

Before the School Ethics Commission
Docket No.: C95-21
Final Decision

Natakie Chestnut-Lee,
Complainant

v.

Sharnell Morgan, Alejandrina Alberto, and Yadira Falcon,
Pleasantville Board of Education, Atlantic County,
Respondents

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on December 12, 2021, by Natakie Chestnut-Lee (Complainant) alleging that Sharnell Morgan (Respondent Morgan), Alejandrina Alberto (Respondent Alberto), and Yadira Falcon (Respondent Falcon) (collectively referred to as Respondents), members of the Pleasantville 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 Respondents violated *N.J.S.A.* 18A:12-24.1(a).

On December 22, 2021, the Complaint was served on Respondents via electronic mail, notifying them that charges had been filed against them with the School Ethics Commission (Commission), and advising that they had had twenty (20) days to file a responsive pleading.¹ On January 13, 2022, Respondent Morgan filed an Answer to Complaint (Answer), including an allegation that the Complaint is frivolous. On April 26, 2022, an amended Answer, which again included an allegation of frivolous filing, was submitted on behalf of *all* of the named Respondents.²

The parties were notified by correspondence dated May 16, 2022, that the above-captioned matter would be discussed by the Commission at its meeting on May 24, 2022. Following its discussion on May 24, 2022, and at its meeting on June 28, 2022, the Commission adopted a decision dismissing the above-captioned matter pursuant to its authority as set forth in *N.J.A.C.* 6A:28-10.2(a)(7) and *N.J.A.C.* 6A:28-10.8(a) for failure to state a claim upon which relief can be granted, and finding the Complaint not frivolous.

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 Although the Commission's April 28, 2022, acknowledgment letter inadvertently failed to note that Respondents' amended Answer included an allegation of frivolous filing, the Commission issued an amended acknowledgment (dated May 4, 2022) confirming the inclusion of this claim in Respondents' amended Answer.

II. Summary of the Pleadings

A. *The Complaint*

Complainant states that, at a Board meeting on December 7, 2021, Respondents voted to terminate her (Complainant's) contract, and did so despite the fact that:

- ❖ The Board had not issued a *Rice* notice to Complainant;
- ❖ The Board “had not certified of [(sic)] any matter of contractual tenure charge(s) against ... Complainant”;
- ❖ Board counsel advised Respondents that a *Rice* notice had not been issued, “there had been no certification of charges which would require termination and that, to the extent there may be cause to terminate, that cause is unknown as there has been no investigation into any such cause”; and
- ❖ Although the Board had authorized the retention of an “attorney investigator,” no investigation had yet been undertaken.

Per Complainant, Respondents' actions on December 7, 2021, were “the third time in two (2) months that [Respondents] ... discussed the terms and conditions of Complainant's employment at a Board meeting without first having provided her with a duly issued *Rice* notice,” and “in open defiance of their Board [c]ounsel's advice that their course of conduct in doing so was contrary to law.”

Therefore, Complainant argues that Respondents violated *N.J.S.A.* 18A:12-24.1(a) because they “knowingly and willingly violated well established New Jersey law and [Pleasantville School District (District)] policy with regard to providing timely notice to an employee whose terms and conditions of employment are to be discussed by the Board at a public meeting. Moreover, the vote to terminate was made in violation of Article VI of the Complainant's Superintendent Contract including all statutory references cited therein.”

B. *Amended Answer*

In their amended Answer, Respondents maintain that “any actions” they took at the meeting on December 7, 2021, “speak for themselves.” Furthermore, Respondents deny the remainder of the allegations “as worded,” and offer nine “Affirmative and/or Separate Defenses,” including that the Complaint is frivolous. More specifically, Respondents argue Complainant “has failed to state a claim upon which relief may be granted”; Complainant's claims are “barred by the doctrine of advice of Counsel”; “barred by the doctrine of mutual and/or unilateral mistake”; “barred by the entire controversy doctrine”; “are frivolous”; “barred by the doctrines of estoppel, waiver and/or laches”; at all times relevant, “Respondents were exercising (a) judgment or discretion, (b) legislative or judicial function or administrative function of legislative or judicial nature, (c) discretionary determination necessary to the provision of adequate governmental services and/or (d) discretionary determinations concerning the utilization and application of existing governmental resources and are therefore immune from liability for any injury arising from governmental action or inaction”; Respondents are “immune

from liability for any injury arising from government action or inaction”; Respondents are “immune from liability because [they] acted in good faith in the execution and enforcement of the laws and Administrative Code of the State of New Jersey”; and Respondents “did not knowingly or willfully violate *N.J.S.A.* 18A:12-24.1(a).”

