

***Before the School Ethics Commission***  
***OAL Docket No.: EEC-16120-19***  
***SEC Docket No.: C35-19***  
***Final Decision***

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**Maria Emma Anderson,**  
***Complainant***

v.

**Niaz Nadim,**  
**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 May 17, 2019, by Maria Emma Anderson (Complainant/Petitioner), alleging that Niaz Nadim (Respondent), a member 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 Respondent violated N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code).

At a special meeting on October 25, 2019, and after reviewing Respondent's Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, along with Complainant's response thereto, the School Ethics Commission (Commission) voted to deny Respondent's Motion to Dismiss in its entirety; to find the Complaint not frivolous; and to deny Respondent's request for sanctions. Based on its findings, the Commission also voted to direct Respondent to file an Answer to Complaint (Answer), and to transmit the matter to the Office of Administrative Law (OAL) following receipt of the Answer.

On November 4, 2019, Respondent filed an Answer as directed. Thereafter, the Commission subsequently transmitted the matter to the OAL for a plenary hearing where Complainant would carry the burden to prove the alleged violation of the Code as set forth in the Complaint.

At the OAL, Respondent filed a Motion for Summary Decision on May 7, 2020; Complainant filed her Opposition on May 11, 2020; Respondent filed a Reply to Complainant's Opposition on May 12, 2020; and the record closed on May 12, 2020. *Initial Decision* at 2. In his Initial Decision, the Honorable John P. Scollo, Administrative Law Judge (ALJ Scollo), detailed his findings of fact and legal analysis. *Id.* at 3-12. Based on his findings of facts and legal analysis, ALJ Scollo concluded that there were no unresolved issues of material fact; Complainant had not offered any admissible evidence necessary to prove a violation of *N.J.S.A.* 18A:12-24.1(f); Respondent was entitled to a decision in his favor as a matter of law; Respondent's Motion for Summary Decision was granted; and the Complaint was dismissed. *Id.* at 9.

On June 5, 2020, the Commission acknowledged receipt of ALJ Scollo's Initial Decision in connection with the above-captioned matter; therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was July 20, 2020. Prior to July 20, 2020, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to receive and review the full record, including the parties' Exceptions (if any). Pursuant to *N.J.S.A.* 52:14B-10(c) and *N.J.A.C.* 1:1-18.8, and for good cause shown, the Commission was granted an extension until September 3, 2020.

On June 19, 2020, Complainant filed Exceptions to ALJ Scollo's Initial Decision and, on June 24, 2020, Respondent filed a response to Complainant's Exceptions.

At its meeting on July 21, 2020, the Commission considered the full record in this matter, including the filed Exceptions. Thereafter, and at its meeting on August 25, 2020, the Commission voted to adopt the findings of fact from ALJ Scollo's Initial Decision, and to adopt the legal conclusion that, based on the admissible evidence, there is insufficient credible evidence to establish a violation of *N.J.S.A.* 18A:12-24.1(f).

## **II. Initial Decision**

In the Initial Decision, ALJ Scollo determined that, based on his review of the parties' submissions, the following facts were not in controversy: on May 7, 2019, Respondent, a current member of the Board, voted to approve an inter-local agreement whereby the Borough of Prospect Park (municipality or municipal government) would provide certain services to the Board, namely the services of a police officer, snow plowing, garbage collection, and recycling in exchange for the Board's payment of \$160,000 per year to the municipality. *Id.* at 3.

In her Complaint, Complainant contends that Respondent's vote to approve the Board's payment of money to the municipality was done to favor a special interest group, the "Friends of Khairullah" (Mayor Khairullah's political campaign), and/or to confer a specific benefit to a member of his immediate family, namely Respondent's spouse who is employed by the municipality as an administrative assistant to the Borough's Administrator. *Id.*

According to Complainant, the Board's payment of money to the municipality makes it more likely that the municipality will continue to employ certain employees, including Respondent's spouse. Complainant insinuates that the public might perceive a sinister purpose to the Board's payment of money to the municipality, namely that Board funds were used as a reward for Respondent's political alliance with Mayor Khairullah's campaign. *Id.* at 3-4. In addition, the employment of Respondent's spouse became more secure by virtue of the money paid by the Board to the municipality. *Id.* at 4. In short, it is Complainant's position that Respondent Nadim conferred a specific benefit on his spouse by voting in favor of the inter-local agreement; his vote constituted use of the schools to confer a specific benefit upon his spouse; and Respondent created a justifiable impression among members of the public that his spouse received a specific benefit by his vote. *Id.*

