

---

**BILLIE HAYES**

**V.**

**JAYNE HOWARD,  
TRENTON BOARD OF EDUCATION,  
MERCER COUNTY**

---

**BEFORE THE SCHOOL  
ETHICS COMMISSION**

**DOCKET NO.: C42-17**

**DECISION ON  
MOTION TO DISMISS**

## **I. PROCEDURAL HISTORY**

This matter arises from a Complaint filed on March 27, 2017, by Billie Hayes (Complainant), alleging that Jayne Howard (Respondent), a school official employed by the Trenton Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. More specifically, the Complaint alleges that Respondent violated N.J.S.A. 18A:12-24(b).

On March 31, 2017, the Complaint was sent to Respondent, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to answer the Complaint. On April 20, 2017, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and alleged that the Complaint was frivolous. Complainant did not file a written response to the Motion to Dismiss and/or the allegation of a frivolous filing.

The parties were notified by correspondence dated June 16, 2017, that this matter would be placed on the Commission's agenda for its meeting on June 27, 2017, in order to make a determination regarding the Motion to Dismiss and the allegation of a frivolous Complaint. At its meeting on June 27, 2017, the Commission considered Respondent's Motion to Dismiss and, at its meeting on July 25, 2017, the Commission voted to grant the Motion to Dismiss, and to find the Complaint not frivolous, for the reasons more fully discussed below.

## **II. SUMMARY OF THE PLEADINGS**

### **A. The Complaint**

Complainant alleges that, on December 27, 2016, the Interim Executive County Superintendent reviewed and approved an employment contract for Nelson Ribon (Ribon) to serve as an Assistant Superintendent in the Trenton Public Schools District (District). On January 2, 2017, the Times of Trenton advertised a public meeting notice for a "special" Board meeting to be held on January 6, 2017. However, according to the Complaint, the "public meeting notice failed to note on the agenda that the [Board] would be appointing" Ribon to serve as an Assistant Superintendent at the special meeting. Complainant asserts that Respondent, the Business Administrator/Board Secretary, is charged with preparing the Board's public meeting notices, and she failed to include this personnel matter on the notice.

Complainant further alleges that at its meeting on January 6, 2017, and even though Ribon's appointment was not included in the January 2, 2017, public meeting notice, the Board approved a resolution naming Ribon as an Assistant Superintendent. Thereafter, Respondent signed the resolution naming Ribon as an Assistant Superintendent.

According to Complainant, Respondent's "signature on the resolution approving [Ribon] as an assistant superintendent and her failure to provide an adequate public meeting notice" pursuant to the Open Public Meetings Act (OPMA) "enabled [Ribon] to secure employment as an assistant superintendent." In this way, Complainant argues that Respondent's actions, i.e., not including the appointment of Ribon in the public meeting notice and signing the resolution which approved the appointment, secured employment for Ribon and, as a result, violated N.J.S.A. 18A:12-24(b).

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

Following receipt of the Complaint, Respondent filed a Motion to Dismiss, and alleged that the Complaint is frivolous. In her Motion to Dismiss, Respondent argues that Complainant accuses her (Respondent) of "technical and ministerial violations of the [OPMA]" and such conduct, even if true, does not constitute a violation of N.J.S.A. 18A:12-24(b). In order to establish a violation of N.J.S.A. 18A:12-24(b), Respondent asserts that Complainant must provide evidence that Respondent used her official position to secure unwarranted privileges, advantages or employment for herself, an immediate family member or others, and no such evidence was proffered here. Instead, Complainant suggests that Respondent violated N.J.S.A. 18A:12-24(b) because she failed to provide adequate notice of the special meeting, and improperly signed the resolution naming Ribon as Assistant Superintendent. According to Respondent, the Commission is not the appropriate tribunal to determine whether Respondent violated OPMA and/or failed to properly execute her ministerial duties. Respondent also asserts that the Complaint is devoid of any evidence of a personal relationship between Respondent and Ribon that could give rise to a violation of N.J.S.A. 18A:12-24(b). Even if such a relationship was alleged, which it was not, Respondent argues that Ribon is more than qualified for the position and, therefore, his appointment was not unwarranted.

