



with prejudice. After deliberations regarding the motion, the Commission went into public and voted to grant the motion to dismiss, to find that the respondent did not violate N.J.S.A. 18A:12-24.1(g) and (i) of the Code of Ethics for School Board Members and dismissed the complaint with prejudice. At its April 24, 2007 meeting, the Commission voted to find that the complaint was not frivolous and to adopt this decision.

## **FACTS**

The Commission was able to discern the following facts based on the pleadings, testimony and the documents submitted.

At all time relevant to this complaint the complainant was a member of the Board and the respondent was President of the Board. Mr. DiDonato is a member of the Board and Mr. Giraldo is Vice-President of the Board. Ms. DeFrancisco is Superintendent and Ms. Prettyman was a candidate for business administrator and was eventually hired for that position. Ms. DeFrancisco and the interim business administrator were at the August 17, 2006 executive session of the Board.

During the August 17, 2006 executive session of the Board, the respondent, upon the advice of the Board Attorney, said "I have one other item to be discussed. I have had more than one board member indicate to me that inappropriate comments, Tom, [complainant] are being made by you." Respondent's Exhibit A, page 2, lines 1-6. She further said, "And what I do know is that I will not have you out there causing problems that could put this board in jeopardy, open it up to liability to be sued. What I'm talking about is you suggesting that one of the applicants has an alternate lifestyle." Respondent's Exhibit A, pages 2, lines 19-25, and page 3, lines 1-6. The complainant responded, "I never said anything about that. I don't know what you're talking about." Respondent's Exhibit A, page 3, lines 12 and 13. The complainant further responded, "What are you talking about? Yeah, you're talking about her and I never told anybody...you're talking about something about Barbara?" Respondent's Exhibit A, page 3, lines 24 and 25, and page 4 lines 2 and 3. The complainant continued to deny he said anything and told the respondent that he would give a sworn legal affidavit that he never said anything. After the complainant continued to deny that he said anything, the Board attorney began to give legal advice to the complainant regarding the complainant's reference to people on the basis of gender. At that time, the complainant left the executive session and never returned to the Board meeting.

Both Ms. DeFrancisco and Ms. Prettyman testified that what occurred at the executive session did not impact their relationship with the complainant and they both continue to work with him as a Board member. They both further testified that what occurred at the August 17, 2006 executive session did not bother them.

## **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.

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(g) and (i) of the Code of Ethics for School Board Members when, at the August 17, 2006 executive session of the Board, respondent made scurrilous, unfounded and libelous statements that complainant, in a local bagel shop, said that Barbara S. Prettyman, then candidate for business administrator was a lesbian and that the Superintendent, Mary Lou DeFrancisco was in a relationship with Ms. Pettyman. 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), the complainant alleges that the respondent revealed confidential information at the executive session of the Board which injured Ms. DeFrancisco and Ms. Prettyman and his relationship with them. The complainant maintains that the respondent should have spoken to him privately about her concerns. The facts show that the respondent never mentioned the names of anyone during the August 17, 2006 executive session; she merely shared her concerns regarding the fact that two Board members told her that the complainant was publicly suggesting that one of the applicants for the position of business administrator had an alternate lifestyle. The facts show that it was the complainant who mentioned the name of Barbara. The facts also show that both Ms. DeFrancisco's and Ms. Prettyman's relationship with the complainant was not injured by what was said at the August 17, 2006 executive session. The Commission notes that the respondent was speaking to the complainant upon advice of the Board attorney. The Commission further notes that the respondent only raised the subject in an executive session of the Board and did not disseminate this information further than that executive session. The facts do not support the complainant's contention that he was injured by what the respondent said at the August 17, 2006 executive session of the Board. Based on the foregoing, the Commission finds that the respondent did not disclose confidential information at the August 17, 2006 executive session that would needlessly injure individuals or the schools. Therefore, the Commission finds that the respondent did not violate N.J.S.A. 18A:12-24.1(g) and dismisses this allegation with prejudice.

N.J.S.A. 18A:12-24.1(i) provides:

I will support and protect school personnel in proper performance of their duties.

To prove a violation of N.J.S.A. 18A:12-24.1(i), the complainant maintains that the respondent injured Ms. DeFrancisco and Ms. Prettyman at the August 17, 2006

executive session. However, the facts show that the respondent never mentioned their names and that it was the complainant who mentioned the name Barbara. The facts also show that Ms. DeFrancisco and Ms. Prettyman were not injured by what occurred at the August 17, 2006 executive session. Therefore, the Commission finds that the respondent did not violate N.J.S.A. 18A:12-24.1(i) and dismisses this allegation with prejudice.

## **REQUEST FOR SANCTIONS**

The 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 commenced and continued in bad faith solely for the purpose of harassment or malicious injury to the respondent. It is apparent to the Commission that the complainant filed this complaint because he believed that his relationship with the superintendent and the business administrator had been harmed because of the respondent's statements at the August 17, 2006 executive session of the Board. There is no evidence to show that the respondent was harassed or maliciously injured as a result of the filing of the complaint. There is also no evidence to show that complainant knew that the complaint was without any reasonable basis in law. The evidence and testimony of the complainant shows that he believed that the Code of Ethics had been violated. Therefore, the Commission finds that the complaint was not frivolous and denies the respondent's request for sanctions against the complainant.

## **DECISION**

For the reasons expressed above, the Commission finds that the respondent did not violate the School Ethics Act and dismisses the allegations with prejudice.

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 – C59-06**

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

**Whereas**, the Commission finds that the respondent did not violate N.J.S.A. 18A:12-21 et seq.; and

**Whereas**, the Commission has reviewed the proposed decision of its staff dismissing the complaint with prejudice; 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.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on April 24, 2007.

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Lisa James-Beavers  
Executive Director