
**JENNIFER DERICKS, MAUREEN SHARPE
DARYL SAVAGE**

v.

**MICHAEL SCHIAVONI
SPARTA BOARD OF EDUCATION,
SUSSEX COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO. C40-07

**DECISION
(CONSOLIDATED)**

**JENNIFER DERICKS, MAUREEN SHARPE,
DARYL SAVAGE, SHIRLEY BOUSHELL,
ARMEN KOOCHAGIAN, RONALD
BASSANI**

v.

**LINDA CURCIO, PAUL JOHNSON,
MICHAEL SCHIAVONI, MICHAEL SCHILL,
KAREN SCOTT, RICHARD SULLIVAN
SPARTA BOARD OF EDUCATION,
SUSSEX COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO. C45-07

**DECISION
(CONSOLIDATED)**

PROCEDURAL HISTORY

This matter arises from two complaints filed on October 12, 2007 and November 13, 2007 by various complainants, as set forth above, against members of the Sparta Board of Education (“Board”) alleging violations of the Code of Ethics for School Board Members found in the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq.

In the matter docketed as C40-07, complainants Jennifer Dericks, Maureen Sharpe and Daryl Savage assert that Michael Schiavoni violated N.J.S.A. 18A:12-24.1(d), (i) and (j) of the Code of Ethics for School Board Members. An answer to the complaint docketed as C40-07 was filed on December 10, 2007.

In the matter docketed as C45-07, complainants Jennifer Dericks, Maureen Sharpe, Daryl Savage, Shirley Boushell, Armen Koochiagian and Ronald Bassani assert that respondents Linda Curcio, Paul Johnson, Michael Schiavoni, Michael Schill, Karen Scott and Richard Sullivan violated N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (g), (i) and (j) of the Code of Ethics for School Board Members.

In March 2008, the Commission learned that Mr. Schiavoni filed a matter in Superior Court, which appeared to necessitate that the complaints be placed in abeyance,

as per N.J.S.A. 18A:12-32. The parties were so notified by letter dated April 3, 2008, and were provided an opportunity to comment. At its meeting on May 27, 2008, the Commission determined to place the complaints in abeyance pending resolution of the matter filed in Superior Court. The Superior Court matter was dismissed in September 2008; the parties were immediately contacted to arrange for a telephone conference to discuss the possibility of consolidating the complaints and to schedule a hearing. A conference call was conducted on October 21, 2008 with lead complainant, Ms. Maureen Sharpe¹, complainant Jennifer Dericks and counsel for the respondents, Howard Mankoff, Esq. The parties did not object to consolidating the complaints for hearing and decision by the Commission.² This consolidated matter was set for a hearing at the Commission's January 27, 2009 meeting.

At the January meeting, the Commission heard the testimony and evidence from both the complainants and the respondents with regard to all allegations contained in the matter docketed as C40-07. At the close of the complainants' case, counsel for the respondents moved to dismiss the complaint, asserting that complainants failed to meet their burden of proof. Upon consideration of the motion and the complainants' response, the Commission voted to dismiss C40-07.³ The Commission also heard testimony and evidence with regard to the allegations contained in counts one, two and three in the matter docketed as C45-07.⁴ Thereafter, the respondents moved to dismiss C45-07 on the basis that complainants failed to meet their burden of proof.⁵

At the public portion of the Commission's January 27, 2009 meeting, it voted to dismiss the complaint docketed as C40-07, as set forth below, but tabled the matter docketed as C45-07 to allow the parties to submit written briefs addressing respondents' motion to dismiss C45-07.⁶ Additionally, both parties agreed to the dismissal of the allegation in count three of the complaint docketed as C45-07 that the respondents violated N.J.S.A. 18A:12-24.1(a) because the complainants failed to provide evidence of a final determination as required at N.J.A.C. 6A:28-6.9(b). The parties further agreed to the dismissal of counts four and five in the matter docketed as C45-07 in that the complainant acknowledged that the Commission does not have jurisdiction to consider matters which do not arise under the Act⁷.

At its March 24, 2009 meeting, the Commission considered the parties' testimony from the January 27, 2009 meeting, the exhibits entered into the record, the parties'

¹ Where a complaint is submitted by more than one person, a lead complainant may be designated by the Commission for the purpose of communication.

² Ordinarily, and where the Commission deems it appropriate, multiple complaints involving the same or similar parties are consolidated for review in order to save time, expense, duplication and avoid inconsistency.

³ A full analysis of the Commission's determination to dismiss C40-07 is set forth supra.

⁴ Due to time constraints, the respondents did not present testimony or evidence with regard to the allegations in count three.

⁵ Although respondents did not offer any witnesses or evidence to address count three, they retained the right to present evidence as to count three in the event that the Motion to Dismiss was denied.

