

JOHN CAMPBELL	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
v.	:	
	:	
VIRGINIA SANTOS	:	Dkt. No. C06-11
KEARNY BOARD OF EDUCATION	:	DECISION
HUDSON COUNTY	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on January 25, 2011 by John Campbell alleging that Virginia Santos, then a member of the Kearny Board of Education (“Board”) 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(c) of the Code of Ethics for School Board Members.¹ An answer was filed by the respondent on February 25, 2011. The answer alleged that the complaint was retaliatory. Therefore, pursuant to N.J.A.C. 6A:28-7.2(b), the Commission accorded the complainant an opportunity to respond to the charge.²

The parties were notified by letters dated February 23, 2011 that the Commission would consider this matter at its March 22, 2011 meeting in order to make a determination pursuant to N.J.A.C. 6A:28-10.8(a) and to consider the allegation of frivolousness. At its meeting on March 22, 2011, the Commission voted to find that the above-captioned complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2. Additionally, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to retain this complaint for hearing. When the Commission retains a complaint for a hearing, such hearing shall be conducted in accordance with the rules of the Office of Administrative Law, N.J.A.C. 1:1. N.J.A.C. 6A:28-10.8(c). Additionally, the complainant has the burden to factually prove a violation under the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4.

By letter dated March 25, 2011, the parties were notified that that this matter appeared to be ripe for summary decision in that there is no genuine issue of material fact that would require an evidentiary hearing. (See, N.J.A.C. 1:1-12.5; N.J.A.C. 1:1-14.6(p)). Thus, the Commission established a briefing schedule with an opportunity for the parties to submit reasons why the Commission should not resolve this matter on a summary basis or, in the alternative, reasons

¹ The Commission noted that the complaint solely alleged a violation of the Code of Ethics for School Board Members, although the complainant asserts a violation of “NJAC 18A:12-24.1(c)” rather than N.J.S.A. 18A:12-24.1(c) (Complaint at p. 1). Therefore, the Commission informed the parties that unless otherwise notified by the complainant, it shall review this complaint as alleging a violation of N.J.S.A. 18A:12-24.1(c) of the Code of Ethics for School Board Members.

² The Commission deemed this allegation to be an allegation of frivolousness, pursuant to N.J.S.A. 18A:12-29(e).

why the Commission should or should not find a violation of the Act. The parties were advised that all timely submissions would be reviewed at the Commission's meeting on May 24, 2011. However, no additional papers were filed. At its meeting on May 24, 2011, the Commission voted to dismiss the complaint.

SUMMARY OF THE RECORD

The complainant asserts that on August 16, 2010, the respondent Board member voted for the appointment of the Vice Principal who would be the supervisor of her daughter, a newly-hired teacher. The complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(c).

In her answer, the respondent admits that on July 19, 2010, her daughter was appointed as a full-time teacher; the respondent was not present for the meeting. The respondent affirms that at the August 16, 2010 meeting, the Board was presented with the recommendations from the Superintendent of one principal, four vice principals and the position of the Director of Special Services. The respondent states, "One of the recommendations was the vice principal position at Schuyler School (copy of resolution attached). I readily admit that I participated in each of these votes." (Answer at p. 1) The respondent further states that she was not aware that there was an impediment to her participating in the vote for the Vice Principal due to her daughter's employment. The respondent notes that based on the advice of counsel and previous voting situations:

It was my understanding that if the candidate in question had never served in a supervisory capacity over a relative, a board member would be allowed to participate in the vote. It was also my understanding that once a supervisory relationship was established, I would be precluded from casting any subsequent votes that could possibly effect [sic] a relative's employment situation. (Id.)

Finally, the respondent notes that that she has served two terms as a Board member, but is not seeking reelection in April 2011.

FINDINGS OF FACT

The Commission finds the following to be undisputed facts:

1. At all times relevant, the respondent was a member of the Kearny Board of Education.
2. On July 19, 2010, the respondent's daughter was appointed to the position of full-time teacher; the respondent was not present for the meeting.
3. On August 16, 2010, the respondent cast a vote for the appointment of Vice Principal at Schuyler School where the respondent's daughter would be working.

ANALYSIS

The Commission initially notes the complainant has the burden to prove factually a violation under the Code of Ethics for School Board Members as provided by N.J.A.C. 6A:28-6.4(a). See also, N.J.S.A. 18A:12-29(b). Thus, it considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(c), which provides:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the respondent(s) 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.

Although respondent's vote which is the subject of this complaint is undoubtedly "board action," the Commission finds nothing on this record to factually support a finding that the respondent failed to confine her board action to policy making, planning, and appraisal, or took action to effectuate policies and plans without consulting those affected by such policies and plans. Rather, it appears that the complainant is asserting that the vote placed the respondent in a position of conflict. Such an allegation might be made pursuant to the Conflicts of Interest portion of the Act and, specifically, N.J.S.A. 18A:12-24(c),³ rather than N.J.S.A. 18A:12-24.1(c), which is a provision of the Code of Ethics for School Board Members. However, even assuming that the complainant properly alleged a conflict of interest, the Commission finds, under these circumstances, that the respondent's vote on August 16, 2010 fairly fell within the permissible parameters of the Commission's advisories.⁴ Consequently, the Commission finds that the complainant has failed to factually establish a violation of N.J.S.A. 18A:12-24.1(c).

³ That provision states: "No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family."

⁴ See, *Advisory Opinion A10-00*, (June 27, 2000), where the Commission advised a board member, pursuant to N.J.S.A. 18A:12-24(c), that s/he may participate in the search for a superintendent, assistant principal and principal, as well as vote on the appointments, even though these administrators could all be considered supervisors of the spouse. The Commission advised that it would not be reasonable for the public to expect that a board member, with

DECISION

The Commission finds that the complainant did not factually establish that the respondent violated N.J.S.A. 18A:12-24.1(c) of the Code of Ethics for School Board Members. Consequently, the complaint is dismissed. 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: June 29, 2011

a spouse who teaches in the district, would choose to appoint administrators who are most likely to be financially favorable to teaching staff, especially since teachers are employed pursuant to a collective bargaining agreement; *Advisory Opinion A23-06*, (November 15, 2006), where the Commission advised a board member (identified as "C") for a K-12 district whose spouse was a teacher's aide in one of the elementary schools that s/he may participate in the search for a new superintendent, the interview process for potential candidates and the hiring of the new superintendent *unless* either the board member or his or her spouse had some familiarity with a potential candidate because the candidate directly or indirectly supervised the board member's spouse.

Resolution Adopting Decision – C06-11

Whereas, the School Ethics Commission has considered the documents filed by the parties; and

Whereas, at its meeting of May 24, 2011, the Commission found that the complainant had not established that the respondent violated N.J.S.A. 18A:12-24.1(c) of the Code of Ethics for School Board Members and therefore dismissed the complaint; and

Whereas, the Commission has reviewed and approved the decision memorializing said action;

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 Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on June 28, 2011.

Joanne Boyle, Executive Director