

Before the School Ethics Commission
Docket No.: C51-18
Decision on Motion to Dismiss

**Janna Smith,
*Complainant***

v.

**Robert Kravitz,
Englewood City Board of Education, Bergen County,
*Respondent***

I. Procedural History

This matter arises from a Complaint that was filed on August 7, 2018, by Janna Smith (Complainant), alleging that Robert Kravitz, an administrator (the Superintendent) employed by the Board of Education of the City of Englewood (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated August 9, 2018, August 28, 2018, and September 14, 2018, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On October 1, 2018, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3. The Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24(a) in Count 1, and *N.J.S.A.* 18A:12-24(b) in Count 2.

On October 3, 2018, the Complaint was served on Respondent, via regular and certified mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading. On October 18, 2018, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On November 16, 2018, Complainant filed a Response to the Motion to Dismiss and to the allegation of frivolous filing.

The parties were notified by correspondence dated December 10, 2018, that this matter would be placed on the Commission's agenda for its meeting on December 18, 2018, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on December 18, 2018, the Commission considered the filings in this matter and, at its meeting on January 22, 2019, the Commission voted to grant the Motion to Dismiss as to Count 1 based on Complainant's concession that Respondent did not violate *N.J.S.A.* 18A:12-24(a), and to grant the Motion to Dismiss as to Count 2 because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24(b). The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant alleges that although Respondent (the Superintendent) was aware that Angela David, a Board member, was involved in “running an unlicensed day camp, child neglect, and causing a false public alarm that is still under investigation by Englewood Police” Department, and knew about the “Englewood Health Officer’s findings” on June 29, 2018, he ignored this information and, thereby, violated *N.J.S.A.* 18A:12-24(a).

In Count 2, Complainant alleges that Respondent contacted her (Complainant’s) Superintendent at Pascack Valley Regional High School with “unsubstantiated allegations” from Mrs. David. Complainant asserts that although she has never met Respondent, she was “spoken to” by her principal and supervisor, and “asked to sign a letter.” Upon advice of counsel, and because “the letter” contained defamatory statements, Complainant refused to sign “the letter.” Based on these facts, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24(b) because Respondent used his official position “to the advantage of Mrs. David’s attempts to silence the reporting of [Mrs. David’s] illegal activities.”

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

Upon receipt of the Complaint, Respondent filed a Motion to Dismiss, and also alleged that the Complaint is frivolous. Regarding Count 1, Respondent argues that he does not have a business interest in the summer program that was owned and operated by Mrs. David. He also argues that Complainant did not provide evidence that Respondent “engaged in a business transaction or professional activity which is in substantial conflict with the proper discharge of his duties” as Superintendent. On the contrary, Complainant alleges that he “ignored information” regarding the summer program, which does not support a violation of *N.J.S.A.* 18A:12-24(a). Therefore, Count 1 should be dismissed.

With regard to Count 2, Respondent argues he did not use his position to secure any unwarranted privilege or benefit for himself or Ms. David. Respondent denies that he contacted Complainant’s Superintendent, denies having knowledge about the conversation between Complainant and her supervisor, denies being aware of the “letter” referred to in the Complaint, and further asserts that he does not even know Complainant’s Superintendent. Moreover, Respondent argues that there is no articulation of the unwarranted privilege(s) or advantage(s) that he or Mrs. David may have received as a result of his alleged conduct. Without any evidence to support the contention that he violated *N.J.S.A.* 18A:12-24(b), Respondent argues that Count 2 should be dismissed.

Finally, Respondent asserts that the Complaint is frivolous because Complainant did not, and cannot, provide any evidence that Respondent violated *N.J.S.A.* 18A:12-24(a) and/or *N.J.S.A.* 18A:12-24(b). Therefore, Respondent requests that the Commission sanction Complainant, and impose a five hundred dollar (\$500.00) fine for the “frivolous nature of her Complaint.”

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

In her response to the Motion to Dismiss and allegation of frivolous filing, Complainant concedes that, with respect to Count 1, Respondent did not violate *N.J.S.A. 18A:12-24(a)*. Complainant notes that she misinterpreted the meaning of the term “interest,” and now understands “that the prohibition under *N.J.S.A. 18A:12-24(a)* relates specifically to a ‘business interest.’” Because she acknowledges that Respondent did not, and does not, have the requisite “interest” in Mrs. David’s business/camp, Complainant consents to the dismissal of Count 1.

