

***Before the School Ethics Commission***  
***Docket No.: C55-20***  
***Decision on Motion to Dismiss***

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**Jerome M. Page, Sharnell Morgan, and Doris Rowell,**  
***Complainants***

v.

**Carla Thomas,**  
**Pleasantville Board of Education, Atlantic County,**  
***Respondent***

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**I. Procedural History**

This matter arises from a Complaint that was filed on September 25, 2020, by Jerome M. Page, Sharnell Morgan, and Doris Rowell (Complainants), alleging that Carla Thomas (Respondent), a member and President of the Pleasantville Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated September 25, 2020, Complainants were notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept their filing. On October 6, 2020, Complainants 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. More specifically, the Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24(d).

On October 7, 2020, the Complaint was served on Respondent, via electronic 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.<sup>1</sup> On October 30, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and on November 12, 2020, Complainants filed a response to the Motion to Dismiss.

The parties were notified by correspondence dated December 14, 2020, that this matter would be placed on the Commission's agenda for its meeting on December 22, 2020, in order to make a determination regarding the Motion to Dismiss. At its meeting on December 22, 2020, the Commission considered the filings in this matter and, at its meeting on January 26, 2021, the Commission voted to find that the alleged violations of the Act that occurred prior to March 27, 2020, are time barred; to find that the alleged violations of the Act that occurred on or after March 27, 2020, were timely filed; and to grant the Motion to Dismiss as to the remaining allegations because Complainants failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24(d).

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<sup>1</sup> Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

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

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

According to Complainants, Respondent, the Board President, disclosed “Gateway Community Action Partnership (GCAP)” (her employer) as a source of income on her 2015 Financial Disclosure Statements (FDS). In each year thereafter, Respondent “recorded a new name as her source of income” (Tri-County Community Action Agency) on her FDSs, but listed the address for this source of income as that initially provided for GCAP.

Based on these facts, Complainants allege that, between 2015 and 2020, Respondent violated *N.J.S.A.* 18A:12-24(d) because she chaired the finance committee which approved Pleasantville School District (District) funds for her employer; voted in the affirmative to award contracts to her employer; voted in the affirmative “for all of Gateway financial invoices”; coordinated “distribution of the Gateway Food program to Pleasantville voters”; used Gateway “a contract vendor” for political gain; despite being advised (in April 2020) that her employer (Gateway) was on the bill list, she “continued voting yes for Gateway’s invoices” in September and October 2020, but did abstain in April 2020; and there was never any discussion regarding Respondent’s employer, “only voting.”

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

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and preliminarily argues that the Complaint is untimely. First, because the Commission acknowledged receipt of the Complaint on September 25, 2020, one hundred eighty (180) days prior thereto was March 29, 2020; therefore, Respondent argues that any allegations based on documents or votes that occurred prior to March 29, 2020, are untimely and should be “dismissed with prejudice.” Respondent further argues that the Complaint should be dismissed because Complainants did not include a “notarized signature and certification”; Complainants failed to follow the “sample Complaint form supplied by the Commission,” specifically, failed to provide a statement giving all pertinent facts as to whether any other action ... is the subject of the complaint or is pending in any court of law or administrative agency of this State”; Complainants failed to provide a “brief statement, in individually numbered paragraphs, ...”; and Complainants failed to provide appropriately numbered exhibits. Respondent asserts, “It is clear [that] Complainant[s] [are] making allegations based on more than 3 pieces of paper,” but that is the sum total of the evidence submitted. According to Respondent, it is a violation of her “due process rights for her not to be supplied with all the alleged supporting documentation of” Complainants.

Therefore, Respondent asserts that the untimeliness of the Complaint, along with Complainants’ “failure to follow the mandates of the Administrative Code warrants a dismissal” of the Amended Complaint.

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

In response to the Motion to Dismiss, including the allegation of untimeliness, Complainants argue, “The 180 days does not [apply] to this [C]omplaint because the violations [have] been going on since 2015 up until today 2020.” According to Complainants, Respondent

recently voted to approve a “financial resolution which included the bill list with Gateway Head start program contract being approved for the invoices financial.” Complainants maintain that Respondent’s conflict of interest “still exists,” and the issue of whether a board member can vote on contracts, invoices, and financial issues relating to her employer “needs to be resolved.”

### 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 (Complainants), 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 Complainants have asserted sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24(d)*.

#### B. Alleged Untimeliness

In her Motion to Dismiss, Respondent preliminarily argues that certain allegations in the Complaint, namely those that occurred more than one hundred eighty days prior to the filing of Complainants’ first deficient Complaint, or prior to March 29, 2020, are untimely and should be dismissed. Complainants counter, “The 180 days does not [apply] to this [C]omplaint because the violations [have] been going on since 2015 up until today 2020.”

The Commission’s regulations provide a one hundred eighty (180) day limitation period for filing a complaint. More specifically, *N.J.A.C. 6A:28-6.5(a)* provides, in relevant part:

- (a) Complaints shall be filed within 180 days of notice *of the events which form the basis of the alleged violation(s)*. A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) *when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known* (emphasis added).