⁶ Pursuant to correspondence from the Commission dated January 29, 2009, a briefing schedule was established which provided the parties with an opportunity to submit original and reply briefs.

⁷ Counts four and five alleged violations of the Open Public Meeting Act, N.J.S.A. 10:4-6, et seq.

primary briefs on the Motions to Dismiss and the complainants' reply brief on the Motions to Dismiss with regard to C45-07.⁸ Upon such consideration, the Commission granted the respondents' Motion to Dismiss counts one and three, and denied the respondents' Motion to Dismiss count two.⁹ With regard to count two, the sole remaining count before the Commission, it voted to find a violation of N.J.S.A. 18A:12-24.1(d) and (e), but no violation of N.J.S.A. 18A:12-24.1(c). The Commission also voted to recommend to the Commissioner of Education a penalty of censure. By correspondence dated April 16, 2009, the Commission notified the parties of its determinations as to the Motions to Dismiss and indicated that it would adopt a final written decision as to these consolidated matters at its April 28, 2009 meeting. At its April 28, 2009 meeting, the Commission reconsidered its findings as to count two of C45-07, and voted to find a violation of N.J.S.A. 18A:12-24.1(c) and (d) and no violation of N.J.S.A. 18A:12-24.1(e).¹⁰ The Commission also found that its previous recommendation to the Commissioner of Education of a penalty of censure was appropriate. This decision was adopted at the Commission's April 28, 2009 meeting.

SUMMARY OF THE RECORD

C40-07

On January 27, 2009, the matter docketed as C40-07 was heard by the Commission. In attendance were complainants Maureen Sharpe, Daryl Savage and Jennifer Dericks with their witness Tom Morton, Superintendent for the district. Ms. Dericks presented the case for complainants. Respondent Michael Schiavoni was in attendance with his attorney, Howard B. Mankoff.

Prior to presentation of testimony in the matter, Mr. Mankoff made a Motion to Dismiss the complaint as untimely pursuant to N.J.A.C. 6A:28-6.1(b). He argued that, although the complaint was filed on October 12, 2007, the substance of the charge, Mr. Schiavoni's summary of a November 2, 2006 meeting with four administrators, referenced incidents that occurred more than a year before the charge was filed. Ms. Dericks responded that the summary was not public information, and came to public light when the letter was discussed at a Board meeting. Due to the lack of information regarding the date of the summary, and granting all inferences to the complainant, the Commission decided to hear testimony from the complainants. The Commission determined that it would allow testimony and deny the Motion to Dismiss, for two reasons. First, the allegations contained in the complaint relate to the November 20, 2006 summary provided by Schiavoni (See C-1) which was within the timeframe, and secondly, to the extent that counsel argued that the complaint was not clear as to whether

⁸ The respondents submitted their reply brief out of time and, thus, it was not considered by the Commission in rendering its decision in this matter.

⁹ The parties were notified of the Commission's determinations on the motion to dismiss in a letter decision dated, April 16, 2009.

¹⁰ As the Commission addressed the Motions to Dismiss counts one and three in the matter docketed as C45-07 in its April 16, 2009 correspondence, this final decision addresses the remaining count two in C45-07 and the matter docketed as C40-07.

it reached to the underlying investigation, the Commission notes that the respondents addressed this issue in their answer.

Complainants first presented the testimony of Jennifer Dericks. Ms. Dericks testified that a letter was written by the principals in the district to the Board, which discussed three specific issues that the principals claimed compromised their ability to do their jobs effectively. The first issue was the Board's interference with the assignment of a secretary to the high school. The Board had asked for additional information regarding the reassignment. The principals' letter also discussed the Board's interference with an investigation of a parent's complaint about a principal. According to Ms. Dericks, the Superintendent was asked to investigate a parent's complaint pursuant to Board policy. The Superintendent was not allowed to bring that investigation to its conclusion.

Ms. Dericks then testified that, rather than waiting for a discussion of the parent's complaint until the Superintendent returned from vacation, Mr. Schiavoni invited the parents to lodge the complaint at the next Board meeting and directed the Assistant Superintendent to issue Rice¹¹ notices for a work session meeting scheduled for August 11, 2006. She argued that Mr. Schiavoni intervened in the investigation and directed Rice notices to be issued without the Superintendent's knowledge. Ms. Dericks introduced into evidence Mr. Schiavoni's summary of the November 2, 2006 meeting with administrators, which was accepted as Exhibit C-1, over the respondents' objection.

