

***Before the School Ethics Commission***  
***Docket No.: C20-19***  
***Decision on Motion to Dismiss***

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**Frank Caraccio,**  
***Complainant***

v.

**Mohammed Hussain,**  
**Prospect Park Board of Education, Passaic County,**  
***Respondent***

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**I. Procedural History**

This matter arises from a Complaint that was filed on March 20, 2019, by Frank Caraccio (Complainant), a member of the Prospect Park Board of Education (Board), alleging that Mohammed Hussain (Respondent), also a member and the President of the 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:12-24.1(f) of the Code of Ethics for School Board Members (Code) in Count 1, and violated *N.J.S.A.* 18A:12-24.1(e) in Count 2 and Count 3.

On March 26, 2019, the Complaint was served on 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 April 30, 2019, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On May 22, 2019, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated June 11, 2019, that this matter would be placed on the Commission's agenda for its special meeting on June 19, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its special meeting on June 19, 2019, the Commission considered the filings in this matter and, at its meeting on July 23, 2019, the Commission voted to grant the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(e) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(e) as contended in Count 3. 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***

In Count 1, Complainant asserts that, from January 7, 2019, to the present, Respondent/Board President is using his office to “satisfy the direction of the Mayor of Prospect Park in a sense of loyalty” due to the Mayor’s financial support of Respondent’s campaign. Complainant asserts that he is aware of this allegation because he was “requested to do the same,” but instead chose to abide by his ethical obligations. Based on this, Complainant alleges Respondent violated *N.J.S.A. 18A:12-24.1(f)*.

In Count 2, Complainant asserts that on February 1, 2019, Respondent allowed an attorney to amend his response to the Board’s Request for Proposals (RFP) when the attorney realized “the bid was too high.” Complainant alleges Respondent violated *N.J.S.A. 18A:12-24.1(e)* because the RFPs “should have been taken at face value and a comprehensive decision [should have been] made by the entire Board.”

In Count 3, Complainant asserts that after a unanimous vote on February 8, 2019, to post an RFP in multiple locations, Respondent issued a directive (on February 9, 2019) to ignore the vote and to only advertise on the school website. Complainant alleges Respondent violated *N.J.S.A. 18A:12-24.1(e)* because he attempted to override a unanimous decision made by the Board “by putting himself” before the Board’s authority.

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

Following receipt of the Complaint, Respondent filed a Motion to Dismiss, and also alleged that the Complaint is frivolous. In response to Count 1, Respondent argues that Complainant does not specify what Respondent actually did to “satisfy” the Mayor, nor what was the exact “direction of the Mayor.” Respondent states that the Complaint is absent any factual evidence demonstrating that he “took action on behalf of the Mayor or any other person or group,” and lacks detail as to what “benefit” Respondent acquired from the Mayor; therefore, Complainant fails to state a claim for a violation of *N.J.S.A. 18A:12-24.1(f)*.

Regarding the alleged violation of *N.J.S.A. 18A:12-24.1(e)* in Count 2 and Count 3, Respondent argues that Complainant did not provide any facts that demonstrate how Respondent made any personal promises or took any action beyond the scope of his duties with the potential to compromise the Board by “improperly accept[ing]” an RFP (Count 2). As to the allegation that Respondent acted contrary to a “unanimous vote” (Count 3), Complainant “misrepresented” the facts. According to Respondent, the minutes from the February 8, 2019, meeting do not indicate that a vote took place regarding where, or how, to advertise the RFP. Instead, the minutes merely reflect that, “Prior to the vote [to issue the RFPs], where to advertise the RFPs [sic] was discussed.” A vote was not taken about this issue so, therefore, it could not have been “unanimous.” Respondent maintains that Complainant did not provide any factual support for his allegations, and asserts that the alleged violations of *N.J.S.A. 18A:12-24.1(e)* in Count 2 and Count 3 should be dismissed.

Finally, Respondent argues that Complainant: (1) made broad allegations without any factual support; (2) “blatantly” misrepresented that Respondent “ignored” a “unanimous” vote, when a vote did not even take place; and (3) engaged in communications with the former Board attorney, outside of the presence of the Board regarding an issue which, (a) Complainant knew the former Board attorney had a stake and (b) Complainant and the former Board attorney disagreed with a majority of the Board. Respondent contends these circumstances suggest bad faith and, as a result, the Complaint should be deemed frivolous, 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. Regarding Count 1, Complainant notes that he was involved in a conversation with Respondent and the Mayor to “get rid” of Board counsel; however, he (Complainant) could not find a reason to look for a new attorney. Complainant also affirms that he “witnessed” the Mayor making statements that “if you don’t follow our agenda you will not receive any support from him.” Complainant asserts these comments and the rush for an RFP to replace the attorney and the auditing firm in January, when both parties (attorney and auditor) still had contracts through June, led Complainant to believe that Respondent was following the Mayor’s direction.

As for Count 2, Complainant states that he was taking it on “good faith” and at “face value” that the advice from the former attorney was provided to keep the Board members apprised of the legality of the process, and to avoid the issues that are currently happening. Regarding Count 3, Complainant poses the question, “if there was no discussion as the posting of the ‘new RFP’s’ then why would it be necessary for the President to issue a ‘directive’ instruction via email detailing how the advertisement would be published?” Complainant explains that the “directive” was different than the “regular” way the Board posted RFPs, which was in the Hawthorne Press.

