

***Before the School Ethics Commission  
Docket No.: C48-21  
Decision on Motion to Dismiss***

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**Alan Manzo,  
Complainant**

v.

**Sharyn Angley, Malani Cadematori, Sheillah Dallara, Alex De La Torrem, Chetali  
Khanna, Thomas Kluepfel, Ailene McGirk, Joyce Simons and Melanie Tekirian  
Hoboken Board of Education, Hudson County,  
Respondents**

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**I. Procedural History**

This matter arises from a Complaint that was filed on October 7, 2021, by Alan Manzo alleging that Sharyn Angley, Malani Cadematori, Sheillah Dallara, Alex De La Torrem, Chetali Khanna, Thomas Kluepfel, Ailene McGirk, Joyce Simons and Melanie Tekirian (Respondents), all of whom are members of the Hoboken Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* The Complaint avers that Respondents violated *N.J.S.A.* 18A:12-24.1(a) of the Code of Ethics for School Board Members (Code).

On October 15, 2021, the Complaint was served on Respondents, by electronic mail, notifying Respondents that charges were filed with the School Ethics Commission (Commission), and advising that Respondents had twenty (20) days to file a responsive pleading.<sup>1</sup> On December 3, 2021, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), which included an allegation the Complaint was frivolous. On December 23, 2021, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

On January 18, 2022, the Parties were subsequently notified that this matter would be placed on the Commission's agenda for its meeting on January 25, 2022, to decide Respondents' Motion to Dismiss and allegation of frivolous filing. At its meeting on January 25, 2022, the Commission considered the filings in this matter, including whether Complainant pleaded sufficient, credible facts to support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a).

**A. Alleged Code Violation**

In the Complaint, Complainant alleges that Respondents violated *N.J.S.A.* 18A:12-24.1(a) of the Code. The relevant Code provision is as follows:

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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.

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. *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).

**II. Summary of the Pleadings**

**A. *The Complaint***

Complainant alleges Respondents violated the Code when the Board awarded a transportation contract to another contractor following Complainant's response to the District's Request for Bids. Complainant contends Respondents, all of whom are Board members, inappropriately delegated their power to enter into transportation contracts to a third-party in violation of the Act.

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

Following receipt of the Complaint, Respondents filed a Motion to Dismiss, which included an allegation of frivolous filing. In the Motion to Dismiss, Respondents assert that Complainant works for a transportation company that was not awarded a contract because Complainant's company demanded a change to the terms of the contract. Respondents further argue the present Complaint mirrors an action brought by Complainant in Superior Court, which was duly dismissed. Respondents also argue that the Complaint does not make any allegations that Respondents, as individuals took any actions that violated the Act, but rather, alleges the Board violated the Act. Respondents also contend Complainant failed to produce any evidence that Respondents failed to uphold or enforce any law or rule or regulation promulgated by the State Board of Education. Finally, Respondents argue the Complaint is frivolous because it is merely a second attempt to relitigate the matter that was dismissed by the Superior Court.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant reaffirms the allegations set forth in the Complaint, and further contends the issues in the present Complaint are different than the claims adjudicated in Superior Court.

### 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 asserted sufficient facts which, if true, could support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a) of the Code.

#### *Alleged Code Violation*

Complainant alleges Respondents violated the Code because they delegated their authority to award transportation contracts to a third-party and did not award a transportation contract to Complainant's company, following Complainant's response to the District's Request for Bids. According to Complainant, Respondents' delegating the awarding of transportation contracts violates *N.J.S.A.* 18A:12-24.1(a) of the Code because it runs afoul of a regulation promulgated by the State Board of Education.

As set forth in *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 the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures.

Complainant contends Respondents violated this provision of the Code because Respondents, as Board members, "delegated their power to enter transportation contracts to an entity identified as "Logic 54 LLC [(Logic)]."

According to Complainant, on or about August 7, 2020, Logic informed Complainant's company, Hudson County Transportation (HCT), via email that the Board would be "advertising a transportation bid" and "invited [HCT] to submit a bid." Complainant maintains on August 10, 2020, the Board issued a "'Request for Bids' for the additional routes referenced in the August 7, 2020 email." According to Complainant, HCT submitted bids for some of the routes and on August 24, 2020, Logic informed HCT that they were "awarded three of the routes." Complainant further maintains as of September 3, 2020, HCT "had not received confirmation" of the pending routes or a proposed contract and on September 3, 2020, HCT contacted Logic via email "requesting confirmation in writing that it had been awarded the referenced routes and also requesting assurance that it get paid on all days regardless of any unforeseen circumstances." Per Complainant, on September 4, 2020, Logic sent HCT an email stating it "accepted [their] rejection of the route bid awards and renewals based on the contractual terms [they] have requested." Logic further informed HCT, "since you cannot provide transportation without your requested terms, and time is of the essence, all routes will be operated by another contractor." Complainant notes as of July 16, 2021, Respondents are "still delegating their power to enter transportation contacts to" Logic.

