

In Count 2 of the complaint, the complainant asserts that Respondent Longo called Belleville School No. 5's Principal, Gabriel Nazziola, and told him whom he should recommend for two physical education teacher positions and one music teacher position. The complainant further alleges that Respondent Longo told Mr. Nazziola that he should distance himself from a teacher at School No. 5 because her father did not donate or attend a political fundraiser as he was instructed to do. According to the complainant, Respondent Longo told Mr. Nazziola that the teacher would not be renewed and that the prior principal of No. 5 was not renewed because she did not make political contributions or follow the political agenda. The complainant asserts that the "date of occurrence" was July 13, 2011. (*Id.* at p. 2) The complainant further asserts this is a violation of N.J.S.A. 18A:12-24(e), as well as N.J.S.A. 18A:12-24.1(c) and (f).

In Count 3 of the complaint, the complainant asserts that on April 11, 2011, during a public meeting of the Board, Respondent Zangari made a political endorsement for the re-election of Respondents Longo and Freda. The complainant states that he became aware of this in May when he received a video of the Board meeting. The complainant asserts this is a violation of N.J.S.A. 18A:12-24(b). (*Id.* at p. 3)

ANALYSIS

As a preliminary matter, the respondents assert that Count 3 is untimely, pursuant to N.J.A.C. 6A:28-6.5 in that "any complaint related to Zangari's public comments at the meeting of April 11, 2011 should have been filed on or before October 8, 2011. The original complaint in the instant matter appears to have been received by the Commission on October 14, 2011, thereby making the complaint untimely. (Motion at p. 7) The Commission's regulations provide, in relevant part:

Complaints shall be filed within 180 days of notice of the events which form the basis of the alleged violation(s). **A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known.** N.J.A.C. 28-6.5(a). (emphasis added)

The Commission recognizes that limitation periods of the type herein serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. Kaprow v. Berkley Township Bd. of Educ., 131 N.J. 571, 587 (1993). Thus, "notice of the alleged violation" must be interpreted in a manner that anticipates the reasonable diligence of the complainant(s). In addressing potential violations of the School Ethics Act, the Commission must balance the public's interest in knowing of potential violations against the important policy of repose and a respondent's right to fairness. The time limitations set forth in the regulations must be enforced if it is to operate in a fair and consistent manner. Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County, C19-03 (June 24, 2003).

present while votes are being counted and have the right to challenge the counting or rejecting of any ballot or part of a ballot. N.J.S.A. 19:7-5.

Thus, the Commission concurs with the respondents that the allegations set forth in Count 3 are untimely. To the extent the complainant states, “I became aware of Zangari’s conduct in May 2010 [sic] when I received a video of the Board meeting and I became aware in June 2010 [sic] that his conduct was unethical,” (complaint at p. 3), such a statement is unavailing, where the complaint clearly states that the respondent made the statement *at a public meeting*. Indeed, as noted above, “A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known.” N.J.A.C. 28-6.5. Further, although the Commission recognizes that the regulatory time period may be relaxed, in its discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice, N.J.A.C. 6A:28-1.8, it finds no extraordinary circumstances in this matter that would compel relaxation. Accordingly, Count 3 is dismissed as untimely.

Motion to Dismiss

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) 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, a Motion to Dismiss considers the adequacy of the complaint, which is governed by the reviewing agency’s specific 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 (emphasis added).

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). In Sloan, 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)

Count 1

In Count 1, the complainant first contends Respondent Longo violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(c) and (f) because he “gave his thoughts and recommendations” with respect to a candidate for the principal’s position in School No. 9 in the District. The

complainant alleges that he did so “prior to receiving the Superintendent’s recommendation” in an attempt “to influence the Steering Committee’s decisions.” The Steering Committee ultimately made its recommendation in August 2011 for School Number 9. (Complaint at p. 1) The respondents argue that “[t]he complaint fails to state what ‘thoughts and recommendations,’ Longo allegedly provided, to whom these thoughts were provided and when they were provided. The Complainant has based this claim on hearsay, and information that was clearly inaccurate.” (Motion to Dismiss at p. 4)

The Commission first considers the allegation that the Respondent Longo violated N.J.S.A. 18A:12-24(b), which provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

In this analysis, the Commission must find that the within complaint alleges sufficient facts which, if true, could support a finding that Respondent Longo used, or attempted to use, his position to secure some unwarranted privilege, advantage or employment for himself, members of his immediate family or others. However, even assuming that Respondent Longo participated on a Steering Committee and urged the hiring of a particular candidate, the same would not necessarily be a violation, unless he used or attempted to use his official position to secure *unwarranted* privileges, advantages or employment for himself, members of his immediate family or others. (See, I/M/O Doris Graves, Pleasantville Bd. of Ed., Atlantic County, C47-05 (May 27, 2008), Commissioner of Education Decision No. 301-08SEC, decided July 10, 2008, rejecting a claim of violation of N.J.S.A. 18A:12-24(b) because the record did not demonstrate that the respondent Board member’s relative did not deserve the continued appointment to the position of head custodian.) The complainant offers no factual allegations on which the Commission could base such a finding. Thus, the Commission finds that, even granting all inferences to the complainant, and assuming that the facts set forth in the complaint are true, the allegations are too vague to support a finding that Respondent Longo violated N.J.S.A. 18A:12-24(b).

