
JANINE WALKER CAFFREY

v.

**JANELLE RODRIGUEZ,
PERTH AMBOY BOARD
OF EDUCATION,
MIDDLESEX COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No. C47-12

**DECISION ON
MOTION TO DISMISS**

PROCEDURAL HISTORY

This matter arises from a complaint filed on October 23, 2012 by complainant, Janine Walker Caffrey against respondent, Janelle Rodriguez, a member of the Perth Amboy Board of Education (Board), alleging violations of the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. The complaint specifically alleged that the respondent violated N.J.S.A. 18A:12-24(b) of the Act, as well as N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics for School Board Members (Code).

On November 12, 2012, the respondent requested and received an extension of time until December 13, 2012 to file a responsive pleading. A Motion to Dismiss in lieu of an answer was filed on December 13, 2012. The respondent therein alleged that the complaint was frivolous. The complainant was accorded an opportunity to respond to the claim of frivolousness, and she did so on January 11, 2013.

By letter dated February 1, 2013, the complainant and the respondent were notified that the Commission would review this matter at its meeting on February 19, 2013 in order to make a determination on respondent’s Motion to Dismiss, in accordance with N.J.A.C. 6A:28-8.3, as well as a determination on the allegation of frivolousness.

At its meeting on February 19, 2013, the Commission voted to grant the respondent’s Motion to Dismiss the complaint for failure to state a claim upon which relief could be granted. The Commission further found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2.

SUMMARY OF THE PLEADINGS

The complainant asserts that on September 12, 2012, the respondent approached the complainant to discuss a program for which she sought funding for her employer, hoping to establish a partnership with the Perth Amboy Public Schools. At the same time, her employer was actively seeking a new contract and revenues from the Board thereby creating a conflict of interest. The complainant alleges that the respondent failed to reveal the conflict on September

22, 2012 when the Board invoked the Doctrine of Necessity during a vote to place the complainant on administrative leave and not renew her contract. The complainant asserts this to be a violation of N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e) and (f) of the Code.

Respondent argues that Complainant has not demonstrated any action by respondent that compromised the Board, conferred a benefit upon her or others nor has she explained how this conflict relates to the vote to place the complainant on administrative and not renew her contract.

ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the complainant and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. In order to prevail on a Motion to Dismiss, the complainant must allege facts, which if true, would be sufficient to support a finding in the complainant's favor. Thus, the question before the Commission was whether the complainant alleged facts which, if true, could support a finding that the respondent violated N.J.S.A. 18A:12-24(b) as well as N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics for School Board Members.

The Commission first considers the allegation that the respondent violated N.J.S.A. 18A:12-24(b), which provides:

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;

In order to credit this allegation, the Commission must find that the within complaint alleges sufficient facts which, if true, could support a finding that the respondent used, or attempted to use, his position to secure some *unwarranted* privilege, advantage or employment for himself, members of his immediate family or others. The Commission has found that a school official has used his/her position in violation of N.J.S.A. 18A:12-24(b) when a Board member released staff email addresses in his campaign literature before the Board discussed and approved releasing them to the public (I/M/O Raymond Bonker, Lenape Valley Regional Bd. of Ed., Sussex County, C11-97 (March 30, 1998), Commissioner of Education Decision No. 225-98SEC, decided May 22, 1998); when a Board member asked the Business Administrator to try to obtain an unsecured loan from the bank that the board used as its depository (I/M/O Lawrence James, Chesilhurst Bd. of Ed., Camden County, C10-98 (December 15, 1998), Commissioner of Education Decision No. 30-99SEC decided February 9, 1999); when a Board member acquired mailing labels containing student information that were used to send mailings for her campaign, (I/M/O Michele Russo, Hoboken Bd. of Ed., Hudson County, C18-01 (February 26, 2002) Commissioner of Education Decision No. 167-02SEC, decided April 18, 2002); when a Board member endorsed a candidate for the municipal council through a mailing of letters to the community where the letterhead, envelope and contents of the letter could mislead recipients to believe that the endorsement was made in the board member's official capacity as board president (I/M/O Alphonse A. DeMao, Belleville Board of Education, Warren County, C09-04,

(September 30, 2004), Commissioner Decision No. 464-04SEC, decided November 17, 2004); and where a Board member posted online information about monies owed by a parent to the school district, where the parent was also a political opponent (I/M/O Jose Ybarra, Passaic City Bd. of Ed., Passaic County, C20-09 (October 27, 2009), Commissioner of Education Decision No. 410-09, decided December 14, 2009). However, the Commission has declined to find a violation of N.J.S.A. 18A:12-24(b) where the school official did not use any school property or personnel to carry out her support (Carol Ferguson v. Dr. Janice Fipp, et al., Northfield Board of Education, Atlantic County, C12-09 (March 23, 2010)).

The Commission determines that the complainant has failed to show that the respondent intended to do any more than to share information about the loss of services in the community and point out the impact that loss would have on the families in the district. The Code obligates a Board member, such as the respondent, to do just that, pursuant to N.J.S.A. 18A:12-24.1(j). This subsection provides:

I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

Consequently, the Commission finds that the facts in the complaint are insufficient to support a finding that the respondent used, or attempted to use, her official position so as to implicate this provision, let alone that the respondent used or attempted to use her official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others in violation of N.J.S.A. 18A:12-24(b).

The Commission next considers the complainant's allegation that the respondent violated N.J.S.A. 18A:12-24.1(e), which provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board. N.J.S.A. 18A:12-24.1(e)

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

The Commission finds that the complainant fails to articulate facts, which would support a conclusion that the respondent took private action or made personal promises, which had the potential to compromise the board. Moreover, the Commission also finds that the facts, as alleged by the complainant, actually demonstrate that the respondent acted appropriately and within her duties under the Code by bringing the problem or concern to the Superintendent for her to solve.

Finally, the Commission considers the complainant's allegation that the respondent violated N.J.S.A. 18A:12-24.1(f), which provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

To support such a finding, Commission regulations require:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(f) shall include evidence that the respondent(s) took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend. N.J.A.C. 6A:28-6.4(a)6.

The Commission has determined that the complaint fails to provide any facts that, if true, would prove that the respondent took action at the request of some political party or organization, which sought a benefit or an advantage. Moreover, the Commission finds that the complainant inadequately demonstrates how the putative conflict of interest, created by her employment, would prohibit the respondent from voting on all issues involving the complainant's position.

Accordingly, based on the foregoing and conceding all inferences to the complainant, the Commission grants respondent's Motion to Dismiss this complaint against her for failure to state a claim upon which relief could be granted.

REQUEST FOR SANCTIONS

The respondent alleged that the complaint herein is frivolous. At its meeting on February 19, 2013, the Commission considered the respondent's request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence, which might show that the complainant filed the complaint in bad faith solely for the purpose of harassment, delay, or malicious injury. The Commission also has no information to suggest that the complainant 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, the Commission finds that the complaint is not frivolous and denies the respondent's request for sanctions against the complainant.

DECISION

Based on the foregoing, the Commission grants the respondent's Motion to Dismiss the complaint in its entirety. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender
Chairperson

Mailing Date: March 20, 2013

Resolution Adopting Decision – C47-12

Whereas, the School Ethics Commission has considered the complaint, the Motion to Dismiss filed on behalf of respondent and the complainant's reply thereto; and

Whereas, at its meeting on February 19, 2013, the Commission granted the respondent's Motion to Dismiss in its entirety and also found that the complaint was not frivolous; and

Whereas, the Commission has reviewed and approved the decision memorializing said action;

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 March 19, 2013.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission