

<b>HOWARD A. KUPFERMAN</b>	:	<b>BEFORE THE SCHOOL</b>
	:	<b>ETHICS COMMISSION</b>
v.	:	
	:	
<b>SUZANNE BECKER</b>	:	<b>Docket No. C05-06</b>
<b>LONG HILL TOWNSHIP</b>	:	
<b>BOARD OF EDUCATION</b>	:	<b>DECISION</b>
<i>MORRIS COUNTY</i>	:	
	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on March 31, 2006 by Howard A. Kupferman alleging that Suzanne Becker, president of the Long Hill Township Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainant specifically alleges that respondent violated N.J.S.A. 18A:12-24.1(c) of the Code of Ethics for School Board Members when, as Board president, she failed to advise the public that the superintendent’s contract was up for renewal. Complainant also alleges that the respondent violated N.J.S.A. 18A:12-24.1(j) when, as Board president, she failed to act at a public meeting after failure of an administrative solution on two occasions, one involving concerns the complainant had regarding the tuning of pianos in the classroom, and another involving a special education matter. Complainant also alleges a violation of N.J.A.C. 6:3-1.3 because the Board members failed to discuss the Act annually at a regularly scheduled public meeting.

The Commission granted the respondent an extension of time to file an answer for good cause. On June 7, 2006, through her attorney, Nicholas Celso, III, Esquire, the respondent filed a motion to dismiss in lieu of an answer. In the motion to dismiss, respondent argues that the Commission lacks jurisdiction to make a determination of a violation of N.J.A.C. 6:3-1.3. The respondent further argues that the Commission lacks jurisdiction over special education matters, and the complainant does not have standing to bring the special education complaint because it does not involve the complainant. The respondent also argues that the complainant has failed to allege facts sufficient to establish a violation of N.J.S.A. 18A:12-24.1(c) and (j) and N.J.S.A. 18A:12-24.1(j) does not compel the Board to act on every complaint raised by a member of the community. The respondent further argues that the complainant filed this complaint in retaliation for actions taken by the Board to prevent complainant from soliciting a piano tuning contract with the Board. The respondent requests that the Commission find that the complaint is frivolous and impose sanctions on the respondent.

On June 27, 2006, the complainant filed an answer to the motion to dismiss wherein he argues that the respondent has offered no evidence to show that the Board has discussed the Act and the Code of Ethics for School Board Members annually at a regularly scheduled public meeting. The complainant also argues that the Act specifies that any person can file a complaint even if the complainant is not directly impacted by the complained of conduct. The respondent further argues that N.J.S.A. 18A:12-24.1(j)

requires the Board to act on every complaint where there is a failure of an administrative solution. The complainant argues that the respondent did not conduct a thorough investigation of complainant's concerns, but instead referred the concerns back to the superintendent whose previous pursuit of the matter was questionable. Complainant denies that the complaint was filed in retaliation.

The respondent filed a motion to suppress the complainant's response to the respondent's motion to dismiss arguing that the complainant's response was not timely filed. However, the Commission did not grant the respondent's motion to suppress because the complainant's response was timely filed on June 27, 2006.

The Commission considered the complaint, motion to dismiss and response to the motion to dismiss at its July 25, 2006 meeting. During the public portion of the meeting, the Commission granted the motion to dismiss the complaint. The Commission also voted to find that the complaint was not frivolous.

## **FACTS**

The Commission was able to discern the following facts based on the pleadings and the documents submitted. In considering whether to grant a motion to dismiss, the Commission reviews the facts in the light most favorable to the complainant.

At all times relevant to the allegations in this complaint, the respondent was president of the Board. The Board reviewed the Act and the Code of Ethics for School Board Members on July 25, 2005. The respondent did not solicit input from the public regarding the renewal of the superintendent's contract.

Sometime in March 2005, the complainant raised concerns regarding the tuning of classroom pianos with school staff and the superintendent. The complainant was unsuccessful in resolving his concerns with the superintendent. The complainant attended several Board meetings and during the public portion of the meetings he shared his concerns regarding the tuning of pianos in the classroom. The complainant felt that the Board did not address his concerns at those public meetings. At the suggestion of the County Superintendent's office, the complainant sent several letters to the Board in April 2005. These letters outlined his concerns regarding the tuning of classroom pianos and asked the Board to conduct a thorough investigation of the matters raised in his letters. The complainant felt that the Board's responding letter did not adequately address his concerns. The complainant again addressed the Board during the public comment portion of the February 2006 Board meeting and was gavelled down by the respondent and not allowed to finish his comments.

Also during the public comment portion of the February 2006 Board meeting, a parent of a special education student addressed the Board regarding services for the student. The respondent did not address the parent's concerns because of the confidential nature of special education issues and stopped the parent from finishing.

