
**VILMA REYES, SILVIO ACOSTA AND
ANTOINETTE VECCHIO**

v.

**JOAN PALERMO
WEST NEW YORK BOARD OF EDUCATION,
HUDSON COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

**SEC Dkt. No. C12-14
OAL Dkt. No. EEC 09919-14
FINAL DECISION**

PROCEDURAL HISTORY

This matter arises from a Complaint filed on March 24, 2014 by Vilma Reyes and Silvio Acosta, members of the West New York Board of Education (Board), and Antoinette Vecchio, alleging that Board member Joan Palermo violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By letters of April 4, 2014 and May 1, 2014, the School Ethics Commission (Commission) acknowledged receipt of the Complaint and deemed it procedurally deficient. Thereafter, the Complainants filed an Amended Complaint, resolving the procedural deficits, and specifically alleged that the Respondent violated N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics for School Board Members.

By letter dated May 9, 2014, the Commission notified the Respondent that charges against her were filed with the Commission and advised that she had 20 days to answer the Complaint. On June 3, 2014, the Respondent filed her Answer, alleging that the Complaint was frivolous, pursuant to N.J.S.A. 18A:12-29(e) and N.J.A.C. 6A:28-7.2. The Complainants filed their response to the allegation of frivolous Complaint on June 20, 2014, in accordance with N.J.A.C. 6A:28-7.2(b)(1).

The parties were notified by letter dated June 9, 2014 that this matter would be placed on the agenda for the Commission's meeting on June 24, 2014 in order to decide whether to retain the complaint for a hearing by the Commission at a later date; to transmit the matter to the Office of Administrative Law for a hearing; to table the matter to request additional information or legal advice; or to dismiss the complaint, where the allegations in the complaint, on their face, are insufficient, even if true, to warrant review by the Commission as possible violations of the School Ethics Act, and to consider this allegation of frivolous Complaint and any response thereto.

At its meeting on June 24, 2014, the Commission voted to find that the above-captioned complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2; and, pursuant to N.J.A.C. 6A:28-10.8(a), voted to transmit this Complaint to the Office of Administrative Law (OAL) for a plenary hearing on all Counts of the Complaint. The Complainants carried the burden to prove factually any violations of N.J.S.A. 18A:12-24.1(e) and (f) under the Code of Ethics for School Board Members within the standards set forth at N.J.A.C. 6A:28-6.4. The Complaint was transmitted to the OAL on July 25, 2014.

While at the OAL, Complainant Vecchio withdrew from the Complaint against the Respondent. On November 30, 2015, Respondent Palermo filed a Motion to Dismiss the Amended Complaint, after which Complainant Acosta withdrew from the Complaint. According to the record, the remaining Complainant, Vilma Reyes, failed to file his opposition to the Motion within the time required by the rules and has failed to communicate with the Administrative Law Judge (ALJ) for nearly four months. On March 24, 2016, the ALJ closed the record and issued her Initial Decision, granting Respondent's Motion to Dismiss the Complaint with prejudice.

The Commission acknowledged receipt of the electronically transmitted Initial Decision on March 28, 2016, and on April 1, 2016, the Commission requested an extension of time to review the full record, including exceptions yet to be filed. The extension was granted until June 27, 2016. Neither party filed exceptions to the Initial Decision. At its meeting on April 26, 2016, the Commission adopted the findings and conclusions of the ALJ for the reasons expressed in the Initial Decision for failure of the remaining Complainant to provide substantive evidence to support the claims in the Complaint and dismissed the matter.

ANALYSIS

Complainant Reyes bore 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). His failure to submit his opposition to the Motion to Dismiss as required to prosecute his claims violated the Uniform Administrative Procedure Rules. Consequently, pursuant to N.J.A.C. 1:1-14.14(a)(1), the ALJ may grant the Motion for unreasonable failure to comply with any requirements of N.J.A.C. 1:1-1, et seq.

Upon careful and independent review, the Commission finds that the record supports the ALJ's conclusion that the matter be dismissed with prejudice.

DECISION

The Commission determines to adopt the ALJ's Initial Decision, granting Respondent Palermo's Motion to Dismiss with prejudice for failure to comply with the requirements of the Uniforms Rules of Procedure, and this failing to meet his burden of proof. 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: April 27, 2016

Resolution Adopting Decision – C12-14

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

Whereas, the Administrative Law Judge concluded in his Initial Decision to grant to the Respondent's Motion to Dismiss the Complaint in its entirety; and

Whereas, neither party filed exceptions in response to the ALJ's decision; and

Whereas, at its meeting of April 26, 2016, the Commission determined to adopt the Initial Decision of the ALJ as the Final Decision; and

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

Now Therefore Be It Resolved, the Commission hereby adopts the within decision as a Final Decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on April 26, 2016.

Joanne M. Restivo
Acting Executive Director
School Ethics Commission