Tom Morton, Superintendent of the district, presented testimony for the complainants. Dr. Morton identified Exhibit C-1 as being written by Mr. Schivoni. Dr. Morton testified that the summary did not accurately reflect what occurred at the meeting. After reviewing the summary, he stated that there were four things in the letter that were not agreed to by the administrators. With respect to the investigation of a parental complainant, one issue was the manner in which the principal and the secretary were treated. He explained that the principal and the secretary were brought in very quickly without a complete investigation on his part due to his vacation. While he was on vacation the principal and the secretary had been given Rice notices and asked to appear at a Board meeting. Dr. Morton testified that he attended that Board meeting and the principal and the secretary were "grilled by the Board" and given a limited amount of time to speak in front of the Board. He claimed that, at the end of that session, the vice-president of the Board turned to that group and said, "I guess I know which people are not telling the truth." Dr. Morton claimed that the parents were brought in and given an extraordinarily long amount of time to talk with the Board members. He stated that he felt the process was pre-determined by the Board and was negatively perceived by the principal and the secretary.

Dr. Morton then testified that in paragraph three of Exhibit C-1, the second and third sentences were inaccurate. He explained that the principals had written a letter to the Board saying that the Board was making their job impossible to do. He stated that the

¹¹ "Rice" refers to the case *Rice v. Union City. Reg. H. Sch. Dist. Bd. of Educ.*, 155 N.J. Super. 64 (App. Div. 1977) *certif. den.* 76 N.J. 238 (1978), which established the right of employees to have notice when they will be discussed by the Board of Education.

intent of the meeting with the administrators was to go over item by item what was in the principals' letter to the Board and to repair the principals' relationship with the Board. He claimed that, as result of the meeting, the principals felt that the Board was untruthful and there was less trust then there was before. He claimed that the statement in the summary, "The meeting ended on a positive note..." was untrue.

At the close of the complainants' case, Mr. Mankoff made a Motion to Dismiss C40-07. He argued that the complaint should be dismissed because the provision of the Code alleged to have been violated required a showing that the summary designated as Exhibit C-1 contained inaccurate statements and complainants failed to offer any testimony showing that the document was inaccurate. He further argued that the only direct testimony provided by the complainants was from Dr. Morton, which consisted of his opinion only. Ms. Dericks responded that the complaint was not alleging that the summary was inaccurate, but that the summary did not support and protect school personnel.

C45-07¹²

The consolidated matter docketed as C45-07 was also heard at the January 27, 2009 meeting. In attendance were complainants Maureen Sharpe, Daryl Savage and Jennifer Dericks with their witness Tom Morton, Superintendent for the district. Ms. Dericks presented the case for the complainants. Respondents Linda Curcio, Paul Johnson, Michael Schiavoni, Michale Schill, Karen Scott and Richard Sullivan were in attendance with their attorney, Howard B. Mankoff.

Prior to hearing testimony on the allegations contained in C45-07, the Commission notified the parties that it did not have jurisdiction to consider matters outside of the School Ethics Act, and, therefore, the Commission would not accept testimony as to any claims that reached to violations of the Open Public Meetings Act, (OPMA) N.J.S.A. 10:4-6 et seq., or Rice notice requirements.

Ms. Dericks stated that, on April 25, 2007, a principal resigned from the Helen Morgan Elementary School effective June 30, 2007. Ms. Dericks claimed that Mr. Schiavoni would not allow the Superintendent to post the job for nearly six weeks while Mr. Schiavoni developed an entire staffing process including, but not limited to, position requirements, advertising, application form and interview evaluation forms. She noted that the Board's interference in this process delayed the staffing process by six weeks. Ms. Dericks claimed that, when the new principal was finally hired, she was only in her position for three days prior to the start of the school year. Ms. Dericks asserted that the same process was used again when, on June 11, 2007, a high school principal resigned. Ms. Dericks claimed that, through these actions, Mr. Schiavoni violated N.J.S.A. 18A:12-24.1(c), (d) and (e).

¹² The summary of the record for C45-07 relates solely to the allegations contained in count two of the complaint. Testimony and Exhibits for counts one and three alleged in C45-07 are not included in this summary as the Commission granted the respondents' Motion to Dismiss those counts at its March 24, 2009 meeting as memorialized in its April 16, 2009 correspondence to the parties.

Ms. Dericks entered the following documents into evidence without objection: Exhibit C-3, a June 9, 2007 email from Mr. Schiavoni; Exhibit C-4 a principal rating form; and Exhibits C-5 through C-23, which represented the remaining documents attached to the complaint docketed as C45-07. Ms. Dericks explained that she received the documents when she was on the staffing committee for the Sparta High School principal position.

Tom Morton, Superintendent of the district, also presented testimony for the complainants. In describing the hiring process for the principal of the Helen Morgan School, Dr. Morton testified that the process was not one he would have used. He confirmed that he had experience in the hiring of personnel. He explained that he would always post a position the week following the resignation of the individual in order to accommodate the possibility that candidates would have to give a 60 to 90-day notice to their current employer. He confirmed that this practice was not followed in the process for the hiring of the principal of the Helen Morgan School.

