

DEBBIE MYERS	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	Docket No. C04-08
PATRICIA BARKSDALE	:	
PLAINFIELD BOARD OF EDUCATION	:	DECISION
UNION COUNTY	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on February 19, 2008 by Debbie Myers against Patricia Barksdale, a member of the Plainfield Board of Education (Board) alleging that Ms. Barksdale violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Specifically, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members.¹ The respondent filed an answer, through her counsel, on March 19, 2008 and then filed a revised answer on April 9, 2008.

The Commission invited the parties to attend its March 24, 2009 meeting for a hearing pursuant to N.J.A.C. 6A:28-6.9. The complainant attended the meeting, with witnesses, as set forth below. Appearing on behalf of the respondent was Ronald C. Hunt, Esq. Prior to the presentation of the complainant’s case, the respondent’s counsel, pursuant to N.J.A.C. 6A:28-6.9(c), moved to dismiss the complaint, arguing: 1) The Commission failed to issue a decision on the matter within 90 days as required by N.J.S.A. 18A:12-29b; 2) The allegations raised issues with respect to the Open Public Meetings Act (OPMA) N.J.S.A. 10:4-6 et seq., which are not within the jurisdiction of the Commission; 3) The complainant failed to keep the complaint confidential as required by N.J.A.C. 6A:28-6.2(a)2; and 4) The subpoenas issued by the complainant were improperly served and, thus, should be quashed. After hearing the positions of both parties the Commission denied all of the motions to dismiss this matter prior to hearing testimony.

During the presentation of complainant’s case on March 24, 2009, the respondent’s counsel requested an adjournment, due to a scheduling conflict. The Commission granted counsel’s request for an adjournment over the complainant’s objection; the hearing was rescheduled for the April 28, 2009 meeting. At the public portion of the Commission’s March 24, 2009 meeting, the Commission tabled the matter.

¹ The Commission notes that, in her complaint, the complainant alleges a violation of N.J.S.A. 18A:12-24(e) and (g); however, the complainant cites to the language of the provisions of N.J.S.A. 18A:12-24.1(e) and (g). The complainant was notified by the Office of the School Ethics Commission that, unless it heard otherwise, the Commission would move forward with the complaint as one alleging allegations of the Code of Ethics for School Board Members. Thus, the Commission considered the complaint as one alleging violations of the Code of Ethics for School Board Members.

At the April 28, 2009 meeting, both parties were in attendance, as well as respondent's counsel. Prior to commencement of the complainant's case, the respondent's attorney, renewed his motion to dismiss due to the Commission's failure to issue a decision on the matter within 90 days as required by N.J.S.A. 18A:12-29b. Respondent's counsel further argued that the complainant herein lacked standing to bring the complaint. The respondent's counsel also requested that this matter be consolidated with a matter docketed as C06-08. After hearing from both parties, the Commission denied the respondent's motion to dismiss, along with the request to consolidate this matter with C06-08. The Commission permitted the complainant to continue with her case, as set forth below. At the public portion of its meeting, the Commission voted to dismiss the complaint, finding that no violation was proven by the complainant and to find that the complaint was not frivolous.²

SUMMARY OF THE RECORD

The complainant contends that the respondent unilaterally directed a district employee to relocate the former Superintendent's personal belongings to her residence (count one); provided inaccurate information and statements to an investigator from the Office of Fiscal Accountability and Compliance (OFAC) on December 14, 2007 (count two); and failed to disclose to the full board and the public information regarding the relationship between the board's counsel, Mr. Raymond Hamlin and the Interim Superintendent at the June 8, 2007 Board meeting when the Interim Superintendent was appointed (count three) (Complaint at paragraphs 1, 2 and 3). At the March 24, 2009 meeting, the complainant requested that the following documents be entered into evidence.³

- Exhibit C-1 The October 31, 2007 Office of Fiscal Accountability and Compliance (OFAC) report;
- Exhibit C-2 The January 15, 2008 letter from OFAC; and
- Exhibit C-3 Board policy 9010.

