

SUMMARY OF THE PLEADINGS

In Count I of the complaint, the complainant alleges that at a Board meeting on August 24, 2009, the respondent made comments regarding the approval of volunteers. The complainant asserts that the respondent opposed the appointment of these individuals and “stated that his son was on the football team and did not think volunteers should act as coaches and questioned the process for selecting the individual.” (Complaint at paragraph 1). The complainant states that the respondent asked the item to be pulled pending further review and stated that he would not like a volunteer to give instructions to his son. The complainant asserts that the respondent is not exercising objectivity in his decisions as a Board member in violation of N.J.S.A. 18A:12-24.1(a), (c), (f) and (h).

In Count II of the complaint asserts that on March 13, 2009 the complainant disregarded the Board’s policy regarding the use of facilities by a township resident in violation of N.J.A.C. 6A:12-24.1(a), (c) and (d).

ANALYSIS

In determining whether to grant a motion to dismiss, the Commission shall review the facts in the light most favorable to the complainant and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss, and any responses thereto, are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. Thus, the question before the Commission was whether the complainant alleged facts which, if true, could support a finding that the respondent violated N.J.S.A. 18A:12-24.1(a), (c), (d), (f) and (h) of the Code of Ethics for School Board Members. The Commission is guided in this review by the standards set forth at N.J.A.C. 6A:28-6.4(a). Granting all inferences to the complainant, and even assuming all facts to be true, the Commission determined to grant the respondent’s Motion to Dismiss.

Count I

The complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(a), (c), (f) and (h) in connection with statements made at the August 24, 2009 Board meeting. The Commission notes, however, that the complaint is devoid of any particular factual allegations that would support findings of violation. Specifically:

- (1) The complainant does not include, nor does she even assert that there has been, a final decision from any court of law or administrative agency of this State demonstrating that the respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(a) (N.J.A.C. 6A:28-6.4(a)1);
- (2) The complainant has set forth no specific facts that could demonstrate that the respondent took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent’s duty to: (i)

develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(c) (N.J.A.C. 6A:28-6.4(a)3);

- (3) The complainant has set forth no specific facts that could demonstrate that the respondent took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(f). (N.J.A.C. 6A:28-6.4(a)6); and
- (4) The complainant has set forth no specific facts that could demonstrate that the respondent acted on a personnel matter without a recommendation of the chief administrative officer, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(h). (N.J.A.C. 6A:28-6.4(a)8).

Accordingly, even accepting as true all facts alleged by the complainant in Count I, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(a), (c), (f) and (h).

Count II

The complaint asserts that on March 13, 2009 the complainant disregarded the Board's policy regarding the use of facilities by a township resident in violation of N.J.S.A. 18:12-24.1(a), (c) and (d). The Commission herein underscores, as set forth in its regulations, that it has jurisdiction only over those matters arising under the School Ethics Act. The School Ethics Commission shall not receive, hear or consider any pleadings, motion papers or documents of any kind relating to any matter that does not arise under the Act. N.J.A.C. 6A:28-1.4(a). Thus, the Commission has no jurisdiction to consider whether a respondent violated local Board policy.

Further, the Commission finds that to the extent the complainant suggests that the respondent's failure to abide by Board policy renders him in violation of N.J.S.A. 18A:12-24.1(a), (c), and (d), the complaint is devoid of any particular factual allegations that would support findings of violation. Specifically:

- (1) The complainant does not include, nor does she even assert that there has been, a final decision from any court of law or administrative agency of this State demonstrating that the respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(a) (N.J.A.C. 6A:28-6.4(a)1);
- (2) The complainant has set forth no specific facts that could demonstrate that the respondent took board action to effectuate policies and plans without consulting those

affected by such policies and plans, or took action that was unrelated to the respondent's duty to: (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(c) (N.J.A.C. 6A:28-6.4(a)3); and

- (3) The complainant has set forth no specific facts that could demonstrate that respondent 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 or charter school, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(d). N.J.A.C. 6A:28-6.4(a)4.

Accordingly, even accepting as true all facts alleged by the complainant in Count II, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(a), (c) and (d).

DECISION

Based on the foregoing, the Commission grants the respondent's Motion to Dismiss the complaint. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender
Chairperson

Resolution Adopting Decision – C38-09

Whereas, the School Ethics Commission has considered the complaint, and the respondent’s Motion to Dismiss;

Whereas, at its meeting on November 24, 2009, the Commission granted the respondent’s Motion to Dismiss the allegations that he violated N.J.S.A. 18A:12-24.1(a), (c), (d), (f) and (h) of the Code of Ethics for School Board Members; and

Whereas, the Commission has reviewed and approved the decision memorializing said action;

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

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on December 15, 2009.

Joanne Boyle
Executive Director