

selected the group of residents who were the recipients of the communications. The complainants assert this was a violation of N.J.S.A. 18A:12-24.1(a). (Id. at p. 2)

In Count 3 of the complaint, the complainants contend that on January 23, 2012, the respondents “stated to the public that they had a ‘previous verbal agreement’, based on the input of the previous Board members, to provide a salary increase to the Superintendent of Schools, Dr. Christopher Nagy.” The complainants allege that Respondent Wiss referred to a “moral obligation” to honor a verbal agreement made by the previous Board to honor the salary increase. The Board then awarded the Superintendent a retroactive salary increase in the amount of \$12,500 in his employment contract. In this connection, the complainants contend that no actions of a previous Board may bind a sitting Board. The complainants assert this was a violation of N.J.S.A. 18A:12-24.1(e). (Id. at pp. 2-3)

In Count 4 of the complaint, the complainants assert that from February 2011 until November 2011, “there is no documentation that supports the request for a cap waiver, the receipt of a cap waiver or the appropriation of such funds to Dr. Christopher Nagy, either from the previous board or the sitting board.” According to the complainants, the respondents “have worked to influence other board members to act on a ‘private, side agreement,’ and have acted to intentionally mislead the public.” The complainants assert this was a violation of N.J.S.A. 18A:12-24.1(e). (Id. at p. 3)

ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the complainant and determine whether the allegation(s) set forth in the complaint, if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. Because the complainant has the burden to factually establish a violation of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a), in order to prevail on a Motion to Dismiss, the complaint must allege facts, which if true, would be sufficient to support a finding that the respondents violated N.J.S.A. 18A:12-24.1(a) and (e) of the Code of Ethics for School Board Members.

In support of their Motion to Dismiss, the respondents state that the complainants essentially disagree with the Board’s decision to pay its new Superintendent an additional salary amount, which additional payment was approved by the Bergen County Superintendent. (Motion at p. 1) In this connection, Board President Respondent Lent avers that discussions began in the fall of 2010 about the process for appointing a new Superintendent. As of that date, the Superintendent’s salary cap law had been adopted and the Board would not be permitted to pay more than \$155,000.00 to its new Superintendent. Fearing that the cap might inhibit the Board’s ability to obtain the best Superintendent, the Board began discussions in 2010 about the possibility of seeking authorization from the Executive County Superintendent of Schools to pay an additional \$12,500 to the incoming Superintendent. The consensus of the Board was to seek approval for the additional payment.

In February 2011, the Board made the request to the County Office. Thereafter, each of the final candidates for the position was informed about the pending request and the Board's willingness to pay the additional monies, should the request be approved. The Board hired Dr. Nagy in April 2011 and he started employment on July 1, 2011, although there was still no response from the County Office about the request. The County Office approved the request on November 17, 2011 and the Board scheduled a public hearing for January 23, 2012. According to Respondent Lent, prior to the public hearing date, eight Board members signed a letter to the community in an effort to counter what they believed was inaccurate information circulating on the internet. Simultaneously, Respondent Lent pre-recorded a telephone message sent to the community which informed parents and the community about the letter signed by the Board members. (Lent Certification at pp. 1-4)

Counts 1 and 2

In Counts 1 and 2 of the complaint, the complainants contend that Respondent Lent initiated and prepared a letter and outbound phone campaign designed to mislead residents with respect to the Superintendent's employment contract, and she misused school funds without Board authorization in order to do so. The complainants assert this was a violation of N.J.S.A. 18A:12-24.1(a), which states:

I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures. N.J.A.C. 6A:28-6.4(a)1.

It is specifically noted in this connection that the complainants do not assert that a final decision has been rendered with respect to these respondents from any court of law or administrative agency of this State demonstrating that they failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondents brought about changes through illegal or unethical means. Nor does the complainant include a copy of a final decision from any court of law or administrative agency of this State that so demonstrates, as is her burden. See, David Hollander v. Judith Millman, et al., Springfield Township Board of Education, Union County, C33-07 (January 22, 2008); Denise Bouyer v. Rita Owens and Oscar McCoy, Willingboro Board of Education, Burlington County, C37-09 (December 15, 2009); Martha Oramas-Shirey v. Peter Gallo et. al., Bethlehem Twp. Bd. of Ed., Hunterdon County, C43-10 (March 22, 2011); and, G.M.B. v. Cynthia Zirkle, Cumberland

Regional Bd. of Ed., Cumberland County, C44-10 (September 27, 2011). Accordingly, even accepting as true all facts alleged by the complainant in Counts 1 and 2, such facts are insufficient to support a finding of violation of N.J.S.A. 18A:12-24.1(a).

