

PATRICIA LEE, et al.	:	BEFORE THE SCHOOL ETHICS COMMISSION
v.	:	
BARRI BECK, UNION TOWNSHIP BOARD OF EDUCATION UNION COUNTY	: : : : : : :	Docket No. C01-05 DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed on January 13, 2005 by a majority of the members of the Union Township Board of Education (Board) including Patricia Lee, James Pellecchia, James Chiego, William M. Edelmann, William Kays (for counts five through nine only), Dolores A. Noboa, Matthew Severino, and Michael S. Sroka alleging that Barri Beck, a member of the Board, violated the School Ethics Act (Act) N.J.S.A. 18A:12-21, et seq.

Complainants specifically allege that the respondent violated the Act as follows:

1. Respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (i) and (j) when, on or around November 2003, she approached the Principal and pointed out to him that a parent with a handicapped tag should park in the handicapped parking space to alleviate traffic problems;
2. Respondent violated N.J.S.A. 18A:12-24.1(f) and (i) when she contacted the Principal and asked him to write a letter outlining his contacts with a parent against whom the respondent had taken legal action;
3. Respondent violated N.J.S.A. 18A:12-24.1(b), (e) and (i) when she refused to adhere to the Principal’s arrangements for Back-to-School Night;
4. Respondent violated N.J.S.A. 18A:12-24.1(a) and (e) when she had problems with other parents in the district and behaved in a manner that would not facilitate any type of conciliation;
5. Respondent violated N.J.S.A. 18A:12-24.1(d) and (i) when she demanded inordinate amounts of documents from the district, was often hostile and abusive towards district staff when requesting information and documentation and, also, seriously impaired the operations of the district;
6. Respondent violated N.J.S.A. 18A:12-24.1(d) and (i) when she interfered with the operations of the business office by giving direct orders to the School Business Administrator and her staff;
7. Respondent violated N.J.S.A. 18A:12-24.1(g) when, at the October 25, 2004 public session of the Board, she revealed the identity of one of the parents who had complained about her in a September 27, 2004 executive session of the Board;

8. Respondent violated N.J.S.A. 18A:12-24(c) and N.J.S.A. 18A:12-24.1(f) when, at the October 25, 2004 Board meeting, she refused to recuse herself from the executive session until the Board President also agreed to recuse herself;
9. Respondent violated N.J.S.A. 18A:12-24.1(g) when, at a private party in her home, she revealed the circumstances of a teaching member's retirement;
10. Respondent violated N.J.S.A. 18A:12-24.1(g) when, prior to Board discussion and acceptance of a maternity leave request, she revealed to members of the community a teaching staff's intention to go on maternity leave; and
11. Respondent violated N.J.S.A. 18A:12-24.1(c), (e), (f) and (j) when she interrupted the conversation between the Board Attorney and a district parent who had been taken into the teacher's lounge by the Board Attorney because the parent was discussing confidential information regarding the respondent during the public comment session of the Board's October 4, 2004 meeting.

The respondent submitted a timely answer by way of counsel, John R. Lanza, Esquire, wherein she denied that she had violated any aspect of the Act. In the answer, she claimed that all the allegations set forth in the complaint, and the complaint in general, were filed in retaliation to a complaint, Beck v. Lee, C53-04, which she previously filed against complainant, Patricia Lee, Board President. She addressed each of the 11 allegations specifically and denied all 11. The respondent also filed a supplemental answer wherein she more specifically addressed allegation six. The respondent requested that the complaint be deemed frivolous and a fine imposed in accordance with N.J.S.A. 18A:12-29(e).

The Commission invited the parties to attend its April 26, 2005 meeting. The parties were advised of their right to bring counsel and witnesses, but the Commission did not require that they attend. Complainants Patricia Lee, James Chiego and Dolores A. Noboa attended the hearing with their attorney, Philip E. Stern, Esq. Respondent attended the hearing with Mr. Lanza, Esq., her attorney. However, the matter was held in abeyance at the request of the parties because the attorney for the complainants had a potential conflict. The hearing was rescheduled to the June 28, 2005 Commission meeting and the parties were again advised of their right to bring counsel and witnesses, but the Commission did not require that they attend.

