

Before the School Ethics Commission
Docket No.: C51-19
Decision on Motion to Dismiss

Juan Allende,
Complainant

v.

Shalanda Thomas,
Hillside Board of Education, Union County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on July 23, 2019, by Juan Allende (Complainant), alleging that Shalanda Thomas (Respondent), a member of the Hillside 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(g) of the Code of Ethics for School Board Members (Code) in Count 1, and violated *N.J.S.A.* 18A:12-24.1(e) of the Code in Count 2 and Count 3.

On July 24, 2019, the Complaint was served on Respondent, via regular and certified mail, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading. On August 14, 2019, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. As of the date of this decision, and even though the Commission sent correspondence to Complainant dated September 11, 2019, and September 27, 2019, advising him of the need to file a response, Complainant failed to file a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated October 11, 2019, that this matter would be placed on the Commission's agenda for its meeting on October 21, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Unfortunately, the Commission did not have a quorum for its meeting on October 21, 2019, and, therefore, the parties were advised that the above-captioned matter would be re-docketed for the Commission's meeting on November 19, 2019. At its meeting on November 19, 2019, the Commission considered the filings in this matter and, at its meeting on December 17, 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(g) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(e) as argued in Count 2, and/or

violated *N.J.S.A.* 18A:12-24.1(e) as contended in Count 3. 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 states that on March 13, 2019, Respondent sent "a sworn statement of privileged information relating to an open litigation matter" to the attorney representing the Petitioner in that matter, and who is a "direct adversary to the Board." Complainant contends that Respondent "had specific and direct knowledge of the lawsuit filed by the Petitioner and that he was represented," as "this was information provided directly to all Board members." According to Complainant, "[a]ny communications that a Board member has with an adversary or an adversary's Counsel with regard to open litigation matters is strictly prohibited and is in direct conflict with holding all matters confidential which pertain to the school, that if disclosed, would injure the schools or individuals in the school community." Based on these facts, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(g) because she was aware of the litigation, knew that the Petitioner was represented by counsel, and was "fully aware that the contents of the communication that she provided [to counsel] was information that she could only possess as a Board member." Complainant further argues that, "Board members as individuals, do not have the right to waive confidentiality and privileged items, as such privilege runs with the Board, and not any one individual Board member."

In Count 2, Complainant states that, on an unknown date, Respondent "filed a Tort Claim Notice" against the Hillside School District (District) on behalf of her minor child, and alleged injuries that occurred on District property. According to Complainant, this filing "creates an obvious conflict" with Respondent "holding the position of a [B]oard member when she made this claim against the Board." Based on these facts, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(e) because it is "unavoidable that filing a Notice of Tort Claim alleging injuries on Board property may compromise the [B]oard and as such, creates a distinct conflict with [Respondent] holding a position on the [B]oard."

In Count 3, Complainant states that at a Board meeting (in March 2019), Respondent "put forth...that her child was enrolled in Cranford Public Schools, despite maintaining a residence in Hillside," and then "made a motion at the ... meeting to have the [Superintendent] and the Board Attorney negotiate a contract for her child's tuition with Cranford Public Schools." Complainant further asserts that, although Respondent abstained from the vote, she herself "raised the issue and brought forth the motion" which is "clearly a direct violation of her duties as a [B]oard member and this places the [B]oard in a compromising situation when a Board [m]ember is asking the Board itself to pay for her child's tuition for schooling in a school district" other than the District. Therefore, based on these actions, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(e).

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

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and allegation of frivolous filing. As an initial matter, Respondent notes that she resigned from the Board effective July 16, 2019, because the Board has “not addressed the needs of the students.”

Regarding Count 1, Respondent maintains that she was not aware that sending the letter to the Superintendent’s attorney was a violation and, had she known, she “would have never put [herself] in that position.” The intent of the letter was simply to state “that [she] was made aware of the Board President[’s] decision to extend [the Superintendent’s] contract.”

As to Count 2, Respondent maintains that her spouse (not her) filed the Tort Claim Notice on behalf of their child. Respondent further maintains as a “result of the negative experience [her child] endured, and the fact that the [Board] did not feel the need [to] address this issue, which was abhorrent,” her spouse “had no other choice than to hire legal counsel, on behalf of [their child].”

Regarding Count 3, Respondent claims that she consulted with Board counsel as to whether she was permitted to make a motion to have the contract negotiated, and counsel advised “yes, [you] just can’t vote on it.” Respondent further maintains after viewing the minutes from the meeting, she abstained from the vote, and the motion was tabled. Respondent notes that if she was at risk to violate the Code, the Board attorney, Board President or Vice President “should have cautioned her at the time.”

Based on the above, Respondent argues that the Complaint should be dismissed, and is frivolous because she resigned before it was filed.

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

As of the date of this decision, and even though the Commission sent correspondence to Complainant dated September 11, 2019, and September 27, 2019, advising him of the need to file a response, Complainant failed to file a response to the Motion to Dismiss and allegation of frivolous filing.

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 Respondent violated *N.J.S.A. 18A:12-24.1(g)* as alleged in Count 1, violated *N.J.S.A. 18A:12-24.1(e)* as argued in Count 2, and/or violated *N.J.S.A. 18A:12-24.1(e)* as contended in Count 3.

