
DENISE BOUYER

v.

**CHRISTOPHER WALKER AND
TONY JOHN
WILLINGBORO BOARD OF EDUCATION
BURLINGTON COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

**Dkt. No. C36-08
DECISION**

PROCEDURAL HISTORY

This matter arises from a complaint filed on November 20, 2008 by Denise Bouyer alleging that the respondents, Christopher Walker and Tony John, members of the Willingboro Board of Education (“Board”), violated the School Ethics Act. Specifically, the complainant alleges that Respondent Tony John violated N.J.S.A. 18A:12-24.1(e) and (f) when he contacted a candidate for the position of Superintendent prior to the conclusion of the interview process. The complainant alleges that Respondent Christopher Walker violated N.J.S.A. 18A:12-24.1(a), (e), (f), and (i) of the Code of Ethics for School Board Members because he failed to divulge to the Board that he was a friend of one of the candidates for the position of Superintendent and because of his conduct toward staff members.¹

The respondents filed answers on December 15, 2008. The matter was heard at the Commission’s meeting on January 26, 2010. At the public portion of the Commission’s meeting, the Commission voted to dismiss the allegation that the respondents violated N.J.S.A. 18A:12-24.1(a) pursuant to an oral Motion to Dismiss² and also voted to find that the complainant failed to establish violations of N.J.S.A. 18A:12-24.1(e), (f), and (i) of the Code of Ethics for School Board Members.

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 before that date, 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.

² The Commission entertained an oral Motion to Dismiss the allegation that the respondents violated N.J.S.A. 18A:12-24.1(a), inasmuch as the complainant acknowledged that she could not satisfy the standard set forth at N.J.A.C. 6A:28-6.9(b)1 for factually establishing a violation of that provision of the Code of Ethics for School Board Members. The Commission informed the parties that, at the public portion of its meeting, it would vote to grant the motion.

SUMMARY OF THE RECORD³

The complainant, Denise Bouyer, testified as to the circumstances surrounding the Board's search for a Superintendent in 2008 and specifically, her contention that Respondent Walker violated N.J.S.A. 18A:12-24.1(e) and (f) in connection with that search. Ms. Bouyer stated that it "came to the attention of the Board," after an extensive search for a new Superintendent, that Walker knew Dr. Hamilton, one of the finalists, but Walker never let it be known to the Board that he knew Dr. Hamilton, "even if in a casual sense." Bouyer stated that she thought it would have been fair for Walker to let the Board know that he knew Dr. Hamilton. Instead, Bouyer stated that she had no knowledge of Walker's "interaction" with Dr. Hamilton until she was informed by the then Board President, Ken Gordon. At that point, according to Bouyer, Walker admitted to the Board that he knew Dr. Hamilton; he became irate and belligerent at a meeting. Bouyer stated that Respondent Walker acknowledged in his answer that he knows Dr. Hamilton and that he was involved in the negotiations. Bouyer stated that she believes Walker violated N.J.S.A. 18A:12-24.1(e) when he took private action by speaking with Dr. Hamilton.

Ms. Bouyer further alleges that Respondent John contacted a candidate for the position of Superintendent, Dr. Paul Stephenson, inquiring why he (the candidate) was not participating in a second round of interviews. Bouyer pointed out that Mr. John admitted that he called Dr. Stephenson; he told the Board that he contacted him to find out why Dr. Stephenson withdrew his name for consideration. According to Bouyer, John breached the confidentiality of closed session meetings. The Board decided to start another round of interviews to give Dr. Stephenson a fair opportunity to participate in the interviews.

Ms. Bouyer testified that Respondent Walker has harassed and intimidated District staff. She testified regarding an incident that occurred at the October 20, 2008 Board meeting. According to Bouyer, there was an Interim Superintendent and the Board was discussing restructuring the schools and transferring staff. Bouyer stated that Walker started making derogatory comments about two staff members who were present; he was questioning why they were being moved and whether they were getting special privileges. Bouyer testified that Walker "stirred the audience into making comments about the staff members." He was "gaveled" by the Board President and asked not to continue. However, according to Bouyer, Walker mimicked the Board President and stated that the Board President could not tell him what to do. Bouyer indicated that the community was murmuring. Principal Tribbet, one of the subjects of the transfer, became offended. The meeting erupted; police were called and Mrs. Tribbet gave a statement to the police that she felt threatened.

Ms. Bouyer referred to another incident involving former Principal Michael White and referred to a memorandum that he wrote to the Interim Superintendent, Edward Kern. That memorandum was marked as Exhibit C-5.

³ Prior to hearing testimony in this matter, and in accordance with N.J.A.C. 6A:28-6.1(b), the Commission determined not to hear an allegation concerning Respondent Walker which dated back to April 2007.

Ms. Bouyer acknowledged under cross-examination that she had a personal relationship with candidate Dr. Stephenson in that he was a member of her church. She further stated that at the October 20, 2008 meeting, it was Mrs. Tribbet who contacted the police. She acknowledged that at that meeting, public comment lasted over an hour and that the community was outraged. Bouyer further acknowledged that Respondent Walker never mentioned the two staff members by name, but rather by their positions. She stated that Walker alluded to the two of them, referencing them by their positions and discussed their qualifications, their competence and inferred that they received favors.

