

***Before the School Ethics Commission***  
***Docket No.: C24-19***  
***Decision on Motion to Dismiss***

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**Barbara Deradorian,**  
***Complainant***

v.

**Danielle Shanley and Jaynellen Behre-Jenkins,**  
**Saddle Brook Board of Education, Bergen County,**  
***Respondents***

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**I. Procedural History**

This matter arises from a Complaint that was filed on March 26, 2019, by Barbara Deradorian (Complainant), alleging that Danielle Shanley and Jaynellen Behre-Jenkins (Respondents), administrators employed by the Saddle Brook Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated March 27, 2019, and April 8, 2019, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On April 15, 2019, 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 Respondents violated *N.J.S.A.* 18A:12-24(d).

On April 17, 2019, the Complaint was served on Respondents, via regular and certified mail, notifying them that charges were filed against them with the Commission, and advising that they had twenty (20) days to file a responsive pleading. On June 13, 2019, and after initially failing to file a responsive pleading, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. As part of their Motion to Dismiss, Respondents noted that Complainant filed a similar complaint in New Jersey Superior Court, Bergen County, Special Civil Part, *Barbara Deradorian v. Saddle Brook School District*, BER-DC-007784-19. On July 22, 2019, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing, but did not specifically address the pendency of her civil litigation as noted by Respondents.

By correspondence dated August 28, 2019, the parties were advised that, at its meeting on August 27, 2019, the Commission reviewed the Complaint in light of the related matter pending before the Bergen County Superior Court, and voted to hold the above-captioned matter in abeyance pursuant to *N.J.S.A.* 18A:12-32 in order to avoid conflicting factual and legal findings and/or inconsistent outcomes. Shortly thereafter, and in correspondence dated August 30, 2019, counsel for Respondents advised that the matter pending in Bergen County Superior Court had been dismissed.

Following receipt of the aforementioned correspondence from counsel for Respondents, the parties were notified by correspondence dated September 13, 2019, and September 16, 2019, that this matter would be placed on the Commission's agenda for its meeting on September 24, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on September 24, 2019, the Commission considered the filings in this matter, and at its meeting on October 25, 2019, the Commission voted to grant the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondents violated *N.J.S.A.* 18A:12-24(d) as alleged in the Complaint. The Commission also voted to find the Complaint not frivolous, and to deny Respondents' request for sanctions.

## **II. Summary of the Pleadings**

### **A. *The Complaint***

Complainant asserts that she was a substitute teacher (with ESS) and often worked at Long Memorial School (LMS) until October 2018, when she no longer received assignments. Although she was not told why she would no longer receive assignments, she later learned it was because her niece and nephew attended the school and it was a "conflict of interest." According to Complainant, "there are many other teacher/aide/substitute-relative 'conflicts,'" but she was "being singled out and denied employment opportunities in a discriminatory manner." Complainant further asserts that on March 19, 2019, she was "fired" from the entire Saddle Brook School District (District) for "questioning the discriminatory practices singling [her] out" and because she was "standing up for the proper and fair treatment in this situation." Based on these facts, Complainant alleges that Respondents violated *N.J.S.A.* 18A:12-24(d) because "there has been prejudice in judgement (sic) by [Respondents] in their discriminatory, disparate treatment of [Complainant's] situation as they tolerate such numerous situations throughout the [District]," and because Respondents fired her for "challenging their discriminatory, disparate treatment of [her] situation."

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

Following receipt of the Complaint, Respondents filed a Motion to Dismiss and allegation of frivolous filing. Respondent Shanley (Superintendent) and Respondent Behre-Jenkins (LMS Principal) admit that the District informed Complainant that "the District chooses substitutes based on the administrations' sole determination of needs of the students and the District." Respondents argue that "the decision not to allow substitutes to teach in buildings where they have relatives ensures no actual or perceived conflict of interest or disparate treatment." Respondents deny that Complainant was "singled out, discriminated against or treated unfairly." Respondents maintain that Complainant was an employee of a substitute service company (ESS) and deny that Complainant was an employee of the District or that she was "fired." Regarding the alleged violation of *N.J.S.A.* 18A:12-24(d), Respondents argue this provision "prevents a school official from holding two positions at the same time if same would create a conflict of interest," and no such facts exist here. In this regard, Respondents argue that Complainant has not alleged that either Respondent "undertook any employment or service

which might reasonably be expected to prejudice their independence of judgment in the exercise of their official duties as the Superintendent or Principal,” nor does Complainant state any allegation “regarding any conflict of interest by either Respondent regarding a second employment service.” Therefore, Respondents argue the Complaint should be dismissed.

Finally, Respondents assert that the Complaint is frivolous because it does not allege a violation of the Act and Complainant should have known that her Complaint is “without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.” Moreover, Complainant filed a complaint regarding the same allegation in New Jersey Superior Court (which was dismissed) and, therefore, her “repeated filing of baseless complaints has the sole purpose to harass the District and Respondents.”