As to the hiring of the Helen Morgan School Principal, Dr. Morton claimed that Mr. Schiavoni would not allow him to post the advertisement without his clearance. Dr. Morton further testified that Mr. Schiavoni would not allow Dr. Morton to continue any aspect of the hiring process without his approval. Dr. Morton stated that the interview process in this case took a long time, and virtually every step of the way was controlled totally by Mr. Schiavoni. He stated that he was not allowed to do anything independent of Mr. Schiavoni, which delayed the process by seven or eight weeks. Dr. Morton explained that he did not review the resumes, but Mr. Schiavoni and other Board members took the resumes out of the district to review them. Dr. Morton claimed that Mr. Schiavoni wrote the questions for the interview, directed the interview process and analyzed which candidate was the best candidate. Dr. Morton testified that Mr. Schiavoni ran the whole show. Dr. Morton claimed that he would have liked to have recommended a couple of the candidates, but Mr. Schiavoni told Dr. Morton that he would not support Dr. Morton's recommendations and he had the votes to stop the hiring. He explained that the final decision was made at the end of June and that the candidate had a 60-day clause in her contract so she could not start work until the end of August, about two days before school began. Dr. Morton testified that the initial search for the high school principal followed the same process as that used for the Helen Morgan principal. As a result, the district was not able to get a high school principal and ended up hiring an interim principal.

On cross-examination, Dr. Morton admitted that it normally took four weeks and could take up to six weeks to hire someone, but he usually tried to minimize the hiring time. On redirect, Dr. Morton testified that the hiring process that was brought in by Mr. Schiavoni compromised the running of the school because the person who was hired for the Helen Morgan principal position was not able to begin before the school year started.

Mr. Schiavoni testified for the respondents with respect to count two. He confirmed that he was president of the Board during all relevant times. Mr. Schiavoni

confirmed that he was the chief staffing officer for three different businesses, all of which were worth a billion dollars or more, the largest one having 10,000 employees, and he had a staffing team report to him in his senior position. Mr. Schiavoni stated that Dr. Morton's previous testimony, that Mr. Schiavoni would not support Dr. Morton's recommendation, was an inaccurate statement. Mr. Schiavoni stated that he never told Dr. Morton that he would not support Dr. Morton's candidate.

Mr. Schiavoni testified that he was part of the staffing team when the Superintendent was looking for a business administrator. He explained that there was no hiring process in place he was asked to come up with interview questions off the top of his head. He stated that interview times varied and he was concerned that several of the people in the room were asking non-job related questions that were not consistent, did not apply to the basic criteria for the position and could result in a discrimination claim. He testified that he was dismayed by the lack of process and offered to develop the material for the staffing process only to help Dr. Morton, who had the ability to make the final decision to use it or not. Mr. Schiavoni claimed that Dr. Morton offered no objection when he volunteered to come up with a staffing process, which Mr. Schiavoni did on evenings and weekends.

Mr. Schiavoni admitted that he created a series of staffing document packets which were adopted by the Board at its July 17, 2006 meeting. He stated that he did not force this process on anyone, but created it pursuant to an invitation. Mr. Schiavoni maintained that he talked to either Dr. Morton or the Assistant Superintendent and said he would be willing to create this process and one of them agreed that Mr. Schiavoni should do it. He explained that he gave the documents to the person in charge of the staffing team for the middle school and she decided not to use them, which was fine. Mr. Schiavoni was then referred to Exhibit C-23, which was a staffing guide from a business where Mr. Schiavoni had worked. Mr. Schiavoni explained that he had used it as a best practices staffing guide, which he had refined for use in the schools. He admitted that the technical elements were different, but noted that the staffing guides were similar. Mr. Schiavoni stated that he prepared the staffing documents in conjunction with the human resources committee chaired by Ms. Curcio. Mr. Schiavoni explained that the staffing process was reviewed by the human resources committee and Dr. Morton, and, at that time, there was no objection.

Mr. Schiavoni testified that he did not tell Dr. Morton that he could not post the position or put the ad in the Star Ledger until May 18, 2007, nor did Linda Curcio. He explained that, for the Helen Morgan staffing, Ms. Curcio and he were the two Board members that were part of the staffing team, supporting and assisting Dr. Morton. He stated that Dr. Morton had not called for a meeting of the staffing committee and he was concerned about the delay from April 25, 2007. Mr. Schiavoni then called Dr. Morton to ask him when he was going to call the first staffing meeting and Dr. Morton suggested May 15. Mr. Schiavoni maintained that as a result of the May 15th staffing meeting, the job specifications were developed, as suggested by Dr. Morton, with input by both Board members. He claimed that the only delay in the process was the three weeks from the time the resignation was accepted on April 25th until May 15th when Dr. Morton finally

agreed to have the first staffing meeting. Mr. Schiavoni stated that Dr. Morton made the final decisions as the chief staffing officer and that the two Board members were there to help support the staffing process. He stated that the job was posted on May 18th and there was not a six-week delay.

