
EDWARD OPORTO

v.

JOSEPH R. ROTONDA
BELLEVILLE BOARD OF EDUCATION,
ESSEX COUNTY

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO.: C31-16

**DECISION ON
MOTION TO DISMISS**

I. PROCEDURAL HISTORY

This matter arises from a Complaint filed on August 1, 2016 by Edward Oporto alleging that Joseph R. Rotonda, a school official employed by the Belleville Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By correspondence dated August 3, 2016, August 19, 2016, and August 25, 2016, Complainant was notified that his Complaint was deficient, and was provided with the opportunity to cure all defects. Complainant cured all defects, and filed an amended Complaint (Complaint) on September 14, 2016. More specifically, the Complaint alleges that Respondent violated N.J.S.A. 18A:12-24(b) of the Act.

On September 23, 2016, the Complaint was sent to Respondent, notifying him that charges were filed against him with the School Ethics Commission (Commission), and advising him that he had twenty (20) days to answer the Complaint. Respondent was provided with an extension of time to file a responsive pleading, and ultimately filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss) on October 12, 2016. Complainant filed a response to the Motion to Dismiss on November 4, 2016.

The Parties were notified by letter dated November 9, 2016, that the above-captioned matter would be placed on the Commission's agenda for its meeting on November 22, 2016 in order to make a determination regarding the Motion to Dismiss. At this meeting, the Commission discussed granting Respondent's Motion to Dismiss, and dismissing the Complaint in its entirety for failure to state a claim upon which relief could be granted. At its meeting on December 20, 2016, the Commission voted to take action as discussed at its meeting on November 22, 2016.

II. SUMMARY OF THE PLEADINGS

A. The Complaint

Complainant alleges that beginning on or about December 18, 2015 and continuing through the present, Respondent, an Assistant Principal at all times relevant to this matter, violated N.J.S.A. 18A:12-24(b) because (1) after creating a hostile work environment and/or harassing Complainant, Respondent "removed" Complainant from the substitute list on December 18, 2015 and, as a result, Complainant has never been called as a substitute again; (2) Respondent's mother is employed as a Principal in the same school district, and she used her

“influence” to place Respondent in the position of Assistant Principal and “other high positions of authority”; (3) after Complainant observed/witnessed “very questionable, physical behavior” by one of Respondent’s favorite students (i.e., using a cell phone in the hallway), Respondent “pre-emptively terminated [him]” from employment in the district; and (4) Respondent violated Complainant’s rights to employment and the public trust with his misconduct, and Respondent is “an unethical person that is abusing his authority.”

B. Motion to Dismiss

In response to the Complaint, Respondent filed a Motion to Dismiss. First, Respondent argues that all of Complainant’s claims are barred by the one hundred eighty (180) day statute of limitations for filing a Complaint with the Commission. N.J.A.C. 6A:28-6.5. Complainant’s initial deficient Complaint was filed with the Commission on August 1, 2016. Assuming that the triggering event that led to the filing of the Complaint occurred on December 18, 2015, Respondent argues that the Complaint was filed forty-five (45) days beyond the limitations period.

Respondent next argues that even if timely filed, there is nothing in the Act which permits the Commission to render determinations regarding claims of harassment as alleged in the Complaint. Moreover, there is nothing in the Complaint which suggests that Respondent took action for the purpose of obtaining an unwarranted privilege, advantage or employment for himself, a member of his immediate family member, or others. In the absence of an allegation that Respondent terminated him in order to secure unwarranted privileges, advantages or employment for himself, a member of his immediate family member, or others, Respondent argues that Complainant failed to plead an essential element of his case. Moreover, Respondent argues that, as a building administrator, he does not have the authority to terminate an employee – only the Board can terminate an employee.

C. Response to Motion to Dismiss

Complainant filed a Reply to the Motion to Dismiss and argues, with regard to the timeliness issue, that “the School Ethics Commission agreed that the deadline was met.” He also argues that even if Respondent did not have the authority to terminate him or any other employee, his “influence” could have had an impact on the Board’s decision to remove Complainant from “the call list to work at the high school.” Complainant also requests that the Commission “proceed with a careful investigation into [his] complaint.”

III. ANALYSIS

A. Standard for 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 non-moving party (Complainant) and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response thereto, is reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. Thus, the question before the Commission is whether

Complainant has alleged facts which, if true, could support a finding that Respondent violated N.J.S.A. 18A:12-24(b).

1. Timeliness Issue / Statute of Limitations

In his Motion to Dismiss, Respondent argues that because the Complaint was filed on August 1, 2016, and the event which led to the filing occurred on December 18, 2015, the Complaint is untimely and, therefore, should be dismissed. The Commission's regulations provide a one hundred eighty (180) day limitation period for filing a complaint. More specifically, N.J.A.C. 6A:28-6.5(a) provides, in relevant part:

- (a) 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.