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

In response to the Motion to Dismiss and frivolous allegation, Complainant asserts that her Complaint is not frivolous, and Respondents’ actions have “impacted [her] life and livelihood and their actions were serious and had severe consequences on [her] personal overall well-being.” Complainant contends in March 2019, after repeated attempts to find out why she was not being called as a substitute, Complainant was informed by the agency (ESS) that Respondent Behre-Jenkins contacted the agency “sometime in October 2018 to take her off the list of substitutes for LMS.” Complainant reiterates that she was not informed of this change by the District and made several attempts to contact Respondent Behre-Jenkins but did not receive a response. Complainant maintains that Respondent Shanley responded to her requests via email (Exhibit A) in March 2019, and that is when Complainant was “denied teaching opportunities first at LMS ... and ultimately all [District] schools simply for questioning her treatment and the reasoning for Respondent[s]’ actions.” Complainant maintains that she has “suffered lost wages (past and future wages), ... she can only work half days which are not widely available ... and she had to go several towns away ... and has lost wages and will continue to do as a result.” Complainant notes that the Board could not provide her with any District policies regarding relatives working in the District, nor could she find any policies that exist. Finally, Complainant asserts that Respondents continue to use their “[D]istrict power and attorney power to intimidate [her].”

## **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.* Thus, the question before the Commission is whether Complainant has alleged sufficient facts which, if true, could support a finding that Respondents violated *N.J.S.A. 18A:12-24(d)* as alleged in the Complaint.

## B. *Allegation of Prohibited Act*

In her Complaint, Complainant alleges that Respondents violated *N.J.S.A.* 18A:12-24(d). This provision of the Act provides:

d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

In support of her claim against Respondents, Complainant argues that “there has been prejudice in judgement (sic) by [Respondents] in their discriminatory, disparate treatment of [Complainant’s] situation as they tolerate such numerous situations throughout the [District],” and Respondents fired her for “challenging their discriminatory, disparate treatment of [her] situation.” As a result, Complainant maintains that Respondents violated *N.J.S.A.* 18A:12-24(d).

Respondents counter that *N.J.S.A.* 18A:12-24(d) “prevents a school official from holding two positions at the same time if same would create a conflict of interest,” and no such facts exist here. In this regard, Respondents argue that Complainant has not alleged that either Respondent “undertook any employment or service which might reasonably be expected to prejudice their independence of judgment in the exercise of their official duties as the Superintendent or Principal,” nor does Complainant state any allegation “regarding any conflict of interest by either Respondent regarding a second employment service.”

In order to credit the alleged violation of *N.J.S.A.* **18A:12-24(d)**, the Commission must find evidence that Respondents engaged in employment or service, regardless of whether compensated, which might reasonably be expected to prejudice their independence of judgment in the exercise of their official duties.

Based on its review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondents violated *N.J.S.A.* 18A:12-24(d). Complainant has not offered any factual evidence that either Respondent engaged in employment or service outside of their District employment, and/or that such outside employment or service might reasonably be expected to prejudice their independence of judgment in the exercise of their official duties as the Superintendent (Respondent Shanley) and/or the building principal (Respondent Behre-Jenkins). Instead, the genesis for the Complaint is Complainant’s disagreement with the actions and decisions rendered by both Respondent Shanley and Respondent Behre-Jenkins in connection with their District employment. However, while Complainant may be able to pursue such claims in another venue, same cannot form the basis for an alleged violation of *N.J.S.A.* 18A:12-24(d). As such, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(d) should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondents violated *N.J.S.A.* 18A:12-24(d) as alleged in the Complaint.

#### IV. Request for Sanctions

At its meeting on September 24, 2019, the Commission considered Respondents' request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondents' argument, the Commission cannot find evidence that 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 October 25, 2019, the Commission voted to find the Complaint not frivolous, and to deny the 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 in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondents violated *N.J.S.A.* 18A:12-24(d) as alleged in the Complaint. The Commission also voted to find that the Complaint is not frivolous, and to deny Respondents' request for sanctions.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondents 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).*

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Robert W. Bender, Chairperson

Mailing Date: October 25, 2019

***Resolution Adopting Decision  
in Connection with C24-19***

***Whereas***, at its meeting on September 24, 2019, 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 submitted in connection with the above-referenced matter; and

***Whereas***, at its meeting on September 24, 2019, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondents violated *N.J.S.A. 18A:12-24(d)* as alleged in the Complaint; and

***Whereas***, at its meeting on September 24, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondents' request for sanctions; and

***Whereas***, at its meeting on October 25, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on September 24, 2019; 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.

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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 25, 2019.

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Kathryn A. Whalen, Director  
School Ethics Commission