

Before the School Ethics Commission
Docket No.: C08-23
Decision on Motion to Dismiss

Christine E. Dye,
Complainant

v.

Dawn Daura, Michele Mega, and Louis Marzullo,
Cedar Grove Board of Education, Essex County,
Respondents

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on January 20, 2023, by Christine E. Dye (Complainant), alleging that Dawn Daura (Respondent Daura), Michele Mega (Respondent Mega), and Louis Marzullo (Respondent Marzullo) (collectively referred to as Respondents), members of the Cedar Grove Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated January 24, 2023, Complainant was notified that the Complaint was deficient, and required amendment before the Commission could accept her filing. On February 21, 2023, 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. More specifically, the Complaint avers that Respondents violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code).

On February 24, 2023, the Complaint was served on Respondents via electronic mail, notifying them that ethics charges had been filed against them with the Commission, and advising that they had twenty (20) days to file a responsive pleading.¹ On March 13, 2023, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and on March 30, 2023, Complainant filed a response to the Motion to Dismiss.²

¹ In order to conduct business during the Coronavirus (COVID-19) pandemic, the Commission implemented an electronic filing system, which remains a permissible method by which the Commission and parties can effectuate service of process. Consequently, service of process was effectuated by the Commission through electronic transmission only.

² On April 10, 2023, Respondents filed a reply to Complainant's response to the Motion to Dismiss. In addition, and on April 10, 2023, Complainant filed an additional response to Respondents' April 10, 2023, filing, objecting to its consideration. As neither Respondents' April 10, 2023, filing, nor Complainant's April 10, 2023, filing is permitted by the Commission's regulations, neither was considered by the Commission at its meetings on April 25, 2023, and/or May 23, 2023, in ruling on the Motion to Dismiss.

The parties were notified by correspondence dated April 17, 2023, that the above-captioned matter would be discussed by the Commission at its meeting on April 25, 2023, in order to make a determination regarding the Motion to Dismiss. Following its discussion on April 25, 2023, the Commission adopted a decision at its meeting on May 23, 2023, finding that the Complaint was untimely filed and, even if it had been filed timely, the Motion to Dismiss would have been granted in its entirety because Complainant failed to plead sufficient credible facts to support a finding/determination/decision that Respondents violated *N.J.S.A.* 18A:12-24.1(a) and/or *N.J.S.A.* 18A:12-24.1(f).

II. Summary of the Pleadings

A. *The Complaint*

Complainant, a former member of the Board, states that, on July 19, 2022, Respondent Daura, Respondent Mega, and Respondent Marzullo “approved a resolution condemning” Complainant’s behavior as a Board member, and the resolution “was based on malicious and false accusations by a friend of” Respondent Daura. Complainant also notes that the resolution in question was introduced at the end of Executive Session by the Board attorney; was not on the agenda; was not shared with Complainant; and none of the named Respondents asked Complainant “anything about what allegedly occurred.” Per Complainant, “[t]he Board has no authority to reprimand a fellow [B]oard member.”

Based on the conduct set forth above, Complainant asserts that Respondents violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(f) because they surrendered their independent judgment to special interest or partisan political groups, and used the schools for personal gain or the gain of friends.

Of note, Complainant concedes that her Complaint “is slightly over the 180-day timeframe,” but asks the Commission to “make an exception” due to her personal and mental health.

B. *Motion to Dismiss*

In their Motion to Dismiss, Respondents concede that on July 19, 2022, a resolution was passed by the Board in “response to complaints by the parents of a student who had been offended by [Complainant] refusing to shake her hand when she passed by her in the course of receiving her diploma, an event captured on video.” Per Respondents, Complainant “engaged in this conduct selectively, singling out a student whose parents supported” Complainant’s recall as an elected member of the Board. The resolution passed by the Board never used the words “censure” or “reprimand,” and instead “was designed to and did provide an apology to the offended graduate’s family.” Not only is the Complaint “meritless” because Complainant was neither reprimanded nor censured, but it was also untimely filed on February 21, 2023.

As noted above, Respondents argue that the Complaint must be dismissed because it was untimely filed with the Commission on February 21, 2023, which was “217 days after the

challenged resolution was adopted at the Board’s July 19, 2022, public meeting.” Moreover, Complainant’s “alleged reasoning” for filing her Complaint untimely is both “vague and unpersuasive,” and should not be a basis to relax the limitation period. Because the filing is “inexcusably untimely,” it must be dismissed.

Even if not regarded as untimely, the Complaint must still be dismissed because Complainant was neither reprimanded nor censured when the Board approved the resolution on July 19, 2022. Because Complainant was “childish and inappropriate,” neither of which is a violation of the Act, but rather “rude behavior,” the Board “very appropriately” issued a public apology to an insulted student and her parents. Furthermore, and regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(f), and Respondents’ purported reliance on malicious and false accusations from an unnamed friend, Complainant “offers no clue as to why this is true, nor does she articulate what political gain would benefit the unidentified friend.” In short, other than speculation, Complainant offers no facts which could possibly establish a violation of *N.J.S.A.* 18A:12-24.1(f).

Based on the foregoing, Respondents argue that the Complaint should be read for what it is, “an untimely, inappropriate, unsubstantiated afterthought, designed only to harass the Board [m]embers who stole [Complainant’s] thunder,” and must be dismissed.

