

Before the School Ethics Commission
Docket No.: C58-21
Decision on Motion to Dismiss

Natakie Chestnut-Lee,
Complainant

v.

Jerome Page, Sharnell Morgan, Yadira Falcon, Anny Melo, and Alejandrina Alberto,
Pleasantville Board of Education, Atlantic County,
Respondents

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on October 20, 2021, by Natakie Chestnut-Lee (Complainant) alleging that Jerome Page (Respondent Page), Sharnell Morgan (Respondent Morgan), Yadira Falcon (Respondent Falcon), Anny Melo (Respondent Melo), and Alejandrina Alberto (Respondent Alberto) (collectively referred to as Respondents), members of the Pleasantville Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* On October 22, 2021, Complainant submitted an Amended Complaint (Complaint) to include an additional violation of the Code of Ethics for School Board Members (Code). More specifically, in the Complaint filed on October 22, 2021, Complainant avers that Respondents violated *N.J.S.A.* 18A:12-24.1(a) of the Code in Counts 1-2.

On October 27, 2021,¹ the Complaint was served on Respondents via electronic mail, notifying them that charges were filed against them with the School Ethics Commission (Commission), and advising that they had had twenty (20) days to file a responsive pleading.² On November 16, 2021, Respondent Morgan filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss); on November 18, 2021, Respondent Page filed an Answer to Complaint (Answer), and allegation that the Complaint is frivolous; on December 6, 2021, Complainant filed a response to Respondent Morgan's Motion to Dismiss, and to Respondent Page's assertion that she (Complainant) filed a frivolous Complaint; on March 2, 2022, Respondent Melo filed a Motion to Dismiss; on March 22, 2022, Complainant filed a response to Respondent Melo's Motion to Dismiss; and on March 29, 2022, Respondents Falcon and Alberto joined in the Motion to Dismiss filed by Respondent Morgan on November 16, 2021.

¹ Complainant's October 20, 2021, Complaint was served on Respondents (electronically) on October 21, 2021; however, Complainant's October 20, 2021, filing was superseded by the Complaint filed on October 22, 2021.

² As a result of the ongoing Coronavirus (COVID-19) pandemic, and the implementation of electronic filing, service of process was effectuated by the Commission through electronic transmission only.

The parties were notified by correspondence dated April 18, 2022, and amended correspondence dated April 20, 2022, that the above-captioned matter would be discussed by the Commission at its meeting on April 26, 2022, in order to make a determination regarding the Motions to Dismiss filed by Respondents Morgan, Falcon, Melo, and Alberto, and regarding the allegation of frivolous filing levied against Complainant by Respondent Page in his Answer. Following its discussion on April 26, 2022, the Commission adopted a decision at its meeting on May 24, 2022, dismissing the above-captioned matter in its entirety for the reasons more fully detailed below, and finding the Complaint not frivolous.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant, the Superintendent, states that “[m]aterial terms and conditions” of her employment were discussed by the Board at its meeting on October 12, 2021, but she was never provided with a *Rice* notice. In fact, Respondents were advised by Board counsel that personnel actions concerning Complainant, including placing her on paid administrative leave without issuing a *Rice* notice, were “patently improper,” and that “both the discussion of the term[s] and conditions” of her employment and “actions taken by the Board” would violate Board policy. Although certain Board members “tried to submit a petition to issue a *Rice* notice under the guise of requesting a special meeting,” the State Monitor (Dr. Rush) wrote a letter to the Board advising that “the issuance of a *Rice* notice should be held in abeyance due to inconsistencies found in the petition,” namely that two signatures appeared to have been forged. Board counsel further advised that Dr. Rush, as State Monitor, had statutory authority to direct the Business Administrator not to issue a *Rice* notice to Complainant and, therefore, for all practical purposes, a *Rice* notice had not been issued to Complainant. As such, the Board was specifically advised that any actions taken regarding Complainant and her employment were in violation of her due process rights, and “were tainted and subject to revocation.”

Even though a *Rice* notice was not issued, and despite the advice they received, Respondents voted to place Complainant on paid administrative leave. During the Board’s meeting, Respondent Page noted, “if the Board[’s] actions were wrong, they will take the punishment.” Based on these facts, Complainant submits Respondents violated *N.J.S.A.* 18A:12-24.1(a) because they “knowingly and willfully violated well established New Jersey law and District policy with regard to providing timely notice to an employee whose terms and conditions of employment are to be discussed by the Board at a public meeting.”