Kenneth Gordon testified for the complainant. He was on the Board from April 2006 until April 2009; he was the Board President for the 2008-2009 term. Addressing the issue of the Superintendent's search, Gordon stated that Dr. Hamilton was a good and impressive candidate and they offered him the position. However, after a fairly lengthy negotiation, Dr. Hamilton withdrew his name from consideration. According to Gordon, Dr. Hamilton rejected the Board's offer as a result of a conversation he had with Respondent Walker. Gordon stated that Dr. Hamilton spoke of being approached by Walker and Board member Martin Nock at the New Jersey School Boards Association (NJSBA) conference. According to Gordon, Dr. Hamilton observed that there was a contentious relationship between Gordon and Walker and he (Dr. Hamilton) did not want to be in the middle. Gordon testified that Dr. Hamilton informed him that he knew Walker because they had a mutual friend. Gordon stated that Dr. Hamilton disclosed this when he first met Gordon, but Walker did not disclose this fact. On cross-examination, Gordon acknowledged that after Dr. Hamilton declined the Board's offer, he accepted an offer with another District. The only "proof" of the alleged friendship between Walker and Dr. Hamilton, Gordon indicated, were the statements made to him by Dr. Hamilton.

Mr. Gordon further testified that, during the Superintendent's search, the Board deliberated in closed session about whether to move Dr. Stephenson "to the next level." According to Gordon, there was also discussion about whether he should be considered because he was a council member. Gordon testified that a majority of the Board was not looking favorably toward moving Dr. Stephenson on for further interviews, although Board members John and Nock were in favor of moving him along. However, Gordon could not recall with certainty whether it was Respondent John or Mr. Nock who stated that he wanted Dr. Stephenson to be "moved along."

Gordon stated that after going through the search and interview process, Respondent John told the Board he had reached out to Dr. Stephenson and had a conversation with him and that Dr. Stephenson was expecting that the Board would reach out to him again. According to Gordon, Dr. Stephenson contacted the NJSBA representative, Gwen Thornton, who was assisting the Board with the search. The Board then learned that Dr. Stephenson was expecting to be invited for further interviews. Gordon stated that the Board felt as though it was "in a bad spot" because it did not want Dr. Stephenson to go any further, yet they feared potential litigation. The Board then decided to add "another layer to the process." According to Gordon, the Board was not happy about extending the interview process. Gordon sent a letter to Respondent John, who wrote back to Gordon; Gordon identified this letter as Exhibit C-2.

Mr. Gordon testified that he never observed any interactions between Respondent Walker and former Principal White. Gordon stated that when he became Board President in April 2008, he was told that Mr. White was leaving the District and he spoke with Mr. White about his

resignation. According to Gordon, White told him that he would not reconsider his resignation; he felt threatened physically by a Board member and he had sent a memorandum to the Interim Superintendent advising him of the situation. Gordon stated that he was not aware of the situation but he received a copy of the memo. He said he asked the Interim Superintendent if he was going to respond to White's memo and Mr. Kern said he would look into it. Gordon identified that memorandum as Exhibit C-5. Gordon stated that the incident summarized in the memorandum was not the first altercation that White told him about; but this one was physical. According to Gordon, White told him he feared for his safety and did not think the Interim Superintendent was protecting him. Gordon underscored that he did not witness the incident summarized in the memorandum; he added that Mr. Kern saw the incident "but could not hear what happened—which caused the Superintendent to intervene."

Mr. Gordon stated that he recalled receiving a letter from Mr. Hopson which has been marked as Exhibit C-3. Referring to a series of emails involving Respondent Walker that were marked as Exhibits C-7, C-8 and C-9, Gordon testified that the way Walker went about complaining about his son's treatment was wrong. After receiving a copy of the Hopson letter, Gordon stated that the Board asked for an investigation, but nothing was substantiated with respect to whether Hopson treated Walker's son improperly. There was no investigation of Hopson's complaints with respect to Walker.

Mr. Gordon testified about the October 20, 2008 public meeting. Gordon stated that the District was making personnel changes; some changes had been announced and others "were rumored." Gordon stated that he was out of town when an article was published about the rumors and the proposed changes. The following Monday, the Board's meeting "was packed and they were angry." Gordon stated that many students attended and public comment had to be extended. The public made accusations about the Interim Superintendent's restructuring and there were allegations that deals were made behind closed doors. According to Gordon, Walker spoke at the meeting, stating that a staff member had "cut deals." It was clear to Gordon that Walker was directing this comment to a particular staff member and the crowd then became unruly. Walker said that the principal was cutting deals to become a principal of the High School and put others out of their positions. According to Gordon, Walker was saying "certain people have cut deals behind close doors." Gordon said that when he saw Walker directing his comments to a specific person, rather than to the chair, he gaveled him, but Walker gaveled him back and would not stop talking. Walker then looked at another Principal (Tribbet) and said the same thing. Gordon walked out of the room and heard a commotion; one of the community members had walked up to Principal Tribbet and threatened her. Mrs. Tribbet walked out and was on the phone calling the police.

Mr. Gordon clarified that the staff members to whom Walker referred at the October 20th meeting were Principal Ellerbe and Principal Tribbet. He further stated that the Board requested police presence at the next few meetings. Gordon said that Walker told students to come to the meeting, which Gordon confirmed with the student council and the faculty advisor to the student government.

Mr. Gordon referred to another incident on November 20, 2008 during the public comment portion of the meeting. A community member, Gwen Talbot came up to speak. Gordon stated that he did not remember the context, but he recalled that Walker was upset and he would not allow Ms. Talbot to speak; he continued to talk to others. Ms. Talbot got angry and

confronted Walker, chiding him for not allowing her to speak. According to Gordon, Walker was very demonstrative and he was not happy. However, on cross-examination, Gordon stated that he could not recall what Walker said.

