

Respondent also points out that the Complainant filed three HIB complaints against her, which were all dismissed. The Respondent argues that the Complaint lacks merit, that the Gloucester City Board of Education was not compromised by the e-mail, and that the Respondent was required to advise Complainant's supervisor, the Superintendent in the Woodstown School of the severity of the Complainant's actions. The Respondent also alleges that the Complaint is frivolous, pursuant to N.J.S.A. 18A:12-29(e).

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 allegation(s), if true, could establish a violation of the Code. 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. 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 alleged facts, which if true, could support a finding that the Respondent violated N.J.S.A. 18A:12-24.1(e), which provides¹:

e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

In order to prove a violation of N.J.S.A. 18A:12-24.1(e), the Complainant must allege factual evidence that the Respondent made personal promises or took action beyond the scope of her duties that, by its nature, had the potential to compromise the Gloucester City Board of Education. The Complainant failed to provide any facts or evidence that the Respondent made personal promises to anyone. However, the Respondent does not deny that she advised the Complainant's Superintendent for the Woodstown School District that the Complainant accosted and threatened the Respondent, and that the Complainant ultimately pled guilty to disorderly conduct in Municipal Court. Although Respondent's email advising the Woodstown Superintendent of the Complainant's assault may be considered private action, by its nature the act is insufficient to compromise the Gloucester City Board of Education, which is required under this subsection.

The Complaint states the assault was a "personal matter," and that "the incident had nothing to do with her (Respondent's) position as Vice President or with the Gloucester City

¹ The Commission's regulations at N.J.A.C. 6A:28-6.4(a) also include standards for factually establishing violations of the Code of Ethics for School Board Members.

School District.” In the past, the Commission has determined that if a board member’s action is found to be private action it cannot constitute board action. Marc Sovelove v. Paul Breda, Mine Hill Twp. Bd. of Ed., Morris County, C49-05 (September 26, 2006). Conversely, if a board member’s action is found to be board action it cannot constitute private action. The Commission found that a Board member’s action cannot be both board action *and* private action. By the Complaint’s own words, the underlying assault was a private matter and as such, the Respondent acted as a private citizen when she alerted the Woodstown Superintendent.

Board officials do not forfeit their rights as members of the public in personal matters that have nothing to do with the Boards on which they sit. Moreover, the Respondent’s official position as the Vice President of the Gloucester City Board holds no sway over the actions of the Woodstown Board; she simply has no authority to effect change in that District or determine its policies or actions. Finally, Respondent’s actions could not compromise the Gloucester City Board as the private action she took in a personal matter did not call into question any issue, deliberation, or vote taken by the Gloucester City Board. Consequently, the Commission finds that the within Complaint sets forth no factual allegations which, if true, could establish that the Respondent failed to recognize that authority rests with the Board or that she made personal promises or took action beyond the scope of her duties that, by its nature, had the potential to compromise the Board, so as to establish that the Respondent violated N.J.S.A. 18A:12-24.1(e).

Accordingly, based on the above determinations, even accepting as true all facts alleged by the Complainant, they are insufficient to support a finding that the Respondent violated N.J.S.A. 18A:12-24.1(e). The Commission finds, therefore, that the Complaint, on its face, fails to allege facts sufficient to maintain a claim that the Respondent violated the Code and hereby dismisses the Complaint for failure to state a claim upon which relief could be granted.

REQUEST FOR SANCTIONS

The Respondent alleged that the Complaint is frivolous. At its meeting on January 26, 2016, the Commission considered the Respondent’s request that the Commission find the Complaint frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence to 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 Respondent’s request for sanctions against the Complainant.

DECISION

Based on the foregoing determinations, and in reviewing the facts in the light most favorable to the Complainant, the Commission determines the Complaint not frivolous, and grants the Motion to Dismiss in its entirety for failure to state a claim upon which relief could be granted. 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: February 24, 2016

Resolution Adopting Decision – C32-15

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

Whereas, at its meeting on January 26, 2016, the Commission determined to dismiss the Complaint for failure to state a claim upon which relief could be granted for a violation of the Act; and

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

Whereas, at its February 23, 2016 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 February 23, 2016.

Joanne M. Restivo
Acting Executive Director
School Ethics Commission