
**JENNIFER DERICKS, MAUREEN SHARPE,
DARYL SAVAGE, SHIRLEY BOUSHELL,
ARMEN KOOCHAGIAN, RONALD
BASSANI,**

v.

**MICHAEL SCHIAVONI,
SPARTA BOARD OF EDUCATION,
SUSSEX COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO. C41-07

DECISION (CONSOLIDATED)

**MAUREEN SHARPE, DARYL SAVAGE,
SHIRLEY BOUSHELL, ARMEN
KOOCHAGIAN, RONALD
BASSANI,**

v.

**PAUL JOHNSON, MICHAEL
SCHIAVONI, MICHAEL
SCHILL,
SPARTA BOARD OF EDUCATION,
SUSSEX COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO. C46-07

DECISION (CONSOLIDATED)

**JENNIFER DERICKS, MAUREEN SHARPE,
DARYL SAVAGE, SHIRLEY BOUSHELL,
ARMEN KOOCHAGIAN, RONALD
BASSANI,**

v.

**LINDA CURCIO, PAUL JOHNSON,
MICHAEL SCHIAVONI, KAREN SCOTT,
RICHARD SULLIVAN,
SPARTA BOARD OF EDUCATION,
SUSSEX COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO. C47-07

DECISION (CONSOLIDATED)

PROCEDURAL HISTORY

This matter arises from three complaints filed on October 22, 2007, November 13, 2007 and November 23, 2007 by various complainants, as set forth above, against members of the Sparta Board of Education (“Board”) alleging violations of the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Specifically, the complainants allege that the respondent violated the Code of Ethics for School Board Members.

In the matter docketed as C41-07, complainants Jennifer Dericks, Maureen Sharpe, Daryl Savage, Shirley Boushell, Armen Koochiagian and Ronald Bassani assert that: (1) Respondent Michael Schiavoni, violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members when he wrote a letter to the editor which was published on November 2, 2006 (Complaint at paragraph 1); (2) Board member Schiavoni violated N.J.S.A. 18A:12-24.1(a), (g) and (i) pursuant to statements made in the letter to the editor (Id. at paragraph 2); (3) Schiavoni’s statements in the letter to the editor with respect to the hiring of supplemental counsel violated N.J.S.A. 18A:12-24.1(a), (c), (d), (g) and (i) of the Code of Ethics for School Board Members. (Id. at paragraph 3 – first part)¹; (4) Board members Linda Curcio, Paul Johnson, Michael Schill and Richard Sullivan violated N.J.S.A. 18A:12-24.1(a), (c), (d), (g) and (i) of the Code of Ethics by voting on August 14, 2006 to approve a resolution to approve supplemental counsel. (Id. at paragraph 3 – second part); and (5) In presenting differing reasons for the hiring of supplemental counsel, Schiavoni was “lying to the public” in violation of N.J.S.A. 18A:12-24.1(a) and (e). An Answer to the complaint docketed as C41-07 was filed on December 10, 2007.

In the matter docketed as C46-07, complainants Maureen Sharpe, Daryl Savage, Armen Koochiagian and Ronald Bassani assert that respondents Paul Johnson, Michael Schiavoni, and Michael Schill violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members when they wrote letters to the editor and placed ads in the newspaper. An Answer to the complaint docketed as C46-07 was filed on January 18, 2008.

In the matter docketed as C47-07, complainants Jennifer Dericks, Maureen Sharpe, Daryl Savage, Shirley Boushell, Armen Koochiagian and Ronald Bassani assert that: (1) Respondents Linda Curcio, Paul Johnson, Michael Schiavoni, Karen Scott and Richard Sullivan made critical, negative and evaluative statements about the administration and citizens of the District in a series of newspaper articles; (2) Michael Schiavoni made a presentation at the January 8, 2007 Board meeting without the input of the Board; (3) Paul Johnson improperly sent letters on June 27, 2006 to solicit law firms and was thereafter involved in the selection of supplemental counsel; and (4) Michael Schiavoni met with a member of the teachers’ association without direction or knowledge of the Board. The complainants assert these actions violated N.J.S.A. 18A:12-24.1(e), (g), and (i) of the Code of Ethics for School Board Members. An Answer to the complaint docketed as C47-07 was filed on January 4, 2008.

In March 2008, the Commission learned that Mr. Schiavoni filed a matter in Superior Court, which appeared to necessitate that the complaints be placed in abeyance, as per N.J.S.A.

¹ The Commission is granting these *pro se* complainants the benefit of the doubt as to the specific violations alleged inasmuch as this portion of the complaint is difficult to understand.

18A:12-32. The parties were so notified by letter dated April 3, 2008; after providing an opportunity to comment, at its meeting on May 27, 2008, the Commission determined to place the complaints in abeyance pending resolution of the matter filed in Superior Court.

The lawsuit was dismissed in September 2008; the parties were immediately contacted to arrange for a telephone conference in order to set hearing dates. A conference call was conducted on October 21, 2008 with lead complainant, Ms. Maureen Sharpe², complainant Jennifer Dericks and counsel for the respondents, Howard Mankoff, Esq. The parties did not object to consolidating the above-captioned matters for hearing and decision by the Commission. This consolidated matter was set for hearing on November 25, 2008 and, thereafter, continued on December 16, 2008 and January 27, 2009.

Pursuant to a Motion to Dismiss, on December 16, 2008, the Commission determined to dismiss the allegation that respondents violated N.J.S.A. 18A:12-24.1(a), as summarized below. Testimony for these consolidated matters concluded on January 27, 2009. At its meeting on February 24, 2009, the Commission found that respondent Michael Schiavoni violated N.J.S.A. 18A:12-24.1(e), as alleged in the matter docketed as C41-07 and voted to recommend that he be censured; all other allegations in the matters docketed as C41-07, C46-07 and C47-07 were dismissed.

SUMMARY OF THE RECORD

On November 25, 2008, the matter docketed as C41-07 was heard by the Commission.³ In attendance were complainants Maureen Sharpe, Ronald Bassani, Daryl Savage and Jennifer Dericks. Ms. Dericks presented the case for complainants. In attendance for respondents were Linda Curcio, Paul Johnson, Richard Sullivan, Michael Schill and Howard Mankoff, Esq. Michael Schiavoni attended by phone.

Ms. Dericks testified that Schiavoni's letter to the editor which was published on November 2, 2006 contained misinformation, which compromises the Board. In order to demonstrate that the letter to the editor contained untrue and inaccurate statements, Ms. Dericks presented testimony which essentially consisted of a series of exhibits; C-1 through C-11 and C-

² Where a complaint is submitted by more than one person, a lead complainant may be designated by the Commission for the purpose of communication.

³ At its meeting on November 25, 2008, the Commission determined not to hear the allegations against respondents Curcio, Johnson, Schill and Sullivan, as set forth in the second part of paragraph 3 of the complaint in C41-07 with respect to their vote on August 14, 2006 in that such allegations were untimely filed, pursuant to N.J.A.C. 6A:28-6.1(b). (See, IMO Glascoe and Rush, Paterson Board of Education, C36-07 (August 26, 2008) wherein the Commission determined that "notice of the alleged violation" pursuant to N.J.A.C. 6A:28-6.1(b) must be interpreted in a manner that anticipates the reasonable diligence of the complainants.) Here, all documentation which formed the basis of the allegations was a matter of public record. Absent any indication that the facts as alleged by the complainants were unavailable or otherwise concealed from them, the Commission need not reach to untimely claims. At the Commission's December 16, 2008 meeting, counsel for the respondents moved to have these respondents dismissed from the matter docketed as C41-07. The motion was granted.

13 were accepted into the record and are identified below. She also presented Exhibits C-12 and C-14, which were not accepted into the record.⁴

Ms. Dericks testified that Schiavoni's letter called into doubt the veracity of the Superintendent. Ms. Dericks further testified that she believed that Schiavoni's involvement in a parental complaint which arose in the summer of 2006 was contrary to Board policy.

