

Before the School Ethics Commission
Docket No.: C26-21
Decision on Motion to Dismiss

Andrew Meehan,
Complainant

v.

Nadia Bennett,
College Achieve Central Charter School, Union County,
Respondent

I. Procedural History

Andrew Meehan (Complainant) initially filed a Petition of Appeal with the Office of Controversies and Disputes (C&D) against Nadia Bennett (Respondent), Executive Director of College Achieve Central Charter School, on September 3, 2020. In his Petition, Complainant objected “to an image and a statement [Respondent] posted on the College Achieve Central Charter School Network website [(Charter School)].” *Initial Decision*, OAL Dkt. No. EDU 03402-21 (June 25, 2021) at 2. Respondent sought “an investigation into their posting, their removal, and an apology to the community for their posting.” *Id.* On October 10, 2020, C&D transmitted the matter to the Office of Administrative Law (OAL) as a contested case for a hearing. On June 25, 2021, the case was decided and dismissed by Administrative Law Judge Barry E. Moscovitz (ALJ Moscovitz) on the grounds that “petitioner has advanced no cause of action in his petition. In fact, petitioner has cited no violation of any law in it. In short, petitioner has only asserted his objection to the image and the statement on the school’s website.” *Id.* at 3. ALJ Moscovitz further concluded that “[i]f petitioner now believes, as he writes in his opposition to the [motion to dismiss], that respondents are (sic) in violation of the School Ethics Act, N.J.S.A. 18A:12-21 to -34, then petitioner should file his complaint before the School Ethics Commission under N.J.S.A. 18A:12-29.” *Id.*

Complainant thereafter filed a Complaint on July 16, 2021,¹ alleging that Respondent 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(a) and *N.J.S.A.* 18A:12-24(g).

On July 19, 2021, the Complaint was served on Respondent, via electronic mail, notifying her that charges were filed against her with the School Ethics Commission

¹ Complainant initially filed a deficient Complaint on July 15, 2021. Therefore, and pursuant to *N.J.A.C.* 6A:28-6.7, the initial filing date of July 15, 2021, will be used for the purpose of determining timeliness pursuant to *N.J.A.C.* 6A:28-6.5.

(Commission), and advising that she had twenty (20) days to file a responsive pleading.² On July 30, 2021, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and on August 29, 2021, Complainant filed a response to the Motion to Dismiss.

The parties were notified by correspondence dated November 9, 2021, that this matter would be placed on the Commission's agenda for its meeting on November 16, 2021, in order to make a determination regarding the Motion to Dismiss. At its meeting on November 16, 2021, the Commission considered the filings in this matter and, at its meeting on December 14, 2021, 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(a)* and *N.J.S.A. 18A:12-24(g)*.

II. Summary of the Pleadings

A. *The Complaint*

In his Complaint, Complainant "objects to an image and a statement [Respondent] ... posted on the school's website endorsing Black Lives Matter organization." Complainant asserts Respondent violated *N.J.S.A. 18A:12-24(a)* because "school administrators and staff are seen as being in positions of power, they are not permitted to exert political pressure while acting on behalf of the school district." Further, Respondent's "public stance on Black Lives Matter impairs her judgment to lead the Charter School and she needs to be removed from her position as an educator in New Jersey."

Complainant further asserts Respondent violated *N.J.S.A. 18A:12-24(g)* because Respondent's "written endorsement of Black Lives Matter during her official work duty is not permitted as a public employee since she is acting in the capacity as a government official representing the school district and not her personal views regarding Black Lives Matter." Complainant further argues that "Endorsing Black Lives Matter as a Public Charter School violates the school's mission to focus on educating students. Charter schools are permitted to engage students with dialogue regarding Black Lives Matter, but they are not permitted to endorse the organization in the capacity as an administrator, teacher, or board of trustees."

B. *Motion to Dismiss*

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and initially argues that the Complaint is untimely. As to the Complaint's untimeliness, Respondent argues that the Complaint was not filed within 180 days of notice of the events. According to Respondent, Complainant knew about Respondent's post on July 7, 2020 and did not file his Complaint until July 16, 2021, which is 374 days later. Respondent further contends that in order for the Complaint to be considered timely, it should have been filed no later than January 4, 2021; however, it was filed 194 days beyond the allotted timeframe.

² Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

Assuming the Complaint was timely filed, Respondent contends the Complaint is “insufficient as a matter of law.” According to Respondent, Complainant did not allege that Respondent has an “interest” in any “business” to sustain a violation of N.J.S.A. 18A:12-24(a). More specifically, Respondent’s website posting of Black Lives Matter does not constitute a violation of this provision nor does it support an “‘interest’ in any ‘business’ that would present a ‘substantial conflict’ with the proper discharge of her duties.” Respondent claims that Complainant is “using the Act to regulate the content of [Respondent’s] statements on matters of racism.” Respondent further claims that Complainant is attempting to punish a school administrator for expressing “a point of view about society’s challenges.” Respondent asserts her public statements are protected by the First Amendment.

As to a violation of N.J.S.A. 18A:12-24(g), Respondent asserts that Complainant has not identified any “‘cause, proceeding, application or other matter pending before the [Board]’ that would conflict with [Respondent’s] support of Black Lives Matter” nor does she “represent any person or party in connection with any cause, proceeding, application or other matter pending before the Board.” Respondent further asserts that she does not have a financial interest in, or represent any business organization, that appears before the Board. Respondent maintains that her support for “Black Lives Matter” does not negatively affect her ability to be an effective and independent school leader. Respondent argues that Complainant “is misusing the Act to allege ethics violations against a school leader simply because he has a personal objection to” the post which supports racial equality, namely Black Lives Matter. For these reasons, Respondent asserts the Complaint should be dismissed as “untimely and because it fails to allege sufficient facts that would constitute a breach of the Act.”

C. Response to Motion to Dismiss

In response to the Motion to Dismiss and allegation of untimeliness, Complainant first argues that his Complaint was timely filed. According to Complainant, he consulted with the Union County Superintendent, who after contacting C&D, advised Complainant to file his Complaint with C&D. Complainant notes that although he “unknowingly” filed his Complaint with the incorrect agency, he nevertheless, filed the Complaint on September 3, 2020, which was within 180 days of notice of the events on July 7, 2020. Therefore, Complainant requests that the Commission consider the date that he filed with C&D, particularly after he made a “reasonable effort to resubmit the” Complaint within 21 days after ALJ Moscowitz issued his final decision.

As to Complainant’s allegations that Respondent violated N.J.S.A. 18A:12-24(a), Complainant reaffirms his assertion, namely that an administrator is not permitted to endorse or engage in any political activity or social movement when serving in the official capacity as a government representative. Complainant asserts Respondent was hired to “advance student achievement, manage five campuses ... and to make sure the school is in full compliance with the Charter School regulations.” According to Complainant, school officials are not permitted to exert political pressure while serving in their position for the school district. Complainant further asserts Respondent “believes that because of George Floyd’s death and the fact that she is an African American woman, she should be treated differently and be given some type of preferential treatment.” Complainant maintains that as an Asian American he is “very much offended.” “Not once did respondent make any comment or support against the increased

violence towards Asian Americans who have been attacked over the past year. Not once did Respondent address the violence where innocent lives were taken because of the Black Lives Matter movement during the summer or the countless police officer who died protecting their community.” Complainant notes that the educational mission of the Charter School is “to advance student achievement and to bridge perceived iniquities in the educational system – not to advance political views or to shape student opinions regarding institutional racism.” Complainant asserts the Motion to Dismiss should be denied and at the very least the school should take down the website and issue an apology.

III. Analysis

A. *Alleged Untimeliness*

The Commission’s regulations provide a one hundred eighty (180) day limitation period for filing a complaint. *N.J.A.C. 6A:28-6.5*. Pursuant to *N.J.A.C. 6A:28-6.5(a)*, the Commission must determine when Complainants knew of the events which form the basis of their Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events. The Commission’s regulations further provide that its rules “shall be considered general rules of practice to govern, expedite and effectuate the School Ethics Commission's implementation and enforcement of the Act ... [and] may be relaxed or dispensed with by the School Ethics Commission, in its discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.” *N.J.A.C. 6A:28-1.8*

In her Motion to Dismiss, Respondent preliminarily contends that the Complaint is untimely and, therefore, should be dismissed. Respondent argues that the Complaint was not filed within 180 days of notice of the events. According to Respondent, Complainant knew about Respondent’s post on July 7, 2020 and did not file his Complaint until July 16, 2021, which is 374 days later. Respondent further contends that in order for the Complaint to be considered timely, it should have been filed no later than January 4, 2021; however, it was filed 194 days beyond the allotted timeframe.