Mr. Schiavoni explained that June 1 was the deadline for candidates to submit applications and, immediately after June 1, he and Ms. Curcio met with Dr. Morton and found that Dr. Morton had not screened any of the 20 to 25 resumes, had not looked at any of them and had not made copies of the resumes. He testified that he and Ms. Curcio offered to take the resumes home over the weekend. He stated that he spent three and a half hours reviewing the resumes. He explained that, in an effort to help expedite the process, on Monday he passed the resumes on to Ms. Curcio who did a quick review so that the next week they were able to meet and have an update. Mr. Schiavoni then noted that he was disappointed that Dr. Morton had simply collected the paperwork and done no preliminary screening or review of the paperwork. Mr. Schiavoni explained that he volunteered, as a member of the staffing team, to develop interview questions and there was no objection to him doing it. He noted that Dr. Morton, as the chief staffing officer, had the ability to use the interview questions or not to use them. Mr. Schiavoni noted that the staffing team could ask any of the questions or come up with others and it was not mandatory to ask the questions.

Mr. Schiavoni stated that, on June 11th, Dr. Morton advised the board that the staffing team was ready to recommend four candidates. Mr. Schiavoni then quoted the following from the Board minutes of June 11th, "They had the first round of interviews for the Helen Morgan principal. They were ready to recommend four candidates. There would be candidate interviews on June 20. There would be a special meeting on June 21 to appoint the principal." Mr. Schiavoni noted that the Board had already arranged a special meeting with the sole subject of the meeting to be the interviews so that there would be no delay from the time of the final interviews. Mr. Schiavoni claimed that this was all part of the Board's good will to expedite the staffing process. Mr. Schiavoni confirmed that the candidate was selected at the June 21st meeting.

Mr. Schiavoni stated that, after a review of Dr. Morton's previous hiring process for the Helen Morgan Principal's position, he learned that it had taken Dr. Morton 10 weeks to hire the current principal who was resigning. He concluded that the Board's staffing process had taken eight weeks and Dr. Morton's staffing process had taken 10 weeks, thus there was a 20 percent reduction in time. Mr. Schiavoni noted that for both processes, they were hiring from outside of the district, which is typically a longer process. Mr. Schiavoni claimed that everybody on the staffing team believed that they had accomplished the hiring on an expedited manner. Mr. Schiavoni stated that he was stunned to hear Dr. Morton's remarks in his testimony because it was in dire contrast to what he said and other members of the staffing team had said during the staffing process. Mr. Schiavoni stated that he had notes from the human resource committee meeting where the committee called this a best practice in terms of the staffing process used.

Mr. Schiavoni testified that he was not on the staffing team for the position of the Sparta High School Principal, but he noted that the team followed the Board process for administrative staffing. He stated that he was aware that there was a significant delay and Dr. Morton did not meet the timelines that the Board set for him. Mr. Schiavoni explained that he provided interview training for the staffing team for the Sparta High School Principal position because the team included community members who were not trained in interviewing. He claimed that he volunteered to do the training and there was nothing to make his training mandatory.

On cross-examination, Mr. Schiavoni confirmed that he had a background in adult education, but not in education administration. He stated that he only offered suggestions during the staffing process and that, as the chief staffing officer, Dr. Morton had the ability to make the final decision, which was never challenged by anyone on the staffing team. He explained that Dr. Morton made all the final decisions and that the staffing team was there in a support capacity only. He stated that having no formal staffing process and having no documentation was not a best practice.

COMPLAINANTS' EXHIBITS

C-1	November 20, 2006 Highlights of Meeting with Administrators by respondent
C-3	June 9, 2007 email from respondent re: principal rating form
C-4	Principal Rating Form
C-5	Predicting Future Performance document
C-6	Typical Behavioral Interview Sequence
C-7	Interview Form
C-8	Rating Sheet Helen Morgan School Principal
C-9	Balanced Leadership Document
C-10	Assessment Interview Guide
C-11	June 15, 2007 memo from respondent to Staffing Team
C-12	Importance of Effective Staffing document
C-13	Sparta School District Administrative Recruiting Guide
C-14	Selection Criteria for High School Principal
C-15	Balanced Leadership document (also C-9)
C-16	Job Demands document
C-17	Rating Sheet Sparta High School Principal
C-18	Predicting Future Performance document (also C-5)
C-19	Typical Behavioral Interview Sequence (also C-6)
C-20	Follow up questions document
C-21	Selection Model document
C-22	Possible questions for SHS Principal Candidates document
C-23	Recruiting Guide

