

Before the School Ethics Commission
Docket No.: C50-18
Decision on Motion to Dismiss

**Janna Smith,
Complainant**

v.

**Angela Midgette-David,
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 Angela Midgette-David (Respondent), a member of 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, September 14, 2018, and October 1, 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 alleged that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (Count 1 and Count 2), *N.J.S.A.* 18A:12-24.1(b) (Count 4 and Count 5), and/or *N.J.S.A.* 18A:12-24.1(f) (Count 3 and Counts 6-8) of the Code of Ethics for School Board Members (Code).

On October 3, 2018, the Complaint was served on Respondent, via regular and certified mail, notifying her that charges were filed against her with the Commission, and advising that she had twenty (20) days to file a responsive pleading. When Respondent failed to file a responsive pleading, she was advised by correspondence dated November 2, 2018, that failure to file a responsive pleading by November 15, 2018, could result in the Commission deciding the matter in a summary manner. The next day, November 16, 2018, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). On December 17, 2018, Complainant filed a Response to the Motion to Dismiss.

The parties were notified by correspondence dated January 14, 2019, that this matter would be placed on the Commission's agenda for its meeting on January 22, 2019, in order to make a determination regarding the Motion to Dismiss. At its meeting on January 22, 2019, the Commission considered the filings in this matter and, at its meeting on February 26, 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 Respondent violated *N.J.S.A.* 18A:12-24.1(a) (Count 1 and Count 2), *N.J.S.A.* 18A:12-24.1(b) (Count 4 and Count 5), and/or *N.J.S.A.* 18A:12-24.1(f) (Count 3 and Counts 6-8).

II. Summary of the Pleadings

A. Complaint

In Count 1 of her Complaint, Complainant asserts that, beginning on June 25, 2018, Respondent (Board member) opened and ran an unlicensed “E-STEP day camp” out of the District’s middle school. Although Respondent applied for a license to run a “40 child day camp,” she allegedly told Complainant “she took in 170 paid applications.” Complainant claims that Respondent violated *N.J.S.A. 18A:12-24.1(a)* because she used the school’s facilities for her unlicensed program.

In Count 2 of her Complaint, Complainant alleges that on June 29, 2018, Respondent called the camp and directed its staff to go into “lockdown mode,” and told Complainant it was because there was an intruder in the building. However, Complainant alleges it was not an intruder, but rather “two health officers from whom she was trying to hide 100 children, camp counselors, and teachers.” Health officers shut down the camp, and parents were called. By causing a “false public alarm,” Complainant alleges Respondent violated *N.J.S.A. 18A:12-24.1(a)* because she endangered staff and students.

In Count 3, Complainant asserts that Respondent “told” parents and staff that her “E-STEP day camp” was a non-profit organization. The E-STEP day camp is also noted as a non-profit organization on its website. However, Complainant contends that beginning on April 21, 2018, Respondent began soliciting funds for her organization through “GoFundMe,” and that her husband also solicits funds for the “E-STEP day camp” through a “Fundly” page. Complainant alleges Respondent violated *N.J.S.A. 18A:12-24.1(f)* because she misrepresented her personal profit by claiming the program is a non-profit.

In Count 4, Complainant alleges that the “E-STEP day camp” did not follow State guidelines regarding teacher/student ratios, criminal background checks and fingerprinting requirements, and because children under three (3) years old (in diapers) were accepted. Complainant alleges Respondent violated *N.J.S.A. 18A:12-24.1(b)* because Respondent’s decisions were dangerous to the welfare of children.

In Count 5, Complainant asserts that on June 29, 2018, the Township of Englewood Health Officers “found 96 children and 4 adults in lock down mode at the auditorium with no working water fountains, water bottles, or food with outdoor temp[eratures] in the high 90’s.” Complainant alleges Respondent violated *N.J.S.A. 18A:12-24.1(b)* because she operated the program “in an unhealthy physical environment.”

In Count 6, Complainant alleges that because Respondent “continuously reached out to [Complainant’s] co-workers and employer” and made “defamatory statements and false allegations,” she (Complainant) had to hire an attorney to send Respondent a “cease and desist” letter. In this way, Complainant alleges Respondent violated *N.J.S.A. 18A:12-24.1(f)* because she used her official position “to attempt to silence [Complainant’s] reports of illegal activity.”