Willingboro resident Fitzgerald Valme testified for the complainant. He affirmed that during the October 20, 2008 meeting, the police were called. He stated that during [public] comments, he was sitting behind Principal Ellerbe. Mr. Valme testified that Respondent Walker was making a statement; he was irate and he was looking at Ellerbe and making reference to an event which occurred at the High School. According to Valme, “some information was leaked out and Mr. Walker was upset that it came from Ellerbe; he was looking at Ellerbe, although he never said his name, but he was looking at him and you could feel the hostility in the room.” There was also mention of Mrs. Tribbet; the tone was bad and parents were upset. At the time this was occurring, the Board President was hitting his gavel. On cross-examination, Mr. Valme stated that he recalled there were a lot of public comments but he did not recall it being hostile. He stated that Respondent Walker did not mention anyone’s name during public comment. He could not say for certain whether this occurred during the public comment portion or at the time the Board was discussing and voting on the agenda item.

Von Gordon has been a Board member since 2008 and she participated in the Board’s search for a Superintendent that year. She stated that the Board initially offered the position to Dr. Hamilton, but he did not accept it. According to Ms. Gordon, Dr. Hamilton said he declined because of his personal relationship with Walker, because he felt that the District technically did not have an open position and because he was concerned that the District’s reputation was so terrible it would damage his “liability.” Ms. Gordon stated that it was only “after prodding” that Walker admitted to the Board that he knew Hamilton. After Dr. Hamilton declined the Board’s offer, the Board went to another Superintendent’s search. It was during that search that Dr. Stephenson was one of the candidates. On cross-examination, Ms. Gordon stated that when Dr. Hamilton declined the Board’s offer, he stated it was because of his relationship with Walker, but he never mentioned Ken Gordon.

Ms. Gordon recalled that Ms. Thornton from the NJSBA informed the Board that Dr. Stephenson had not returned her calls and, therefore, was not among the candidates who would receive another interview. According to Ms. Gordon, at that point, Respondent John stated that he had called Dr. Stephenson and asked him why he did not respond to the NJSBA’s invitation. She testified that John said that he thought Dr. Stephenson was an important community member and he needed to be involved. John was adamant that he did not care what the Board said about his contacting Dr. Stephenson and he did not care if they had to start the search over. Ms. Gordon identified Exhibit C-4 as an email sent by Respondent John “some time ago.” She also identified John’s letter to the Board dated October 3, 2008, Exhibit C-2, which she characterized as “arrogant.” On cross-examination, Ms. Gordon could not recall which other candidates were being considered at the time of the Dr. Stephenson incident. Nor could she recall with any specificity at what stage of the interview process this incident occurred.

Ms. Gordon was present for the October 20, 2008 Board meeting. Respondent Walker referred to the “Principal of Hawthorne,” a school in the District. He stated that persons were not qualified for the positions they were being considered for; he inferred that Ms. Tribbet had not earned the position. Mr. Ellerbe was sitting in the front row and, according to Ms. Gordon, he was horrified and embarrassed. Ms. Gordon stated that the audience was getting riled and Walker

was “feeding into it and saying outrageous things.” The police were called. The Board President tried to stop Walker, but Walker ignored him. There was a “huge melee.” Ms. Gordon attributed the conflict to Walker’s comments, stating that “none of that violent energy was present until he was talking.”

Ms. Gordon recalled receiving a copy of Exhibit C-3, the letter from Mr. Hopson, but he did not recall how she received it. She stated that after she came onto the Board, there was an altercation between Mr. White and Mr. Walker; she added, “White sent a letter to Kern saying he was physically threatened.” Ms. Gordon said she “vaguely” recalled White providing notice of his resignation. She said that White stated that one of the main reasons for his resignation was the screaming and intimidation from Walker. Ms. Gordon said that she believed the incident summarized in Exhibit C-5 happened in June [2008].

Respondent Tony John is a member of the Board. He referred in his testimony to a timeline of events surrounding the Superintendent’s search.⁴ According to John, the Board wished to conduct a second round of interviews, including Dr. Thomas McMahan, Dr. Hamilton and Dr. Stephenson as finalists. The representative from the NJSBA (Thornton) said she would contact the three finalists to set up further meetings. When they arrived for the meeting, Thornton informed the Board that Dr. Stephenson would not be attending because he did not respond to her invitation. John testified that he got the impression Dr. Stephenson was not interested. At the meeting, the Board interviewed Dr. Hamilton and Dr. McMahan. The Board agreed that the NJSBA representative would contact Dr. McMahan for final references. According to John, this was around September 10, 2008. John stated that on Thursday, September 11, 2008, he contacted Dr. Stephenson and expressed his disappointment that he chose not to be part of the process. Dr. Stephenson then told John that he was still interested and could not understand why Thornton did not call him. John stated that he got the impression “that was the end of it.”

Mr. John testified that, the next day, there was a special meeting about another matter and at that meeting the Board was informed by the Board President that Dr. Stephenson had contacted Thornton and asked why she did not reach out to him; Thornton replied that she tried to reach him. Thornton wrote a letter to Dr. Stephenson so stating, which was accepted as Exhibit RJ-3. According to John, on Friday, September 12, 2008, the Board was told that Dr. Stephenson wanted another interview and Thornton said that the Board should provide him with one because of John’s call. The Board discussed the matter and because of the possibility that the process was compromised, they decided to interview Dr. Stephenson. John denied that he stated that the Board needed to interview Dr. Stephenson because he was a pillar of the community. John stated that he voted against re-opening the interview process. However, the Board voted to re-open the interviews and when it did, Dr. Stephenson did not attend the [third level] interview. At that point, according to John, the Board selected Dr. Hamilton.

Mr. John testified that the Board asked the Board President to make Dr. Hamilton an offer and Dr. Hamilton declined because he said he had a better position. John testified that Gordon also informed the Board that Dr. Hamilton stated that he felt he would enter a position where the Board had two Superintendents because the case with former Superintendent Kittrels

⁴ The complainant conceded that the sequence of events that was presented by Mr. John was accurate.

was not yet settled and because of the relationship between Walker and Gordon. After Dr. Hamilton declined, the Board took another vote and voted for Dr. McMahon.