Ms. Dericks testified on the issue of hiring additional counsel in the summer of 2006. She noted that Exhibit C-10, the Board minutes from the date when counsel were approved, uses the term "supplemental" counsel, although Schiavoni's letter says this "is an inaccurate statement." (Exhibit C-1) Ms. Dericks offered C-11 into evidence in order to demonstrate that there was regular contact with supplemental counsel in the summer of 2006 and their hiring was not because of any actions taken by the Superintendent, as stated in the letter to the editor. When asked on cross-examination whether the Superintendent had ever been denied access to legal advice, Ms. Dericks stated that the new policy with respect to getting legal advice added a layer – an "unnecessary" requirement. Ms. Dericks stated that she did not know whether the president or vice president of the Board ever denied access to anyone; she did not know if Dr. Morton was ever denied access. However, she testified that President Schiavoni was overstepping his bounds. The very nature of this policy was to limit access to counsel. Ms. Dericks questioned what gave the Board the background and expertise for adopting such a policy.

Ms. Dericks referenced paragraph four of the complaint wherein the complainants allege that Schiavoni was "lying to the public" because he made statements, as quoted in a newspaper article, which attributed the hiring of additional counsel to a reconstruction project, but the letter said otherwise.

When cross-examined on the issue of hiring additional counsel, Ms. Dericks initially stated that she did not know why they were hired. She then stated that the Board's existing counsel was retained to continue work on union and special education issues and the Board already had bond counsel and construction counsel. According to Ms. Dericks, the "bottom line" was that the hiring was not for construction and they were not hired to deal with communications from Dr. Morton's attorney, because "the whole process" began earlier.

When cross-examined on the question of how the Board was compromised by the letter to the editor, Ms. Dericks asserted that the Board's authority was undermined because one person was speaking for them and making inaccurate statements, although she could not identify anything specific which the Board was unable to accomplish. Ms. Dericks said that this letter and other actions helped to raise questions about the authority of the Board, and whether the District was a good place to work. When pressed on this issue, Ms. Dericks stated that this letter was merely the "tip of the iceberg." State stated that in the public's view, making repeated inaccurate statements and attributing inaccuracies to the Superintendent erodes the public's confidence. She stated that the inaccuracies were the Board President's and the public was left unknowing. The two documents that were released by Dr. Morton have not been called into question.

⁴ The complainant's testimony in this regard was not based on her first-hand knowledge of events, but, rather on the possession of public documents which she alleges support the claims of violation.

When cross-examined on the issue of Board oversight for the transfer of personnel, Ms. Dericks stated that the action referenced in the letter to the editor was actually a reassignment and there was no oversight function by the Board. She stated that this was confirmed by the New Jersey School Board's Association (NJSBA). The fact that the Superintendent placed the item on the Board's agenda was, according to Ms. Dericks, "just a courtesy."

Ms. Dericks could not point to any inaccuracies in the last two paragraphs of the letter to the editor.

Tom Morton, Superintendent of Schools, presented testimony for the complainants. Dr. Morton testified that there is a distinction between the reassignment of staff within a building, which is within the purview of the Superintendent versus a "transfer" either between certifications or between buildings, which requires approval by the Board. The employee action referenced in the Schiavoni letter to the editor was, according to Dr. Morton, a reassignment within the building from vice principal's secretary to library secretary. Dr. Morton testified that he advised the Board that it was not their role to oversee such actions. The board also received advice from the NJSBA and from board counsel that it was not their role. Dr. Morton stated that a principal who left the district indicated to him that the Board's involvement in this decision led to his resignation. On cross-examination, Dr. Morton stated that this principal was one of six administrators who left the district and attributed their leaving to the Board's micro-management.

Dr. Morton also testified about the process for investigating complaints raised by parents, in that this issue was also addressed in the letter to the editor. His process was to meet with parents or staff, and go back to the employee to discuss the matter. He testified about a letter that was sent to the Board of Education and the Board got involved. According to Dr. Morton, there was a discussion between the Board President and himself regarding the need to discuss with the Board, when Dr. Morton returned from vacation, what had transpired between the parents and Dr. Morton. Dr. Morton suggested that he and the Board President should meet when he returned from vacation. On his first day back to work, the Board asked the principal and the secretary, who were the employees involved in the matter, to appear at a board meeting. His understanding is that Mr. Schiavoni directed the assistant superintendent to send a "Rice"⁵ notice to the involved employees. Dr. Morton testified that he was very angry that the Board had the meeting without input from him; he felt that this meeting was an interrogation of the principal and the secretary, after which the employees were asked to leave and they spoke to parents for a long time.

Dr. Morton testified that he believed there was a meeting with the assistant superintendent and the parents; the Board President and Vice President were supposed to attend, but did not. Dr. Morton affirmed that he has informed Board members in writing that they

⁵ "Rice" notice refers to the matter entitled, *Rice v. Union County Regional High School Bd. of Ed.*, 155 N.J. Super. 64 (App. Div. 1977), certif. den. 76 N.J. 238 (1978) which established the right of employees to obtain notice when they will be discussed by the Board of Education.

should not be directing employees to take any action; communications to staff should go through him. Dr. Morton stated that, in his absence, he was not aware that the assistant superintendent was directed by the Board to investigate this parental complaint, although he was in daily contact with his office while away.

On cross-examination, Dr. Morton stated that he believed that the Board should investigate what comes before them; in this case, they should have spoken to him. Here, they “Riced” the employees without his knowledge and proceeded to “grill” them in a meeting. Dr. Morton stated there was never an opportunity at that meeting for him to share what was going on. Dr. Morton acknowledged that Schiavoni’s letter was accurate in stating that there was a meeting in closed session. Dr. Morton said he does not know who suggested the meeting, as referenced in Schiavoni’s letter, although the Rice letters were signed by the assistant superintendent. Dr. Morton could not confirm whether Schiavoni’s statement in his letter that the meeting was “suggested by a senior administrator, and the board followed the administrator’s recommendation and arranged for the principal to meet with the board,” was accurate. (Exhibit C-1).

Dr. Morton testified about the Board’s desire for supplemental counsel. He stated that the Board did not discuss with him the need for additional counsel; they did not seek his advice. Rather, he testified that there was discussion after the fact. Dr. Morton stated that the Board approved a policy that no administrator could contact an attorney and no attorney could contact an administrator; this made it difficult to get a legal opinion on any issue, particularly where there was a need for a quick response. Dr. Morton affirmed that he never took legal action against the Board and the first letter written by his attorney was in August 2006. On cross-examination, Dr. Morton acknowledged that after the Board approved its initial resolution limiting attorney access, it later created an exception to this prohibition.

Dr. Morton testified that Board members Keith Smith, Jonathon Rush and Kevin Pollison indicated to him that the Board talked to the new counsel and directed new counsel to do everything in his power to get rid of the Superintendent of Schools. Dr. Morton stated that when the Superintendent is questioned publicly on everything he does, it raises questions among the public and staff and also affects potential candidates coming to the district. On cross-examination, Dr. Morton acknowledged that there are ways that a Board can be critical and going through the press is detrimental to everyone. Dr. Morton stated that he could be criticized in open session, with just cause. But there is a process to be followed to conduct evaluations and have discussion in a closed session.

The matter docketed as C41-07 was continued at the Commission’s meeting on December 16, 2008. Prior to presenting their case on C41-07, the respondents made a motion to dismiss N.J.S.A. 18A:12-24.1(a) as a potential violation. Respondents’ counsel argued that the Commission’s regulations require that, in order to prove factually a violation of N.J.S.A. 18A:12-24.1(a), a complainant:

shall include a copy of a final decision from any court of law or administrative agency of this State that finds the respondent(s) 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[s] brought about changes through illegal or unethical means. N.J.A.C. 6A:28-6.9(b).

At no time, however, did the complainants assert that a final decision has been rendered with respect to these respondents from any court of law or administrative agency of this State as is their burden when bringing forth an allegation under N.J.S.A. 18A:12-24.1(a). As such, the Commission determined to dismiss the allegation in C41-07 that the respondent violated N.J.S.A. 18A:12-24.1(a)⁶.

In attendance at the December 16, 2008 meeting were complainants Jennifer Dericks, Maureen Sharpe, Daryl Savage and Ronald Bassani. Respondents Michael Schiavoni, Paul Johnson, Linda Curcio and Karen Scott were in attendance along with their attorney Howard Mankoff, Esq.

