

<b>ROBERT McCANN</b>	:	<b>BEFORE THE SCHOOL ETHICS COMMISSION</b>
<b>v.</b>	:	<b>Docket No. C15-07</b>
<b>MARGO HARRIS</b>	:	
<b><i>CHESILHURST BOARD OF EDUCATION</i></b>	:	<b>DECISION</b>
<b><i>CAMDEN COUNTY</i></b>	:	
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## **PROCEDURAL HISTORY**

This matter arises from a complaint filed on April 9, 2007 by Robert McCann alleging that Margo Harris, a member of the Chesilhurst Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.* The complainant specifically alleges that the respondent violated N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics for School Board Members. The respondent submitted an answer to the complaint and the Commission invited the parties to attend its April 22, 2008 meeting. The complainant did not attend the Commission's meeting. The respondent attended the meeting with her attorney, Stuart Jay, Esq. Testimony was heard, as set forth below. During the public portion of the meeting, the Commission voted to dismiss the complaint, finding that the complainant did not meet his burden to prove that the respondent violated the Code of Ethics for School Board Members.

## **THE PLEADINGS**

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(e) and (f) when she allowed her live-in fiancé to obtain a position with the Board for which he was not properly certified. The complainant alleges that the money being paid to her fiancé benefits her because he lives with her. (Complaint, at pages 1 and 2)

In her response, the respondent notes that she is no longer a member of the Board and answers as though the complainant had alleged a violation of N.J.S.A. 18A:12-24(e) and (f), which is the prohibited acts section of the Act. (Answer, at page 1) The respondent asserts that the Act does not apply to former school officials. (Answer, at page 2) The respondent also notes that the position which her fiancé filled requires no certification. The respondent certified that she began living with Jaime Ocasio in early 2004 and they were married on April 6, 2007. (Respondent's Certification at page 1) She further certified that Mr. Ocasio applied for the position of bilingual utility clerk with the Board, that she did not participate in discussions about Mr. Ocasio or rate him, and she abstained from voting to approve his appointment to the position. (Id., at page 2)

## **EVIDENCE**

The respondent testified that she had been a Board member for four years, two of which she served as Board President. She was a member of the Board's personnel

committee, which interviewed potential candidates for positions with the Board. She testified that a position was posted for a bilingual clerk, which required no certification. Only four people, including her live-in fiancé, applied for the position, and interviews for the four candidates were scheduled. The respondent testified that she checked with the Board attorney about participating in the interviews and he indicated there was not a problem if she did not participate in discussions about her live-in fiancé. She further testified that she participated in the overall interview process for the position. She stated that, after the personnel committee members asked standard questions of a potential candidate, they would give each candidate a number score and discuss that candidate's eligibility for the position. On the day of the interviews only two candidates were interviewed since one candidate had decided to withdraw her application and the other candidate did not show up for the interview.

The respondent further testified that, at the time of the interviews, the other Board members on the personnel committee did not know that Mr. Ocasio was her live-in fiancé. During Mr. Ocasio's interview, the respondent testified that she stayed in the room, but moved away from the table and did not participate in questioning Mr. Ocasio. She stated that the superintendent told the other Board members that the respondent was abstaining from interviewing Mr. Ocasio. The Board members were not told the reason for her abstention. The respondent testified that she left the room when the personnel committee scored Mr. Ocasio, which explained why there are only two scores for Mr. Ocasio and three for the other candidate reflected in the minutes. The respondent testified that she took part in interviewing the other candidate, which included asking standard questions that had been provided to the committee members by the superintendent. The respondent then testified that she also abstained from the vote to hire Mr. Ocasio.