Mr. John affirmed that he did not talk to Dr. Stephenson about what happened in closed session and did not encourage the Board to interview him. John stated, "At that point, I did say that I spoke with him and I got the impression he did not want the job." John testified that the Board felt that he had compromised the process. Ms. Bouyer suggested that the Board President should file ethics charges against John. John stated that anyone can file such charges. On cross-examination, he explained that when he called Dr. Stephenson, he was under the impression that Dr. Stephenson was not going to be contacted again because the night before, the Board had made a decision on who was going to be the Superintendent. He said that he took Thornton at her word that Dr. Stephenson had not returned calls because he was not interested. John acknowledged that when the Board hired the NJSBA to assist with the Superintendent's search, it was given instructions about how to conduct the search and to allow the NJSBA to be the liaison. John affirmed that he did not give Dr. Stephenson any information about the process and that he allowed the NJSBA representative to do what she was hired to do.

Respondent Christopher Walker is a Board member. He addressed the alleged personal relationship with Dr. Hamilton. Walker testified that the complainant failed to provide any evidence to establish that he is friends with Dr. Hamilton. Walker explained that he met Dr. Hamilton years before the Superintendent's search. He describes it as "a chance meeting at the same place and through a mutual friend." He further testified that Dr. Hamilton was offered the job and the Board set the parameters for salary and insurance; when Ken Gordon made the offer, Dr. Hamilton declined. Walker stated that the Board talked some more about raising the salary, but he questioned why they would do that. Walker stated that the majority of the Board voted to raise the salary a few thousand dollars. When Gordon relayed this information, Dr. Hamilton declined the Board's offer and accepted an offer from another Board. Walker stated that the Willingboro Board offered Dr. Hamilton \$158,000 but he was offered another position at \$185,000 and he took it. When questioned by the Commission, Walker clarified that although Gordon informed the Board that Dr. Hamilton declined the offer because of the friction between him (Walker) and Gordon, Walker had no conversation with Gordon on this issue and Dr. Hamilton never stated this to the Board; rather Gordon relayed the information.

Mr. Walker denied that he was ever hostile to Gwen Talbot or a member of the community. He noted that there was no specific testimony with respect to this allegation. Walker stated, "I do not respond when stuff is said about me."

Mr. Walker testified that Mr. Hopson's allegations against him were in retaliation for an incident with his son. Walker stated that Mr. Hopson placed his son behind a bookshelf barrier; he believed his son was physically abused and embarrassed. After having a parent-teacher conference, he went to Principal who ignored him and his wife. Walker asserted that he did not think that he had to give up the right [to advocate for his son] because he is a board member. Walker pointed out that the emails that were entered into evidence show that he was making statements as a parent. They also show that he went to the Principal, then to the [Interim] Superintendent, then to the Board. If there was an investigation regarding Hopson, there was no evidence of that brought before the Commission. He further noted that the emails that he sent were sent from his personal email accounts as a parent. On cross-examination, Walker emphasized that when he sent the emails, it was because he was not getting a response as a

parent. He testified that Mr. White was Mr. Hopson’s principal. The emails were sent to White and to Kern initially. He stated that the issue was finally resolved after he contacted the State; he had a meeting with Mr. Kern who said he was addressing the issue; the infraction was rescinded. Walker further explained that the “Craig Stevens” noted in the email was a Board member at the time; he responded to the email that was sent to all board members.

As to the memorandum marked as Exhibit C-5 from Mr. White to Mr. Kern, Walker queried why it was not on district letterhead and not signed. Further, Walker noted that although it is alleged that White resigned because of harassment from him, the Board considered White’s resignation as an agenda item on April 21, 2008. Exhibit RW-1 is a copy of that agenda item. Walker further noted that Gordon testified that when he came to office as Board President, he learned from White that he was resigning because of Walker. Yet, White’s resignation was brought before the Board on April 21, 2008 and the reorganization meeting [where Gordon would have been named president] was later. Moreover, the incident summarized in White’s memorandum “was allegedly the last day of school.” According to Walker, it does not add up. He affirmed that he never harassed White and they had a good rapport for a long period of time. When questioned by the Commission, Walker specifically denied that he referred to White as a “punk” and a “joke,” as indicated in the memorandum. He further denied that there was an incident with White that [June 2008] day.

With respect to the October 20, 2008 meeting and the Ellerbe and Tribbet allegations, Walker pointed out the discrepancy in testimony: one witness said the meeting was calm and another said it was already hostile. He affirmed that the Board did speak about the restructuring. Walker testified that the Board posted a position for a Principal who was already in the position. He stated, “I simply questioned the process.” Walker also stated that it was Theresa Lucas, the Principal whose job was posted, who called the newspaper. He acknowledged that it was a hostile meeting; he affirmed that he directed his questions to the chair.

As to the proposed restructuring, Mr. Walker stated that he was not happy about it. He affirmed that it caused the District a lot of embarrassment and the Board gets the blame. He stated that he was upset, but never to the point of looking someone in the eye to harass them and never to the point where anything he said caused a member of the community to approach an employee. Walker testified that there were many members of the community there that night because of the newspaper article. He further stated, “that commotion happened during public comment, before we got to the agenda items; I spoke about the process later in the evening when we got to the agenda item.”

