

K.S.M. ¹	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
CHRIS HALEY	:	DOCKET NO. C27-10
<i>MANASQUAN BOARD OF EDUCATION</i>	:	DECISION
<i>MONMOUTH COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on September 17, 2010 by K.S.M. asserting that Chris Haley, a member of the Manasquan Board of Education (“Board”) violated the School Ethics Act (“Act”). Specifically, the complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members when she openly discussed her daughter, a student in the high school, in a public place. The respondent filed an answer on October 13, 2010. At its meeting on October 26, 2010, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to retain this complaint for hearing at a later date.

By letter dated January 25, 2011, the parties were notified that this matter would be scheduled for hearing at the Commission’s meeting on February 22, 2011. The parties attended the meeting on February 22, 2011. After hearing all testimony, as summarized below, the Commission voted during the public portion of its meeting to dismiss the complaint.

SUMMARY OF THE RECORD

K.S.M., the complainant, testified that she learned that her daughter, R.M., was being pulled from the ballot to run for Student Council at the end of the 2009-2010 school year due to an incident of underage drinking. In response to this news, K.S.M. wrote to the Superintendent, Geraldine Margin, and requested a meeting. She identified that letter as Exhibit C-3, dated June 5, 2010, which she stated was hand-delivered on June 7, 2010.

K.S.M. testified that on June 10, 2010, M.M., her ex-husband’s wife, informed her that the respondent came to the salon where M.M. was employed and had a conversation with M.M. about R.M. According to the complainant, M.M. had no prior knowledge of R.M.’s underage drinking incident and the potential effect of that incident on running for Student Council. K.S.M. testified that M.M. told her that the respondent stated that R.M. was unfit for the Student Council Presidency and that, if allowed to run, she would be under a microscope. The complainant testified that she then contacted the Superintendent to report this information. In turn, the Superintendent contacted the respondent. K.S.M. further testified that M.M. reported to her that the respondent contacted her in order to apologize and do “damage control.” The complainant identified Exhibit C-1 as a letter dated June 14, 2010 which she wrote to the Superintendent notifying her “of unprofessional, unethical, and violative conduct of a member of your Board of

¹ Initials are used herein to protect the identity of the student in this matter.

Education.” (Exhibit C-1) She identified Exhibit C-2 as a letter dated June 25, 2010 which was a follow-up to the June 14th letter.

K.S.M. testified that on the weekend of July 4th, 2010, she received a call from the Superintendent informing her that the Board had “taken steps” with respect to the respondent, but that such actions were confidential and could not be shared with the complainant. K.S.M. stated that the Superintendent informed her that the respondent thought she was talking to a friend on June 10, 2010.

M.M. testified that she is married to the complainant’s ex-husband and she maintains a cordial relationship with the complainant. She testified that on June 10, 2010, she was working at a salon called “The Place” in Manasquan. M.M. stated that she has known the respondent for about 15 years as an acquaintance; they did not socialize and she did not have the respondent’s cell phone number until she left it on M.M.’s machine. M.M. testified that on June 10, 2010, she was in the salon waiting for a client when the respondent came in and approached her, asking if M.M. knew what “the little princess” was up to. M.M., who had just returned from vacation, asked what had happened. She testified that she had no prior knowledge of R.M. being removed from the ballot for Student Council. M.M. testified that the respondent told her that R.M. had been pulled into the principal’s office and they asked her to remove her name from the ballot. M.M. further testified that the respondent told her that R.M. was going down the wrong path, and had better watch her step because everyone would be watching her like a hawk. According to M.M., the respondent also mentioned that R.M. was running for captain of the cheerleading squad.

M.M. testified that the conversation took place at the reception desk of the salon. M.M. stated that the receptionist was there, the nail technician was there and one of her clients was also within earshot. According to M.M., heads began to turn and she suggested to the respondent that they talk outside. M.M. told R.M. that she had heard the information about her from someone at the deli, so as not to upset her. When R.M. reported the information to her mother, K.S.M. called M.M. According to M.M., the respondent told her that R.M. was being removed from the ballot for the Student Council election and that K.S.M. had requested a special meeting about the ballot issue. M.M. further stated that the respondent told her that R.M. was not suited for cheerleading captain either.