Complainant argues that his Complaint was timely filed. According to Complainant, he consulted with the Union County Superintendent, who after contacting C&D, advised Complainant to file his Complaint with C&D. Complainant notes that although he “unknowingly” filed his Complaint with the incorrect agency, he nevertheless, filed the Complaint on September 3, 2020, which was within 180 days of notice of the events on July 7, 2020. Therefore, Complainant requests that the Commission consider the date that he filed with C&D, particularly after he made a “reasonable effort to resubmit the” Complaint within 21 days after ALJ Moscowitz issued his final decision.

In the instant matter, Complainant initially filed a petition with C&D as a result of advice received from the Union County Superintendent within the 180-day limitation period. Due to no fault or delay caused by Complainant, ALJ Moscowitz’s initial decision was issued on June 25, 2021. In accordance with ALJ Moscowitz’s decision, Complainant thereafter filed a complaint with the Commission without undue delay. In light of the above, although the Complaint was

filed beyond the 180 day time period, in utilizing its exercise of authority under *N.J.A.C. 6A:28-1.8*, the Commission finds that the Complaint was timely filed.³ The Commission further avers in the alternative that even if determined that the Complaint was untimely, the Commission's ultimate determination in the within decision would remain unchanged.

B. *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(a)* and/or *N.J.S.A. 18A:12-24(g)*.

C. *Allegations of Prohibited Acts*

In the Complaint, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24(a)*, and *N.J.S.A. 18A:12-24(g)*. These provisions of the Act provide:

a. No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

g. No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities.

Alleged Violation of N.J.S.A. 18A:12-24(a)

To credit the alleged violation of *N.J.S.A. 18A:12-24(a)*, the Commission must find evidence that Respondent, or a member of his immediate family, has an interest in a business organization, or engaged in any business, transaction, or professional activity which was in substantial conflict with the proper discharge of his duties in the public interest.

³ The Commission emphasizes the importance of choosing the proper venue for filing complaints. Complainants must conduct proper due diligence in determining where a complaint should be filed in order to avoid delays and waste of judicial and public resources.

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(a). In this regard, the Complaint does not set forth any facts which could possibly establish, or which even suggest, that Respondent or a member of her immediate family had an “interest” in a business organization,⁴ namely the Black Lives Matter organization. Respondent’s support for the Black Lives Matter movement does not equate to an “interest” in a business organization as that term is used within the statute. Further, there are no facts indicting that Respondent engaged in an external “business, transaction, or professional activity” that was in substantial conflict with the proper discharge of her duties. Again, the posting of a “Black Lives Matters” heart shaped logo on the Charter School’s website does not constitute a “business, transaction, or professional activity” as that term is used under *N.J.S.A.* 18A:12-24(a). Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(a) should be dismissed.

Alleged Violation of N.J.S.A. 18A:12-24(g)

In order to credit the allegation of a violation of *N.J.S.A.* 18A:12-24(g), the Commission must find evidence that Respondent, or a business organization in which he has an interest, represents a person or party other than the school board or school district in connection with a cause, proceeding, application, or other matter currently pending before the school district in which he serves or in any proceeding involving the school district in which he serves.

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(g). Again, as noted above, Complainant does not set forth any facts which could possibly establish, or which even suggest, that Respondent or a member of her immediate family had an “interest” in a business organization, namely the Black Lives Matter organization. Respondent’s support for the Black Lives Matter movement does not equate to an “interest” in a business organization as that term is used within the statute. Furthermore, Complainant does not identify a “cause, proceeding, application or other matter pending before the [Board].” Respondent’s alleged actions in the present matter, namely the posting of a “Black Lives Matters” heart shaped logo on the Charter School’s website, does not constitute a “cause, proceeding, application or other matter pending before the [Board].” Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(g) should be dismissed.

IV. 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 find the Complaint was timely filed and 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(a) and/or *N.J.S.A.* 18A:12-24(g).

⁴ Pursuant to *N.J.S.A.* 18A:12-23, “interest” means the ownership or control of more than 10% of the profits, assets, or stock of a business but shall not include the control of assets in a labor union.

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 14, 2021

***Resolution Adopting Decision
in Connection with C26-21***

Whereas, at its meeting on November 16, 2021, 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 submitted in connection with the above-referenced matter; and

Whereas, at its meeting on November 16, 2021, the Commission discussed finding that the Complaint was timely filed; and

Whereas, at its meeting on November 16, 2021, 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(a) and/or *N.J.S.A.* 18A:12-24(g); and

Whereas, at its meeting on December 14, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 16, 2021; 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 14, 2021.

Salma T. Chand, Executive Director
School Ethics Commission