Complainant’s Exhibits

C-1	Attorney letter (not accepted into evidence)
C-2	Letter from Tony John Letter to the Board, October 3, 2008
C-3	Letter from Larry Hopson to the Board, May 23, 2008
C-4	Partial email from Tony John to Board, September 17, 2008
C-5	Memo from Michael White to Edward Kern, June 19, 2008
C-6	Email from Chris Walker to Ken Gordon, October 21, 2008
C-7	Emails between Chris Walker, Ed Kern and Craig Stevens, January 15, 2008
C-8	Emails from Chris Walker to Michael White and Ed Kern, January 11, 2008
C-9	Email from Chris Walker to Michael White, January 8, 2008

Respondents' Exhibits

RW-1	Willingboro Bd. of Ed. Agenda, Item 8.1.1, Approval of Resignation of Levitt Middle School Principal for the 2007-2008 School Year
RJ-1	Thomas McMahon's Letter to the Board, September 15, 2008
RJ-2	Letter from Dr. Stephenson to Gwen Thornton, September 12, 2008
RJ-3	Letter from Gwen Thornton to Dr. Stephenson, September 12, 2008
RJ-4	Letter from Tony John to the Board (not dated)
RJ-5	Letter from Ken Gordon to Tony John, September 28, 2008
RJ-6	Letter from Tony John to the Board, October 3, 2008

FINDINGS OF FACT

The Commission was able to discern the following facts based on the testimony, pleadings and all documents submitted.

1. At all times relevant to this complaint, the complainant and the respondents were members of the Board.
2. On January 8, 2008, Respondent Walker emailed Mr. White, Principal of the Levitt Middle School, copying Interim Superintendent Mr. Kern and informing White that his son overheard two teachers "conspiring against his Father." Mr. Walker stated that his son was not receiving what he needed from his educational setting. Walker stated that he was concerned that teachers are permitted to "make false accusation [sic] about my son." Walker referred to infractions being written against his son, as well as a parent-teacher conference with Mr. Hopson who was "very oppositional" toward Walker. (Exhibit C-9)
3. On January 11, 2008 at 7:46 a.m., Respondent Walker sent an email to Mr. White concerning his son. He stated that the day before, Mr. Hopson put his son out of class. Walker questioned the procedures employed by the teacher; he stated that he has asked for a copy of the infraction form that was written on the incident, but has not received it. He has also asked for an account of the events surrounding the incident. Walker stated, "I am asking that you please respond to these requests." At 10:16 a.m., Walker emailed Mr. Kern informing him that he had yet to receive a copy of the infraction form that was allegedly written on his son "pertaining to the incident with Mr. Hopson." Walker informed Kern that Mr. Hopson "continues to put [his son] out of class." He stated that Mr. Hopson is not providing his son with the tools he needs to succeed." Walker stated that his son is being bullied and harassed by his teacher. He asked that Mr. Kern "please respond to this email and let me know what you plan to do to correct this." (Exhibit C-8)
4. On January 15, 2008, at 7:39 p.m., Mr. Walker emailed Mr. Kern (copying Mr. White) informing him that Mr. Hopson refused to sign his son's Agenda Book. Walker asked Kern a series of questions about the teacher and why he was not being held accountable. Walker also questioned why, in an incident which involved his son and another student, his son was suspended but the other student was not disciplined. At 9:54 p.m., Board member Craig Stevens responded to Walker, noting that the "incidents you describe are terrible," and further stating, "If you feel the need to petition the board for redress in this

matter, then do so.” At 11:24 p.m., Walker responded to Craig Steven’s email, stating that he forwarded the emails to the Board because “I have been enduring this battle for months and have not been able to get any form of resolution from Mr. Kern.” He noted that he was also forwarding the emails to the County Office. Walker stated, “It seems like every time that I speak out about the INJUSTICES that my son faces on a daily basis, I am accused of harassment, or being ethically wrong. When I look at what is done, the people that are making the accusations are the ones that are guilty of the very thing that they are accusing me of. That is one of the greatest conflicts within me. I am asking that the Board look into these inappropriate behaviors and hold the guilty accountable. I am asking these things as a PARENT. Nothing more. Nothing less.” (Exhibit C-7, emphasis in text)

5. During the summer/fall of 2008, the Board was involved in a search for a new District Superintendent.
6. On August 13, 2008, in closed Executive Session, the Willingboro Board interviewed Dr. Hamilton and Dr. Stephenson for the position of Superintendent. (John’s Answer/timeline at page 1)
7. On August 25, 2008, in closed Executive Session, the Board interviewed Dr. McMahon and Mr. Smith for the position of Superintendent. (Id. at page 2)
8. On September 3, 2008, the Board interviewed Dr. Baker for the position of Superintendent. Due to a lack of quorum, the interview was conducted as part of a committee meeting. On the same date, the Board decided to bring back Dr. Hamilton, Dr. Stephenson and Dr. McMahon for a second round of interviews. The NJSBA representative was to contact the candidates about the interviews to be conducted on September 10, 2008. (Ibid.)
9. On September 10, 2008, in closed Executive Session, Gwen Thornton advised the Board that she was unable to contact Dr. Stephenson. The Board interviewed the remaining two finalists, Dr. Hamilton and Dr. McMahon. The Board agreed that the NJSBA would request that Dr. McMahon provide an updated reference list. (Ibid.)
10. On September 11, 2008, Tony John called Dr. Stephenson to express his disappointment that he did not participate in the second round of interviews. (Id. at page 3)
11. On September 12, 2008, Dr. Stephenson sent an email to Gwen Thornton noting that he supplied her with an alternate cell phone number to contact him in the event that he was out of town. He further stated, “Additionally, to date, there is no evidence of communications by use of both my email [sic] (both are noted below and have been previously provided to you).” He stated that he was still interested in the position. (Exhibit RJ-2)
12. On September 12, 2008, Gwen Thornton acknowledged receipt of Dr. Stephenson’s email. She stated that she left Dr. Stephenson “many phone messages” at his home phone, but she did not have his cell phone number or email address due to a “server change” in the NJSBA’s Trenton headquarters which resulted in records being deleted.