Respondents filed a Motion to Dismiss and allegation of frivolous filing. Respondents contend that Complainant works for HCT, which submitted a bid for transportation routes solicited by the Board; however, the Board did not enter into any contract with HCT to provide transportation services for the 2020-2021 SY. According to Respondents, on September 4, 2020, Complainant was informed that HCT's bid was rejected "because it made a demand to change the terms of the transportation on September 3, 2020[,] which circumvented the 2020-2021 Bid Specifications." Respondents further contend on September 16, 2020, "prior to initiating the instant proceeding," HCT filed a complaint against the Board in the NJ Superior Court, Hudson County. Complainant's business "sought money damages as a result of the [Board] allegedly delegating the authority to enter into transportation contracts to a third party." Ultimately, the Board was granted summary judgment on the "very same claims which Complainant now set forth before the Commission." Respondents argue Complainant "merely rehashes the already-dismissed allegation from the Superior Court action."

Respondents initially argue the Complaint should be dismissed because Complainant does not make any allegations that Respondents, as individuals, committed acts or omissions, that violate the Act, but rather allege the Board violates the Act. Therefore, the Complaint should be dismissed because the Code does not apply to the Board as an entity. Furthermore, as to a violation of *N.J.S.A.* 18A: 12-24.1(a), Respondents assert Complainant did not provide any evidence to support that Respondents, in their individual capacity, failed to "uphold and enforce any law, rule, and/or regulation of the State Board of Education, or court orders pertaining to schools." Respondents assert because the "cause of action has already been finally determined on the merits by a tribunal exercising jurisdiction, the doctrine of *res judicata* prevents that action from later being relitigated in a new proceeding by the same parties or their privies."

Finally, Respondents contend the Complaint is frivolous because the "instant [C]omplaint amounts to nothing more than an impermissible attempt to forum-shop a second bite at the apple from the Commission due to Complainant's dissatisfaction with the [Judge's] ruling in the Superior Court action such that imposition of a fine is warranted." According to Respondents, Complainant has "parroted the exact same substantive allegations" from the Superior Court matter, and "attempted to repackage them as purported violations of the Act without any good faith basis to do so." Respondents respectfully request that the Complaint be dismissed with prejudice.

In response to the Motion to Dismiss and allegation of frivolous finding, Complainant reaffirmed the allegations set forth in the Complaint, and argued the claims here are different from the claims adjudicated in Superior Court.

After a review of this alleged violation as pled in the Complaint, the Commission determines that even if the facts as argued are proven true by sufficient credible evidence, they would not support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a) because the regulations concerning the awarding of transportation contracts, which the Districts appears to have adhered to in this matter, are clear and well-known, including the procedures for rejecting a bid following a request to change the terms and/or specification of the duly issued Bid. Therefore, the Commission determines that the alleged violation of *N.J.S.A.* 18A:12-24.1(a) should be dismissed.

The Commission also finds the Complaint is frivolous because Complainant knew or should have known the Complaint was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law. The Commission finds the present Complaint is nothing more than an attempt by an unsuccessful vendor to relitigate claims concerning its rejected bid; claims that were summarily dismissed by the Superior Court prior to the filing of this Complaint.

Recognizing its duty to the public, the Commission acknowledges its responsibility to consider allegations of ethical violations by school officials from good-faith litigants. The Commission is steadfast in its commitment to ensuring school officials adhere to the provisions of the Act and comport their behavior accordingly. The Commission and its staff conduct a thorough review of each allegation included in the numerous Complaints it receives each year. The Commission is clear-eyed about the nature and extent of this profound responsibility.

However, the Commission cannot become a forum where parties can seek recourse for personal vendettas or other impermissible purposes. The Commission cannot, and will not, allow itself to become an instrument for individuals to file baseless, false, and/or unfounded claims against school officials. For the foregoing reasons, the Commission finds the Complaint to be frivolous, and orders that the Complainant pay a fine in the amount of \$500.00.

#### **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 *grant* the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondents violated *N.J.S.A. 18A:12-24.1(a)*. The Commission also voted to find that the Complaint is frivolous and to impose a sanction of \$500.00.

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)*.

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Robert W. Bender, Chairperson

Mailing Date: February 25, 2022

***Resolution Adopting Decision  
in Connection with C48-21***

***Whereas***, at its meeting on January 25, 2021, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), the allegation that the Complaint was frivolous, and the response to the Motion to Dismiss submitted in connection with the above-referenced matter; and

***Whereas***, at its meeting on January 25, 2022, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegation that Respondents violated *N.J.S.A.* 18A:12-24.1(a), and

***Whereas***, at its meeting on January 25, 2022, the Commission discussed finding the Complaint frivolous in accordance with the standard set forth in *N.J.A.C.* 6A:28-1.2, the Commission also discussed imposing a penalty of \$500.00 on Complainant for his frivolous filing; and

***Whereas***, at a special meeting on February 25, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on January 25, 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.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at a special meeting on February 25, 2022.

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Kathryn A. Whalen, Esq.,  
Director, School Ethics Commission  
(For Submission Only)