

Before the School Ethics Commission
Docket No.: C29-19
Decision on Motion to Dismiss

Jordan E. Michel,
Complainant

v.

Mark R. Rogers,
Guttenberg Board of Education, Hudson County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on April 10, 2019, by Jordan E. Michel (Complainant), a former member of the Guttenberg Board of Education (Board), alleging that Mark R. Rogers (Respondent), a current member of the Board, violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated April 17, 2019, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On May 16, 2019, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3. The Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(b) of the Code of Ethics for School Board Members (Code) in Count 1, violated *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 2, violated *N.J.S.A.* 18A:12-24.1(e) of the Code in Count 3, and violated *N.J.S.A.* 18A:12-24.1(f) of the Code in Count 4.

On May 17, 2019, the Complaint was served on Respondent, via regular and certified mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading. On June 10, 2019, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On July 8, 2019, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing. Of note, and as part of his response to the Motion to Dismiss and allegation of frivolous filing, Complainant voluntarily withdrew the alleged violation of *N.J.S.A.* 18A:12-24.1(f) in Count 4.

The parties were notified by correspondence dated July 15, 2019, that this matter would be placed on the Commission's agenda for its meeting on July 23, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on July 23, 2019, the Commission considered the filings in this matter and, at its special meeting on August 30, 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(b) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(d) 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. Remaining Allegations in the Complaint

In Count 1, Complainant (a former Board member) asserts that, in connection with the construction of an addition on Guttenberg School District (District) property, the cost of which is being jointly funded by the Board and the Town of Guttenberg, Respondent "has made efforts to coordinate" with the Mayor and to use his position on the Board as Vice President to "manipulate the budget and financial decisions of the [Board] and the [District]." Complainant maintains that Respondent's conversations with the Mayor, as well as his "recent actions and efforts on the Board," demonstrate that "political allegiance for his own benefit" outweigh his concerns for the District. As such, Complainant asserts that Respondent, who is employed by the Town as the Director of Recreation, violated *N.J.S.A.* 18A:12-24.1(b) because he not only "failed to make decisions in the interest of the welfare of the children," but he also used his position as Vice President to influence Board decisions in a way that would serve the interests of the Town to the detriment of the District.

In Count 2, Complainant states that Respondent serves on the Guttenberg Democratic Committee, and is employed by the Town as the Director of Recreation. When you consider these facts along with Respondent's relationship with the Mayor, and the concerted efforts of Respondent and the Mayor to garner votes for him (Respondent) as Board President, it "becomes clear" that Respondent "lacks the independence and objectivity" required of a Board member. Complainant asserts this to be a violation of *N.J.S.A.* 18A:12-24.1(d) because he has repeatedly demonstrated that his loyalty is to elected officials, and not to the Board. Instead of working with his fellow Board members to ensure that the District is well run, Respondent is more concerned with "using his position to gain power and [to] influence [B]oard decisions in a direction that serves his political allies."

In Count 3, Complainant alleges that Respondent promised him (Complainant) that he would form a committee to search for a new superintendent when he (Respondent) became Board President. According to Complainant, Respondent also had private meetings with the Mayor during which he promised to be a "team player," and coordinated with other Board members "to advance agendas and actions that serve the interests of this 'team.'" Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(e) because he took it upon himself to make "promises of actions that he would take" as Board President, and "has worked within and outside of the [B]oard to coordinate actions that would compromise" the Board and the District, including budget matters and voting coalitions.

B. Motion to Dismiss and Allegation of Frivolous Filing

Following receipt of the Complaint, Respondent filed a Motion to Dismiss, and also alleged the Complaint is frivolous. Regarding Count 1, Respondent asserts that the construction

project referred to by Complainant was started, and voted on, prior to Respondent's election to the Board. Complainant also alleges that Respondent used his position as Board Vice President to "manipulate" the budget; however, Respondent argues that the budget is proposed by administration, and voted upon by the entire Board. Respondent contends that Complainant did not provide specific explanation how Respondent manipulated the budget and, therefore, the allegation that he violated *N.J.S.A. 18A:12-24.1(b)*, should be dismissed.

As for Count 2, Respondent argues that he does not know how serving on the Democratic Committee and as the Director of Recreation prevents him from working with the Board to ensure that the schools are well run. Respondent maintains that the alleged violation of *N.J.S.A. 18A:12-24.1(d)* in Count 2 lacks merit.

Regarding Count 3, Respondent argues that Complainant has not provided any evidence to demonstrate that he (Respondent) made promises to anyone about Board business, or otherwise compromised the Board. Absent Complainant providing this evidence, Respondent asks that Complainant withdraw this frivolous claim.

Finally, Respondent argues that the Complaint is frivolous because Complainant tried to slander his (Respondent's) name and "clean" reputation by alleging these violations. This Complaint is based on Complainant's opinion, and he has not provided any facts that Respondent violated the Act. Furthermore, Complainant resigned from the Board before he could be removed based on ineligibility due to residency. In addition, Complainant was a speech writer for the Mayor, and it appears now that he has a vendetta against the Mayor. Respondent asserts the Complaint is frivolous because it appears that Complainant is disgruntled.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant contends that Respondent did not deny any of the allegations made against him and, instead, tried to discredit Complainant by describing him as "disgruntled" and stating that he had a "vendetta" against the Mayor.

