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| LORRAINE E. SOLAR-SNYDER     | : | BEFORE THE SCHOOL |
|                              | : | ETHICS COMMISSION |
| v.                           | : |                   |
|                              | : |                   |
| DIANE ROSE, B. GAIL GARDNER, | : | Docket No. C32-03 |
| SUSAN M. BOYLE,              | : |                   |
| THERESA HIGGINS and          | : |                   |
| KAREN DISPENZIERS            | : |                   |
| SUSSEX- WANTAGE BOARD OF     | : |                   |
| EDUCATION                    | : |                   |
| SUSSEX COUNTY                | : | DECISION          |
|                              | : |                   |

**PROCEDURAL HISTORY**

This matter arises from a complaint filed by Lorraine E. Solar-Snyder, alleging that Respondents, members of the Sussex-Wantage Board of Education, violated several provisions of the Code of Ethics for School Board Members set forth at N.J.S.A. 18A:12-24.1, by directing the Superintendent to limit her job responsibilities, thereby causing harm to her and the District. Complainant alleges these actions constitute a violation N.J.S.A. 18A:12-24.1 (d ), (g), (h) and (i) of the Code of Ethics for School Board Members within the School Ethics Act.

In lieu of an Answer, Respondents filed a Motion to Dismiss the within complaint. The Motion generally sets forth that the complaint is essentially a grievance regarding Complainant’s assigned job and since this is a dispute about terms and conditions of employment, it must be resolved through the grievance procedure set forth in the Collective Bargaining Agreement between the Board and the Sussex-Wantage Education Association (SWEA). That Agreement specifies that such matters should be brought before the Public Employment Relations Commission (PERC). Additional arguments were presented in the Motion as well.

Complainant was given an opportunity to respond to the Motion to Dismiss and to specifically address why this matter is not barred by the grievance procedure set forth in the SWEA contract. She was directed not to respond to the additional arguments set forth in the Motion since they presented factual matters. Complainant’s response was timely filed on November 17, 2003. She stated that the grievance procedure allows her only to grieve the terms and conditions of her employment. Her complaint, however, asks the Commission to find that Respondents’ conduct violated the School Ethics Act.

Upon review of the Motion and Complainant’s Response to the Motion, the Commission determined to grant Respondents’ Motion at its meeting of November 25, 2003, and dismiss the complaint. It adopted this decision at its meeting of December 16, 2003 with amendments.

## **FACTS**

As required when determining a Motion to Dismiss, the Commission found the following facts on the basis of the pleadings and supplemental documents submitted by the Complainant.

Respondents are all members of the Sussex-Wantage Board of Education. Four of the members comprise the Board's Personnel and Policy Committee and the fifth member is the President of the Board of Education.

Complainant initially worked for the District as a bus driver since 1994. She has a background in accounting and office management. Complainant was hired under the title of bookkeeper for the School District on July 1, 2000. When she was hired, Respondents Gardner and Rose voted against her appointment. From June 12, 2000, until June 2003, Complainant performed job duties including tracking daily teacher attendance and reasons for absences, as well as completing the Fall Survey and the Limited English Proficiency (LEP) programs. After a one-year absence, Respondent Rose was elected to the Board and elected President. On June 12, 2003, the Policy and Personnel Committee met and discussed a possible violation of the Board's anti-nepotism policy. The Committee recommended that the Superintendent assume supervisory responsibility for Complainant and remove her from the business office. The superintendent was instructed to relieve the business administrator of his responsibilities regarding buildings and grounds without formal board action. The business administrator was never consulted about these changes.

## **ANALYSIS**

The Code of Ethics for School Board Members, N.J.S.A. 18A:12-24.1, sets forth a minimum set of standards for all school board members.

In the present case, the Complainant admits that the respondents made recommendations concerning her employment but the actions were ultimately taken by the Superintendent, the chief academic officer in the District. This is admitted by Complainant when she states in her amended complaint,

The job responsibilities that I've performed for the past 4 years have been taken from me on June 13, 2003 by the Superintendent based upon instruction from the respondents who are members of the Personnel and policy Committee and the other respondent, Board President Rose.  
[Amended Complaint, page 1.]

Complainant also admits in her amended complaint that she was performing duties outside of her regular job description and was told by the Superintendent to perform only the job duties for which she was hired. 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.

Because the Superintendent handled the matter concerning Complainant's employment and not the board members, this provision would not apply.

Further, N.J.S.A. 18A:12-24(g), (h) and (i) do not apply to the facts presented. These are set forth below.

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

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

Complaint's allegations do not set forth a claim that Respondents disclosed personal information outside of the board meetings where they have the authority to carry out all school policies as board members or that they failed to provide accurate information. Therefore, N.J.S.A. 18A:12-24(g) does not apply.

N.J.S.A. 18A:12-24(h) sets forth, "I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer" and N.J.S.A. 18A:12-24(i) provides, "I will support and protect school personnel in proper performance of their duties."

Board members may make recommendations regarding the management of staff as members of the Personnel and Policy Committee and as Board President. N.J.S.A. 18A:12-24(h) and (i) do not empower the School Ethics Commission to supplant the decisions of duly elected or appointed local board members when they are acting in their capacities as board members in concert with the District Superintendent to make recommendations regarding staff of a local school district. And, while they may not make decisions in an arbitrary or capricious manner, pursuant to Dunellen Board of Education v. Dunellen Ed. Ass'n., 64 N.J. 17, 23 (1973), any claim that they did so should be raised before the Commissioner of Education. Further, there is a grievance process in place within the District for aggrieved employees, set forth in the SWEA contract with the Board. The complainant's issue with the duties that were taken from her and the type of work she is now required to perform, is an issue involving with the terms and conditions of her employment. Such matters are more properly the subject of a grievance. Therefore, the Commission has determined to dismiss this complaint.

## **DECISION**

For the reasons expressed above, the Commission finds that Complainant has failed to set forth a cause of action under the School Ethics Act and therefore grants Respondents' Motion to Dismiss. Accordingly, the complaint is dismissed in its entirety.

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 Rules R:2:2-3(a).

Paul C. Garbarini  
Chairperson

### **Resolution Adopting Decision – C32-03**

**Whereas**, the School Ethics Commission has considered the pleadings, with amendments, the Motion to Dismiss, the Response to Motion filed by the parties and the documents submitted in support thereof; and

**Whereas**, the Commission finds the complainant does not set forth facts to substantiate a violation of N.J.S.A. 18A:12-24.1(d), (g), (h) or (i) 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 on Motion; and

**Whereas**, the Commission agrees with the proposed decision;

**Now Therefore Be It Resolved** that the Commission hereby adopts the proposed decision on motion referenced 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 December 16, 2003.

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Lisa James-Beavers  
Executive Director