As applied here, although Complainant's first deficient Complaint was received by the Commission on August 1, 2016, Complainant did submit, as an attachment/exhibit to that filing *only*, documentation indicating he mailed a package from the United States Postal Service (USPS) in Staten Island, New York to "Trenton, New Jersey 08625" on May 24, 2016. The tracking information provided by Complainant indicates that the package was accepted at the Staten Island USPS on May 24, 2016, and that it departed from the Staten Island USPS on May 24, 2016. However, this package was never received by the Commission. Complainant has represented that this package was his first effort to file the Complaint with the Commission.

Pursuant to N.J.A.C. 6A:28-6.7, "A complainant may amend a complaint to cure technical defects, clarify or amplify allegations made in the original complaint and such amendments will *relate back to the date the complaint was first received by the Commission for the purposes of determining timeliness pursuant to N.J.A.C. 6A:28-6.5*" (emphasis added). Because the package allegedly mailed by Complainant to the Commission on May 24, 2016 was never "received" by the Commission, it would appear, as argued by Respondent, that the Complaint is untimely.

Nevertheless, and in granting all inferences in favor of the Complainant, the Commission will view May 24, 2016 as the initial filing date for the Complaint. As the Complaint alleges that the violation occurred on December 18, 2015, the one hundred eighty (180) deadline to file with the Commission would have been June 15, 2016. Therefore, and for purposes of reviewing and considering this Motion to Dismiss, the Complaint is considered timely filed.

Even if the Commission did not accept, based on the documentation submitted by Complainant as part of his initial filing, May 24, 2016 as the initial filing date for the Complaint, Complainant asserts that his "removal" or "termination" from employment has been continuing

since December 18, 2015. Thereafter, and again in granting all inferences in favor of the Complainant, the Commission considers the Complaint timely filed.

2. Jurisdiction

The Commission notes that it only has jurisdiction over those matters which arise under the Act. In this regard, 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 Act. N.J.A.C. 6A:28-1.4(a). To the extent Respondent seeks a determination that Respondent “harassed” Complainant or created a “hostile work environment,” the Commission notes that such determinations are outside its purview. Moreover, although Complainant requests that the Commission conduct an “investigation into” his Complaint, the Commission additionally notes that it does not have the power, or the authority, to conduct investigations.

3. Allegations of Prohibited Acts

In his Complaint, Complainant asserts that Respondent violated N.J.S.A. 18A:12-24(b) of the Act. This provision of the Act provides:

- b. 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 order to credit the allegation of a violation of N.J.S.A. 18A:12-24(b), the Commission must find evidence that Respondent used or attempted to use his official position to secure unwarranted privileges, advantages or employment for himself, a member of his immediate family, or others.

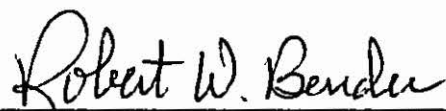
In his Complaint, Complainant alleges that Respondent, an Assistant Principal at all times relevant to this matter, created a hostile work environment for Complainant; harassed Complainant; terminated Complainant from the substitute list; was placed in and/or promoted to positions of authority by his mother, a Principal also employed by the Board; violated Complainant’s rights to employment and the public trust; and is an “unethical person.” However, the Complaint does not indicate *how* Respondent allegedly used his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others, and also does not indicate *what* unwarranted privilege, advantage or employment Respondent allegedly secured for himself, members of immediate family or others with such actions. Complainant’s allegation that Respondent was placed in and/or promoted to positions of authority in the district’s administration because of his mother fails to articulate how *he* used his official position to secure an unwarranted privilege, advantage or employment for himself, members of his immediate family or others. In addition, and despite Complainant’s argument to the contrary, he submitted evidence indicating that, as of June 23, 2016, he was still on the Board’s “Substitute Teacher List.” The fact that Complainant may not have been called to serve as a Substitute Teacher since December 18, 2015 does not, as Complainant alleges, translate to termination from employment.

Therefore, and based on the allegations in the Complaint and granting all inferences in favor of Complainant, the Commission finds that there is no sufficient, credible evidence that may support a finding that Respondent violated N.J.S.A. 18A:12-24(b).

IV. DECISION

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission finds that Complainant has failed to allege sufficient facts to demonstrate a *prima facie* case for a violation of N.J.S.A. 18A:12-24(b).

Therefore, the Commission **grants** Respondent's Motion to Dismiss in its entirety, and dismisses the Complaint for failure to state a claim upon which relief could be granted, pursuant to 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: December 21, 2016

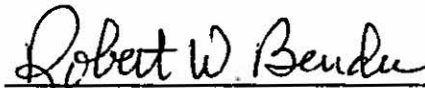
Resolution Adopting Decision – C31-16

Whereas, the School Ethics Commission (Commission) has considered the Complaint, the Motion to Dismiss, and the Response to Motion to Dismiss; and

Whereas, at its meeting on November 22, 2016, the Commission discussed granting Respondent's Motion to Dismiss in its entirety, and dismissing the Complaint for failure to state a claim upon which relief could be granted; and

Whereas, at its meeting on December 20, 2016, the Commission voted to take action as discussed as its meeting on November 22, 2016, and voted to approve the within decision as memorializing that discussion; and

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 December 20, 2016.



Kathryn A. Whalen, Director
School Ethics Commission