



**B. Motion to Dismiss and Allegation of Frivolous Filing**

Following receipt of the Complaint, Respondent filed a Motion to Dismiss, and also alleged that the Complaint was frivolous. In particular, Respondent argues that Complainant failed to provide sufficient factual evidence for the alleged violation of N.J.S.A. 18A:12-24.1(a), in that he did not assert a final decision had been rendered, and did not provide a copy of a final decision from any court of law or administrative agency demonstrating that Respondent failed to enforce laws, rules, and regulations of the State Board. Respondent further argues that the Commission does not have the authority, or jurisdiction, to determine a violation of N.J.A.C. 6A:27-11.4. Even if it had such authority, Respondent argues that liability for a violation would fall to the Board, and not to an individual Board member.

Finally, Respondent asks the Commission to find the Complaint frivolous, as it is the third complaint Complainant has filed this year against officials of the Trenton School District, and it does not have a proper basis in fact. Moreover, Respondent argues it was filed in bad faith for purposes of harassment or delay.

**C. Response to Motion to Dismiss and Allegation of Frivolous Filing**

Complainant's response to the Motion to Dismiss and allegation of frivolous filing was due to be filed with the Commission by October 2, 2017. When Complainant failed to submit a response, the Commission provided Complainant with an additional twenty-one (21) days, or until October 23, 2017, to submit a responsive brief. It further advised Complainant that failure to submit a responsive brief by October 23, 2017, "may result in the Commission ruling on the Motion to Dismiss without considering any written submission from you."

Although Complainant did not submit a filing by October 23, 2017, he did file a written submission on October 30, 2017. In his untimely filing, Complainant argues that the Motion to Dismiss should be denied because Respondent's "use of legal services is unauthorized and is a conflict of interest" as the firm representing him in this matter is the same firm that represents the Board; Complainant filed his complaint against Respondent, and not the Board, and Respondent needs to retain an attorney that is not the Board's attorney; and a student was physically assaulted on a school bus and Respondent, as a Board member, failed to approve a bus safety plan in accordance with State regulations. Complainant also requested an extension of time to file a response to the Motion to Dismiss.

**III. ANALYSIS**

**A. The Jurisdiction of the Commission**

Complainant argues that, pursuant to N.J.A.C. 6A:27-11.4, the Board is responsible for providing a safety education program for its students. Based on the response he received from an OPRA request, Complainant asserts that the Board does not provide such a program. Consequently, Complainant contends that Respondent, as a Board member, failed to "uphold and enforce" the provisions of N.J.A.C. 6A:27-11.4.

The authority of the Commission is limited to enforcing the Act, N.J.S.A. 18A:12-21 et seq., a set of minimum ethical standards by which all school officials must abide. The Commission has jurisdiction only over matters arising under the Act, and it may not receive,

hear, or consider any matter that does not arise under the Act, N.J.A.C. 6A:28-1.4(a). Consequently, and to the extent that Complainant seeks a determination from the Commission that the Board and/or Respondent violated N.J.A.C. 6A:27-11.4, the Commission dismisses those claims as they fall outside the scope, authority, and jurisdiction of the Commission.

**B. 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 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:12-24.1(a).

**Alleged Code Violation**

Complainant asserts that Respondent violated N.J.S.A. 18A:12-24.1(a). This provision provides:

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures;

Pursuant to N.J.A.C. 6A:28-6.4(a)(1), factual evidence of a violation of N.J.S.A. 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools, or that Respondent brought about changes through illegal or unethical procedures. After review, the Commission finds that Complainant has not provided any of the factual evidence necessary to find a violation of N.J.S.A. 18A:12-24.1(a). Even if a court of law or other administrative agency had found a violation of N.J.A.C. 6A:27-11.4, the Commission agrees with Respondent that liability for such a violation would be on the Board, and not on one specific Board member (Respondent).

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that Complainant has not alleged any facts which, if true, could support a finding that Respondent violated N.J.S.A. 18A:12-24.1(a). Therefore, the Commission grants Respondent's Motion to Dismiss in its entirety.

**C. Request for Extension**

In his October 30, 2017, filing, Complainant requested "an extension to file a response to the motion to dismiss pursuant to NJAC (sic) 6A:28-8.2(b)." The Commission notes that it already provided Complainant with an additional twenty-one (21) days to file a response to the Motion to Dismiss and allegation of frivolous filing. In addition, because the basis for the Complaint is an alleged violation of N.J.A.C. 6A:27-11.4, an issue that falls outside the scope of the Commission's jurisdiction, the Commission believes that the granting of an additional extension will unnecessarily delay the resolution of this matter. If the Complaint was grounded

in facts and circumstances that fell within the Commission's jurisdiction, the Commission would have afforded Complainant with additional time to respond as requested.

#### IV. REQUEST FOR SANCTIONS

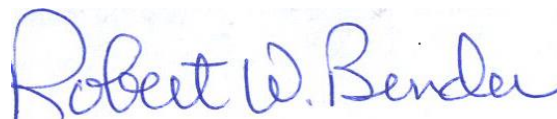
At its meeting on October 31, 2017, the Commission considered Respondent's request that the Commission find the Complaint frivolous, and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). Despite Respondent's argument, the Commission cannot find evidence which might show that the Complainant filed the Complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also does not have information to suggest that Complainant knew or 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. See N.J.A.C. 6A:28-1.2. Although the Commission does not have jurisdiction to determine whether there was a violation of N.J.A.C. 6A:27-11.4, it is possible that Complainant could seek redress for such a claim in a different forum (the Bureau of Controversies and Disputes). Therefore, the Commission finds that the Complaint is not frivolous, and denies Respondent's request for sanctions against Complainant.

Notwithstanding its determination, the Commission notes that this is at least the second Complaint that Complainant has filed with the Commission that contains allegations outside the scope of its jurisdiction.<sup>1</sup> Therefore, the Commission hereby advises Complainant that if he files another complaint with the Commission with allegations outside the scope of the Commission's jurisdiction, it may regard such a filing as frivolous, and impose a sanction as appropriate. The Commission strongly advises Complainant to carefully review the Act before filing future complaints with the Commission.

#### V. DECISION

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission grants Respondent's Motion to Dismiss in its entirety. The Commission also finds that the Complaint is not frivolous, and denies Respondent's request for sanctions.

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that, for the reasons set forth above, this matter is dismissed, and the Complaint is not frivolous. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court-Appellate Division. See, New Jersey Court Rule 2:2-3(a).



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Robert W. Bender, Chairperson

Mailing Date: November 29, 2017

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<sup>1</sup> Hayes v. Howard, SEC Docket No. C42-17, Trenton Board of Education, Mercer County (<http://www.state.nj.us/education/legal/ethics/2017/C42-17.pdf>).

**RESOLUTION ADOPTING DECISION – C57-17**

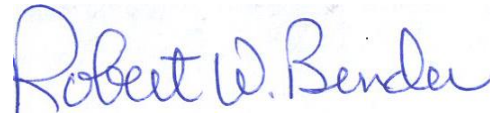
**WHEREAS**, at its meeting on October 31, 2017, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and the Response to Motion to Dismiss and allegation of frivolous filing; and

**WHEREAS**, at its meeting on October 31, 2017, the Commission discussed dismissing the Complaint; and

**WHEREAS**, at its meeting on October 31, 2017, the Commission discussed finding the Complaint not frivolous; and

**WHEREAS**, at its meeting on November 28, 2017, the Commission voted to approve the within decision; 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.



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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on November 28, 2017.



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Kathryn A. Whalen, Director  
School Ethics Commission