
JOHANNAH BARRY

V.

**ROBERT GANNON, KATHY LINDERT,
JENEENE NORMAN, BERNARD LENIHAN,
ZENON DAWIDOWICZ
MONTVILLE BOARD OF EDUCATION
MORRIS COUNTY**

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: **BEFORE THE SCHOOL
ETHICS COMMISSION**
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: **Docket No.: C16-03**
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: **DECISION**
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PROCEDURAL HISTORY

This matter arises from a complaint that the Montville Board of Education (Board) violated the Code of Ethics for School Board Members (Code of Ethics), N.J.S.A. 18A:12-24.1. Complainant sets forth the following allegations. First, the Board behaved in a fashion that intimidated and discouraged the public from expressing its concerns and criticisms during the Board’s public sessions. Complainant does not set forth any specific provision of the Act that she believes has been violated with respect to this allegation. Second, the Board routinely dismisses and ignores the recommendations of the district’s educational experts in violation of N.J.S.A. 18A:12-24.1(b), (c), (h) and (i). Third, the Board overruled the recommendation of the superintendent and building principal regarding class size issues in violation of N.J.S.A. 18A:12-24.1(d). Fourth, the Board resolved the issues regarding class size, but with intense community opposition in violation of N.J.S.A. 18A:12-24.1(g). Fifth, the Board ignored the individual needs of the students affected by its determination regarding class size in violation of N.J.S.A. 18A:12-24.1(b). Sixth, the Board provided one day’s notice to the administration, staff and parents before deciding to reorganize a class in violation of N.J.S.A. 18A:12-24.1(c). Seventh, the Board instructed the superintendent to direct her administrators, teachers and staff not to attend Board meetings in violation of N.J.S.A. 18A:12-24.1(i).

Complainant also alleges that the Board has violated Board policy. However, the Commission will not make determinations on allegations that pertain to violations of Board policy. The Board should address such issues. Complainant further alleges that the Board has avoided the public discussion of the District’s class size policy in violation of the Code of Ethics. The Commission can find no provision of the Act where such conduct would rise to the level of violation under the Code of Ethics.

In their answers, the respondents deny that the Board intimidated and discouraged the public from expressing its concerns and assert that at every regularly scheduled Board meeting, the public was given the opportunity to speak. The respondents deny the second

allegation and assert that the Board routinely accepts the recommendation of the administration. The respondents assert that the Board did not follow the superintendent's recommendation regarding class size due to its previous adoption of policy on the issue. Regarding the fourth, fifth and sixth allegations, the respondents assert that the Board's decision regarding class size was made in consideration of equity and the best outcome for the District. Lastly, the respondents deny that they ever instructed the superintendent to prohibit any individuals from attending Board meetings. The respondents deny that they violated any provision of the Code of Ethics.

The Commission invited the parties to attend the Commission's meeting on June 24, 2003, to present witnesses and testimony to aid in the Commission's investigation. Counsel for Respondents Stephen Edelstein, Esquire, appeared. Complainant and Respondents did not appear. During its public meeting of June 24, 2003, the Commission voted to find no violation. The Commission directed its staff to prepare a decision for adoption. The Commission adopted this decision at its meeting on August 26, 2003.

FACTS

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted, testimony and its investigation.

Respondents Robert Gannon, Kathy Lindert, Jeneene Norman, Bernard Lenihan, and Zenon Dawidowicz were members of the Montville Board of Education at all times relevant to this complaint. The following paragraphs set forth the facts as they relate to each allegation.

The Board intimidates and discourages the public.

On December 3, 2002, a resident of the district addressed the Board with her comments and concerns. Mr. Gannon, who was the Board president at that time, curtailed the discussion and moved to the next speaker when he believed that she had become rude and abusive. Mr. David B. Rubin, Esq. advised the aforementioned resident and wrote a letter to the Board attorney on her behalf. The letter set forth:

From my review of the tape of that portion of the [December 3rd Board meeting], I could not conceive of a more blatant violation of my client's First Amendment rights. She was addressing the body in a calm tone of voice posing no threat of disruption, and the president's attempt to silence her was plainly based on nothing other than the content of her remarks, which she perceived as unflattering to the Board. While he did finally allow her to continue her remarks, it appears from the tape that he cut her time short, and plainly attempted to discourage others from making similar comments. Based on the cases cited in my earlier correspondence, as reinforced by the Appellate Division just last week in State v. Charzewski,

A-1831-01T3 (12/13/02), also enclosed, we must once again register our concern about First Amendment violations at Montville Board of Education meetings.