Counts 3 and 4

In Counts 3 and 4 of the complaint, the complainants contend that the respondents told the public that there was a “previous verbal agreement” to provide a salary increase to the Superintendent of Schools, then the Board awarded the Superintendent a retroactive salary increase in the amount of \$12,500 in his employment contract. The complainants contend there is no documentation to support the appropriation of such funds to the Superintendent. The complainants assert this was a violation of N.J.S.A. 18A:12-24.1(e), which provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

The Commission’s regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

The Commission acknowledges the respondents’ argument that the complaint “provides no details whatsoever as to how this Subsection of the Act was even potentially violated.” Respondents continue:

What “personal promises” did any of the Board members make which compromised the Board? If Complainants are asserting that the Board members’ “oral agreement” with Dr. Nagy concerning the potential for a salary increase is somehow a personal promise which compromised the Board, they have utterly failed to show how this is the case. Indeed, the Complainants themselves, on page 3 of the Complaint, aver that Respondent Raymond Wiss made a public statement during that January 23rd public hearing in which he “concluded that the NJBOE [sic] had no contractual obligation, but a ‘moral obligation’ to honor this verbal agreement made by the previous Board.” What complainants failed to state in their Complaint, however, is that during the hearing the Board members concurred with the opinion of the Board’s attorney that there was no legally binding oral agreement which would have required the Board of Education to grant Dr. Nagy the \$12,500.000 increase. Rather, this matter was being considered de novo (as in for the first time) as a matter of binding contract law by the

Northern Valley Regional High School Board of Education at the January 23rd hearing.” (Motion at pp. 10-11)

Indeed, the Commission agrees that the actions attributed to the respondents in these counts were statements made at a meeting on January 23, 2012. The Commission does not find this to be “private action”¹ within the intent of N.J.S.A. 18A:12-24.1(e). Further, although the complainants assert that the respondents “worked to influence other board members” to act in accordance with what the complainants allege was a “private agreement,” they offer no specific facts to support this vague claim.

To the extent the complainants challenge the vote by the Board to award the increase and the alleged lack of documentation to support the Board’s action, the Commission finds that such claims are not properly within its jurisdiction. The Commission maintains that the School Ethics Act does not empower it to supplant the decisions of duly elected or appointed local board members when they are acting in their capacities as board members. To the extent the complainant believes that the Board has acted in a manner that is arbitrary and capricious, or otherwise contrary to law or regulation,² any such claim must be brought before the Commissioner of Education. Solar-Snyder v. Rose et al., Sussex Wantage Board of Education, Sussex County, C32-03 (December 16, 2003). See, also, Dericks et al. v. Johnson et al., Sparta Board of Education, Sussex County, C01-08 (October 27, 2009). Consequently, the Commission finds that the within complaint sets forth no factual allegations which, if true, could establish that the respondents failed to recognize that authority rests with the Board and made personal promises or took action beyond the scope of their duties such that, by its nature, had the potential to compromise the board, so as to establish that the respondents violated N.J.S.A. 18A:12-24.1(e).

REQUEST FOR SANCTIONS

At its meeting on May 29, 2012, the Commission considered the respondents’ 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 does not find that the complainants “[c]ommenced, used or continued [this matter] in bad faith, solely for the purpose of harassment, delay or malicious injury;” or that the complainants “knew, or should have known,” that the matter “was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.” N.J.A.C. 6A:28-1.2. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondents’ request for sanctions against the complainants.

¹ In Marc Sovelove v. Paul Breda, Mine Hill Twp. Bd. of Ed., Morris County, C49-05 (September 26, 2006), the Commission found that a Board member’s action cannot be both board action *and* private action.

² For instance, N.J.S.A. 18A:11-11 sets forth public notice requirements for extending, amending or altering the terms of a Superintendent’s contract.

DECISION

Based on the foregoing, the Commission grants the respondents' 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 W. Bender
Chairperson

Mailing Date: June 27, 2012

Resolution Adopting Decision – C11-12

Whereas, the School Ethics Commission has considered the complaint, the Motion to Dismiss filed on behalf of the respondents and the reply thereto; and

Whereas, at its meeting on May 29, 2012, the Commission determined to grant the respondents' Motion to Dismiss; and

Whereas, the Commission also found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2; and

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

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

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on June 26, 2012.

Joanne Boyle
Executive Director