M.M. testified that the respondent left messages on her cell phone on June 11, 2010, requesting that M.M. call her back because the respondent needed to do “damage control.” Later that day, M.M. and the respondent spoke for about 16 minutes; the respondent wanted to know who at the salon could have heard the conversation. According to M.M., the respondent stated that she feared losing her position on the Board.

Maria McMenamen testified that she is a receptionist at The Place in Manasquan. Her desk is about three to four feet from the front door. She recalled that on June 10, 2010, Ms. Haley came in to buy a product; she testified that the respondent and M.M. were outside having a conversation. Ms. McMenamen stated that there was “hardly anyone in the salon and no one within earshot.” She stated that she went outside and the respondent and M.M. were talking, but she did not hear anything; it looked like a friendly conversation, but she did not

overhear content. When cross-examined, Ms. McMenamem stated that she did not know why M.M. and the respondent were talking outside.

Geraldine Margin, the Superintendent of the Manasquan School District, testified that she informed the Board that there had been an incident on April 18, 2010 involving alcohol possession and one of the students. She did not name the student. Ms. Margin testified that ordinarily she would not give names of students unless parents were appealing disciplinary action; she just wanted the Board to be aware that the administration was handling the matter. She did not discuss the matter with the Board and there were no appeals. Ms. Margin stated that she did not tell the Board that the student, R.M., had been told by the principal that she was removed from the ballot for Student Council. She discussed the matter with the principal and it was later determined that R.M. could run, which she did. However, she did not win the election.

Ms. Margin testified that the local newspaper also published an article about the alcohol possession incident, since it was the second time there had been such an incident at the student's home. However, the paper did not report names. According to Ms. Margin, following the April incident, all three students involved were told they could not attend the prom. Thereafter, Ms. Margin stated that there was some question as to why the election that was previously scheduled for June 8, 2010 was postponed. She stated that the matter was discussed by the students and it is a very small town. However, she could not say that R.M.'s charge of alcohol possession was "common knowledge."

On cross-examination, Ms. Margin stated that she spoke with Ms. Haley after the June 10th incident at the salon, but could not be sure that it was the same day. She confirmed that she received K.S.M.'s letters of June 14 and June 25, 2010 and that during the weekend of July 4th, she got back to K.S.M and informed her that the Board was handling the situation involving the respondent, that she was not going to be asked to resign and the rest was confidential. Ms. Margin confirmed that she received Exhibit C-3, K.S.M.'s letter dated June 5, 2010 when K.S.M. hand-delivered it on June 7, 2010. She stated that R.M. was told on June 3 that she was being removed from the Student Council election ballot.

The respondent, Chris Haley, testified that she does not deny that a conversation took place at the salon on June 10, 2010. She stated that she went into the salon that day to purchase a product. She was walking out the door when she saw M.M., whom she said she knew, but not well. She stated that there was some "chit chat" that involved the complainant; it was not the first time that M.M. spoke to her about K.S.M. and her "struggles with co-parenting." The respondent stated that she wondered why someone so promising would be having these parties. She stated that she gleaned this information as a parent in the community, rather than as a Board member because the Board had little information about R.M.'s alcohol possession incident. Ms. Haley stated that "there is a rumor mill and kids hear things; they come home and talk about stuff." However, conversations with the principal were not known to the Board. Ms. Haley testified that she heard that R.M. was called down to the principal's office. The respondent affirmed that her conversation with M.M. on June 10, 2010 was brief and she was shocked when she received a call from the Superintendent after the Superintendent had heard from K.S.M.

Ms. Haley confirmed that after she spoke with the Superintendent, she called M.M. and asked her how this happened; she needed an explanation. She stated that her accusations were so blown out of proportion and “full of fabrications and exaggerations.” Ms. Haley texted M.M. and asked her to call her. When she spoke to M.M., the respondent stated that M.M. “proceeded to sell me baloney” which she knew to be false.

On cross-examination, the respondent stated that she is entitled to have opinions on information that was out in the public; there were articles in the paper. The April 18th incident was “out there” in the paper, albeit with no names. She denied that she advised M.M. that R.M. had been pulled from the ballot. Ms. Haley denied that she told M.M. that the coach was going to talk to R.M., as alleged in the complaint. She further denied that she told M.M. that K.S.M. requested a special meeting with the Superintendent. The respondent testified that “a lot” of what M.M. stated was fabricated. Ms. Haley stated that she does not think that she breached the Code of Ethics.

