
**COREY J. LOWELL, ANGELA
AHBEZ-ANDERSON, BARBARA LESINSKI
AND CONNIE BREECH**

V.

**GENEVA SMALLWOOD, NICOLLE HARRIS,
CHRISTIAN HALL, KENNETH SAUNDERS,
AND FELICIA SIMMONS,
ASBURY PARK BOARD OF EDUCATION,
MONMOUTH COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

**Docket No. C48-14
DECISION ON
MOTION TO DISMISS
AND
FINAL DECISION**

PROCEDURAL HISTORY

This matter arises from a complaint filed on September 12, 2014, by Corey J. Lowell,¹ Angela Ahbez-Anderson, Barbara Lesinski, and Connie Breech, members of the Asbury Park Board of Education (Board)², alleging that Board members Geneva Smallwood, Nicolle Harris, Christian Hall, Kenneth Saunders, and Felicia Simmons violated the School Ethics Act (Act). N.J.S.A. 18A:12-21 et seq. By letter of October 2, 2014, the complainants were notified that the Complaint was deficient. On October 23, 2014, the complainants cured all defects, specifically alleging that the respondents violated N.J.S.A. 18A:12-24.1(c) and (h) of the Code of Ethics for School Board Members (Code).

By letter dated December 2, 2014, the Complaint was sent to all of the respondents, notifying them that charges against them were filed with the School Ethics Commission (Commission) and advising that they had 20 days to answer the Complaint. The respondents retained separate counsel, who requested and received brief extensions to file responsive pleadings. Respondent Smallwood filed a Motion to Dismiss in Lieu of an Answer on December 19, 2014, which included an allegation that the Complaint was frivolous, pursuant to N.J.S.A. 18A:12-29(e). All other respondents filed their Answers on December 22, 2014. Complainants filed a response to Respondent Smallwood's Motion and to the frivolous allegation on January 20, 2015.

By letter dated December 22, 2014, the Commission notified the parties that this matter was scheduled for discussion by the Commission at its meeting on January 27, 2015 in order to make a determination regarding the respondent's Motion to Dismiss the Complaint, the allegation of frivolousness, as well as the Answers filed by the other respondents who had not filed a Motion to Dismiss. Due to anticipated inclement weather, however, the meeting was canceled, and the entire agenda was moved to the meeting on February 24, 2015.

¹ On October 23, 2014, Complainant Lowell advised the Commission that she was designated by the other complainants to receive, process and respond on their behalf.

² Pursuant to N.J.S.A. 18A:7A-55, the Commissioner of Education has appointed a State Monitor to oversee the fiscal management of the Asbury Park School District.

At its February 24, 2015 meeting, the Commission determined the Complaint not frivolous, granted Respondent Smallwood's Motion to Dismiss in its entirety and voted to dismiss the matter *sua sponte*, pursuant to N.J.A.C. 6A:28-10.8(a)(5), against all other respondents for failure to state a claim upon which relief could be granted.

SUMMARY OF THE PLEADINGS

In Count 2 of the Complaint, the complainants contend that Respondent Smallwood violated N.J.S.A. 18A:12-24.1(h) of the Code, when at the meeting of July 22, 2014, she voted to create an Assistant Superintendent position without the knowledge and recommendation of the Superintendent. The complainants assert this was a violation of N.J.S.A. 18A:12-24.1(h).

In Count 3 of the Complaint, the complainants contend that Respondent Smallwood violated N.J.S.A. 18A:12-24.1(c) of the Code, when, at the meeting of July 22, 2014, she voted to create an Assistant Superintendent without a job description or the funds to support the new position. The complainants assert this was a violation of N.J.S.A. 18A:12-24.1(c).

Respondents Smallwood maintains that the Complaint lacks merit as the wrong subsections of the Act have been applied and that the complainant failed to produce sufficient evidence to support their claims. She further argues that the Complaint is frivolous.

ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the alleged facts in the light most favorable to the complainant and determine whether the allegation(s) set forth in the Complaint, if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. Thus, the question before the Commission was whether the Complaint alleges facts, which, if true, could support a finding that Respondent Smallwood violated N.J.S.A. 18A:12-24.1(h) and (c) of the Code.

In its review, the Commission considers the allegations that Respondent Smallwood violated N.J.S.A. 18A:12-24.1(h) of the Code in Count 2 and N.J.S.A. 18A:12-24.1(c) of the Code in Count 3, which state, respectively:

h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

c. 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.

To prove that the respondent violated N.J.S.A. 18A:12-24.1(h) and (c) 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(h) shall include evidence that the respondent(s) acted on a personnel matter without a recommendation of the chief administrative officer. N.J.A.C. 6A:28-6.4(a)8.

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.

The Commission finds that each Count of the Complaint is devoid of any particular factual allegations that would support findings of such violations. Specifically:

- The complainants have set forth no specific facts that, if proven true, could demonstrate that Respondent Smallwood took any further action than to conceptually determine the Board's interest in creating the position of Assistant Superintendent. Her vote alone could not bring the title to fruition. The vote for the position was academic at best given how the District is administered. Most significantly, Respondent Smallwood did not attempt to hire or appoint a candidate to this newly emerging position as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(h). N.J.A.C. 6A:28-6.4(a)8.
- The complainants have set forth no specific facts that, if proven true, could demonstrate that Respondent Smallwood 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 as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(c). N.J.A.C. 6A:28-6.4(a)3.

The vote to create a new position was a preliminary stage in the development of the nascent title. The complainants offered no evidence that Respondent Smallwood took further steps to advance or advocate for the formation of such a position, and it is reasonable to conclude that no further action could be taken on the vote since the District is overseen by a State monitor with the authority to reject such a vote. Moreover, any discussion with the Superintendent and State monitor, who, pursuant to N.J.S.A. 18A:7A-55(b), has the authority to oversee budgetary

allocations and all district staffing, including the ability to hire employees, had not yet occurred. Respondent Smallwood took only the first step in the process to gauge the Board's interest in establishing such a title. If she had taken additional action without the necessary approvals, Respondent Smallwood would have violated N.J.S.A. 18A:12-24.1(h) of the Code. That did not happen here.

Similarly, the allegation that Respondent Smallwood's vote to create a new position without a job description or the proper funds violated N.J.S.A. 18A:12-24.1(c) is premature. The discussion to gauge interest in creating the title occurred at the meeting of July 22, 2014 before the Board, and the respondent's vote is the only action she took as the responsibility to support the title are beyond the scope of the Board's authority. The new position of Assistant Superintendent would still have to be developed and planned for with the involvement of appropriate school officials and the approval of the State fiscal monitor. The Commission finds this marginal first step is insufficient to violate N.J.S.A. 18A:12-24.1(c).

The Commission finds, therefore, that there are insufficient facts set forth in the Complaint that would support a conclusion that Respondent Smallwood violated the Code under either subsection. Thus, even accepting as true all facts alleged by the complainant in all Counts of the Complaint, 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(h) and (c) of the Code and hereby dismisses the Complaint for failure to state a claim upon which relief could be granted.

Moreover, after a review of the remaining respondents' Answers and in accordance with the foregoing analysis, the Commission hereby dismisses the matter *sua sponte* against all other respondents for failure to state a claim upon which relief could be granted, pursuant to N.J.A.C. 6A:28-10.8(a)5.

REQUEST FOR SANCTIONS

At its meeting on February 24, 2015, the Commission considered the respondents' request that the Commission find that the Complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission does not find that the complainants "[c]ommenced, used or continued [this matter] in bad faith, solely for the purpose of harassment, delay or malicious injury;" or that the complainants "knew, or should have known," that the matter "was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." N.J.A.C. 6A:28-1.2. For the foregoing reasons, the Commission finds that the Complaint is not frivolous and denies the respondents' request for sanctions against the complainants.

DECISION

Based on the foregoing, and pursuant to its discretion, the Commission granted Respondent Smallwood's Motion to Dismiss in its entirety and voted to dismiss the matter *sua sponte* against all other respondents for failure to state a claim upon which relief could be granted, pursuant to 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: March 25, 2014

Resolution Adopting Decision – C48-14

Whereas, the School Ethics Commission has considered the Complaint, the Motion to Dismiss filed on behalf of Respondent Smallwood, and the reply thereto as well as the Answers filed on behalf of the remaining respondents; and

Whereas, at its meeting on February 24, 2015, the Commission determined to grant Respondent Smallwood's Motion to Dismiss the Complaint in its entirety and voted to dismiss the matter *sua sponte* against all other respondents for failure to state a claim upon which relief could be granted, pursuant to N.J.A.C. 6A:28-10.8(a)5; and

Whereas, the Commission further found that the Complaint was not frivolous; and

Whereas, at its meeting on March 24, 2015, 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 March 24, 2015.

Joanne M. Restivo
Acting Executive Director