

MICHELE GOITIANDIA	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	Docket No. C63-06
SAL OLIVO	:	
NUTLEY BOARD OF EDUCATION	:	DECISION
ESSEX COUNTY	:	
	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on December 11, 2006 by Michele Goitiandia, alleging that Sal Olivio, President of the Nutley 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(a) and (c) and N.J.S.A. 18A:12-24.1(e), (f), (g) and (h) of the Code of Ethics for School Board Members when, at the November 20, 2006 Executive session of the Board, the respondent shared with the Board a letter from the complainant to the respondent's spouse that was critical of the Board's Gifted and Talented Education program (GATE) in which the respondent's spouse was involved.

The respondent timely filed a response in which he admitted that he did share the complainant's letter to his spouse with the Board because he felt that it was relevant to the complainant's potential employment. He denied that his conduct violated the Act.

The Commission invited the parties to attend its June 26, 2007 meeting to present witnesses and testimony, but did not require that they be present. The complainant issued Subpoenas Ad Testificandum for the following witnesses: Gerald Parisi, Philip Casale, Ken Reilly, Joseph Zarra and Jim Viola. Both the complainant and the respondent appeared before the Commission. Because of his inability to attend the Commission meeting, Mr. Parisi submitted a certified affidavit. Mr. Viola, Mr. Casale and Mr. Zarra provided testimony before the Commission. Board attorney, Mark Wenzel, Esquire was also present at the hearing. During the public portion of the June 26, 2007 meeting, the Commission voted to find no probable cause to credit the allegations that the respondent violated the Act and dismissed the complaint.

**FACTS**

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

At all times relevant to the complaint, the respondent was President of the Board and his spouse worked in the Nutley School District (District) as a teacher in the GATE program. The complainant was the parent of a child enrolled in the District who had previously been enrolled in the GATE program.

On April 8, 2006, the complainant wrote a letter to the respondent's wife to provide notification that the complainant was withdrawing her child from the GATE program. The letter was critical of the GATE program. The letter was copied to the superintendent, the director of special services and the elementary principal. In April 2006, the complainant applied to the District for the position of part-time school aide/clerk. The Special Services Department in the District offered the complainant a part-time position as a pre-school teacher's aide subject to the Board's approval.

At the Board's November 20, 2006 executive session, the superintendent recommended that the Board approve the complainant as a substitute aide. The superintendent placed before the Board an addendum resolution to add the complainant to a list of substitute aides. During the Board's consideration of the resolution, the respondent shared the complainant's April 8, 2006 letter with the Board. After a discussion regarding the letter, in which the respondent took part, the Board took a straw poll and the resolution failed. The respondent abstained from voting in the straw poll. As a result of the straw poll, the resolution was pulled from the Board's agenda.

## **ANALYSIS**

The complainant first alleges that the respondent's conduct at the November 20, 2006 Executive session of the Board violated N.J.S.A. 18A:12-24(a), which provides:

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

The respondent's spouse is considered a member of the respondent's "immediate family" as that term is defined at N.J.S.A. 18A:12-23. In order to find a violation of N.J.S.A. 18A:12-24(a), the Commission would have to find that the position held by the respondent's spouse as a teacher in the District is in substantial conflict with the proper discharge of respondent's duties in the public interest. The Commission has never ruled that a board member is in substantial conflict with the proper discharge of her or his duties when that board member's spouse is employed in the district. The Commission has advised that a board member should recuse her or himself from certain matters because of the employment of the board member's spouse in the district. See, *Advisory Opinion, A16-96* (January 28, 1997); *Advisory Opinion A10-00* (June 27, 2000) and *Advisory Opinion A30-05* (March 10, 2006). However, the Commission has never advised that a board member could not serve on a board where that board member's spouse was employed by the board. The Commission finds that the position held by the respondent's spouse in the District does not create a substantial conflict with the proper discharge of the respondent's duties in the public interest. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(a) and dismisses this allegation.

The complainant next alleges that the respondent's conduct at the November 20, 2006 executive session of the Board violated N.J.S.A. 18A:12-24(c), which provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

To find a violation of N.J.S.A. 18A:12-24(c), the Commission must first determine if the respondent acted in his official capacity in a matter where he or a member of his immediate family had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. As noted above, the respondent's spouse is a member of the respondent's immediate family. At the November 20, 2006 executive session, the Board was considering a resolution to add the complainant to a list of substitute aides. When the respondent presented and discussed the complainant's April 8, 2006 letter to his spouse, the respondent was acting in his official capacity. However, inasmuch as the complainant was being considered for the position of a substitute aide, the Commission cannot find that the respondent or his spouse had either a direct or indirect financial involvement in the complainant's potential employment in the district.

