

REVEREND DR. MARY LOVETT and	:	BEFORE THE SCHOOL
ANTHONY L. FUSSELL¹	:	ETHICS COMMISSION
	:	
v.	:	
	:	
BRET ASBURY, JILL BAZELON	:	
CARY JOSHI, DWIGHT MOXIE,	:	
JESS TIGHE, JOANNE WRIGHT and	:	
TOM WYATT,	:	Docket No. C01-09
FREEDOM ACADEMY CHARTER	:	
SCHOOL BOARD OF TRUSTEES,	:	DECISION ON MOTION
CAMDEN COUNTY	:	TO DISMISS
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on February 3, 2009 by Reverend Dr. Mary Lovett and Anthony L. Fussell, alleging that Bret Asbury, Jill Bazelon, Cary Joshi, Dwight Moxie, Jessie Tighe, Joanne Wright and Tom Wyatt, members of the Board of Trustees of the Freedom Academy Charter School, (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The complainant specifically alleges that the respondents violated N.J.S.A. 18A:12-24.1(a), (b), (d) and (h) of the Code of Ethics for School Board Members.

Pursuant to N.J.A.C. 6A:28-6.5(e), on February 27, 2009, the respondents filed a Motion to Dismiss the complaint, with supporting documents. Although provided an opportunity to do so, the complainant did not submit a response to the Motion to Dismiss. The Commission considered the complaint and the Motion to Dismiss at its meeting on March 24, 2009, at which time the Commission voted to grant the Motion to Dismiss the complaint.

SUMMARY OF THE PLEADINGS

The complainants allege that on June 24, 2008, the respondents hired Jeremy Esposito, who, although certified as an English teacher, did not possess the required certification or training to be employed as a School Leader in accordance with N.J.A.C. 6A:9-8.6. The complainants assert that, in so doing, the respondents violated N.J.S.A. 18A:12-24.1(a), (b), (d) and (h) of the Code of Ethics for School Board Members. (Complaint at paragraphs 1-4)

The respondents moved to dismiss the complaint in its entirety on the grounds that, even if the complainants’ factual allegations are accepted as true, the complainants have not advanced a cause of action before the Commission. (Motion at page 2)

¹ Because both statute and code provide that complaints filed with the Commission be filed by “a person,” rather than an entity, (N.J.S.A. 18A:12-29; N.J.A.C. 6A:28-6.1(a)), the complainants are identified as indicated above, rather than as “Reverend Dr. Mary Lovett and Anthony L. Fussell o/b/o Concerned Citizens for the Children of Camden,” as was noted in the complaint.

ANALYSIS

In considering a Motion to Dismiss, the Commission considers the facts in the light most favorable to the non-moving party. The question before the Commission is whether the complainants alleged facts which, if true, could support a finding that the respondents violated N.J.S.A. 18A:12-24.1(a), (b), (d) and (h) of the Code of Ethics for School Board Members.

The within complaint simply alleges that the respondents, as Board members, were in violation of the Code of Ethics for School Board Members because they hired someone, who, while certified as an English teacher, did not possess the required certification or training to be employed as a School Leader. Appended to the complaint is a letter decision from the Commissioner of Education, dated October 30, 2008, citing the Board of Trustees of the Freedom Academy for, among other things, allowing Mr. Esposito to function as the principal although he had neither the certification nor the authority to conduct and sign evaluations. (Complaint at Exhibit B). The letter indicated that the Freedom Academy Charter School would be placed on probation and was required to submit a remedial plan.

While the complaint, on its face, alleges violations of the Code of Ethics, it fails to advance any specific allegations against individual trustees. Although the Commission is mindful of its duty to ensure and preserve public confidence by enforcing the standards set forth in the School Ethics Act, N.J.S.A. 18A:12-22b, it finds that absent specific factual allegations of prohibited acts or unethical conduct by individual members of a Board of Trustees of a charter school, bare allegations that “the Board” violated the Act because of its alleged failure to abide by school law or regulation encroaches on the Commissioner’s authority to hear and determine all disputes arising under school law, N.J.S.A. 18A:6-9, and, more specifically in this instance, to assess the performance of charter schools, verify their compliance with applicable laws and regulations and determine the viability of its charter. N.J.S.A. 18A:36A-16 and 17.

The Commission is not convinced that the School Ethics Act intended to cast so broad a net as to permit a finding of “unethical behavior” on behalf of an entire Board, based solely on a concomitant finding, or allegation, that “the Board” acted contrary to school law or regulation.² Such a broad reading of the Act could result in complaints routinely being filed against an entire Board in every instance where the Commissioner of Education found that the Board acted contrary to law or regulation, or in every instance where there was a mere allegation of the same, notwithstanding that the complaint was devoid of any specific facts alleging wrongdoing by specific board members.

Thus, even assuming that the Freedom Academy Board of Trustees hired someone who did not possess the required certification or training to meet his job function as School Leader, there are no particular facts alleged in this complaint against any specific respondent that could support a finding that any respondent:

² It appears from the minutes of the Board’s meeting on June 24, 2008, the date that the Board voted to approve the contract of Mr. Esposito, that one trustee was absent. (Complaint at Exhibit A) This trustee is not a named respondent.

- Failed to uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools or failed to bring about desired changes through legal and ethical procedures in violation of N.J.S.A. 18A:12-24.1(a);
- Failed to make decisions in terms of the educational welfare of children or to seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing in violation of N.J.S.A. 18A:12-24.1(b);
- Failed to carry out his/her responsibility not to administer the schools, but, together with my fellow board members, to see that they are well run in violation of N.J.S.A. 18A:12-24.1(d); or
- Failed to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer in violation of N.J.S.A. 18A:12-24.1(h).

DECISION

Based on the foregoing, the Commission grants the respondent's 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).

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C01-09

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the Motion to Dismiss filed by the respondent, together with the documents submitted in support thereof; and

Whereas, the Commission granted the respondent’s Motion to Dismiss the allegations that respondent violated N.J.S.A. 18A:12-24.1(a), (b), (d), and (h) of the Code of Ethics for School Board Members; and

Whereas, the Commission directed its staff to prepare a decision consistent with the aforementioned conclusion; and

Whereas, the Commission has reviewed, and agrees with, the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision granting the respondents’ Motion to Dismiss as the final decision of an administrative agency and directs its staff to notify all parties to this action of its 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 April 28, 2009.

Joanne Boyle
Executive Director