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MARK DIMON : BEFORE THE SCHOOL : ETHICS COMMISSION

v.

CHRISTINE SKINNER
FLORENCE TOWNSHIP BOARD OF
EDUCATION
BURLINGTON COUNTY

OAL Dkt. No. EEC 10311-10 DECISION

SEC Docket No. C11-10

DECISIO

PROCEDURAL HISTORY

This matter arises from a complaint filed by Mark Dimon, a member of the Florence Township Board of Education alleging that the respondent violated N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (g) and (j) of the Code of Ethics for School Board Members. Pursuant to a Motion to Dismiss filed on behalf of the respondent, at its meeting on July 27, 2010, the Commission voted to grant the respondent's Motion to Dismiss the first count in the complaint, as well as the allegation in the third count that the respondent violated N.J.S.A. 18A:12-24.1(a). The Commission denied the respondent violated N.J.S.A. 18A:12-24.1(d), (e) and (j). The Commission further found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2 and voted to transmit this matter to the Office of Administrative Law (OAL) for hearing pursuant to N.J.A.C. 6A:28-10.8(a), after the respondent filed her answer to the remaining claims. The complaint was transmitted to the OAL on September 1, 2010.

By letter dated March 31, 2011, the complainant withdrew Count 2 and this count was thereafter dismissed by Order of the Administrative Law Judge (ALJ) dated April 19, 2011. The respondent then moved to dismiss Count 3 of the complaint. A cross-motion to deny dismissal was filed by the complainant; additional briefs were accepted and the record closed on September 8, 2011. The Initial Decision of the ALJ was transmitted electronically to the Commission on February 1, 2012 and mailed to the parties the next day. Neither party filed exceptions to the Initial Decision. At its meeting on February 28, 2012, the Commission adopted the findings and conclusions of the ALJ for the reasons expressed in her Initial Decision.

ANALYSIS

The complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a). See also, N.J.S.A. 18A:12-29(b). The Commission underscores that summary decision may be granted:

if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. N.J.A.C. 1:1-12.5(b).

Upon careful and independent review, the Commission finds that the record supports the ALJ's conclusion that Count 3 is ripe for summary dismissal. In so finding, the Commission concurs that the papers and discovery, together with the affidavits in this matter, show that there is no genuine issue as to any material fact and the respondent is entitled to prevail as a matter of law inasmuch as the facts fail to demonstrate that the respondent: (1) gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district so as to violate N.J.S.A. 18A:12-24.1(d) (see, N.J.A.C. 6A:28-6.4(a)4); (2) made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the board so as to violate N.J.S.A. 18A:12-24.1(e) (see, N.J.A.C. 6A:28-6.4(a)5); or (3) acted on, or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint prior to referral to the chief administrative officer or at a time or place other than a public meeting and prior to the failure of an administrative solution so as to violate N.J.S.A. 18A:12-24.1(j) (see, N.J.A.C. 6A:28-6.4(a)10).

DECISION

The Commission determines to adopt the ALJ's Interim Order of April 19, 2011 dismissing Count 2, 1 as well as the Initial Decision dismissing Count 3 and denying the respondent's application for sanctions. 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).

Robert W. Bender, Chairperson

Mailing Date: February 29, 2012

¹ The ALJ's Order states that it is reviewable either pursuant to a request for interlocutory review (<u>N.J.A.C.</u> 1:1-14.10), which did not occur in this matter, or at the end of the contested case (<u>N.J.A.C.</u> 1:1-18.6).

Resolution Adopting Decision – C11-10

Whereas, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to transmit this matter to the Office of Administrative Law for hearing; and

Whereas, the Administrative Law Judge concluded in her Initial Decision that summary decision should be granted to the respondent and the complaint should be dismissed; and

Whereas, the Commission considered the documentation filed in response to the ALJ's decision; and

Whereas, at its meeting of February 28, 2012, the Commission determined to adopt the Initial Decision of the ALJ as well as to affirm her Order dated April 19, 2011; and

Whereas, the Commission finds that the within decision accurately memorializes its adoption of the Initial Decision;

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

| - | Robert W. Bender, Chairperson |
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| I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on February 28, 2012. | |
| Joanne Boyle, Executive Director School Ethics Commission | |