The Commission next considers the allegation that Respondent Longo violated N.J.S.A. 18A:12-24.1(c), which states:

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.

Assuming it is true that Respondent Longo “gave his thoughts and recommendations” with respect to a candidate for the principal’s position in School No. 9 in the District, (complaint at p. 1), complainant offers no specific facts to indicate how, by doing so, Respondent Longo failed to confine his board actions to policy making, planning, and appraisal, or how he failed to work to frame policies and plans only after consultation with those affected by them. Accordingly, the Commission finds that even assuming the facts set forth in the complaint are true, they would not

be sufficient to support a finding that Respondents Longo and Freda violated N.J.S.A. 18A:12-24.1(c).

The Commission next considers the complainant's allegation that Respondent Longo 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 complaint is devoid of any facts to indicate that Respondent Longo took action on behalf of, or at the request of, a special interest group or partisan political group; nor are there any facts to indicate that the respondent used the schools in order to acquire some benefit for himself a member of his immediate family or a friend. Accordingly, even assuming the facts set forth in the complaint are true, the Commission does not find that these facts would support a finding that the respondent violated N.J.S.A. 18A:12-24.1(f).

In Count 1, the complainant also asserts that Respondents Longo and Freda violated N.J.S.A. 18A:12-24.1(c) and (f), as set forth above, when they hired/appointed James Cundari as a District Project Manager on August 15, 2011 and Frank Longo as a head custodian on July 1, 2011. According to the complainant, both men were campaign workers (challengers) for the Longo and Freda 2011 campaign. (Complaint at p. 1-2) As to the allegation that the respondents violated the Act by voting to hire persons who worked on their 2011 campaigns, respondents contend:

Complainant fails to indicate how voting on a Board resolution to promote Frank Longo to the position of head custodian, or voting on a resolution to accept the Proposal of James Cundari in response to a Request for Proposals, presents a conflict for either Longo or Freda. The fact that Frank Longo and James Cundari may have previously served as challengers in the 2011 elections for Longo and Freda does not automatically disqualify Longo or Freda from taking action on board resolutions that may relate to either individual. (Motion to Dismiss at p. 5)

Assuming it is true that James Cundari and Frank Longo were appointed by the Board as District Project Manager and Head Custodian, respectively, the complainant nevertheless offers no specific facts to indicate how, by voting for these individuals, Respondents Longo and Freda failed to confine their board actions to policy making, planning, and appraisal, or how they failed to work to frame policies and plans only after consultation with those affected by them, so as to potentially violate N.J.S.A. 18A:12-24.1(c).³ In so finding, the Commission notes that the complainant does not allege that Respondent Longo and Frank Longo are related. Moreover, recognizing that the decision to hire any individual rests with the Board as a whole, the Commission finds that complaint is devoid of any facts to indicate how these respondents

³ If Respondent Longo is related to Frank Longo, the complaint does not specify how the two are related.

surrendered their independent judgment to special interest or partisan political groups or to used the schools for personal gain or for the gain of friends so as to potentially violate N.J.S.A. 18A:12-24.1(f). Accordingly, even assuming the facts set forth in the complaint are true, the Commission does not find that these facts would support a finding that the respondent violated N.J.S.A. 18A:12-24.1(c) or (f).

Count 2

In Count 2 of the complaint, the complainant asserts that Respondent Longo violated N.J.S.A. 18A:12-24(e), as well as N.J.S.A. 18A:12-24.1(c) and (f) when he made statements to Belleville School No. 5's Principal, Gabriel Nazziola, and told him whom he should recommend for teaching positions and when he told Nazziola that the prior principal of School No. 5 was not renewed because she did not make political contributions or follow the political agenda. The complainant asserts that the "date of occurrence" was July 13, 2011. (Id. at p. 2) The complainant further asserts this is a violation of N.J.S.A. 18A:12-24(e), as well as N.J.S.A. 18A:12-24.1(c) and (f).

As a preliminary matter, the Commission notes that although the complainant states that the "date of occurrence" of the alleged incidents in this count was July 13, 2011, the documents appended at Exhibit B show otherwise. Indeed, Exhibit B to the complaint is a copy of Mr. Nazziola's statement made on July 13, 2011 at his Donaldson hearing before the Board.⁴ Thus, while Nazziola's hearing was held on July 13, 2011, according to Nazziola's statement, the underlying incidents set forth in Count 2 occurred in August and September of 2010, *well outside* the 180-day timeline provided in the Commission's regulations. The complainant does not claim, as he did in Count 3, that he was unaware of these events until Nazziola made his statement at his Donaldson hearing on July 13, 2011. Nevertheless, the Commission shall grant all inferences to the complainant and review this count, assuming that the statements made by Nazziola did not become public until July 13, 2011.