B. *Alleged Code Violations*

In the Complaint, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(g) in Count 1, and violated *N.J.S.A.* 18A:12-24.1(e) in Count 2 and Count 3. These provisions of the Code provide:

e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

Count 1

In **Count 1**, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(g) because she sent “a sworn statement of privileged information relating to an open litigation matter” to the attorney representing the Petitioner in that matter, and who is a “direct adversary to the Board.” Complainant continues, “[a]ny communications that a Board member has with an adversary or an adversary’s Counsel with regard to open litigation matters is strictly prohibited and is in direct conflict with holding all matters confidential which pertain to the school, that if disclosed, would injure the schools or individuals in the school community.”

Respondent counters that she did believe sending the sworn statement was problematic and, moreover, the intent in sending same was simply to state “that [she] was made aware of the Board President[’s] decision to extend [the Superintendent’s] contract.”

As set forth in *N.J.A.C.* 6A:28-6.4(a)(7), factual evidence of a violation of the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that Respondent took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that Respondent violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by Respondent and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

After 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 Respondent violated *N.J.S.A.* 18A:12-24.1(g). Although Complainant claims that Respondent disclosed confidential information (“a sworn statement of privileged information” relating to “an open litigation matter”), he did not specifically explain which part(s) of the “sworn statement” was confidential, or the authority for his position that the information was, as asserted, actually confidential. In addition, there is nothing in the Complaint which contends, or insinuates, that

the information provided by Respondent was inaccurate. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in Count 1 should be dismissed.

Count 2

In **Count 2**, Complainant argues that because Respondent “filed a Tort Claim Notice” against the District alleging that her minor child sustained injuries on District property, she violated *N.J.S.A.* 18A:12-24.1(e). According to Complainant, it is “unavoidable that filing a Notice of Tort Claim alleging injuries on Board property may compromise the [B]oard and as such, creates a distinct conflict with [Respondent] holding a position on the [B]oard.”

Respondent counters that she did not file the Tort Claim Notice against the District, but her spouse did. Moreover, Respondent claims that her spouse was forced to file a Tort Claim Notice because the Board inexplicably failed to address issues relating to her child.

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(5), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) shall include evidence that Respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the Board.

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 Respondent violated *N.J.S.A.* 18A:12-24.1(e). Complainant has not offered any facts which establish, or even suggest, that Respondent made personal promises regarding Board business, or took action beyond the scope of her duties as a Board member. If anything, the Complaint alleges that Respondent (or members of her family) engaged in private action that could have had an impact on the Board (financial or otherwise). Although such actions could violate other provisions of the Act and/or other school laws (e.g., *N.J.S.A.* 18A:12-2) if they culminated in the filing of litigation, those claims are not set forth in the Complaint, and the Commission is bound to review only the facts and claims that are enumerated in a filed Complaint. For these reasons, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 2 should be dismissed.

Count 3

In **Count 3**, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(e) because, although she (and her child/children) are residents of the District, Respondent “put forth ... that her child was enrolled in Cranford Public Schools” and then “made a motion at the ... meeting to have the [Superintendent] and the Board Attorney negotiate a contract for her child’s tuition with Cranford Public Schools.” As argued by Complainant, it places the Board in a “compromising situation when a Board [m]ember is asking the Board itself to pay for her child’s tuition for schooling in [another] school district”

Respondent maintains that she consulted with Board counsel to determine if she could make the at-issue motion, and counsel indicated she could, but could not vote on it. In reviewing

the minutes, Respondent confirms that, as advised by counsel, she made the motion but abstained from the vote (the matter was also tabled). Furthermore, she argues that if her conduct violated the Act, the Board attorney, Board President or Vice President “should have cautioned her at the time.”

As set forth above, and pursuant to *N.J.A.C.* 6A:28-6.4(a)(5), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) shall include evidence that Respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the Board.

After 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 Respondent violated *N.J.S.A.* 18A:12-24.1(e). Once again, Complainant has not offered any facts which verify, or even imply, that Respondent made personal promises regarding Board business, or took action beyond the scope of her duties as a Board member. As a Board member, Respondent is authorized to make motions regarding Board business. Although the Commission agrees that, regardless of the legal advice she may have received, Respondent’s involvement in a motion which financially benefitted her and/or her child may have violated other provisions of the Act (e.g., *N.J.S.A.* 18A:12-24(c)), the Commission is constrained to review the allegations that are asserted in a Complaint, and not those that could have been asserted. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 3 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 Respondent violated *N.J.S.A.* 18A:12-24.1(g) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(e) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(e) as contended in Count 3.

IV. Request for Sanctions

At its meeting on November 19, 2019, 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 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 December 17, 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 Respondent violated *N.J.S.A.* 18A:12-24.1(g) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(e) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(e) as contended in Count 3. The Commission also voted to find that the Complaint is 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: December 18, 2019

***Resolution Adopting Decision
in Connection with C51-19***

Whereas, at its meeting on November 19, 2019, the School Ethics Commission (Commission) considered the Complaint, and the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing submitted in connection with the above-referenced matter; and

Whereas, at its meeting on November 19, 2019, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(g) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(e) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(e) as contended in Count 3; and

Whereas, at its meeting on November 19, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at its meeting on December 17, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 19, 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 December 17, 2019.

Kathryn A. Whalen, Director
School Ethics Commission