



## II. SUMMARY OF THE PLEADINGS

### A. The Complaint

In Count 1, Complainant alleges that Respondent McDermott, the Board President and a police dispatcher with the North Arlington Police Department (NAPD), “routinely” wears his police dispatcher uniform while conducting both public and executive session Board meetings. Complainant complained about this to the Board in executive session, and was told by the Superintendent that the Board “did not see the conflict,” and suggested that he (Complainant) file a complaint with the NAPD. Complainant did file a complaint with the NAPD, and was advised, by correspondence from the Chief of Police dated September 12, 2017, that Respondent McDermott had violated the NAPD’s policy, and was being disciplined. Based on these facts, Complainant alleges that Respondent McDermott violated N.J.S.A. 18A:12-24(a) because, by wearing his uniform to public and executive session Board meetings, he created “a conflict in the proper discharge of his duties.”

In Count 2, Complainant alleges that, by “allowing” Respondent McDermott to wear his police dispatcher uniform while conducting both public and executive session Board meetings, action that was later deemed to be a violation of the NAPD’s policy (and resulted in discipline to Respondent McDermott), Respondent Yurchak violated N.J.S.A. 18A:12-24(a) and N.J.S.A. 18A:12-24.1(a) because he created “a conflict in the proper discharge of his duties in the public interest.”

In Count 3, Complainant alleges that while Respondent McDermott was working as a police dispatcher for the NAPD, he was contacted by the building principal about an assault against a student (Complainant’s minor child) by a staff member. According to Complainant, Respondent McDermott “did not follow Police procedure and send an officer to obtain a report,” and instead “used his job as a police dispatcher to cover up an incident that could have had a negative impact on the district.” Based on these facts, Complainant alleges that Respondent McDermott violated N.J.S.A. 18A:12-24(a). Complainant further contends that Respondent McDermott violated N.J.S.A. 18A:12-24.1(b) because he failed to make a decision with the welfare of the children in mind when he chose not to send a police officer to the school to investigate the reported assault. Complainant also alleges that Respondent McDermott violated N.J.S.A. 18A:12-24(b) because he used his position as Board President and as a police dispatcher for the NAPD to “shield” the staff member from criminal and disciplinary charges. Finally, he claims that Respondent McDermott violated N.J.S.A. 18A:12-24.1(j) because, instead of referring the complaint/issue to the Superintendent, he acted on the complaint himself and ultimately chose not to send a police officer to the school. Complainant indicates that the “internal affairs division of the NAPD” advised him, in correspondence dated September 12, 2017, that Respondent McDermott’s actions violated the NAPD’s policy.

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

Upon receipt of the Complaint, Respondents filed a Motion to Dismiss, and also argue that the Complaint is frivolous. As an initial matter, Respondents argue that the Complaint is

time barred and should be dismissed. In this regard, Respondents contend that the allegations made in Count 1 and Count 2 occurred on April 24, 2017, and/or April 27, 2017, and the allegations in Count 3 occurred on April 13, 2017; therefore, because the Complaint was not filed until April 23, 2018, approximately one (1) year later, the Complaint is untimely and should be dismissed.

If the Commission does not find the Complaint untimely, regarding Count 1, Respondent McDermott denies that wearing his daytime work clothes to a Board meeting is either a professional activity or in substantial conflict with the discharge of his duties as a Board member. He further argues that working as a police dispatcher is not a professional activity that substantially conflicts with the proper discharge of his duties, and that being employed by the local police department while simultaneously serving as a Board member is not a conflict of interest. Therefore, Respondent Mc Dermott argues that there are insufficient facts to demonstrate he violated N.J.S.A. 18A:12-24(a), and this Count should be dismissed.

As for Count 2, Respondent Yurchak argues that, in addition to the points raised by Respondent McDermott for Count 1, there is nothing in N.J.S.A. 18A:12-24(a) which requires the superintendent to police what a Board member wears to a Board meeting; therefore, this allegation must be dismissed. Further, because Respondent Yurchak is not a Board member, the allegation that he violated N.J.S.A. 18A:12-24.1(a) was improperly pled, and must be dismissed.

Regarding Count 3, Respondent McDermott argues: as to the alleged violation of N.J.S.A. 18A:12-24(a), even if he violated some unidentified police department policy, Complainant has failed to set forth how that interfered with the proper discharge of his duties as a Board member; with regard to the alleged violation of N.J.S.A. 18A:12-24.1(b) and N.J.S.A. 18A:12-24(b), whether Respondent McDermott sent a police officer to the school while he was working as a police dispatcher is not governed by the Act and, moreover, there is no indication how Respondent McDermott failed to make decisions as a Board member for the educational welfare of the children, or that he used his official position as a Board member to secure a privilege or advantage for himself or his family; and regarding the alleged violation of N.J.S.A. 18A:12-24.1(j), there is no evidence that a complaint was made by a member of the public, or that Respondent McDermott attempted to unilaterally resolve a complaint made by a member of the public. Therefore, Respondent McDermott argues that this Count should be dismissed.

