

Before the School Ethics Commission
Docket No.: C04-22
Decision on Motion to Dismiss

Emily E. Morgan,
Complainant

v.

Eric J. Andrews,
Plainfield Board of Education, Union County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on January 6, 2022, by Emily E. Morgan (Complainant), alleging that Eric J. Andrews (Respondent), a member of the Plainfield Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(a) of the Code of Ethics for School Board Members (Code).

On January 7, 2022, the Complaint was served on Respondent via electronic mail, notifying him that ethics charges had been filed against him with the School Ethics Commission (Commission) and advising that he had twenty (20) days to file a responsive pleading.¹ On May 25, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss),² and Complainant filed a response to the Motion to Dismiss on June 20, 2022.

The parties were notified by correspondence dated July 18, 2022, that the above-captioned matter would be discussed by the Commission at its meeting on July 26, 2022, in order to make a determination regarding the Motion to Dismiss. Following its discussion on July 26, 2022, the Commission adopted a decision at its meeting on August 23, 2022, granting 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).

¹ As a result of the ongoing Coronavirus (COVID-19) pandemic, and the implementation of electronic filing, service of process was effectuated by the Commission through electronic transmission only.

² Following service of the Complaint, the Commission's staff sent correspondence to Respondent dated February 8, 2022, March 3, 2022, and March 31, 2022, advising that failure to file a responsive pleading would result in each allegation of the Complaint being deemed admitted, and the matter being decided summarily. *N.J.A.C.* 6A:28-7.3(b). On April 20, 2022, General Counsel for the Board advised that the above-captioned matter had been referred to the New Jersey Schools Insurance Group, and that Respondent was awaiting assignment of counsel. Following the assignment of counsel, and an extension request (with Complainant's consent), a responsive pleading was filed.

II. Summary of the Pleadings

A. *The Complaint*

Complainant states that, during the “Special Executive Meeting” of the Board on December 8, 2021, which was conducted virtually, she was “removed” from the meeting by Respondent, the Board President. According to Complainant, Respondent “was in full control of the Zoom meeting due to the sensitivity of the discussion,” namely the evaluation of the Plainfield School District (District) Superintendent.

After she, a “non-conflicted” Board member, was disconnected from the meeting (at 8:10 p.m.), Complainant immediately began emailing Respondent and copied “all the meeting participants[,] including [Board counsel]” to inform them that she had been “disconnected from the meeting and requesting to be re-entered into the meeting.” According to Complainant, Respondent did not reply to her email. At 8:13 p.m., Board counsel asked Complainant if she “had gained access to the meeting,” and Complainant replied she had not. At 8:17 p.m., Board counsel provided Complainant with the Zoom meeting link, but Complainant still could not rejoin the meeting.

Thereafter, and at 8:23 p.m., Respondent sent an email to Complainant stating, “we are waiting for you to return to the meeting,” which was followed by another email (at 8:38 p.m.) with the Zoom meeting link. Complainant maintains that, despite “numerous” attempts, she was “never re-admitted to the meeting.” Based on this information, Complainant contends Respondent violated *N.J.S.A. 18A:12-24.1(a)* because by not permitting Complainant to access the meeting, Respondent violated Complainant’s “right to fulfill [her] duty as a duly elected [Board member] and [her] First Amendment Right of Freedom of Speech.”

B. *Motion to Dismiss*

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and argues that “as soon as members of the meeting learned of [Complainant’s] absence[,] steps were taken to have her rejoin the meeting, which included contacting the IT Department.” Respondent notes that because Complainant was unable to rejoin the meeting, the executive session was terminated, and the meeting did not proceed (except for efforts to have her (Complainant) rejoin the meeting). Respondent denies taking any action to keep or remove Complainant from the meeting and maintains that Complainant has not provided any facts to support her claims.

In more specific response, and as to the purported violation of *N.J.S.A. 18A:12-24.1(a)*, Respondent argues Complainant “fails to identify any law, rule and regulation of the State Board” with which he did not comply and, therefore, this claim “fails on its face” and must be dismissed. Regarding the alleged violation of Complainant’s right of freedom of speech under the First Amendment of the United States and New Jersey Constitutions, Respondent argues that “[s]uch an allegation is not within the jurisdiction” of the Commission and, as a result, it too must be dismissed. Even if the Commission did have jurisdiction over these claims, Complainant has failed to demonstrate a violation of her rights because, once she was disconnected and unable to rejoin the meeting, it (the meeting) was “halted and terminated.” Therefore, Complainant’s speech was not abridged, to any extent.

For the foregoing reasons, Respondent contends the Complaint should be dismissed.

C. *Response to Motion to Dismiss*

In response to the Motion to Dismiss, Complainant reaffirms that Respondent “directed” the Business Administrator to “give him [(Respondent)] control of the Zoom meeting as [he] felt he would need to use the ‘Zoom mute feature.’” Complainant reasserts that she was “disconnected” from the Zoom meeting, contacted Respondent and Board counsel to inform them that she was disconnected from the meeting and, despite several attempts, was unable to rejoin the meeting. As part of her response, Complainant provided an email from another Board member noting that, on December 8, 2021, Respondent “wasted no time whatsoever to begin his muting control over” Complainant and used the mute control “MANY times during board meetings.”

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(s) 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 pled sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)*.

B. *Jurisdiction of the Commission*

In reviewing the allegations in this matter, the Commission notes that its authority is limited to enforcing the Act, *N.J.S.A. 18A:12-21 et seq.*, a set of minimum ethical standards by which all school officials must abide. In this regard, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C. 6A:28-1.4(a)*.

With the jurisdiction of the Commission in mind, to the extent that Complainant seeks a determination from the Commission that Respondent’s conduct/actions at the Board meeting on December 8, 2021, violated her “First Amendment Right of Freedom of Speech,” the Commission advises that such a determination(s) falls outside the scope, authority, and jurisdiction of the Commission. Although Complainant may be able to pursue a cause of action in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate this issue(s). Accordingly, those claims are dismissed.

C. *Alleged Code Violations*

Complainant submits that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A. 18A:12-24.1(a)*, and this provision of the Code states:

- 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.

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.

Following a thorough review of the Complaint, the Commission finds that even if the facts as pled 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). Despite being required by *N.J.A.C.* 6A:28-6.4(a)(1) to substantiate a violation of *N.J.S.A.* 18A:12-24.1(a), Complainant has not provided **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating or specifically finding that *Respondent* violated any specific law(s), rule(s), or regulation(s) of the State Board of Education and/or court orders pertaining to schools, or that Respondent brought about changes through illegal or unethical procedures, when he engaged in any of the actions/conduct set forth in the Complaint. Without the required final decision(s), the Commission is constrained to dismiss the alleged violation of *N.J.S.A.* 18A:12-24.1(a).

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 **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).

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: August 23, 2022

***Resolution Adopting Decision
in Connection with C04-22***

Whereas, at its meeting on July 26, 2022, 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 July 26, 2022, 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(a)*; and

Whereas, at its meeting on August 23, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 26, 2022; 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 August 23, 2022.

Kathryn A. Whalen, Esq.
Director, School Ethics Commission