In Count 2, Complainant states that “[m]aterial terms and conditions” of her employment were again discussed by the Board at its meeting on October 21, 2021, even though she was not provided with a *Rice* notice. Again, Respondents were advised by Board counsel that personnel actions concerning Complainant, including an investigation of her (Complainant), without issuing a *Rice* notice, were “patently improper.” Not only was this action “not duly advertised nor []part of the [A]genda,” Board counsel and the Board President also advised the Board that “both the discussion of the term[s] and conditions” of her employment and “actions taken by the

Board” would violate Board policy. As a *Rice* notice was not issued to Complainant, the Board was specifically advised that any actions taken regarding Complainant and her employment were in violation of her due process rights, and “were tainted and subject to revocation.”

Once again, even though a *Rice* notice was not issued, and despite the advice they received, Respondents voted to have a firm investigate Complainant. During the Board’s meeting, Respondent Page again noted, “if the investigation found the superintendent to be squeaky clean[,] she would be returning.” Given these facts, Complainant contends Respondents violated *N.J.S.A. 18A:12-24.1(a)* because they “knowingly and willfully violated well established New Jersey law and District policy with regard to providing timely notice to an employee whose terms and conditions of employment are to be discussed by the Board at a public meeting.”

B. *Motion to Dismiss filed by Respondents Morgan, Alberto, and Falcon*

Following receipt of the Complaint, Respondents Morgan, Alberto, and Falcon filed a Motion to Dismiss, and initially argue the Complaint should be dismissed because Complainant failed to provide a telephone number for Respondents and, therefore, the Complaint is “non-conforming.” Respondents further argue the Complaint should be dismissed because Complainant “used a combination of narrative paragraphs as opposed to the individually numbered paragraphs required by the Administrative Code.” Furthermore, Respondents maintain the Complaint should be dismissed because Complainant has failed to provide the “petition” and the “video” that she references in her Complaint, and such failure violates Respondents’ “due process rights.” For these reasons, Respondents submit that Complainant’s failure to comply with the administrative code warrants dismissal of her Complaint.

C. *Answer (Respondent Page)*

Following receipt of the Complaint, Respondent Page filed an Answer. Respondent Page denies Complainant’s allegations, and notes that proper “*Rice* notices were delivered for timely service on ... [C]omplainant pursuant to [B]oard policy.” Respondent contends that in the summer of 2021, the Board learned that Complainant “delivered supporting material with regard to an anonymous letter that was transmitted to the Commissioner of the Department of Education [(Commissioner)].” According to Respondent Page, Complainant “purported to respond on behalf of the [Board],” but “[a]t no time was the [Board] advised that [Complainant] had supported a claim against the Principal Academy Charter School [(Charter School)],” and “[a]t no time was [Complainant] authorized to act in this regard by the Board.” Respondent Page further contends “as a result of [Complainant’s] unauthorized actions, she exposed the Board to a legal claim for damages.” Respondent Page maintains that the Charter School’s attorney issued a “cease-and-desist letter,” and requested an investigation. Respondent Page further maintains the Board learned of Complainant’s behavior “after the fact” and asked her to “explain her conduct with regard to this unauthorized action.” Per Respondent Page, “It became apparent that [Complainant] was acting without Board approval on other issues, and [Respondents] wanted an explanation. It was equally apparent that [Respondents] were working with a deeply divided Board and that [Complainant] was selectively and secretly communicating with a few Board members. It was important that [Complainant] address all Board members.” Respondent Page asserts the Board submitted a petition to the Interim Executive County Superintendent and State

Monitor on September 30, 2021, requesting a special Board meeting for October 8, 2021. According to Respondent Page, it was only after “delivering a proper petition on October 6, 2021, that supported the issuance of a *Rice* notice” in accordance with Board policy, that on October 7, 2021, the State monitor “at the behest of [Complainant], claimed that he was putting the *Rice* notice on hold pending the outcome of an investigation into the propriety of the petition.” On October 8, 2021, the State Monitor resigned, and the Board considered the “issue at the regular” Board meeting on October 12, 2021. Respondent Page claims Complainant knew that the Board wanted to discuss her behavior “on account of her actual knowledge of the *Rice* notice being issued previously.” On October 8, 2021, Complainant “conducted a press conference” “expressing her knowledge of the *Rice* notice that was issued to her and her threatened legal action.” Respondent Page contends that at the October 12, 2021, Board meeting he “made a motion to place [Complainant] on administrative leave with full pay contingent upon her receiving another *Rice* notice that confirmed the prior issuance of the October 6, 2021, *Rice* notice.”

Respondent Page notes that Complainant has “simultaneously filed a notice of claim against the Board and [Respondent Page] to be filed in Superior Court and or Federal Court.” Respondent Page therefore requests that the Complaint be dismissed with prejudice, and “an award of attorney’s fees and an award of sanctions on account of it being a frivolous assertion motivated by [Complainant’s] improper political considerations and the clear orchestration of encouraging false claims against [Respondent Page] at the Commission by Rod Knox (C49-21) and Christiana Otuwa (C51-21).”

