

Before the School Ethics Commission
Docket No.: C34-19
Decision on Motion to Dismiss

Maria Emma Anderson,
Complainant

v.

Mohammed Hussain and Daysi Gonzalez,
Prospect Park Board of Education, Passaic County,
Respondents

I. Procedural History

This matter arises from a Complaint that was filed on May 15, 2019, by Maria Emma Anderson (Complainant), alleging that Mohammed Hussain (Respondent Hussain) and Daysi Gonzalez (Respondent Gonzalez) (collectively referred to as Respondents), members and officers of the Prospect Park Board of Education (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) in Count 1, and violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i) of the Code in Count 2.

On May 21, 2019, the Complaint was served on 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 24, 2019, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On August 8, 2019, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated September 16, 2019, that this matter would be placed on the Commission's agenda for its meeting on September 24, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on September 24, 2019, the Commission considered the filings and, at its meeting on October 25, 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 Respondents violated *N.J.S.A.* 18A:12-24.1(a) as alleged in Count 1 and/or violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i) as argued in Count 2. The Commission also voted to find the Complaint not frivolous, and to deny the request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant states that, despite public notice having been provided and in disregard of established New Jersey Department of Education (NJDOE) deadlines, Respondent Hussain (Board President) and Respondent Gonzalez (Board Vice President) removed “the public hearing on [the] budget” from the Board’s May 7, 2019, agenda. Based on these facts, Complainant alleges that Respondents violated *N.J.S.A.* 18A:12-24.1(a) because, in his position as President (Respondent Hussain), and in her position as Vice President (Respondent Gonzalez), Respondents “had full access and control over the agenda . . . including the public hearing on the 2019-2020 budget,” and violated *N.J.S.A.* 18A:12-24.1(a) because despite the laws and deadlines of the State (*N.J.S.A.* 18A:22-10), Respondents “proceeded to change the agenda without any legal or ethical procedures.”

In Count 2, Complainant states that Respondents allowed “external influence in the discharge of their official duties.” According to Complainant, Respondents “took the budget public hearing off the agenda for no other reason [than] that someone told them to do so, and failed to support and protect the Business Administrator [(BA)] in the exercise of his duties, when he sounded the alarm on their illegal actions.” Based on these facts, Complainant asserts that Respondents violated: *N.J.S.A.* 18A:12-24.1(c) because (i) they “modified the agenda at the spur of the moment while the meeting was taking place,” (ii) they “invited public input on a nonexistent budget, knowing that the public had no access to any information and that no input or discussion could be entertained without a written budget that the public could analyze,” and (iii) they did not “consult those who will be affected by the budget,” namely the public; *N.J.S.A.* 18A:12-24.1(e) because they “took the budget public hearing off the agenda for no valid reason” and, therefore, took a “private action that may compromise the [B]oard”; and *N.J.S.A.* 18A:12-24.1(i) because they allowed an attorney to “publicly harass and humiliate” the BA when he “cautioned the Board against violating the law and set deadlines, effectively not supporting or protecting school personnel in the proper performance of their duties.”

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

Following receipt of the Complaint, Respondents filed a Motion to Dismiss and allegation of frivolous filing. As a general matter, Respondents contend that the Complaint “fail[s] to establish a violation of the [Act]” and should be dismissed. In response to Count 1, Respondents argue that Complainant (a former Board member and an unsuccessful candidate for Mayor) did not provide factual evidence in the form of 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.” Moreover, even if such a decision existed, liability would “fall on the Board as a whole, rather than on any individual Board members.” Therefore, the alleged violation(s) of *N.J.S.A.* 18A:12-24.1(a) in Count 1 should be dismissed.

Regarding Count 2, Respondents argue that Complainant did not provide any facts to support her allegation that Respondents violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(i)*. More specifically, the Complaint is “silent as to what ‘external influence’ was allegedly placed on Respondents, the identity of the ‘someone’ who allegedly told them to remove the budget hearing from the agenda, and the content and nature of any alleged ‘harassing’ or ‘humiliating’ statements or actions by another individual at the meeting.” In this way, the Complaint sets forth no facts demonstrating the existence of any “external influence,” “personal promise,” or “private action.” Without any facts suggesting that Respondents took any inappropriate Board action, made any personal promise, took any private action with the potential to compromise the Board, or took any deliberate action to undermine school personnel,” and because there is no cited legal authority which prohibits a Board from removing an item from the agenda, Respondents counter that the alleged violations of *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(i)* should be dismissed.