Finally, Respondents argue that Complainant “obviously” knew of the alleged ethical violations in April 2017, but “sat on his rights for an entire year,” and then commenced a time-barred action in bad faith. Respondents also argue that Complainant knew, or should have known, that the Complaint is without reasonable basis in law. Therefore, Respondents argue that the Complaint is frivolous, and Complainant should be fined.

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

In his response to the Motion to Dismiss and allegation of frivolous filing, Complainant argues that his Complaint is “neither frivolous nor overdue and without malice.” Complainant states that his Complaint was filed “due to the improper handling of an assault” on his minor child. Although he acknowledges that the issue was brought to the attention of the Board during

an executive session meeting in “April of 2017,” it was not a “proven fact” that Respondent McDermott “failed to act and attempted to cover up an incident that would paint the district in an unfavorable light” until he received correspondence from the NAPD dated September 12, 2017. Complainant argues that he filed his Complaint with the Commission within one hundred eighty (180) days of receipt of correspondence from the NAPD and, therefore, his Complaint was timely filed. Complainant additionally argues that if he had filed his Complaint prior to receiving the determination from the NAPD, his Complaint could have been deemed frivolous.

As for other operative dates in this matter, Complainant notes that the assault on his minor child occurred on February 23, 2017, but the building principal did not conduct an investigation until after he (Complainant) sent her an email about the incident. On April 24, 2017, Complainant met with the Board in executive session to discuss his concerns with Respondent McDermott wearing his police uniform and badge during Board meetings. On May 4, 2017, Complainant received notification from the Board that the assault, and subsequent investigation, “was handled properly.”<sup>1</sup>

Complainant finally argues that, as a police dispatcher, Respondent McDermott is “tasked with sending the appropriate [p]olice response to situations that occur in the school.” In the course of those duties, he “chose to minimize an assault by a staff member and not send the appropriate immediate response to a crime being committed.” According to Complainant, this inaction “was taken to cover up the incident due to the fact that [Complainant has] been known to advocate for [his minor child].”

### **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 alleged facts which, if true, could support a finding that Respondents violated the Act as set forth in Counts 1, 2, and 3 of his Complaint.

#### **B. Timeliness Issue / Statute of Limitations**

In their Motion to Dismiss, Respondents preliminarily argue that because the Complaint was filed on **April 23, 2018**, and the events which formed the basis of the alleged violations occurred on April 24, 2017, and/or April 27, 2017, for Count 1 and Count 2, and occurred on April 13, 2017, for Count 3, the Complaint is untimely, and should be dismissed. Complainant counters that because he did not “know” that Respondent McDermott violated NAPD policy

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<sup>1</sup> Respondents filed a “brief reply” to Complainant’s filing. In this brief reply, which is not permitted or authorized by the Commission’s regulations, Respondents argue that even if September 12, 2017, is the date that Complainant “knew” that Respondent McDermott did not perform his duties as required by NAPD policy, his Complaint was still untimely because it was not filed until April 23, 2018 (and the deadline would have been March 12, 2018).

until he received correspondence from the NAPD dated September 12, 2017, his Complaint was timely filed with the Commission.

The Commission's regulations provide a one hundred eighty (180) day limitation period for filing a complaint. More specifically, N.J.A.C. 6A:28-6.5(a) provides, in relevant part:

- (a) Complaints shall be filed within 180 days of notice *of the events which form the basis of the alleged violation(s)*. A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) *when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known* (emphasis added).

As applied here, although Complainant did not file a Complaint that was deemed compliant with the Commission's regulations (N.J.A.C. 6A:28-6.3) until April 23, 2018, he filed his first deficient Complaint on March 5, 2018, his second deficient Complaint on March 26, 2018, and his third deficient Complaint on April 2, 2018; therefore, and because Complainant's amendments relate back to the date his Complaint was first received by the Commission, the filing date in this matter is **March 5, 2018**, and not April 23, 2018, as argued by Respondents. See N.J.A.C. 6A:28-6.7(b).