The Commission was advised that Joseph J. Bell, Esq. would be representing the complainants. The Commission granted Mr. Bell's request to adjourn the June 28, 2005 hearing, and the hearing was rescheduled for the July 26, 2005 Commission meeting. All of the complainants except for Mr. Kays attended the July 26, 2005 meeting with their attorneys Mr. Bell and co-counsel Aurora R. Aragon, Esq. Board members, Mr. Edelman and Mr. Pellicchia and witnesses Tim Brennan, Interim Superintendent; Susan Murphy, a teacher; Carolyn Heaps and Angela Zieniuk, parents; all testified for the complainants. Ms. Beck testified and witnesses Cindy Palka and Marie Hersch testified under a subpoena from Mr. Lanza. Prior to hearing testimony, the Commission notified both parties that the first allegation was dismissed because it had not been filed within one year of notice of the alleged violation as required by N.J.A.C. 6A:28-6.1(b). Therefore, the Commission did not take testimony on that allegation. The Commission then heard

testimony from the witnesses, but had to table the matter during the public session due to the loss of a quorum. During the public session, the Chairperson appointed a committee of the Commission consisting of Commission members Paul Garbarini, Robert Bender, Rosalind Frisch, and Zhaobo Wang to continue hearing the remaining testimony on the matter. At the conclusion of the testimony before the committee, the Commission provided Mr. Lanza and Mr. Bell with 15 days to submit affidavits from additional witnesses and those additional affidavits were due by August 10, 2005. Through correspondence dated August 2, 2005, the Commission instructed Mr. Lanza to provide his summation by August 30, 2005 and Mr. Bell to provide his summation within 20 days of the date of Mr. Lanza's summation, which was September 19, 2005.¹

At its August 23, 2005 meeting, the Committee of the Commission briefed the Commission on the testimony from the July 26, 2005 committee meeting. The Commission tabled the matter at its public meeting on August 23, 2005 in order to wait for further submissions from the parties. At its September 27, 2005 meeting, the Commission considered the additional affidavits that were submitted within the timelines prescribed in the Commission's August 2, 2005 correspondence. The Commission did not accept an affidavit that was submitted by the complainants in the afternoon of September 26, 2005 because it was submitted out-of-time and the day before the hearing. The Commission also considered the respondent's summation, which was timely filed and the complainants' summation, which was filed out-of-time. At its September 27, 2005 meeting, the Commission voted to find no probable cause to credit the allegations that respondent violated the Act and dismissed the complaint. The Commission further found that the complaint was frivolous and imposed a sanction on the complainants in the amount of \$250.00.

FACTS

The Commission was able to discern the following facts based on the pleadings, documents submitted and the testimony.

At all times relevant to the allegations in this complaint, complainant Patricia Lee was President of the Board. Complainants James Pellecchia, James Chiego, William Edelmann, William Kays and Dolores Noboa were members of the Board, and complainants Matthew Serverino and Michael Sroka were not yet members of the Board. Mr. Severino and Mr. Sroka became Board members some time after the allegations occurred. At all times relevant to the allegations in this complaint, respondent was a member of the Board and a parent of two children in the school. Respondent also volunteered at the school as both a class room parent and a parent supervisor on the play ground.

¹ On August 16, 2005 Mr. Lanza submitted an affidavit of respondent in support of her motion to dismiss the complaint and on August 26, 2005, co-counsel Aurora Aragon, Esq., submitted a response to the motion to dismiss. The Commission notes that since the motion to dismiss was filed at an inappropriate point in the procedure, the Commission treated it and the response as additional affidavits.

Prior to the filing of this complaint, the Board had taken no formal action against the respondent.

1. Handicapped Parking Space

This allegation was dismissed at the July 26, 2005 Commission meeting and the Commission did not take testimony.

2. Respondent's Request for a Letter from the Principal

Between December 8, 2003 and February 27, 2004, a parent of a student in the school videotaped Ms. Beck at least 19 times on school grounds. During the time that the parent was videotaping Ms. Beck and her children, Ms. Beck went to the Principal and reported what was happening. The Principal advised her that there was nothing he could do and she should go to the police. On or about July 23, 2004, the Principal called Ms. Beck and advised her that the parent was constantly calling him. The Principal asked Ms. Beck if she would attend mediation with the parent. Ms. Beck replied that she would not attend mediation because she had filed a harassment complaint in municipal court against the parent. On or about June 16, Ms. Beck was informed that the parent had filed a complaint with the Board against her. Ms. Beck was never given a copy of the parent's complaint. The investigation of the parent's complaint proceeded through the chain of command process established by Board policy #1312 and the Principal conducted an inquiry. Throughout the investigation the Principal had contact with the parent. On or about August 4, 2004, Ms. Beck called the Principal and requested that he write a letter outlining his contacts with the parent so she could use the information in her municipal matter against the parent. The Principal felt uncomfortable about the request from Ms. Beck and feared retaliation from her. The Principal refused to write the letter. There was no retaliation from Ms. Beck.

