

Before the School Ethics Commission
OAL Docket No.: EEC-01318-22
SEC Docket Nos.: C60-21, C68-21, C69-21, C71-21, C73-21, C74-21, C77-21,
C78-21, C80-21, and C81-21 (Consolidated)
Final Decision

**Ronald E. Hidalgo, Jessica Johnson, Christina N. Ramos, John Raftery, Jashaun Sadler,
Carolina Velez, Marly Gonzalez, Rafael Alfaro, Susan DeSantis, Edmond DeSantis, Janet
Malool, Elaine Marin, and Dawn Dwyer,**
Complainants

v.

Robert Thiemann,
Ridgefield Park Board of Education, Bergen County,
Respondent

I. Procedural History

The above-captioned consolidated matter arises from ten (10) separate but related Complaints that were filed with the School Ethics Commission (Commission) on various dates between October and November 2021. On October 24, 2021, a Complaint was filed by Ronald E. Hidalgo and docketed as C60-21; on November 1, 2021, a Complaint was filed by Jessica Johnson and docketed as C68-21; on November 2, 2021, a Complaint was filed by Christina N. Ramos and docketed as C69-21; on November 3, 2021, a Complaint was filed by John Raftery and docketed as C71-21; on November 4, 2021, a Complaint was filed by Jashaun Sadler and docketed as C73-21; on November 5, 2021, a Complaint was filed by Carolina Velez and docketed as C74-21; on November 10, 2021, a Complaint was filed by Marly Gonzalez and Rafael Alfaro and docketed as C77-21; on November 10, 2021, a Complaint was filed by Susan DeSantis,¹ Edmond DeSantis, and Janet Malool and docketed as C78-21; on November 16, 2021, a Complaint was filed by Elaine Marin and docketed as C80-21; and on November 16, 2021, a Complaint was filed by Dawn Dwyer and docketed as C81-21.

Although filed separately, the Complaints collectively averred that, based on the same set of facts and circumstances, Robert Thiemann (Respondent), a member of the Ridgefield Park Board of Education (Board), violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(c) of the Code of Ethics for School Board Members (Code).

Following receipt, the Commission served Respondent with a copy of each Complaint via electronic mail, thus notifying him that ethics charges had been filed against him, and that he had

¹ Complainants agreed that Ms. DeSantis would be designated and serve as the Lead Complainant in this consolidated matter.

twenty (20) days to file a responsive pleading.^{2,3} On November 19, 2021, and in connection with the matter docketed by the Commission as C60-21, Respondent filed an Answer to Complaint (Answer), which included an allegation of frivolous filing.

Shortly thereafter, and by electronic correspondence dated December 1, 2021, the Commission's staff advised the parties that, pursuant to its authority as set forth in *N.J.A.C.* 6A:28-6.6, the Commission determined to consolidate the matters docketed by the Commission as C60-21, C68-21, C69-21, C71-21, C73-21, C74-21, C77-21, C78-21, C80-21, and C81-21 as one matter. Following consolidation, and on December 16, 2021, Respondent submitted a singular Amended Answer for the consolidated matter, and it again included an allegation that the Complaints were frivolous. On January 14, 2022, Complainants filed a response to the allegation of frivolous filing.

The parties were subsequently notified by correspondence dated January 28, 2022, that the above-captioned matter would be discussed by the Commission at a special meeting on February 4, 2022. Following its special meeting on February 4, 2022, the Commission advised the parties that it voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing as a contested case, and to reserve its determination as to whether the Complaints were frivolous, and sanctions should be imposed. The Commission further advised that, at the OAL, Complainants would have the burden to prove the stated violations of *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(c) pursuant to the standards set forth in *N.J.A.C.* 6A:28-6.4.

At the OAL, the matter was assigned to the Honorable Kimberly A. Moss, Administrative Law Judge (ALJ Moss). *Initial Decision* at 1. On or about September 29, 2022, Respondent filed a motion for summary decision, and Complainants filed their opposition thereto on October 31, 2022. *Id.* at 2. Oral argument was conducted on February 8, 2023, and thereafter, the record closed. *Id.* On February 15, 2023, ALJ Moss issued an *Initial Decision* detailing her findings of fact, legal conclusions, and order granting Respondent's motion for summary decision. *Id.* at 6.

The Commission acknowledged receipt of ALJ Moss's *Initial Decision* on the date it was issued (February 15, 2023); therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was April 3, 2023.⁴ Prior to that date, the Commission

² In order to conduct business during the Coronavirus (COVID-19) pandemic, the Commission implemented an electronic filing system, which remains a permissible method by which the Commission and parties can effectuate service of process. Consequently, service of process was effectuated by the Commission through electronic transmission only.