In Count 7, Complainant asserts that Respondent “reached out” to the District’s Superintendent, and had him send a letter to Complainant’s Superintendent “with unsubstantiated hearsay” from Respondent. As a result, Complainant states that she was “spoken to” by her principal and supervisor, and asked to sign a letter that she did not agree with. Although she (Complainant) previously had “perfect” performance reviews, she now feels, as a result of Respondent’s actions, that her job is not secure. Complainant alleges Respondent violated *N.J.S.A. 18A:12-24.1(f)* because she used her official position “for her own personal gain.”

In Count 8, Complainant alleges that Respondent either did not pay or only partially paid the wages of “E-STEP day camp” employees. Consequently, Complainant had to file a complaint in small claims court, and was awarded payment through settlement/mediation. Notwithstanding this award, Complainant claims that she has since “filed a default judgment” because the settlement “has been ignored and remains unpaid.” Complainant asserts Respondent violated *N.J.S.A. 18A:12-24.1(f)* because “not paying promised wages profited” Respondent.

B. *Motion to Dismiss*

Following receipt of the Complaint, Respondent filed a Motion to Dismiss. As a preliminary matter, Respondent argues that the Complaint is a form of “harassment, intimidation, [and] bullying,” and that all of the “deceitful allegations” are “unfounded.” In response to Count 1, Respondent asserts that the camp is licensed, was approved by the State, and is owned and operated by Darryl David. In addition, Mr. David rented the space from the Board, and the Board approved the use of its facilities for this purpose.

Regarding Count 2, Respondent argues that Complainant made a series of “harassing calls” to the Department of Children and Families (DCF), and the allegations were “unfounded with no neglect” substantiated. In response to Count 3, Respondent asserts that the “E-STEP day camp” is a non-profit organization, and was incorporated as such on April 3, 2018, by Mr. David. Regarding Count 4 and Count 5, Respondent argues that the New Jersey Department of Health’s Sanitary Inspection Report revealed a “Satisfactory” finding, and that the “E-STEP day camp” was operational while the referred to investigation was being conducted. In addition, Respondent notes that all of the District staff employed by the camp were already fingerprinted by the Board, and that the camp was never cited for any infractions.

Regarding Count 6 and Count 7, Respondent argues that she was, and still is being harassed by Complainant, a person who was fired from the “E-STEP day camp.” As an example, Respondent claims that the District’s Superintendent sent an email to Respondent that Complainant sent to him (the Superintendent) accusing Respondent of, among other things, stealing food from another school district and serving it to the children at the camp. Respondent claims that Complainant’s allegations are false and need to stop. Finally, and in response to Count 8, Respondent asserts that the mediation agreement referenced by Complainant is between her and Mr. David, and that she (Respondent) “was not involved in the original claim.

C. *Response to Motion to Dismiss*

In her response to the Motion to Dismiss, Complainant reiterates three points from her initial Complaint. First, Complainant asserts that Respondent's Exhibits will not "hold up" when compared to the Englewood Health Department's report (submitted by Complainant). The camp was unlicensed, 96 children were "hidden" from health inspectors, and children were found in a building "with no working water fountains, food, or air conditions." Second, Respondent's camp was never registered as a non-profit organization, and "Respondent is still under criminal investigation in Englewood." Third, Respondent was in the process of obtaining a license for her "40 kid day camp" when, on June 29, 2018, she was "caught running a camp with 96 children without a license," and the camp was "shut down immediately." Therefore, and when viewed in the light most favorable to Complainant, she asserts that there are facts sufficient to establish a violation of *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, and *N.J.S.A. 18A:12-24.1(f)*.

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 facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)* (Count 1 and Count 2), *N.J.S.A. 18A:12-24.1(b)* (Count 4 and Count 5), and/or *N.J.S.A. 18A:12-24.1(f)* (Count 3 and Counts 6-8).

B. *Alleged Code Violations*

Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(a)* (Count 1 and Count 2), *N.J.S.A. 18A:12-24.1(b)* (Count 4 and Count 5), and/or *N.J.S.A. 18A:12-24.1(f)* (Count 3 and Counts 6-8). These provisions of the Code provide, respectively:

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.
- b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.
- f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

1. Alleged Violations of N.J.S.A. 18A:12-24.1(a) (Count 1 and Count 2)

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(1), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures.

In **Count 1**, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(a) because she used the school's facilities to run an unlicensed "E-STEP day camp." Respondent counters that the camp was licensed, approved by the State, and owned and operated by Darryl David (Mr. David), not Respondent. Respondent further notes that Mr. David rented the space from the Board, and that the Board approved the use of its facilities for the purpose requested by Mr. David.

After review of Complainant's allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) as alleged in Count 1. More specifically, the Commission finds that Complainant has not provided a copy of a final decision from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation by using the District's facilities for the "E-STEP day camp." Absent such a final decision, 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:12-24.1(a) as alleged in Count 1. As a result, the Commission finds that this allegation should be dismissed.

In **Count 2**, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(a) because she caused a "false public alarm" and, thereby, endangered staff and students. Respondent argues that the allegations made by Complainant were determined by DCF to be "unfounded with no neglect" substantiated.

Based on its review of Complainant's allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) as set forth in Count 2. More specifically, the Commission finds that Complainant has not provided a copy of a final decision from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when she caused an alleged "false public alarm." Absent such a final decision, 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:12-24.1(a) as set forth in Count 2. Therefore, the Commission finds that this allegation should be dismissed.

2. Alleged Violations of N.J.S.A. 18A:12-24.1(b) (Count 4 and Count 5)

As set forth in *N.J.A.C.* 6A:28-6.4(a)(2), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(b) shall include evidence that Respondent willfully made a decision contrary to the

educational welfare of children, or evidence that Respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

In **Count 4**, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(b)* because Respondent's decisions to not follow State guidelines (regarding teacher/student ratios, criminal background checks, etc.) were dangerous to the welfare of children. Respondent counters that the New Jersey Department of Health's Sanitary Inspection Report revealed a "Satisfactory" finding, the "E-STEP day camp" was operational while the referred to investigation was being conducted, and all of the District staff employed by the camp were already fingerprinted by the Board, and that the camp was never cited for any infractions.

After review of Complainant's allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(b)* as argued in Count 4. Even if Respondent had a legitimate business interest in/association with the "E-STEP day camp," a fact which is not entirely clear from the limited record, there is no evidence that Respondent's interest in/association with this camp was in her capacity as a Board member, or that the "E-STEP day camp," other than being conducted in the District's buildings, had any relationship to the Board or Board business. The fact that Respondent happens to be a Board member does not, in and of itself, mean her actions in connection with a personal business (for profit or otherwise) can violate or implicate the Act. In order to find a violation of *N.J.S.A. 18A:12-24.1(b)*, Complainant needed to provide evidence that the complained of actions occurred while Respondent was acting in her capacity as, and in her role as, a Board member. Without this factual predicate, the Commission finds that this allegation should be dismissed.

In **Count 5**, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(b)* because she operated her "E-STEP day camp" in "an unhealthy physical environment." Respondent argues, as she did in response to Count 4, that the New Jersey Department of Health's Sanitary Inspection Report revealed a "Satisfactory" finding, the "E-STEP day camp" was operational while the referred to investigation was being conducted, and all of the District staff employed by the camp were already fingerprinted by the Board, and that the camp was never cited for any infractions.

Based on its review of Complainant's allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(b)* as alleged in Count 5. Again, there is nothing in the record to confirm that Respondent's interest in/association with the "E-STEP day camp" was in her capacity as a Board member, or that the "E-STEP day camp," other than being conducted in the District's buildings, had any relationship to the Board or Board business. Actions that occur in a Board member's personal or private life cannot be used to find a violation unless the actions taken are represented to be in one's capacity as a Board member. Without this critical link between Respondent's personal conduct and her role as a Board member, the Commission finds that this allegation should be dismissed.

3. *Alleged Violation of N.J.S.A. 18A:12-24.1(f) (Count 3 and Counts 6-8)*

Pursuant to *N.J.A.C. 6A:28-6.4(a)(6)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(f)* shall include 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; or evidence that Respondent used the schools in order to acquire some benefit for herself, a member of her immediate family or a friend.

In **Count 3**, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(f)* because she “misrepresented her personal profit by claiming the program is a non-profit.” Respondent counters that the “E-STEP day camp” is a non-profit organization, and was incorporated as such on April 3, 2018, by Mr. David.

