

Before the School Ethics Commission
Docket No.: C21-20
Decision on Motion to Dismiss

Joan Banez,
Complainant

v.

Richard Rigoglioso,
Garfield Board of Education, Bergen County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on May 19, 2020, by Joan Banez (Complainant), alleging that Richard Rigoglioso (Respondent), an administrator employed by the Garfield Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated May 20, 2020, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On May 22, 2020, 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(c).

On May 29, 2020, the Complaint was served on Respondent, via electronic mail, notifying him that charges were filed against him with Commission, and advising that he had twenty (20) days to file a responsive pleading.¹ On July 10, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On July 31, 2020, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated August 17, 2020, that this matter would be placed on the Commission's agenda for its meeting on August 25, 2020, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on August 25, 2020, the Commission considered the filings in this matter² and, at its meeting on September 29, 2020, 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

¹ Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

² Complainant appeared, by telephone, during the second public comment portion of the Commission's meeting on August 25, 2020. Complainant did not offer any specific comments during the meeting, and instead only noted her attendance.

Respondent violated *N.J.S.A.* 18A:12-24(c). 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 states that on May 5, 2020, Respondent, who is the Mayor of Garfield and the Principal of the Garfield Middle School, made a "public statement prior to the Garfield Board of Education Elections." Specifically, and during the "COVID-19 Mayor's Address," Respondent stated, "I have to vote for the budget and I hope everyone else does too."

Complainant asserts that Respondent's statement violated *N.J.S.A.* 18A:12-24(c) because "the Mayor made the above quoted statement advising the residents of Garfield to vote for the budget," and he, his brother, and his sister-in-law are all employed by the Board, and their respective salaries are included in the annual Board budget.

In addition, Complainant notes that at a City Council meeting on May 12, 2020, a "fellow councilman" inquired about Respondent's statement ("I have to vote for the budget and I hope everyone else does too"), and Respondent "acknowledge[d] the statement and apologized for making the public statement."

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

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and allegation of frivolous filing. Respondent argues that Complainant "fails to state a claim under the [Act]" because Respondent made the comment at-issue while acting in his capacity as the Mayor, not in his official capacity as an administrator or school official. Stated differently, and during "an official Mayor's Address," Respondent addressed "the citizenry in his capacity as Mayor, not [in] his capacity as Principal." According to Respondent, "there is absolutely no conduct alleged in the Complaint constituting Respondent acting in his official capacity as a school official," "the Complaint itself indicates that the comment in question was made during an official Mayor's Address," and "[t]he video ... clearly bears the seal of the City of Garfield and unquestionably constitutes Respondent addressing the citizenry in his capacity as Mayor ..."; therefore, there "is simply no way that the comment in question, given the context in which it arose, could be construed by any reasonable person as constituting Respondent acting in his official capacity as a school official." Because there is "simply no way to interpret the Complaint as describing Respondent doing anything as Garfield Middle School Principal, let alone in his 'official capacity,'" Respondent argues that the Complaint "does not allege any conduct that could conceivably constitute a violation of *N.J.S.A.* 18A:12-24(c)." Moreover, and because the comment was made in Respondent's capacity as the Mayor and, therefore, does not implicate the Act, the Complaint "must be dismissed for lack of jurisdiction."

Respondent further argues that the Act does not apply to Respondent's comment/statement because it (the comment/statement) "pertained clearly" to the general school board election, an issue in which residents of the district can participate freely. According to

Respondent, because “any resident, including Respondent, could freely vote in the school board election if so desired,” commenting on it “cannot be described as [being] related to Respondent’s official capacity or official business in any way.” Absent a connection between the comment/statement and Respondent’s role as an administrator, and given the nature of the comment/statement, the Commission **does not have jurisdiction over the claims asserted in the Complaint.**

Respondent also argues that, in “making the alleged comment regarding the school board election during his Mayor’s Address, Respondent was doing nothing more than exercising the freedom of speech that, as a public employee and official, he enjoys and is protected by the First Amendment” of both the United States and New Jersey constitutions. For these reasons, Respondent argues that the Complaint should be dismissed.