## ANALYSIS

The Commission will initially address the complainant's allegation that the respondent violated N.J.A.C. 6:3-1.3. As the respondent correctly notes in her motion to dismiss, the Commission does not have jurisdiction over allegations of a violation of N.J.A.C. 6:3-1.3. Pursuant to N.J.S.A. 18A:12-29(a), the Commission has jurisdiction to hear complaints alleging a violation of the Act or the Code of Ethics. Therefore, the Commission grants the respondent's motion to dismiss the complainant's allegation that the respondent violated N.J.A.C. 6:3-1.3.

The Commission notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members. In considering a motion to dismiss, the Commission considers the facts in the light most favorable to the non-moving party.

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(c) of the Code of Ethics for School Board Members because, as Board president, she did not solicit public input on the renewal of the superintendent's contract. 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.

To prove a violation of N.J.S.A. 18A:12-24.1(c), complainant argues that, "in my opinion the renewal of a school superintendent's contract is a plan". The complainant then reasons that the respondent, as Board president, was required by N.J.S.A. 18A:12-24.1(c) to consult the public since the public would be affected by "plan" meaning the contract renewal. Pursuant to Black's Law Dictionary, Fifth Edition, the term "plan" is defined as a method of design or action, procedure or arrangement for accomplishment of a particular act or object, and the term "contract" is basically defined as an agreement between two or more persons which creates an obligation. Based on those definitions, the Commission finds that the renewal of the superintendent's contract was not a plan and consideration of the contract did not constitute planning.

In viewing the facts in the light most favorable to the complainant, the Commission can find no further evidence to factually prove that respondent failed to confine her Board action to policy making, planning, and appraisal, and help to frame policies and plans only after the Board has consulted those who will be affected by them. Therefore, the Commission grants the respondent's motion to dismiss complainant's allegation that respondent violated N.J.S.A. 18A:12-24.1(c).

The complainant also alleges that the respondent violated N.J.S.A. 18A:12-24.1(j) when, as Board president, she failed to act at a public meeting after failure of an administrative solution on two occasions: the first, involving complainant's concerns

regarding the tuning of pianos in the classroom; and another, involving a special education matter.

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.

To prove a violation of N.J.S.A. 18A:12-24.1(j), the complainant argues that the respondent has an affirmative duty to act at a public meeting on complaints once an administrative solution has failed. The complainant argues that the respondent did not investigate his complaint regarding the tuning of pianos in the classroom after the superintendent failed to address complainant's concerns. The complainant also argues that the respondent did not act on the complaint of the parent of a special education student at a public meeting after the parent's complaints were not addressed by the administration. The Commission has consistently found a violation of N.J.S.A. 18A:12-24.1(j) only in those matters where a board member has acted on a complaint without referring the complaint to the chief administrator officer. See I/M/O Kroschwitz, and Sturgeon, C29-03 (November 25, 2003), Com'r decision #429-11/03 (December 19, 2003) and I/M/O Lahn, C25-05 (December 20, 2005), Com'r decision #383-12/05 (January 23, 2006). Here, the respondent acted appropriately when she referred respondent's concerns to the chief school administrator for resolution. The respondent also acted appropriately when she referred the parent's concerns regarding special education to the chief administrative officer.

In viewing the facts in the light most favorable to the complainant, the Commission can find no evidence to factually prove that respondent failed to refer all complaints to the chief school administrator or that she failed to act on a complaint as a public meeting only after of an administrative solution. Therefore, the Commission grants the respondent's motion to dismiss complainant's allegation that respondent violated N.J.S.A. 18A:12-24.1(j).

## **DECISION**

For the reasons expressed above, the Commission grants the respondent's motion to dismiss the complaint.

## **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]

The respondent argues that the complaint was filed in retaliation for actions taken by the Board to prevent complainant from soliciting a piano tuning contract. However, the complaint indicates that the complainant was concerned about the respondent's failure to act on complaints at a public meeting after an administrative solution had failed. While there was an ongoing disagreement between the Board and the complainant regarding the tuning of pianos in the classroom, this was not the entire focus of the complaint. The Commission can find no evidence that the complaint was filed in bad faith solely for the purpose of harassment, delay or malicious injury. It is apparent to the Commission from the complaint and the complainant's response to the motion to dismiss that the complainant believed that the respondent's conduct violated the Code of Ethics. Thus, he believed that there was a reasonable basis in law for the complaint. The Commission has no information to suggest that he should have known otherwise. For the foregoing reasons, the Commission finds that the complaint was not frivolous and denies the respondent's request for 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 – C05-06**

**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 grants the respondent's motion to dismiss the complaint; 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 grant the respondent's motion 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.

---

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution  
was duly adopted by the School  
Ethics Commission at its public meeting  
on September 26, 2006.

---

Lisa James-Beavers  
Executive Director

PCG/LJB/MET/ethics/decisions/C05-06