



privacy restrictions at that time. The respondent further argues that the complaint is frivolous as it is part of her continued harassment of him and that it is out of time.

## 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 alleged facts, which if true, could support a finding that the respondent violated N.J.S.A. 18A:12-24. The complainant alleges this was a violation of N.J.S.A. 18A:12-24.1(g), (b), and (i) the Code.

As a threshold matter, the Commission must determine whether the complaint was untimely filed, within the 180-time limitation, pursuant to N.J.A.C. 6A:28-6.5(a). The complainant asserts that all of the alleged violations occurred on January 25, 2013—441 days before she filed her complaint on April 11, 2014. The regulation governing the filing of complaints before the Commission is clear in that a complaint must be filed with 180 days of notice of the alleged violation, N.J.A.C. 6A: 28-6.5(a) and provides 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). Moreover, 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. As such, the Commission is mindful that the time limitations set forth in the regulations must be enforced if it is to operate in a fair and consistent matter. Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., C19-03 (June 24, 2003).

Further, although the Commission recognizes that this 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 and the complainant has not provided an explanation demonstrating one. The Commission finds, therefore, that the complaint docketed as C18-14 is untimely, pursuant to N.J.A.C. 6A:28-6.5(a) and is hereby dismissed.<sup>1</sup>

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<sup>1</sup> The Commission believes it would be remiss if it neglected to comment on the respondent's conduct. While the Commission understands that the respondent's statements on social media were borne of frustration and concern for his child, the Commission determines that such vitriolic invective, which incites violence, has no place in the public arena, particularly when spoken by a Board member, a leader in the community. Such comments diminish that individual's standing in the community. The Commission recognizes that the purpose of the School Ethics Act is to preserve the public trust and, as such, seeks to avoid the impression in the public's eye that its trust has been violated. The public should never have to question the integrity of any member's vote or his Board action. Being an elected official is a privilege, and the office requires the holder to be his better self, especially in public. The community has a right to expect leadership from their elected officials. They deserve nothing less.

## **REQUEST FOR SANCTIONS**

The respondent alleged that the complaint herein is frivolous. At its meeting on September 23, 2014, the Commission considered the respondent's 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 respondent's request for sanctions against the complainant.

## **DECISION**

Based on the foregoing, and granting all facts in the light most favorable to the complainant, the Commission grants the respondent's Motion to Dismiss the complaint with prejudice, N.J.A.C. 6A:28-6.5(a). 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).

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Robert W. Bender, Chairperson

Mailing Date: October 29, 2014

## **Resolution Adopting Decision – C18-14**

**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 September 23, 2014, the Commission granted respondent’s Motion to Dismiss the complaint as untimely and dismissed the complaint with prejudice; and

**Whereas**, the Commission further found the complaint not frivolous; and

**Whereas**, 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.

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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 October 28, 2014.

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Joanne M. Restivo  
Interim Executive Director