The Commission must next determine if the respondent acted in his official capacity in a matter where he had a personal involvement that created some benefit to him or his spouse. When the respondent discussed the complainant's letter during the November 20, 2006 executive session of the Board, he did so in the context of the complainant's potential employment in the District. This matter can be distinguished from I/M/O Dino Pettinelli, C01-04 (July 27, 2004), where the Commission found a violation of N.J.S.A. 18A:12-24(c) when a board member participated in executive session discussions regarding the hiring of his brother because that board member had a personal involvement in the employment of his brother. In this matter, the Board's discussion was not about the complainant's spouse's employment; rather it was about the employment of the complainant. The Commission chooses not to extend the reach of a personal involvement beyond as established in Pettinelli to the facts in this matter. It cannot find that the respondent had a personal involvement in the complainant's employment simply because the complainant wrote a letter critical of a program in which the respondent's spouse was involved. Based on the foregoing, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c) when he presented and discussed the complainant's April 8, 2006 letter at the November 20, 2006 executive session of the Board and dismisses this allegation.

The complainant also alleges that the respondent's conduct at the November 20, 2006 executive session of the Board violated the Code of Ethics for

School Board Members. The Commission notes that the complainant has the burden of factually proving a violation of the Code of Ethics for School Board Members pursuant to N.J.S.A. 18A:12-29(b). The complainant first alleges that the respondent's conduct violated N.J.S.A. 18A:12-24.1(e), which provides:

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.

As the Commission noted above, the respondent acted in his official capacity when he presented and discussed the complainant's April 8, 2006 letter at the November 20, 2006 executive session of the Board. In Marc Sovelove v. Paul Breda, C49-05 (September 26, 2006), the Commission found that where a board member's conduct has been found to be board action it cannot also be found to be private action. Therefore, the respondent's presentation and discussion of the complainant's letter was not a private action that may have compromised the Board. Based on the foregoing, the Commission finds no probable cause to credit that allegation that the respondent violated N.J.S.A. 18A:12-24.1(e), and dismisses this allegation.

The complainant next alleges that the respondent's conduct violated N.J.S.A. 18A:12-24.1(f), which provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

The complainant does not articulate how the respondent's conduct violated N.J.S.A. 18A:12-24.1(f). However, to find a violation of N.J.S.A. 18A:12-24.1(f), the Commission would have to find that the respondent surrendered his independent judgment to special interest or partisan political groups or used the schools for his personal gain or the gain of friends. There is no evidence to show that a "special interest" or "partisan political group," as those terms are defined in N.J.A.C. 6A:28-7.1, was in any way involved with the Board's discussion of the complainant's employment at the November 20, 2006 executive session of the Board. There is also no evidence to show how either the respondent gained or a friend gained from the Board's discussion of the complainant's employment. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f), and dismisses this allegation.

The complainant next alleges that the respondent's conduct violated N.J.S.A. 18A:12-24.1(g), which 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.

The complainant does not articulate how the respondent's conduct violated N.J.S.A. 18A:12-24.1(g). However, to find a violation of N.J.S.A. 18A:12-24.1(g), the Commission would have to find that the respondent revealed confidential information when he presented and discussed the complainant's April 6, 2006 letter at the November 20, 2006 executive session of the Board or that he provided inaccurate information. There is no evidence to show that the complainant's letter to the respondent's spouse was confidential. The Commission notes that the complainant copied the letter to the superintendent, director of special services and the elementary principal, which indicates that the letter was not confidential. There was also no evidence to show that the respondent provided inaccurate information when he presented the letter to the Board for discussion. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(g), and dismisses this allegation.

Finally, the complainant alleges that the respondent's conduct violated N.J.S.A. 18A:12-24.1(h), which provides:

I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief school administrator.

N.J.A.C. 6A:28-6.9(b)3 provides that, to prove a violation of N.J.S.A. 18A:12-24.1(h), the complainant must provide factual evidence to show that the respondent acted without a recommendation of the chief administrative officer. The evidence shows that the superintendent recommended that the Board approve the complainant as a substitute aide. Thus, the respondent did consider the chief school administrator's recommendation. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(h), and dismisses this allegation.

## **DECISION**

For the reasons discussed above, the Commission finds no probable cause to credit the allegations that Sal Olivo violated the Act and the Commission dismisses the allegations against him.

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).

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Paul C. Garbarini  
Chairperson

## Resolution Adopting Decision – C63-06

**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 of October 30, 2007, the Commission voted to find no probable cause to credit the allegations that Sal Olivo violated Act and to dismiss the allegations against him; and

**Whereas**, the Commission reviewed a draft decision prepared by its staff 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.

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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 December 18, 2007.

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Joanne Boyle  
Executive Director

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