
GLORIA O. CLOSE

v.

MICHAEL MESSINGER
FREEHOLD REGIONAL HIGH SCHOOL
DISTRICT BOARD OF EDUCATION
MONMOUTH COUNTY

**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket. No. C14-13

**DECISION ON MOTION
TO DISMISS**

PROCEDURAL HISTORY

This matter arises from a complaint filed on March 15, 2013, by complainant, Gloria O. Close, alleging that respondent, Michael Messinger, a member of the Freehold Regional High School District Board of Education (“Board”), violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. By letters dated March 22, 2013 and April 16, 2013, the School Ethics Commission (Commission) acknowledged receipt of the complaint and deemed it procedurally deficient. The complainant filed an amended complaint on May 13, 2013, resolving the procedural deficits, and specifically alleged that the respondent violated N.J.S.A. 18A:12-24.1(b), (c), (f) and (g) of the Code of Ethics for School Board Members (Code).

On June 5, 2013, the respondent filed a Motion to Dismiss in lieu of an answer to the complaint. The complainant did not submit a response to the Motion to Dismiss, but filed a “settlement letter” “in lieu of a formal responsive brief,” attempting to resolve the issues by exacting certain releases and promises from the respondent on the eve of the Commission’s scheduled review of the matter. There is no certification that the complainant mailed the letter to the respondent or that he actually received it. The Commission took no action on the settlement attempt.

The parties were notified by letter dated June 4, 2013 that the Commission would consider this matter at its meeting on June 25, 2013, in accordance with N.J.A.C. 6A:28-10.8. Therein, the parties were specifically advised that the Commission would take one of several actions: Decide to retain the complaint for a hearing by the Commission at a later date after the filing of an Answer; decide to refer the matter to the Office of Administrative Law for a hearing; table the matter to request additional information or legal advice; or dismiss the complaint where the allegations in the complaint, on their face, were insufficient, even if true, to warrant review by the Commission as possible violations of the School Ethics Act.

At its meeting of June 25, 2013, the Commission voted to dismiss the complaint for failure to state a claim upon which relief could be granted for a violation of the Act. [N.J.A.C. 6A:28-10.8(a)(5)].

SUMMARY OF THE PLEADINGS

The complainant asserts that on October 27, 2012, the respondent referred to the complainant in Facebook as an “unhinged lunatic” with a “learning disability.” Additionally, the complainant, who was running for a seat on the Board, alleges that the respondent defamed her character and further commented about the complainant’s political leanings to curry favor with the political parties of Manalapan. She also asserts that the respondent frequently treats the members of the community with disrespect by scoffing at their comments and further asserts that the respondent mischaracterized her platform with lies and inflammatory comments. On January 23, 2013 in a News Transcript article, the respondent defended his Facebook comments stating what he said was perfectly legal and not unethical and that he could post his messages as a campaign advertisement. At a Board meeting on January 28, 2013, the complainant asserts that she chastised the respondent for his comments attacking her, but he did not apologize and claimed that he was the victim. The complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(b), (f), (g) and (c).

In his Motion, the respondent argues that the comments he made about the complainant were said in a private conversation and that he never made them public. The complainant became aware of the comments after the election when the person to whom the comments were made revealed them to the complainant. The respondent avers that at all times these personal opinions were expressed in a private conversation, and it is the complainant who made them public.

ANALYSIS

The complainant has the burden to factually establish a violation 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). A complaint must include, among other requirements, specific allegations and the facts supporting them, which give rise to the alleged violation(s) of the Act. N.J.A.C. 6A:28-6.3(b)3. Regulations further provide that the Commission may, in its discretion, dismiss complaints entirely or specific allegations in complaints, where the complaint, on its face, fails to allege facts sufficient to maintain a claim under the Act. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5.

In its review of this complaint, the Commission found that the complainant failed to demonstrate how she learned of the respondent’s comments since they were not made to her, and also failed to provide any factual support that the comments were available to the public. That the comments were on the respondent’s Facebook does not prove they were accessible for public viewing.

To prove that the respondent violated N.J.S.A. 18A:12-24.1(b), (c), (f) and (g) of the Code, the complainant would have to provide the following, respectively, pursuant to N.J.A.C. 6A:28-6.4, et seq.:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(b) shall include evidence that the respondent(s) willfully made a decision contrary to the educational welfare of children, or evidence that the respondent(s) took deliberate action to obstruct the programs and

policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the respondent(s) took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to:

- i. Develop the general rules and principles that guide the management of the school district or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- iii. Ascertain the value or liability of a policy.

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(f) shall include evidence that the respondent(s) took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend.

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

The complainant did not offer any proof that the respondent jeopardized children, their educational programs or took action to interfere with programs and policies intended to benefit the children so as to violate N.J.S.A. 18A:12-24.1(b). Moreover, she did not demonstrate that the respondent became involved in board action to alter policies and plans without consulting those affected by them or that he acted beyond the scope of his duties so as to violate N.J.S.A. 18A:12-24.1(c).

Additionally, the complainant does not contend nor does she provide evidence that the respondent acted on behalf of a special interest group or political party for his benefit or to benefit a member of his immediate family or a friend so as to violate N.J.S.A. 18A:12-24.1(f).

Finally, the complaint has not asserted that the respondent divulged confidential or protected information or that he inaccurate information that establishes that the inaccuracy was other personal opinion so as to violate N.J.S.A. 18A:12-24.1(g).

The Commission finds that there are no facts set forth in the complaint that would support a conclusion that respondent violated the Code under any of these subsections. Thus, the Commission finds that the complaint, on its face, fails to allege facts sufficient to maintain a claim that the respondent violated N.J.S.A. 18A:12-24.1(b), (c) (f) or (g) and hereby dismisses the complaint for failure to state a claim on which relief could be granted.

DECISION

Based on the foregoing, and pursuant to its discretion, the Commission dismisses the within complaint for failure to allege facts sufficient to maintain a claim that would be a violation of the Act. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender, Chairperson

Mailing Date: July 31, 2013

Resolution Adopting Decision – C14-13

Whereas, the School Ethics Commission has considered the complaint and the Motion to Dismiss filed on behalf of respondent; and

Whereas, at its meeting on June 25, 2013, the Commission determined to dismiss the complaint for failure to state a claim upon which relief could be granted for a violation of the Act; and

Whereas, at its July 30, 2013 meeting, the Commission has reviewed and approved the decision memorializing said action;

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

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 30, 2013.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission