

(EEC 00214-11 OAL Decision: Not yet available online)

JOHN AIELLO, JR.	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
v.	:	
	:	
WAYNE GOTTLIEB	:	SEC Docket No. C26-10
WEST MILFORD BOARD OF EDUCATION	:	OAL Dkt. No. EEC 00214-11
PASSAIC COUNTY	:	
	:	DECISION
	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed by John Aiello, a member of the West Milford Board of Education (Board), alleging that the respondent violated *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members. The respondent filed an answer, asserting *inter alia* that the complaint was frivolous. The complainant filed a reply in opposition. Pursuant to N.J.A.C. 6A:28-10.8(a), at its meeting on December 21, 2010, the Commission determined that the complaint was not frivolous, in accordance with the standard set forth in N.J.A.C. 6A:28-1.2 and also voted to transmit the matter to the Office of Administrative Law (OAL) for a plenary hearing.

By notice dated February 8, 2012, the respondent filed a Motion for Summary Decision with the Administrative Law Judge (ALJ). The complainant filed a brief opposing the Motion on April 2, 2012, and the respondent replied on April 17, 2012. The ALJ issued the Initial Decision on July 13, 2012, and mailed it to the parties on July 16, 2012. The Initial Decision, along with the file, was transmitted to the School Ethics Commission (Commission) on July 17, 2012. Neither party filed exceptions to the Initial Decision. At its meeting on August 28, 2012, the Commission adopted the findings and conclusions of the ALJ for the reasons expressed in his Initial Decision.

ANALYSIS

The complainant bears the burden of factually proving any violations 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). See also, N.J.S.A. 18A:12-29(b). The Commission underscores that summary decision may be granted:

if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is

entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. N.J.A.C.1:1-12.5(b).

Upon careful and independent review, the Commission finds that the record supports the ALJ's conclusion that that this matter is ripe for summary decision as there are no genuine issues of material fact to resolve. In so finding, the Commission concurs with the ALJ that the papers and discovery, together with the unrefuted certifications in this matter, show that the respondent is entitled to prevail as a matter of law inasmuch as the protected information was already made public by third parties and that the facts failed to demonstrate that the respondent disclosed or revealed confidential information so as to violate N.J.S.A. 18A:12-24.1(g). (See, N.J.A.C. 6A:28-6.4(a)(7)).

DECISION

The Commission determines to adopt the ALJ's Initial Decision granting Summary Decision to the respondent and to dismiss the complaint in its entirety. 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: August 29, 2012

Resolution Adopting Decision – C26-10

Whereas, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to transmit this matter to the Office of Administrative Law for hearing; and

Whereas, the Administrative Law Judge concluded in his Initial Decision that summary decision should be granted to the respondent and the complaint should be dismissed; and

Whereas, no documentation was filed by either party in response to the ALJ’s decision; and

Whereas, at its meeting of August 28, 2012, the Commission determined to adopt the Initial Decision of the ALJ; and

Whereas, the Commission finds that the within decision accurately memorializes its adoption of the Initial Decision;

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

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on August 28, 2012.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission