
COURTNEY L. WHITE

v.

LISA M. SAVOIA, ED.D.,
KEYPORT BOARD OF EDUCATION,
MONMOUTH COUNTY

BEFORE THE SCHOOL
ETHICS COMMISSION

DOCKET NO.: C47-17

DECISION ON
MOTION TO DISMISS

I. PROCEDURAL HISTORY

This matter arises from a Complaint filed on May 11, 2017, by Courtney L. White (Complainant), alleging that Lisa M. Savoia, Ed.D. (Respondent), a school official employed by the Keyport Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. More specifically, the Complaint alleges that Respondent violated N.J.S.A. 18A:12-24(b).

On May 15, 2017, the Complaint was sent to Respondent, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to answer the Complaint. On June 21, 2017, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and alleged that the Complaint was frivolous. Complainant filed a written response to the Motion to Dismiss and the allegation of a frivolous filing on July 5, 2017.

The parties were notified by correspondence dated July 17, 2017, that this matter would be placed on the Commission's agenda for its meeting on July 25, 2017, in order to make a determination regarding the Motion to Dismiss and the allegation that the Complaint is frivolous. At its meeting on July 25, 2017, the Commission considered Respondent's Motion to Dismiss and the response thereto; and, at its meeting on August 22, 2017, the Commission voted to grant the Motion to Dismiss and to find the Complaint not frivolous for the reasons more fully discussed below.

II. SUMMARY OF THE PLEADINGS

A. The Complaint

Complainant (a Board member) alleges that on or before October 15, 2014, the Board decided to change from a "multiple committee format" to a "committee of the whole" because, with the multiple committee format, Board members were asked to vote on issues/matters without sufficient information.

At the January 18, 2017, Board meeting, Respondent (the Superintendent), informed the Board she would be proceeding with strategic planning meetings with a group of "committees" that she put together. Respondent had previously informed individual Board members that she would be reaching out to the Keyport community to pull together a list of stakeholders on "committees" to conduct strategic planning for the Board. Complainant informed Respondent he

was uncomfortable with this action, as strategic planning falls under the purview of the Board and he was concerned that the Board was abdicating its responsibility to a group of unelected citizens.

At the March 8, 2017, Board meeting, Respondent provided the Board with an update on the work of her strategic planning committees, i.e., they had been meeting, working on goals, and preparing vision and mission statements for the District. Complainant again reiterated his concern regarding an unelected group of people, working under the Superintendent's direction, making plans and decisions on behalf of the District without the Board's direct knowledge and input.

On May 1, 2017, Respondent's office emailed the Board an agenda and supporting documents for the upcoming meeting, which included a policy for a first reading. The policy was the mission statement created by Respondent's committees. Complainant then asked the Superintendent to provide him, and the other members of the Board, with information about the committees (i.e., the names of the committees, the names of the individuals on those committees, etc.). The Superintendent provided the information requested, and the names of the committees included, among others, the Education Committee and the Finance/Facilities Committee.

Based on the above, Complainant alleges Respondent violated N.J.S.A. 18A:12-24(b) because Respondent unilaterally and without explicit authorization from the Board, commissioned "committees" to undertake the work of the Board; in addition, because the Superintendent, in her official capacity, created committees to carry out the work of the Board, it resulted in an "unwarranted privilege that she granted herself." Complainant maintains that, in so acting, Respondent knowingly overreached and exceeded her authority in violation of N.J.S.A. 18A:12-24(b).

B. Motion to Dismiss and Allegation of Frivolous Filing

Following receipt of the Complaint, Respondent filed a Motion to Dismiss, and alleged that the Complaint is frivolous. In her Motion to Dismiss, Respondent argues that her duties and responsibilities require her to: "(i) [p]rovide leadership in the implementation of the district's vision, mission, and goals" and "(ii) [p]repare and recommend short and long range plans for board approval and implement those plans when approved." On August 17, 2016, the Board approved a motion which included, as a District level goal, "create a strategic plan." Respondent argues she was the "leader" in this process, and that she provided the Board with a wealth of information about how she planned to implement this process, and also regularly provided updates to the Board. She also asserts that Board members participated on the committees that she created.

Based on the above, Respondent argues she has not violated the Act, and that she did not use her position to secure an unwarranted privilege or benefit. She further argues: the Board approved the strategic planning process; the Board was informed about the status throughout; and individual Board members participated in various strategic planning committees. Respondent also argues that Complainant has failed to articulate how the adoption of the policy violates, or would violate, N.J.S.A. 18A:12-24(b); how the formation of the committees resulted in an unwarranted privilege to Respondent; and how Respondent overreached her authority.