Ms. Thornton indicated that she made the Board aware of Dr. Stephenson's concerns and noted that the Board would be discussing the matter at their meeting that day. (Exhibit RJ-3)

13. On September 12, 2008, the Board determined to grant Dr. Stephenson a second interview. Tony John voted against granting Dr. Stephenson a second interview. (Ibid.)
14. On September 13, 2008, Dr. Stephenson called Tony John and stated that he was still interested in the position of District Superintendent. (Id. at pages 3-4)
15. By letter dated September 15, 2008, Dr. McMahon wrote to the Board, thanking the members for the interview and noting that he forwarded his reference list to Gwen Thornton. (Exhibit RJ-1)
16. On September 17, 2008, Respondent Tony John forwarded to the Board (addressed to "All") a copy of the email that Dr. Stephenson received from Gwen Thornton on September 12, 2008. John states, in relevant part:

Based on Ms. Thornton's comments at the second round interview meeting on Wednesday, Sep 10 that she called Dr. Stephenson on his home phone many time [sic] and even sent him emails, I, and I believe other board members, came to the conclusion that Dr. Stephenson was not interested in the position and we needed to move on. We conducted the second round with the other two candidates and came to a consensus that the interviews were concluded and we would inform Dr. McMahon the next day that we wished to do a reference check.

Thursday, the next day I called Dr. Stephenson to express my disappointment that he did not participate in the second round of interviews and that we were moving on. He informed me that he was still interested in the position and could not understand why Gwen Thornton did not call him on his cell phone which he had given her.***

Friday, Sep 12, at the board meeting to discuss the Kittrell [sic] matter, we were informed by our Board president that Dr. Stephenson was demanding to be interviewed to rectify an inequity. At the time I didn't understand what the inequity was because I believed we conducted the interviews fairly based on the information we had at the time. But after talking to Dr. Stephenson on Saturday, Sep 13, and seeing Gwen Thornton's email, it is my belief that the Willingboro Board of Education has again put itself in a situation where there is no equitable solution.

Based on what I heard at Friday's meeting, to give Dr. Stephenson an interview just to appease him because of his status in the community without giving him serious thought would be a sham.

To reopen the interview process would not be fair to the other candidates or Dr. Stephenson and would only delay the process and cause us to miss the goal of trying to get a permanent superintendent as soon as possible. *** As much as I respect Dr. Stephenson and believe he would have made an excellent superintendent and although it looks like an injustice was done because due diligence was not exercised, we have to move on and we have another candidate who will allow us to do so.

Tony John ended the letter by stating about Ms. Thornton:

Based on her email to Dr. Stephenson, she misled us into believing every effort was made to contact Dr. Stephenson. I remember her telling us she sent Dr. Stephenson emails yet her email says she did not have his email address. Again, it may cause delay, but we have to immediately do what we voted to do which was remove Gwen Thornton from the search process. (Exhibit C-4 and Exhibit RJ-4)

17. On September 27, 2008, the Board conducted a second interview for Dr. Stephenson. After his interview, the Board decided to conduct a third interview session for not only Dr. Stephenson, but for the other finalists, Dr. Hamilton and Dr. McMahon. (John's Answer/timeline at page 4)
18. By letter dated September 28, 2008, Ken Gordon wrote to Tony John, copying the Board, and responding to "the call for charges to be filed against" Mr. John as a result of his "interference in the Superintendent Interview process." Mr. Gordon therein explains the reasons why he is not "pursuing charges," but instead recommended that he, Mr. Walker, Ms. Bouyer and Mr. John "sit down and have a meeting of the minds." He further recommended that they engage a neutral, third party mediator. (Exhibit RJ-5)
19. On October 3, 2008, Respondent Tony John wrote to the Board in response to Mr. Gordon's letter rejecting Ken Gordon's proposal to sit down with a mediator. (Exhibits C-2 and RJ-6)
20. At the Board's meeting on October 20, 2008, the Board was discussing a restructuring of the District. A newspaper article had been published about rumored changes and the meeting was well-attended. Principals Keith Ellerbe and Nadine Tribbet attended the meeting. Mr. Walker challenged the proposed transfers, suggesting that the two administrators were the beneficiaries of some deal-making; he did not refer to them by name, but rather by position. He also looked at the administrators when he spoke. Board President Ken Gordon attempted to gavel Mr. Walker, but he continued to speak. The community was angry. A community member threatened Ms. Tribbet, who called the police.
21. The Board chose to offer the Superintendent's position to Dr. Hamilton.

22. On October 21, 2008, Respondent Walker emailed Ken Gordon (and copied the Board) asking, “Who contacts Dr. Hamilton to make the offer and negotiate the contract? Can you give me the details involving this process.” (Exhibit C-6)

23. Dr. Hamilton rejected the Board’s offer.

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29b, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members.

Allegations Concerning Tony John

The complainant asserts that Respondent Tony John contacted Dr. Paul Stephenson, a candidate for the Superintendent’s position inquiring why Dr. Stephenson did not participate in a second round of interviews. The complainant contends that “Mr. John compromised the Board’s ability to finalize the search and the Board had to implement a third interview process in order to afford Dr. Stephenson equity in the interview process.” (Complaint at page 2) The complainant asserts that Mr. John violated N.J.S.A. 18A:12-24.1(e) and (f).

N.J.S.A. 18A:12-24.1(e) 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.