Pursuant to N.J.A.C. 6A:28-6.5(a), the Commission must determine when Complainant knew of the events which form the basis of his Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events. In its review of the pleadings, the Commission determines that Complainant knew of the events which form the basis of his Complaint as follows: with regard to Count 1, on April 27, 2017; regarding Count 2, on April 24, 2017; and as for Count 3, on May 4, 2017 (the date he learned that the Board had determined its investigation had been conducted appropriately). Although Complainant would like to rely on September 12, 2017, as the date he "knew" of the events forming the basis for his Complaint, reliance on this date, and this correspondence, is misplaced.

In order to rely on September 12, 2017, as the starting point for the one hundred eighty (180) day statute of limitations, Complainant needed to argue that an appropriate Respondent violated N.J.S.A. 18A:12-24.1(a), and needed to demonstrate that the correspondence from the NAPD is a "final decision from any court of law or administrative agency of this State demonstrating that a 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 a respondent(s) brought about changes through illegal or unethical procedures." N.J.A.C. 6A:28-6.5. Although Complainant did argue that Respondent Yurchak violated N.J.S.A. 18A:12-24.1(a), Respondent Yurchak is not a Board member and, therefore, not subject to the provisions of the Code of Ethics for School Board Members, which includes N.J.S.A. 18A:12-24.1(a). Even if Complainant had argued that Respondent McDermott, a Board member, violated N.J.S.A. 18A:12-24.1(a), there is nothing in the correspondence from the NAPD indicating what conduct was investigated, what conduct violated the NAPD's rules and regulations, and what specific rule(s) and/or regulation(s) was violated. For this reason, and the fact that the NAPD is not a

court of law or administrative agency of the State, the correspondence from the NAPD would not be sufficient to constitute a final decision from a court of law or administrative agency of this State.

With May 4, 2017, as the starting point for the one hundred eighty (180) day statute of limitations, Complainant had until October 31, 2017, to file his Complaint with the Commission. Because the Complaint was not received by the Commission until March 5, 2018, more than four (4) months after the one hundred eighty (180) day limitation period, the Commission finds that the Complaint is untimely, and time barred.

The Commission recognizes that limitation periods of this type serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. Kaprow v. Berkley Township Bd. of Educ., 131 N.J. 571, 587 (1993). Thus, “notice of the alleged violation” must be interpreted in a manner that anticipates the reasonable diligence of complainant(s). In addressing potential violations of the Act, the Commission must balance the public’s interest in knowing of potential violations against the important policy of repose and a respondent’s right to fairness. The time limitations set forth in the regulations must be enforced if the Commission is to operate in a fair and consistent manner. Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County, C19-03 (June 24, 2003). Although the Commission recognizes that the regulatory time period may be relaxed, in its discretion, in any case where strict adherence may be deemed inappropriate or unnecessary or may result in injustice, it finds no extraordinary circumstances in this matter that would compel relaxation. This is especially true here because the complained of conduct relates to actions (or inactions) that Respondent McDermott made as a police dispatcher in connection with his employment, and not as a Board member. Accordingly, the Complaint is dismissed as untimely, and time barred.

Notwithstanding the above, the Commission is not insensitive to the allegations raised by Complainant. Whenever there is a belief that a school official may have violated the Act, it is incumbent upon the filer to ensure that a timely Complaint is filed, and that the Complaint clearly explains how a respondent(s)’s actions, in their capacity as a school official(s), may have violated the Act. If, and when appropriate, the Commission has the authority to hold a matter in abeyance pending the resolution of a related proceeding.

#### **IV. REQUEST FOR SANCTIONS**

At its meeting on July 24, 2018, 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 which 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, the Commission finds that the Complaint is not frivolous, and denies Respondents’ request for sanctions.

## V. DECISION

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission grants the Motion to Dismiss in its entirety based on untimeliness. The Commission also 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).

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Robert W. Bender, Chairperson

Mailing Date: August 29, 2018

**RESOLUTION ADOPTING DECISION IN  
CONNECTION WITH C18-18**

**WHEREAS**, at its meeting on July 24, 2018, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and the Response to the Motion to Dismiss and allegation of frivolous filing, filed in connection with this matter; and

**WHEREAS**, at its meeting on July 24, 2018, the Commission discussed granting the Motion to Dismiss in its entirety due to untimeliness, and dismissing this matter; and

**WHEREAS**, at its meeting on July 24, 2018, the Commission discussed finding the Complaint not frivolous, and denying Respondents' request for sanctions; and

**WHEREAS**, at its meeting on August 28, 2018, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 24, 2018; and

**NOW THEREFORE BE IT RESOLVED**, that the Commission hereby adopts the decision and directs its staff to notify all parties of its decision.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on August 28, 2018.

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Kathryn A. Whalen, Director  
School Ethics Commission