
MARIA E. LORENZ

v.

**JOSE M. RODRIGUEZ,
ELIZABETH BOARD OF
EDUCATION,
UNION COUNTY**

:
: **BEFORE THE SCHOOL**
: **ETHICS COMMISSION**
:
: **SEC DOCKET NO.: C29-16**
:
: **OAL DOCKET NO.: EEC 17210-16**
:
: **FINAL DECISION**
:

I. PROCEDURAL HISTORY

This matter arises from a Complaint filed on July 11, 2016, by Maria E. Lorenz (Complainant), alleging that Jose M. Rodriguez (Respondent), a member of the Elizabeth 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:12-24.1(f) of the Code of Ethics for School Board Members (Code), and its corresponding regulation, N.J.A.C. 6A:28-6.4(a), when he accepted a campaign contribution from a law firm, and later voted to appoint this same law firm to serve as the Board's general co-counsel, and voted to approve the law firm's form of contract.

On July 14, 2016, the Complaint was served on Respondent, via regular and certified mail, notifying him that charges were filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to respond to the Complaint. On August 18, 2016, and after receiving an extension, Respondent filed an Answer to Complaint (Answer), and also alleged that the Complaint was frivolous. On August 31, 2016, Complainant filed a response to the allegation of a frivolous filing.

By correspondence dated September 12, 2016, the parties were advised that this matter would be placed on the Commission's agenda for its meeting on September 27, 2016. Prior to the Commission's meeting, and on September 22, 2016, in particular, Respondent filed a "letter memorandum" in support of "Respondent's Motion to Dismiss for lack of probable cause" (Motion to Dismiss). By correspondence dated September 23, 2016, Respondent was advised that his Motion to Dismiss was being returned, because the Commission cannot consider a Motion to Dismiss following the filing of an Answer to which the Complainant had already responded.

At its meeting on September 27, 2016, the Commission considered the parties' filings, and at its meeting on October 24, 2016, the Commission voted to find that the Complaint was not frivolous, and to transmit the matter to the Office of Administrative Law (OAL) for a hearing.

II. INITIAL DECISION

This matter was transmitted to the OAL on November 4, 2016. A telephone pre-hearing conference was conducted on December 7, 2016, and hearing dates were subsequently scheduled for April 19, 2017, and May 17, 2017. However, because the parties filed cross Motions for Summary Decision, the hearing dates were adjourned. After the parties' respective Motions for Summary Decision were denied on June 14, 2017, new hearing dates were scheduled for August 14, 2017, and August 16, 2017, but were adjourned until January 12, 2018, and January 26, 2018. After Complainant "put in her case" on January 12, 2018, Respondent moved for dismissal.

In her Initial Decision, Kimberly A. Moss, Administrative Law Judge (ALJ), made the following findings of fact:

1. Respondent...was at all times relevant a duly elected member of the [Board].
2. On December 8, 2015, [an attorney with a law firm] donated to the election fund of Respondent.
3. At the January 7, 2017 Board meeting [Respondent] voted for [the law firm and another law firm] to be general co-counsel to the Board.
4. On February 18, 2016, [R]espondent cast an affirmative vote to approve the forms of contract for numerous attorneys, including [the law firm that contributed to his election fund].

Based on the findings of fact as set forth above, ALJ Moss found that Complainant did not provide any testimony or evidence that Respondent took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; there was no evidence or testimony that Respondent used the schools in order to acquire some benefit for himself, a member of his immediate family or a friend; there was no evidence or testimony that Respondent, a family member, or friend of Respondent acquired a benefit from the law firm that donated to his election fund; and no testimony or evidence that Respondent surrendered his independent judgment for personal gain or gain of friends.

Consequently, ALJ Moss concluded that Complainant's argument was without merit, and that she did not provide testimony or evidence that Respondent violated N.J.S.A. 18A12-24.1(f), or its corresponding regulation, N.J.A.C. 6A:28-6.4(a)(6). Therefore, ALJ Moss granted Respondent's oral request for dismissal.

The Initial Decision was filed with the Commission on January 12, 2018; therefore, the forty-five (45) day statutory period for the Commission to issue its Final Decision was February 26, 2018. Prior to February 26, 2018, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the

opportunity to receive and review the full record. Pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, and for good cause shown, the Commission was granted an extension until April 12, 2018.

III. EXCEPTIONS

Neither party filed Exceptions to the Initial Decision with the Commission.

IV. ANALYSIS

The Commission notes that Complainant bears the burden of factually proving the alleged violation of N.J.S.A. 18A:12-24.1(f) in accordance with the standard enumerated in N.J.A.C. 6A:28-6.4(a)(6). N.J.S.A. 18A:12-29(b). Upon careful and independent review of the record, the Commission finds that the record supports the ALJ's findings of fact, conclusions of law, and the decision to dismiss the Complaint based on Complainant's failure to meet her burden to prove, by a preponderance of the credible evidence, that Respondent violated N.J.S.A. 18A:12-24.1(f), and its corresponding regulation (N.J.A.C. 6A:28-6.4(a)(6)). However, had Complainant alleged that Respondent's conduct violated another provision of the Act, such as N.J.S.A. 18A:12-24(b), and provided additional facts demonstrating the unwarranted nature of the appointment, and/or alleged that Respondent's conduct violated N.J.S.A. 18A:12-24(c) because he had an indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment, the Commission's determination could have been different. Nonetheless, the Commission is compelled to review the Initial Decision based on the legal claims articulated by the Complainant, and because Complainant solely alleged that Respondent violated N.J.S.A. 18A:12-24.1(f), the Commission is constrained to adopt the findings of fact issued by the ALJ, to adopt the conclusions of law, and to adopt the decision to dismiss the complaint.

V. DECISION

The Commission determines to adopt the ALJ's Initial Decision, dismissing the Complaint because Complainant failed to satisfy her burden to prove, by a preponderance of the credible evidence, that Respondent violated N.J.S.A. 18A:12-24.1(f), and its corresponding regulation (N.J.A.C. 6A:28-6.4(a)(6)). This decision is a final agency decision, and is appealable only to the Superior Court-Appellate Division. See, N.J.A.C. 6A:28-10.11 and New Jersey Court Rule 2:2-3(a).

Robert W. Bender, Chairperson
School Ethics Commission

Mailing Date: March 28, 2018

RESOLUTION ADOPTING DECISION – C29-16

WHEREAS, at its meeting on October 24, 2016, the School Ethics Commission (Commission) voted to transmit C29-16 to the Office of Administrative Law (OAL) for a plenary hearing; and

WHEREAS, Kimberly A. Moss, Administrative Law Judge (ALJ), concluded in her Initial Decision that the matter should be dismissed because Complainant failed to meet her burden to prove, by a preponderance of the credible evidence, that Respondent violated N.J.S.A. 18A:12-24.1(f), or its corresponding regulation, N.J.A.C. 6A:28-6.4(a)(6); and

WHEREAS, neither party filed Exceptions to the Initial Decision; and

WHEREAS, at its meeting on February 27, 2018, the Commission discussed the Initial Decision; and

WHEREAS, at its meeting on March 27, 2018, the Commission voted to adopt the Initial Decision as the Final Decision, and to approve the within decision; 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 March 27, 2018.

Kathryn A. Whalen, Director
School Ethics Commission