FINDINGS OF FACT

1. The respondents were all members of the Board at all times relevant to these complaints.

2. Respondent Mr. Schiavoni was Board President at all times relevant to these complaints.
3. Mr. Schiavoni is not currently a member of the Board.
4. On October 12, 2006, the President, Vice-President, Secretary and Treasurer of the Sparta Administrators' Association submitted a memorandum to Dr. Morton regarding their concerns with the Board.
5. On November 2, 2006, Dr. Morton and Board members Sullivan and Schiavoni attended a meeting with the President, Vice-President, Secretary and Treasurer of the Sparta Administrators' Association to address the concerns that were raised in the October 12, 2006 memorandum.
6. Mr. Schiavoni prepared a document summarizing what occurred at the November 2, 2006 meeting.
7. Mr. Schiavoni prepared a series of staffing document packets to be used in the hiring process for administrative staff positions. The staffing packets consisted of several documents including rating forms, interview forms, rating sheets, an assessment interview guide, an administrative recruiting guide, selection criteria, a list of interview questions, a general recruiting guide and a "white paper" entitled "Predicting Future Performance Based on Past Behavior." (Exhibits C-3 through C-23)
8. The staffing process for administrative staff positions developed by Mr. Schiavoni was adopted by the Board at its July 17, 2006 meeting.
9. The principal of the Helen Morgan Elementary School submitted a letter of resignation dated April 20, 2007.
10. At its April 25, 2007 meeting, the Board accepted the resignation of the Helen Morgan Principal, which was effective June 30, 2007.
11. The first meeting of the staffing team for the Helen Morgan Principal position was held on May 15, 2007. Mr. Schiavoni and Ms. Curcio were on the staffing team.
12. On May 18, 2007 the position was posted and an ad was placed in the Star Ledger on May 22, 2007.
13. June 1, 2007 was the deadline for submission of applications, and the staffing team met on that day.
14. Mr. Schiavoni and Ms. Curcio took the resumes out of the district to review them.

15. Mr. Schiavoni wrote the questions for the interview process for the Helen Morgan Principal position.
16. At the June 11, 2007 Board meeting, the Board was given an update on the progress on the hiring of the Helen Morgan Principal and notified that the staffing team was ready to recommend four candidates.
17. At the June 21, 2007 meeting, a candidate was selected.
18. The candidate did not begin employment in the district until the end of August 2007.
19. Mr. Schiavoni trained the staffing team for the High School Principal position in the staffing process adopted by the Board for the hiring of administrative staff positions. Mr. Schiavoni was not on the staffing team for the High School Principal position.

ANALYSIS¹³

The Commission notes that, pursuant to N.J.S.A. 18A:12-29b, the complainants bear the burden of factually proving any violations of the Code of Ethics for School Board Members. After consideration of the respondents' Motion to Dismiss C40-07, the Commission voted to dismiss the complaint in its entirety.¹⁴ The Commission found that the complainants failed to establish that Mr. Schiavoni's memorandum summarizing a meeting could be considered administering the schools as defined at N.J.A.C. 6A:28-7.1.¹⁵ Mr. Schiavoni merely summarized the November 2, 2006 meeting that he attended with another Board member and Dr. Morgan. He did not become directly involved in activities or functions that are the responsibility of school personnel or the day to day administration of the school district and he did not give a direct order to school personnel. Nor did the complainants establish that the content of the document failed to support and protect school personnel in the proper performance of their duties in violation of N.J.S.A. 18A:12-24.1(i).¹⁶ Again, Mr. Schiavoni merely summarized what occurred at the November meeting. The document contained his opinion of what occurred, which does not establish that Mr. Schiavoni failed to support and protect school personnel in the proper performance of their duties. As noted above, the allegations in the complaint related to the memorandum itself and did not reach to the underlying events, which

¹³ As counts one and three in the matter docketed as C45-07 were dismissed by the Commission in its April, 16, 2009 correspondence, this final decision addresses the remaining count two in C45-07 and the dismissal of C40-07.

¹⁴ The Commission so voted during the public portion of its meeting.

¹⁵ "Administer the schools" means that a member of the district board of education or a member of a charter school board of trustees has become 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 or has given a direct order to school personnel.

¹⁶ See, Lauren Spicer v. John Della Vecchia et seq., C31-04 (February 22, 2005) where the Commission found that a board member had not violated N.J.S.A. 18A:12-24.1(i) when he openly expressed resentment toward the Superintendent. The Commission reasoned that it did not believe that purpose of N.J.S.A. 18A:12-24.1(i) was to allow the Commission to become involved in every dispute between a board president and the chief school administrator. (Id., at page 5)

appeared to be untimely pursuant to N.J.A.C. 6A:28-6.1(b). Thus, the complainants failed to establish that Mr. Schiavoni's memorandum violated N.J.S.A. 18A:12-24.1(j).