Abdi Gass, the superintendent, testified that he had advertised the position of bilingual utility clerk with the Courier Post, as well as posting the position in school and in the town hall. The district needed a person who could "wear many hats" and the person needed to be bilingual because of the influx of Hispanic students in the community. He testified that it was the normal process for the Board's personnel committee to interview candidates, but that he was part of the process and was a member of the Board's personnel committee. Because of the district's nepotism policy, the superintendent testified that he did not want the respondent involved in interviewing her live-in fiancé. The superintendent testified that he told the committee members that the respondent was recusing herself from the interview of Mr. Ocasio, but did not explain the nature of her relationship with Mr. Ocasio. He testified that he believed that the board members knew of the relationship of the respondent with Mr. Ocasio. He asked the questions of Mr. Ocasio in place of the respondent asking questions.

## **FINDINGS OF FACT**

The Commission found the following facts based on the pleadings, testimony and documents on the record.

1. At all times relevant to the complaint, the respondent was President of the Board and a member of the personnel committee. The superintendent was also a member of the personnel committee.
2. The respondent lived with her fiancé, James Ocasio, in early 2004 and they were married on April 6, 2007.
3. In early September 2006, the superintendent advertised the position of bilingual utility clerk with the Courier Post and posted the position in school and in the town hall. The position did not require any specific type of certification.
4. Only four candidates applied for the position including Mr. Ocasio. One of the four candidates withdrew her application.
5. On October 3, 2006, the personnel committee, including the respondent, interviewed the candidates for the position. One of the candidates did not show up for the interview; thus, the Board interviewed Mr. Ocasio and one other candidate.
6. The interview process began with the members of the personnel committee asking a candidate standard questions that were provided by the superintendent. Once all of the questions were answered, the personnel committee members scored the candidate and discussed the scores and the potential hiring of the candidate.
7. During Mr. Ocasio's interview, the respondent stayed in the room, but moved away from the interview table and did not ask any questions. The superintendent informed the personnel committee members that the respondent was recusing herself from interviewing Mr. Ocasio, but did not provide any explanation as to the conflict of interest. The superintendent, instead of the respondent, asked Mr. Ocasio the standard questions. The respondent left the room when the personnel committee scored Mr. Ocasio and discussed his potential employment.
8. The respondent participated fully in the interview of the other candidate.
9. The respondent recused herself from voting on the appointment of Mr. Ocasio to the position of bilingual utility clerk.

## **ANALYSIS**

The Commission will first address the respondent's assertion that a former member of the board is not subject to the provisions of the Act. The Commission notes that, at the time of the complaint, the respondent was a member of the Board. Therefore, pursuant to the definition set forth at N.J.S.A. 18A:12-23, she was subject to the provisions of the Act. Since the respondent is currently not a Board member, the Commission is limited in this review only with respect to its penalty recommendation

because the respondent cannot be removed or suspended from the Board. However, the respondent, if found in violation of the Act, could be reprimanded or censured.

The complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(e), of the Code of Ethics for School Board Members when she allowed her live-in fiancé to obtain a position with the Board for which he was not properly certified. Pursuant to N.J.A.C. 6A:28-6.9, it is the complainant's burden to prove these alleged violations. Thus, he must demonstrate that the respondent violated her duty to:

- recognize that authority rests with the board of education and make no personal promises nor take any private action that may compromise the board (N.J.S.A. 18A:12-24.1(e)); and

The complainant alleges that the respondent allowed her live-in fiancé to obtain a position with the Board in violation of N.J.S.A. 18A:12-24.1(e). The complainant has not presented the Commission with any factual evidence to show that the respondent failed to recognize that authority rests with the Board or that the respondent made a personal promise or took a private action that may compromise the Board. Pursuant to N.J.A.C. 6A:28-7.1, "private action" is defined as "action taken by a member of a district board of education that is beyond the scope of the duties and responsibilities of a district board of education..." The evidence shows that at all times the respondent was acting in her role as a member of the Board recognizing that authority rests with the Board. Based on the foregoing, the Commission finds that the complainant failed to meet his burden to prove that the respondent violated N.J.S.A. 18A:12-24.1(e) and dismisses that allegation against her.

