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**STEVEN VOGEL**

**v.**

**JO ANN MAGISTRO,  
EAST BRUNSWICK  
BOARD OF EDUCATION  
MIDDLESEX COUNTY**

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**BEFORE THE SCHOOL  
ETHICS COMMISSION**

**Docket No. C20-04**

**DECISION**

### **PROCEDURAL HISTORY**

This matter arises from a complaint filed on April 5, 2004, by Steven Vogel alleging that respondent, Jo Ann Magistro, Superintendent of the East Brunswick School District (District), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., when the complainant allegedly observed her coaching a witness during cross-examination testimony on a matter before the East Brunswick Board of Education (Board). On April 15, 2004, Martin R. Pachman, Esq., attorney for the respondent, filed a motion to dismiss the complaint because the conduct complained of does not fit within the purview of the Act. The motion was accompanied by an answer disputing the facts as alleged by complainant. Mr. Pachman's filing also included a request for sanctions on the complainant for the filing of a frivolous complaint. Mr. Pachman argued that complainant had not set forth a specific section of the Act that had been violated. He further argued that because there is no legal basis for the complaint, it is appropriate to conclude that it is not filed in good faith, but instead is an attempt on the part of the complainant to coerce a favorable resolution by the Board in a matter before them.

On April 17, 2004, the complainant filed an amended complaint, which specified that respondent's conduct violated N.J.S.A. 18A:12-24(g) of the Act. In the amended complaint, complainant set forth that the purpose of the complaint was not to misuse the legal process but to insure that fairness and justice are served. On May 26, 2004, Mr. Pachman filed a response to the amended complaint denying that respondent coached a witness and arguing that respondent was representing the interests of the school district when she attended the hearing in question.

On August 6, 2004, the Commission notified the parties that the complaint had been placed on the agenda for the August 24, 2004 Commission meeting for discussion of the motion only. The Commission did not request the appearance of the parties since it was only discussing the motion to dismiss the complaint. At its public meeting on August 24, 2004, the Commission granted the respondent's motion to dismiss the complaint and denied the respondent's request for the imposition of sanctions.

## FACTS

The Commission was able to discern the following facts based on the pleadings and the documents submitted. Where there was a dispute, the Commission, for the purposes of deciding the motion, relied on the facts of the complainant.

At all time relevant to the complaint, respondent was Superintendent of the District. Complainant is the parent of a student who was arrested and charged with possession of a controlled dangerous substance with intent to distribute. On April 1, 2004, the Board held a due process hearing regarding the suspension of complainant's son. During complainant's cross examination of the Principal, complainant says that he saw the respondent coach the Principal.

## ANALYSIS

Complainant alleges that respondent violated N.J.S.A. 18A:12-24(g) when complainant observed her coaching a witness during a cross-examination during a due process hearing held on April 1, 2004.

N.J.S.A. 18A:12-24(g) provides:

No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities.

In order for the Commission to find a violation of subsection 24(g), the Commission must first find that respondent represented some person or party other than the school board in connection with the Board's April 1, 2004 due process hearing. See I/M/O/ Gina Kolata, C34-96 (June 24, 1997) (the Commission dismissed allegations of a violation of subsection 24(g) because of a failure to show that respondents represented any other person or party in connection with any matter pending before the school district); and I/M/O/ Fred Ferrone, et al, C20-96 (April 22, 1997), (same).

In the present case, the respondent attended the due process hearing in her role as Superintendent of the District representing the interests of the District to protect the health and safety of the District's students. Even under a liberal construction of the allegations, it is apparent that the respondent did not represent herself personally or some other person or party other than the District. Therefore, the Commission finds that N.J.S.A. 18A:12-24(g) is not applicable to

the present situation and finds no probable cause to credit the allegation against the respondent.

## **DECISION**

For the reasons expressed above, the Commission finds no probable cause to credit the allegations that respondent violated the School Ethics Act and therefore grants the motion of the respondent to dismiss the complaint in its entirety.

Respondent has asked that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the Commission must find on the basis of the pleadings, discovery, or the evidence presented that either:

- 1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) The nonprevailing party knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. [N.J.S.A. 2A:15-59.1]

The New Jersey Supreme Court has held that the term “frivolous” should be given restrictive interpretation, in light of the premise that in a democratic society, citizens should have ready access to all branches of government. McKeown-Brand v. Trump Castle Hotel & Casino 132 N.J. 546 (1993). The two-prong test is one of objective reasonableness. See Iannone v. McHale, 245 N.J. Super. 17, 29 (App. Div. 1990). Mr. Pachman argues that the instant matter is one of several filed by complainant before the Board voted on the suspension of complainant’s son and that the decisions were filed in an effort to force the Board into making a decision in his son’s favor. While complainant may have filed the complaint before the Board voted on the suspension of his son, the complainant filed the complaint almost immediately after the conduct alleged in the complaint took place. There is no evidence before the Commission that the filing of this complaint actually delayed the proceedings against complainant’s son or that it influenced the Board’s vote in that matter. The Commission believes that it should view the law in a restrictive manner as suggested in McKeown, *supra*. Therefore, the Commission finds that the first prong of the test has not been met.

Mr. Pachman also argues that complainant knew or should have known that the complaint was without any reasonable basis in law or equity. In his filings, complainant sets forth that he believed that respondent was representing herself while sitting on the local board that rules on the same matter. The Commission finds that the second prong of the test has not been met. Therefore, the Commission finds that the standard for a frivolous complaint has not been met and does not impose sanctions against the complainant.

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).

Paul C. Garbarini  
Chairperson

### **Resolution Adopting Decision – C20-04**

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

**Whereas**, the Commission finds no probable cause to credit the allegations that Respondent violated N.J.S.A. 18A:12-21 et seq.; 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 to dismiss as its final decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution  
was duly adopted by the School  
Ethics Commission at its public meeting  
on September 30, 2004.

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Lisa James-Beavers  
Executive Director