
**KATHRYN VAN BUREN, PATRICK
MCHALE, AND CHARLES SEVERINO,**

v.

**LISA KOHLES, EILEEN LEWIS,
AMANDA MONTGOMERY, JAMES
MOORE, MAUREEN MILLER, AND
JACQUELINE DEVORE,
BOGOTA BOARD OF EDUCATION,
BERGEN COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO.: C30-18

**DECISION ON
MOTION TO DISMISS**

I. PROCEDURAL HISTORY

This matter arises from a Complaint filed on May 17, 2018, by Kathryn Van Buren, Patrick McHale, and Charles Severino (Complainants), members of the Bogota Board of Education (Board), alleging that Lisa Kohles, Eileen Lewis, Amanda Montgomery, James Moore, Maureen Miller, and Jacqueline DeVore (Respondents), also members of the Board, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. More specifically, the Complaint alleges that Respondents violated N.J.S.A. 18A:12-24.1(a) of the Code of Ethics for School Board Members (Code).

On May 22, 2018, the Complaint was sent to Respondents, via regular and certified mail, notifying them that charges were filed against them with the School Ethics Commission (Commission), and advising that they had twenty (20) days to file a responsive pleading. On June 22, 2018, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also allege that the Complaint is frivolous. On July 9, 2018, Complainants filed a Response to Respondents' Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated July 16, 2018, that this matter would be placed on the Commission's agenda for its meeting on July 24, 2018, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on July 24, 2018, the Commission considered the filings in this matter and, at its meeting on August 28, 2018, the Commission voted to grant the Motion to Dismiss in its entirety because the Commission does not have jurisdiction to adjudicate an alleged violation of N.J.S.A. 18A:17-17 (Count 1), Complainants have not alleged any facts which, if true, could support a finding that Respondents violated N.J.S.A. 18A:12-24.1(a) as alleged in Count 1, and Complainants voluntarily dismissed/withdrew the allegations in Count 2. The Commission also voted to find the Complaint not frivolous, and to deny Respondents' request for sanctions.

II. SUMMARY OF THE PLEADINGS

A. The Complaint

In Count 1, Complainants allege that, at a Board meeting on May 15, 2018, Respondents appointed a non-certificated person (D. Kennedy) to the position of Superintendent, with such appointment to become effective July 1, 2018. Complainants contend that at a “previous” closed session, they advised Respondents that a non-certificated person could not be appointed to this position. In addition, Respondents also presented Kennedy with an employment contract to sign before he was formally appointed to the position of Superintendent, and before he received the appropriate certification for the position. Based on these facts, Complainants allege that Respondents violated N.J.S.A. 18A:12-24.1(a) and N.J.S.A. 18A:17-17.

In Count 2, Complainants contend that, also at a Board meeting on May 15, 2018, Respondents voted to appoint an individual to a teaching position for the following school year; however, the individual appointed was the spouse of Respondent DeVore. Although Respondent DeVore initially voted “yes” to her spouse’s employment, she later changed her vote, with permission from the other members of the Board, from “yes” to “abstain.” Based on these facts, Complainants allege that Respondents violated N.J.S.A. 18A:12-24.1(a), Board policy, and N.J.A.C. 6A:23A-6.2.

B. Motion to Dismiss and Allegation of Frivolous Filing

Upon receipt of the Complaint, Respondents filed a Motion to Dismiss, and also allege that the Complaint is frivolous. In response to Count 1, Respondents argue that, at the Board meeting on May 15, 2018, Kennedy’s appointment was approved by a majority of the Board, but the appointment was expressly noted as “pending approval of the Executive County Superintendent of Schools [ECS].” In addition, Kennedy received his school administrator certificate in the first week of June 2018, and his appointment was approved by the ECS on June 15, 2018. Regardless, Respondents argue that this Count must be dismissed because the Complaint is “utterly devoid of any reference to, or copy of, any...court or agency decision, as [is] required by N.J.A.C. 6A:28-6.4(a)(1)” to prove a violation of N.J.S.A. 18A:12-24.1(a). Even if such a decision existed, liability would fall on the Board, and not on individual Board members (Respondents). As for the alleged violation of N.J.S.A. 18A:17-17, Respondents argue that Kennedy received the appropriate certification prior to the start of his employment and, more importantly, the Commission does not have jurisdiction to address this allegation. Therefore, Respondents contend that Count 1 should be dismissed.

As for Count 2, Respondents argue that as in Count 1, Complainants have not provided the factual evidence necessary to sustain an alleged violation of N.J.S.A. 18A:12-24.1(a). In addition, Respondents counter that the Commission does not have jurisdiction to consider the alleged violations of Board policy and/or N.J.A.C. 6A:23A-6.2. For these reasons, Respondents argue that Count 2 should be dismissed.

Finally, Respondents allege the Complaint was filed in bad faith, and solely for the purpose of harassment, namely because Complainants’ candidate of choice for Superintendent

did not receive approval by a majority of the Board. In addition, Respondents argue that Complainants “certainly knew,” or should have known, that the Complaint was without reasonable basis in law since they are Board members and had access to the information regarding the conditions of Kennedy’s appointment; therefore, Respondents request that the Complaint be dismissed, and monetary sanctions be imposed.

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

In their response to the Motion to Dismiss and allegation of frivolous filing, Complainants first note that because the Board, is now “in compliance” with the vote regarding the appointment of Respondent DeVore’s spouse, Complainants are “not pursuing charges with regard to her voting for her” spouse (Count 2).

With regard to Count 1, Complainants reiterate that when Kennedy applied for the position of Superintendent in January 2018, he did not have the necessary administrator certificate (a job requirement), and “had not started school to obtain it.” In addition, although Kennedy submitted information indicating that he had completed a significant number of “internship hours” with the Board’s former Superintendent, the former Superintendent denied that this information was accurate. Therefore, Complainants suggest Kennedy may have fraudulently obtained his administrator certificate. And according to Complainants, while the May 15, 2018, Board meeting Resolution 5-15-18-01A states, “the Board approves the expedited appointment . . .”; that is not how the events occurred. Instead, the Board appointed, and then expedited Kennedy’s appointment. As a result, Complainants affirm that Respondents violated N.J.S.A. 18A:12-24.1(a) and N.J.S.A. 18A:17-17 by appointing Kennedy before he received the necessary administrator certification.

Finally, Complainants deny that their Complaint is frivolous, and assert it was filed in good faith to ensure compliance with applicable laws.

III. ANALYSIS

A. Jurisdiction of the Commission

Complainants argue that by voting to appoint a person (Kennedy) to the position of Superintendent who did not have the appropriate certification at the time he was appointed, Respondents violated N.J.S.A. 18A:17-17. Respondents counter that the Commission does not have jurisdiction over this claim because it does not fall within the Act.

As noted by Respondents, the authority of the Commission 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. 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). Consequently, and to the extent that Complainants seek a determination from the Commission that Respondents violated N.J.S.A. 18A:17-17, the Commission dismisses that claim as it falls outside the scope, authority, and jurisdiction of the Commission. Instead, this

allegation, because it implicates an alleged violation of a school law and/or regulation, can be filed with the Bureau of Controversies and Disputes.

B. 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 (Complainants), 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 Complainants have alleged facts which, if true, could support a finding that Respondents violated N.J.S.A. 18A:12-24.1(a).

C. Alleged Code Violation

As noted in their Response to the Motion to Dismiss and allegation of frivolous filing, Complainants voluntarily agreed to withdraw/dismiss Count 2. In the remaining Count of their Complaint (Count 1), Complainants assert that Respondents violated N.J.S.A. 18A:12-24.1(a). This provision provides:

- 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. Complainants argue that by appointing Kennedy to the position of Superintendent before he had the requisite certification, Respondents violated N.J.S.A. 18A:17-17 and, thereby, N.J.S.A. 18A:12-24.1(a).

After review, the Commission finds that Complainants have not provided a copy of a final decision from any court of law or other administrative agency demonstrating that Respondents, either individually or collectively, actually violated N.J.S.A. 18A:17-17 when they appointed Kennedy to the position of Superintendent before he received his administrator certification. Absent such a final decision, and because the Commission does not have jurisdiction to determine whether Respondents, either individually or collectively, violated N.J.S.A. 18A:17-17, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondents violated N.J.S.A. 18A:12-24.1(a) as argued in Count 1.

Accordingly, and granting all inferences in favor of the non-moving party (Complainants), the Commission has determined that it does not have jurisdiction to adjudicate an alleged violation of N.J.S.A. 18A:17-17 (Count 1), Complainants have not alleged any facts

which, if true, could support a finding that Respondents violated N.J.S.A. 18A:12-24.1(a) as alleged in Count 1, and Complainants voluntarily dismissed/withdrew the allegations Count 2. Therefore, the Commission grants the Motion to Dismiss in its entirety.

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 Complainants 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 Complainants 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 (Complainants), the Commission grants the Motion to Dismiss in its entirety because the Commission does not have jurisdiction to adjudicate an alleged violation of N.J.S.A. 18A:17-17 (Count 1), Complainants have not alleged any facts which, if true, could support a finding that Respondents violated N.J.S.A. 18A:12-24.1(a) as alleged in Count 1, and Complainants voluntarily dismissed/withdrew the allegations in Count 2. 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 Complainants 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: August 29, 2018

**RESOLUTION ADOPTING DECISION IN
CONNECTION WITH C30-18**

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 because the Commission does not have jurisdiction to adjudicate an alleged violation of N.J.S.A. 18A:17-17 (Count 1), Complainants have not alleged any facts which, if true, could support a finding that Respondents violated N.J.S.A. 18A:12-24.1(a) as alleged in Count 1, and Complainants voluntarily dismissed/withdrew the allegations in Count 2; 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.

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.

Kathryn A. Whalen, Director
School Ethics Commission