
STEVEN HOH

v.

C.B.¹

MINE HILL BOARD OF EDUCATION
MORRIS COUNTY

: **BEFORE THE SCHOOL**
: **ETHICS COMMISSION**
:
:
: **DOCKET NO. C50-10**
: **DECISION**
:
:

PROCEDURAL HISTORY

This matter arises from a complaint filed on December 22, 2010 by Steven Hoh alleging that C.B., a member of Mine Hill 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(a), (d), (e) and (j) when, on September 21, 2010, she entered a classroom, removed a student to the hallway and confronted the student about a bullying situation between the student and her child. After being granted an extension for good cause shown, an answer was filed on behalf of the respondent on February 22, 2011. At its meeting on March 22, 2011, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to retain this complaint for hearing at a later date. The Commission also determined that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6:28-1.2. By letter dated April 4, 2011, the parties were notified that this matter would be scheduled for hearing at the Commission’s meeting on June 28, 2011. The parties attended the meeting on June 28, 2011. The complainant appeared, pro se and the respondent appeared with counsel, Brenda C. Liss, Esq. After hearing testimony from the complainant, as summarized below, the Commission voted during the public portion of its meeting to dismiss the complaint.

SUMMARY OF THE RECORD

The complainant testified that he became aware that the respondent, on September 21, 2010, spoke to a student in school about an incident involving the respondent’s child. The complainant admitted that he had no firsthand knowledge of the incident, but he took it upon himself to file a complaint because he believed that the complainant had overstepped her role as a board member. In support of his complaint, the following documents were presented by the complainant and accepted by the Commission into evidence: Exhibit C-2 is a document entitled “Notes on Tuesday September 21, 2010” as written by Gregory A. Hobaugh, Principal of the Canfield Elementary School, and C-3 is a memorandum from Gregory Hobaugh to Dr. Ernie Palestis, the Superintendent, dated September 27, 2010.²

On cross-examination, counsel for the respondent questioned the complainant about the responses he produced pursuant to counsel’s discovery request. The Request for Admissions

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

² Although the complainant introduced a Board Policy, marked as C-1 for potential evidence, counsel for the respondent objected to the Board Policy and it was not accepted into evidence.

was marked as R-1 for cross-examination. The complainant affirmed, as stated in the Request for Admissions at questions 1, 2 and 3, that he was not aware of any court or legal decisions concerning this matter. The complainant affirmed, as stated in the Request for Admissions at question 7, that he was not aware that the respondent had made any personal promises on the date in question. The complainant affirmed, as stated in the Request for Admissions at question 8, that he had no facts, other than the incident itself, to support a claim that the respondent's action had the potential to compromise the Board. Finally, the complainant affirmed, as stated in the Request for Admissions at questions 9 and 10, that the respondent did not act on or attempt to resolve a complaint made or asserted by any person against the Board and did not conduct an investigation or inquiry related to any complaint made or asserted by any person against the Board.

Pursuant to N.J.A.C. 6A:28-8.3(d), upon completion of complainant's case, the respondent's counsel moved to dismiss the complaint. After hearing arguments from the parties, the Commission asked the parties to leave the room so that it could deliberate. When the parties returned, the Commission informed the parties that it would grant the respondent's Motion to Dismiss.

FINDINGS OF FACT

It is critical to note that the complainant was not present during the incident in question and admitted that he had no personal knowledge of the events that formed the basis of his complaint. Although the complainant offered documents to support the allegations in his complaint, these documents are hearsay. Hearsay evidence is admissible pursuant to N.J.A.C. 1:1-15.5, but 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). Therefore, because the complainant presented no witnesses to offer firsthand knowledge of any facts that might support his complaint, the Commission is unable to base any findings on Exhibits C-2 and C-3. As such, the Commission finds:

1. At all times relevant to this complaint, the respondent was a member of the Board.
2. On September 21, 2010, the respondent was at the Canfield Avenue School attending a Parent Teacher Association (PTA) fundraiser when her child came to her crying and complaining of something another student said. The respondent asked the student's teacher for permission to speak to the student, and the respondent then told the student that if his behavior persisted, she would have to call his parents. (Answer at pp. 1-2).

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). Here, the complainant asserts that the respondent's actions on September 21, 2010 violated N.J.S.A. 18A:12-24.1(a), (d), (e) and (j).

The Commission initially considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(a), which states:

I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that 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 brought about changes through illegal or unethical procedures. N.J.A.C. 6A:28-6.4(a)1.

The complainant admitted on cross-examination that there has not been a final decision rendered with respect to this respondent from any court of law or administrative agency of this State demonstrating that she 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 means. See, Denise Bouyer v. Rita Owens and Oscar McCoy, Willingboro Board of Education, Burlington County, C37-09 (December 15, 2009); Martha Oramas-Shirey v. Gallo et. al., Bethlehem Twp. Bd. of Ed., Hunterdon County, C43-10 (March 22, 2011). To the extent the complainant attempted, with the introduction of the policy marked as C-1, to argue that the respondent acted contrary to Board 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. See, David Hollander v. Judith Millman, et al., Springfield Board of Education, Union County, C33-07 (January 22, 2008). Accordingly, the complainant has failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(a).

The Commission next considers the allegation that the respondent violated 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.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(d) shall include, but not be limited to, evidence that the respondent(s) 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. N.J.A.C. 6A:28-6.4(a)4.

The complainant at no time alleges that the respondent gave a direct order to any school personnel. Further, the Commission finds that the complainant failed to provide a sufficient factual basis on which to conclude that the respondent became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district. Accordingly, the complainant has failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(d).

The Commission next 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.

The complainant acknowledged on cross-examination that the respondent did not make personal promises to anyone. Further, even assuming that the respondent's actions on September 21, 2010 were actions beyond the scope of her duties as a Board member, the Commission finds that the complainant failed to provide a sufficient factual basis to conclude that those actions were of such a nature that they had the potential to compromise the Board. (See, K.S.M. v. Chris Haley, Manasquan Bd. of Ed., Monmouth County, C27-10 (March 23, 2011, where the Commission found that although the respondent engaged in a conversation with someone in a salon about the complainant's daughter, 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.) Accordingly, the complainant has failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(e).

Finally, the Commission considers the complainant's allegation that the respondent violated N.J.S.A. 18A:12-24.1(j), which provides:

I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(j) shall include evidence that the respondent(s) acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint:

- i. Prior to referral to the chief administrative officer; or
- ii At a time or place other than a public meeting and prior to the failure of an administrative solution. N.J.A.C. 6A:28-6.4(a)10.

The complainant admitted on cross-examination that the respondent did not act on or attempt to resolve a complaint made or asserted by any person against the Board and did not conduct an investigation or inquiry related to any complaint made or asserted by any person against the Board. The Commission concurs that the record is devoid of any such facts. Accordingly, the complainant has failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(j).

DECISION

The Commission finds that the complainant failed to factually establish that the respondent violated N.J.S.A. 18A:12-24.1(a), (d), (e) or (j) and consequently, the Commission granted the respondent's Motion to Dismiss the complaint. 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: July 27, 2011

Resolution Adopting Decision – C50-10

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and the testimony from its hearing on June 28, 2011; and

Whereas, at its meeting on June 28, 2011, the Commission found that the complainant failed to factually establish that the respondent violated N.J.S.A. 18A:12-24.1(a), (d), (e) or (j); and

Whereas, the Commission granted the respondent’s Motion to Dismiss the complaint; and

Whereas, at its meeting on July 26, 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, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 26, 2011.

Joanne Boyle
Executive Director