3. Back-to-School Night

On September 10, 2004, the Principal called Ms. Beck and asked her if she would consider attending Back-to-School night, which was being held on September 13, 2004, at 8:00 p.m. so that she would not come into contact with the parent who had been videotaping her and her children on school grounds. Ms. Beck responded that if she was to come at 8:00 p.m. she would not be able to attend her sixth grade daughter's event since it began at 6:30 p.m. Her other daughter's event began at 8:00 p.m. Therefore, Ms. Beck told the Principal that she could not agree to his request that she come at 8:00 p.m. On Back-to-School night, the parent testified that she called the Principal to see what special arrangements were made so that she would not come into contact with Ms. Beck. The parent testified that the Principal told her to come at 8:00 or 8:20 p.m., that there was a special parking place for them and that the state police would be there. When the parent pulled into the parking spot she saw Ms. Beck's van parked in the space next to hers and she left immediately and did not attend Back-to-School night. There is no evidence to show that the Principal advised Ms. Beck of the special arrangements that were made for the parent. The Principal's certification did not address this issue and Ms.

Beck testified that she was not aware of any special arrangements that were made for the parent on Back-to-School night.

4. Respondent and District Parents

Three sets of parents complained about respondent. Two of the complaints were regarding respondent's role as a volunteer classroom parent and volunteer parent supervisor at the school and were not about respondent in her role as a Board member. One of the complaints was against respondent personally. One set of parents filed a complaint that proceeded through the chain of command process established by Board policy #1312 until it was before the Board for a closed session hearing on September 27, 2004. Although the respondent was given notice of the hearing, she and her attorney were not given a copy of the complaint. Respondent also filed a harassment complaint in municipal court against this set of parents, which is still pending.

Without notice to respondent, the Board also heard a complaint from a second set of parents at the September 27, 2004 closed session hearing. This complaint did not proceed through the chain of command process established by Board policy #1312. The Board President decided to add this complaint to the agenda at the last minute. Again, the respondent and her attorney were not provided with a copy of the complaint. Both the respondent and the complaining parent filed municipal harassment complaints against each other, which were both voluntarily dismissed. A third set of parents complained to the Principal regarding the respondent and the Principal found no wrongdoing on the part of the respondent.

The Interim Superintendent testified that when he came to the district on November 23, 2004, he looked into the history of the controversies between the parents. When he did so, he found that some of the complaining parents had connections to the respondent's opponent in the recent Board elections. The Interim Superintendent attempted to resolve the complaints. He installed a camera system that no one, including the Board, knew about, to observe the area of the school where all of the trouble occurred. He testified that the tape showed no improper behavior on the part of either the Board President or the respondent. In a further effort to resolve the complaints, the Interim Superintendent invited everyone to talk. The parents and the respondent all spoke with the Interim Superintendent. The respondent never refused any agreement to settle the complaints as she was unaware of any agreements or offers of settlement.

5 and 6. District Operations

Respondent was chair of the Policy Committee from April 2003 until June 2004. She volunteered to chair the Policy Committee after the Board voted to appropriate approximately \$16,000 for a complete policy update and no other Board member would volunteer for the position of chair. Revamping the entire policy system involved many documents. Respondent spent many days and hours in the business office to keep track of every policy and at what stage each policy was at in the review process. In her role as chair of the Policy Committee, with the knowledge of the Superintendent and the Policy

Committee, the respondent requested copying to be done by the business office. The Superintendent instructed the business office employees to work with respondent on the policies. One employee complained to her supervisor about the additional work load created by the revamping of the entire policy system. The Business Administrator also confirmed that it was the work load and not Ms. Beck that disrupted the office since it was such a small office. The district staff members that worked on the policy revisions testified that they had a good working relationship with Ms. Beck.

Respondent also made additional requests for the copying of other documents under the Open Public Records Act (OPRA) N.J.S.A. 47:1A-1 et seq. Respondent made the OPRA requests through the proper procedures and paid for all requests as required.