On March 24, 2009, Sean Sutton testified for the complainant. Mr. Sutton testified that he was employed by the Board as a head custodian for the administration building. He stated that he was at the Board offices on June 9, 2007 when he was told to pack up the belongings of Dr. Paula Howard, the Superintendent who had resigned days before. Mr. Sutton stated that he was not sure who told him to do so. He explained that he attempted to deliver Dr. Howard's belongings to her residence, but no one was there. He claimed that he had a conversation with the respondent, but it took place after he had been told to pack and move Dr. Howard's belongings. On cross-examination, Mr. Sutton clarified that, when he went to the Howard

² On April 15, 2009, the State Board of Education adopted amendments to N.J.A.C. 6A:28, the regulations governing matters that come before the School Ethics Commission. These rules became effective on May 18, 2009. However, because the complaint in this matter was filed on February 19, 2008, the Commission followed procedures and rendered its determinations herein in accordance with the rules that were in effect at the time the complaint was filed. To the extent this decision cites to regulations, they are the regulations that were in effect when the complaint was filed.

³ Counsel for the respondent objected to Exhibits C-1 and C-2 being entered into evidence, as these reports issued by the OFAC are hearsay. The Commission allowed the documents to be entered into evidence, subject to the residuum rule found at N.J.A.C. 1:1-15.5

residence, he rang the doorbell two or three times, then left. He stated that he brought Dr. Howard's belongings back to the District.

On March 24, 2009, Sam Howard, Dr. Paula Howard's spouse, testified for the complainant. Mr. Howard explained that, on June 9, 2007, he was outside of his house and he saw Mr. Sutton drive up in a van. Mr. Sutton asked him where Dr. Howard was. Mr. Sutton then told Mr. Howard that he had Dr. Howard's belongings packed up in the van. Mr. Howard testified that he asked Mr. Sutton what this was all about. According to Mr. Howard, Mr. Sutton responded that he had been directed by the respondent to bring Dr. Howard's belongings to her residence. Mr. Howard explained that he did not accept the belongings and Mr. Sutton left.

On March 24, 2009, Wilma Campbell testified for the complainant. Ms. Campbell has served on the Board since 2004 and was chair of the Curriculum and Instruction committee for three years. She testified that at the June 8, 2007 Board meeting, there was a motion before the Board to accept the resignation of Dr. Howard. Ms. Campbell explained that she did not know of the relationship between Peter Carter, the Interim Superintendent, and the Board attorney. She clarified that the respondent did not inform her of the financial relationship between Mr. Carter and the Board's counsel. Rather, Ms. Campbell testified that she received an anonymous letter well after Mr. Carter had been appointed Interim Superintendent. The letter was delivered to her residence and referenced a press release from the Asbury Park Press indicating that Mr. Hamlin had handled a legal matter for Mr. Carter. She explained that the letter was brought up at a Board retreat and other Board members were asked if they had received the letter. Ms. Campbell testified that the matter was "blown off" by the respondent. Ms. Campbell claimed that she would not have voted for Mr. Carter to be Interim Superintendent if she had known of the financial relationship between him and Board's attorney.

Upon a review of Exhibits C-1 and C-2, Ms. Campbell testified that she had never seen either of the documents. She stated that the respondent never shared either document with her. She verified that she had been interviewed by someone from the OFAC and the questions centered on the hiring of Mr. Carter as Interim Superintendent. Ms. Campbell asserted that the respondent did not provide her with enough information to enable her to make informed decisions as a Board member. On cross-examination, Ms. Campbell confirmed that she attended the executive session of the June 8, 2007 Board meeting and was able to question Mr. Carter who was present at that executive session, but she did not recall that the Board attorney informed the Board that he had worked with Mr. Carter in another district.

On April 28, 2009, Ms. Lisa-Logan Leach testified for the complainant. Ms. Logan-Leach stated that she had been on the Board for six years. She confirmed that she was in attendance at the June 8, 2007 executive session which was called as an emergency meeting due to the unexpected resignation of the Superintendent the day before. At that meeting, the Board accepted the resignation of the Superintendent and appointed Mr. Carter as the Interim Superintendent.