Finally, Respondents argue that the Complaint is frivolous because Complainant, a former Board member, should have known that there is no legal authority that prohibits the Board from removing an item from the agenda. Despite “such knowledge or constructive knowledge,” Complainant “asserts broad allegations of wrongdoing” without providing any facts to support such allegations. Furthermore, this Complaint is “one of three actions” that Complainant has filed against current Board members in the past month, and Complainant “clearly harbors a gripe against Respondents” and is improperly seeking “retribution from the [Commission], without any factual evidence of wrongdoing.” Therefore, Respondents request that the Commission find the Complaint frivolous, and impose sanctions on Complainant.

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

In response to the Motion to Dismiss and frivolous allegation, Complainant reaffirms her allegations, and maintains that Respondents knew or should have known that the “public was made aware of the budget hearings by notices on local newspapers.” Residents attended the May 7, 2019, meeting “for the purposes of seeing and discussing the budget.” Respondents chose to disregard the regulations of the State by directing the BA to remove “the public input of the budget.” Complainant asserts that “there was no compelling reason or undue burden that would justify [Respondents] to break the law, except that they were under political pressure to manipulate the school budget in order to balance the books at the municipal level.”

Complainant also argues that her Complaint is not frivolous, and that she does not have a personal conflict or gripe as stated by counsel. The Complaint is limited to the events that occurred on May 7, 2019. As such, Complainant “respectfully” requests that the Commission investigate the “facts and decision taken” by Respondents, and find that they violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(i)*.

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 Respondents violated *N.J.S.A. 18A:12-24.1(a)* as alleged in Count 1, and/or violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, or *N.J.S.A. 18A:12-24.1(i)* as argued in Count 2.

B. *Alleged Code Violations*

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

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.

c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

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.

i. I will support and protect school personnel in proper performance of their duties.

Count 1

In Count 1, Complainant alleges that, despite public notice having been provided, and in disregard of established NJDOE deadlines, Respondent Hussain and Respondent Gonzalez removed “the public hearing on [the] budget” from the Board’s May 7, 2019, agenda. Based on these facts, Complainant alleges that Respondents violated *N.J.S.A. 18A:12-24.1(a)* because, in his position as President (Respondent Hussain), and in her position as Vice President (Respondent Gonzalez), Respondents “had full access and control over the agenda . . . including the public hearing on the 2019-2020 budget,” and violated *N.J.S.A. 18A:12-24.1(a)* because despite the laws and deadlines of the State (*N.J.S.A. 18A:22-10*), Respondents “proceeded to change the agenda without any legal or ethical procedures.”

Respondents counter that Complainant, a former Board member and an unsuccessful candidate for Mayor, did not provide factual evidence in the form of 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.” Moreover, even if such a decision existed, liability would “fall on the Board as a whole, rather than on any individual Board members.”

As set forth in *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.

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 Respondents violated *N.J.S.A. 18A:12-24.1(a)*. More specifically, the Commission finds that, despite being required by *N.J.A.C. 6A:28-6.4(a)(1)*, Complainant has not provided **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondents violated a specific law, rule, or regulation (including, but not limited to, *N.J.S.A. 18A:22-10*), when they removed “the public hearing on the budget” from the Board’s agenda. Absent such a final decision, and even if their actions may be actionable in another forum, the Commission finds that there is insufficient credible evidence to support a finding that Respondents violated *N.J.S.A. 18A:12-24.1(a)*. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(a)* in Count 1 should be dismissed.

