

GEORGE F. BURDICK, JR.,	:	
	:	SCHOOL ETHICS COMMISSION
v.	:	
	:	
PETER DIGIAMBATTISTA AND KENNETH WEISS, FRANKLIN TOWNSHIP BOARD OF EDUCATION HUNTERDON COUNTY	:	Docket No. C15-09
	:	DECISION ON
	:	MOTION TO DISMISS
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on April 24, 2009 by George Burdick, Jr., alleging the Peter DiGiambattista and Kenneth Weiss, members of the Franklin Township Board of Education in Hunterdon County (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), (c), (f), (g) and (j)¹ of the Code of Ethics for School Board Members.²

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 July 6, 2009, a Motion to Dismiss in Lieu of Answer was filed on behalf of the respondents. The complainant submitted a reply to the motion on July 20, 2009. The Commission considered the complaint, the Motion to Dismiss and the response to the motion at its meeting on July 28, 2009, at which time the Commission voted to grant the respondents' motion to dismiss the complaint.

SUMMARY OF THE PLEADINGS

The complainant alleges that at a regular meeting on February 23, 2009, the respondents moved to “disclose the public and financial burden to the district” in connection with another matter brought by the complainant pursuant to the Open Public Records Act (OPRA) entitled George Burdick v. Franklin Township Board of Education (Hunterdon), GRC Complaint No. 2007-74. According to the complainant, the Governor’s Record Council (GRC) ruled that the district had unlawfully denied the complainant’s request for records and the records were subsequently released to him. The action taken by the respondents at the February 23rd meeting,

¹ Although the first paragraph of the complaint asserts there was a violation of N.J.S.A. 18A:12-24.1(i), the language quoted from the statute is that of N.J.S.A. 18A:12-24.1(j). Supporting documents to the complaint confirm that the complainant is alleging a violation of N.J.S.A. 18A:12-24.1(j) in his first allegation.

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 April 24, 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.

according to the complainant, were a violation of N.J.S.A. 18A:12-24.1(a), (b), (c), (f), (g) and (j). (Complaint at paragraph 1)

The complainant next asserts that on March 23, 2009, as a result of the aforementioned motions made and seconded by the respondents, Board counsel informed the public that the OPRA matter was fully adjudicated. According to the complainant, this item was not advertised on the agenda. Members of a campaign committee, FT VOTE, were present. The complainant asserts that the respondents were members of this committee, and that the chairperson of FT VOTE had prepared questions for the Board attorney relative to the costs of the litigation. Comments about the complainant and his wife, Board member Alba Burdick, appeared on the district's website. The complainant asserts that the respondents' actions were in violation of N.J.S.A. 18A:12-24.1(f) and (g). (Id. at paragraph 2)

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(a), (b), (c), (f), (g) and (j) of the Code of Ethics for School Board Members. Granting all inferences to the complainant, and even assuming all facts to be true, the Commission finds that the complainant has failed to meet this standard.

First Allegation

In his first allegation, the complainant asserts the respondents violated N.J.S.A. 18A:12-24.1(a), (b), (c), (f), (g) and (j) when, at the meeting on February 23, 2009 they moved to "disclose the public and financial burden to the district" in connection with the GRC matter filed by the complainant. (Id. at paragraph 1). N.J.S.A. 18A:12-24.1(a) provides:

- a. 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 notes that its regulations require that, in order to prove factually a violation of N.J.S.A. 18A:12-24.1(a), a complainant:

shall include a copy of a final decision from any court of law or administrative agency of this State that finds 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[s] brought about changes through illegal or unethical means. N.J.A.C. 6A:28-6.9(b).

The complainant asserts the respondents violated N.J.S.A. 18A:12-24.1(a) because an interim order was issued by the Government Records Council (GRC) in the Burdick v. Franklin GRC

complaint, finding that the Board's OPRA custodian unlawfully denied access to public records. However, even assuming that a final decision from the GRC regarding a District's OPRA custodian would satisfy the standard set forth above as a "decision from any court of law or administrative agency of this State that finds the *respondent(s)* failed to enforce all laws, rules and regulations of the State Board of Education, (emphasis added)" the complaint and all attachments show that the GRC never issued such a final decision in the Burdick v. Franklin matter. Indeed, the complainant states, "[o]n October 21, 2007 and January 31, 2008, the Government Records Council entered an Interim Order that the Custodian of Record for the Franklin Township Board of Education had unlawfully denied my OPRA request." (Complaint at Exhibit A, page 1 of 12; See also Exhibits D and E) The complainant's own papers also show that after the interim order was issued, the GRC matter was transmitted to the Office of Administrative Law for hearing. (Id. at Exhibit D). Thereafter, the complainant withdrew his GRC petition on March 5, 2009. (Id. at Exhibit E Chronology at page 4 of 17). Accordingly, even accepting as true all facts alleged by the complainant, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(a).

The Commission next considers whether the events of February 23, 2009, if true, could support a finding that the respondents violated N.J.S.A. 18A:12-24.1(b), which provides:

b. I will make decisions in terms of the educational welfare of children and will 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.

It is the complainant's burden to allege facts that could show a finding of violation. (See, N.J.S.A. 18A:12-29(b)). However, the complainant merely affirms that "[t]he action taken on February 23, 2009 has nothing to do with the educational welfare of children." (Id. at Exhibit A, page 2 of 12) The complainant has alleged no facts that, if true, could show that the motion to make the cost of the district's legal fees public constituted a decision that is contrary to the educational welfare of children. In this connection, the Commission acknowledges the respondents' argument that "[t]hese expenditures do have a direct impact on the amount of money available for the educational welfare of the children." Accordingly, even accepting as true all facts alleged by the complainant, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(b).