When the respondent's attorney attempted to interview the district staff witnesses, he was told that the Interim Superintendent told the district staff that they could not speak with him and that he should speak with the Board attorney, Mr. Stern. On July 5, 2005, the respondent's attorney wrote Mr. Stern and asked to interview the witnesses. However, the respondent's attorney was never allowed to interview the witnesses.

7. Respondent Publicly Revealed the Identity of Complaining Parent

At its Board meeting of September 27, 2004, the Board went into executive session twice. During one of the executive sessions the Board heard complaints from three sets of parents, including respondent, which they had against each other. At the public session of the October 25, 2004 Board meeting, the executive session minutes of September 27, 2004 were presented for approval. The respondent had recused herself from one of the two executive sessions. In order to vote correctly on the approval of the minutes, when it came time to approve the executive session minutes, the respondent leaned over to a fellow Board member and asked him to verify that the first executive session was regarding the M. Z. hearing. Another Board member then said that the only minutes he was approving were for the Beck presentation.

8. Respondent's Recusal at the October 25, 2004 Executive Session Meeting

On October 1, 2004, pursuant to the advice of her attorney, the respondent sent an e-mail to the entire Board indicating that she would not recuse herself from any Board matters, in either open or closed session, in the future, because in the past she was not informed as to why she was being asked to leave. On October 25, 2004, the respondent was asked to leave the executive session of the Board because it would be discussing the hearings, including respondents, which were held at the September 27, 2004 meeting. The complainants claim that the respondent refused to leave. The respondent claims that she did not refuse to leave. In any event, respondent did eventually leave the executive session. However, prior to leaving, respondent asked that the Board President also leave because the Board President had a conflict of interest. The Board President was listed as a witness in a municipal court matter for one of the parents who were involved in the September 27, 2004 hearings. The Board President then agreed to leave the executive session.

9. Teaching Member's Retirement

A witness testified that when she was at the respondent's home, respondent said something to her about a teacher retiring prior to official notice of the teacher's retirement. The witness did not state that she was aware of the circumstances of the retirement. Respondent was not a member of the Personnel Committee and, thus she had no information about the circumstances of the teacher's retirement. The respondent did not obtain any information from the Board about the teacher's retirement. However, one of her neighbors told her that a teacher was retiring. Respondent then called the Superintendent who confirmed that the teacher was retiring, but refused to disclose the reason for her retirement because the teacher wanted it kept confidential.

10. Teacher's Maternity Leave

Respondent was the room mother for her daughter's class. Her daughter's teacher became pregnant. Respondent's daughter spoke with the respondent about the fact that her teacher was pregnant. There is no evidence that the respondent revealed the pregnancy to anyone else. Respondent was not a member of the Personnel Committee and, thus did not obtain any information from the Board about the teacher's pregnancy.

11. Public Session on October 4, 2005

At the public comment session of the October 4, 2004 Board meeting, a district parent began to make some negative remarks about the respondent's conduct towards the parent's children when the respondent was working as a volunteer playground supervisor. The parent had previously spoken with the Principal who had investigated the matter and concluded that the respondent had done nothing wrong. The Board attorney took the parent into the teacher's lounge in an effort to maintain confidentiality and listened to the parent's concerns about the respondent. The respondent certified that she became concerned with the amount of time the Board attorney was spending with the parent. A week prior, the Board had held a hearing for a parental complaint against the respondent that did not go through the chain of command procedure, and this parent had not filed a chain of command form, but had only spoken with the Principal. The respondent left the Board meeting and went into the room in an effort to resolve the problem with the parent. She indicated that the Principal had already investigated the allegations and found no wrong doing. After some conversation between the respondent and the parent, the respondent left the teacher's lounge.

ANALYSIS

As an initial matter, the Commission notes that the complainants bear the burden of proving factually any violations of the Code of Ethics for School Board Members under N.J.S.A. 18A:12-29(b).

1. Handicapped Parking Space

Complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (i) and (j) when, in November 2003 she approached the Principal and pointed out to him that a parent with a handicapped tag should park in the handicapped parking space to alleviate traffic problems. At its July 26, 2005 meeting, the Commission notified both parties that this allegation was dismissed because it was not filed within one year of notice of the alleged violation as required by N.J.A.C. 6A:28-6.1(b). Therefore, the Commission dismisses this allegation.