Finally, Respondent alleges that the Complaint is frivolous because the Complainant did not and could not supply any evidence that Respondent received or secured some unwarranted privilege for herself. Respondent argues that Complainant knew or should have known, as a trained Board member, that Respondent, in her capacity as the Superintendent, has the responsibility to implement decisions made by the Board, including strategic planning. Respondent also argues a reasonable basis does not exist under the law for Complainant to allege that Respondent violated the Act, and the Complainant's allegations cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. Respondent requests that the Commission sanction Complainant and impose a five hundred dollar (\$500.00) fine.

For the reasons set forth above, Respondent argues that the Complaint should be dismissed, and the allegations deemed frivolous.

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

In response to Respondent's Motion to Dismiss and allegation of a frivolous filing, Complainant reiterates his position that Respondent knowingly overstepped her authority and, in doing so, violated N.J.S.A. 18A:12-24(b) because Respondent did not have the authority to form official committees to carry out the work of the Board "when" the Board itself had already officially eliminated individual committees and was operating as a committee of the whole. Complainant argues that Respondent's decision to form committees that were not officially sanctioned by the Board, and did not have clear/official Board oversight, effectively rendered the Board's decision to move to a committee of the whole null and void. As for the frivolous allegation, Complainant argues it cannot be frivolous if he is merely seeking redress for an action by a school official that has the potential to harm the students of the school district.

III. ANALYSIS

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, in accordance with N.J.A.C. 6A:28-8.1 et seq. Thus, the question before the Commission is whether Complainant has alleged facts which, if true, could support a finding that Respondent violated N.J.S.A. 18A:12-24(b).

Allegation of Prohibited Act

Complainant asserts that Respondent violated N.J.S.A. 18A:12-24(b) of the Act. This provision provides:

- 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;

In order to credit the allegation of a violation of N.J.S.A. 18A:12-24(b), the Commission must find evidence that Respondent used or attempted to use her official position to secure unwarranted privileges, advantages or employment for herself, a member of her immediate family, or an “other.” After review, the Commission has determined that the Complaint fails to articulate any facts which, if true, could possibly demonstrate a violation of N.J.S.A. 18A:12-24(b). Although Complainant did not necessarily agree with the Superintendent’s approach to fulfilling her duties and responsibilities, all of her actions were undertaken pursuant to her contractual obligations and, more specifically, with the Board’s approval. Again, although Complainant did not necessarily approve of her plan to rely on the work of committees, Complainant’s recourse was to find a majority of the Board who agreed with his position, and to oppose the action of the Superintendent. Respondent’s actions were not completed in a vacuum, but rather with the full knowledge, and support, of the Board. In addition, Complainant did not provide any facts to demonstrate that Respondent received an *unwarranted* privilege, advantage, or employment because her contract specifically provided her with the authority, i.e., strategic planning, that Complainant takes issue with here. Without facts demonstrating that Respondent used her official position, as Superintendent, to secure an identified unwarranted privilege, advantage, or employment, there is no evidence to support a violation of N.J.S.A. 18A:12-24(b).

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that Complainant has not alleged any facts which, if true, could support a finding that Respondent violated N.J.S.A. 18A:12-24(b) of the Act. Therefore, the Commission grants Respondent’s Motion to Dismiss in its entirety.

IV. REQUEST FOR SANCTIONS

At its meeting on July 25, 2017, 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 which might show that the 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, the Commission finds that the Complaint is not frivolous, and denies Respondent’s request for sanctions.

V. DECISION

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 in its entirety, and the Complaint is not frivolous.

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, 2017

RESOLUTION ADOPTING DECISION – C47-17

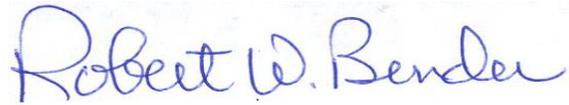
Whereas, at its meeting on July 25, 2017, the School Ethics Commission (Commission) considered the Complaint, Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation that the Complaint is frivolous, and the response to the Motion to Dismiss and allegation of frivolous filing; and

Whereas, at its meeting on August 22, 2017, the Commission voted to grant Respondent's Motion to Dismiss; and

Whereas, at its meeting on August 22, 2017, the Commission voted to find the Complaint not frivolous; and

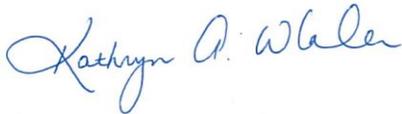
Whereas, at its meeting on August 22, 2017, the Commission voted to approve the within decision; and

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.



Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on August 22, 2017.



Kathryn A. Whalen, Director
School Ethics Commission