³ On October 27, 2021, Respondent was served with the Complaint filed in connection with C60-21; on November 3, 2021, Respondent was served with the Complaint filed in connection with C68-21; on November 15, 2021, Respondent was served with the Complaints filed in connection with C69-21, C71-21, C73-21, C74-21, and C77-21; and on November 18, 2021, Respondent was served with the Complaints filed in connection with C78-21, C80-21, and C81-21.

⁴ Forty-five (45) days after February 15, 2023, is, technically, Saturday, April 1, 2023; by rule, and because April 1, 2023, is a Saturday, the deadline is extended until the next business day, which is Monday, April 3, 2023.

requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to review the full record. Pursuant to *N.J.S.A.* 52:14B-10(c) and *N.J.A.C.* 1:1-18.8, and for good cause shown, the Commission was granted an extension until May 18, 2023.

Following a discussion at its regularly scheduled meeting on March 21, 2023, during which the full record was reviewed, the Commission, at its regularly scheduled meeting on April 25, 2023, voted to adopt the findings of fact from ALJ Moss's *Initial Decision*; to adopt the legal conclusion that, based on the evidence presented, Complainants failed to prove that Respondent violated *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(c); and to adopt ALJ Moss's decision granting Respondent's motion for summary decision, and dismissing the above-captioned matter. Finally, and because it was not previously determined, the Commission also adopted a decision finding the Complaints were not frivolous, and denying Respondent's request for sanctions.

II. Initial Decision

Based on the parties' written submissions and oral argument, ALJ Moss issued the following *findings of fact*: Respondent was a member of the Board. *Id.* at 2. Dyan Thiemann is employed by the Ridgefield Park School District (District) as a Middle School Principal, and reports to the Superintendent. *Id.* On June 23, 2021, Respondent voted in the affirmative to suspend the Superintendent. *Id.* Although Complainants allege that Respondent "is married or engaged to" Dyan Thiemann, Respondent denies this assertion, and states "she is the ex-wife of his nephew." *Id.* Respondent further states he and Dyan Thiemann do not reside together; are not financially involved; do not share bills or bank accounts; and do not "have any financial [arrangement] of any kind." *Id.* In support of their claims, Complainants allege that Respondent voted to suspend the Superintendent "even after the Board's attorney...wrote that he should recuse himself." However, the letter from the Board attorney also stated, "the decision to recuse ... is totally in the discretion of [R]espondent" *Id.* at 2-3.

In the "Legal Analysis and Conclusion" section of her *Initial Decision*, ALJ Moss reviewed the standard for determining whether a matter may be decided by summary decision (*N.J.A.C.* 1:1-12.5) and concluded that, because there are "no material issue[s] of fact" in dispute, the matter was ripe for summary decision. *Id.* at 3-4. Based on the written record and the parties' oral arguments, ALJ Moss determined that, "[t]here was no evidence produced that any decision made by [R]espondent as a school board member was contrary to the educational welfare of the students or obstructed programs and policies designed to meet the students' needs" in violation of *N.J.S.A.* 18A:12-24.1(b). *Id.* at 4. ALJ Moss further concluded that Complainants failed to present evidence that Respondent took action to effectuate policies and plans without consulting those affected by such policies and plans, and no evidence that he took action that was unrelated to Respondent's duty to develop the general rules and principles that guide the management of the District; formulate the programs and methods to effectuate the goals of the school district or charter school; or ascertain the value or liability of a policy in violation of *N.J.S.A.* 18A:12-24.1(c). *Id.* at 4-5.

Because Complainants failed to satisfy their burden of proof and did not provide sufficient evidence to establish a violation of *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(c), ALJ Moss **ordered** that Respondent’s motion for summary decision “be and is hereby granted.” *Id.* at 5-6.

III. Exceptions

On February 28, 2023, Respondent advised, through counsel, that he would not be filing written exceptions to the *Initial Decision*. Notwithstanding this fact, he noted that Complainants’ allegations do not have “basis or merit,” and maintained that the allegations are frivolous.

In their written submission also dated February 28, 2023, Complainants take exception to the following from the *Initial Decision*:

- “Contrary to the ‘Facts’ found by the OAL,” they allege that Respondent was in a “long-term relationship” with Dyan Thiemann, and that he was her “significant other.”
- Respondent “never denies being in a ‘long-term relationship’” with Dyan Thiemann.
- ALJ Moss “incorrectly” stated, “...petitioners did not reference” *N.J.S.A.* 18A:12-24(b) in their Complaints, and note it is specifically alleged in “paragraph (2) of the Complaints.”
- In ruling on the motion for summary decision, ALJ Moss failed to consider Complainants’ opposition, in which two of the Complainants stated that they “personally witnessed ... Respondent giving an engagement ring to Dyan Thiemann.”
- ALJ Moss failed to consider the minutes from the June 28, 2017, Board meeting which specifically states, “Robert Thiemann is in a long-term relationship with Dyan Thiemann, who is employed by the Board as an [e]lementary [t]eacher”

Based on the foregoing, Complainants “respectfully request that the ... Commission find ‘there is indeed a genuine issue of fact, which can only be determined by an evidentiary proceeding,’ and consign the matter to a plenary hearing and appropriate sanctions.”

As of March 21, 2023, Respondent did not respond to the exceptions filed by Complainants.

IV. Analysis

Following receipt of an initial decision, the Commission “may enter an order or a final decision adopting, rejecting, or modifying” it. *N.J.A.C.* 1:1-18.6(a). The Commission is also authorized to “reject or modify conclusions of law, interpretations of agency policy, or findings of fact not relating to issues of credibility of lay witness testimony,” but “may not reject or modify any finding of fact as to issues of credibility of lay witness testimony unless it first

determines from a review of a record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record.” *N.J.A.C.* 1:1-18.6(b); *N.J.A.C.* 1:1-18.6 (c).

With the above in mind, and following a thorough, careful, and independent review of the record, the Commission finds an insufficient basis upon which to modify or to otherwise reject the findings of fact detailed in ALJ Moss’s *Initial Decision*. Furthermore, in the absence of sufficient credible factual evidence that Respondent willfully made a decision contrary to the educational welfare of children, or evidence that he took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing (*N.J.S.A.* 18A:12-24.1(b)), and/or took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondent’s duty to (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy (*N.J.S.A.* 18A:12-24.1(c)), the Commission agrees that the record supports ALJ Moss’s legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(c).

Although Respondent’s vote(s) on matters related to the Superintendent may have violated other provisions of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, because of the nature of his personal relationship with Dyan Thiemann, the Commission is constrained to review the Complaint as pled and cannot find a violation(s) of any provision of the Act unless it is set forth in the charging document. Moreover, despite Complainants’ argument in their exceptions, not one of the ten (10) Complaints submitted contend that Respondent violated *N.J.S.A.* 18A:12-24(b) (“No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others”) or *N.J.S.A.* 18A:12-24(c) (“No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family”). Instead, all ten (10) Complaints assert Respondent violated *N.J.S.A.* 18A:12-24.1(b) (“ I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing”) and *N.J.S.A.* 18A:12-24.1(c) (“I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them”). Consequently, the Commission’s review, and that of ALJ Moss, was limited to determining whether there was sufficient credible factual evidence to substantiate a violation of *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(c) and, based on the record, Complainants failed to satisfy their burden.

V. Request for Sanctions

At its meeting on March 21, 2023, and because it previously reserved its determination, the Commission considered Respondent's request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondent's argument, the Commission cannot find evidence that might show that Complainants filed their Complaints in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainants knew or should have known that the Complaints were 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 April 25, 2023, the Commission voted to find that the Complaints were not frivolous, and to deny the request for sanctions.

VI. Decision

Following its review, the Commission ***adopts*** the findings of fact from ALJ Moss's *Initial Decision*; ***adopts*** the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(c); and ***adopts*** the decision to dismiss the above-captioned matter. The Commission also voted to find that the Complaints were not frivolous, and to deny Respondent's request for sanctions.

Accordingly, the within decision is a final agency decision and is appealable only to the Superior Court-Appellate Division. *See, N.J.A.C.* 6A:28-10.11 and *New Jersey Court Rule* 2:2-3(a).

Robert W. Bender, Chairperson

Mailing Date: April 25, 2023

***Resolution Adopting Decision in Connection with
C60-21, C68-21, C69-21, C71-21, C73-21, C74-21, C77-21, C78-21,
C80-21, and C81-21 (Consolidated)***

Whereas, on or about February 4, 2022, the School Ethics Commission (Commission) transmitted the above-captioned consolidated matter to the Office of Administrative Law (OAL) for a plenary hearing as a contested case; and

Whereas, the Honorable Kimberly A. Moss, Administrative Law Judge (ALJ Moss) issued an *Initial Decision* dated February 15, 2023; and

Whereas, in her *Initial Decision*, ALJ Moss issued findings of fact and found that, based on the evidence presented, Complainants failed to prove that Respondent violated *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(c); and

Whereas, Complainants filed exceptions to ALJ Moss's *Initial Decision*, but Respondent did not file a response to Complainants' exceptions; and

Whereas, at its meeting on March 21, 2023, the Commission reviewed and discussed the full record; and

Whereas, at its meeting on March 21, 2023, the Commission discussed adopting the findings of fact from ALJ Moss's *Initial Decision*; adopting the legal conclusion that, based on the evidence presented, Complainants failed to prove that Respondent violated *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(c); and adopting ALJ Moss's decision to dismiss the above-captioned consolidated matter; and

Whereas, at its meeting on March 21, 2023, and because it was not determined previously, the Commission discussed finding the Complaints not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on April 25, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on March 21, 2023; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its regularly scheduled meeting on April 25, 2023.

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