Complainant reaffirms that Respondent violated *N.J.S.A. 18A:12-24.1(b)* because he abuses the privileges of the trusted position and acts in ways that put his own interests, or those of his personal or political allies, above the educational welfare of the children; *N.J.S.A. 18A:12-24.1(d)* because he surrendered his independent judgment and objectivity to his political allies; and *N.J.S.A. 18A:12-24.1(e)* because he used the employment/firing of the superintendent as a bargaining chip in order to gain votes for himself to become Board President.

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, and with Complainant's voluntary withdrawal of the alleged violation of *N.J.S.A. 18A:12-24.1(f)* in Count 4, the remaining 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(b)* as alleged in Count 1, violated *N.J.S.A. 18A:12-24.1(d)* 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 remaining allegations of the Complaint, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(b)* in Count 1, violated *N.J.S.A. 18A:12-24.1(d)* in Count 2, and violated *N.J.S.A. 18A:12-24.1(e)* in Count 3. These provisions of the Code provide:

- b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.
- d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.
- 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.

Count 1

As set forth in *N.J.A.C. 6A:28-6.4(a)(2)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(b)* shall include evidence that Respondent willfully made a decision contrary to the educational welfare of children, or evidence that Respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

In Count 1, Complainant alleges that, in connection with a construction project jointly funded by the Board and the Town, Respondent "has made efforts to coordinate" with the Mayor and to use his position on the Board as Vice President to "manipulate the budget and financial decisions of the [Board] and the [District]." Because Respondent's actions demonstrate that "political allegiance for his own benefit" outweigh his concerns for the District, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(b)* because he not only "failed to make decisions in the interest of the welfare of the children," but he also used his position as Vice President to influence Board decisions in a way that would serve the interests of the Town to the detriment of the District. Respondent counters that the construction project referred to by Complainant was started, and voted on, prior to Respondent's election to the Board. In addition, Complainant did not provide specific explanation how Respondent manipulated the budget or otherwise violated *N.J.S.A. 18A:12-24.1(b)*.

After review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(b)*. Although the Complaint contains conclusions that may, arguably, constitute a violation of *N.J.S.A. 18A:12-24.1(b)*, the Complaint (which includes the substance of the related attachments/Exhibits) is devoid of any specific factual information and/or assertions that can be used to serve as the basis for such a violation. Although Complainant has seemingly offered text messages between him (Complainant) and the Mayor, and between him and Respondent, there are no text messages evidencing communications, or directives, between Respondent and the Mayor. Without the benefit of specific factual information and averments, and because the Complaint only contains allegations, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(b)* in Count 1 should be dismissed.

Count 2

In Count 2, Complainant argues that because Respondent serves on the Guttenberg Democratic Committee, is employed by the Town as the Director of Recreation, has an established relationship with the Mayor, and the Respondent and the Mayor engaged in a “concerted effort” to garner votes for Respondent as Board President, Respondent “lacks the independence and objectivity” required of a Board member. As such, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(d)* because he has repeatedly demonstrated that his loyalty is to elected officials, and not to the Board. Respondent counters that this claim lacks merit, and further states that it is unclear how serving on the Democratic Committee and as the Director of Recreation prevents him from working with the Board to ensure that the schools are well run.

Pursuant to *N.J.A.C. 6A:28-6.4(a)(4)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(d)* shall include, but not be limited to, evidence that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.

Based on its review of the Complaint, the Commission finds that even if the facts as alleged therein are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(d)*. There are, once again, no facts enumerated in the Complaint (which includes the substance of the related attachments/Exhibits) to support the position that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the District. If, as Complainant contends, Respondent’s political affiliation and/or employment have resulted in him engaging in actions violative of *N.J.S.A. 18A:12-24.1(d)*, Complainant needed to provide factual support for those contentions. Absent the requisite facts, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(d)* in Count 2 should be dismissed.

Count 3

As set forth in *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 or her duties such that, by its nature, had the potential to compromise the board.

In Count 3, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(e) because he took it upon himself to make “promises of actions that he would take” as Board President, and “has worked within and outside of the [B]oard to coordinate actions that would compromise” the Board and the District, including budget matters and voting coalitions. Respondent counters that Complainant has not provided any factual evidence to demonstrate that he (Respondent) made promises to anyone about Board business, or otherwise compromised the Board.

After review of the Complaint, the Commission finds that even if the facts as alleged 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). Once again, while there are conclusory statements in the Complaint which could serve as the basis for a violation, there are insufficient facts in the Complaint (which includes the substance of the related attachments/Exhibits), explaining the specific personal promises or the actions that Respondent took that were beyond the scope of his duties, and how those personal promises or actions had the potential to compromise the Board. In order to establish a violation, Complainant needed to articulate the facts necessary to establish a violation. Without those facts, 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(b) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(d) 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 meeting on July 23, 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 special meeting on August 30, 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(b) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(d) 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).*

Robert W. Bender, Chairperson

Mailing Date: August 30, 2019

***Resolution Adopting Decision
in Connection with C29-19***

Whereas, at its meeting on July 23, 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 meeting on July 23, 2019, and with the voluntary withdrawal of the allegations in Count 4, 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(b) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(d) 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 meeting on July 23, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at its special meeting on August 30, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 23, 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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its special meeting on August 30, 2019.

Kathryn A. Whalen, Director
School Ethics Commission