
DOUG WALKER

v.

**DR. MATTHEW JENNINGS,
ALEXANDRIA TOWNSHIP BOARD OF
EDUCATION, HUNTERDON COUNTY**

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**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO.: C53-18

**DECISION ON
MOTION TO DISMISS**

I. PROCEDURAL HISTORY

This matter arises from a Complaint that was filed on August 16, 2018, by Doug Walker (Complainant), alleging that Dr. Matthew Jennings (Respondent), the Superintendent of the Alexandria Township School District (District), 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(e) of the Act.

On August 22, 2018, the Complaint was sent to Respondent, via regular and certified mail, notifying him that charges were filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to file a responsive pleading. On September 26, 2018, and after receiving an extension, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On October 1, 2018, Complainant filed a Response to Respondent's Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated October 22, 2018, that this matter would be placed on the Commission's agenda for its meeting on October 30, 2018, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on October 30, 2018, the Commission considered the filings in this matter and, at its meeting on November 27, 2018, the Commission voted to grant the Motion to Dismiss in its entirety. The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

II. SUMMARY OF THE PLEADINGS

A. The Complaint

Complainant alleges that on May 24, 2018, the Alexandria Township Board of Education (Board) unanimously approved an agenda item "Frontline Research and Learning Institute Academy Scholarship." More specifically, it voted to approve "the Frontline Research & Learning Academy Scholarship – Academy Class of 2020 awarded to [Respondent] – Tuition Amount - \$3850 plus \$300 expense reimbursement for 5 sessions during the 2 1/2 year program." Thereafter, Complainant asserts that Respondent (the Superintendent) accepted a \$6,000.00 scholarship from Frontline Research and Learning Institute (Institute), a division of

Frontline Education (Frontline), which is a vendor that has provided services to the District since approximately 2014. Moreover, Complainant asserts that Respondent may have misrepresented the value of the scholarship to the Board because on May 24, 2018, the Board approved a Resolution accepting the scholarship which was valued at \$3,850.00 plus \$300.00; however, in a press release issued by the Institute on July 26, 2018, the Institute announced that the annual recipients of the scholarship, including Respondent, received \$6,000.00.

Based on the above, Complainant alleges Respondent violated N.J.S.A. 18A:12-24(e) because he is directly and indirectly connected with the purchase or acquisition of services from the Institute, yet accepted a scholarship from the Institute valued at \$6,000.00.

B. Motion to Dismiss and Allegation of Frivolous Filing

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and also alleged that that the Complaint is frivolous. Respondent asserts in early 2018, with the Board's support, he applied for several scholarship opportunities to attend the Learning Forward Academy (Academy). The Academy is operated by Frontline, a vendor which has contracted with and supplied educational materials and services to the Board for years. Respondent also asserts that in May 2018, he was awarded the scholarship to attend the Academy. Since the scholarship was a gift to the Board (the Board otherwise funds professional development opportunities for administrators and staff), the scholarship was placed on the agenda for the May 24, 2018, meeting and the Board unanimously voted to accept the scholarship (it was valued at \$3,850.00 for tuition, plus \$300.00 for travel expenses for each of the five (5) visits to the Academy (\$1,500.00), for a total of \$5,350.00).

Respondent argues that he did not personally receive the scholarship from Frontline. It was accepted by the Board, who would have paid for Respondent to attend the Academy if the scholarship was not offered. Respondent also argues that the Board has contracted with Frontline for many years and, therefore, there are no facts to suggest that the scholarship has or intended to have any influence over the District's contracts. Moreover, Respondent argues that Complainant's allegation that "it would seem [Respondent] misrepresented the value of the scholarship" is "nonsense." Based on this information, Respondent contends that Complainant has failed to demonstrate that Respondent violated N.J.S.A. 18A:12-24(e).

Respondent asserts that Complainant filed this Complaint in bad faith, solely for the purpose of maligning Respondent and the Board in an effort to boost his own chances of winning a seat on the Board in the upcoming election even though he (Complainant) was aware that the Board accepted the scholarship. Moreover, the fact that Complainant mentioned an alleged violation from 2013, which is beyond the 180-day filing period, is clearly an attempt to "paint [Respondent] in a poor light" and, therefore, the Complaint should be dismissed and sanctions imposed.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant reaffirms his allegations and reasserts that Respondent applied for several scholarship

opportunities, not the Board; Respondent was awarded the scholarship to attend the Academy, not the Board; and the May 24, 2018, agenda states the Board agreed to *approve* the scholarship for Respondent, not *accept* it. Furthermore, Complainant states Respondent's counsel has misrepresented the facts regarding the scholarship total. The motion that was presented to and voted on by the Board states, "Motion to approve the [Academy] Scholarship – Academy Class of 2020 awarded to [Respondent] – Tuition amount - \$3850 plus \$300 expense reimbursement for 5 sessions during the 2 ½ year program." Complainant asserts that this motion, which would have been submitted and reviewed by Respondent prior to going to the Board, does not imply, as Respondent's counsel calculated, that the gift from Frontline permits \$1,500.00 in travel. Moreover, Complainant disagrees that the Board would have paid for Respondent to attend the Academy had he not received the scholarship. There are contractual limitations to Respondent's receipt of annual continuing education and limitations as to what reimbursements he can apply for under State law. Counsel's presumption that the Board would have paid cannot be supported.

Ultimately, Complainant reiterates, Respondent accepted a gift from Frontline, a vendor who conducts business with the District, while he was serving as Superintendent. As Superintendent, Respondent is responsible for determining which vendors the District uses. Complainant denies that his Complaint is frivolous.

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 Respondent violated N.J.S.A. 18A:12-24(e) as set forth in the Complaint.

B. Allegation of Prohibited Act

Complainant alleges that Respondent violated N.J.S.A. 18A:12-24(e), and this provision of the Act provides:

e. No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if

accepted, was given with the intent to influence the school official in the discharge of his official duties.

In order to credit the allegation of a violation of N.J.S.A. 18A:12-24(e), the Commission must find factual evidence that Respondent, a member of his immediate family, or a business organization in which he has an interest, solicited or accepted a gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties.

Complainant alleges that Respondent violated N.J.S.A. 18A:12-24(e) because he is directly and/or indirectly connected with the purchase or acquisition of services from the Institute, yet accepted a scholarship from the Institute (valued between \$3,850.00 and \$6,000.00). Respondent counters that he did not accept the scholarship from the Institute, but rather the Board did. Moreover, Frontline has been a vendor with the District for several years, and there are no facts to suggest that the scholarship has, or was intended to have, any influence over the District's contracts.

After review, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated N.J.S.A. 18A:12-24(e). Notably absent from the Complaint, and as argued by Respondent, is that there are no facts demonstrating that the scholarship was provided to Respondent with "an understanding" that it was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties as Superintendent. At the time the scholarship was offered to Respondent, Frontline had already been a vendor to the Board for at least four (4) school years; as such, this fact undermines any *quid pro quo* suggested by Complainant. In short, other than alleging that the scholarship was offered for the purpose of influencing Respondent, there are no facts demonstrating that it was, in fact, offered for this specific purpose. The Commission also notes that because the Board took action to approve the scholarship awarded to Respondent, it suggests that the Board, and not Respondent, accepted receipt of the funds related to the scholarship. Finally, the Commission notes that Respondent is a non-voting member of the Board and, therefore, cannot personally choose the vendors with which the District does business. Therefore, the Commission finds that this allegation should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that Complainant has not alleged facts sufficient to state a claim for a violation of N.J.S.A. 18A:12-24(e) as alleged in the Complaint. Therefore, the Commission grants the Motion to Dismiss in its entirety.

IV. REQUEST FOR SANCTIONS

At its meeting on October 30, 2018, 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 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

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 for failure to plead sufficient, credible facts to support a finding that Respondent violated N.J.S.A. 18A:12-24(e) as alleged in the Complaint. The Commission also finds that the Complaint is not frivolous, and denies Respondent's request for sanctions.

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. 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: November 28, 2018

**RESOLUTION ADOPTING DECISION
IN CONNECTION WITH C53-18**

WHEREAS, at its meeting on October 30, 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 October 30, 2018, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support a finding that Respondent violated N.J.S.A. 18A:12-24(e) as alleged in the Complaint, and dismissing this matter; and

WHEREAS, at its meeting on October 30, 2018, the Commission discussed finding the Complaint not frivolous, and denying Respondent’s request for sanctions; and

WHEREAS, at its meeting on November 27, 2018, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from October 30, 2018; 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 herein.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on November 27, 2018.

Kathryn A. Whalen, Director
School Ethics Commission