Mr. Schiavoni provided testimony regarding the letter to the editor of the Sparta Independent on November 2, 2006. He testified that prior to submitting his letter to the editor, he asked for attorney review and the letter was then submitted to the newspaper. Mr. Schiavoni testified that he wrote the letter in response to an article that had been written in the Sparta Independent on October 26th; he stated that the reporter had tried to reach him when writing that article, but he was away. He returned on a Friday. According to Schiavoni, the article stated that Board members were violating the Code of Ethics. Schiavoni testified that he believed that the article was not fact-based, and he wanted to respond. He further stated that he was surprised that in the article, the superintendent released confidential documents to the newspaper; he asserts that he was “stunned” when he got emails and phone calls from other Board members.

Consequently, Schiavoni testified that on Monday morning, he called the editor of the Sparta Independent and stated that the article was not factual or balanced. Furthermore, he believed that the article contained information that included “ongoing board business.” According to Schiavoni, the editor said he could write a letter in response and state the Board’s position; however, the editor needed the letter by Tuesday afternoon. Schiavoni then called the Board’s attorney to provide a “heads up” that he was going to be requesting her review. Schiavoni stated that he did not “want an opinion piece.” The attorney returned the letter he drafted and Schiavoni took that version and sent it to the Sparta Independent; it was printed on November 2, 2006. Schiavoni further testified that on Wednesday night, he sent an email to Board members and the Superintendent alerting them; additional emails further explained his rationale for sending the letter to the editor.

Schiavoni testified that Board minutes reflect that the letter was discussed at the next Board meeting, however, he does not recall the discussion. No Board member objected to the letter. He acknowledged on cross-examination that he vetted the letter with the attorney, but not the Superintendent or the Board.

With respect to the issue of hiring another law firm, Schiavoni testified that although the Board had counsel at the time, he did not feel that the Board was getting adequate attention from that attorney. Schiavoni explained that the Board has a multitude of issues and potential for law

⁶ The Commission so voted during the public portion of its meeting on December 18, 2008.

suits; if the town council had an attorney who regularly attended meetings, why not the school board? Schiavoni testified that for cost reasons, it occurred to him and to others that having a local attorney who does not have to charge travel time would be a good idea.

According to Schiavoni, Board member Paul Johnson did the research and recommended four local firms. Mr. Johnson invited the firms to submit a letter. Schiavoni acknowledged on cross-examination that the Superintendent had no input into the criteria, although he could have offered comments and did not. He does not recall if Johnson's letter was written pursuant to direction from the full Board. Law firms were interviewed and Schiavoni then made a written recommendation to Board, which was reviewed by the Human Resources Committee, which the Superintendent chaired. The recommendation was later approved by the Board. According to Schiavoni, the goal was to divide the existing work. Schiavoni affirmed that he reviewed the Board's budget and legal fees paid; they came under the allotment in 2007 and 2008. According to Schiavoni, no one raised the concern about the cost of supplemental counsel prior to hiring. He said that the motion to approve the supplemental firm passed 9-0. On cross-examination, complainant Dericks pointed out that the Board minutes at Exhibit C-10 shows a vote of 5 to 4.

According to Schiavoni, the Superintendent never asked for access to counsel that was denied. As for the policy regarding attorney access, Schiavoni stated that Dr. Morton felt that getting Board approval was a problem if there was an emergency. Therefore, Schiavoni affirmed that they changed the policy and, if there is an emergency, Dr. Morton could contact the attorney and obtain Board approval within 24 hours. Schiavoni said that after the policy was changed, there were no complaints about access.

Schiavoni further testified about the parental complaint. He stated that a letter from the parents of two students attending school in the district was addressed to the Board. The letter, dated July 5, 2006, raised concerns about how the children were treated by staff. The letter was entered into evidence as Exhibit R-1. Schiavoni stated that he believed the letter was discussed at the July 2006 meeting in closed session. Schiavoni referenced the local policy regarding the handling of complaints, Policy R9130, which was accepted into evidence as Exhibit R-2. He admitted he was "slightly foggy" with respect to what happened after the Board meeting, but the Board felt that they had to respond to the letter. Schiavoni testified that he does not recall exactly what the Board agreed to, but it was clear that the Superintendent had met with the parents unsuccessfully and the parents wanted the Board involved; the last page of the letter asked the Board to investigate the complaint. Schiavoni stated that he believed it was appropriate for the Board to review the matter since Dr. Morton had not resolved the complaint. Schiavoni believed this was consistent with the aforementioned Board policy.

Schiavoni stated that the parental complaint was discussed at the meeting of the Human Resources Committee on August 7, 2006; Dr. Morton was on vacation. The Committee discussed how to do fact-finding. The assistant superintendent recommended that the two administrators from the Alpine School who were part of the complaint would come before the Board so the Board could more fully understand the charges. The parents also attended the August 14, 2006 Board meeting. Dr. Morton was present at the August 14th meeting and made no objection. Both administrators were given a chance to explain; Schiavoni testified that he viewed it as a cordial discussion which took about 30 minutes, whereupon the Board "took on face value" what the administrators said. The Board decided there would be a meeting of the

Superintendent, the assistant superintendent, Board members Sullivan and Schiavoni and the administrators to try and mediate the issue with the parents. According to Schiavoni, the parents were prepared to file a lawsuit and this was a last attempt to address the issues several weeks before school was due to open. The meeting took place, but Sullivan and Schiavoni could not attend. The parents met with the Superintendent; the students continued with the school and the problem was resolved, according to Schiavoni, with the Board's action. No lawsuit was filed.

Schiavoni acknowledged that an email from Dr. Morton dated July 28, 2006 indicated that before Schiavoni met with the parents, he should meet with the Superintendent. However, Schiavoni did not first meet with Dr. Morton because he was on vacation. According to Schiavoni, Morton's first day back was August 14, 2006.

Schiavoni testified about the secretary in the high school principal's office. The Superintendent, based upon the recommendation of the principal, recommended transferring her to the media center. Schiavoni stated that he later received a letter from media specialist who outlined her concerns about the transfer stating that the other person was not qualified to be moved there; she raised issues of pay, hours and experience. Schiavoni wrote a letter back to the media specialist, but did not meet or speak with her. The Board then tabled the Superintendent's motion and did not approve the transfer. As to the distinction between a reassignment and a transfer, Schiavoni testified that he consulted with counsel and it was counsel's opinion that this was a transfer, thereby warranting Board approval. On this, Schiavoni testified that his goal as a Board member was to provide oversight to district. He was on the Human Resources Committee for three years.

The matter docketed as C47-07 was heard on December 16, 2008.⁷ The complainants herein allege that over the course of many months, the respondents made negative and evaluative statements to the press. Such statements, according to the complainants, affected the employment in the District. The complainants assert this was a violation of N.J.S.A. 18A:12-24.1(e), (g) and (i). In support of their positions, the complainants presented exhibits C-15 through C-25 as identified below; all but C-19 were accepted into evidence.

Doug Chesnolovitch testified for the complainants. He was a Board member from 1998 until 2007. Mr. Chesnolovitch testified that he was concerned about how the public perceived the board; that the Board was taking action that did not include the full Board. Mr. Chesnolovitch stated that he was surprised by Schiavoni's presentation at the meeting on January 8, 2007.

The respondents did not offer any evidence with respect to the allegations in C47-07.

⁷ At its meeting on November 25, 2008, the Commission determined not to hear the allegations against respondents which were untimely filed, pursuant to N.J.A.C. 6A:28-6.1(b). Specifically, the Commission does not reach to allegations of violations in connection with the November 15, 2006 article in the N.J. Herald (Item A of the Complaint), the November 16, 2006 article in the Sparta Independent (Item B of the Complaint), and the November 17, 2006 article in the N.J. Herald (Item E of the Complaint). At its December 16, 2008 meeting, the Commission further determined that the allegation that Paul Johnson improperly sent letters on June 27, 2006 to solicit law firms and was thereafter involved in the selection of supplemental counsel was untimely and, therefore, dismissed. Finally, with respect to C47-07, the Commission dismissed the allegation that Schiavoni met with the president of the teachers' association, as that allegation includes no date, as required by N.J.A.C. 6A:28-6.3.

