May 18, 2009. However, because the complaint in this matter was filed before May 18, 2009, the Commission followed procedures and rendered its determinations herein in accordance with the rules that were in effect at the time the complaint was filed. To the extent this decision cites to regulations, they are the regulations that were in effect when the complaint was filed.

shall.” N.J.S.A. 18A:12-24(a) through (i). Similarly, the Code of Ethics for School Board Members begins as follows, “A school board member shall abide by the following Code of Ethics for School Board Members.” Each affirmative statement which follows begins with “I.”

Further, the Commission’s authority to issue sanctions pertains to individuals, but it does not have the authority to sanction a Board, as an entity, or set aside a Board’s determination:

c. Upon completion of the hearing, the commission, by majority vote, shall determine whether the conduct complained of constitutes a violation of this act, or in the case of a board member, this act or the code of ethics, or whether the complaint should be dismissed. If a violation is found, the commission shall, by majority vote, recommend to the commissioner the reprimand, censure, suspension, or removal **of the school official** found to have violated this act, **or in the case of a board member**, this act or the code of ethics. The commission shall state in writing its findings of fact and conclusions of law. The commissioner shall then act on the commission's recommendation regarding the sanction. N.J.S.A. 18A:12-29c (emphasis added)

The Commission also considers that, in adopting the School Ethics Act, the Legislature found that:

[I]t is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators 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.

To ensure and preserve public confidence, school board members and local school administrators should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards among them. N.J.S.A. 18A12-22a and 22b.

In this connection, the Commission notes that the Act, and the specific prohibitions set forth therein, were intended to establish ethical standards for school officials along with a mechanism “to weed out the few people who would use our schools for personal gain.” (Office of the Governor, News Release, January 16, 1992, “Governor Florio Signs Law Imposing Greater Accountability for School Districts”)⁵ Thus, the legislative purpose does not speak to the need

⁵ Because there is no specific legislative statement which accompanied the adoption of the Code of Ethics for School Board Members in 2001 (P.L. 2001, c. 178), the Commission reasons that the legislature intended for the statements set forth at N.J.S.A. 18A12-22a and 22b to encompass the Code of Ethics for School Board Members.

for the Commission to address Board actions, which are properly taken in a public forum and, therefore, subject to scrutiny or challenge.

In the instant matter, there is no dispute that the Board voted to approve the resolution of censure for the Superintendent at its meeting on November 26, 2007 (Complaint, Item KK, Board minutes of November 26, 2007), then rescinded the measure at its January 23, 2008 work session (Complaint, Item OO).⁶ Thus, the resolution of censure and the rescission of the resolution of censure were Board action. The Commission does not view the scope of its authority to extend to the review of Board actions where the complainants are not alleging that Board members were conflicted when they voted, pursuant to N.J.S.A. 18A:12-24 et seq., but are alleging that the substance or subject matter of the action was in some manner inappropriate. If it were to accept otherwise, the Commission would be placed in the position of reviewing, or as counsel for the respondents proposes, “second guessing,” potentially any and all Board action which a complainant (who need not, according to the Act, demonstrate interest in the matter) asserted was “unethical.” The Commission finds that such an interpretation is not supported by the plain language or the legislative intent of the Act. To the extent an interested party sought to set aside the Board’s censure resolution herein, a petition of appeal could have been filed before the Commissioner of Education, in accordance with N.J.A.C. 6A:3-1 et seq., and consistent with the Commissioner’s authority to hear and determine all disputes arising under school law, including those allegations that a Board acted in a manner that was arbitrary and capricious or contrary to its own policies.⁷

DECISION

Based on the foregoing, the Commission grants the respondent’s oral Motion to Dismiss the complaint. 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).

Robert Bender
Chairperson

⁶ To the extent the complainants allege that the public was not accorded proper notice of the actions taken on these dates, such allegations implicate the Open Public Meetings Act, which is not within the Commission’s jurisdiction.

⁷ See, for example, Robert Crystal v. Board of Education of the Twp. of Barnegat, Ocean County, Commissioner of Education Decision No. 29-00, January 18, 2000, where the Board, acting upon a perceived violation of its local policy, voted to censure Crystal, a Board member. The petitioner sought to have the censure removed and expunged from his record on the grounds that the Board’s decision to censure him was arbitrary, capricious and unreasonable. The Administrative Law Judge found, and the Commissioner affirmed, that the petitioner violated a clearly articulated policy and, pursuant to N.J.S.A. 18A:11-1, the Board was empowered to censure him for the act. Crystal, slip op. at 9.

Resolution Adopting Decision – C01-08

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

Whereas, at its meeting of September 22, 2009, pursuant to an oral Motion to Dismiss brought by the respondents, the Commission determined to grant the motion; and

Whereas, at its meeting on October 27, 2009 agreed that the within decision accurately memorializes its findings and conclusions; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.⁸

Robert Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on October 27, 2009.

Joanne Boyle, Executive Director

⁸ Commissioner Robert Copeland was recused from participating in the hearing and determination of this matter.