C. *Response to Allegation of Frivolous Filing*

As of June 27, 2022, Complainant had not filed a response to the allegation that her Complaint is frivolous.

D. *Public Comments Offered at the Commission’s Meeting on May 24, 2022*

At the Commission’s meeting on May 24, 2022, members of the public, appeared by telephone and offered public comment regarding the above-captioned matter. More detailed information regarding the substance of those public comments can be found in the [minutes](#) from the Commission’s meeting on May 24, 2022.

III. Analysis

A. *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 Respondents’ conduct (whether individually and/or collectively) may have violated a Board policy and/or regulation and/or may have been contrary to the requirements mandated by *Rice v. Union Cty. Reg’l High Sch. Bd. of Educ.*, 155 *N.J. Super* 64 (App. Div. 1977), the Commission advises that such determinations fall well beyond the scope, authority, and jurisdiction of the Commission. Nevertheless, Complainant may be able to pursue each of those claims in the appropriate tribunal; however, the Commission is not the appropriate entity to adjudicate such issues. As such, those claims are dismissed.

B. *Alleged Code Violation*

Complainant has the burden to factually establish a violation of the Code in accordance with the standards set forth in *N.J.A.C.* 6A:28-6.4(a). A complaint must include, among other requirements, specific allegations and the facts supporting them which gave rise to the alleged violation(s) of the Act. *N.J.A.C.* 6A:28-6.3(b)(3). The Commission’s regulations authorize it, in its discretion, to dismiss a complaint when, on its face, it fails to allege facts sufficient to maintain a claim under the Act. *N.J.A.C.* 6A:28-10.2(a)(7); *N.J.A.C.* 6A:28-10.8(a)(5).

In the within matter, Complainant submits that, based on the conduct more fully detailed above, Respondents 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 Respondents failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondents brought about changes through illegal or unethical procedures.

Following a comprehensive review of the Complaint, the Commission finds that even if the facts as contended in the Complaint 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). In the absence of **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating or specifically finding that Respondents, either individually or collectively, violated a specific law, rule, or regulation when they engaged in any of the acts/conduct set forth in the Complaint, the Commission is compelled to find that the alleged violation of *N.J.S.A.* 18A:12-24.1(a) must be dismissed.

The Commission notes that, despite the offering of public comment at its meeting on May 24, 2022 the Commission's review of this matter was limited solely to the parties' written submissions.

IV. Request for Sanctions

At its meeting on May 24, 2022, the Commission considered Respondents' request that the Commission find the Complaint frivolous and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondents' 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 June 28, 2022, the Commission voted to find the Complaint not frivolous, and to deny the request for sanctions.

Notwithstanding its determination that the within matter is not frivolous, the Commission cautions Complainant, and others similarly situated, that the continued filings of Complaints that, on their face, fail to establish a violation of *N.J.S.A.* 18A:12-24 and/or *N.J.S.A.* 18A:12-24.1, may result in the Commission finding a future matter to be frivolous. Although the Commission can certainly understand and appreciate the issues that the community and the District

administration are reporting, the Commission cannot, and will not, allow individuals to repeatedly file Complaints that are without sufficient factual and/or evidentiary support.

V. Decision

Based on the foregoing, and because there is *currently* insufficient credible evidence to support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a), the Commission dismisses the above-captioned matter, pursuant to its authority as set forth in *N.J.A.C.* 6A:28-10.2(a)(7) and *N.J.A.C.* 6A:28-10.8(a), for failure to state a claim upon which relief could be granted. The Commission additionally finds that the Complaint is not frivolous and denies Respondents' request for sanctions.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondents 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: June 28, 2022

**Resolution Adopting Decision
in Connection with C95-21**

Whereas, at its meeting on May 24, 2022, the School Ethics Commission (Commission) considered the Complaint and the Answer to Complaint (Answer), including allegation of frivolous filing, submitted in connection with the above-referenced matter; and

Whereas, at its meeting on May 24, 2022, the Commission discussed, pursuant to its authority as set forth in *N.J.A.C.* 6A:28-10.2(a)(7) and *N.J.A.C.* 6A:28-10.8(a)(5), dismissing the alleged violation of *N.J.S.A.* 18A:12-24.1(a) for failure to state a claim upon which relief could be granted; and

Whereas, at its meeting on May 24, 2022, the Commission discussed, pursuant to its authority as set forth in *N.J.A.C.* 6A:28-10.2(a)(7) and *N.J.A.C.* 6A:28-10.8(a)(5), dismissing the above-captioned matter in its entirety; and

Whereas, at its meeting on May 24, 2022, the Commission discussed finding that the Complaint is not frivolous, and denying Respondents' request for sanctions; and

Whereas, at its meeting on June 28, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on May 24, 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 June 28, 2022.

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