
JOSEPH S. SCIALABBO, SR.

v.

SANFORD STUDENT

***EVESHAM TOWNSHIP BOARD
OF EDUCATION,
BURLINGTON COUNTY***

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**BEFORE THE SCHOOL
ETHICS COMMISSION**

SEC Docket No.: C26-14

**OAL Docket No.:
EEC 00996 2015 S**

FINAL DECISION

PROCEDURAL HISTORY

This matter arises from a Complaint filed on November 4, 2013 by Joseph Scialabbo, Sr., alleging that Sanford Student, a member of the Evesham Township Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainant was notified that his Complaint was deficient, and was provided with an opportunity to cure all defects. Complainant filed an amended Complaint on June 23, 2014, and was again advised that his Complaint was deficient and that all defects needed to be cured before the Complaint could be served on Respondent. Ultimately, Complainant cured all defects, and filed an amended Complaint (Complaint) on July 14, 2014. The Complaint alleges that Respondent violated N.J.S.A. 18A:12-24.1(c), (e), (g), and (i) of the Code of Ethics for School Board Members (Code).

On July 31, 2014, 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 filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss) on August 22, 2014. Complainant did not file a reply to the Motion to Dismiss.

The parties were notified by letter dated September 8, 2014, that the above-captioned matter would be placed on the Commission's agenda for its meeting on September 23, 2014, in order to make a determination regarding Respondent's Motion to Dismiss. At that meeting, the Commission voted to deny the Motion to Dismiss as to the alleged violations of N.J.S.A. 18A:12-24.1(c) and (e), but granted the Motion to Dismiss as to the alleged violations of N.J.S.A. 18A:12-24.1(g) and (i). Pursuant to N.J.A.C. 6A:28-10.8(a), the Commission also voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a *de novo* plenary hearing after submission of Respondent's Answer to the remaining allegations.

Respondent's Answer, Defenses and Written Statement Under Oath, and Proof of Service were received by the Commission on November 10, 2014, and the matter was transmitted to the OAL on December 30, 2014.

While at the OAL, Respondent filed a Motion for Summary Decision, and Complainant filed a response. The Honorable Solomon A. Metzger, Administrative Law Judge (ALJ), granted Respondent's Motion for Summary Decision, and electronically transmitted the Initial Decision to the Commission on November 16, 2016. The Initial Decision was also mailed to the parties on November 16, 2016.

On November 22, 2016, the Commission requested an extension of time to review the full record, including the parties' Exceptions which, as of November 22, 2016, had yet to be filed. The Commission's extension was granted until February 1, 2017. Complainant's Exceptions to the Initial Decision were received by the Commission on November 28, 2016, and Respondent's Reply to Complainant's Exceptions was received by the Commission on December 15, 2016. At its meeting on December 20, 2016, the Commission discussed the Initial Decision and, at its meeting on January 24, 2017, the Commission voted to adopt the ALJ's findings of fact, conclusions of law, and decision to dismiss the Complaint for the reasons expressed in the Initial Decision.

ANALYSIS

Complainant bears the burden of factually proving violations of the Code in accordance with the standards enumerated in N.J.A.C. 6A:28-6.4(a). N.J.S.A. 18A:12-29(b). The Commission recognizes that summary decision may be granted in certain circumstances. More specifically, summary decision is appropriate when:

the papers and discovery, which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue, which can only be determined in an evidentiary proceeding. N.J.A.C. 1:1-12.5(b).

In support of his Motion for Summary Decision, Respondent referenced the language that appeared in the Commission's decision regarding his Motion to Dismiss. More specifically, he cited the following:

As to the claims underlying N.J.S.A. 18A:12-24.1(c), the Commission stated that "in order to find a violation of N.J.S.A. 18A:12-24.1(c) the Complainant **must provide evidence** that the Respondent took Board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the Respondent's duty." (Exhibit "B") (emphasis added). The Commission went on to state that "**if the Complainant can factually prove that Respondent's action securing a police presence was beyond the scope of the Respondent's duties**, then the Complainant may be able to provide proof of a violation of N.J.S.A. 18A:120-4.1(c) (sic)." *Id.* Similarly, to prove the claim under N.J.S.A. 18A:12-24.1(e), the Commission stated "**if the**

Complainant can provide evidence that Respondent took ‘private action’ when he contacted the Chief of Police to arrange for security that evening, then the Complainant may be able to prove that the Respondent violated N.J.S.A. 18A:12-24.1(e).

Based on the language from the Commission’s decision, and upon review of the record, Respondent argued that Complainant could not meet his burden to prove a violation of N.J.S.A. 18A:12-24.1(c) or N.J.S.A. 18A:12-24.1(e). According to Respondent, Complainant was served with “interrogatories and a notice to produce documents that was intended to elicit and bring forth all of the potential documents and testimony” in support of his claims. However, instead of providing additional information and documentation, Complainant merely offered general objections and only referred to the “facts and documents” attached to the complaint he filed with the Commission. In short, Respondent argued that Complainant failed to produce any new or different information or facts from that presented to the Commission. Without any additional information or documentation, Respondent argues that the record reveals his actions addressed a valid, safety concern that was required by his duties as Board President and, moreover, that his actions were not private action. Therefore, Respondent argued that the matter should be dismissed.

