

**CONSUELO M. CARPENTER AND  
JOSEPH RUGGIERO**

**V.**

**CHARLES SEVERINO AND  
MARY ANN CRUDELLA  
*BOGOTA BOARD OF EDUCATION  
BERGEN COUNTY***

**BEFORE THE SCHOOL  
ETHICS COMMISSION**

**Docket No.: C24-02**

**DECISION**

### **PROCEDURAL HISTORY**

This matter arises from a complaint that Bogota Board of Education (Board) members, Charles Severino and Mary Ann Crudello, engaged in four acts of misconduct in violation of the School Ethics Act, specifically, the Code of Ethics, N.J.S.A. 18A:12-24.1. First, Complainants allege that a board member refused to acknowledge the Superintendent’s recommendation and spoke directly to the Board attorney regarding the “Ricing”<sup>1</sup> of an administrator in violation of N.J.S.A. 18A:12-24.1(a). Second, Complainants allege that Mr. Severino and Ms. Crudello violated N.J.S.A. 18A:12-24.1(b) when they insisted on the removal of a Basic Skills Instruction (BSI) student placement, who scored 16 points below the proficient level on the Elementary School Proficiency Assessment (ESPA). Third, Complainants allege that Mr. Severino and Ms. Crudello debated with the Superintendent on instructional strategies, practices and administrative decisions relating to a district instruction program in violation of N.J.S.A. 18A:12-24.1(c) and (d). Fourth, Complainants allege that a Board member chose to disregard the statute on the termination of a non-tenured employee in violation of N.J.S.A. 18A:12-24.1(d).

In response to the first allegation, Mr. Severino and Ms. Crudello assert that they do not need the Superintendent’s opinion, advice or recommendation to “Rice” an employee. Regarding Complainants’ second allegation, the respondents assert that they never insisted that a child be removed from a BSI class. Mr. Severino and Ms. Crudello also deny the third and fourth allegations and note that it is their job to question the Superintendent’s actions and decisions to ensure that the district’s policies are followed. Mr. Severino and Ms. Crudello deny that they violated any provision of the Code of Ethics and counterclaim that the complaint is frivolous.

In correspondence dated August 7, 2002, the Commission advised the parties that they had the right, but were not required, to attend the Commission’s meeting on August

<sup>1</sup> A public body is required to provide concerned employees with reasonable notice of its intention to consider in closed session personnel matters related to them in order to allow them to exercise their statutory right to request a public hearing. See “Rice” v. Union Cty. Regional High School Bd. of Ed., 155 N.J. Super. 64 (App. Div. 1977), certif. den. 76 N.J. 238 (1978).

27, 2002, to present witnesses and testimony. Neither the Complainants nor the respondents chose to appear.

During its public meeting of August 27, 2002, the Commission voted to find no probable cause to credit the allegations in the complaint. The Commission directed its staff to prepare a decision for adoption at the next meeting. The Commission adopted this decision at its meeting on September 24, 2002.

## **FACTS**

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

Charles Severino and Mary Ann Crudello are members of the Bogota Board of Education. This complaint arises as a result of Mr. Severino and Ms. Crudello's questioning of certain decisions and recommendations made by the district's Superintendent.

Mr. Severino and Ms. Crudello spoke directly to the Board attorney regarding the "Ricing" of an employee despite the Superintendent's recommendation. Mr. Severino and Ms. Crudello also questioned the measures that were used to put a student in a BSI class and the Superintendent's instructional strategies, practices and administrative decisions relating to an instruction program developed for the district's students. Mr. Severino and Ms. Crudello further voted to appoint a school nurse after the Superintendent had reversed his decision and determined not to reappoint.

## **ANALYSIS**

Complainants urge the Commission to find that Mr. Severino and Ms. Crudello violated N.J.S.A. 18A:12-24.1 (a), (b), (c) and (d). Each provision will be discussed in turn as it relates to the above-referenced allegations.

First, Complainants set forth that a board member refused to acknowledge the Superintendent and spoke directly to the Board attorney regarding the "Ricing" of an administrator, regardless of the Superintendent's recommendation, in violation of N.J.S.A. 18A:12-24.1(a),<sup>2</sup> which provides:

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.

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<sup>2</sup> The complaint does not specify which board member refused to acknowledge the Superintendent regarding the "Ricing" of an employee. However, it is assumed that the Complainants are referring to Mr. Severino and Ms. Crudello.

Under the School Ethics Act, N.J.S.A. 18A:12-29, the burden of proof to demonstrate that the respondents' conduct is in violation of the Code of Ethics, is on the Complainants. In the present case, Complainants must demonstrate that Mr. Severino and Ms. Crudello failed to uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to the schools. The Complainants do not satisfy this burden.

The Commission cannot conclude that respondents failed to uphold and enforce the laws, rules or regulations of the State Board of Education, when the complaint does not provide any applicable statute, Board policy or other provision that require Mr. Severino or Ms. Crudello to obtain the opinion, advice or recommendation of the Superintendent to speak to the Board attorney regarding the need to "Rice" an employee. The Commission therefore finds that there is no probable cause to credit the allegation that Mr. Severino and Ms. Crudello failed to uphold and enforce the laws, rules or regulations of the State Board of Education in violation of N.J.S.A. 18A:12-24.1(a).