The matter docketed as C46-07 was heard on January 27, 2009. Appearing for the complainants were Maureen Sharpe and Daryl Savage. Respondents Paul Johnson, Michael Schiavoni and Michael Schill were present and represented by counsel, Howard Mankoff, Esq. Complainant Maureen Sharpe presented the case for the complainants, asserting that the respondents violated N.J.S.A. 18A:12-24.1(e) when they wrote a series of letters to newspapers and when they placed ads in the newspapers which supported local candidates for the Board. Ms. Sharpe entered into evidence C-26 through C-31, identified below.

Kevin Pollison, a current member of the Board of Education, testified for the complainants, asserting that he has been on the Board since April 7, 2007 and that he was not consulted or shown copies of the letters before they were written and published. Mr. Pollison stated that he believed that these letters undermined the authority of the Board.

Dr. Morton, Superintendent, testified for the complainants. He stated that the respondents did not consult with him before writing the letters. As to the effect of these letters, Dr. Morton testified that it was his belief that they caused the public to question the authority in the district and damaged relationships. It is his belief that these letters caused a rift that has not yet been resolved. On cross-examination, Dr. Morton acknowledged that a political endorsement does not question the board and he is not suggesting that an endorsement is not permitted.

The respondents offered no specific testimony on this case. While there was no challenge as to the authenticity of these letters and advertisements, counsel argued that the letters speak for themselves and were not a violation of the Act.

Complainants' Exhibits

C-1	Schiavoni Letter to the Editor, <u>Sparta Independent</u> , November 2, 2006
C-2	Board Minutes, November 6, 2006
C-3	Schiavoni emails to the Board, November 5, 2006
C-4	Board Policy #0146 Board Member Authority; #0171 Duties of President and Vice President
C-5	Schiavoni email to BOE re: November 2, 2006 letter; November 3, 2006
C-6	Schiavoni email to BOE re: November 2, 2006 letter; November 2, 2006
C-7	<u>Sparta Independent</u> article, October 26, 2006 by Fran Hardy (to which Schiavoni responded)
C-8	Memorandum dated October 12, 2006 from school administrators to Superintendent Morton re: administrative concerns.
C-9	Email from Superintendent Morton re: parental complaint and three letters addressed to administrators at the Alpine School notifying that the Board would be discussing performance on August 14, 2006.
C-10	Board Minutes, August 14, 2006
C-11	Attorney bills from August 2006, September 2006, July & August 2007
C-12	Not accepted into evidence.
C-13	<u>Sparta Independent</u> article, 2006 (specific date not shown) by Fran Hardy
C-14	Not accepted into evidence.
C-15	Minutes of Meeting, January 8, 2007
C-16	<u>Daily Record</u> article, April 18, 2007, by Abbott Koloff

C-17	<u>NJ Herald</u> article, April 18, 2007, by Stephen Novak
C-18	<u>NJ Herald</u> article, April 24, 2007, by Stephen Novak
C-19	Not accepted into evidence.
C-20	<u>NJ Herald</u> article, September 30, 2007, by Stephen Novak
C-21	<u>NJ Herald</u> article, April 19, 2007, by Stephen Novak
C-22	<u>Sparta Independent</u> article, April 26, 2006 by Fran Hardy
C-23	<u>Sparta Independent</u> article, September 20, 2007 by Fran Hardy
C-24	<u>Sparta Independent</u> article, October 4, 2007 by Fran Hardy
C-25	Board Minutes, October 1, 2007
C-26	Paul Johnson's Letters: <u>Sparta Independent</u> April 5, 2007 & <u>NJ Herald</u> April 9, 2007
C-27	Paul Johnson & Michael Schill's advertisement, <u>Sparta Independent</u> , April 12, 2007
C-28	Michael Schiavoni's Letter: <u>Sparta Independent</u> , April 5, 2007 & <u>NJ Herald</u> , April 2007
C-29	Paul Johnson & Michael Schill's letters, <u>Sparta Independent</u> April 12, 2007 and <u>NJ Herald</u> April 15, 2007.
C-30	Paul Johnson's letter, <u>Sparta Independent</u> , July 5, 2007
C-31	Michael Schill's letter, <u>NJ Herald</u> , December 1, 2006

Respondents' Exhibits

R-1	Parents' letter dated July 5, 2006 addressed to Sparta BOE
R-2	Board Policy #9130 Public Complaints and Grievances

FINDINGS OF FACT

As to C41-07

1. On October 26, 2006, an article appeared in the Sparta Independent written by Fran Hardy. (Exhibit C-7)
2. At the time, Michael Schiavoni was president of the Sparta Board of Education.
3. In response to the October 26th article, Michael Schiavoni wrote a letter to the editor which was published in the Sparta Independent on November 2, 2006. (Exhibit C-1)
4. Mr. Schiavoni did not obtain prior consent from the Board to write the letter, although he submitted a draft of the letter to the Board's attorney for review.
5. Schiavoni informed the Board about the letter after he submitted it to the Sparta Independent. (Exhibits C-3, C-5 and C-6)
6. The letter is "signed," Michael R. Schiavoni, President, Sparta Board of Education. (Exhibit C-1)

As to C46-07

1. Michael Schiavoni, Michael Schill and Paul Johnson were members of the Board of Education in 2006 and 2007.⁸
2. Michael Schill wrote a letter to the editor of the NJ Herald dated December 1, 2006. (Exhibit C-31)
3. Paul Johnson wrote a letter to the editor which was published in the Sparta Independent on April 5, 2007 and NJ Herald on April 9, 2007. (Exhibit C-26)
4. Paul Johnson wrote a letter to the editor of the Sparta Independent dated July 5, 2007. (Exhibit C-30)
5. Paul Johnson and Michael Schill placed an advertisement in the Sparta Independent, April 12, 2007. (Exhibit C-27).
6. Paul Johnson and Michael Schill wrote letters to the editor published in the Sparta Independent on April 12, 2007 and the NJ Herald on April 15, 2007. (Exhibit C-29)
7. Michael Schiavoni wrote a letter to the editor which was published in the Sparta Independent on April 5, 2007 and the NJ Herald in April 2007. (Exhibit C-28)

As to C47-07

1. Linda Curcio, Paul Johnson, Michael Schiavoni, Karen Scott and Richard Sullivan were members of the Board of Education in 2007.
2. Newspaper articles appeared in the Sparta Independent and the NJ Herald quoting these board members. (Exhibits C-16, C-17, C-18, C-20, C-21, C-22, C-23 and C-24)
3. The articles were not written by the Board members.

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29b, the complainants bear the burden of factually proving any violations of the Code of Ethics for School Board Members.

C41-07

In the first paragraph of the complaint, the complainants assert that Board member Schiavoni wrote a letter to the editor of the Sparta Independent and signed it as Board President. According to the complaint, Mr. Schiavoni spoke on behalf of the entire board about contentious issues, without having first asked the board to review the letter and approve it for publication. Thereafter, in two separate emails that followed to board members, Schiavoni admits to taking this action on his own; he admits to having the letter reviewed by the board attorney. (Complaint at paragraph 1) The complainants assert this was a violation of N.J.S.A. 18A:12-24.1(e).

⁸ Pursuant to N.J.A.C. 1:1-15.2, at its meeting on January 27, 2009, the Commission informed the parties that it would take official notice of which respondents were still on the Board of Education. The Commission permitted the parties the opportunity to object to taking official notice of this information; there were no objections. Thus, the Commission found that respondents Michael Schiavoni and Richard Sullivan are no longer serving on the Board, while respondents Linda Curcio, Paul Johnson, Michael Schill and Karen Scott are currently serving on the Board.

There is no question on this record that Mr. Schiavoni sent the letter to the editor of the Sparta Independent without the full knowledge and consent of the Board. The Commission must now determine whether, having done so, he violated N.J.S.A. 18A:12-24.1(e), which 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.

Initially, the Commission notes that although Schiavoni's failure to duly notify the Board may have violated local policy, the Commission does not have the authority to consider alleged violations of local policy; rather, the Commission's jurisdiction is limited to reviewing violations of the School Ethics Act.