The Board ignores the recommendations of the District's education experts.

The District recently had an opening for a temporary Gifted and Talented teacher. An existing teacher in the District applied for the position and participated in an interview process with the District's superintendent, elementary curriculum director and several elementary school principals. Upon the superintendent's recommendation the above-referenced teacher was put on the agenda for consideration for the position. The Board president removed the teacher's name from the agenda. The District re-advertised the position and conducted another round of interviews. She was not placed on the agenda again for consideration.

The Board made determinations regarding class size despite community opposition or, the affects on students, administration, teachers and staff.

On July 2, 2002 the superintendent recommended the reinstatement of a fourth second grade section at the Cedar Hill School, due to increased enrollment. Faculty and aides were reassigned to accommodate the fourth class. The curriculum was revised and student placement was re-evaluated. On August 20, 2002 the Board ratified the recommendation to maintain the four sections. By August 29, 2002 student enrollment had decreased by two and the Board voted to close the fourth section, overruling the recommendations of the superintendent and the building principal. The community opposed the decision of the Board. The Board's decision was based upon its pre-existing policy on class size. The Board agreed to discuss its policy on class size with the public. No discussion of the topic occurred.

The Board directed the superintendent to instruct the administration, teachers and staff not to attend Board meetings.

There is no information to show that the Board directed the superintendent to prohibit administrators, teachers or staff from attending Board meetings.

ANALYSIS

Complainant urges the Commission to find that the above named Board members violated the Code of Ethics, N.J.S.A. 18A:12-24.1. The Commission notes that, in complaints alleging a violation of the Code of Ethics, the complainant must prove that an actual violation exists based upon the facts presented pursuant to N.J.S.A. 18A:12-29(b).

The Board behaved in a fashion that intimidated and discouraged the public from expressing its concerns and criticisms during the Board's public sessions in violation of the Act.

There is insufficient evidence to support a finding by the Commission that the Board members intimidated or discouraged the public in any manner. Complainant notes that former Board president, Mr. Gannon, attempted to prevent a member of the public from continuing a statement during the Board's December 3, 2002 public meeting because she was being critical of the Board's actions. However, the Commission notes the letter from David B. Rubin, Esq., which indicates that the same individual was eventually permitted to continue her remarks. Although Mr. Rubin sets forth that Mr. Gannon limited the length of the statement in violation of the First Amendment, the Commission has no jurisdiction to address First Amendment issues. Furthermore, the Commission recognizes the discretion of the Board to encourage brevity in the interest of time. For the foregoing reasons, the Commission finds that the Board did not violate any provision of the Act or the Code of Ethics with respect to this allegation.

The Board ignores the recommendations of the District's educational professionals in violation of N.J.S.A. 18A:12-24.1(b), (c), (h) and (i).

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

I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

Complainant argues that the most recent example of the above allegation occurred prior to the Board's December 3, 2002 meeting. Mr. Gannon removed a district teacher from the Board's agenda, despite the superintendent's recommendation that she be approved for the position of temporary Gifted and Talented teacher. The Commission notes that a board is not bound by the recommendation of the superintendent. The Board ultimately appoints all teaching staff members pursuant to N.J.S.A. 18A:27-1. While the Commission recognizes that N.J.S.A. 18A:27-4.1 authorizes boards of education to appoint, transfer or remove a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator, it finds that this provision does not prevent a board president from removing the recommendation of the superintendent from the board agenda. The Commission further finds that there is no evidence that any other Board member was involved in the amendment of the Board's December 3, 2002 meeting agenda. Therefore, the Commission finds that there is no information to show that the above named Board members failed to make a decision in terms of the educational welfare of children or failed to develop public schools to meet the individual needs of all children. The Commission finds that the above named Board members did not violate N.J.S.A. 18A:12-24.1(b).

N.J.S.A. 18A:12-24.1(c) provides, in pertinent part, that board members will confine their board action to policy making, planning and appraisal. The Commission has found that the Board president was not prevented from removing the

recommendation of the superintendent from the Board's agenda. Therefore, the Commission finds that the above named Board members did not violate N.J.S.A. 18A:12-24.1(c).