After review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(f)* as set forth in Count 3. Regardless of whether the “E-STEP day camp” is a profit or non-profit organization, Complainant has not articulated how Respondent, *in her capacity as a Board member*, used the schools to acquire a benefit for herself or a member of her immediate family. There is also no evidence that Respondent, or Mr. David, failed to secure Board approval or authorization for the use of the District’s facilities. As a result, the Commission finds that this allegation should be dismissed.

In **Count 6**, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(f)* because she used her official position as a Board member to reach out to her (Complainant’s) co-workers and employer to make “defamatory statement and false allegations” against Complainant, and thereby attempted to “silence [Complainant’s] reports of illegal activity” regarding Respondent’s “E-STEP day camp.” Respondent argues that she (Respondent) was, and still is being harassed by Complainant, a person who was fired from the “E-STEP day camp,” and that Complainant falsely accused her (Respondent) of, among other things, stealing food from another district and serving it to the children at the “E-STEP day camp.”

Based on its review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(f)* as argued in Count 6. Complainant has not provided the facts necessary to establish a violation, including dates, times, the name(s) of the individuals that she (Respondent) allegedly contacted, and whether Respondent used/referenced her position or title as a Board member when she engaged in the behavior alleged by Complainant. In addition, Complainant has not identified how Respondent’s purported contact with Complainant’s coworkers and supervisors resulted in a specific or identifiable benefit to Respondent or a member of her immediate family. Therefore, the Commission finds that this allegation should be dismissed.

In **Count 7**, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(f)* because she used her official position as a Board member to reach out to her (Complainant’s) employer “for [Respondent’s] own personal gain.” Respondent again counters that she (Respondent) was, and still is being harassed by Complainant, a person who was fired from the

“E-STEP day camp,” and that Complainant falsely accused her (Respondent) of, among other things, stealing food from another district and serving it to the children at the “E-STEP day camp.”

After review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 7. As indicated previously, Complainant has not provided the facts necessary to establish a violation of this subsection of the Code, including dates, times, the name(s) of the individuals that she (Respondent) allegedly contacted, and whether Respondent used/referenced her position or title as a Board member when she engaged in the behavior alleged by Complainant. In addition, Complainant has not identified the “personal gain” that Respondent received by initiating this contact. As a result, the Commission finds that this allegation should be dismissed.

In **Count 8**, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(f) because, despite a mediation judgment, Respondent did not pay her (Complainant) for wages promised and, as a result, she (Respondent) received a profit. Respondent argues that the agreement referenced by Complainant is between her and Mr. David, and that she (Respondent) “was not involved in the original claim.”

Based on its review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(f) as set forth in Count 8. The Commission does not have the authority or jurisdiction to enforce the terms of an alleged “mediation judgment” between Complainant and Respondent, and/or Complainant and Mr. David. Even if the Commission did have such authority, which it does not, absent a clear nexus between Respondent’s position or role as a Board member to the use of the schools and the receipt of a benefit, the Commission finds that this allegation should be dismissed. Complainant cannot simply rely on Respondent’s status as a Board member, without evidence that she used this status or position in connection with her private conduct, as the basis for a violation of the Act.

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 for a violation of *N.J.S.A.* 18A:12-24.1(a) (Count 1 and Count 2), *N.J.S.A.* 18A:12-24.1(b) (Count 4 and Count 5), and/or *N.J.S.A.* 18A:12-24.1(f) (Count 3 and Counts 6-8). Therefore, the Commission **grants** Respondent’s Motion to Dismiss in its entirety.

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 for failure to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (Count 1 and Count 2), *N.J.S.A.* 18A:12-24.1(b) (Count 4 and Count 5), and/or *N.J.S.A.* 18A:12-24.1(f) (Count 3 and Counts 6-8).

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: February 27, 2019

***Resolution Adopting Decision
in Connection with C50-18***

Whereas, at its meeting on January 22, 2019, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the Response to the Motion to Dismiss filed in connection with this matter; and

Whereas, at its meeting on January 22, 2019, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (Count 1 and Count 2), *N.J.S.A.* 18A:12-24.1(b) (Count 4 and Count 5), and/or *N.J.S.A.* 18A:12-24.1(f) (Count 3 and Counts 6-8); and

Whereas, at its meeting on February 26, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on January 22, 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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on February 26, 2019.

Kathryn A. Whalen, Director
School Ethics Commission