In his response to Respondent’s Motion for Summary Decision, Complainant argued, “I can challenge the facts that [counsel] has used as his legal argument and can provide factual material and witnesses to contradict said statements.” Complainant also asserted that the “best opportunity” for him to contradict Respondent’s arguments “would be to present witnesses and testimony moving forward.” Notably, Complainant did not detail any of the facts or the names of the witnesses, or a summary of their anticipated testimony, that he could present at a hearing.

Following review of Respondent’s Motion for Summary Decision and Complainant’s response thereto, Judge Metzger stated:

The motion record is sparse concerning the basis for Mr. Student’s apprehensions, although a few e-mails suggest petitioner could become argumentative. Nonetheless, the burden of proof rests with petitioner, N.J.A.C. 6A:28-6.4. His limited response is uncertified and refers generally to facts that *would be* presented at a hearing, which is unacceptably vague under Brill [v. Guardian Life Ins. Co. of Amer., 142 N.J. 520 (1995)]. ... In refusing to dismiss petitioner’s claims under subsections (c) & (e), the Commission provided him with the opportunity to show that Mr. Student made school policy without consulting those affected, or took private action that might compromise the Board. The motion record was the place to present these facts.

Based on a review of the record, Judge Metzger found that there was nothing suggesting “impropriety, or usurpation of authority,” and no indication that “the officers were used to intimidate and no evidence of any objection during the proceeding.” Judge Metzger also noted, “The facts have not substantively evolved since the Commission ruled on the motion to dismiss.” Consequently, Judge Metzger granted Respondent’s Motion for Summary Decision.

In his Exceptions to Judge Metzger's Initial Decision, Complainant argues his "facts" and "documents" were presented to the ALJ who was initially assigned to handle the matter, and that when the matter was transferred to another ALJ, his "facts" and "documents" were "disregarded" or "overlooked." Complainant also argues that the granting of Respondent's Motion for Summary Decision does not allow him to prove his case. To these Exceptions, the Commission notes that any written documentation submitted by Complainant in connection with this matter would have been considered by the ALJ who ultimately granted Respondent's Motion for Summary Decision. If there was other evidence or documentation that Complainant wanted the ALJ to consider, and he felt was critical to proving his allegations, Complainant should have ensured that this evidence became part of the record. Although the Commission understands that Complainant is *pro se*, Complainant is still responsible for ensuring that the facts and documentation in support of his claims are made a part of the record. Instead of submitting these facts and the necessary documentation, Complainant, to his detriment, believed that general and vague references to "facts" he believed he could later prove at a hearing would be sufficient to survive Respondent's Motion for Summary Decision. It is also important to note that, as part of his Exceptions, Complainant did not cite to any specific fact or evidence that Judge Metzger failed to consider in ruling on Respondent's Motion for Summary Decision, and also did not present any such facts, or documentation, to the Commission as part of his Exceptions.

Upon careful and independent review of the record and the arguments raised, the Commission finds that the record supports the ALJ's conclusion that the Complaint is ripe for summary dismissal. In so finding, the Commission concurs with the ALJ that, based on the record and the submissions of the parties, there is no genuine issue as to any material fact, and there is nothing in the record to suggest (1) impropriety, or usurpation of authority by Respondent; (2) that officers were present at the hearing to intimidate Complainant; or (3) that Complainant ever objected to the presence of the officers at the time of the hearing.

DECISION

The Commission determines to adopt the ALJ's Initial Decision, granting Respondent's Motion for Summary Decision, and dismissing the remaining allegations in the Complaint for failure to provide substantive evidence in support of his claims. This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court-Appellate Division. See, New Jersey Court Rule 2:2-3(a).



Robert W. Bender, Chairperson
School Ethics Commission

Mailing Date: January 25, 2017

Resolution Adopting Decision – C26-14

Whereas, pursuant to N.J.A.C. 6A:28-10.8(a), the School Ethics Commission (Commission) voted to transmit this matter to the Office of Administrative Law for a *de novo* plenary hearing; and

Whereas, the Administrative Law Judge concluded in his Initial Decision that summary decision should be granted to Respondent, and that the Complaint should be dismissed; and

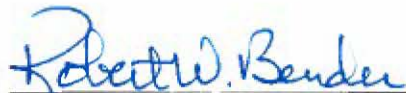
Whereas, Complainant's Exceptions to the Initial Decision were received by the Commission on November 28, 2016; and

Whereas, Respondent's Reply to Complainant's Exceptions was received by the Commission on December 15, 2016; and

Whereas, at its meeting on December 20, 2016, the Commission discussed the Initial Decision, the Exceptions to the Initial Decision filed by Complainant, and Respondent's Reply to Complainant's Exceptions; and

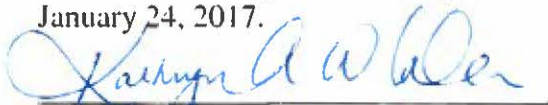
Whereas, at its meeting on January 24, 2017, the Commission voted to adopt the Initial Decision as the Final Decision, and to approve the within decision as accurately memorializing that discussion; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision as a Final Decision and directs its staff to notify all parties to this action of its decision herein.



Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on January 24, 2017.



Kathryn A. Whalen, Director
School Ethics Commission