

never authorized the respondent Board members to discuss her employment in public session that evening. She asserts that the respondents disregarded the statutory and regulatory prohibitions of discussing her record in public and permitted several invited members of the public to speak and have input on her employment. The complainant alleges these actions violated N.J.S.A. 18A:12-24.1(a), (c), (d) and (g) and the Open Public Meeting Act N.J.S.A. 10:4-7 (OPMA).

The respondents aver that at no time did they divulge the complainant's name in public and referred to her solely as Employee #28. The respondents also maintain that the transcript of that evening's colloquy involving the complainant proves that the complainant's name was never mentioned.

Complainant's response to the Motion re-asserts that the Board disclosed her identity to the public that evening and that the Board was indifferent to the complainant's right to privacy when they allowed the public to comment on unsubstantiated incidents as if still true.

ANALYSIS

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 allegations(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. Because the complainant has the burden to factually establish a violation of the Code of Ethics for School Board members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a), in order to prevail on a Motion to Dismiss, the complainant must allege facts, which if true, would be sufficient to support a finding in the complainant's favor. Thus, the question before the Commission was whether the complainant's alleged facts, which if true, could support a finding that the respondents violated N.J.S.A. 18A:12-24.1(a), (c), (d) and (g).

As a threshold matter, the Commission must determine whether it has jurisdiction to consider the Complaint. The School Ethics Commission has jurisdiction **only** over those matters arising under the School Ethics Act. N.J.S.A. 18A:12-21 *et seq.* Consequently, the Commission is not authorized to receive, hear or consider any pleadings, motion papers or documents of any kind relating to any matter that does not arise under the School Ethics Act. N.J.A.C. 6A:28-1.4(a). Accordingly, the Commission may only accept complaints alleging that a school official has violated the School Ethics Act.

The allegations asserted in the Complaint are raised in the context of violations of *Rice* procedures and the OPMA. The complainant argues that the respondents violated her privacy rights established under the statutory and regulatory prohibitions designed to grant these protections to individuals. As such, since the Commission may only consider violations cognizable under the Act, it is without the authority to review violations of *Rice* procedures or of the OPMA or to grant the relief sought.

The Commission finds, therefore, that the allegations of the Complaint are beyond its authority to review and redress. Thus, the Commission hereby dismisses the Complaint for lack of subject matter jurisdiction.

REQUEST FOR SANCTIONS

The respondents alleged that the Complaint herein is frivolous. At its meeting on October 28, 2014, the Commission considered the respondents' request that the Commission find that the Complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence which might show that the complainant filed the Complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also has no information to suggest that the complainant should have known that the Complaint was without any reasonable basis in law or equity or that it 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. Therefore, the Commission finds that the Complaint is not frivolous and denies the respondents' request for sanctions against the complainant.

DECISION

Based on the foregoing, and pursuant to its discretion, the Commission dismisses the within Complaint for lack of subject matter jurisdiction. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender, Chairperson

Mailing Date: November 26, 2014

Resolution Adopting Decision – C27-14

Whereas, the School Ethics Commission has considered the Complaint, the Motion to Dismiss filed on behalf of respondent, and the complainant’s reply thereto; and

Whereas, at its meeting on October 28, 2014, the Commission determined to dismiss the Complaint for lack of subject matter jurisdiction; and

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

Whereas, at its November 25, 2014 meeting, 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 November 25, 2014.

Joanne M. Restivo
Acting Executive Director
School Ethics Commission