

SCHOOL ETHICS COMMISSION DKT. NO. C45-07
COMMISSIONER DKT. NO. 4-5/09A

JENNIFER DERICKS, MAUREEN SHARPE, :
DARYL SAVAGE, SHIRLEY BOUSHELL, :
ARMEN KOCHAGIAN, AND :
RONALD BASSANI, :
COMPLAINANTS-RESPONDENTS, : COMMISSIONER OF EDUCATION
V. : DECISION
MICHAEL SCHIAVONI, BOARD OF :
EDUCATION OF THE TOWNSHIP :
OF SPARTA, SUSSEX COUNTY, :
RESPONDENT-APPELLANT.¹ :
_____ :

Decided by the School Ethics Commission, April 28, 2009
For Complainants-Respondents, Maureen Sharpe, *Pro Se*²
For Respondent-Appellant, Howard B. Mankoff, Esq.
(Marshall, Dennehey, Warner, Coleman & Goggin, PC)

This matter came before the Commissioner of Education by way of a May 28, 2009 appeal by Respondent-Appellant Michael Schiavoni (respondent) of the April 28, 2009 decision of the School Ethics Commission (Commission) finding him in violation of *N.J.S.A.* 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members and recommending a penalty of censure.³ In its decision, the Commission specifically determined

¹ The complaint under review additionally included Sparta Board members Linda Curcio, Paul Johnson, Michael Schill, Karen Scott and Richard Sullivan as named respondents; however, the Commission made no finding of violation with respect to these respondents, and they are not parties to the within appeal.

² Where a complaint is submitted by more than one person, the Commission may designate a lead complainant – in this case Ms. Sharpe – for purposes of communication. See Commission’s decision at 3, note 2.

³ This matter was heard as part of a consolidated proceeding involving an additional complaint (C40-07) filed by the same complainants against respondent Michael Schiavoni. The complaint in that matter and all allegations in the

that respondent – at the time President of the Sparta Board of Education (Board) – took Board action that went beyond policy making, planning and appraisal, and administered the schools by creating and developing a detailed and all-encompassing staffing process and becoming directly involved in the functions and responsibilities of the Superintendent during the hiring of a school principal.

On appeal to the Commissioner, respondent contends that the Commission erred in finding him in violation of the Code of Ethics, asserting that the Commission “engaged in unfounded leaps of logic” through findings that are not supported by the evidence on record, and that its recommended penalty is not appropriate to the offense found. (Brief on Appeal at 1-2)

According to respondent, the underlying basis of the Commission’s finding is that the district Superintendent, Dr. Tom Morton, was “somehow forced” to adopt respondent’s suggestions – a conclusion which is not only unsupported by the record, but could not be the case in any event because “there is nothing [respondent] could have done to compel Dr. Morton to accept his recommendation or suggestions” and Dr. Morton “was at all times in charge of staffing the Principal (*sic*),” notwithstanding that he may have chosen to adopt some of respondent’s suggestions. (Brief on Appeal at 2-3) Respondent asserts that Dr. Morton should not have been found credible as a witness, since he presented no documentation to support his contention that he was not allowed to do anything independent of respondent or that respondent caused a delay in the hiring process – neither of which is borne out by the facts.⁴ (*Id.* at 3-5)

complaint herein, other than those of Count Two, were dismissed by the Commission and are not before the Commissioner on appeal. *N.J.A.C.* 6A:4-1.3(c)1, referencing *N.J.S.A.* 18A:12-29(b) and *N.J.A.C.* 6A:28-11.1. The complaint under review additionally included Sparta Board members Linda Curcio, Paul Johnson, Michael Schill, Karen Scott and Richard Sullivan as named respondents; however, the Commission made no finding of violation with respect to these respondents, and they are not parties to the within appeal.