After reviewing Exhibits C-1 and C-2, Ms. Logan-Leach indicated that she had never seen either OFAC report; the respondent had never given her a copy of either report and there was never a motion at a Board meeting with respect to the reports, although she acknowledged

that she had missed some meetings. The complainant also entered into the record Exhibit C-4, a copy of a portion of the Board's minutes for its November 20, 2007 Board meeting.⁴

Ms. Logan-Leach testified that on June 8, 2007, the respondent did not inform the Board of the relationship between the Board attorney Hamlin and Mr. Carter. She confirmed that she found out about the relationship after the Board voted to approve Mr. Carter as Interim Superintendent, when she found a sealed envelope with no return address in her home mailbox. The envelope contained an article from the Asbury Park Press about the relationship between the Board's counsel and Mr. Carter. Ms. Logan-Leach claimed that when she brought the article to the attention of the respondent, there was nothing acknowledged and nothing done. Ms. Logan-Leach stated that she would not have voted for Mr. Carter as the Interim Superintendent if she had known about the relationship between him and the Board's counsel.

On cross-examination Ms. Logan-Leach acknowledged that, at the June 8, 2007 meeting, she had an opportunity to ask questions of the Board attorney and Mr. Carter who was also in attendance at the meeting. She stated that there was no mention at that meeting of the previous relationship between Mr. Hamlin and Mr. Carter and the respondent did not tell her anything about the relationship. Ms. Logan-Leach underscored that she had never seen Exhibit C-1 and Exhibit C-2 and that the documents were never discussed at a Board meeting.

On April 28, 2009, Martin Cox testified for the complainant.⁵ Mr. Cox stated that he was in attendance at the Board's June 8, 2007 emergency meeting. He indicated that he had prior knowledge of the relationship between Board attorney Hamlin and Mr. Carter; he believed that other Board members were also aware of the nature of the relationship. He stated that he did not recall how he came to know of the relationship; he did not inform the community of the same. Mr. Cox testified that he believed the Board members already knew of the relationship, but could not recall that the respondent so notified the Board.

Mr. Cox testified that the respondent contacted him on either June 6th or 7th of 2007 and asked him to help her in replacing the outgoing Superintendent. Mr. Cox indicated that he had a list of candidates from the New Jersey School Boards Association (NJSBA); Mr. Carter's name, however, was not on that list. He clarified that he obtained Mr. Carter's name from conversations he had with people he spoke to about possible candidates. Mr. Cox testified that there was a discussion before the Board about the nature of the relationship between Board

⁴ The document has the date November 20, 2007 at the top and indicates that it is page 4 of 49 pages. Therefore, pursuant to the respondent's objection, the Commission accepted the document into evidence, acknowledging that it was incomplete. Exhibit C-4 states, in part:

REPORT BY THE BOARD ATTORNEY

At the request of the President, Mr. Hamlin, Board Counsel, presented a summary of a report issued by the New Jersey Department of Education, Office of Compliance that is the result of an investigation into the actions taken by the Board at a meeting held on June 8, 2007. No specific action is required other than the reading of the findings, and the Board Counsel indicated that the Board will be filing an appeal to address the inaccurate information in the report. (Exhibit C-4)

⁵ Mr. Hunt objected to this witness being called by the complainant. However, the Commission overruled counsel's objection and allowed the testimony.

attorney Hamlin and Mr. Carter, but he could not recall when that discussion occurred. He was not sure that the discussion was on June 8, 2007.

Pursuant to N.J.A.C. 6A:28-6.9(c) and upon completion of the complainant's case, the respondent moved to dismiss counts one and two of the complaint.⁶ After considering the positions of both parties, the Commission granted the motion to dismiss count one and denied the motion to dismiss count two.⁷

The respondent, Patricia Barksdale, testified that she had served as president of the Board from May 2007 until April 2008. After one month serving as president, the District was in a crisis situation. Ms. Barksdale explained that the District did not have a Human Resources Director, Business Administrator/Board Secretary, High School Principal and Superintendent. She stated that there was a gaping hole in the infrastructure and there was a \$160,000 shortfall in the food program. Ms. Barksdale explained that on June 6, 2007, she became aware of the resignation of the Superintendent and she began making calls to the NJSBA, legal counsel, previous Board members and current Board members in an attempt to find a replacement. She stated that she reached out to Mr. Cox because of his past experience as a past Board president and she asked him to help her find an Interim Superintendent. She wanted a short-term available candidate who could come to the emergency meeting so that that candidate could be appointed as Interim Superintendent to assist the District through the crisis. According to Ms. Barksdale, there were also economic constraints in that the candidate needed to be reasonable about a per-diem fee.

