

DEBBIE MYERS	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	Docket No. C06-08
MARTIN COX	:	
PLAINFIELD BOARD OF EDUCATION	:	DECISION
UNION COUNTY	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on February 18, 2008 by Debbie Myers against Martin Cox, a member of the Plainfield Board of Education (Board) alleging that Mr. Cox violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Specifically, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members when he provided inaccurate information and statements to an investigator from the Office of Fiscal Accountability and Compliance (OFAC) in the Department of Education.¹ The respondent filed an answer, through his counsel, on April 25, 2008.

The Commission invited the parties to attend its March 24, 2009 meeting for a hearing pursuant to N.J.A.C. 6A:28-6.9. Complainant Myers and counsel for the respondent, Ronald C. Hunt, Esq., were in attendance. At the March 24, 2009 meeting, and prior to hearing the matter, the respondent’s counsel requested an adjournment of the hearing, due to a scheduling conflict. The Commission granted the adjournment, over the complainant’s objection. The hearing was rescheduled for the April 28, 2009 meeting. The matter was tabled during the March 24, 2009 public session.

Both the complainant and the respondent, with his counsel, attended the April 28, 2009 meeting. At the April 28, 2009 hearing, and prior to the complainant’s presentation of her case, the respondent, pursuant to N.J.A.C. 6A:28-6.9(c), moved to dismiss the complaint due to the Commission’s failure to issue a decision on the matter within 90 days as required by N.J.S.A. 18A:12-29b, and for lack of standing on the part of the complainant to bring the complaint. After hearing the position of the parties, the Commission denied the motions to dismiss. The complainant then called her first witness, Patricia Barksdale. The respondent objected to the complainant calling Ms. Barksdale as a witness and requested a proffer, arguing that the witness had no personal knowledge of the matter. The complainant admitted that the witness had no personal knowledge as to whether the respondent provided inaccurate information and statements to an investigator from OFAC. Pursuant to N.C.A.C. 1:1-15.8(c), which requires that as a prerequisite for the testimony of a witness, there must be evidence that the witness has

¹ The Commission notes that, in her complaint, the complainant alleges a violation of N.J.S.A. 18A:12-24(g); however, the complainant cites to the language of the provisions of N.J.S.A. 18A:12-24.1(g). The complainant was notified by the Office of the School Ethics Commission that, unless it heard otherwise, the Commission would move forward with the complaint as one alleging allegations of the Code of Ethics for School Board Members. Thus, the Commission considered the complaint as one alleging violations of the Code of Ethics for School Board Members.

personal knowledge of the matter or has special experience, training or education, if required, the Commission sustained the respondent's objection to the testimony of the witness.

The complainant then called respondent Cox as a witness. The respondent's attorney objected to the respondent being called to provide testimony for the complainant. Recognizing Mr. Cox's status as the respondent in this matter, the Commission sustained the objection. Upon further questioning by the Commission, the complainant acknowledged that she did not have any witnesses with direct knowledge as to whether the respondent provided inaccurate information and statements to an investigator from the OFAC, although she intended to rely on an October 2007 report issued by the OFAC. The respondent's attorney made a motion to dismiss on the basis that the complainant failed to provide evidence to support her allegations. The Commission granted the respondent's motion to dismiss during the public portion of the April 28, 2009 meeting.²

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29b, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members. The complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members when he provided inaccurate information and statements to an investigator from OFAC.

N.J.S.A. 18A:12-24.1(g) sets forth:

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.

The Commission recognizes that when conducting hearings on complaints that solely allege a violation of the Code of Ethics for School Board Members, such hearing must be conducted in accordance with the rules of the Office of Administrative Law. N.J.A.C. 6A:28-6.9(c). At the April 28, 2009 hearing, when, given the opportunity to present her case, the complainant acknowledged that she had no witnesses to offer direct knowledge of the matter, other than the respondent. To the extent the complainant intended to rely on the October 2007 OFAC report as evidence, the Commission notes that such evidence is hearsay. Although hearsay evidence is admissible, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15. The Commission, therefore, finds that the complainant has failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(g).

² 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 on February 18, 2008, 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.

REQUEST FOR SANCTIONS

At its April 28, 2009 meeting, the Commission considered the respondent's request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence which might show that the complainant filed the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also has no information to suggest that the complainant should have known that the complaint was without any reasonable basis in law or equity or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondent's request for sanctions against the complainant.

DECISION

Based on the foregoing, the Commission grants the respondent's Motion to Dismiss the allegation that the respondent violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members. 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 – C06-08

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, and the evidence presented at the hearing; and

Whereas, at its meeting of April 28, 2009, the respondent moved to dismiss the complaint; and

Whereas, at its April 28, 2009 meeting, the Commission granted the respondent's Motion to Dismiss the allegations that respondent violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members; and

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

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.

Paul C. Garbarini, Chairperson

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

Joanne Boyle, Executive Director

PCG/JB/MET/decisions/C06-08