⁴ With respect to causing a delay, respondent asserts that the hiring process at issue took eight weeks, which is precisely the amount of time such processes commonly take, according to Dr. Morton’s own testimony (Appeal Brief at 3); he further asserts that no specifics were provided as to exactly how he caused the process to be

Indeed, respondent avers, had Dr. Morton truly believed that respondent was interfering with the hiring process, he would have “undoubtedly brought this to the attention of the full Board” and his failure to do so “strongly suggests that [his] testimony before the Commission is his attempt to revise history.” (*Id.* at 4)

Respondent also rejects as “completely illogical and unfounded” – as well as not warranted based on complainants’ actual charges – the Commission’s finding regarding his purported removal of candidate resumes before Dr. Morton had an opportunity to copy them for other staffing team members, asserting that there is no evidence that Dr. Morton was prevented from copying the resumes – which he could have done before, during or after the group’s June 1st staffing meeting – or objected when respondent and fellow Board member Linda Curcio discussed taking the resumes home over the weekend for review in order to expedite the hiring process. To the contrary, respondent asserts, Dr. Morton’s testimony “is another example of him revising history.” (*Id.* at 5-6)

Finally, respondent opines that the Commission’s recommended penalty is excessive even for the violation found, because respondent’s offense involved “no self dealing, no personal gain, and no evidence of dishonesty,” and that “[at] worst, there was a good faith disagreement between the Sparta Board of Education and [the Superintendent]” about the extent to which Board members could be involved in the hiring of a school principal. Respondent further urges that the charges against him be “viewed in the broader context of a situation in

delayed, adding that it could not have been the staffing guide, since this was not completed until June 2007 while the principal position was posted on May 18 of that year (*Ibid.*). With respect to Dr. Morton’s purported inability to act independently, respondent claims that not a single specific example of this may be found on record; according to respondent, his ideas and suggestions were offered for *advisory* purposes – consistent with the role assigned to Board members in the revised Board of Education Hiring Process discussed at the July 2006 Board meeting, to which Dr. Morton did not object – and there is no evidence whatsoever that the hiring team was *compelled* to use the staffing guide drafted by respondent. (*Id.* at 4-5)

which the complainants have brought more than one hundred charges, almost all of which have been dismissed, for political gain.” (*Id.* at 6)⁵

The complainants did not answer respondent’s arguments on appeal.

Upon review and consideration, the Commissioner can find no basis on which to disturb the decision of the School Ethics Commission as to its determination of violation, since the Commission’s decision is supported by sufficient credible evidence in the record, and respondent has not demonstrated that such decision is arbitrary, capricious or contrary to law. *N.J.A.C.* 6A:4-4.1(a) In particular, the Commissioner notes that respondent’s appeal fundamentally challenges the Commission’s assessment of witness credibility, recitation of testimony, and resulting findings of fact, yet – notwithstanding clear notice by the Commission of a party’s obligation in this regard⁶ – fails to provide the relevant and necessary portions of the hearing transcript supporting such challenge.⁷ *In re Morrison*, 216 *N.J. Super.* 143, 158 (App. Div. 1987) Moreover, the documentary record provides ample evidence in support of witness testimony – and the Commission’s conclusion – that respondent as a Board member went well beyond policy making and appraisal and instead acted to administer the schools by his direct and extensive involvement in functions and responsibilities properly within the purview of the school administration.

⁵ At the outset of his appeal brief (at 1-2), respondent stated his view that complainants were “predominantly unsuccessful candidates for the Sparta Board of Education” who brought and manipulated ethics charges for political purposes and routinely disregarded the Commission’s confidentiality rules.

⁶ In its June 16, 2009 Statement of Items Comprising the Record, filed and copied to the parties (see *N.J.A.C.* 6A:4-2.5(a)1), the Executive Director expressly noted that parties challenging findings of fact are required to provide the relevant and necessary portions of the transcript, and that unofficial copies of sound recordings do not suffice to meet this requirement. (Statement of Items at 1, note 2)

⁷ For example, the Commission represents (at 6) that Dr. Morton’s testimony on the ordinary time frame for filling positions was four to six weeks, not eight as claimed by respondent (see note 4 above). Similarly, the delay in the hiring process attributed to respondent appears not in the time prior to posting of the position, as respondent suggests (*Ibid.*), but afterward, as confirmed by Exhibits C-3 (June 9, 2007 email) and C-11 (July 15, 2007 memorandum, misdated in the Commission’s decision at 9 as *June* 15, 2007).

Indeed, the Commissioner fully concurs with the Commission that:

***Mr. Schiavoni went far beyond policy making, planning and appraisal. ...While the Board may have approved the staffing documents created by Mr. Schiavoni, ...the creation of the documents and the content of the documents went beyond the making of policy, planning and appraisal. The documents ranged from a “white paper” on Predicting Future Performance Based on Past Behavior, which supported the use of behavioral questions in interviews, to specific forms such as an interview form and a candidate rating form, which included a detailed rating scale. The documents also included an assessment interview guide, which presented specific steps that should be taken in an interview and indicated how many minutes should be spent at each step. The documents included an Administrator Recruiting Guide that detailed the roles and responsibilities of the chief school administrator and Board members on a staffing team, and provided for a 10-phase recruitment process along with specific selection criteria. The documents were very specific, all encompassing and covered every step of the hiring process leaving very little discretion to anyone utilizing them.

***Dr. Morton credibly testified that virtually every step of the interview process for the Helen Morgan School Principal position was controlled by Mr. Schiavoni who would not allow Dr. Morton to continue any aspect of the hiring process without his approval. Dr. Morton further testified that he was not allowed to do anything independent of Mr. Schiavoni. Dr. Morton did not even review the resumes of the candidates; it was Mr. Schiavoni who took the resumes home to review them. While Mr. Schiavoni testified that he was disappointed in the way Dr. Morton handled the resumes, by taking the only copy of the resumes out of the district for review, Mr. Schiavoni became directly involved in a function that was the responsibility of Dr. Morton. Dr. Morton testified that Mr. Schiavoni wrote the questions for the interview of the Helen Morgan School Principal, directed the interview process and analyzed which candidates were the best candidates. While Mr. Schiavoni testified that, as chief staffing office[r], Dr. Morton had the ability to use or not use the questions, Mr. Schiavoni’s overall conduct in relation to the interview shows that Mr. Schiavoni administered the schools and became directly involved in a function that was the responsibility of the Superintendent. The evidence also shows that Mr. Schiavoni assumed the responsibilities of the Superintendent when he prepared a detailed and all-encompassing staffing process without input from the Superintendent, and when he controlled the role of the Superintendent in the hiring process for the Helen Morgan School Principal position.

(Commission’s Decision at 12-14)

In light of the above, the Commissioner likewise deems appropriate the Commission’s recommended penalty of censure. Contrary to his assertions on appeal – and however worthy his intentions may have been – respondent’s actions as evidenced by the record

herein evince far more than a “good faith disagreement” about the extent to which a board member may become involved in the hiring process for staff; rather, they are tantamount to a willful, full-scale usurpation of the role and responsibilities of the district administration. Moreover, even granting, *arguendo*, that the charges against respondent may have been rooted in Board and community politics, a complainant’s motivation for bringing a matter to the attention of the Commission does not alter the fact that a violation occurred; nor can the Commissioner permit personal benefit or inconsistent interest to become necessary preconditions to imposing a penalty of censure where, as here, the violation found is sufficiently serious or flagrant.

Accordingly, for the reasons set forth therein and above, the Commissioner affirms the decision of the School Ethics Commission finding that respondent Michael Schiavoni violated *N.J.S.A.* 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members, and adopts the Commission’s recommendation that Mr. Schiavoni be censured for such violation.

IT IS SO ORDERED.⁸

COMMISSIONER OF EDUCATION

Date of Decision: September 15, 2009

Date of Mailing: September 15, 2009

⁸ Pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1), Commissioner decisions are appealable to the Appellate Division of the Superior Court.