

LAURA A. DANIS	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
NICKOLCE MILEVSKI	:	Docket No. C36-10
GARFIELD BOARD OF EDUCATION	:	DECISION ON
BERGEN COUNTY	:	MOTION TO DISMISS
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on October 22, 2010 by Laura A. Danis alleging that Nickolce Milevski, a member of the Garfield Board of Education (Board), violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. Specifically, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e) and (f) of the Code of Ethics for School Board Members.

After being granted an extension for good cause shown, on November 18, 2010, a Motion to Dismiss in Lieu of Answer was filed on behalf of the respondent, which included an allegation that the complaint was frivolous. By letter dated November 19, 2010, the complainant was advised that, pursuant to N.J.A.C. 6A:28-8.2, she had 20 days from receipt of the Motion to Dismiss to file a responsive brief as well as to respond to the allegation of frivolousness. The parties were therein also notified that this matter would be placed on the agenda for discussion by the School Ethics Commission at its meeting on December 21, 2010 in order to make a determination regarding the respondent’s Motion to Dismiss the complaint and allegation of frivolousness. The complainant did not respond to the Motion to Dismiss.

At its meeting on December 21, 2010, the Commission voted to grant the respondent’s Motion to Dismiss the complaint, without prejudice. The Commission found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2.

SUMMARY OF THE PLEADINGS

The complainant alleges that on August 25, 2010, the respondent, along with another board member, Dr. Donna Koch, met with 10 principals in the District in order to review the hiring procedures of the district. According to the complainant, the respondent stated, “I would like to find a job for a good friend of mine in the School District who worked my campaign.” The complainant asserts that the Superintendent and the Business Administrator confirmed that the meeting took place and that this statement was made. However, the complainant states that the “Principals will only answer questions under subpoena.” (Complaint at attachment) The complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(c), (d), (e) and (f).

ANALYSIS

In the respondent's Motion to Dismiss in Lieu of Answer, he acknowledges that, as newer members of the Board, out of concern over nepotism and political patronage, as well as an effort to familiarize themselves with the process for hiring new employees, he and Board member Dr. Donna Koch met with principals and supervisors on or about April 25, 2010. (Certification of Respondent at paragraph 4). However, the respondent specifically denies that he made the statement set forth in the complaint. (*Id.* at paragraph 5). Additionally, the respondent asserts that the complainant was not present during the meeting at issue and has obtained her information about the meeting from second-hand sources and internet forums. (Motion at paragraphs 8, 9). Notably, although the complainant was accorded an opportunity to respond to these arguments, she did not.

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the complainant and determine whether the allegation(s), 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.

A Motion to Dismiss considers the adequacy of the pleadings, which are governed by the reviewing agency's specific pleading requirements. Here, the Commission's rules require, *inter alia*, that a complaint shall include: "[a] brief statement, in individually numbered paragraphs, setting forth the specific allegation(s) and the facts supporting them which have given rise to the alleged violation(s) of the Act." N.J.A.C. 6A:28-6.3(a)3. The Commission's rules further provide that, for complaints alleging a violation of the Code of Ethics for School Board Members, the complainant has the burden to factually establish a violation in accordance with the standards set forth at N.J.A.C. 6A:28-6.4.

The Commission is cognizant that the Courts have established that "[a]n administrative agency has broad authority to adopt rules and mold its procedures in a manner best suited to perform its statutory responsibilities. Sloan ex rel. Sloan v. Klagholtz, 342 N.J.Super. 385, 394 (App. Div. 2001)¹ Here, the Commission is particularly concerned that the complainant, who carries the burden to *factually establish* a violation of the Code of Ethics for School Board Members, offers in her complaint no basis of knowledge of the events alleged to have taken place. Moreover, she did not reply to the respondent's specific contention in this regard. As such, the Commission is not persuaded that it may engage in an analysis of whether those "facts," if true, could establish a violation of the Act, until it is satisfied that there is sufficient support for the allegations in the complaint so as not to render its analysis futile.

¹ In Sloan, supra, the Appellate Division determined that the Commissioner of Education properly dismissed a petition of appeal where the appellant school board and students challenged the amount of aid distributed to the District, yet failed to present any factual support for their contentions, as specifically requested by the Commissioner. Following a Motion to Dismiss filed by the Department of Education, the Court found that "it is within the Commissioner's authority to treat a motion to dismiss on the ground that 'no sufficient cause for determination has been advanced' as encompassing not only a claim that the petition on its face fails to set forth a basis for relief, but also that petitioners have failed to provide any factual support for the general allegations in their petition." Sloan ex rel. Sloan v. Klagholtz, 342 N.J.Super. 385, 394 (App. Div. 2001)

Having fully considered this matter, as well as the Commission's obligations pursuant to the Act, the Commission determines that the most equitable course is to dismiss the within complaint without prejudice to the complainant's right to refile the specific claims raised in this complaint, with attention to the parameters set forth above. That is, where the complainant has no basis of knowledge of the events and "facts" set forth in the complaint, she must provide the Commission with a reasonable basis for such allegations, through, but not necessarily limited to, a sworn affidavit or certification. Any such complaint must also be timely filed and submitted in accordance with N.J.A.C. 6A:28-1.1 et seq.

REQUEST FOR SANCTIONS

Pursuant to N.J.A.C. 6A:28-8.2, the respondent alleged in his Motion to Dismiss that the complaint herein is frivolous. Thus, at its meeting on December 21, 2010, the Commission considered the respondent's 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 complainant "[c]ommenced, used or continued [this matter] in bad faith, solely for the purpose of harassment, delay or malicious injury;" or that the complainant "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 respondent's request for sanctions against the complainant.

DECISION

At its meeting on December 21, 2010, the Commission granted the respondent's Motion to Dismiss the complaint, without prejudice to the complainant's right to refile the claims raised herein through a subsequent complaint which is filed in accordance with N.J.A.C. 6A:28-1.1 et seq.

Robert W. Bender
Chairperson

Mailing Date: January 26, 2011

Resolution Adopting Decision – C36-10

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

Whereas, at its meeting on December 21, 2010, the Commission determined to grant the respondent’s Motion to Dismiss the complaint, without prejudice; and

Whereas, the Commission found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2; and

Whereas, 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 January 25, 2011.

Joanne Boyle
Executive Director