“Private action” means any action taken by a member of a district board of education that is beyond the scope of the duties and responsibilities of the member. N.J.A.C. 6A:28-7.1.⁵ The Commission finds on the facts set forth above, that Mr. John took private action when he contacted Dr. Stephenson on September 11, 2008. In order to find a violation, the Commission must also find that this action was of such a nature that it could have compromised the Board. Under the particular circumstances in this matter, the Commission does not find that Mr. John’s actions might have compromised the Board. The evidence on this record shows that the Board decided on September 3, 2008 to bring back Dr. Stephenson for a second interview. That he was not afforded the second interview along with his fellow candidates on September 10th is attributable to the failure of the NJSBA representative to reach him. To the extent Mr. Gordon testified that the Board believed it was placed “in a bad spot” because it did not want Dr. Stephenson to go any further in the interview process, this statement not only contradicts Tony John’s timeline, which the complainant accepted as accurate, but does not take into account the fact that Dr. Stephenson did not participate in the second interviews on September 10th because Ms. Thornton was perhaps less than diligent in trying to reach him. Accordingly, the

⁵ It is noted, however, that in Marc Sovelove v. Paul Breda, Mine Hill Twp. Bd. of Ed., C49-05 (September 26, 2006), the Commission found that a Board member’s action cannot be both board action *and* private action. Conversely, if a board member’s action is found to be private action it cannot constitute board action.

Commission finds that the complainant has not established that Mr. John violated N.J.S.A. 18A:12-24.1(e).

The complainant further claims that Mr. John 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.

There is no evidence on this record that Mr. John surrendered his independent judgment to special interest or partisan political groups or that he used the schools for personal gain or for the gain of his friends. There is no evidence on this record to rebut Mr. John's assertion that he reached out to Dr. Stephenson only when he thought Dr. Stephenson had chosen not to participate in further interviews. Nor is there any evidence to refute Mr. John's claim that when the Board considered the matter of extending an interview to Dr. Stephenson, Mr. John voted against it. Accordingly, the Commission finds that the complainant has not established that Mr. John violated N.J.S.A. 18A:12-24.1(f).

Allegations Concerning Christopher Walker

The complainant contends that Respondent Walker "is a close personal friend of Dr. Hamilton," yet, he did not recuse himself from participating in the Superintendent interview process, nor did he inform the Board or the Board Solicitor of his relationship with Dr. Hamilton. Furthermore, the complainant asserts that Walker "voiced his preference of Dr. Hamilton, advocated for Dr. Hamilton during executive session discussions, and participated in the interview of Dr. Hamilton, knowing he should recue [sic] himself." The complainant also asserts that Walker was "instrumental in designing the contract for Dr. Hamilton," as he suggested salary and contract terms. According to the complainant, "Dr. Hamilton divulged his relationship with Mr. Walker to Board President Gordon as one of his reasons for declining an offer of the Superintendent position." The complainant also claims that, according to President Gordon, "Dr. Hamilton revealed information that was privy only to board members during a close [sic] session meeting." (Complaint at page 1) The complainant asserts that Respondent Walker violated N.J.S.A. 18A:12-24.1(e) and (f), as set forth above.

The Commission first notes that this record is devoid of any competent evidence that Respondent Walker failed to recognize that authority rests with the board of education and made personal promises or took private action that was of such a nature that it could have compromised the Board, in violation of N.J.S.A. 18A:12-24.1(e). The Commission finds that there is insufficient evidence on this record to establish that Walker had a private conversation with Dr. Hamilton prior to, or during, the interview process. Gordon testified about a conversation that Dr. Hamilton had along with Board member Nock at the NJSBA conference. However, neither Mr. Nock nor Dr. Hamilton appeared as witnesses to attest to that conversation. Walker's testimony did not address a conversation between him and Dr. Hamilton and his answer specifically denies that he had any contact with Dr. Hamilton prior to, or after, his being interviewed. (Walker Answer at page 1). Accordingly, the Commission finds that the complainant has not established that Mr. Walker violated N.J.S.A. 18A:12-24.1(e).

Additionally, there is no evidence on this record that Mr. Walker surrendered his independent judgment to special interest or partisan political groups. Presumably, the complainant is contending that Respondent Walker used the schools for “the gain of friends” when she asserts that he violated N.J.S.A. 18A:12-24.1(f). The Commission first notes that Walker challenged the complainant’s characterization of his relationship with Dr. Hamilton and there was no specific evidence to counter Walker’s affirmation that he knew Dr. Hamilton through “a chance meeting through a mutual friend.” On this, Ken Gordon merely testified that Dr. Hamilton informed him that he knew Walker in that they “had a mutual friend.” Gordon also testified that Dr. Hamilton disclosed this information when he *first met* Ken Gordon, although Walker did not disclose this fact. Thus, even assuming that there was more than an incidental relationship between Walker and Dr. Hamilton, Ken Gordon admitted that he knew of that relationship. While there seems to be no dispute that Walker participated in the interviews with Dr. Hamilton, the Commission cannot find that the complainant has established that, in doing so, he “used the schools for the gain of his friend.”

Moreover, the Commission also notes that the complainant’s own witnesses attributed Dr. Hamilton’s decline of the Board’s offer for employment to a number of reasons. According to Ken Gordon, Dr. Hamilton observed that there was a contentious relationship between Gordon and Walker and he (Dr. Hamilton) did not want to be in the middle. On cross-examination, Gordon acknowledged that after Dr. Hamilton declined the Board’s offer, he accepted an offer with another District. According to Von Gordon, Dr. Hamilton said he declined because of his personal relationship with Walker, because he felt that the District technically did not have an open position and because he was concerned that District’s reputation was so terrible it would damage his “liability.” Accordingly, the Commission finds that the complainant has not established that Mr. Walker violated N.J.S.A. 18A:12-24.1(f).