Finally, Complainant notes that he wants the Board to act the way it should, “independent of any and all influences.”

## **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 sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(f)* as alleged in Count 1, violated *N.J.S.A. 18A:12-24.1(e)* as argued in Count 2, and/or violated *N.J.S.A. 18A:12-24.1(e)* as contended in Count 3.

## **B. *Alleged Code Violations***

In the Complaint, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(f) in Count 1, and violated *N.J.S.A.* 18A:12-24.1(e) in Count 2 and Count 3. These provisions of the Code provide:

e. 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.

f. 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.

### **Count 1**

In Count 1, Complainant alleges that, in violation of *N.J.S.A.* 18A:12-24.1(f), and from January 7, 2019, through the present, Respondent has used his office to “satisfy the direction of the Mayor of Prospect Park in a sense of loyalty” due to the Mayor’s financial support of Respondent’s campaign. Respondent counters that Complainant does not specify what Respondent actually did to “satisfy” the Mayor, nor what was the exact “direction of the Mayor.” In this way, Respondent argues that the Complaint is absent any factual evidence demonstrating that he “took action on behalf of the Mayor or any other person or group,” and lacks detail as to what “benefit” Respondent acquired from the Mayor.

As set forth in *N.J.A.C.* 6A:28-6.4(a)(6), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(f) shall include evidence that Respondent 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 Respondent used the schools in order to acquire some benefit for himself, a member of his immediate family, or a friend

After review of Complainant’s allegations, 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:12-24.1(f). Although Complainant’s response to the Motion to Dismiss contains more specific factual averments, the Complaint, which is the pleading from which the Commission is to construe the facts in the light most favorable to Complainant, is devoid of the necessary factual allegations to establish a violation of *N.J.S.A.* 18A:12-24.1(f) including, without limitation, the specific dates and the specific actions allegedly taken by Respondent to satisfy the direction of the Mayor. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(f) in Count 1 should be dismissed.

### **Count 2**

In Count 2, Complainant argues that because Respondent unilaterally allowed an attorney to amend his response to the Board’s RFP, and allowed this to occur without the full Board’s

authority, Respondent violated *N.J.S.A.* 18A:12-24.1(e). Respondent counters that Complainant did not provide any facts to demonstrate how Respondent made any personal promises or took any action beyond the scope of his duties with the potential to compromise the Board by “improperly accept[ing]” an RFP.

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

Based on its review of Complainant’s allegations, 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:12-24.1(e). Even if Respondent allowed an attorney to amend his response to the Board’s RFP, Complainant has not provided factual support for his position that Respondent, as the Board President, was not authorized to permit the amendment and/or that Respondent’s actions had the potential to compromise the Board. It is Complainant’s burden to adduce sufficient facts to support his allegations and, unfortunately, the necessary factual assertions are not set forth in the Complaint. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 2 should be dismissed.

### **Count 3**

In Count 3, Complainant contends that, after the Board’s unanimous vote on an issue (the posting of an RFP), Respondent issued a directive to ignore the vote and, in violation of *N.J.S.A.* 18A:12-24.1(e), put “himself before” the Board’s authority. Respondent counters that Complainant “misrepresented” the facts in Count 3 because, as reflected in the Board’s minutes, the Board did not vote on the posting of the RFP and, instead, only discussed the matter. Without any formal vote on the matter, and because Complainant did not provide any factual support for the alleged violation of *N.J.S.A.* 18A:12-24.1(e), Respondent argues that Count 3 should be dismissed.

As set forth above, factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) shall include evidence that Respondent made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the Board. *N.J.A.C.* 6A:28-6.4(a)(5).

After review of Complainant’s allegations, 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:12-24.1(e). Again, even if Respondent issued a “directive” as alleged in the Complaint, Complainant has not provided factual support for his position that Respondent, as the Board President, was not authorized to issue this directive, and/or that Respondent’s actions had the potential to compromise the Board. The Commission is constrained by the allegations in the Complaint and, unfortunately, cannot surmise or assume additional facts in order to assist Complainant with meeting his burden to establish a violation. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 3 should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(e) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(e) as contended in Count 3.

#### **IV. Request for Sanctions**

At its special meeting on June 19, 2019, 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 that 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, at its meeting on July 23, 2019, the Commission voted to find the Complaint not frivolous, and to deny the 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 voted to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(e) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(e) as contended in Count 3. The Commission also voted to find that the Complaint is not frivolous, and to deny 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).*

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Robert W. Bender, Chairperson

Mailing Date: July 24, 2019

***Resolution Adopting Decision  
in Connection with C20-19***

***Whereas***, at its special meeting on June 19, 2019, 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 submitted in connection with the above-referenced matter; and

***Whereas***, at its special meeting on June 19, 2019, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(e) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(e) as contended in Count 3; and

***Whereas***, at its special meeting on June 19, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

***Whereas***, at its meeting on July 23, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on June 19, 2019; 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.

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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 July 23, 2019.

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Kathryn A. Whalen, Director  
School Ethics Commission