Count 2

In Count 2, Complainant argues that Respondents “took the budget public hearing off the agenda for no other reason [than] that someone told them to do so, and failed to support and protect the [BA] in the exercise of his duties, when he sounded the alarm on their illegal actions.” Based on these facts, Complainant contends that Respondents violated: *N.J.S.A. 18A:12-24.1(c)* because (i) they “modified the agenda at the spur of the moment while the meeting was taking place,” (ii) they “invited public input on a nonexistent budget, knowing that the public had no access to any information and that no input or discussion could be entertained without a written budget that the public could analyze,” and (iii) they did not “consult those who will be affected by the budget,” namely the public; *N.J.S.A. 18A:12-24.1(e)* because they “took the budget public hearing off the agenda for no valid reason” and, therefore, took a “private action that may compromise the [B]oard”; and *N.J.S.A. 18A:12-24.1(i)* because they allowed an attorney to “publicly harass and humiliate” the BA when he “cautioned the Board against violating the law and set deadlines, effectively not supporting or protecting school personnel in the proper performance of their duties.”

Respondents counter that the Complaint is “silent as to what ‘external influence’ was allegedly placed on Respondents, the identity of the ‘someone’ who allegedly told them to remove the budget hearing from the agenda, and the content and nature of any alleged ‘harassing’ or ‘humiliating’ statements or actions by another individual at the meeting.” In this way, the Complaint sets forth no facts demonstrating the existence of any “external influence,” “personal promise,” or “private action.” Without any facts suggesting that Respondents took any inappropriate Board action, made any personal promise, took any private action with the potential to compromise the Board, or took any deliberate action to undermine school

personnel,” Respondents counter that the alleged violations of *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(i) should be dismissed.

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(3), factual evidence of a violation of ***N.J.S.A.* 18A:12-24.1(c)** shall include evidence that Respondents took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondents’ duty to (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy.

Based on its 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 Respondents violated *N.J.S.A.* 18A:12-24.1(c). Even if Respondents did remove the public hearing from the agenda, Complainant has not provided any facts to establish that Respondents effectuated policies and plans without consulting those affected by such policies or plans, or that the action of removing the item from the agenda was unrelated to their duties as Board members (and as officers of the Board). Complainant does not appear to argue that Respondents lacked the authority to remove the public hearing from the agenda, only that she did not think it was appropriate or for a “valid reason.” As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(c) in Count 2 should be dismissed.

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 Respondents made personal promises or took action beyond the scope of their duties such that, by its nature, had the potential to compromise 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 Respondents violated *N.J.S.A.* 18A:12-24.1(e). The Commission agrees with Respondents that Complainant has not identified the specific person who allegedly told them to remove the public hearing (on the budget) from the agenda, and has not provided sufficient facts explaining why the decision to remove the public hearing, at that particular Board meeting, had the potential to compromise the Board. It is Complainant’s supposition, unsupported by factual evidence, that the public hearing was removed for “no valid reason.” Furthermore, the addition or removal of items from the Board’s agenda by members, and officers, of the Board does not constitute “private action.” Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 2 should be dismissed.

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(9), factual evidence of a violation of ***N.J.S.A.* 18A:12-24.1(i)** shall include evidence that Respondents took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

Based on its 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 Respondents violated *N.J.S.A.* 18A:12-24.1(i). Without an articulation of the specific “deliberate

action” that Respondents took *which resulted* in the undermining, opposing, compromising, or harming of the BA, Complainant cannot establish a violation of *N.J.S.A. 18A:12-24.1(i)*. According to the allegations in the Complaint, it was the actions of another individual, namely the Board attorney, and not the actions of Respondents, which caused the BA to allegedly feel harassed and humiliated. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(i)* in Count 2 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 Respondents violated *N.J.S.A. 18A:12-24.1(a)* as alleged in Count 1 and/or violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(i)* as argued in Count 2.

IV. Request for Sanctions

At its meeting on September 24, 2019, 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 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 October 25, 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 Respondents violated *N.J.S.A. 18A:12-24.1(a)* as alleged in Count 1 and/or violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(i)* as argued in Count 2. The Commission also voted to find that the Complaint is not frivolous, and to deny 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)*.

Robert W. Bender, Chairperson

Mailing Date: October 25, 2019

***Resolution Adopting Decision
in Connection with C34-19***

Whereas, at its meeting on September 24, 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 September 24, 2019, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondents violated *N.J.S.A.* 18A:12-24.1(a) as alleged in Count 1 and/or violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i) as argued in Count 2; and

Whereas, at its meeting on September 24, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondents' request for sanctions; and

Whereas, at its meeting on October 25, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on September 24, 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 public meeting on October 25, 2019.

Kathryn A. Whalen, Director
School Ethics Commission