At the OAL, Respondent filed a *Motion in Limine* to define the breadth and scope of the Exhibits that would be admissible in the proceedings. *Id.* Following the filing of Respondent's *Motion in Limine*, ALJ Scollo ruled that Complainant could only seek to admit P-4, which was

the minutes from the Board's meeting on May 7, 2019, to prove that Respondent seconded the motion at the Board meeting to approve the inter-local agreement, and that he voted to approve the inter-local agreement for the period of July 1, 2019, through June 30, 2020. *Id.*

With the above in mind, and after reviewing Respondent's Motion for Summary Decision, Complainant's Opposition thereto, Respondent's Reply to Complainant's Opposition, and all of the exhibits attached to the parties' respective filings, ALJ Scollo found that the above-captioned matter was "ripe to be decided as a matter of law." *Id.*

### *Analysis and Conclusion*

In his Motion for Summary Decision, Respondent argues that Complainant has not presented sufficient admissible evidence, based on the standard set forth in *N.J.A.C. 6A:28-6.4(a)(b)*, which proves her (Complainant's) contention that Respondent's involvement in the May 7, 2019, vote to approve the inter-local agreement between the Board and the municipality resulted in a specific benefit accruing to his spouse. *Id.* at 7.

In her Opposition, Complainant argues that the facts contained in her Exhibits P-1 through P-5 present "unresolved issues of material fact, which render resolution of" the above-captioned matter by Summary Decision to be inappropriate. *Id.* at 8.

In the Initial Decision, as to Complainant's argument that, based on her Exhibits (P-1 through P-5), unresolved issues of fact remained, ALJ Scollo stated:

During the Respondent's *Motion in Limine*, the Tribunal closely examined Petitioner's P-1 through P-5. The Tribunal found that the Petitioner's use of P-1 through P-5 (individually or in combination) failed to explain in a reasoned, logical, or coherent presentation how and why [Respondent's] participation in the vote on May 7, 2019 could result in the accrual of a specific benefit upon anyone, including his [spouse] (the ultimate issue in the case). As a result of the *Motion in Limine*, only P-4 remains, and that only for limited purposes. There is no other admissible evidence before this Tribunal which has a tendency in reason to prove a fact of consequence to the determination of the action.

*Id.*

With the standard for establishing a violation of *N.J.S.A. 18A:12-24.1(f)* in mind, ALJ Scollo found:

Instead of offering documents that tend to prove facts of consequence to the determination of the action, [Complainant] has presented an argument that asks this Tribunal to accept a presupposition. [Complainant's] argument for admission of the proffered documents (P-1 through P-5) is that [Respondent], Mayor Khairullah and [Respondent's spouse] "worked closely" and that "[i]t is clear from the relationship between Respondent, his spouse and the Mayor, that all three would receive some financial benefit if the inter-local agreement between the Board and the Borough were approved." The presupposition is that [Respondent], Mayor Khairullah and [Respondent's spouse] engaged in a concert of action to use [Board] money, obtained through the inter-local agreement, to fund or continue to fund the municipal government's expenses (including [Respondent's spouse's] salary as an administrative assistant to the Borough Administrator). Aside from P-1 through P-5, there is no other evidence

supporting the Petitioner's suspicions. In order for this Tribunal to allow the Petitioner's case to continue by denying the Summary Decision Motion, it would be necessary to adopt the Petitioner's presupposition that the proffered documents (P-1 through P-5) demonstrate a concert of action, a conspiracy, involving people who concocted and carried-out a scheme to use [Board] money for the sinister purpose of placing or maintaining favored insiders on the municipal government's payroll. In deciding the *Motion in Limine*, the Tribunal did not find that P-1 through P-5 had any tendency in reason to prove the fact of consequence (that [Respondent] used his vote to result in the accrual of a specific benefit for his [spouse]). In her above-referenced argument, [Complainant] makes serious accusations against three people. However, [Complainant] has not presented even a scintilla of evidence to support her accusations. This Tribunal cannot accept bare allegations or fanciful beliefs in lieu of well-grounded facts.

*Id.* at 8-9.