The first paragraph of the letter states, "As board president and spokesman for the board, I am providing important facts and corrections about matters covered in the recent Sparta Independent article." (Exhibit C-1) Schiavoni's emails (Exhibits C-3, C-5 and C-6), as well as his testimony, indicate that, upon returning home on Friday, October 27, 2006, he read the article dated October 26, 2006 in the Sparta Independent. He believed that the article was "one sided" and contained inaccuracies. Upon learning from the editor of the Sparta Independent that a letter response would be due on Tuesday, October 31, 2006, he made "a Presidential decision not to miss the 11/2 edition." (Exhibit C-5) Mr. Schiavoni testified that he did not want an opinion piece, but wanted to factually address the information provided in the October 26th article.⁹

The Schiavoni letter addresses three issues that were raised in the October 26, 2006 article in the Sparta Independent: access to legal resources; interfering with personnel decisions and improper handling of a parental complaint to the principal. These were, indeed, Board matters. While Schiavoni, as the President, may have been the spokesman for the Board at the time, and while he was addressing Board issues in his letter, the Commission finds that by rushing to submit the letter to the editor without first obtaining the consent of the Board, Schiavoni failed to recognize that the authority to address any perceived problems with the October 26th article rested with the Board. To the extent that Mr. Schiavoni maintained that the October 26th article required rebuttal, he should have brought the matter to the attention of the Board for review, even if that meant delaying the publishing of the article for another week. Having failed to do so, the Commission finds that Mr. Schiavoni took "private action;" *i.e.*, 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.

The Commission has similarly found that a Board member violated N.J.S.A. 18A:12-24.1(e) when he sent a letter to a private donor giving the impression that the letter was written on behalf of the board when, in fact, the board had not authorized the respondent to send the letter (see, I/M/O Bruce Freilich, Washington Township Bd. of Education, C18-04 & C19-04 Consolidated, (April 4, 2005) and where a Board member investigated a complaint and drafted a letter that appeared to have the endorsement of the Board. (See, I/M/O Randie Zimmerman,

⁹ For this reason, the Commission chooses not to apply the standards established in Advisory A02-06, issued on March 10, 2006, because the letter to the editor therein, and the advice which followed from the Commission, was based on an opinion piece which was written by the Board member.

C49-02 (July 22, 2003). The board member in Zimmerman referred to a classroom as being substandard and an obvious code violation when the classroom had previously been approved by the county superintendent. The Commission found sufficient evidence that the board member created the impression that she was representing the interests of the Board in violation of N.J.S.A. 18A:12-24.1(e). Because the letter to the editor in C41-07 clearly addresses Board business and is plainly intended to speak *for* the Board of Education, the Commission finds that there was a reasonable likelihood that the public would perceive this letter to be an official statement of the Board's position. The Commission finds, therefore, that Schiavoni's private action could have compromised the Board if, indeed, the Board did not subscribe, as whole, to the statements made in the letter to the editor, particular since these statements concerned the administration of the schools.¹⁰ Accordingly, the Commission finds that Mr. Schiavoni violated N.J.S.A. 18A:12-24.1(e).

In the second paragraph of the complaint, the complainants assert that Schiavoni's letter to the editor states, "Superintendent Dr. Morton released information to this newspaper that is not entirely accurate." The complainants allege this statement is untrue. The complainants further allege, "The remainder of the article goes on to make statements about actions the board has taken, which in and of themselves violate the code of ethics and are the subject of additional charges. The letter, taken as a whole, is an unwarranted, untruthful statement about the superintendent." The complainants assert Schiavoni's conduct violated N.J.S.A. 18A:12-24.1(g) and (i). (Complaint at paragraph 2)

In order to address these allegations, the letter to the editor is excerpted, in relevant part, as follows:

Recently, Superintendent Morton released information to this newspaper that is not entirely accurate. As board president and spokesman for the board, I am providing important facts and corrections about matters covered in the recent Sparta Independent article.

Three issues were raised in the communications from Dr. Morton's attorney and the Principal's Union:

¹⁰ Contrast the Commission's determination in Dressel v. Kolupanowich, Monroe Township Board of Education, C11-07 (June 24, 2008), where the Commission found that while the respondent's letter to the editor began with "As President of the Monroe Township Board of Education...", the respondent credibly testified that she used her title of Board President in the letter because she expected the newspaper to follow a practice common in the industry by putting her name and title at the end of the letter. The Commission also found that the respondent *did not* state in the letter that it was being written on behalf of the Board and that she used first person pronouns throughout the letter. The Commission dismissed the allegation that the respondent board member was in violation of N.J.S.A. 18A:12-24.1(e), noting also that the record does not show and the complainant does not establish how the respondent's clarification of the Board's position on the construction issue in the letter to the editor may have compromised the Board.

1. Limiting access to legal resources.
The board has initiated a process that is designed to oversee the cost and necessity for legal advice. It has not denied the superintendent access to legal advice.
2. Interfering with personnel decisions.
The board has exercised its responsibility to approve assignments. The board clearly has oversight authority on matters regarding the transfer of personnel. The board denial of the personnel transfer included research and review of documents, including a letter from the involved school staff person that stated major concerns about the negative impact of the proposed transfer on support service's ability to adequately serve students.
3. Improper handling of a parent's complaint regarding a principal.
There was a meeting with a principal and the board in closed session. The meeting, however, was suggested by a senior administrator, and the board followed the administrator's recommendation and arranged for the principal to meet with the board.

The board is confident that it operated within the proper oversight role as outline by the Sparta School District policy and New Jersey statue [sic].
(Exhibit C-1)¹¹

The Commission notes that the complainants appear to be asking this Commission to review the documents that Dr. Morton released to the Sparta Independent for the October 26, 2006 article so as to challenge the veracity of Schiavoni's statement that such information is "not entirely accurate." The Commission declines to engage in this level of review, as it is not necessary to assessing whether the letter to the editor was in violation of the Code of Ethics for School Board Members. To the extent the complainants paint a broad-brushed allegation as to the "remainder of the article" violating the Code of Ethics, or the letter when "taken as a whole" contains unwarranted and untruthful statements about the Superintendent, the Commission shall review the letter, below, with respect to the claim that there are inaccuracies in violation of 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.¹²

¹¹ Notably, complainant Dericks admitted on cross-examination that there was nothing inaccurate in the last two paragraphs of Schiavoni's letter. Accordingly, these paragraphs are not excerpted herein.

¹² The complainants do not allege that Schiavoni breached the confidentiality portion of this provision.

“Inaccurate information” under N.J.S.A. 18A:12-24.1(g) must be more than a personal opinion. N.J.A.C. 6A:28-6.9(a)2. In this connection, Schiavoni wrote:

1. Limiting access to legal resources.

The board has initiated a process that is designed to oversee the cost and necessity for legal advice. It has not denied the superintendent access to legal advice.

The complainants’ own exhibit evidences that the board took action to curtail the direct access of school administrators to legal counsel. (Exhibit C-8) Dr. Morton’s testimony was consistent with the above statements, as he explained that the Board limited administrators’ access to attorneys. He did not testify that he was denied access. Indeed, Derick’s testimony merely confirmed that the board adopted a policy that added “an unnecessary requirement.” She did not know whether the President or Vice President of the Board ever denied the Superintendent access to legal advice. The Commission finds that the complainants have failed to prove that Schiavoni’s statements in #1 above are inaccurate so as to be in violation of N.J.S.A. 18A:12-24.1(g).

2. Interfering with personnel decisions.

The board has exercised its responsibility to approve assignments. The board clearly has oversight authority on matters regarding the transfer of personnel. The board denial of the personnel transfer included research and review of documents, including a letter from the involved school staff person that stated major concerns about the negative impact of the proposed transfer on support service’s ability to adequately serve students.

There appears to be a dispute as to whether the employment action in question was a “reassignment” so as to be within the exclusive responsibility of the Superintendent or “transfer,” so as to come within the purview of the Board of Education. The Superintendent asserted it was the former and Schiavoni testified that Board counsel advised him it was the latter. The Commission is without jurisdiction to resolve this dispute, inasmuch as it implicates school law other than the School Ethics Act. In any event, that the complainants disagree with Schiavoni’s interpretation does not prove that his account is inaccurate. The Commission finds that the complainants have failed to prove that Schiavoni’s statements in #2 above are inaccurate so as to be in violation of N.J.S.A. 18A:12-24.1(g).

3. Improper handling of a parent’s complaint regarding a principal.

There was a meeting with a principal and the board in closed session. The meeting, however, was suggested by a senior administrator, and the board followed the administrator’s recommendation and arranged for the principal to meet with the board.

