

if the papers and discovery, which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue, which can only be determined in an evidentiary proceeding. N.J.A.C. 1:1-12.5(b).

Upon careful and independent review, the Commission finds that the record supports the ALJ's conclusion that Count 1 and Count 4 are ripe for summary dismissal.¹ In so finding, the Commission concurs that the papers and discovery, together with the affidavits in this matter, show that there is no genuine issue as to any material fact and the respondent is entitled to prevail as a matter of law inasmuch as the facts fail to demonstrate that: 1) respondent violated any cited law, rule, regulation or court ruling as required by N.J.S.A. 18A:12-24.1(a) (see, N.J.A.C. 6A:28-6.4(a)1); (2) respondent discussed personnel matters not on the agenda in executive session or acted beyond the scope of his authority so as to violate N.J.S.A. 18A:12-24.1(c) (see, N.J.A.C. 6A:28-6.4(a)3); (3) respondent became involved in the activities or functions that are the responsibility of school personnel when he voted against the Superintendent's recommendation so as to violate N.J.S.A. 18A:12-24.1(d) (see, N.J.A.C. 6A:28-6.4(a)4); (4) respondent surrendered his independent judgment or used the schools for personal gain so as to violate N.J.S.A. 18A:12-24.1(f) (see, N.J.A.C. 6A:28-6.4(a)6); or (5) respondent failed to support and protect school personnel by having a difference of opinion so as to violate N.J.S.A. 18A:12-24.1(i) (see, N.J.A.C. 6A:28-6.4(a)9).

DECISION

The Commission determines to adopt the ALJ's Initial Decision, granting summary decision to the respondent and dismissing Count 1 and Count 4 of 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 31, 2013

¹ The School Ethics Commission has recognized that the Commission lacks jurisdiction to consider *Rice* notice violations. To the extent that this issue arose during the pendency of this matter at the OAL, the Commission concurs with the ALJ that same is dismissed.

Resolution Adopting Decision – C27-11

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 that summary decision should be granted to the respondent and the complaint should be dismissed; and

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

Whereas, at its meeting of June 25, 2013, the Commission determined to adopt the Initial Decision of the ALJ; 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 it 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 it public meeting on July 30, 2013.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission