

ANNIE D. JACKSON,	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
v.	:	
	:	Docket No. C09-07
REGINALD DAVIS,	:	
<i>EAST ORANGE</i>	:	
<i>BOARD OF EDUCATION</i>	:	
<i>ESSEX COUNTY</i>	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on February 26, 2007 by Annie D. Jackson alleging that Reginald D. Davis, a member of the East Orange Board of Education (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The complainant specifically alleges that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (g), (i) and (j) of the Code of Ethics for School Board Members when, at a Curriculum Committee meeting, the respondent aggressively questioned the complainant in a manner that went beyond the scope of his duty as a board member and was, instead administrative in nature.

Pursuant to respondent’s Motion to Dismiss, at its December 18, 2007 meeting, the Commission voted to grant the Motion to Dismiss regarding the alleged violation of N.J.S.A. 18A:12-24.1(g), but denied the Motion to Dismiss all of the other alleged violations. An Answer was submitted on behalf of the Respondent on January 10, 2008. The respondent requests that the complaint be found frivolous.

The matter was heard on the merits of the complainant’s claims at the Commission’s February 26, 2008 meeting. After presentation of the complainant’s case, the Commission granted the respondent’s Motion to Dismiss the alleged violations of N.J.S.A. 18A:12-24.1(c), (d), and (j). The Commission allowed the complainant to move forward on her claim of violation of N.J.S.A. 18A:12-24.1(i).

At the close of testimony, and pursuant to a request from respondent’s counsel, the parties were accorded 14 days from the meeting date to submit closing arguments in writing for the Commission’s consideration. Discussion, therefore, was tabled for the next meeting. The respondent’s closing statement was filed on March 11, 2008. The complainant’s closing statement was filed on March 14, 2008, beyond the 14-day timeline accorded by the Commission. Therefore, the complainant’s closing statement was not considered by the Commission. After discussion at its meeting on April 1, 2008, the Commission determined to dismiss the remainder of the complaint and find that the complaint was not frivolous.

THE PLEADINGS

By way of background, the complainant is an elementary school principal assigned to the Langston Hughes School of Publishing and Fine Arts in the East Orange School District (“District”). The respondent is a former member of the Board and the chair of the Curriculum Committee. The complainant attended the Curriculum Committee’s meeting held on the evening of November 28, 2006.

The complainant asserts that, at the November 28, 2006 meeting, she initially presented a resolution to the committee for consideration; later she was questioned about the results of her school’s Adequate Yearly Progress (“AYP”) data. She contends that Mr. Davis initiated the questioning by asking her what evidence there was that she was implementing strategies for improvement. The complainant alleges that Mr. Davis asked several questions in this regard. (Complaint at p. 2, paragraph 7)

The complainant contends that Mr. Davis moved to the issue of her school’s staff attendance and questioned how she could run her program if people are not coming to work. In this connection, the complainant alleges that the respondent “went into a tirade using aggressive body language.” She further asserts that the respondent indicated that her teachers had their resumes “out there,” meaning, they were looking for other positions. (*Id.* at pp. 2-3, paragraph 7).

According to the complainant, the respondent then asked questions about the attendance of her secretarial staff. On this issue, the complainant asserts that the respondent “continued his angry tirade,” questioning how an attendance problem could have endured for eight years. The complainant asserts that Ms. Davis asked her, “Can’t you pay your people to come to work!?!” (*Id.* at p. 3, paragraph 9)

When the discussion turned to the issue of professional development, the complainant alleges that the respondent questioned whether she trained her teachers; she asserts he was loud, condescending and aggressive. (Complaint at p. 3, paragraph 10) The complainant further claims that she was asked about whether there were sufficient library books in her classroom. When she indicated that books had not been ordered for three new classrooms, the complainant asserts that the respondent replied, in a loud and aggressive tone “You haven’t ordered the books; half the year is gone! How are the students going to get help if they don’t have what they need!?!” (*Id.* at p. 3, paragraph 11)

Finally, the complainant asserts that the discussion turned to technology and she informed the committee that it was not until November 22, 2006 that her school was connected to the district’s AS400 system which allows the technological capability to input requisitions for school needs. The complainant claims that the respondent then yelled, “You mean they haven’t done that since I was at your school a month ago.” (*Id.* at pp. 3-4, paragraph 11). The complainant asserts that the respondent’s conduct at the November 28, 2006 meeting was in violation of N.J.S.A. 18A:12-24.1(c), (d) (i) and (j).

In his Answer and affidavit, the respondent denied that it was he who initiated the questioning as to the evidence of improvement strategies in her school. Rather, the respondent asserts that another Board member, Mr. J. Garfield Jackson, posed the questions to the complainant and that similar questions were asked of all the principals who appeared before the Committee. (Respondent's Affidavit at p. 3 paragraph 12)

The respondent denied that he initiated the topic of staff attendance, although he acknowledged asking follow-up questions on this issue. The respondent acknowledged that he asked the complainant how she was able to run her program with excessive staff absences and he admitted making a statement to the effect that there must be a problem if staff are not coming to work. He vehemently denied the allegation that he "went into a tirade, yelling and using aggressive body language," although he acknowledged that he speaks with his hands. The respondent admitted that he made a statement that he was aware that teachers in the complainant's school were looking elsewhere for positions, although he never identified any teachers by name. (Id. at pp. 3-4, paragraphs 13-15)

The respondent affirmed that he served as a Board liaison to the complainant's school and, in this connection, he "received complaints from teachers indicating they were looking for jobs in other districts because of the Complainant's disrespectful attitude towards them and due to her poor leadership role." The respondent further attested that he brought similar complaints to the Superintendent's attention approximately two years ago and also in or around October 2006, just prior to the meeting in question. The respondent stated that he specifically informed the Superintendent, Dr. Hoover, as well as the two assistant superintendents, Dr. Scott and Ms. Veale. The respondent states, "I am aware that prior to the November 28, 2006 Curriculum Committee meeting, Ms. Veale spoke to the Complainant about her treatment of staff. At no time did I raise these issues at the November 28, 2006 Curriculum Committee meeting." (Id. at p. 4, paragraph 16)

The respondent denied that he initiated the discussion regarding attendance problems with the complainant's secretarial staff; he further denied that he was angry or went into a tirade. Rather, he stated that when the issue turned to the attendance of the complainant's secretarial staff, he asked questions about how long a particular secretary's attendance had been an issue and why nothing was done about it. He further admitted that he said words to the effect, "Can't you pay your people to come to work?" This statement, according to the respondent, was not meant as a literal suggestion, but was in reference to the fact that the Board offers a bonus and awards to staff members with perfect attendance as an incentive to regularly come to work. (Id. at p. 5, paragraph 18)

The respondent acknowledged that he questioned the complainant about professional development for her teachers and about library books in the complainant's classroom; he acknowledged that he was surprised to learn that not all classrooms were adequately supplied with books. The respondent affirmed that he "likely made the statements" regarding the library books, but did not do so in a loud or aggressive tone. (Id. at p. 6, paragraphs 19, 20)

The respondent stated that he was “surprised and troubled” by the complainant’s statements at the meeting that her school was not connected to the District’s AS400 system. He acknowledged that he “likely made the statements” that the complainant alleged in the complaint in this regard, but he did not yell. (Id. at p. 6, paragraph 21)

Finally, the respondent asserts that the Board does not have a Policy Committee; consequently, policy making is handled by the specific committees to which the policy in question would apply. As such, the respondent contends that his comments to the complainant “were directly related to identifying obstacles to achieving AYP and identifying needed resources” and were not aimed at embarrassing, attacking or reprimanding Ms. Jackson. (Id. at p. 6, paragraph 24)

EVIDENCE

Ms. Jackson testified that she attended the meeting on November 28, 2006 to discuss AYP with respect to her school. Her school did not reach its AYP goal and she was presenting strategies that were being implemented. Present at the meeting were two Board members, Reginald Davis and J. Garfield Jackson, as well as two assistant superintendents, one of whom is her supervisor, Ms. Brenda Veale. Ms. Jackson further stated that three colleagues were present during the time in which she was questioned by the Curriculum Committee.

Ms. Jackson testified that Mr. Davis initiated the questions, as set forth in her complaint, by asking how she knew the strategies were actually being implemented. She asserts that Mr. Davis persisted in this line of questioning, wanting to know what he would see if he went into the school.

From this, Ms. Jackson testified that the questioning moved to staff attendance; she agreed that she was having problems in this area. However, she said that Mr. Davis’ questioning escalated to yelling and ranting as he stated that he was aware that teachers had their resumes “out there.” Ms. Jackson claimed that Mr. Davis did not offer her any suggestions or strategies for improvement. She further testified that Mr. Davis asked her, “Can’t you pay your staff to come to work?” She responded by asking if he meant her personally.

As to the discussion of technology, Ms. Jackson attested that the respondent asked her about supplies and classroom libraries. According to the complainant, Mr. Davis asked if the schools were adequately supplied. Ms. Jackson responded that they were not, in that her school was a new facility and she did not have access to the District’s automated system for ordering supplies (the AS400) until November 22, 2006, which was days before the meeting.