The board is confident that it operated within the proper oversight role as outline by the Sparta School District policy and New Jersey statue [sic].

Both Dr. Morton and Mr. Schiavoni testified that there was a meeting with the principal and secretary before the Board on August 14, 2006. Schiavoni testified that this meeting was at the suggestion of the assistant superintendent and Dr. Morton could not confirm otherwise. The complainants have failed to prove that Schiavoni's statements in #3 above are inaccurate so as to be in violation of N.J.S.A. 18A:12-24.1(g).

The Commission now turns to the complainants' allegation that Schiavoni's letter, as excerpted above, violated N.J.S.A. 18A:12-24.1(i), which states:

I will support and protect school personnel in proper performance of their duties.

Here, the complainants point to no specific portion of the letter which violates this provision, but rather, assert that "[t]he letter as a whole" contains unwarranted and untruthful statements about the Superintendent. For the reasons set forth above, the Commission cannot credit the allegation that the letter contains "untruthful" statements about the Superintendent as it addressed the three issues that were raised in the October 26, 2006 Sparta Independent article. To the extent the letter starts by stating, "Recently, Superintendent Morton released information to this newspaper that is not entirely accurate," (Exhibit C-1), the Commission finds that this statement does not rise to the level of failing to support and protect school personnel in violation of N.J.S.A. 18A:12-24.1(i).

Moving to the third paragraph of the complaint docketed as C41-07, the complainants allege that Schiavoni's statements in the letter to the editor with respect to the hiring of supplemental counsel violated N.J.S.A. 18A:12-24.1(c), (d), (g) and (i) of the Code of Ethics for School Board Members (Complaint at paragraph 3 – first part).¹³ Schiavoni's statement in the letter to the editor regarding the hiring of additional counsel is as follows:

The Oct. 26 Sparta Independent article stated that the school board has hired supplemental legal resources. This is an inaccurate statement. The board decided to divide the required legal work between two law firms. The Board researched area law firms and selected Morris, Downing & Shered based on their prior extensive experience with New Jersey school boards, their research capability for educational issues, and their stellar legal reputation. This matter was thoroughly discussed at the August board meeting and approved by a majority vote of the board. The board has recently incurred additional legal expenses. The legal expenses are in large part due to the superintendent's actions through his lawyer. (Exhibit C-1)

¹³ It is not entirely clear in this portion of the complaint whether the complainants confine their allegations to the letter to the editor, as written on November 2, 2006, or whether they are also addressing preliminary activities in the Summer of 2006 on the part of Schiavoni which led to the hiring of additional legal counsel. In any event, any such preliminary activities are not clearly stated as part of the charges and could not be reviewed by the Commission as they are untimely.

As to this allegation, the Commission first considers N.J.S.A. 18A:12-24.1(c), which states:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The Commission finds that Schiavoni's statements, as quoted above, merely show: (1) that he engaged in the process of reviewing additional counsel and (2) that the Board approved the appointment of the firm in August 2006. The complainants failed to demonstrate how these *statements* violate N.J.S.A. 18A:12-24.1(c). Indeed, it appears that, based on Derick's testimony on cross-examination, the complainants believe that the Board was "overstepping its bounds" in the hiring of outside counsel. The charge, however, does not concern the hiring itself, but Schiavoni's statement about the hiring. Accordingly, the Commission finds that the complainants have failed to prove that the respondent violated N.J.S.A. 18A:12-24.1(c).¹⁴

The Commission next turns to the allegation that the above-excerpted statement violates N.J.S.A. 18A:12-24.1(d), which states:

I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

In order to establish a violation of N.J.S.A. 18A:12-24.1(d), the complainants must show that the respondent "administered" the schools, contrary to his duty as a board member. To administer the schools means that a board member has become directly involved in activities or functions that are the responsibility of school personnel or the day to day administration of the school district. N.J.A.C. 6A:28-7.1. To the extent that the complainants contend that Schiavoni's statements, as set forth above, so demonstrate, they have failed to carry their burden of proof. Accordingly, the Commission finds that the complainants have failed to prove that the respondent violated N.J.S.A. 18A:12-24.1(d).

The complainants further allege that the excerpted language violates N.J.S.A. 18A:12-24.1(g) provides:¹⁵

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.

¹⁴ Moreover, any allegation that the respondent's conduct in August 2006 violated the Act would be untimely, as C41-07 was filed on October 22, 2007.

¹⁵ Here again, the complainants do not allege that Schiavoni breached the confidentiality portion of this provision, but, rather, that the information provided in the letter to the editor was inaccurate.

As noted above, “inaccurate information” under N.J.S.A. 18A:12-24.1(g) must be more than a personal opinion. N.J.A.C. 6A:28-6.9(a)2. The complainants herein point to Exhibit C-10 which states, in relevant part,

On a motion by Mrs. Curcio, seconded by Dr. Schill and carried by roll call vote of the members present, the Sparta Board of Education appointed [names omitted] and the law firm of Morris, Downing & Sherred, [address omitted] as supplemental attorneys of record. (Exhibit C-10 at page 18)

Complainants argue that the use of the term “supplemental counsel” in the Board’s minutes renders Schiavoni’s statement untruthful, because he said, as excerpted above, “[t]he Oct. 26 Sparta Independent article stated that the school board has hired supplemental legal resources. This is an inaccurate statement.” Schiavoni goes on to explain that the board decided to divide the required work between two law firms. The Commission finds that this is a distinction that simply does not rise to the level of an inaccuracy that would implicate N.J.S.A. 18A:12-24.1(g). Here again, the complainants’ own evidence shows that the matter went before the Board on August 14, 2006 and the additional law firm was approved by a vote of 5 to 4.¹⁶ (Exhibit C-10) Moreover, the complainants did not establish that Schiavoni’s statement concerning recent expenses incurred was inaccurate. Schiavoni merely states, “The board has recently incurred additional legal expenses. The expenses *are in large part* due to the superintendent’s actions against the district.” (emphasis added) The complainants’ own exhibits support Schiavoni’s statement in that some of the entries identified in Exhibit C-11 show legal costs incurred for (new) counsels’ review of correspondence from Dr. Morton’s attorney. That such activity was a contributing rather than causal factor in the hiring of additional counsel is of no consequence because Schiavoni does not state that it was the sole reason that additional counsel were hired. Therefore, the Commission finds that the complainants have failed to prove that Schiavoni’s statements in this paragraph violated N.J.S.A. 18A:12-24.1(g).

The final allegation with respect to the third paragraph of the complaint is that Schiavoni violated N.J.S.A. 18A:12-24.1(i), which states:

I will support and protect school personnel in proper performance of their duties.

Once again, Schiavoni’s statements, as quoted above, merely show: (1) that he engaged in the process of reviewing additional counsel and (2) the Board approved the appointment of the firm. The Commission finds that the complainants failed to demonstrate that these statements violate N.J.S.A. 18A:12-24.1(i).

Finally, with respect to the fourth paragraph of the complaint docketed as C41-07, the complainants appear to contend that Schiavoni was quoted in an article published in the Sparta Independent on October 27, 2006 (Exhibit C-13) as stating that additional counsel were needed for the high school reconstruction project. However, “[a]fter being questioned by fellow board members in correspondence on the same topic, Mr. Schiavoni states, ‘TOM MORTON legal

¹⁶ One board member voted against the action and three board members were absent.

issues with the BOE...’ to be the true reason for [additional counsel’s] presence [at board meetings].” (Complaint at paragraph 4; emphasis in text). Thus, the complainants assert that Schiavoni violated N.J.S.A. 18A:12-24.1(e). As noted above, 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.

Here, the Commission notes that the newspaper article at Exhibit C-13 was written by Fran Hardy. The complainants brought no evidence to the record to prove that Schiavoni made the statements to Ms. Hardy that were attributed to him in the article. Even assuming, *arguendo*, that there was evidence on the record before the Commission to prove that Schiavoni made such statements, the complainants have not established that a different reason was later provided to fellow board members *or* that, in presenting differing reasons for the hiring of supplemental counsel, Schiavoni was “lying to the public” in violation of N.J.S.A. 18A:12-24.1(e). Accordingly, the Commission finds that the complainants have failed to prove that Schiavoni violated N.J.S.A. 18A:12-24.1(e) as alleged in the fourth paragraph of C41-07.

C46-07

In the matter docketed as C46-07, complainants assert that respondents Paul Johnson, Michael Schiavoni, and Michael Schill violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members when they improperly wrote letters to the editor and also placed ads in the newspaper. As noted above, 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.

The Commission initially addressed the issue of a board member sending a letter to the editor in *Advisory Opinion A02-06*, which was issued on March 10, 2006. Therein, the Commission advised that a board member would not violate the Act if he were to write a letter to the editor expressing his opinion about the budget¹⁷ as long as, in the letter, he: (1) did not hold himself out as a board member and (2) provided accurate information that is not confidential. Later, the Commission revisited the issue of letters to the editor and refined its advice in *Advisory Opinion A03-07*, which was issued on April 2, 2007, stating that a Board member would not violate the Act by sending a letter to the editor expressing his/her opinion about the budget as long as, in the letter, that person (1) identified himself/herself as a board member; (2) indicated that the letter is not authorized by or written on behalf of the board; (3) provided accurate information that is not confidential; (4) and ensured that his/her private action does not compromise the board.

¹⁷ The Commission has applied this standard to cases where the board member was writing on matters other than the budget. (See, Dressel v. Kolupanowich, Monroe Township Board of Education, C11-07 (June 24, 2008)).

The Commission notes, however, that all but one of the letters in C46-07 written by respondents either predated *Advisory Opinion A03-07* or were written almost concurrent with its issuance on April 2, 2007. Accordingly, the analysis set forth below does not strictly apply the prerequisites set forth in the advisory opinions, but uses them as guideposts to evaluate conduct vis a vis a board member 's affirmative duty in N.J.S.A. 18A:12-24.1(e).

Michael Schill

The complainants contend that Michael Schill wrote a letter to the editor of the NJ Herald on December 1, 2006 “criticizing the superintendent and members of the public, [and] discussing a specific issue from a Board of Education meeting.” (Complaint at paragraph 1) The complainants state that although the letter indicates that Schill is speaking as a resident, “this does not negate the fact that he is known as a member of the BOE and is speaking solely about a BOE issue.” (*Id.*) The Commission notes that Michael Schill’s December 1, 2006 letter to the editor specifically states that he is writing “as a resident of Sparta and these views are mine, not the Board of Education’s. I do not speak for them.” (Exhibit C-31). What follows is a paragraph about Dr. Morton’s refusal to discuss “issues,” which are never identified, in private. There are no specifics in the letter. Even assuming, *arguendo*, that this was private action, there is simply no showing that such ill-defined statements were of such a nature that they may compromise the board. Thus, the Commission finds that the complainants have failed to demonstrate that Schill violated N.J.S.A. 18A:12-24.1(e) with his letter to the editor on December 1, 2006.

Paul Johnson

The complainants contend that on April 5 and 9, 2007, Paul Johnson wrote a letter to the editor of the Sparta Independent and NJ Herald newspapers discussing the campaign for the April 2007 Board elections. The complainants assert that he therein “alludes to inappropriate behavior being exhibited by one slate of candidates and is supportive of the other two candidates. He makes accusations without substance or detail.” (Complaint at paragraph 5) Here, the Commission notes that the complainants’ own allegation is the reason they cannot prevail on their claim of violation: indeed, Johnson’s letter to the editor provides comment with no details or specifics. It merely states that he and Michael Schill “were accused of all sorts of negative actions and positions” during the prior Board election, but they were both elected. Johnson continues,

Recently, I was given copies of emails sent by supporters of one of the slates of candidates. These contain veiled references to the 2 opposition candidates and allude to their being in appropriate for board membership.

I hope this is as far as it goes and stops now.

I don’t believe that the candidates condone what their supporters are doing. I urge them to counsel their supporters to run a clean, dignified campaign. ... (Exhibit C-26)

Even assuming, *arguendo*, that writing this letter was private action, there is simply no showing that such statements about candidates to the board were of such a nature that they may compromise the board. Thus, the Commission finds that the complainants have failed to demonstrate that Johnson violated N.J.S.A. 18A:12-24.1(e) with his letter to the editor on April 5 and 9, 2007.

The complainants contend that Board member Paul Johnson wrote a letter to the editor of the Sparta Independent on July 5, 2007 discussing his abstention vote on a resolution before the board. The complainants assert that the respondent's "discussion of the issues surrounding the resolution are not supportive of the school district. While he states he is not writing as a member of the BOE, the subject of the letter is clearly BOE business." (Complaint at paragraph 7) Here again, the Commission notes that Johnson states, "I have to state that I am speaking as an individual and do not present my views as those of the board." (Exhibit C-30) Johnson therein addresses an article that appeared in the Sparta Independent about his abstaining on a vote for a drug testing policy. Johnson clarified that the vote actually included a number of policies, and he had reservations about some of them. However, he specifically expressed *his support* for the Drug Testing Policy. Even assuming, *arguendo*, that writing this letter was private action, there is simply no showing that such statements were of such a nature that they may compromise the board. Indeed, the article merely explains Johnson's reasons for his vote. Thus, the Commission finds that the complainants have failed to demonstrate that Johnson violated N.J.S.A. 18A:12-24.1(e) with his letter to the editor on July 5, 2007.

Paul Johnson and Michael Schill

The complainants contend that on April 5 and 9, 2007, board members Schill and Johnson paid for advertisements endorsing two candidates for the 2007 Board election. According to the complainants, the respondents names appear at the bottom of the endorsement and they state that "School Board members hear constantly from Administration that business people don't understand education. We now have an opportunity to elect..." The complainants argue that the respondents acted without the consent of the board. (Complaint at paragraph 3)

The Commission notes that the advertisement endorses candidates Linda Curcio and Karen Scott. While the text includes the statement, "School Board members hear constantly from Administration that business people don't understand education," (Exhibit C-27) the Commission cannot find that this statement rises to the level of a violation of the Act. At the bottom of the ad is the text:

This opportunity should be embraced.
Paid for by Michael Schill and Paul Johnson.
(not affiliated with any special interest group) (Exhibit C-27)

The Commission has determined that Board members have the right to endorse board candidates. I/M/O Alphonse A. DeMao, Belleville Board of Education, C09-04, (September 30, 2004). Where a board member may run afoul of the School Ethics Act, however, is by using his/her official position to the potential advantage of the candidate. Indeed, in DeMao, the Commission found that the respondent violated N.J.S.A. 18A:12-24(b) of the School Ethics Act in that "[t]he

totality of the endorsement including the letterhead, the content of the letter, and the nature of the return address on the envelope, could lead someone reading the letter to reasonably assume that the endorsement was made by Mr. DeMao in his official capacity as the President of the Board.” DeMao, slip op. at 5. The Commission does not find that the text of the ad as set forth above in a newspaper is similarly problematic. Nor do the complainants allege that the respondents used, or attempted, to use their official positions to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others, in violation of N.J.S.A. 18A:12-24(b). Rather, they asserted that the respondents violated N.J.S.A. 18A:12-24.1(e). Even assuming, *arguendo*, that this advertisement was private action, there is simply no showing that such statements were of such a nature that they may compromise the board. Thus, the Commission finds that the complainants have failed to demonstrate that Johnson and Schill violated N.J.S.A. 18A:12-24.1(e) with this advertisement on April 5 and 9, 2007.

The complainants further contend that on April 12 and April 15, 2007, board members Paul Johnson and Michael Schill wrote a letter to the editor of the Sparta Independent and NJ Herald wherein they “discuss a contentious issue regarding the BOE election for April 2007.” (Complaint at paragraph 6). The complainants affirm that the information they give is “incomplete and clearly gives support to two candidates.” (*Id.*) The Commission initially notes that the letters are substantially identical. They are a response to an article written in the Sparta Independent regarding candidate attendance at a Sparta Education Association Candidate Forum – an open meeting where all candidates were invited to attend with the press. Apparently, three candidates chose not to attend and two candidates chose to attend. The article states in relevant part:

The three candidates allege that by attending this meeting, Linda Curcio and Karen Scott, some how [sic] violated the Code of Ethics and could not now participate in any deliberations or votes involving the teacher’s association. They quickly relayed their opinion to the press in order to fuel a controversy. (Exhibit C-29)

As set forth above, Board members have the right to endorse board candidates. Even assuming, *arguendo*, that the articles constitute private action, there is simply no showing that such statements were of such a nature that they may compromise the board. Thus, the Commission finds that the complainants have failed to demonstrate that Johnson and Schill violated N.J.S.A. 18A:12-24.1(e) with these letters to the editor.