As to count two of C45-07, the complainants assert that Mr. Schiavoni's conduct violated N.J.S.A. 18A:12-24.1(c), (d) and (e). To prove a violation of the Code of Ethics for School Board Members, the complainants presented testimony from Ms. Dericks and Dr. Morton and Exhibits C-2 through C-23, which contain various documents created by Mr. Schiavoni in relation to the hiring process and an email and a memorandum relative thereto.

To find a violation of N.J.S.A. 18A:12-24.1(c), the Commission must first determine if Mr. Schiavoni's actions in his creation and development of the staffing process, in his participation in the interview process for the Helen Morgan School Principal and in his training of staffing team members in the staffing process was board action. N.J.S.A. 18A:12-24.1(c) provides:

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.

In his testimony, Mr. Schiavoni testified that the series of staffing document packets that he created were adopted by the Board at its July 17, 2006 meeting. While Mr. Schiavoni admitted that he created interview questions for the Helen Morgan School Principal staffing team, he did so as a member of that staffing team. Both he and Ms. Curcio were the two Board members who were on that team. When he trained staffing team members, he trained them in the staffing process that had been adopted by the Board. Based on this evidence, the Commission finds that Mr. Schiavoni's action in relation to the staffing process was Board action.

Having found that Mr. Schiavoni's action was Board action, the Commission must next determine whether Mr. Schiavoni's Board action went beyond policy making, planning and appraisal. In reviewing the staffing documents that Mr. Schiavoni created, it is apparent to the Commission that Mr. Schiavoni went far beyond policy making, planning and appraisal. While the Board may have approved the staffing documents created by Mr. Schiavoni, the Commission finds that the creation of the documents and the content of the documents went beyond the making of policy, planning and appraisal. The documents ranged from a "white paper" on Predicting Future Performance Based on Past Behavior, which supported the use of behavioral questions in interviews, to specific forms such as an interview form and a candidate rating form, which included a detailed rating scale. The documents also included an assessment interview guide, which presented specific steps that should be taken in an interview and indicated how many minutes should be spent at each step. The documents included an Administrator Recruiting Guide that detailed the roles and responsibilities of the chief school administrator and Board members on a staffing team, and provided for a 10-phase recruitment process along with specific selection criteria. The documents were very specific, all encompassing and covered every step of the hiring process leaving very little

discretion to anyone utilizing them. While Mr. Schiavoni testified that neither the Superintendent nor any Assistant Superintendent had made an objection when he volunteered to come up with the staffing process, there is no evidence to show that he consulted with anyone in the administration during the development of these documents.

The Commission also finds that Mr. Schiavoni's Board actions went beyond policy making, planning and appraisal when he took candidate resumes for the position of the Helen Morgan Principal home to review over the weekend and then passed the resumes on to another Board member for her review. Previously in I/M/O Marlene Polinik, C45-06 (January 22, 2008), the Commission found that a board member violated N.J.S.A. 18A:12-24.1(c) when she went beyond policy making, planning and appraisal by actively attempting to locate candidate resumes while she was at the district office when the chief school administrator was absent. In this matter, the respondent's actions were more severe in that he took the resumes out of the district to review, and then exchanged the resumes with the other Board member on the staffing team. While the Superintendent was aware that Mr. Schiavoni had taken the resumes out of the district, the Commission notes that Mr. Schiavoni removed the resumes before the Superintendent had a chance to copy the resumes for the other members on the staffing team. Accordingly, the Commission finds that Mr. Schiavoni violated N.J.S.A. 18A:12-24.1(c).¹⁷

To find a violation of N.J.S.A. 18A:12-24.1(d), the Commission must first determine whether Mr. Schiavoni's actions constituted administering the schools. N.J.S.A. 18A:12-24.1(d) provides:

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.

"Administer the school" means, in part, that a board member has become directly involved in activities or functions that are the responsibility of school personnel. See, N.J.A.C. 6A:28-7.1. Dr. Morton credibly testified that virtually every step of the interview process for the Helen Morgan School Principal position was controlled by Mr. Schiavoni who would not allow Dr. Morton to continue any aspect of the hiring process without his approval. Dr. Morton further testified that he was not allowed to do anything independent of Mr. Schiavoni. Dr. Morton did not even review the resumes of the candidates; it was Mr. Schiavoni who took the resumes home to review them. While Mr. Schiavoni testified that he was disappointed in the way Dr. Morton handled the resumes, by taking the only copy of the resumes out of the district for review, Mr. Schiavoni became directly involved in a function that was the responsibility of Dr. Morton. Dr. Morton testified that Mr. Schiavoni wrote the questions for the interview of the Helen Morgan School Principal, directed the interview process and analyzed which candidates were the best candidates. While Mr. Schiavoni testified that, as chief staffing office, Dr.