Finally, Respondent argues that the Complaint is frivolous because Complainant has not asserted any facts that could possibly constitute a violation of the Act. Therefore, she contends the Complaint was filed in bad faith and for purposes of harassment or delay.

For the reasons set forth above, Respondent argues that the Complaint should be dismissed, and the allegations deemed frivolous.

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

Complainant did not file a written response to the Motion to Dismiss and/or the allegation of a frivolous filing.<sup>1</sup>

---

<sup>1</sup> Although Complainant did not file a written response to the Motion to Dismiss and/or the allegation of a frivolous filing, the Commission notes that Complainant did appear, in person, at its meeting on June 27, 2017, and read a statement to the Commission. Complainant did not provide the Commission with a copy of his statement.

### III. ANALYSIS

#### A. The Jurisdiction of the Commission

As part of his Complaint, Complainant argues that Respondent's failure to provide "adequate notice" of the special Board meeting on January 6, 2017, violated the OPMA and, consequently, enabled Ribon to secure employment as an Assistant Superintendent in the District in violation of N.J.S.A. 18A:12-24(b).

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 Respondent's action(s) violated the OPMA, 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(b).

#### Allegation of Prohibited Act

Complainant asserts that Respondent violated N.J.S.A. 18A:12-24(b) of the Act. This provision 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 her official position to secure unwarranted privileges, advantages or employment for herself, a member of her immediate family, or an "other." After review, the Commission has determined that the Complaint fails to articulate any facts which, if true, could possibly demonstrate a violation of N.J.S.A. 18A:12-24(b). Instead, Complainant argues that because Respondent did not include the appointment of Ribon in the public notice for the meeting on January 6, 2017, and because Respondent subsequently signed the resolution which appointed an individual who was not included in the public notice, Respondent "enabled [Ribon] to secure employment as an assistant superintendent" in violation of N.J.S.A. 18A:12-24(b). As an initial matter, Respondent is without power to secure employment for any individual within a school district; instead, it is the Board, and the Board alone, that is charged with employing, and appointing, individuals to

positions within the District. Even if the public notice was defective, and placement of Ribon's appointment on the agenda improper, it was the Board, and not Respondent, that ultimately appointed, and employed, Ribon. In addition, and as argued by Respondent, Complainant did not provide any facts or otherwise claim that Ribon's employment was unwarranted. Without any facts demonstrating, or even suggesting, that Ribon's employment was "unwarranted," there is no evidence to support a violation of N.J.S.A. 18A:12-24(b).

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(b) of the Act. Therefore, the Commission grants Respondent's Motion to Dismiss in its entirety.

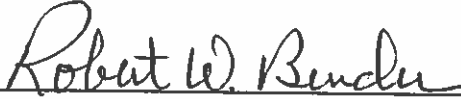
#### **IV. REQUEST FOR SANCTIONS**

At its meeting on June 27, 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. N.J.A.C. 6A:28-1.2. Although the Commission does not have jurisdiction to determine whether there was a violation of the OPMA, it is possible that Complainant could seek redress for such a claim in a different forum. Therefore, the Commission finds that the Complaint is not frivolous, and denies Respondent's request for sanctions against Complainant.

#### **V. DECISION**

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).

  
\_\_\_\_\_  
Robert W. Bender, Chairperson

Mailing Date: July 26, 2017

**RESOLUTION ADOPTING DECISION – C42-17**

**Whereas**, at its meeting on June 27, 2017, the School Ethics Commission (Commission) considered the Complaint and the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), including an allegation that the Complaint is frivolous; and

**Whereas**, Complainant did not file a written response to the Motion to Dismiss and/or the allegation that the Complaint is frivolous, but did appear, in person, at the Commission's meeting on June 27, 2017, and read a statement; and

**Whereas**, at its meeting on July 25, 2017, the Commission voted to dismiss the Complaint; and

**Whereas**, at its meeting on July 25, 2017, the Commission voted to find the Complaint not frivolous; and

**Whereas**, at its meeting on July 25, 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.

  
\_\_\_\_\_  
Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 25, 2017.

  
\_\_\_\_\_  
Kathryn A. Whalen, Director  
School Ethics Commission