Michael Schiavoni

The complainants contend that Michael Schiavoni wrote a letter to the editor of the Sparta Independent and NJ Herald newspapers which “is a clear endorsement of two candidates for the April 2007 BOE elections.” (Complaint at paragraph 4). The complainants further contend that Schiavoni therein discusses “board issues,” although he was not given direction from the board to give this endorsement.

The Commission initially notes that the letters are substantially identical. Further, while Schiavoni clearly endorses the candidacy of Linda Curcio and Karen Scott, both letters are written in the first person as Schiavoni makes a personal endorsement. (Exhibit C-28)

Additionally, the articles indicate that they are written by “Michael R. Schiavoni, Sparta.” Underneath the “signature” in the letter that appears in the NJ Herald is the following text: “The writer is the school board president, but this is his own opinion, not that of the board.” (Id.) Board members have the right to endorse board candidates; this board member did so as an individual, not as a Board member. Even assuming, *arguendo*, that the articles constitute private action, there is simply no showing that such statements were of such a nature that they may compromise the board. Thus, the Commission finds that the complainants have failed to demonstrate that Schiavoni violated N.J.S.A. 18A:12-24.1(e) with these letters to the editor.

C47-07

In the matter docketed as C47-07, the complainants assert that respondents Linda Curcio, Paul Johnson, Michael Schiavoni, Karen Scott and Richard Sullivan violated the Code of Ethics in connection with a series of newspaper articles which the complainants assert contained critical, negative and evaluative statements about the administration and citizens of the District. The complainants assert the respondents violated N.J.S.A. 18A:12-24.1(e), (g), and (i) of the Code of Ethics for School Board Members. In support of its claim, the complainants offer the following evidence:

- C-16 Daily Record article, April 18, 2007, by Abbott Koloff
- C-17 NJ Herald article, April 18, 2007, by Stephen Novak
- C-18 NJ Herald article, April 24, 2007, by Stephen Novak
- C-20 NJ Herald article, September 30, 2007, by Stephen Novak
- C-21 NJ Herald article, April 19, 2007, by Stephen Novak
- C-22 Sparta Independent article, April 26, 2006 by Fran Hardy
- C-23 Sparta Independent article, September 20, 2007 by Fran Hardy
- C-24 Sparta Independent article, October 4, 2007 by Fran Hardy
- C-25 Board Minutes, October 1, 2007

It is critical to note that the evidence brought to the record by the complainants, other than minutes of board meetings, consisted exclusively of articles written by *other people*, and not the respondents. The complainants offered no evidence to prove that the respondents actually made the statements that the complainants are alleging they made in the above-noted articles. Indeed, the answer submitted on behalf of the respondents asserts that such statements are merely hearsay and do not violate the School Ethics Act. (Answer at page 2) There is no concession as to their authenticity. While hearsay evidence is admissible pursuant to N.J.A.C. 1:1-15.5, it is also subject to the “residuum rule,” which requires that findings be supported by a residuum of competent evidence. Matter of Tenure Hearing of Cowan, 224 N.J.Super. 737 (App. Div. 1988). Consequently, the Commission finds that the complainants failed to *factually prove* that respondents Linda Curcio, Paul Johnson, Michael Schiavoni, Karen Scott and Richard Sullivan made the statements in the newspaper articles and the Commission, therefore, need not reach to any analysis of violations. Instead, the Commission dismisses the allegations that respondents Linda Curcio, Paul Johnson, Michael Schiavoni, Karen Scott and Richard Sullivan violated N.J.S.A. 18A:12-24.1(e), (g), and (i) of the Code of Ethics for School Board Members in connection with the newspapers articles.

The complainants also contend in C47-07 that at the Board's meeting of January 8, 2007, Schiavoni made a presentation about the progress of the Board, wherein he discussed goals met, disappointments and challenges ahead. In this connection, the complainants assert Schiavoni:

created this presentation on his own. The board as a whole, had not been included in the discussion nor was able to give input as to what they considered to be highlights, disappointments and challenges ahead. He presented this document in public with many evaluative and negative statements, representing that it reflected the opinion of the entire board. (Complaint at paragraph 5)

The Commission notes that the only evidence on this record concerning this allegation is testimony from Mr. Chesnolovitch that he was "surprised" by Schiavoni's presentation at the meeting on January 8, 2007, along with minutes from the meeting which state:

Mr. Schiavoni gave a power point presentation on his views of the Board progress. He presented highlights, disappointments and the major challenges the Board will face in 2007. (Exhibit C-15)

There is no evidence before the Commission that, in so doing, Schiavoni failed to recognize that authority rests with the board of education and made personal promises or took private action that may compromise the board in violation of N.J.S.A. 18A:12-24.1(e). Similarly, there is no evidence on this record that Schiavoni either failed to hold confidential all matters which, if disclosed, would needlessly injure individuals or the schools, or that he provided inaccurate information in violation of N.J.S.A. 18A:12-24.1(g). Finally, there is no evidence on this record that Schiavoni, with this presentation failed to support and protect school personnel in proper performance of their duties in violation of N.J.S.A. 18A:12-24.1(i). Accordingly, the Commission dismisses the allegations that Schiavoni violated N.J.S.A. 18A:12-24.1(e), (g), and (i) of the Code of Ethics for School Board Members in connection with the January 8, 2007 Board presentation.

DECISION

The Commission finds that respondent Michael Schiavoni violated N.J.S.A. 18A:12-24.1(e) when he took private action to submit an article to the editor of the Sparta Independent which was published on November 2, 2006 before having received the consent of the Board to do so, as set forth in the complaint docketed as C41-07. All other allegations in the matters docketed as C41-07, C46-07 and C47-07 are dismissed.

PENALTY

The Commission recommends that respondent Schiavoni be censured for violating N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members. In so doing, the Commission notes that board members have been censured for single findings of violations of the Act. (*See, I/M/O Raymond Bonker, Lenape Valley Reg'l Bd. of Ed.*, C11-97 (March 30, 1998), Commissioner of Education Decision No. 522-98, decided May 22, 1998, where a board member was censured for violating N.J.S.A. 18A:12-24(b) when he released staff email

addresses in his campaign literature before the board had discussed and approved releasing them in public; I/M/O Lawrence James, Chesilhurst Bd. of Ed. C10-98 (December 15, 1998), Commissioner of Education Decision No. 30-99, decided February 9, 1999, where a board member was censured for violating N.J.S.A. 18A:12-24(b) when he asked the Business Administrator to intercede on his behalf in order to acquire an unsecured loan from the bank that held the Board's accounts). The Commission also notes that board members have been censured for single violations of the Code of Ethics for School Board Members. (See, I/M/O Doris Graves, Pleasantville Bd. of Education, C47-05 (May 27, 2008), Commissioner of Education Decision No. 301-08, decided July 10, 2008, wherein a board member was found to have violated 18A:12-24.1(d) when she spoke with the district's facilities coordinator and later appeared at a board personnel meeting regarding a personnel action affecting her cousin by marriage.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the School Ethics Commission's recommended sanction. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of violation may file, within **13 days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4 within **30 days** of the filing date of the decision from which the appeal is taken. The filing date shall be three days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (13 days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Paul C. Garbarini
Chairperson

Mailing Date: February 25, 2009

Resolution Adopting Decision – C41-07, C46-07 & C47-07 Consolidated

Whereas, the School Ethics Commission has considered the pleadings, testimony and all documentary evidence brought to the record in these consolidated matters; and

Whereas, at its meeting on February 24, 2009, the Commission found that the respondent Michael Schiavoni violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members; and

Whereas, the Commission dismissed all other allegations that respondents violated the Code of Ethics of School Board members, as set forth in the complaints;

Whereas, the Commission found that censure is the appropriate penalty to recommend to the Commissioner of Education in this matter;

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.¹⁸

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on February 24, 2009.

Joanne Boyle, Executive Director

¹⁸ Commissioner Robert Copeland was recused from participating in the hearing and determination of these consolidated matters.