2. Respondent's Request of Principal for Letter

Complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(f) and (i) when she contacted the Principal and asked him to write a letter outlining his contacts with a parent against whom the respondent had taken legal action. N.J.S.A. 18A:12-24.1(f) provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

To prove a violation of N.J.S.A. 18A:12-24.1(f), the complainants allege that the respondent used the school for her gain by seeking to use the Principal's letter in a municipal court matter pending against the parent. The Commission notes that the parent had videotaped the respondent and her children starting in December 8, 2003. The District did nothing to help the respondent to resolve the matter; instead the Principal directed her to go to the police. Because of the continuous and constant videotaping of the respondent by the parent, the respondent eventually had to file a complaint of harassment against the parent in municipal court. When the respondent asked the Principal for a letter outlining his contacts with the parent, the respondent was merely attempting to obtain evidence to support her municipal case against the parent. Respondent took this action as a parent and a citizen who was trying to protect herself from harassment. She did not take this action as a Board member. There is no evidence to show that respondent surrendered her independent judgment as a Board member. There is also no evidence to show that respondent attempted to get information from the Principal that she would have otherwise been unable to get as a parent and citizen. It is reasonable for a parent in her situation to have turned to the Principal for evidence of the harassment that occurred mostly on school grounds since it was the Principal who had investigated the matter. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f) when she contacted the Principal and asked him to write a letter outlining his contacts with a parent against whom the respondent had taken legal action.

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

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

To prove a violation of N.J.S.A. 18A:12-24.1(i), complainants maintain that respondent's actions compromised her obligation to support and protect school personnel. The facts show that respondent requested the Principal to provide her with a letter outlining his contacts with a parent who had been videotaping her and her children on school property. It was the Principal who conducted an inquiry on the matter due to the parent's filing of a complaint against the respondent with the Board, which is why the respondent asked him for the letter. While the Principal was uncomfortable as a result of the request from the respondent for the letter and believed that respondent would retaliate against him, the Commission notes that there was no retaliation from the respondent and no reason to believe that she would retaliate. The Commission also notes that the respondent did not use her position as a Board member to demand that the Principal write a letter or threaten the respondent if he did not write the letter. She merely asked the Principal if he would write the letter and then accepted his response when he said that he wouldn't. The Commission concludes that such a request was not a failure on the part of the respondent to support and protect the Principal in the proper performance of his duties. Based on the foregoing, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(i) when she asked the Principal for a letter outlining his contacts with a parent against whom the respondent had taken legal action.

3. Back-to-School Night

Complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(b), (e) and (i) when she refused to adhere to the Principal's arrangements for Back-to-School Night. 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.

Complainants claim that respondent ignored her obligation to make decisions in terms of the educational welfare of children when she refused to adhere to the Principal's schedule for Back-to-School night for both the respondent and the parent who had videotaped the respondent. However, there was no evidence that the respondent was aware of any schedule for Back-to-School night. Respondent testified that she was not aware that the Principal had made special arrangements for the parent for Back-to-School night. Respondent also testified that the Principal called her and asked her if she would come to Back-to-School night at 8:00 p.m. She testified that she told the Principal that she could not agree to his request that she attend Back-to-School night at 8:00 p.m. because she would then miss one of her daughter's events that started at 6:30 p.m. The Commission notes that respondent attended Back-to-School night as a parent, not as a Board member and, as a parent, she had a right to attend the Back-to-School events for

both daughters. The Commission can find no evidence to show that respondent's decision to attend Back-to-School night at 6:30 p.m. was a decision that failed to fulfill her obligation to make decisions in terms of the educational welfare of children. Therefore, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24.1(b) when she told the Principal that she could not agree to his request that she attend Back-to-School night at 8:00 p.m.

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

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.

Complainants maintain that when respondent attended Back-to-School night, she took personal action that deprived other citizens of their enjoyment of the school, which compromised the Board as the parent in question believed that respondent's attendance was contrived from the outset, since she is a Board member. As the Commission previously noted, the respondent did not attend Back-to-School night in her role as a Board member; she attended as a parent. Respondent's attendance at Back-to-School night was a private action. Respondent has two daughters enrolled in the school. As an involved parent, she attended the Back-to-School events for both daughters. There is no evidence to show that respondent's private action in attending Back-to-School night compromised the Board in any way. Respondent's attendance at Back-to-School night did not preclude the parents in question from also attending. The evidence shows that these parents left the school at the mere sight of respondent's van. It was their choice to leave the school and not attend Back-to-School night. The respondent did nothing to keep them from attending. Therefore, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24.1(e) when she attended Back-to-School night.

