

ROBERT McCANN	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	Docket No. C14-07
ABDI GASS	:	
CHESILHURST BOARD OF	:	
EDUCATION	:	DECISION
CAMDEN COUNTY	:	
_____	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on April 9, 2007 by Robert McCann, alleging that Abdi Gass, Superintendent of the Chesilhurst School District (District) 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(e) of the Code of Ethics for School Board Members. The respondent submitted a timely answer to the complaint through his attorney, Emmett E. Primas, Jr. Esq., and requested the Commission to find the complaint frivolous and sanction the complainant pursuant to N.J.S.A. 18A:12-29(e). The Commission invited the parties to attend its April 22, 2008 meeting. The complainant did not attend the meeting. The respondent attended the meeting and testified before the Commission. During the public session of the April 22, 2008 meeting, the Commission voted to find that the respondent did not violate N.J.S.A. 18A:12-24.1(e) and dismissed the complaint. The Commission also voted to find that the complaint was not frivolous.

THE PLEADINGS

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(e) when he used school stationary for his personal use by placing an email address on it to suggest that the District is somehow associated with the email address. (Complaint page 1) He also alleges that the email address represents a private political partisan group.

In his answer, the respondent asserts that he is not a “school official” as defined by the Act and responds as though the complainant had alleged a violation of N.J.S.A. 18A:12-24(e), which is in the prohibited acts section of the Act. (Respondent’s answer, pages 1-2) The respondent asserts that the District does not provide email to its administration or teaching staff and, as a result, personal email addresses are used on District stationary. The email address on the District’s stationary is the respondent’s personal email address and does not represent any organization. (Respondent’s certification, paragraph 8) The respondent uses his email address on District stationary in order to facilitate communication with parents and colleagues. (Respondent’s answer, page 3)

EVIDENCE

The respondent testified that he has been the chief school administrator at Chesilhurst for the past five years. He testified that the District is a small one and does not provide email for the administration or staff members; therefore, he uses his personal email address on the District stationary. He further testified that he uses his personal email address as a courtesy for parents and board members. He stated that his email address is not connected to any organization, but is something he selected for personal reasons.

FINDINGS OF FACT

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

1. At all times relevant to the complaint, the respondent was the chief school administrator of the District and, as such, was a school official subject to the provisions of the Act.¹
2. The District does not provide official district email to the respondent or any staff in the District.
3. The respondent uses his personal email address on District stationary for the purpose of facilitating communication with board members, parents and colleagues.
4. The respondent's email address does not represent any group or organization and was selected by him for personal reasons.

ANALYSIS

The complainant asserts that the respondent's use of his email address on District stationary violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members.² Pursuant to N.J.A.C. 6A:28-6.9, it was the complainant's burden to prove that the respondent violated N.J.S.A. 18A:12-24.1(e), which provides:

¹ Contrary to the respondent's assertion, he is a "school official" as defined at N.J.S.A. 18A:12-23. The definition of "school official" specifically includes "administrators" and only excludes certain New Jersey School Board Association employees from the definition. Thus, it is clear that the respondent falls under the definition of "administrator" and, as such is a school official subject to the provisions of the Act.

² The Commission notes that, in his submission, the respondent incorrectly answers to a violation of N.J.S.A. 18A:12-24(e), which is in the prohibited acts section of the Act. However, on page one of the complaint, the complainant refers to "Section e of the Ethics Code***" which is a reference to N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members. Thus, the Commission only considered whether the respondent's conduct violated N.J.S.A. 18A:12-24.1(e).

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.

The Commission initially notes that N.J.S.A. 18A:12-24.1(e) applies solely to school board members and does not apply to other “school officials” as defined at N.J.S.A. 18A:12-23. While, contrary to his assertion, the respondent is a “school official” who is subject to the provisions of the Act, since the respondent is not a board member, he is not subject to the provisions of the Code of Ethics for School Board Members. The Commission finds that the complainant has failed to sustain his burden to prove a violation of N.J.S.A. 18A:12-24.1(e) and dismisses this complaint.

REQUEST FOR SANCTIONS

At its April 22, 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 respondent alleges that the complaint was political in nature because the complainant, a Councilman in Chesilhurst campaigning to be Mayor, knew that the respondent did not support his candidacy. However, the respondent did not provide evidence to support that contention, and such a contention, if proven, would not necessarily show bad faith on the complainant’s part that the complainant was filed solely for the purpose of harassment, delay or malicious injury. The Commission 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 the complaint 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 respondents’ request for sanctions against the complainant.³

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(e) 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

³ Commission members Robert Copeland, Jane Hutchinson and Margarita Roig voted against finding that the complaint was not frivolous.

Resolution Adopting Decision – C14-07

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

Whereas, at its meeting of April 22, 2008, the Commission found that the complainant had not established that Abdi Gass violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* and therefore dismissed the charges against him; and

Whereas, the Commission directed its staff to prepare a decision consistent with the aforementioned conclusion; and

Whereas, the Commission has reviewed the decision and agrees with the decision;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on May 27, 2008.

Joanne Boyle, Executive Director