

KRISTEN CORBY	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
KELLY-ANNE McDONNELL	:	Docket No. C18-06
GREEN TOWNSHIP	:	
BOARD OF EDUCATION	:	DECISION
SUSSEX COUNTY	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on June 12, 2006 by Kristen Corby alleging that Kelly-Anne McDonnell, a member of the Green 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(g) of the Code of Ethics for School Board Members when respondent discussed with complainant a possible job opening in the Green Township School District (District) prior to the firing of the teacher who held the job. Complainant further alleges that respondent then suggested that complainant should submit her resume to the District.

For good cause shown, the Commission granted the respondent an extension of time to file an answer. On September 19, 2006, through her attorney, Marc H. Zitomer, Esquire, the respondent filed a motion to dismiss in lieu of an answer. In the motion to dismiss, respondent argues that the complainant has not offered evidence to show that the respondent violated N.J.S.A. 18A:12-24(g) by stating that a teacher might be retiring and that complainant should submit her resume for future consideration. The respondent also requests that the Commission find that the complaint is frivolous and impose sanctions on the complainant. The Commission provided the complainant with 20 days to respond to the respondent’s motion to dismiss. The complainant did not submit a response to the motion to dismiss.

The Commission considered the complaint and the motion to dismiss at its October 24, 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 a member of the Board and Chair of the Board’s Personnel Committee.

On April 21, 2006, the complainant was involved in a conversation with the respondent. Complainant alleges that the respondent stated “give me your resume, there is a fifth grade position opening up.” Complainant alleges that this statement was made before the person who held the position was fired.

ANALYSIS

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(g) of the Code of Ethics for School Board Members when respondent discussed with complainant a possible job opening in the District prior to the firing of the teacher who held the job and then suggested that complainant should submit her resume to the District. 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), complainant argues that respondent revealed confidential information that respondent knew because of her position as Chair of the Personnel Committee. Complainant argues that respondent revealed that there would be a job opening in a position from which the person holding the job was subsequently fired. However, the facts as alleged by the complainant only show that respondent suggested that complainant submit her resume for a fifth grade position that was opening up. Complainant has failed to provide evidence to show that any confidential information was provided and respondent did not indicate what specific position was becoming available or why the position was opening up; it could have been for other reasons such as a retirement or a resignation. The fact that respondent stated that a fifth grade position was opening up does not prove that such a statement contained confidential information. Complainant also failed to provide any evidence to show how respondent’s statement that a fifth grade position would be opening up would needlessly injure individuals or the schools.

In viewing the facts in the light most favorable to the complainant, the Commission can find no evidence to factually prove that respondent revealed confidential information which, if disclosed, would needlessly injure individuals or the schools. Therefore, the Commission grants the respondent’s motion to dismiss complainant’s allegation that respondent violated N.J.S.A. 18A:12-24.1(g).

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 bad faith because complainant misrepresented the conversation she had with the respondent and distorted the facts. However, there is no evidence to show that complainant distorted the facts. The complaint represents the complainant's view of what occurred during the conversation. 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 that the complainant believed that the respondent's conduct violated the Code of Ethics. The Commission has no information to suggest that complainant 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 – C18-06

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 November 28, 2006.

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C18-06