The Commission next considers whether the events of February 23, 2009, if true, could support a finding that the respondents violated N.J.S.A. 18A:12-24.1(c) states:

c. 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.

While the Commission finds that the motion made at the February meeting was Board action, the Commission disagrees with the complainant's assertion that such action "has nothing to do with policy, planning and appraisal." (Ibid.) Indeed, the discussion of costs associated with litigation may be viewed as highly relevant to a Board's planning functions. That no one consulted with

the complainant prior to this public discussion, as alleged in the complaint,³ is of no consequence in this particular analysis since the complainant has asserted no particular facts which, if true, could support a finding that the respondents' participation in a discussion of such expenditures was violative of N.J.S.A. 18A:12-24.1(c).

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

f. 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.

As to this claim, the complainant merely asserts:

1. The action taken on February 23, 2009 was a surrender of independent judgment to the partisan political group known as FT VOTE.
2. The action taken on February 23, 2009 was purely for the advancement of school board candidates being supported by FT VOTE. (Ibid.)

Once again, such statements are not alleged facts, but rather, conclusory statements without supporting details. The complainant alleges no facts which, if true, could support a finding that the respondents violated N.J.S.A. 18A:12-24.1(f) by moving to discuss the aforementioned litigation costs.

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

g. 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 to this allegation, the complainant asserts:

1. The release of the information to the public was done with malicious intent, and to purposely cause substantial personal injury.
2. The information released to the public was inaccurate, as no letter was sent by the Board of Education to the Government Records Council to "join." (Id. at page 3 of 12)

³ See Complaint Exhibit A at page 2 of 12.

There is no allegation that the respondents in this matter released confidential information; therefore, the first sentence of N.J.S.A. 18A:12-24.1(g) does not apply. To the extent the complainant claims that the information released was inaccurate as stated above in #2, it is important to note that the complainant's papers do not attribute any such statement to the respondents, but, rather to the Board's counsel. Specifically, the complaint includes an excerpt of a statement made by the Board's counsel on March 23, 2009 that the Board joined in a request to the GRC to end the litigation initiated by the complainant. These are the only "facts" alleged by the complainant to support a claim of violation; thus, even if true, these facts could not support a finding that the respondents violated N.J.S.A. 18A:12-24.1(g).⁴

The complainant also claims that the respondents violated N.J.S.A. 18A:12-24.1(j), which provides:

j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

As to this allegation, the complainant asserts:

1. The action taken on February 23, 2009 was before any final administrative decision or final order was adjudicated in this matter.
2. At no time in the past has the Franklin Township Board of Education ever felt the need to "disclose the financial burden to the public" for any other legal matter before the Board, either before or after full adjudication." (Ibid.)

As used in this provision, "complaint" means a concern, issue or dissatisfaction that a member of the public or a member of the school personnel has brought to the attention of a member of the district board of education. N.J.A.C. 6A:28-7.1. The complainant alleges no facts to indicate that such a complaint was brought to the attention of the respondents and they failed to act on such complaints at a public meeting only after the failure of the administration to find a solution to the complaint. Therefore, the complainant has alleged no facts which, if true, could support a finding that the respondents violated N.J.S.A. 18A:12-24.1(j).

Second Allegation

The complainant's second allegation concerns the events at the March 23, 2009 meeting. Specifically, the complainant asserts that the respondents violated N.J.S.A. 18A:12-24.1(f) and 24.1(g), as set forth above.

As to the alleged violation of N.J.S.A. 18A:12-24.1(f), the complainant notes that the respondents are members of the political campaign, FT VOTE. The complainant asserts that, as

⁴ In this connection, the Commission notes that the complainant appears to confuse the events association with the first allegation (concerning the February 23, 2009 meeting) with the events associated with the second allegation (concerning the March 23, 2009 meeting).

a result of respondents' motion on February 23, 2009, and the subsequent statements made at the Board Meeting of March 23, 2009 by the Board Attorney and the Board President, a number of statements appeared on the FT VOTE website as well as the website of the Hunterdon Democrat which were not favorable to the complainant. (Id. at pages 4 -5 of 12) Even assuming that the respondents are associated with FT VOTE, involvement with a political or special interest group is not, in and of itself, prohibited by the School Ethics Act. The complainant alleges no specific facts relative to actions taken by the respondents that, if true, would support a finding that they "surrendered their independent judgment to special interest or partisan political groups" or "used the schools for personal gain or for the gain of friends." Moreover, even further assuming that the complainant could demonstrate a causal connection between the respondents' actions on February 23 and March 23, 2009 and the subsequent website postings, the Commission finds that such actions, alone, would not support a finding that the respondents "surrendered their independent judgment to special interest or partisan political groups" or "used the schools for personal gain or for the gain of friends" in violation of N.J.S.A. 18A:12-24.1(f).

The complainant lastly claims that the respondents violated N.J.S.A. 18A:12-24.1(g) because,

[a]t no time during the adjudication of [the GRC matter] did the Franklin Township Board of Education make any offer of settlement to me to resolve this issue. Accordingly, inaccurate information was presented to the public with the one specific purpose to maligned [sic] myself and my wife (Board Member Alba Burdick) and with the specific intent to compromise the Board. (Id. at pages 11 - 12 of 12)

Once again, however, the complainant's own papers indicate that such information was presented by the Board's counsel during the March 23, 2009 meeting, rather than the respondents. The complainant does not allege any particular facts, which, if true, would support a finding that the respondents violated N.J.S.A. 18A:12-24.1(g).

REQUEST FOR SANCTIONS

At its July 28, 2009 meeting, 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 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 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 – C15-09

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

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

Whereas, the Commission has reviewed the proposed decision 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 August 25, 2009.

Joanne Boyle
Executive Director