When asked by the Commission what she and M.M. spoke about on June 10th, the respondent stated that she recalled they had conversations in the past about M.M.’s “struggles with co-parenting” and she had a “chit chat” about her “troubles with this child” and M.M.’s parenting role. Ms. Haley stated that these were “things that were being said in the community.” She denied that she spoke with the principal or the coach about R.M. She testified that she never used the phrase “damage control.” When asked who initiated the conversation on June 10th, Ms. Haley stated that she “really couldn’t say--- I was on my way out and she [M.M.] was outside, maybe waiting for someone.” She said she just bumped into M.M. Ms. Haley described M.M. as an acquaintance; she said she recommended her for the position at the salon; they have some mutual friends. Ms. Haley denied that M.M. questioned her about R.M. being removed from the ballot; she affirmed that she did not have that information.

Complainant’s Exhibits

C-1	K.S.M.’s letter to the Superintendent dated June 14, 2010.
C-2	K.S.M.’s letter to the Superintendent dated June 25, 2010.
C-3	K.S.M.’s letter to the Superintendent dated June 05, 2010.

FINDINGS OF FACT

As the trier of fact in this matter, the Commission had the opportunity to observe the demeanor of the witnesses and to judge their credibility. In this connection, the Commission notes that the critical witnesses were the respondent and M.M., since they were the only people with personal knowledge of the conversation that gave rise to this complaint. However, the Commission found that the testimony of the respondent was evasive and less than forthcoming, while M.M.’s testimony was similarly unconvincing. Accordingly, the Commission finds that neither witness offered a reliable account of the events that transpired on June 10, 2010. Thus, the following are the facts based on the pleadings, testimony and documents on the record.

1. The respondent was at all times relevant to this matter a member of the Board of Education.

2. On April 18, 2010, R.M., a student in the Manasquan School District, was charged with alcohol possession.
3. Following the incident, Superintendent Geraldine Margin informed the Board because there was going to be disciplinary action taken, but did not provide the Board with the student's name.
4. On June 3, 2010, the principal informed R.M. that her name would be removed from the ballot for Student Council President. (Exhibit C-3)
5. The Student Council election was scheduled for June 8, 2010. (Exhibit C-3)
6. By letter dated June 5, 2010, K.S.M. requested "a closed-door discussion" at the Board's meeting scheduled for Tuesday, June 8, 2010 and also requested that the election be "adjourned until a date subsequent to the Board meeting in order to address this issue." (Exhibit C-3)
7. On June 10, 2010, Ms. Haley had a conversation with M.M. at The Place in Manasquan. They discussed parenting issues.
8. By letter dated June 14, 2010, K.S.M. notified the Superintendent "of professional, unethical, and violative conduct of a member of your Board of Education." The letter further stated:

It has come to my attention that Chris Haley has been discussing my 17 year old daughter in public with knowledge that she has apparently, and erroneously, gained in her position as a member of the Board. Said conduct is a violation of my daughter's privacy, a violation of the confidentiality requirement of juvenile records and information, a violation of the position of trust that has been bestowed upon her, and a violation of ethical standards. On June 11, 2010, I was notified that on the prior day Ms. Haley, while in a nail/hair salon, started a conversation with my ex-husband's wife inquiring whether she knew what happened to "the princess." With numerous clients in ear shot, Ms. Haley proceeded to advise that [R.] had been precluded from running for Student Council because of alcohol, it being determined that she was not a candidate for leadership, was not to be trusted, and she was "going down the wrong path." ***

K.S.M. therein requested that Ms. Haley "be asked to resign or be removed from the Board in light of these ethical violations." (Exhibit C-1)

9. By letter dated June 25, 2010 addressed to the Superintendent, K.S.M. requested a response to her letter of June 14th. (Exhibit C-2)

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 complainant asserts that on June 10, 2010, the respondent “openly discussed, defamed and derogated” her daughter in a public place (the salon), sharing information that she had been privy to in her position as a Board member. Specifically, the complainant alleges that the respondent referred to her daughter as “the princess” and told a salon employee (M.M.) that her daughter had been removed from the ballot for President of Student Council because the Principal decided she was not a good candidate due to her charge of alcohol possession. According to the complainant, the respondent loudly discussed that the complainant’s daughter was not a good candidate for leadership and was not to be trusted and not allowed to run for President. (Complaint at p. 1) The complainant further alleges that the respondent stated that she was aware that her daughter and her daughter’s friend wanted to become captains of the cheerleading squad and that the captain of the squad would be informed that the complainant’s daughter should not be allowed to have that position. The complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(e) and (g).