D. Response to Motion to Dismiss filed by Respondents Morgan, Alberto, and Falcon, and Response to Respondent’s Page Allegation of Frivolous Filing

In response to the Motion to Dismiss filed by Respondents Morgan, Alberto, and Falcon, Complainant notes that Respondents “clearly understood the gist of the [C]omplaint” and were able to file a response even though she (Complainant) did not use numbered paragraphs and, moreover, she was not required to use numbered paragraphs. Regarding the audio/video of the Board meeting, Complainant has always maintained it is available upon request, and provided it (via memory stick) to counsel.

As for the substance of her claims, Complainant maintains Respondents “proceeded to suspend [Complainant] without having issued her a *Rice* Notice” and “[d]espite being repeatedly told by Board counsel that a *Rice* notice had not been validly issued,” Respondents discussed Complainant’s employment in public and without allowing Complainant to respond and, therefore, “violated one of the most fundamental due process protections afforded to ... employees.” Complainant reaffirms, “Knowing full well that the petition submitted by the [B]oard members was considered suspect, [B]oard counsel nonetheless advised the Board on October 12, 2021[,] that it was well within their province to take a vote to *Rice* [Complainant] so that she could be discussed at a subsequent meeting. Despite Board [c]ounsel’s repeated warnings ... these Board members declined to remedy their due process violation by voting to issue a valid *Rice* notice.” Complainant further asserts five Board members (Respondents) continued to discuss “the terms and conditions of [Complainant’s] employment at two (2) separate meetings without first having issued [Complainant] a *Rice* Notice.” With the above in

mind, Complainant maintains the Motion to Dismiss should be denied, and the Commission should find that the Complaint is not frivolous.

E. *Motion to Dismiss filed by Respondent Melo*

In a separately filed Motion to Dismiss, Respondent Melo argues that to establish a violation, Complainant “must include or at least ‘assert that there has been, a final decision from any court of law or administrative agency of this State demonstrating that ... [R]espondent [Melo] failed to enforce all laws, rules and regulations of the State Board of Education and/or court orders pertaining to schools”; without such a final decision, a violation cannot be sustained. Moreover, Board counsel’s advice to the Board that “their action would be a violation of a statute, does not change the requirement that in order for an action to constitute a violation ... there must be a final decision from a court or administrative agency.”

Moreover, Respondent Melo asserts that Complainant’s “sole[]” argument is that Respondents acted unethically when they placed Complainant “on leave” without properly issuing a *Rice* notice and, according to Respondent Melo, this “is not within the Commission’s purview.” Respondent Melo further asserts that “[e]ven if the Commission had jurisdiction regarding the alleged *Rice* notice, there is simply no support for the allegation that the vote of the majority of the Board was unethical.” Per Respondent Melo, a “majority of the Board presented a petition requesting a special meeting,” and the petition did not need to be approved by the State monitor; therefore, “even if the validity of the *Rice* notice was before the Commission, which it is not, there is no support for the allegation that the majority of the Board’s action in presenting the petition and voting to place [] Complainant on leave violated” the Act; for these reasons, Respondent Melo submits the Motion to Dismiss should be granted in its entirety.

F. *Response to Motion to Dismiss filed by Respondent Melo*

In response to Respondent Melo’s Motion to Dismiss, Complainant argues Respondent Melo’s main focus in her Motion to Dismiss is on the Board’s “intentional decision to proceed with suspending [Complainant] without a required ‘*Rice* Notice,’” and that this action does not violate the Act. However, Complainant contends she is not requesting the Commission “evaluate the inadequacy of the *Rice* Notice” because the State Monitor “found the petition potentially fraudulent.” Rather, Complainant reasserts that her Complaint is predicated on the fact that Respondents, despite being told their petition was deficient, [] knowingly violated: (1) the longstanding *Rice* Notice requirement”; (2) “the Commissioner’s rule in [*Persi v. Woska*]”; and (3) “violated their own policy implementing the Court ordered *Rice* requirement providing advance notice to employees whose terms and conditions of employment are being discussed.”

Complainant reasserts that Board counsel “not only advised the Board that there was no *Rice* Notice, but also stated they should take no action regarding [Complainant] that evening.” According to Complainant, after disregarding the advice of counsel, the Board members were further advised that they were violating Board policy, which requires 72 hours’ notice “in advance of the meeting as well as the subject or subjects of discussion.” Moreover, Complainant notes the Board did not put Complainant’s suspension on the meeting’s agenda and, therefore, Complainant “was never afforded the opportunity to direct the Board as to whether any discussion of the terms and conditions of her employment, her suspension for alleged

improprieties ... should be heard in closed or open session.” Consequently, Complainant did not take any measures to protect herself. Complainant contends Respondent’s actions “were a flagrant violation of the personnel exception of the Open Public Meetings Act and the Appellate Panel’s holding in *Rice*.”