In response to Count 2, Complainant reiterates that she has alleged “and believes the evidence will bear out that Respondent contacted her Superintendent in order to have her silenced and punished for complaining about [Mrs. David’s] illegal activity.” Complainant argues that Respondent’s attempts to silence her were “advantageous to [Mrs.] David,” and were intended to “intimidate Complainant and discourage her from speaking out against the illegal and unethical activities of a school board member.” Therefore, Complainant reiterates her position that Respondent violated *N.J.S.A. 18A:12-24(b)*, and argues that this Count should not be dismissed.

Complainant asserts that although she misinterpreted *N.J.S.A. 18A:12-24(a)*, and therefore consents to the dismissal of Count 1, there are sufficient facts to support her argument that Respondent violated *N.J.S.A. 18A:12-24(b)*. As a result, Complainant submits that the request to have the Complaint deemed frivolous should be denied.

III. Analysis

A. *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:28-8.1 et seq.* With Complainant’s decision to voluntarily dismiss the alleged violation of *N.J.S.A. 18A:12-24(a)* in Count 1, the only remaining 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)* as alleged in Count 2.

B. *Alleged Prohibited Act*

In Count 2, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24(b)*. This provision of the Act 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 his official position to secure an unwarranted privilege, advantage or employment for himself, members of his immediate family or “others.”

Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24(b) because he used his position as Superintendent to contact Complainant’s Superintendent and to report “unsubstantiated allegations” from Mrs. David. According to Complainant, this contact was intended to silence, punish, and intimidate her from speaking out against the illegal and unethical activities of a Board member. Respondent denies he used his position to secure any unwarranted privilege or benefit for himself or for Mrs. David, and also denies that he contacted Complainant’s Superintendent, denies having knowledge about the conversation between Complainant and her supervisor, denies being aware of the “letter” referred to in the Complaint, and further asserts that he does not even know Complainant’s Superintendent.

After review of Complainant’s allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24(b) as alleged in Count 2. Although Complainant alleges that Respondent is the individual who contacted her supervisor to report “unsubstantiated allegations,” it seems that this statement is nothing more than a hunch which Complainant is attempting to verify through litigation. In this regard, and in her response to the Motion to Dismiss and allegation of frivolous filing, Complainant states that she “*believes* the evidence will bear out that Respondent contacted her Superintendent.” Even if it was Respondent who contacted Complainant’s Superintendent, the Commission agrees with Respondent that Complainant has not articulated any specific “unwarranted privilege, advantage or employment” that inured to Respondent’s benefit, or to the benefit of Mrs. David, by contacting Complainant’s Superintendent. This is especially true given that, as noted in the Complaint, multiple investigations and reviews had already been initiated about the operation of the day camp, and some findings had been issued. Complainant does not identify, or explain, how Respondent’s contact with her Superintendent *after* multiple investigations and reviews had already been initiated, and findings issued, could have resulted in an unwarranted privilege, advantage, or employment to Respondent or Mrs. David. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(b) in Count 2 should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that Complainant has not alleged facts sufficient to state a claim that Respondent violated *N.J.S.A.* 18A:12-24(b) as alleged in Count 2. Therefore, and because Complainant also agreed to voluntarily dismiss Count 1 of her Complaint, the Commission *grants* Respondent’s Motion to Dismiss in its entirety.

IV. Request for Sanctions

At its meeting on December 18, 2018, 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 Complainant filed the Complaint in bad faith or 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. Therefore, at its meeting on January 22, 2019, the Commission voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

V. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission voted to **grant** the Motion to Dismiss as to Count 1 based on Complainant's concession that Respondent did not violate *N.J.S.A.* 18A:12-24(a), and to **grant** the Motion to Dismiss as to Count 2 because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24(b). The Commission also voted to find the Complaint not frivolous, and to deny 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. 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: January 23, 2019

***Resolution Adopting Decision
in Connection with C51-18***

Whereas, at its meeting on December 18, 2018, 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 the Motion to Dismiss and allegation of frivolous filing filed in connection with this matter; and

Whereas, at its meeting on December 18, 2018, the Commission noted that, as indicated in her Response to the Motion to Dismiss and allegation of frivolous filing, Complainant voluntarily agreed to dismiss Count 1 of her Complaint; and

Whereas, at its meeting on December 18, 2018, the Commission discussed granting the Motion to Dismiss as to Count 2 because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A. 18A:12-24(b)*; and

Whereas, at its meeting on December 18, 2018, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at its meeting on January 22, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on December 18, 2018; 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 herein.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on January 22, 2019.

Kathryn A. Whalen, Director
School Ethics Commission