The respondent denies the allegations in the complaint, alleging that they are hearsay. She denies that she discussed any information that was discussed by the Board in private Executive Session with anyone outside the executive session. The respondent further asserts that M.M. raised the issue of the complainant’s parenting and there was no public discussion or episode as alleged in the complaint. (Answer)

The Commission first considers the complainant’s allegation that the respondent 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.

The Commission’s regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

There is no allegation in this matter that the respondent made personal promises to anyone. Rather, the complainant contends that the respondent’s actions at the salon on June 10, 2010 constituted private action that, by its nature, had the potential to compromise the Board. In the instant matter, there is no dispute that the respondent spoke with M.M. at the salon on June 10, 2010; while the discussion generally concerned “parenting” issues (respondent’s

answer), it is highly likely that the discussion also included R.M. However, the complainant did not establish that the respondent spoke about any particular matter that had been before the Board or otherwise failed to recognize that authority rests with the Board of Education. In Benson v. Gearity, Toms River Regional Board of Education, Ocean County, C21-07 (June 24, 2008), the Commission found that a respondent's letter to the editor, although it indicated that he was a Board member, did not state that he was speaking on behalf of the Board and did not reference any Board action, either of a public or private nature. Thus, although the Commission found that the letter was written by the respondent in his role as a citizen and constituted private action, there was no showing that it may have compromised the Board.

Similarly, in the instant matter, although the Commission finds that the respondent engaged in a conversation with M.M. on June 10, 2010, the complainant failed to establish that the respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the Board. (See also, Dressel v. Kolupanowich, Monroe Township Board of Education, Middlesex County, C11-07 (June 24, 2008)). Therefore, the Commission finds that the complainant failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(e).

The Commission next considers the allegation that the respondent 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 Commission's regulations require that:

Factual evidence of a violation of the confidentiality provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that the respondent(s) took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that the respondent violated the inaccurate information provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by the respondent(s) and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. N.J.A.C. 6A:28-6.4(a)7.

The complainant asserts that the respondent shared confidential information with M.M. Recognizing that the respondent and M.M. were the only parties to the conversation on June 10th and further underscoring its credibility determinations, as set forth above, the Commission finds

that while there is no dispute that the respondent engaged in a conversation with M.M. on June 10, 2010, the record herein does not establish: (1) that the respondent became aware of R.M.'s alcohol possession through her service on the Board; (2) that the respondent became aware of the consequences of that incident, such as her temporary removal from the ballot for Student Council through her service on the Board; or (3) that respondent discussed these details with M.M. (See, Ogintz v. Lavery, East Windsor Regional Bd. of Ed., Mercer County, C29-09 (July 28, 2010, wherein the Commission found that the complainant failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(g) by communicating with his son about a teacher's resignation where the Superintendent notified the community by email, and the complainant acknowledged in her testimony that the subject of the teacher's resignation was not discussed at a Board meeting, so as to render this potentially a "confidential matter pertaining to the school," thus implicating N.J.S.A. 18A:12-24.1(g).) Therefore, the Commission finds that the complainant failed to establish that the respondent took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with Board policies, procedures or practices so as to violate N.J.S.A. 18A:12-24.1(g).

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).

Robert W. Bender
Chairperson

Mailing Date: March 23, 2011

Resolution Adopting Decision – C27-10

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 from its hearing on February 22, 2011; and

Whereas, at its meeting on February 22, 2011, the Commission found that the complainant had not established 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

Whereas, the Commission, therefore, dismissed the complaint; and

Whereas, at its meeting on March 22, 2011, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

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

Robert W. Bender, Chairperson²

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on March 22, 2011.

Joanne Boyle
Executive Director

² Although Chairperson Bender did not attend the February 22, 2011 meeting and participate in the decision, his signature affirms that the decision was reviewed and duly adopted by the Commission at its meeting on March 22, 2011.