¹⁷ Since the Commission has found that Mr. Schiavoni took Board action that went beyond policy making, planning and appraisal, it will not reach to whether Mr. Schiavoni failed to help frame policies and plans only after the Board consulted those who would be affected by them.

Morton had the ability to use or not use the questions, Mr. Schiavoni's overall conduct in relation to the interview shows that Mr. Schiavoni administered the schools and became directly involved in a function that was the responsibility of the Superintendent. The evidence also shows that Mr. Schiavoni assumed the responsibilities of the Superintendent when he prepared a detailed and all-encompassing staffing process without input from the Superintendent, and when he controlled the role of the Superintendent in the hiring process for the Helen Morgan School Principal position. Accordingly, the Commission finds that Mr. Schiavoni violated N.J.S.A. 18A:12-24.1(d).¹⁸

To find a violation of N.J.S.A. 18A:12-24.1(e), the Commission must first determine whether Mr. Schiavoni's action in relation to the hiring process was private action. N.J.S.A. 18A:12-24.1(e) 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.

"Private action" is defined, in part, as action taken by a board member that is beyond the scope of the duties and responsibilities of that board member. See, N.J.A.C. 6A:28-7.1. Here, the Commission has already determined that Mr. Schiavoni's action was Board action. Previously in Marc Sovelove v. Paul Breda, C49-05 (September 26, 2006), the Commission found that an action of a board member that has been found to be Board action cannot also be private action. Accordingly, the Commission finds that the complainants failed to carry their burden to show that Mr. Schiavoni's action was private action in violation of N.J.S.A. 18A:12-24.1(e).

DECISION

The Commission finds that respondent Michael Schiavoni violated N.J.S.A. 18A:12-24.1(c) and (d) when he took Board action that went beyond policy making, planning and appraisal and administered the schools by creating and developing a detailed and all-encompassing staffing process, and by becoming directly involved in functions and responsibilities of the Superintendent during the staffing process for the Helen Morgan School Principal position, as set forth in the complaint docketed as C45-07. All other allegations in the matters docketed as C40-07 and C45-07 are dismissed.

PENALTY

The Commission recommends that respondent Michael Schiavoni be censured for violating N.J.A.C. 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members. In so doing, the Commission finds instructive I/M/O Doris Graves, Pleasantville Board of Education, C47-05 (May 27, 2008), approved by Commissioner,

¹⁸ Since the Commission has found that Mr. Schiavoni failed to carry out his responsibility not to administer the schools, it will not reach to whether Mr. Schiavoni failed to see that the schools were will run in concert with his fellow Board members.

July 10, 2008, wherein a board member was found to have violated N.J.S.A. 18A:12-24.1(d) when she spoke with the district's facilities coordinator and later appeared at a board personnel meeting regarding a personnel action affecting her cousin by marriage. In that matter, the Commission recommended that the board member be censured for a single violation of the Code of Ethics for School Board Members. The Commission also finds instructive I/M/O Marlene Polinik, C45-06 (January 22, 2008). Therein, the Commission recommended the penalty of censure for a single violation of N.J.S.A. 18A:12-24.1(c) when the board member went beyond policy making, planning and appraisal in the review of candidate resumes. Similarly, here where the respondent was found to have violated both N.J.A.C. 18A:12-24.1(c) and (d), the Commission finds that the penalty of a censure is appropriate.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the School Ethics Commission's recommended sanction. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of violation may file, within **13 days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4 within **30 days** of the filing date of the decision from which the appeal is taken. The filing date shall be three days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (13 days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Paul C. Garbarini
Chairperson

Mailing Date: April 29, 2009

Resolution Adopting Decision – C40-07 & C45-07 Consolidated

Whereas, the School Ethics Commission has considered the pleadings, testimony and all documentary evidence brought to the record in these consolidated matters; and

Whereas, at its meeting on March 24, 2009, the Commission found that respondent Michael Schiavoni violated N.J.A.C. 18A:12-24.1(d) and (e) of the Code of Ethics for School Board Members; and

Whereas, at its meeting on April 28, 2009, the Commission reconsidered its March 24, 2009 vote and found that respondent Michael Schiavoni violated N.J.A.C. 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members; and

Whereas, the Commission dismissed all other allegations that respondents violated the Code of Ethics of School Board Members, as set forth in the complaints; and

Whereas, the Commission found that censure is the appropriate penalty to recommend to the Commissioner of Education in these consolidated matters;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.¹⁹

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on April 28, 2009.

Joanne Boyle, Executive Director

PCG/JB/MET/decisions/Sparta II

¹⁹ Commissioner Robert Copeland was recused from participating in the hearing and determination of these consolidated matters.