The complainant also alleged that the respondent violated N.J.S.A. 18A:12-24.1(f), which provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

The complainant alleges that, in violation of N.J.S.A. 18A:12-24.1(f), the respondent "...took an action so that her fiancé remains an employee, the money being paid to Mr. Ocasio her fiancé benefits [her] as she resides with him in her home in Chesilhurst." (Complaint at page 2)<sup>1</sup> The evidence shows that the superintendent advertised for the position and prepared standard questions for all candidates. While the Commission notes that Mr. Ocasio lived with the respondent at the time of the interview and his appointment, the complainant has provided no factual evidence to show how the respondent used the schools for personal gain or for the gain of friends. Therefore, the

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<sup>1</sup> It appears that the complainant's allegation of a violation of N.J.S.A. 18A:12-24.1(f), refers only to the respondent's use of the schools for personal gain or for the gain of friends; therefore, the Commission will not address whether the respondent surrendered her independent judgment to special interest or partisan political groups.

Commission finds that the complainant failed to meet his burden to prove that the respondent violated N.J.S.A. 18A:12-24.1(f) and dismisses that allegation against her.

While the Commission has found that the complainant did not meet his burden to prove that the respondent violated N.J.S.A. 18A:12-24.1(e) and (f), the Commission notes that it has previously found in I/M/O Dino Pettinelli, C01-04 (July 27 2004) that a board member violated N.J.S.A. 18A:12-24(c) when he attended an executive session of the board and the hiring of his brother as a technology coordinator/instrumental music teacher was discussed. The Commission therein found that the board member should have left the room during those discussions. The Commission based its reasoning on SEC v. Michael Kilmurray, C12-94 (January 27, 1998) wherein the Commission noted that the public may believe that a board member who sits in on a private session discussion regarding his sister-in-law is actively participating in the discussion behind closed doors, that the board member will tell his relative what was said, or at the least, that the other board members will be inhibited in their discussion of the matter because of his presence. Here, the respondent attempted to recuse herself from the interview of Mr. Ocasio by remaining in the room during the questioning, but moving away from the interview table and refraining from questioning. The respondent then left the room during the scoring of Mr. Ocasio and she also recused herself from voting on his appointment. Should the respondent serve as a board member in the future, the Commission cautions her to follow its previous findings regarding recusal.<sup>2</sup>

## **DECISION**

Based on the testimonial and documentary evidence, the Commission finds that the complainant has failed to prove factually that the respondent violated N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics for School Board Members. Consequently, the complaint is dismissed. 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).

Paul C. Garbarini  
Chairperson

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<sup>2</sup> The Commission notes that in Dino Pettinelli, it found a violation of N.J.S.A. 18A:12-24(c) when the complainant did not allege such a violation. In Dino Pettinelli, the Commission found that, pursuant to N.J.S.A. 18A:12-29(b), it was within the Commission's authority to make such a determination. (*Id.*, at page 5) The Commission reasoned that, N.J.S.A. 18A:12-29(b) gave it the authority to investigate complaints alleging prohibited acts, and during its investigation, the Commission raised the allegation of a violation of N.J.S.A. 18A:12-24(c). The Commission has not raised the allegation of a violation of N.J.S.A. 18A:12-24(c) in this matter because the complainant only alleges violations of the Code of Ethics for School Board Members. In such matters, the complainant has the burden to factually prove such allegations and the Commission's role is not the same as it is in complaints alleging prohibited acts.

## **Resolution Adopting Decision – C15-07**

**Whereas**, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and the testimony of the parties; and

**Whereas**, at its meeting of April 22, 2008, the Commission found that the complainant had not established that Margo Harris violated N.J.S.A. 18A:12-24.1(e) and (f) and dismissed the charges against her; and

**Whereas**, the Commission directed its staff to prepare a decision consistent with the aforementioned conclusion; and

**Whereas**; the Commission has reviewed the decision and agrees with the decision;

**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.

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Paul C. Garbarini, Chairperson

I hereby certify that this Resolution  
was duly adopted by the School Ethics  
Commission at its public meeting on  
May 27, 2008.

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Joanne Boyle, Executive Director