Consequently, ALJ Scollo concluded that he had to reject Complainant's presupposition or any unsupported allegations. *Id.* at 9. In addition, and because there were no unresolved issues of material fact remaining in this case, ALJ Scollo concluded that disposition by Summary Decision was appropriate; Complainant had not offered any admissible evidence necessary to prove a violation of *N.J.S.A.* 18A:12-24.1(f); Respondent was entitled to a decision in his favor as a matter of law; Respondent's Motion for Summary Decision was granted; and the Complaint was dismissed. *Id.*

### **III. Exceptions**

#### ***Complainant's Exceptions***

In her Exceptions, which were filed on June 19, 2020, Complainant notes that the "Order of *Motion of Limine*," issued by ALJ Scollo, "suppressed certain evidences and ruled that the municipal government is not a business." Complainant argues that at the June 9, 2020, Board meeting, the Board invoked the "Doctrine of necessity for the approval of a 'Memorandum of Agreement' [(MOA)] between the [Board] and the Borough of Prospect Park, which is a monetary contract and includes but is not limited to [p]olice services." According to Complainant, the MOA involves the transfer of money "from school, for purposes that are not instructional and potentially hurt the educational process. In turn," Respondent's spouse "has a stellar career, that started a short time ago as a campaign helper" and recently has "ascended ... to the [D]eputy [B]orough clerk position." Complainant notes that Respondent's spouse's job success "closely correlated to the times." Respondent "blindly voted for monetary deals with the municipality" where his spouse is employed. Complainant notes that the "intricacies of this close business relation were highlighted by multiple evidences," which the Commission accepted, but the ALJ dismissed. Complainant notes that Respondent "wants to ensure the employment [of his spouse]" by voting to benefit the municipality. In short, Respondent's [spouse] receives "direct pay or promotion as a result of [Board] decisions."

Complainant "respectfully" requests that the Commission reconsider the Summary Decision. According to Complainant, the MOA between the District and the municipality only benefits Respondent's spouse's career, and the Mayor "and his inflated municipal budget." By entering into this contract, "the Borough functions as a business." Complainant reaffirms that the ALJ's decision that "the Borough is not a business should not have served as a basis to exclude

[P]etitioner's evidence. The [M]otion in [L]imine should be reversed and the matter should be remanded for a new hearing which considers all of [P]etitioner's evidence."

### ***Response to Complainant's Exceptions***

In his response to Complainant's Exceptions, which were filed on June 24, 2020, Respondent preliminarily argues that Complainant filed her exceptions beyond the thirteen (13) day deadline and, therefore, they are time barred. The Initial Decision was issued June 5, 2020, but Complainant did not file her Exceptions until June 19, 2020, which was fourteen (14) days after, and one day beyond, the thirteen (13) day deadline. In addition, Respondent argues that Complainant did not fulfill the requirements set forth in *N.J.A.C. 1:1-18.4(b)*, which necessitates "specific findings of fact, conclusions of law or dispositions proposed in lieu of or in addition to those reached by the judge," nor did Complainant "set forth any legal 'authorities relied upon' in support of the exceptions." Respondent notes that Complainant "simply re-hashes her prior arguments, and submits" the Doctrine of Necessity, in violation of *N.J.A.C. 1:1-18.4(c)*, "which has never before been presented in this matter."

Respondent further argues that Complainant states "she must 'clarify the situation' by re-emphasizing her argument that Respondent voted in favor of the Board's inter-local agreement with the municipality in order to pad the coffers of the municipal government and secure continued employment for his [spouse]." Respondent notes, contrary to Complainant's unnecessary "clarification," ALJ Scollo correctly determined that Complainant did not submit any "factual evidence" to support her allegation that "Respondent's involvement in the [May 7, 2019] vote to approve the inter-local agreement with the municipality (his spouse's employer) resulted in a specific benefit accruing to his spouse." Moreover, Complainant's evidence "consisted exclusively of documents reflecting activities well pre-dating the May 7, 2019 vote, and a document reflecting an August 2019 vote that post-dated the filing of the Complaint."

Respondent maintains that Complainant is a "disgruntled former Board member and unsuccessful mayoral candidate, [who] clearly is not pleased with the operations of either the Board or the municipality." According to Respondent, Complainant has failed to provide the adequate evidence that is required to support her allegations that Respondent's May 7, 2019, vote violated *N.J.S.A. 18A:12-24.1(f)* and, therefore, ALJ Scollo's decision was appropriate. As such, Respondent "respectfully requests that the Commission reject Complainant's exceptions and affirm ALJ Scollo's" Initial Decision granting Respondent's Motion for Summary Decision, and dismissing the Complaint.

#### **IV. Analysis**

As an initial matter, Respondent argues that Complainant's Exceptions should not be considered by the Commission because they were submitted one (1) day beyond the thirteen (13) day deadline. Despite Respondent's argument, the Commission finds that, in light of the current Coronavirus (COVID-19) pandemic, and although the filing was technically delinquent, it is appropriate to accept and consider the substance of Complainant's filing, especially since there is no demonstrable prejudice to Respondent in doing so.

Complainant bears the burden of factually proving the alleged violation of the Code in accordance with the standards enumerated in *N.J.A.C. 6A:28-6.4(a)*. *N.J.S.A. 18A:12-29(b)*.

Upon a thorough, careful, and independent review of the record, including Complainant's Exceptions and Respondent's response thereto, the Commission finds that the record supports the findings of fact in ALJ Scollo's Initial Decision, and also supports ALJ Scollo's legal conclusion that there is insufficient credible (and admissible) evidence to support a violation of *N.J.S.A.* 18A:12-24.1(f). Although Complainant argues that "[t]he *[M]otion in [L]imine* should be reversed and the matter should be remanded for a new hearing which considers all of [P]etitioner's evidence," the Commission does not have the authority to overrule the evidentiary determination of ALJ Scollo. Even if it did have such authority, the Commission does not have any reasonable basis upon which to overturn ALJ Scollo's determination that there is nothing in Complainant's Exhibits which has "any tendency in reason to prove the fact of consequent," which is whether Respondent's vote resulted "in the accrual of a specific benefit" for Respondent's spouse.

Absent the authority to overturn ALJ Scollo's evidentiary determination, the Commission finds that the record supports ALJ Scollo's findings of fact, and the decision to grant Respondent's Motion for Summary Decision because of insufficient credible evidence to establish a violation of *N.J.S.A.* 18A:12-24.1(f).

## **V. Decision**

After review, the Commission adopts ALJ Scollo's Initial Decision granting Respondent's Motion for Summary Decision, and dismissing the Complaint.

Therefore, this is a final agency decision and is appealable only to the Superior Court-Appellate Division. *See, N.J.A.C.* 6A:28-10.11 and *New Jersey Court Rule* 2:2-3(a).

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Robert W. Bender, Chairperson

Mailing Date: August 25, 2020

***Resolution Adopting Decision  
in Connection with C35-19***

***Whereas***, by correspondence dated November 6, 2019, the School Ethics Commission (Commission) transmitted the above-referenced matter to the Office of Administrative Law (OAL) for a hearing; and

***Whereas***, at the OAL, Respondent filed a Motion for Summary Decision and Complainant filed an opposition; and

***Whereas***, the Honorable John P. Scollo, Administrative Law Judge (ALJ Scollo) issued an Initial Decision dated June 5, 2020; and

***Whereas***, in his Initial Decision, ALJ Scollo granted Respondent's Motion for Summary Decision, finding that Complainant failed to offer any admissible evidence to prove a violation of *N.J.S.A.* 18A:12-24.1(f); and

***Whereas***, on June 19, 2020, Complainant filed Exceptions to the Initial Decision; and

***Whereas***, on June 24, 2020, Respondent filed a response to Complainant's Exceptions; and

***Whereas***, at its meeting on July 21, 2020, the Commission reviewed and discussed the record, including ALJ Scollo's Initial Decision and the filed Exceptions; and

***Whereas***, at its meeting on July 21, 2020, the Commission discussed adopting the findings of fact from the Initial Decision, and adopting the legal conclusion that, based on the admissible evidence, there is insufficient credible evidence to establish a violation of *N.J.S.A.* 18A:12-24.1(f); and

***Whereas***, at its meeting on August 25, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 21, 2020; and

***Now Therefore Be It Resolved***, the Commission hereby adopts the within decision.

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Robert W. Bender, Chairperson

I certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on August 25, 2020.

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Kathryn A. Whalen, Director  
School Ethics Commission