As applied here, although Complainants did not file a Complaint that was deemed compliant with the Commission’s regulations (*N.J.A.C. 6A:28-6.3*) until October 6, 2020, they filed their first deficient Complaint on September 25, 2020; therefore, and because Complainants’ amendments relate back to the date their Complaint was *first* received by the Commission, the filing date in this matter is **September 25, 2020**. See *N.J.A.C. 6A:28-6.7(b)*.

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. In its review of the pleadings, the Commission finds that the Complaint references multiple actions in arguing that Respondent violated the Act, namely the filing of her FDSs in 2015 through 2020; her affirmative vote for “Gateway’s Contract [at] 2015-2020 Board [Meetings]”;

her affirmative vote “for all of Gateway financial invoices” at the Board’s meeting on September 15, 2020; and her affirmative vote for Gateway’s invoices in September and October 2020. However, Complainants have not argued, or even suggested, that they did not have reason to know of the events that form the basis of their Complaint on a date/day other than when the events initially transpired. Although Complainants claim that the alleged violations of the Act have been “going on since 2015,” the actions complained of are discrete, and cannot reasonably be construed as “one series” of continuous actions. Therefore, the Commission determines that Complainants knew of the events that form the basis of their Complaint on the date/day *each* occurred.

Because Complainants filed their first deficient Complaint on September 25, 2020, one hundred eighty (180) days prior thereto would be **March 27, 2020**.<sup>2</sup> Accordingly, and because there is no reasonable basis upon which the Commission should relax the time period for filing as to each action that occurred prior to March 27, 2020, the Commission finds that any and all alleged violations of the Act which purportedly occurred prior to March 27, 2020, are time barred, and those that occurred thereafter were timely filed.

### C. Allegation of Prohibited Acts

In their Complaint, Complainants contend that Respondent violated *N.J.S.A.* 18A:12-24(d), and 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;

More specifically, Complainants argue that, in her capacity as a Board member, Respondent voted to approve multiple financial and contractual issues, including invoices and payments, regarding her employer. Although Respondent cites multiple substantive and procedural deficiencies with the Complaint, she did not offer any argument explaining why Complainants failed to offer sufficient facts to support the claimed violation of *N.J.S.A.* 18A:12-24(d).

In order to credit the alleged violation of *N.J.S.A.* **18A:12-24(d)**, the Commission must find evidence that Respondent engaged in employment or service, regardless of whether compensated, which might reasonably be expected to prejudice her independence of judgment in the exercise of her 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 Respondent violated *N.J.S.A.* 18A:12-24(d). Complainants have not articulated a single fact(s) or provided any reason(s) why Respondent’s employment with her employer, *in and of itself*, might reasonably be expected to prejudice her independence of judgment in the exercise of her official duties as a Board member. Although the Commission wholeheartedly agrees that, with regard to

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<sup>2</sup> Technically, one hundred eighty (180) days prior to September 25, 2020, is Sunday, March 29, 2020. Therefore, and construing the facts in the light most favorable to Complainants, the Commission finds that Friday, March 27, 2020, is the appropriate date to be used in this matter.

any and all issues that may come before the Board related to Respondent's employer, she **must** recuse herself, there is not a scintilla of evidence indicating that her employment, without more, prejudices her independence of judgment. Although a board member's involvement and action in a matter(s) in which she has a conflict of interest implicates the Act, it does not, unfortunately, implicate *this* provision of the Act. A violation of *N.J.S.A.* 18A:12-24(d) requires a credible link between a school official's employment or service, and a concomitant prejudice to his/her independence of judgment – however, no such evidence has been presented here. 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 (Complainants), the Commission has determined to find that the alleged violations of the Act that occurred prior to March 27, 2020, are time barred; to find that the alleged violations of the Act that occurred on or after March 27, 2020, were timely filed; and to **grant** the Motion to Dismiss as to the remaining allegations because Complainants failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24(d).

#### **IV. Decision**

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainants), the Commission voted to find that the alleged violations of the Act that occurred prior to March 27, 2020, are time barred; to find that the alleged violations of the Act that occurred on or after March 27, 2020, were timely filed; and to **grant** the Motion to Dismiss as to the remaining allegations because Complainants failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24(d).

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

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Robert W. Bender, Chairperson

Mailing Date: January 26, 2021

***Resolution Adopting Decision  
in Connection with C55-20***

***Whereas***, at its meeting on December 22, 2020, 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 December 22, 2020, the Commission discussed finding that the alleged violations of the Act that occurred prior to March 27, 2020, are time barred, and finding that the alleged violations of the Act that occurred on or after March 27, 2020, were timely filed; and

***Whereas***, at its meeting on December 22, 2020, the Commission discussed granting the Motion to Dismiss as to the remaining allegations because Complainants failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A. 18A:12-24(d)*; and

***Whereas***, at its meeting on January 26, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on December 22, 2020; 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 January 26, 2021.

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Kathryn A. Whalen, Director  
School Ethics Commission