Ms. Jackson testified that she never had meetings with any administrators about the concerns raised by the respondent; neither did her evaluations reflect a problem with these issues (*i.e.*, ordering materials and staff attendance).

On the issue of her secretarial staff, Ms. Jackson acknowledged that she had a problem because there was a vacant position; also the head secretary was on sick leave and the third secretary had poor attendance. According to the complainant, when Mr. Davis questioned her on this at the meeting, she refused to discuss it since it was a personnel matter.

Ms. Jackson testified that the principal who presented information before her that evening, Dr. Howard Walker, was not asked questions about staff attendance, supplies in the library and professional development. Moreover, Ms. Jackson averred that the account offered by Dr. Walker in his certification (below) is “not true.”

In response to questioning from the Commission, Ms. Jackson acknowledged that she could have filed a grievance with her administrative association, but she did not. She also stated that although other administrators were present during the meeting, they did not speak on her behalf.

On cross-examination, Ms. Jackson stated that the facts presented in Mr. Jackson’s certification (below) are not the facts as she recalls them. Additionally, she testified that she could not recall that some administrators actually raised issues of staff attendance with her in the past. Ms. Jackson denied that her evaluations referenced anything about staff treatment or staff being discontent.

The respondent testified that, at the time of the meeting on November 28, 2006, he was the chair of the Curriculum Committee, the purpose of which was to discuss resolutions brought by the District administrators. As to the specific discussions on November 28, 2006, that forum was to discuss AYP and to look at how schools were trying to meet their goals. This was the second year that the complainant’s school had not met AYP goals. The purpose of the committee, according to Mr. Davis, was to understand what was happening in the schools and provide feedback. He stated that he believed all his questions were related to policy. He affirmed that he and Mr. Jackson were the only Board members present at the meeting, but that two assistant superintendents were also in attendance.

Mr. Davis testified that, “in theory” there is a Policy Committee; it had been discussed but the Board was instructed by the Board President that they had to make policy in each committee.

Mr. Davis acknowledged that a significant amount of the questions for the complainant on November 28, 2006 were from him. He averred that the complainant raised the issue of staff attendance, specifically speaking about her secretary and the problem she had been trying to deal with for eight years.

Mr. Davis states that his tone of voice during the meeting was consistent, much the same as that which he used while testifying before the Commission. He admitted that he is passionate about education and that was his reason for being a Board member.

Mr. Davis further acknowledged that at times he would ask challenging questions, seek clarity and does speak with his hands.

On the issue of supplying the classrooms, Mr. Davis asserted that the complainant could have accessed the computer system from her former office, which he indicated was next door to the new school she was occupying at the time of the meeting, thereby allowing her to timely order necessary supplies. On cross-examination, he conceded that he was not aware that the system in the complainant's former office was actually working.

Mr. Davis admitted stating that he knew that staff had their resumes "out there." In this connection, he explained that each school in the District has a Board liaison and he was the liaison to the complainant's school. He testified that staff members would communicate with him about their issues and concerns; he brought the complainant's staff problems to the attention of the Superintendent.

The respondent referenced two certifications which contradict the complainant's version of events at the meeting. Dr. Howard Walker, a District principal, was present at the November 28, 2006 meeting and attests, in relevant part,

I understand that Ms. Jackson is alleging that during the time she was before the committee Mr. Davis yelled at her, went into a tirade towards her, reprimanded her, made disparaging comments toward and used aggressive body language towards her. These allegations are simply untrue. (Walker Certification at p. 2)

J. Garfield Jackson was the other Board member present that evening. Mr. Jackson certified that it was he, not Mr. Davis, who asked the complainant "What evidence would I see in her school that the strategies she presented to the Committee were actually being implemented." Mr. Jackson characterized the dialogue as "respectful." He further certified, in relevant part:

In my opinion, Mr. Davis did not yell at or engage in aggressive body language towards Ms. Jackson. I also did not perceive that he was trying to embarrass or humiliate her with his questions. We were trying to ascertain relevant information regarding her school's annual yearly progress so that the Board could help her achieve its goals. In fact, the depth of questioning was far more comprehensive for the other Principals that appear [sic] before our Committee. (Jackson Certification at p. 2)

MOTION TO DISMISS

Pursuant to N.J.A.C. 6A:28-6.9(c), upon completion of complainant's case, the respondent moved to dismiss the allegations that he violated N.J.S.A. 18A:12-24.1(c), (d), and (j) of the Code of Ethics for School Board Members. The motion was granted by the Commission, for the reasons set forth below.