Finally, Respondent argues that the Complaint “undoubtedly meets the standard of frivolous filing.” Complainant filed a Complaint based on a statement that Respondent made in his capacity as the Mayor and as a citizen of Garfield. According to Respondent, the statements “were made in a setting and context completely unrelated to Respondent’s capacity as a school official and their content contained no relation to official school business.” Furthermore, because the Complaint “fails to allege any action or conduct by Respondent in his capacity as a school official, it can be inferred that the Complaint had no other motivation other than to harass and embarrass Respondent.” Lastly, Respondent contends that Complainant “must have known that the Complaint [was] without any basis in law or fact,” as it is “devoid of any allegation ... has caused only delay, harassment, and potentially malicious injury.” Therefore, Respondent asserts “the Complaint should be found frivolous and Complainant sanctioned accordingly.”

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant argues that Respondent’s statement, when considered in its entirety, emphasizes the fact that Respondent is an educator and “confirms and constitutes the Mayor’s dual role as both Mayor and Principal” (“**As an Educator**, I have to vote for the budget and I hope everyone else does too”). According to Complainant, this “dual role holds much responsibility for the citizens, residents and voting public and should be considered as such.”

Complainant further argues that Respondent’s statement “was very impressive, influential and made a strong statement of opinion which was made to influence those listening citizens, to vote for the budget.” According to Complainant, “a vote to pass the budget specifically coincides with monies appropriated for,” among other things, “increasing salaries of all employees,” including Respondent and his relatives.

Complainant maintains that Respondent, while acting in his official capacity as the Mayor, “has been advised by the council’s attorney to recuse himself, not only from voting on any school matters as a City Council member, but to remove himself from any city council discussions when related to any and all school financial matters.” Complainant further maintains that her Complaint was not questioning Respondent’s “freedom of speech,” but rather his use of

the public forum “to take advantage of an opportunity to promote the passing of the [Board’s] budget.”

Finally, Complainant asserts that her Complaint is not frivolous because she is “*sincerely serious minded* and concerned with the leadership of both Mayor and Principal” Furthermore, Complainant notes that this is the first Complaint she has filed against Respondent and, therefore, it cannot be considered “harassment.” Complainant also states she would “sincerely, never even consider utilizing the [Commission] as an avenue to harass, embarrass, delay or cause malicious injury, nor [did she], or [has she] ever had any intentions whatsoever to do so.” Lastly, Respondent claims that Complainant “should have known” that the Complaint “was without any reasonable basis in law”; however, Complainant asserts as a “lay person, and not versed or educated in all aspects of the law,” she “truly does not know that as a fact.” Complainant “humbly” requests that the Commission considers her Complaint.

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(c)*.

B. Allegation of Prohibited Act

In the Complaint, Complainant asserts that Respondent violated *N.J.S.A. 18A:12-24(c)*. This provision of the Act provides:

- c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

In the Complaint, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24(c)* because, during the “COVID-19 Mayor’s Address,” he stated, “**As an Educator**, I have to vote for the budget and I hope everyone else does too.” Complainant notes that Respondent, his brother, and his sister-in-law are all employed by the Board and, as such, their salaries are included in the annual Board budget that he publicly advocated for during the “COVID-19 Mayor’s Address.” Respondent counters that he made the comment at-issue while acting in his

capacity as the Mayor, not in his official capacity as an administrator or school official; therefore, and because the comment does not implicate the Act, the Commission does not have jurisdiction over Respondent's comments during the "COVID-19 Mayor's Address."

In order to credit the alleged violation of *N.J.S.A. 18A:12-24(c)*, the Commission must find evidence that Respondent acted in his official capacity in a matter where he, a member of his immediate family, or a business organization in which he has an interest, had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity, or in a matter where he or a member of his immediate family had a personal involvement that created some benefit to him or to a member of his immediate family.

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(c)*. The Commission agrees with Respondent that, based on the facts set forth in the Complaint, as well as the circumstances and context in which the comments were made (i.e., during the "COVID-19 Mayor's Address"), Respondent's comments were made in his official capacity as the Mayor, and were not made in his official capacity as a school official. Although Respondent references his background as "an educator," the Commission finds that this non-specific reference/comment, in and of itself, is insufficient to link Respondent's comments to his official position as the Principal of the Garfield Middle School. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(c)* 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(c)*.

IV. Request for Sanctions

At its meeting on August 25, 2020, 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 September 29, 2020, 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(c). 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: September 29, 2020

***Resolution Adopting Decision
in Connection with C21-20***

Whereas, at its meeting on August 25, 2020, 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 August 25, 2020, 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(c)*; and

Whereas, at its meeting on August 25, 2020, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at its meeting on September 29, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on August 25, 2020; 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 certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on September 29, 2020.

Kathryn A. Whalen, Director
School Ethics Commission