

BRENDA SULLIVAN	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
DONALD BOCHICCHIO	:	Docket No. C37-05
OCEAN TOWNSHIP	:	
BOARD OF EDUCATION	:	DECISION
<i>OCEAN COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on August 8, 2005 by Brenda Sullivan alleging that Donald Bochicchio, Superintendent of the Ocean Township School District (District) in Ocean County, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainant also alleged that the respondent violated N.J.S.A. 18A:36-20, N.J.S.A. 18A:6-1, N.J.S.A. 18A:11-1 and the Ocean Township Board of Education Code of Ethics because of how her daughter was treated by respondent. By correspondence dated September 12 and 20, 2005, the Commission informed the complainant that the allegations that are not part of the School Ethics Act could not be considered by the Commission because the Commission does not have jurisdiction over the issues raised in those allegations. The Commission also noted that since the complainant alleged a violation of the Act in paragraphs, four, five and six of the complaint, the Commission could consider those allegations. However, the Commission asked the complainant to provide the specific provisions of the Act that she believed were violated by the conduct of which she complained. Through correspondence dated October 12, 2005, the complainant specifically alleged that the respondent violated N.J.S.A. 18A:12-24(g) of the Code of Ethics for School Board Members in the Act when he set up a mediation meeting, represented an employee at the meeting and made the decision as to the outcome of the meeting.

The respondent requested and was granted, for good cause, an extension to file his answer. Mr. Bochicchio submitted an answer by way of counsel, Joan K. Josephson, Esquire, wherein he requested the complaint be dismissed because nothing in allegations four, five and six constituted a violation of the Act.

The Commission invited, but did not require, the parties to attend its December 20, 2005 meeting. The parties were advised of their right to bring counsel and witnesses. The complainant was also advised that because allegation six was not filed within the timelines established in N.J.A.C. 6A:28-6.1(b), the Commission would not make a determination or accept testimony regarding that allegation unless the complainant could show that she received notice of the allegation no earlier than August 8, 2004. Ms. Sullivan and her husband Lawrence D. Sullivan appeared and testified before the Commission. Mr. Bochicchio appeared with his attorney, Joan K. Josephson, Esq., and testified before the Commission. At its public meeting on December 20, 2005, the Commission voted to find no probable cause that respondent violated N.J.S.A. 18A:12-

24(g) of the Act. 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, testimony and the documents submitted.

At all times relevant to this complaint, respondent was Superintendent of the District. Complainant was the parent of a student in the District.

The complainant met with the respondent on April 8, 2005 regarding concerns she had with the manner in which the lunchroom aide handled a matter with a District student. Complainant argues that the respondent gave her the impression that the meeting was going to be with a mediator and that minutes were going to be taken. The respondent certifies that he never offered or suggested that there was going to be a mediator at the meeting or that minutes of the meeting would be taken. At the meeting, respondent suggested that the complainant should take her child to a catholic school.

The complainant received correspondence dated April 19, 2005 from the respondent regarding complainant's input about a lunchroom aide. The correspondence notified the complainant that it is the Superintendent's managerial prerogative to make judgments regarding assignment of the lunchroom aide. The correspondence also notified the complainant that the substitute lunchroom aide would be substituting on an as-needed basis in the Waretown Elementary School with no restrictions. The complainant also received correspondence from the Department of Education dated April 30, 2005, which noted that after consulting with the County Superintendent about the substitute lunchroom aide that the aide in question had been removed from duty at the Waretown Elementary School. The correspondence indicated that the matter was under the jurisdiction of the local district and the complainant should address any further concerns to the Superintendent.

ANALYSIS

As an initial matter, the Commission notes that the complainant, in correspondence dated December 15, 2005, admitted that she received notice of the alleged violation in allegation six in October 2003, and her complaint was filed on August 8, 2005, which is more than a year of notice of the alleged violation. Therefore, the Commission did not consider this allegation since it was not timely filed pursuant to N.J.A.C. 6A:28-6.1(b).

Complainant alleges that respondent violated N.J.S.A. 18A:12-24(g) when, at the April 8, 2005 meeting, he represented an employee, mediated the meeting and made a decision regarding the outcome of the meeting. N.J.S.A. 18A:12-24(g) provides:

No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities.

In order to find a violation of N.J.S.A. 18A:12-24(g), the Commission must determine if the respondent represented any person or party other than the school board or school district at the April 8, 2005 meeting with the complainant. The Commission can find no evidence or information that shows that the Superintendent was representing any person or party other than the school board or the District at the April 8, 2005 meeting. Regardless of whether the Superintendent indicated that the meeting was going to involve mediation, that fact does not prove that the Superintendent was not representing the school board or the District at the April 8, 2005 meeting. Similarly, even if the employee attended the meeting, that fact does not prove that the respondent represented the employee. Pursuing administrative solutions to complaints brought against the District is part of a Superintendent's job as chief administrative officer of the school board or the District. See: N.J.S.A. 18A:12-24.1(j). The respondent was pursuing an administrative solution to complainant's concerns regarding the manner in which a lunchroom aide handled another student in the District. In doing so, the respondent was representing the school board and the District. The April 8, 2005 meeting was an informal meeting held by the respondent to find a solution to the complainant's concerns regarding the lunchroom aide. The Commission finds that, at the April 8, 2005 meeting, the respondent did not represent any person or party other than the school board or the District. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(g) and dismisses the allegations against him.

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 him.

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]

Based on the pleadings, it is clear that the complaint was not used or continued in bad faith solely for the purpose of harassment, delay or malicious injury. The complainant was extremely concerned about the way her daughter had been treated and was merely attempting to address what had occurred. There is no evidence or fact to show that the complainant had any ill will towards the respondent that would show bad faith. Further, the complainant believed that the respondents' conduct violated the Act and no information was presented to show that she should have known that the conduct did not violate the Act. For the foregoing reasons, the Commission finds that the complaint was not frivolous and denies the respondents' 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 – C37-05

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

Whereas, the Commission has reviewed the proposed decision of its staff dismissing the complaint and finding that it was not frivolous; 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 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 March 28, 2005.

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C37-05dismiss