

JOSEPH R. ARMENTI	:	BEFORE THE
	:	SCHOOL ETHICS COMMISSION
v.	:	
	:	
MICHAEL RECA,	:	
<i>ROBBINSVILLE BOARD OF</i>	:	Docket No. C07-09
<i>EDUCATION</i>	:	
<i>MERCER COUNTY</i>	:	DECISION ON
	:	MOTION TO DISMISS

PROCEDURAL HISTORY

This matter arises from a complaint filed on April 25, 2009 by Joseph R. Armenti, a former member of the Robbinsville Board of Education (Board) alleging that Michael Reca, a member of the Board, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The complainant specifically alleges that the respondent violated N.J.S.A. 18A:12-24.1(f) and (g) of the Code of Ethics for School Board Members.¹

Pursuant to N.J.A.C. 6A:28-6.5(e), and after having been granted an extension of time to submit a response, on May 7, 2009, a Motion to Dismiss in Lieu of Answer was filed on behalf of the respondent. The complainant was accorded an opportunity to reply to the motion. During this time, he obtained counsel, who requested and was granted, an extension of time in which to reply to the motion. On June 5, 2009, a response to the motion was filed on behalf of the complainant. The Commission considered the complaint, the Motion to Dismiss and the response to the motion at its meeting on June 23, 2009, at which time the Commission voted to grant the motion to dismiss.

SUMMARY OF THE PLEADINGS

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(f) by allowing the Gay-Straight Alliance (GSA) in the district to dictate policy. In “Background” information attached to the complaint, the complainant recounts that at a Board meeting on September 23, 2008, the Board was considering placing a box in its schools wherein a student could report another student by name for using derogatory language; the named student would meet with a guidance counselor. At the meeting, the complainant reports that he stated, “If I had a son and he said the word faggot I would not want my son’s name placed in a box and wouldn’t that be a first amendment issue?” (Complaint/Background at page 1). According to the complainant, the following exchange then took place:

¹ 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 April 25, 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.

Immediately, the high school Principal Ms. Molly Avery, who was the only administrator in the audience at the time, responded saying [sic] that “Students do not have first amendment rights while they are attending public school.” I responded in saying, “Really!” At that time Mr. Thomas Halm, a board member, also responded to Ms. Molly Avery’s response and said that, “You are incorrect, students have first amendment rights”. This exchange of words and statements took approximately two minutes. No one made any further comments and the meeting was adjourned. (*Id.* at pages 1-2)

According to the complainant, thereafter, and without calling a Board meeting, the respondent, then Board president, was concerned about the political ramifications of the complainant’s statement and he surrendered his independent judgment in violation of N.J.S.A. 18A:12-24.1(f) by allowing an organization, the Robbinsville High School Gay-Straight Alliance (GSA) to dictate policy in the district. (*Id.* at page 4)

The complainant next alleges that the respondent went to the newspapers without calling a meeting or discussing the matter with any other school board members and made statements that compromised the complainant’s position. The complainant asserts that the respondent disregarded the opinion of other board members and failed to call upon other board members to arrive at a solution. According to the complaint, in respondent’s statements to the press, he failed to hold confidential his unsubstantiated opinion of the complainant’s reasons for making the statement. He presented personal opinions as the voice of the board and misrepresented the complainant, causing harm to the complainant and his family. The complainant reasons that when the respondent subsequently voted to correct the meeting minutes in January 2009, he “essentially admitted that the statement in the letter from the GSA---which appears to have formed the basis for all subsequent misleading public statements ---was not factually correct.” The complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(g). (*Id.* at page 5)

The complaint also alleges that the respondent violated local Board policy.

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 complainant alleged facts which, if true, could support a finding that the respondents violated N.J.S.A. 18A:12-24.1(f) and (g) of the Code of Ethics for School Board Members.² To the

² In the response to the motion which was submitted on behalf of the complainant, argument is made that there is a genuine issue of material fact which requires that the motion be denied. However, the respondent in this matter filed a Motion to Dismiss in Lieu of Answer, pursuant to N.J.A.C. 6A:28-6.5(e). In considering a Motion to Dismiss, the Commission considers the facts in the light most favorable to the non-moving party and determines whether the alleged facts which, if true, could support a finding that the respondents violated the Code of Ethics for School Board Members. See, Jenkins-Buwa v. Rivers et al., Plainfield Board of Education, C39-08 (March 24, 2009); Lovett and Fussell v. Asbury et al., Freedom Academy Charter School Board of Trustees, C01-09 (April 28, 2009); Hollander v. Millman et al., Springfield Twp. Board of Education, C33-07 (January 22, 2008); and Noll v. Mott, Green Twp. Board of Education, C20-08 (September 23, 2008).

extent that the complainant has alleged that the respondent did not act pursuant to District policy, the Commission does not have the authority to consider alleged violations of local policy; rather, the Commission's jurisdiction is limited to reviewing violations of the School Ethics Act. Thus, all such allegations are dismissed.