Complainant argues Respondents, including Respondent Melo, “knowingly violated a longstanding Superior Court imposed requirement that ‘public employees must be given reasonable notice when a public entity intends to consider taking adverse employment action related to them.’” Complainant further argues, “In abrogation of the *Rice* requirement, the Persi rule and their own policy, [Respondents] defiantly proceeded to discuss [Complainant] and, thereafter, render a decision affecting her terms and conditions of her employment without having issued a *Rice* Notice.” Therefore, Complainant “respectfully requests that the Motion to Dismiss be denied.”

III. Analysis

A. *Jurisdiction of the Commission*

In reviewing the allegations in this matter, the Commission notes that its authority is limited to enforcing the Act, *N.J.S.A.* 18A:12-21 *et seq.*, a set of minimum ethical standards by which all school officials must abide. In this regard, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C.* 6A:28-1.4(a).

With the jurisdiction of the Commission in mind, to the extent that Complainant seeks a determination from the Commission that Respondents’ conduct (whether individually and/or collectively) may have violated a Board policy and/or regulation; may have violated the Open Public Meetings Act; and/or may have been contrary to the requirements mandated by *Rice v. Union Cty. Reg’l High Sch. Bd. of Educ.*, 155 *N.J. Super* 64 (App. Div. 1977), the Commission advises that such determinations fall well beyond the scope, authority, and jurisdiction of the Commission. Nonetheless, Complainant may be able to pursue each of those claims in the appropriate tribunal; however, the Commission is not the appropriate entity to adjudicate such issues. As such, those claims are dismissed.

B. *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(s) 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 pled sufficient facts which, if true, could support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a) in Count 1 and/or Count 2.

C. *Alleged Code Violations*

In the within matter, Complainant submits that, based on the conduct more fully detailed above, Respondents violated *N.J.S.A.* 18A:12-24.1(a) in Counts 1-2, and this provision of the Code provides:

- 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.

Pursuant to *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.

Following a thorough review of the Complaint, the Commission finds that even if the facts as asserted in Counts 1-2 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) in Count 1 and/or Count 2. Despite being required by *N.J.A.C.* 6A:28-6.4(a)(1), the Commission finds that Complainant has not provided **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating or specifically finding that Respondents, either individually or collectively, violated a specific law, rule, or regulation when they engaged in any of the acts/conduct set forth in Counts 1-2. Without the required final decision, the Commission is constrained to find that the alleged violations of *N.J.S.A.* 18A:12-24.1(a) in Count 1 and Count 2 should be dismissed as requested by Respondents Morgan, Falcon, Melo, and Alberto.

D. *Respondent Page's Answer*

Although, in lieu of a Motion to Dismiss, Respondent Page chose to file an Answer, the Commission is authorized by *N.J.A.C.* 6A:28-10.2 and *N.J.A.C.* 6A:28-10.8 to dismiss a Complaint when, as here, a Complaint fails, on its face, to state a viable claim for a violation of the Act. Accordingly, and for the reasons more fully detailed above, the claims filed by Complainant against Respondent Page are also dismissed.

IV. **Request for Sanctions**

At its meeting on April 26, 2022, the Commission considered Respondent Page's request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondent Page'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 May 24, 2022, 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 Motions to Dismiss filed by Respondents Morgan, Falcon, Melo, and Alberto in their 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) in Count 1 and/or Count 2; to dismiss, pursuant to *N.J.A.C.* 6A:28-10.2 and *N.J.A.C.* 6A:28-10.8, the Complaint filed against Respondent Page because, on its face, the Complaint fails to state a viable claim for a violation of the Act; to find that the Complaint is not frivolous; and to deny Respondent Page's 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: May 24, 2022

***Resolution Adopting Decision
in Connection with C58-21***

Whereas, at its meeting on April 26, 2022, the School Ethics Commission (Commission) considered the Complaint, the Motions to Dismiss in Lieu of Answer (Motions to Dismiss), and the response to the Motions to Dismiss submitted in connection with the above-referenced matter; and

Whereas, at its meeting on April 26, 2022, the Commission discussed granting the Motions to Dismiss filed by Respondents Morgan, Falcon, Melo, and Alberto in their 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) in Count 1 and/or Count 2; and

Whereas, at its meeting on April 26, 2022, the Commission discussed dismissing, pursuant to *N.J.A.C.* 6A:28-10.2 and *N.J.A.C.* 6A:28-10.8, the Complaint filed against Respondent Page because, on its face, the Complaint fails to state a viable claim for a violation of the Act; and

Whereas, at its meeting on April 26, 2022, the Commission discussed finding that the Complaint is not frivolous, and denying Respondent Page's request for sanctions; and

Whereas, at its meeting on May 24, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on April 26, 2022; 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 May 24, 2022.

Kathryn A. Whalen, Esq.
Director, School Ethics Commission