
**MICHAEL DAUBER AND
MELANIE KUNKLER**

v.

**CONSTANCE BAUER AND
LISA HARTMANN
*BORDENTOWN REGIONAL
BOARD OF EDUCATION,
BURLINGTON COUNTY***

**BEFORE THE SCHOOL
ETHICS COMMISSION**

**SEC Docket No. C05-14
OAL Dkt. No. EEC 8188-14**

FINAL DECISION

PROCEDURAL HISTORY

This matter arises from a Complaint filed on January 28, 2014 by Michael Dauber and Melanie Kunkler, alleging that Superintendent Constance Bauer, Ph.D., and Lisa Hartmann, Board President of the Bordentown Regional Board of Education (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Specifically, the Complainants allege that Respondent Bauer violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code), and that Respondent Hartmann violated N.J.S.A. 18A:12-24.1(e), (g) and (j) of the Code. In its acknowledgement of the Complaint, dated February 10, 2014, the Commission advised the Complainants that Count 1 would be dismissed since Code violations can be ascribed only to Board members and not to school officials, as here, Respondent Bauer.

On March 4, 2014, Respondent Hartmann filed a Motion to Dismiss in Lieu of Answer. In accordance with N.J.A.C. 6A:28-8.2(a), the Complainants filed a responsive statement on March 27, 2014.

On March 5, 2014, Respondent Bauer filed a Motion to Dismiss the Complaint against her for the very same reason set forth in the Commission's Acknowledgement.

The parties were notified by letter dated April 2, 2014 that this matter would be placed on the agenda for the Commission's meeting on April 22, 2014 in order to make a determination regarding the Respondents' Motions to Dismiss. At its meeting on April 22, 2014, the Commission voted to dismiss Count 1, and thereby, the entire Complaint against Superintendent Bauer for failure to state a claim upon which relief could be granted, but denied the Motion to Dismiss Counts 2 and 3 of the Complaint against Respondent Hartmann, which alleged that she violated N.J.S.A. 18A:12-24.1 (e), (g) and (j).

The Commission also voted to transmit this matter to the Office of Administrative Law (OAL) for a plenary hearing, after the Respondent files her Answer on all remaining claims.

The Complaint was transmitted to the OAL on June 23, 2015.

While at the OAL, Respondent Hartmann filed a Motion for Summary Decision, to which the Complainants failed to file their opposition thereto, pursuant to N.J.A.C. 1:1-12.5. The ALJ granted the Motion for Summary Decision and electronically transmitted the Initial Decision to the Commission on June 24, 2015 and mailed it to the parties the on June 26, 2015. On July 2, 2015, the Commission requested an extension of time to review the full record, including exceptions yet to be filed. The extension was granted until September 24, 2015. Neither party filed exceptions to the Initial Decision. At its meeting on July 28, 2015, the Commission adopted the findings and conclusions of the ALJ for the reasons expressed in the Initial Decision for failure to provide substantive evidence to support their claims and dismissed the matter.

ANALYSIS

The Complainants bear 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 recognizes 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 the Complaint is ripe for summary dismissal.¹ In so finding, the Commission concurs that the papers and discovery, together with the affidavits in this matter, show that there is no genuine issue as to any material fact and Respondent Hartmann is entitled to prevail as a matter of law inasmuch as the facts fail to demonstrate that: (1) The individuals, whom the Complainants claimed to have personal knowledge of the facts as stated in the Complaint, disclaimed any such knowledge in their individual affidavits; (2) Respondent Hartmann's public comments on Facebook show only that she attempted to avoid discussing the details with the individuals engaged in the colloquy and took no action beyond the scope of her authority so as to violate N.J.S.A. 18A:12-24.1(e) (see, N.J.A.C. 6A:28-6.4(a)5); (3) The Complainants failed to demonstrate that the Respondent disclosed confidential information or information that was not already in the public arena as required under N.J.S.A. 18A:12-24.1(g) (see, N.J.A.C. 6A:28-6.4(a)7); (4) The Complainants failed to demonstrate that the Respondent attempted to resolve their Complaint or conduct an investigation on her own without first referring the matter to the Superintendent so as to violate N.J.S.A. 18A:12-24.1(j) (see, N.J.A.C. 6A:28-6.4(a)10).

¹ The School Ethics Commission has recognized that the Commission lacks jurisdiction to consider *Rice* notice violations. To the extent that this issue arose during the pendency of this matter at the OAL, the Commission concurs with the ALJ that same is dismissed.

DECISION

The Commission determines to adopt the ALJ's Initial Decision, granting summary decision to Respondent Hartmann and dismissing both remaining Counts of the Complaint for failure to provide substantive evidence to support their claims. 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 26, 2015

Resolution Adopting Decision – C05-14

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, neither party filed exceptions in response to the ALJ’s decision; and

Whereas, at its meeting of July 28, 2015, the Commission determined to adopt the Initial Decision of the ALJ as the Final Decision; 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 as a Final Decision and directs its 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 its public meeting on August 25, 2015.

Joanne M. Restivo
Acting Executive Director
School Ethics Commission