The complainant also contends that Respondent Walker violated N.J.S.A. 18A:12-24.1(i) when he: 1) criticized and discussed information pertaining to two administrators, Principals Keith Ellerbe and Nadine Tribbet, during a Board meeting on October 20, 2008 which incited the audience to the verge of rioting and compromised the safety of the administrators; 2) sent emails to Board members and the former Superintendent “[i]n his attempt to garner Board support for his belief of unfair treatment of his son;” 3) harassed former Principal White to the point of nearly engaging him in a physical altercation; and 4) interrupted public comment from a resident, Gwen Talbot, on November 17, 2008.⁶ (Complaint at pages 2 and 3)

N.J.S.A. 18A:12-24.1(i) provides:

I will support and protect school personnel in proper performance of their duties.

Because this provision, on its face, applies to “school personal,” the Commission will not consider the complainant’s contention that Respondent Walker violated this provision when he interrupted a resident during the November 17, 2008 meeting. Additionally, the evidence which the complainant brought to the record regarding the alleged harassment of Mr. White by Respondent Walker was Exhibit C-5, a memorandum addressed to Ed Kern from Michael White.

⁶ The Commission notes that the complaint states that this event occurred on November 17, 2007. However, the parties conceded that the allegation concerns a meeting that took place on November 17, 2008.

This memorandum is hearsay. While hearsay evidence is admissible pursuant to N.J.A.C. 1:1-15.5, it is also subject to the “residuum rule,” which requires that findings be supported by a residuum of competent evidence. Matter of Tenure Hearing of Cowan, 224 N.J.Super. 737 (App. Div. 1988). Notably, no witness presented first-hand knowledge of the events set forth in the memorandum. Consequently, the Commission finds there is no competent evidence to support this allegation and it, therefore, makes no findings with respect to this claim.

As to the complainant’s claim that Walker violated N.J.S.A. 18A:12-24.1(i) by contacting Board members regarding the conduct of a teacher, Mr. Hopson, the Commission notes that it is evident from Exhibits C-7, C-8 and C-9 that Walker had a parent-teacher conference and also brought these matters which concerned the treatment of his son to the attention of Mr. White and Mr. Kern before he forwarded the emails to the attention of the Board. When he did so, it was clear from the text of these emails that he was acting as a parent and that he was frustrated by the administration’s failure to address his issues. The Commission finds that the complainant has not demonstrated that, in so doing, Mr. Walker violated N.J.S.A. 18A:12-24.1(i).

Finally, the Commission considers the complainant’s allegation that Mr. Walker violated N.J.S.A. 18A:12-24.1(i) with respect to his conduct on October 20, 2008. In this connection, the Commission notes that it has found violations of N.J.S.A. 18A:12-24.1(i) where the comments made to or about the school employee were direct, confrontational and intimidating. For instance, in I/M/O Charles Fischer, C30-03 (February 24, 2004), Commissioner of Education Decision No. 157-04, April 12, 2004, the Commission found that a board member violated N.J.S.A. 18A:12-24.1(i) when he called an employee at home and became angry when she refused to provide him with the reports that he had requested. In I/M/O David Kanaby, Hillsborough Bd. of Ed., Somerset County, C53-05 (July 24, 2007), Commissioner of Education Decision No. 350-07, September 10, 2007, the Commission found that the respondent Board member violated N.J.S.A. 18A:12-24.1(i) when he sent an email to the Superintendent which was both “threatening and intimidating” in that it asked the Superintendent for an accounting of her personal leave. The Board member sent the email to all Board members, as well as the Business Administrator, the Assistant Superintendent and his subordinate. The Commission found the respondent’s email to be “a personal and highly critical expression of his anger towards the superintendent in the proper performance of her duties.” (Kanaby at slip op. page 3) Finally, in Brown et al. v. David Matthews, City of Englewood Board of Education, Bergen County, C13-07 (October 27, 2008), *aff’d*, Commissioner of Education Decision No. 123-09A, April 14, 2009, the Commission found the respondent in violation of N.J.S.A. 18A:12-24.1(i) when he refused to cooperate with the District’s affirmative action officer (AAO) and, in so doing, engaged in offensive comments so upsetting to the employee that she resigned as the District’s AAO.

Here, the evidence shows that, at the October 20, 2008 meeting, Walker challenged the proposed transfers, insinuated that two administrators, Ellerbe and Tribbet, were the beneficiaries of some deal-making and looked at these administrators when he spoke. The Commission does not find these actions sufficient to rise to a violation of N.J.S.A. 18A:12-24.1(i). Moreover, it was not clear from the testimony to what extent Walker’s actions may have contributed to the ensuing “melee.” Although Ms. Bouyer testified that Walker “stirred the audience into making comments about the staff members” and Ms. Gordon stated that the audience was getting riled and Walker was “feeding into it and saying outrageous things,” Ken Gordon also testified that as a result of the newspaper article that was published about the proposed transfers, the Board

meeting “was packed and [people] were angry.” Thus, on this record, the Commission cannot make any causal connection between Walker’s actions at the meeting and Ellerbe or Tribbet feeling threatened. Therefore, the Commission finds that the complainant has not established that Walker violated N.J.S.A. 18A:12-24.1(i).

DECISION

The Commission finds that the complainant failed to establish that the respondents violated the Code of Ethics for School Board Members as set forth in the complaint. 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

Resolution Adopting Decision – C36-08

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and the testimony of the parties from its hearing on January 26, 2010; and

Whereas, at its meeting of January 26, 2010, the Commission found that the complainant failed to establish that the respondents violated N.J.S.A. 18A:12-24.1(a), (e), (f), and (i) of the Code of Ethics for School Board Members;

Whereas, at its meeting on February 23, 2010, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its 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 its public meeting on February 23, 2010.

Joanne Boyle, Executive Director