Complainants also allege that respondent violated N.J.S.A. 18A:12-24.1(i), which is set forth above, when she attended Back-to-School night because she failed to support and protect school personnel. There is no evidence to show that respondent was aware that the Principal arranged a specific schedule for her for Back-to-School night. What the evidence does show is that both the respondent and the parent in question had conversations with the Principal and that the respondent was unaware of any arrangements that the Principal made with the parents. When the respondent told the Principal that she refused to delay her attendance at Back-to-School night because she wanted to attend her sixth grade daughter's events, she did so as a parent interested in the education of her daughter. Her refusal to agree to the Principal's request is not evidence that she failed to support the Principal, but is evidence that she is a concerned parent. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(i) when she refused to accept the Principal's request that she delay her attendance at Back-to-School night.

4. Respondent and District Parents

Complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(a) and (e) when she had problems with other parents in the district and behaved in a manner that would not facilitate any type of conciliation. N.J.S.A. 18A:12-24.1(a) provides:

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

To prove a violation of N.J.S.A. 18A:12-24.1(a), the complainants maintain that the respondent had been fighting with other district parents and that she did not behave in a manner that would facilitate any type of conciliation. Complainants maintain that respondent refused to acquiesce to any agreements designed to put an end to the infighting, and instead made the problem worse. Complainants allege that respondent has failed to act ethically in attempting to bring about any change and has been obsessed with her own personal issues. The Commission fails to see what type of change respondent was attempting to bring about. The Commission notes that the changes referred to in N.J.S.A. 18A:12-24.1(a) are changes that a Board member attempts to make in her role as a Board member, not in her role as a parent. In any event, the evidence shows that the complaints were brought against the respondent in her role as volunteer parent and not in her role as a Board member. Therefore, the Commission finds no probable cause to credit the allegation that respondent failed to act ethically in attempting to bring about any changes related to her role as a Board member in violation of N.J.S.A. 18A:12-24.1(a).

The complainants maintain that respondent violated N.J.S.A. 18A:12-24.1(e), which is set forth above, because she continues to take private action that compromises the Board. The complainants maintain that respondent's fighting with district parents and refusal to acquiesce to any agreements to put an end to the conflicts is private action that compromises the Board. The evidence shows that there have been several sets of parents that have filed complaints against the respondent in her role as a volunteer parent and that the respondent has filed complaints against district parents. There is no evidence to show that the respondent refused any agreements put forward by the Board. The Commission notes that when the Interim Superintendent attempted to resolve the complaints by talking to the parties, respondent met with him. The evidence also shows that there was no improper behavior demonstrated on the part of respondent when she was secretly videotaped by the Interim Superintendent. The Commission notes that there is no evidence to show that the Board was compromised. Therefore, the Commission finds no probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-24.1(e) by taking private action that compromises the Board.

5 and 6. District Operations

Complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(d) and (i) when she demanded inordinate amounts of documents from the district, was often hostile

and abusive towards district staff when requesting information and documentation and interfered with the operations of the school business office by giving direct orders to the School Business Administrator, all of which seriously impaired the operations of the district. N.J.S.A. 18A:12-24.1(d) 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.

The evidence presented shows that the Board had undertaken an extensive revamping of the Board's policy system. When the respondent, in her role as chair of the Policy Committee, requested district employees to assist her by copying policies, she made such a request with the knowledge of the Superintendent and the Policy Committee. Witnesses testified that it was the Superintendent, and not the respondent, who told the district employees to assist the respondent in the revamping of the policies. The School Business Administrator testified that the Superintendent asked her to work with the respondent on the policy revamp. The evidence also shows that for other document requests, the respondent followed the proper procedures through OPRA requests. There is no evidence to show that the respondent administered the school. The evidence shows that the respondent took her position as chair of the Policy Committee seriously and worked hard at revamping the policy system. Based on the foregoing, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24.1(d) by administering the schools.

To prove a violation of N.J.S.A. 18A:12-24.1(i), which is set forth above, the complainants allege that the respondent was often hostile and abusive towards staff when requesting information. However, the district staff who worked on the revamping of the policies with respondent testified that respondent never made any undue demands on them and was not abusive towards them. They testified that they had a good working relationship with the respondent. The evidence shows that the district staff was unhappy about the increase in the work load due to the paper intensive nature of the policy overhaul. The district staff also testified that it was the work on the policies that interfered with the operations of the office and not the respondent. There is no evidence to show that the respondent failed to support and protect school personnel in the proper performance of their duties. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(i) by failing to support and protect school personnel in the proper performance of their duties.