The complainant first claims that the respondent violated N.J.S.A. 18A:12-24.1(f), which provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

Although the complaint herein fails to explicitly state the facts which support this claim, the Commission infers from the "Background" information provided that the complainant is asserting that the apology letter issued by the respondent in conjunction with the Superintendent on October 6, 2008 was violative of N.J.S.A. 18A:12-24.1(f). This letter, appended to the complaint, is addressed to specific students and members of the community; it states, in relevant part:

We write in response to your October 1, 2008, letter. On behalf of the Robbinsville High Board of Education, we join you in the paramount mission of our school district which is to create an educational community of inclusion and acceptance, free of any invidious discrimination against members of any protected group, including gays and lesbians. We acknowledge the outstanding work of the Robbinsville High School Gay-Straight Alliance and we assure you that we join you in a full commitment to your goals and ideals and we will never, ever condone any behavior, including words, which could be perceived as hostile in the open and accepting community that we aspire to at Robbinsville High School. ...

The letter highlights the specific actions taken by the District to promote tolerance and also states that the complainant has asked to meet with the recipients "to apologize for his inappropriate statement at the last Board of Education meeting." (October 6, 2008 letter) The letter is signed by the Superintendent and the respondent.

The complainant's own submissions clearly indicate that there was a significant public outcry following the Board meeting where the complainant made the aforementioned statement. That the respondent, as Board President, and the Superintendent swiftly issued a joint public apology to remediate the many concerns raised by the community is understandable. Again, respondent's own submissions indicate that the Board President is authorized by local policy 0171 to speak to the press on behalf of the Board. Therefore, even accepting as true all facts alleged, the Commission finds that such facts would not constitute a violation of N.J.S.A. 18A:12-24.1(f).

The complainant also claims that the respondent violated N.J.S.A. 18A:12-24.1(g) by making statements to the press that compromised his (the complainant's) position in that the statement attributed to the complainant was inaccurate. N.J.S.A. 18A:12-24.1(g) states:

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.

As the respondent argues in his Motion to Dismiss, the matter herein was not "confidential" in nature. (Respondent's Motion to Dismiss at page 8). The complainant made his statement at a public meeting and the response thereto was public. Thus, there can be no reasonable claim that the respondent violated the "confidential" clause of this statute.

To the extent that the complainant contends that the respondent provided inaccurate information to the newspapers, the Commission notes that the complaint fails to cite a specific instance, date or time when the respondent gave inaccurate information to the newspapers. Complaints alleging violations of the Code of Ethics for School Board members must include the specific facts upon which the complaint is based, including dates of the occurrences upon which the complaint is based. N.J.A.C. 6A:28-6.3(b). Absent any specific facts attributable to the respondent, the complainant asserts in his reply certification to the Motion to Dismiss that because a reporter from the Trenton Times was not in the room at the time the complainant made his statement, "the only way in which information could have been disseminated to the reporter is by publication of the miscategorized [sic] statement by Mr. Recca [sic] or at worth [sic] another board member." The complainant then reiterates, "Again, for the Trenton Times to publish the incorrect statement only means that it was leaked by Mr. Recca [sic] or another board member." (Complainant's Reply Certification at paragraphs 3 and 7.) Thus, not only does the complaint fail to allege any specific action taken by the respondent, but the complainant's reply certification allows for the possibility that another board member may have provided (mis)information to the newspapers. Therefore, even accepting as true all facts alleged, the Commission finds that such facts would not constitute a violation of N.J.S.A. 18A:12-24.1(g).

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 – C07-09

Whereas, the School Ethics Commission has considered the complaint, the Motion to Dismiss filed on behalf of the respondent, together with the response filed on behalf of the complainant; and

Whereas, on June 23, 2009, the Commission granted respondent’s Motion to Dismiss the allegations that respondent violated N.J.S.A. 18A:12-24.1(f) and (g) of the Code of Ethics for School Board Members; and

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

Whereas, the Commission 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 July 28, 2009.

Joanne Boyle
Executive Director