It was the complainant's burden to establish that the respondent failed to:

- confine 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;
- carry out his responsibility not to administer the schools, but, together with his fellow board members, to see that they are well run; and
- refer all complaints to the chief administrative officer and act on the complaints at public meetings only after failure of an administrative solution.

The Commission found, however, that the complainant failed to meet her burden of proving that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), and (j). In this regard, the Commission notes that the substance of the questions themselves did not rise to the level of being violative of the Code of Ethics for School Board Members. Mindful of the respondent's affidavit affirming that the District does not have a Policy Committee and that policy-making, therefore, is left to individual committees, such as the Curriculum Committee, the Commission finds that the complainant did not show that the nature of the questions posed by Mr. Davis, while evidently challenging to the complainant, went beyond policy making, planning, and appraisal in violation of N.J.S.A. 18A:12-24.1(c).

Further, although the complainant apparently maintains that the respondent's question, "Can't you pay your staff to come to work?" was in violation of N.J.S.A. 18A:12-24.1(d) and his duty not to administer the schools, the Commission notes that the regulations define such conduct as becoming "directly involved in activities or functions that are the responsibility of school personnel or the day to day administration." (N.J.A.C. 6A:28-7.1) On this record, there is no such evidence.

Finally, the respondent attests in his affidavit that he reported the complainant's staff problems to the Superintendent. Although the complainant could not recall any conversations with administrators regarding the issues that were raised in the meeting, such testimony simply does not establish that Mr. Davis failed to refer these concerns to the chief school administrator in violation of N.J.S.A. 18A:12-24.1(j).

Accordingly, at its meeting on February 26, 2008, the Commission granted the respondent's Motion to Dismiss the allegations that he violated N.J.S.A. 18A:12-24.1(c), (d), and (j); the Commission allowed the complainant to move forward on her claim that the respondent violated N.J.S.A. 18A:12-24.1(i).

FINDINGS OF FACT

The Commission found the following facts based on the pleadings, testimony and documents on the record.

1. The complainant is an elementary school principal assigned to the Langston Hughes School of Publishing and Fine Arts in the East Orange School District.
2. The respondent was, on November 28, 2006, a member of the Board and the chair of the Curriculum Committee.
3. The complainant attended the Curriculum Committee's meeting held on the evening of November 28, 2006. She appeared before the Curriculum Committee to discuss AYP goals for her school.
4. Mr. Davis questioned Ms. Jackson on issues related to strategies for school improvement, staff attendance, professional development, library books and supplies, and the school's connection to the AS400 system.
5. Mr. Davis' questioning of the complainant was focused and challenging.

ANALYSIS

The remaining allegation before the Commission was that the respondent's conduct at the November 28, 2006 meeting breached his duty to support and protect school personnel in the proper performance of their duties, in violation of N.J.S.A. 18A:12-24.1(i) of the Code of Ethics for School Board Members. The Commission notes that the parties' testimony as to the tone and manner of respondent's questions is diametrically opposed. Notably, the complainant has offered no independent accounts to corroborate her version of the events. Whereas, the Commission has considered the certifications offered by two other school officials who were present at the meeting and who affirm that the questioning at the meeting was not extreme or disrespectful. Thus, there is no evidence on this record to demonstrate that the respondent's questioning of Ms. Jackson, albeit demanding, was for a purpose other than to gather information. The Commission, therefore, finds that the complainant failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(i).

REQUEST FOR SANCTIONS

At its April 1, 2008 meeting, the Commission considered the respondent's request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence which might show that the complainant filed the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also has no information to suggest that the complainant should have known that the complaint was without any reasonable basis in law or equity or that it could not be supported by a good faith argument for an extension,

modification or reversal of existing law. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondent's request for sanctions against the complainant.

DECISION

Based on the testimonial and documentary evidence, the Commission finds that the complainant has failed to prove factually that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (i) and (j) of the Code of Ethics for School Board Members. Consequently, the complaint is dismissed. 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 – C09-07

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

Whereas, at its meeting on December 18, 2007, the Commission granted the respondent's Motion to Dismiss the complainant's allegation that Reginald Davis violated N.J.S.A. 18A:12-24.1(g) of the School Ethics Act; and

Whereas, at its meeting of February 26, 2008, the Commission granted the respondent's Motion to Dismiss the allegations that Reginald Davis violated N.J.S.A. 18A:12-24.1(c), (d), and (j) of the Code of Ethics for School Board Members, but tabled the vote as to the remaining allegation; and

Whereas, at its meeting on April 1, 2008, the Commission voted to dismiss the remaining allegation that Mr. Davis violated N.J.S.A. 18A:12-24.1(i);

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 it decision in this matter and directs it staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on April 1, 2008.

Joanne Boyle, Executive Director