Second, Complainants argue that Mr. Severino and Ms. Crudello violated N.J.S.A. 18A:12-24.1(b) when they insisted on the removal of a BSI student placement, who scored 16 points below the proficient level on the ESPA. 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.

As set forth above, under the School Ethics Act, the Complainants have the burden of proving a violation of the Code of Ethics. Thus, the Complainants must prove that Mr. Severino and Ms. Crudello insisted upon the removal of the BSI student placement. No such information has been provided to the Commission. In addition, respondents deny that they insisted upon the removal of the BSI student placement and assert that they merely questioned the Superintendent as to what standards were used to put the child in the class. The Commission cannot find that Mr. Severino or Ms. Crudello's inquiry regarding the criteria used to place the student constitutes decision making that is contrary to the educational welfare of the children or failure to develop and maintain the schools to meet the individual needs of the children. For the foregoing reasons, the Commission finds that there is no probable cause to credit the allegation that Mr. Severino or Ms. Crudello violated N.J.S.A. 18A:12-24.1(b).

Third, Complainants allege that Mr. Severino and Ms. Crudello debated with the Superintendent on instructional strategies, practices and administrative decisions relating to a district instruction program. Complainants set forth that Mr. Severino and Ms. Crudello's alleged debate with the Superintendent interfered with NJAC 6:11-9.3<sup>3</sup> and gave rise to a violation under N.J.S.A. 18A:12-24.1(c) and (d).

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<sup>3</sup> NJAC 6:11-9.3 authorizes the superintendent to direct district level programs and oversee the administration of school level programs.

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

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The Complainants must prove that Mr. Severino and Ms. Crudello went beyond their duties of policy making, planning and appraisal by debating with the Superintendent on instructional strategies, practices and administrative decisions relating to the instruction program. Although the Complainants allege that Mr. Severino and Ms. Crudello debated with the Superintendent, insufficient information has been provided to the Commission to demonstrate that the event occurred. Moreover, respondents deny that the debate occurred. Therefore, the Commission must find that there is no probable cause to credit the allegation that Mr. Severino or Ms. Crudello violated N.J.S.A. 18A:12-24.1(c).

Complainants also allege that Mr. Severino and Ms. Crudello's alleged debate with the Superintendent was in violation of N.J.S.A. 18A:12-24.1(d), which provides:

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.

In the absence of sufficient information to show that Mr. Severino and Ms. Crudello actually debated with the Superintendent in an attempt to administer the schools, the Commission finds that there is no probable cause to credit the allegation that Mr. Severino and Ms. Crudello violated N.J.S.A. 18A:12-24.1(d).

Fourth, Complainants allege that a Board member chose to ignore N.J.A.C. 6:11-9.3 and questioned the recommendation of the Superintendent regarding the tenure of an employee, in violation of N.J.S.A. 18A:12-24.1(d).<sup>4</sup> The Commission is without sufficient information to conclude that Mr. Severino and Ms. Crudello's questioning of the Superintendent constitutes an attempt to administer the schools. No information has been provided to show the nature of the questions or the context in which they were asked. Therefore, the Commission finds that there is no probable cause to credit the allegation that Mr. Severino and Ms. Crudello violated N.J.S.A. 18A:12-24.1(d).

The Commission acknowledges that N.J.A.C. 6:11-9.3 empowers superintendents to administer the schools. However, the Commission also acknowledges that the Code of Ethics charges board members with the duties of planning and ensuring that schools are well run. The Commission, therefore, notes that there could be circumstances where the execution of those duties may necessitate inquiries into administrative decisions, recommendations and practices.

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<sup>4</sup> The complaint does not specify which board member allegedly questioned the Superintendent's recommendation in violation of N.J.S.A. 18A:12-24.1(d). However, it is assumed that the Complainants are alleging that the Mr. Severino and Ms. Crudello violated the provision.

## **DECISION**

For the foregoing reasons, the Commission finds no probable cause to credit the allegations that Mr. Severino and Ms. Crudello violated the School Ethics Act and dismisses the complaint against them.

## **RESPONDENTS' REQUEST FOR SANCTIONS**

Respondents counterclaimed that the complaint brought by Consuelo Carpenter and Joseph Ruggiero was frivolous and that they should be sanctioned under N.J.S.A. 18A:12-29(e). In order to find a counterclaim frivolous, the Commission must find, on the basis of pleadings and evidence presented, that the complaint was commenced or continued in bad faith; or that the non-prevailing 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 extension, modification or reversal of existing law. N.J.S.A. 2A:15-59.1. The Commission finds that Mr. Carpenter and Mr. Ruggiero's allegations were not made in bad faith and were not without any reasonable basis in law. Therefore, the Commission does not find the present complaint to be frivolous.

The Commission therefore dismisses respondents' counterclaim against Mr. Carpenter and Mr. Ruggiero for filing a frivolous complaint and denies their request for sanctions.

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 – C24-02**

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

Whereas, at its meeting of August 27, 2002, the Commission found no probable cause to credit the allegations that Mr. Severino and Ms. Crudello violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. 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 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.

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Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on September 24, 2002.

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Lisa James-Beavers  
Executive Director