Ms. Barksdale explained that Mr. Carter was the only candidate who was available immediately. She did not have any conversation with Mr. Carter prior to the meeting. She admitted that she knew that there had been a prior representation of Mr. Carter by Board attorney Hamlin. She stated that she believed that there was a discussion of the relationship with the Board at the June 8, 2007 emergency meeting. She testified that she did not attempt to deceive or mislead Board members about the relationship between Board attorney Hamlin and Mr. Carter and did not willfully withhold information about their prior relationship.

Ms. Barksdale recalled that there was an OFAC investigation during the summer of 2007; she had several interviews with the investigators and gave them accurate and truthful information. She recalled that she had discussed the process of the hiring of Mr. Carter with the investigators. When she reviewed Exhibit C-1, she said that she believed that she may have seen the document, but that it was sent to the Board address. Ms. Barksdale testified that it was her practice to forward such information to the Business Administrator. She recalled that the

⁶ Respondent's counsel conceded that additional testimony was needed as to count three.

⁷ In count one, the complainant alleged that the respondent violated N.J.S.A. 18A:12-24.1(e) when she told the Board's head custodian to pack up Dr. Howard's belongings and take them to Dr. Howard's residence, without the Board's knowledge. However, the complainant presented no evidence to prove that the respondent told the head custodian to pack up the belongings. Indeed, Mr. Sutton could not recall who directed him to pack up Dr. Howard's belongings. Because the complainant failed to carry her burden to factually prove a violation of N.J.S.A. 18A:12-24.1(e), the Commission voted at the public portion of its meeting to dismiss count one.

contents of Exhibit C-1 had been discussed with the Board and the public, but she could not recall the specific date. Ms. Barksdale stated that the OFAC had urged confidentiality; therefore, she provided the document to the Board attorney to discuss with the Board as needed. On cross-examination, Ms. Barksdale indicated that she sent Exhibit C-1 to Board counsel and left it to him to determine how to handle the matter. Ms. Barksdale explained that sensitive documents were not always included in Board packets. She clarified that Board attorney Hamlin gave her the name of Mr. Carter and, at the June 8, 2007 meeting, counsel discussed his relationship with Mr. Carter with the Board. Ms. Barksdale did not recall that *she* specifically discussed the matter with the Board and the public that night as they were in a conference room and “in and out” of executive session.

FINDINGS OF FACT

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

1. Superintendent Dr. Paula Howard resigned from the Board effective June 6, 2007.
2. In an attempt to find a replacement for Dr. Howard, the respondent made a number of calls, including calls to Board members. She asked Board member Cox to assist her in finding a replacement on short notice.
3. Board member Cox recommended Mr. Carter as a candidate who could start immediately and whose salary would not exceed the Board’s fiscal capabilities.
4. The respondent and Board member Cox were aware that Board attorney Hamlin had represented Mr. Carter previously on a legal matter.
5. The Board held an emergency meeting on June 8, 2007 to accept Dr. Howard’s resignation and to approve Mr. Carter as an Interim Superintendent.
6. Mr. Carter and Board attorney Hamlin were present at the executive session on June 8, 2007 and answered questions from the Board.
7. In the summer of 2007, the respondent was interviewed by investigators from the OFAC. She answered questions regarding the nature of the relationship between Board attorney Hamlin and Mr. Carter.
8. When the respondent received Exhibits C-1 and C-2, she sent them to the Board attorney due to the sensitive nature of the documents.