N.J.S.A. 18A:12-24.1(h) requires board members to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer. While there are no Board minutes or other information to show the Board's criteria for the position or the qualifications of candidates, the Commission notes that the District re-advertised the position and conducted another round of interviews, after the recommendation for the aforementioned teacher was removed from the agenda. Based upon this information, the Commission finds that the Board made an attempt to carefully select a teacher for the position, which is precisely what N.J.S.A. 18A:12-24.1(h) requires. Moreover, the Commission has found that although the Board may only appoint, transfer and remove officers and employees of the District upon the recommendation of the superintendent, the Board is not required to accept the superintendent's recommendation. Therefore, there is insufficient information to show that the Board failed to appoint the best qualified person available. The Commission finds that the above named Board members did not violate N.J.S.A. 18A:12-24.1(h).

N.J.S.A. 18A:12-24.1(i) requires board members to support and protect school personnel in proper performance of their duties. The Commission finds that there is no evidence to show that the above named Board members failed to support and protect any school personnel in the proper performance of their duties in violation of this section.

The Board violated N.J.S.A. 18A:12-24.1(d) when it overruled the recommendation of the superintendent and a building principal to reinstate a fourth section of a second grade class.

N.J.S.A. 18A:12-24.1(d) requires board members to carry out their responsibility not to administer the schools, but, together with their fellow board members, to see that they are well run. Complainant argues that the Board's conduct constituted an administering of the schools. The Commission notes that the Board followed its own policy on class size. The Commission, therefore, cannot find that the Board administered the schools when it merely enforced pre-existing policy. The Commission finds that the Board did not administer the schools in violation of N.J.S.A. 18A:12-24.1(d).

The board resolved the issues regarding class size, but with intense community opposition in violation of N.J.S.A. 18A:12-24.1(g).

N.J.S.A. 18A:12-24.1(g) provides that board members shall interpret to the staff the aspirations of the community for its schools. However there is no language in N.J.S.A. 18A:12-24.1(g) that require Board decisions to be consistent with community sentiment. The Commission therefore finds that the above named Board members did not violate N.J.S.A. 18A:12-24.1(g).

The Board ignored the individual needs of the students regarding its decision on class size in violation of N.J.S.A. 18A:12-24.1(b).

There are no meeting minutes or any other information to show the nature or extent of the Board's considerations when making its decision. As a result, there is insufficient information to demonstrate that the Board failed to consider the educational welfare of children or failed to develop and maintain the schools that meet the individual needs of all children. Therefore, the Commission finds the above named Board members did not violate N.J.S.A. 18A:12-24.1(b).

The Board violated N.J.S.A. 18A:12-24.1(c) when it provided only one day's notice to the administration, staff and parents before deciding to reorganize the aforementioned class.

For the Commission to find a violation under this provision it must find that the Board exceeded its authority of planning, policy making and appraisal. The Commission finds that it did not. The Commission will not make a determination on the adequacy of notice provided to the administrators, teachers and staff affected by the Board's decision. This is a question of Board policy and should be addressed within the District. Therefore, the Commission finds that the above named Board members did not violate N.J.S.A. 18A:12-24.1(c).

The Board instructed the superintendent to direct her administrators, teachers and staff, not to attend Board meetings in violation of N.J.S.A. 18A:12-24.1(i).

There is no evidence to demonstrate that the Board ever gave such a directive to the superintendent. Therefore, the Commission finds that the above-named Board members did not violate N.J.S.A. 18A:12-24.1(i).

DECISION

For the foregoing reasons, the Commission finds that the respondents did not violate the School Ethics Act and dismissed the complaint against them.

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 – C16-03

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

Whereas, at its meeting of June 24, 2003, the Commission found that Respondents did not violate the Code of Ethics for School Board Members, N.J.S.A. 18A:12-24.1 and therefore dismissed the charges against them; and

Whereas, the Commission requested that its staff prepare a decision consistent with the aforementioned conclusion; and

Whereas, the Commission has reviewed the draft decision and agrees with the 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 this Resolution was duly adopted by the School Ethics Commission at its public meeting on August 26, 2003.

Lisa James-Beavers
Executive Director