7. Respondent Publicly Revealed Identity of Complaining Parent

Complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(g) when, at the October 25, 2004 public session of the Board, she revealed the identity of one of the parents who had complained about her in a September 27, 2004 executive session of the Board. N.J.S.A. 18A:12-24.1(g) provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all 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.

To prove a violation of N.J.S.A. 18A:12-24.1(g), complainants allege that the respondent failed to hold confidential the identity of a complaining parent, which needlessly injured the parent. The evidence shows that at the October 25, 2004 Board meeting, the respondent leaned over to another Board member and revealed the complaining parent's name in an effort to vote correctly on the executive session minutes for the September 27, 2004 Board meeting. The Commission can find no evidence to show that when the respondent spoke with the other Board member, any one other than Board members heard her. The respondent mentioned the complaining parent's name to another Board member and not the public. In doing so, she was not releasing confidential information since the Board member was already aware of the complaining parent's name. Based on the foregoing, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(g) at the October 25, 2004 Board meeting.

8. Respondent's Recusal at the October 25, 2004 Executive Session Meeting

Complainants allege that the respondent violated N.J.S.A. 18A:12-24(c) and N.J.S.A. 18A:12-24.1(f) when, at the October 25, 2004 Board meeting, she refused to recuse herself from the executive session until the Board President also agreed to recuse herself. N.J.S.A. 18A:12-24(c) provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

On October 25, 2004, the respondent was asked to leave the executive session of the Board because it would be discussing the hearings, including respondent's, which were held at the September 27, 2004 meeting. The complainants argue that when the respondent refused to leave the executive session on October 25, 2004 unless the Board President also left, she violated N.J.S.A. 18A:12-24(c). The evidence shows that the Board President had a conflict of interest in the matter before the Board at the October 25, 2004 executive session. The Board President was listed as a witness in a municipal court matter for one of the parents the Board would be discussing in the October 25, 2004 executive session. The mere fact that the respondent reasonably requested the recusal of a conflicted Board member prior to her leaving the executive session does not constitute a violation of N.J.S.A. 18A:12-24(c). The evidence shows that the respondent left the executive session. The Commission can find no evidence of any action on the part of the

respondent that would rise to the level of a violation of N.J.S.A. 18A:12-24(c). Therefore, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24(c).

The complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(f), set forth above, because she attempted to use the schools for personal gain and only agreed to recuse herself when the Board President capitulated to her “quid pro quo” demand. The Commission fails to see how the respondent’s reasonable request that a conflicted Board member leave the executive session prior to her leaving the session is using the schools for personal gain. As noted above, the Board President had a conflict of interest in the matter before the Board at the executive session. Therefore, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24.1(f) when she requested that a conflicted Board member also leave the executive session prior to respondent’s recusal from the executive session.

9. Teaching Member’s Retirement

Complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(g), set forth above, when, at a private party in her home, she revealed the circumstances of a teaching member’s retirement. The evidence shows that the respondent discussed the retirement of a teacher, not the circumstances of that retirement. The respondent found out about the teacher’s retirement from one of her neighbors and had no knowledge of the circumstances of the retirement. According to the testimony, the teacher’s retirement was not confidential information, it was common knowledge. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(g) when she discussed the teacher’s retirement.

10. Teacher’s Maternity Leave

Complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(g), set forth above, when, prior to Board discussion and acceptance of a maternity leave request, she revealed to members of the community a teacher’s intention to go on maternity leave. The Commission notes that there is no evidence to show that respondent spoke to anyone about a teacher’s maternity leave request. There is also no evidence to show that the respondent spoke to anyone, except in response to her daughter, about the teacher’s pregnancy. Respondent became aware of that fact through her daughter not through the Board. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(g) in regards to a teacher’s maternity leave request.

11. Public Session on October 4, 2005

Complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(c), (e), (f) and (j) when respondent interrupted a private conversation between a district parent and the Board attorney. A district parent had been taken into the teacher’s lounge by the Board Attorney because the parent was discussing confidential information regarding the

respondent during the public comment session of the Board's October 4, 2004 meeting. 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.

Complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(c) because, when she went into the teacher's lounge to speak with the Board attorney and the parent, she failed to confine her actions to policy making, planning and appraisal. The evidence shows that at the public session of the October 4, 2004 Board meeting, a district parent was complaining about the conduct of the respondent in her role as a parent volunteer playground supervisor. This was a matter that had already been investigated by the Principal resulting in a finding of no wrong doing on the part of the respondent. The respondent went into the teacher's lounge to try and help resolve the parent's complaint and to inform the Board attorney that the Principal had already investigated the matter. The Commission cannot find that the respondent took Board action when she went into the teacher's lounge since the parent had complained about the respondent in her role as a parent volunteer playground supervisor, not in her role as a Board member. Furthermore, the respondent was attempting to bring about a resolution of the matter. Based on the foregoing, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(c).

Complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(e) because when she went into the teacher's lounge to resolve the parent's complaint, she took private action that could compromise the Board. As the Commission has noted above, the respondent did not take Board action when she went into the teacher's lounge to resolve the parent's complaint, she took private action. However, the Commission notes that the private action was an attempt to resolve a district parent's complaint and to clarify for the Board attorney what measures had already been taken to resolve the matter. This private action was the type of conciliatory action that the complainants alleged in the fifth count that respondent failed to undertake. In the fifth count, complainants maintained that the respondent took no action to attempt to put an end to parental complaining. Then, when the respondent took private action to resolve a parental complaint, the complainants allege that such private action compromises the Board. Since the respondent's private action was an attempt to resolve a parental complaint and inform the Board attorney of the previous measures taken to resolve the complaint, the private action could not compromise the Board. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(e) when she took private action in an attempt to resolve a parental complaint against the respondent, which had already been investigated.

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

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

Complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(j) because she failed to refer complaints to the chief school administrator and acted on complaints before any administrative intervention. The evidence shows that before the October 4, 2004 Board meeting, the parent had already spoken to the Principal about the complaint against the respondent and the Principal had exonerated the respondent. Thus, an administrative solution had occurred and failed since the parent was still complaining. Respondent was acting in her capacity as a parent volunteer playground supervisor after the failure of an administrative solution. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(j).

DECISION

For the reasons expressed above, the Commission finds no probable cause to credit the allegations that respondent violated the School Ethics Act and dismisses the allegations against her.

REQUEST FOR SANCTIONS

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]

Pursuant to case law, either prong of N.J.S.A. 2A:15-59.1 may be satisfied in order to find that a complaint is frivolous. Fagas v. Scott, 251 N.J. Super 169, 189 (Law Div. 1991). In the present matter, the Commission finds that this complaint meets the second prong of the test.

In determining whether a complaint meets the standard set forth at N.J.S.A. 2A:15-59.1, the Courts must consider the totality of the circumstances. See, McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 561 (1993); Weed v. Casie

Enterprise, 279 N.J. Super. 517, 532 (App. Div. 1995). In considering the totality of these circumstances, the Commission first notes that this complaint was filed on January 13, 2005, not even one month after the respondent's filing of a complaint with the Commission against the Board President. Furthermore, there are extensive allegations in the complaint, some of which the complainants' own witnesses refuted. It appears that based on the timing of the filing of the complaint and the extensive allegations, that the complaint was filed for the purposes of harassment or malicious injury of the respondent. However, the Commission cannot conclusively determine that all complainants filed the complaint for the purposes of harassment or malicious injury.

In application of the second prong of the test, the Commission cannot find how the complainants could have believed that there was a reasonable basis in law for the allegations. For example, in allegations five and six, the district staff members that the complainants alleged were abused testified for the respondent that they were not abused. It does not appear that the complainants ever spoke to the witnesses to determine if they were abused by the respondent. Furthermore, in allegations nine and ten, the complainants allege that respondent released confidential information with no evidence that the information was obtained through her board membership. The Commission finds that the complainants should have known that the complaint was filed without any reasonable basis in law.

For the foregoing reasons, the Commission finds the complaint to be frivolous pursuant to N.J.S.A. 18A:12-29(e) and orders that the complainants pay a fine in the amount of \$250.00.

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 – C01-05

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 therefore dismissed the charges against her; and

Whereas, the Commission finds that the complaint meets the standard set forth in N.J.S.A. 2A:15-59.1 for a frivolous complaint and further finds that a sanction of \$250.00 is appropriate; 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 the complainants are hereby **ORDERED** to pay the Commission a \$250.00 fine for the filing of a frivolous complaint. The Commission directs its staff to notify all parties to this action of the Commission's decision herein and to collect the fine imposed above.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 27, 2005.

Lisa James-Beavers
Executive Director
PCG/LJB/MET/ethics/decisions/C01-05