In their Motion to Dismiss, the respondents contend that this count must be dismissed because the claims as outlined in the complaint are the subject of a matter pending before the OAL. (Motion to Dismiss at p. 6) Further, even if the issues were not pending elsewhere, the respondents contend that the allegations herein relate to purported discussions between Respondent Longo and Nazziola. Notably, the complainant does not claim to have been a party to the conversations, nor does he indicate that he has any firsthand knowledge regarding these alleged communications. (Id. at p. 6)

The Commission notes that its regulations provide:

Pursuant to N.J.S.A. 18A:12-32, the School Ethics Commission shall not process any complaint nor issue a final ruling or advisory opinion where the subject matter of such complaint or advisory opinion is pending in any court of law or administrative agency of

⁴ The procedures discussed in Donaldson v. North Wildwood Board of Education, 65 N.J. 236 (1974) provide a non-tenured, non-renewed employee with the opportunity to appear informally before the employing Board.

this State. The School Ethics Commission shall place such matters in abeyance and notify the parties accordingly. N.J.A.C. 6A:28-1.5.

Thus, where necessary, the Commission may place a complaint *in abeyance*, but would not necessarily dismiss the complaint, or a particular claim therein, where the subject matter of such complaint is pending in any court of law or administrative agency of this State. That said, the respondents herein do not offer sufficient information in their motion from which the Commission could conclude that abeyance is necessary. See, Kevin Brister v. Shalonda Tanner, Roselle Borough Board of Education, Union County, C09-09 (April 20, 2010) citing to Horvath et al. v. Rosenwald, Freehold Regional High School District Bd. of Ed., Monmouth County and Rosenwald v. Horvath et al., Freehold Regional High School District Bd. of Ed., Monmouth County, Commissioner of Education Decision No. 459-08SEC, decided November 24, 2008.

Therefore, the Commission considers the allegations in Count 2. In this connection, the Commission acknowledges the respondents' contention that the complainant does not claim to have been a party to the conversations referenced in Count 2, nor does he indicate that he has any firsthand knowledge regarding these alleged communications. (Motion to Dismiss at p. 6) Nevertheless, the complainant alleges that Respondent Longo "told Principal Nazziola who among the candidates [for vacant teaching positions] he should recommend." The complainant further alleges:

During the same week, Board Member Joseph Longo personally approached Principal Nazziola in Belleville and reiterated his recommendations regarding which applicants Principal Nazziola should recommend for hiring. Principal Nazziola has stated in public that the individuals recommended by Board member Joseph Longo were not the most qualified individuals for those positions. When Principal Nazziola told this to Board member Joseph Longo, he was told that "these are our people." A copy of Principal Gabriel Nazziola's statement made on July 13., 2011 during the public Donaldson Hearing is attached as Exhibit B, and the statements reference herein are located at the seventh page of his statement.

In addition, Board member Joseph Longo approached Principal Nazziola and told him that he should distance himself from a wonderful teacher at Belleville School No. 5 because her father did not donate or attend the political fund raiser as he was instructed to do. He also told Principal Nazziola that she⁵ would not be renewed with the District. In addition, he told Principal Nazziola that the prior principal of Belleville School No. 5 was not renewed because she did not make political contributions or follow the political agenda for the their [sic] partisan political group. (Complaint at Count 2)

⁵ Presumably, the complainant refers to the teacher.

The complainant asserts that Respondent Longo violated N.J.S.A. 18A:12-24(e), as set forth below, as well as N.J.S.A. 18A:12-24.1(c) and (f), as set forth above. N.J.S.A. 18A:12-24(e) provides:

No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

To the extent that the complainant attempts to use Mr. Nazziola's statement made on July 13, 2011 at his Donaldson hearing before the Board in support of this count, the Commission notes that the Nazziola statement does not identify the Board member who allegedly contacted him. Indeed, the complainant includes no specific names, dates or facts other than what appears in Nazziola's unsworn statement to support these allegations. Accordingly, recognizing, as stated above, that the Commission has broad authority to adopt rules and mold its procedures in a manner best suited to perform its statutory responsibilities, the Commission finds that the complainant fails to allege sufficient facts which, if true, would support a finding that Longo solicited or accept a gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties so as to violate N.J.S.A. 18A:12-24(e).

Nor does the Commission find any facts set forth in this complaint which, if true, would suggest that Respondent Longo took any particular "board action" so as to implicate N.J.S.A. 18A:12-24.1(c). Finally, the Commission finds this complaint sets forth insufficient facts from which it may conclude that Respondent Longo took action on behalf of, or at the request of, a special interest or partisan group or that he used the schools in order to acquire some benefit for himself, a member of his or her immediate family or a friend. N.J.A.C. 6A:28-6.4(a)6.

DECISION

Based on the foregoing, the Commission grants the respondent's Motion to Dismiss the complaint. 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 28, 2012

Resolution Adopting Decision – C43-11

Whereas, the School Ethics Commission has considered the complaint and the Motion to Dismiss filed on behalf of the respondents and the complainant's reply thereto; and

Whereas, at its meeting on February 28, 2012, the Commission granted the respondent's Motion to Dismiss the complaint; and

Whereas, at its meeting on March 27, 2012, the Commission 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 27, 2012.

Joanne Boyle
Executive Director