
WALTER BERGLUND

v.

STACY GRAY
DEPTFORD TWP. BOARD OF EDUCATION
GLOUCESTER COUNTY

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BEFORE THE SCHOOL
ETHICS COMMISSION

Docket No. C10-13
DECISION ON MOTION
TO DISMISS

PROCEDURAL HISTORY

This matter arises from a complaint filed on February 11, 2013, by complainant, Walter Berglund, alleging that respondent, Stacy Gray, a member of the Deptford Township Board of Education ("Board"), violated the School Ethics Act ("Act"), N.J.S.A. 18A:12-21 et seq. By letter dated February 28, 2013, the School Ethics Commission (Commission) acknowledged receipt of the complaint and deemed it procedurally deficient. The complainant filed an amended complaint, resolving the procedural deficits, and specifically alleged that the respondent violated N.J.S.A. 18A:12-24.1(g), (i) and (j) of the Code of Ethics for School Board Members.

On March 26, 2013, the respondent filed a Motion to Dismiss in lieu of an answer to the complaint, which included an allegation of frivolousness. On March 28, the respondent filed an amendment to her motion. The complainant submitted responses to the Motion to Dismiss, the allegation that the complaint was frivolous, and the amendment thereto on April 26, 2013.

The parties were notified by letter dated June 4, 2013 that the Commission would consider this matter at its meeting on June 25, 2013, in accordance with N.J.A.C. 6A:28-10.8. Therein, the parties were specifically advised that the Commission would take one of several actions: Decide to retain the complaint for a hearing by the Commission at a later date after the filing of an Answer; decide to refer the matter to the Office of Administrative Law for a hearing; table the matter to request additional information or legal advice; or dismiss the complaint where the allegations in the complaint, on their face, were insufficient, even if true, to warrant review by the Commission as possible violations of the School Ethics Act.

At its meeting of June 25, 2013, the Commission voted to dismiss the complaint for failure to state a claim upon which relief could be granted for a violation of the Act. [N.J.A.C. 6A:28-10.8(a)(5)].

SUMMARY OF THE PLEADINGS

The complainant alleges that respondent, a member of the Deptford Township Board of Education, provided inaccurate information, failed to support and protect school personnel in the proper performance of their duties and neglected to refer all complaints to the Superintendent before acting on complaints in a public meeting. The complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(g), (i) and (j). (Complaint at p. 2) The respondent argues that the complainant was appointed to the position of Supervisor of Buildings and Grounds for the

Deptford Twp. Board of Education without the necessary experience or credentials for the post. The investigation she has launched is an attempt to simply find out the truth regarding the position. Moreover, at the November 29, 2012 meeting during which the complainant was appointed Supervisor of Buildings and Grounds, the complainant himself revealed that he had not worked in a school maintenance position previously and that he lacked the necessary credentials for the position. These facts were supported in the March 2013 report on an investigation, conducted by the Office of Fiscal Accountability and Compliance (OFAC) into the complainant's appointment. OFAC determined that the School District did not ensure that he had the appropriate certificate for the position and that the District had no statutory authority to grant the complainant tenure.

ANALYSIS

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). A complaint must include, among other requirements, specific allegations and the facts supporting them, which give rise to the alleged violation(s) of the Act. N.J.A.C. 6A:28-6.3(b)3. Regulations further provide that the Commission may, in its discretion, dismiss complaints entirely or specific allegations in complaints, where the complaint, on its face, fails to allege facts sufficient to maintain a claim under the Act. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5.

In its review of this complaint, the Commission found that the complainant failed to provide dates on which his allegations occurred and sufficient factual support for the allegations. The timeline that the Commission could discern from the complaint indicates that the lion's share of events complained of took place prior to the respondent's swearing in as a Board member. Pursuant to N.J.S.A. 18A:12-23.1 and N.J.A.C. 6A:28-1.1, the Commission has jurisdiction over elected and appointed school board members and certain school officials only; therefore, the Commission may not decide this matter since the respondent was not a Board member at relevant times suggested in the complaint.

To the extent that some of the events complained of occurred after respondent's swearing in, the Commission cannot identify them based on allegations in the complaint and cannot make a determination as to them.¹

The Commission finds that there are no facts set forth in the complaint that would support a conclusion that respondent violated the Code. Thus, the Commission finds that the complaint, on its face, fails to allege facts sufficient to maintain a claim that the respondent violated N.J.S.A. 18A:12-24.1(g), (i) or (j) and hereby dismisses the complaint.

REQUEST FOR SANCTIONS

The respondent alleged that the complaint herein is frivolous. At its meeting on August 28, 2012, the Commission considered the respondent's request that the Commission find that the

¹ Given that in its investigation, OFAC determined the respondent lacked the requisite credentials at the time of the appointment and that the grant of tenure for this permanent position was contrary to the statute, it would be difficult for the complainant to prevail on this set of facts.

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. N.J.A.C. 6A:28-1.2. Therefore, 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, and pursuant to its discretion, the Commission dismisses the within complaint for failure to allege facts sufficient to maintain a claim that would be a violation of the Act. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5. 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: July 31, 2013

Resolution Adopting Decision – C10-13

Whereas, the School Ethics Commission has considered the complaint, the Motion to Dismiss filed on behalf of respondent, the complainant's reply and supplemental amendments thereto; and

Whereas, at its meeting on June 25, 2013, the Commission determined to dismiss the complaint for failure to state a claim upon which relief could be granted for a violation of the Act; and

Whereas, the Commission further found that the complaint was not frivolous; and

Whereas, at its July 30, 2013 meeting, 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 July 30, 2013.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission