

MICHAEL R. HANLON	:	BEFORE THE
	:	SCHOOL ETHICS COMMISSION
v.	:	
	:	
DANIEL P. GROSS,	:	Docket No. C14-03
<i>JACKSON TWP. BOARD OF</i>	:	
<i>EDUCATION</i>	:	
<i>OCEAN COUNTY</i>	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint alleging that Jackson Township Board of Education member Daniel P. Gross violated the Code of Ethics for school board members set forth at N.J.S.A. 18A:12-24.1, by bypassing the Board’s regular grievance process in meeting with two school employees personally to address their employment problems. Complainant alleges these actions constitute a violation of subsections (a), (d), (e), (i) and (j) of the Code of Ethics for School Board Members within the School Ethics Act.

In his answer, Respondent denies that he violated any provision of the Code of Ethics in that he is fully cognizant of his responsibilities as a board member not to interfere with the operation of the School District. Beyond this, Respondent does not specifically address the substance of the charges. Rather, he contends that the charges were filed by Complainant in retaliation against him, because Respondent fought for, and was successful in obtaining, an open interview process for the Superintendent of Schools search. Respondent contends that Complainant has filed the charges to “punish” Complainant.

The Commission invited the parties to attend its meeting on June 24, 2003, to present witnesses and testimony to aid in the Commission’s investigation. Respondent and his attorney, Thomas Monahan, Esq. appeared. The complainant did not attend the meeting.

At its public meeting on June 24, 2003, the Commission voted to find no violation and dismiss the complaint. The Commission adopted this decision at its meeting of July 22, 2003.

FACTS

The Commission found the following facts on the basis of the pleadings, documents submitted and testimony. Respondent and Complainant are both board members in Jackson Township. On September 25, 2002 at 3:20 p.m., Respondent initiated an electronic mail (“e-mail”) conversation with fellow Board members and

administrators to discern whether they would be able to meet in executive session to discuss issues related to a pending grievance matter which also seemed to involve criminal allegations. Respondent and other Board members became involved in a lengthy e-mail discussion as to whether or not to follow the “chain-of-command” in the District to address this matter. There was disagreement among Board members as to how to proceed on this matter. Some members thought the matter should go to the Board attorney, and some wanted it to go through administration, and at least one other board member thought Respondent should meet with the grieving employees. Respondent testified before the School Ethics Commission that he did meet with the employees who were the subject of the grievance matter at a diner, and also accompanied the employees to a meeting with administrators.

ANALYSIS

Complainant alleges that Respondent violated the Code of Ethics set forth at N.J.S.A. 18A:12-24.1. Complainant has the burden of proving factually that a violation of the Code of Ethics has occurred pursuant to N.J.S.A. 18A:12-29(b).

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

I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

Respondent did not violate subsection (a) in that he did not violate a law, rule or regulation of the State Board of Education or a court order, as the subsection requires.

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

I will carry out my responsibility, not to administer the schools, but together with my fellow board members, to see that they are well run.

Respondent did not violate subsection (d), since (d) requires evidence that respondent administered the schools. Here, although this was done through an e-mail exchange, the board members did attempt to work together in reaching a consensus in handling the matter in question.

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

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.

Subsection (e) prohibits personal promises or private action to be taken by a board member that may compromise a board. Here, Respondent did not act alone. He did confer with other board members by e-mail, regarding the course of action ultimately taken with regard to the grievance. He also acted in cooperation with the chief school administrator since he was present at a meeting between District personnel and the employees. Thus, Respondent did not violate subsection (e).

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

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

The Commission finds no evidence that Respondent failed to support and protect school personnel in the proper performance of their duties and therefore, finds no violation of subsection (i).

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

I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

Lastly, the Commission did not find a violation of subsection (j) based on the facts presented. There is some indication that the chief administrative officer was involved in the decision by virtue of his inclusion in the initial e-mail, and his allowance of Respondent in the meeting between administrators and grieving parties. The Commission is, thus, without sufficient evidence to make a finding that Respondent violated this subsection.

In summary, the Commission finds no violation of the above provisions based on the facts in evidence. The Commission need not address Respondent's contention concerning retaliation or a politically motivated complaint brought by Complainant herein since the Commission finds that the allegations have not been sustained.

DECISION

Accordingly, the Commission finds that Respondent's actions did not violate the Code of Ethics in the School Ethics Act and the complaint is dismissed. The Commission does find troubling, however, the numerous amount of e-mail correspondence between Respondent, Complainant, and other board members in this matter. The Commission reminds the parties that Board business must be conducted in a public forum in compliance with the Open Public Meetings Act ("OPMA"), set forth at N.J.S.A. 10:4-6 et seq. Respondent testified that he uses e-mail to correspond with fellow board members because it is convenient; however, this does not excuse compliance with the law. While the School Ethics Commission lacks the jurisdiction to

review OPMA issues, we admonish the Board members to be mindful of their legal obligations.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C14-03

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof and the testimony; and

Whereas, the Commission finds that respondent has not violated N.J.S.A. 18A:12-24.1 (a), (d), (e) (i) or (j) of the Code of Ethics within the School Ethics Act; and

Whereas, the Commission has reviewed the proposed decision of its staff dismissing the complaint; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 22, 2003.

Lisa James-Beavers
Executive Director

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