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29b, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members. In count two of the complaint, the complainant asserts that the respondent violated

N.J.S.A. 18A:12-24.1(g) when she provided inaccurate information and statements to an investigator from the Office of Fiscal Accountability and Compliance (OFAC) on December 14, 2007. The complainant contends that the respondent withheld information from the community about the nature of the relationship between Board attorney Hamlin and Interim Superintendent Mr. Carter. 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.

There was no testimony from any witness who has first-hand knowledge that the respondent provided inaccurate information and statements to an investigator from the Office of Fiscal Accountability and Compliance (OFAC) on December 14, 2007. Presumably, the complainant is relying on Exhibit C-2 which references the District's appeal of the OFAC findings in Exhibit C-1, and specifically references an affidavit provided by Ms. Barksdale regarding the events leading up to the June 8, 2007 meeting. Exhibit C-2 discredits the statements in the respondent's affidavit. However, the Commission notes that to the extent Exhibit C-2 is inconsistent with the testimony adduced in this matter, it is the complainant's obligation to advance competent evidence in support of her claim. That is, notwithstanding the admissibility of hearsay evidence, such as Exhibits C-1 and C-2, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5. Here, there was no competent evidence to support the complainant's claim that the respondent provided inaccurate information to the OFAC. Therefore, the Commission finds that the complainant failed to carry her burden to factually prove that the respondent violated N.J.S.A. 18A:12-24.1(g) and dismisses this allegation.⁸

In count three, the complainant asserts that the respondent failed to disclose to the full board and the public information regarding the financial and legal relationship between the Board's counsel, Mr. Hamlin and the Interim Superintendent at the June 8, 2007 Board meeting when the Interim Superintendent was appointed, in violation of N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members. N.J.S.A. 18A:12-24.1(e) states:

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.

"Private action" means any action taken by a member of a district board of education that is beyond the scope of the duties and responsibilities of the member. N.J.A.C. 6A:28-7.1. It is unclear in this regard what action the complainant contends was improperly taken by the respondent, since she specifically charges the respondent with a "failure to disclose." (Complaint at count three). This failure to disclose is alternatively cast as "blatant action [that] was obviously an attempt to deceive the public as well as her fellow board members." (Id.)

⁸ The complainant does not assert that the confidentiality provision of this statute was violated.

In this connection, the Commission notes that while there appears to be no dispute that Mr. Carter was presented to the Board at its June 8, 2007 executive session for the Board to meet him and ask him questions, there was differing testimony as to whether the issue of Mr. Carter's prior relationship with Board counsel Hamlin arose during questioning. The Commission finds that it is not necessary to resolve the dispute. Even assuming that the complainant had demonstrated by a preponderance of credible evidence that the issue was *not* raised at the June 8, 2007 meeting, the Commission cannot find on this record that it therefore follows that the respondent blatantly acted to mislead fellow Board members, along with the public.

Rather, the evidence shows that respondent was, for a period of time, overwhelmed by the departure of critical staff in the District, including the Superintendent. She reached out to the Board members when she received Dr. Howard's resignation seeking their advice on how to find a replacement, which was well within the scope of her duties as a Board president. The Commission found credible the respondent's testimony that she took no affirmative action to deceive or mislead the Board members about Board counsel Hamlin's relationship with Mr. Carter. At worst, this record supports a finding that the respondent's actions to submit a name of an Interim Superintendent to the Board for review were hasty, but the complainant has not shown that the respondent, in so doing, failed to recognize that authority rests with the Board. Neither can the Commission find on this record that the respondent took private action that could have compromised the Board. Accordingly, the Commission finds that the complainant failed to carry her burden to prove that the respondent violated N.J.S.A. 18A:12-24.1(e) and the Commission dismisses this allegation.

REQUEST FOR SANCTIONS

At its April 28, 2009 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 Commission can find no evidence which might show that the complainant filed the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also 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 it 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 respondent's request for sanctions against the complainant.

DECISION

Based on the testimonial and documentary evidence, the Commission finds that the complainant failed to prove that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) 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

Resolution Adopting Decision – C04-08

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 April 28, 2009, the Commission found that the complainant failed to factually prove that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members and dismissed the complaint; and

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

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

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, 2009.

Joanne Boyle, Executive Director

PCG/JB/MET/decisions/C04-08