C. *Response to Motion to Dismiss*

In response to the Motion to Dismiss, Complainant argues that Respondents’ counsel should be recused from this matter because he was previously fired by the Board for “unethical behavior,” and because Complainant has an active ethics complaint against Respondent Daura and Respondent Mega for hiring him. Complainant also maintains that, based on the conduct set forth in the Complaint, along with the additional facts and information set forth in her response, Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), and *N.J.S.A.* 18A:12-24.1(j).³ Complainant also vehemently denies the version of the events set forth in the resolution, including the claim that she refused to shake the hand of the student in question (or that of any other student), and takes issue with the fact that no other Board member or member of the administration ever asked Complainant her version of the events before the resolution was presented to and adopted by the Board. Complainant argues that Respondents “most intentionally and unethically read the Resolution on the night of July 19, 2022, in the absence of [Complainant and another Board member] to assure unilateral approval and to facilitate and continue the defamation” of Complainant.

³ As part of her response to the Motion to Dismiss, Complainant included violations of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(j). Because Complainant did not plead a violation of *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(j) in the charging document, namely the Complaint, the Commission will not consider or further analyze whether Respondents violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(j).

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(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)* and/or *N.J.S.A. 18A:12-24.1(f)*.

B. *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' comments/statements may have constituted defamation, slander, and/or libel, the Commission advises that such determinations fall well beyond the scope, authority, and jurisdiction of the Commission. Although Complainant may be able to pursue a cause of action in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those issues. Consequently, those claims are *dismissed*.

C. *Alleged Untimeliness*

In their Motion to Dismiss, Respondents argue that the Complaint, which was filed on February 21, 2023, was filed "217 days after the challenged resolution was adopted at the Board's July 19, 2022, public meeting" and, as a result, was untimely filed with the Commission. Furthermore, Complainant's stated reasoning for filing an untimely Complaint is both "vague and unpersuasive" and should not serve as a basis upon which to relax the period of limitations. Although Complainant concedes that her Complaint was filed "slightly over the 180-day timeframe," she urges the Commission to make an exception to her dilatory filing because of her personal and mental health.

The Commission's regulations provide a one hundred eighty (180) day limitation period for filing a complaint. More specifically, *N.J.A.C. 6A:28-6.5(a)* provides, in relevant part:

- (a) Complaints shall be filed within 180 days of notice *of the events which form the basis of the alleged violation(s)*. A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) *when he or she knew of such events or when such events were made public*

so that one using reasonable diligence would know or should have known (emphasis added).

In this case, Complainant did not file a Complaint that was deemed compliant with the Commission's regulations (*N.J.A.C.* 6A:28-6.3) until February 21, 2023; however, she filed her first deficient Complaint on January 20, 2023. Therefore, and because Complainant's amendments relate back to the date her Complaint was first received by the Commission, the filing date in this matter is regarded as **January 20, 2023**. See *N.J.A.C.* 6A:28-6.7(b). One hundred eighty (180) days prior to January 20, 2023, is Sunday, July 24, 2022; however, by rule, the deadline is extended to the previous business day, which is Friday, July 22, 2022.

With the above in mind, and pursuant to *N.J.A.C.* 6A:28-6.5(a), the Commission must determine when Complainant knew of the events which form the basis of her Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events.

The Commission recognizes that limitation periods of this type serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. *Kaprow v. Berkley Township Bd. of Educ.*, 131 *N.J.* 571, 587 (1993). Thus, "notice of the alleged violation" must be interpreted in a manner that anticipates the reasonable diligence of complainant(s). In addressing potential violations of the Act, the Commission must balance the public's interest in knowing of potential violations against the important policy of repose and a respondent's right to fairness. The time limitations set forth in the regulations must be enforced if the Commission is to operate in a fair and consistent manner. *Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County*, C19-03 (June 24, 2003).

After review, the Commission finds that there is not a credible basis upon which to find that Complainant was unaware of Respondent's actions/conduct until a date(s) other than when they occurred, namely on July 19, 2022. Although the Commission recognizes that the regulatory time period may be relaxed when strict adherence may be deemed inappropriate or unnecessary or may result in injustice, and although it is certainly sensitive and sympathetic to the "personal and mental health" issues Complainant may have endured, it finds no extraordinary circumstances in the within matter that would compel relaxation.

Even if the Commission determined that, due to Complainant's "personal and mental health" issues, the period of limitations should be relaxed because her Complaint was filed only three (3) days beyond the period of limitations, the Commission still would have granted the Motion to Dismiss in entirety.

As noted above, Complainant contends that Respondents violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(f) when they "reprimanded" her without, per Complainant, the authority to do so. The cited provisions of the Code provide, respectively, "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," and "I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends."

Pursuant to *N.J.A.C.* 6A:28-6.4(a), a violation(s) of *N.J.S.A.* 18A:12-24.1(a) and/or *N.J.S.A.* 18A:12-24.1(f) needs to be supported by certain factual evidence, more specifically:

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.

6. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(f) shall include evidence that Respondents took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that Respondents used the schools in order to acquire some benefit for themselves, a member of their immediate family or a friend.

Based on the foregoing, even if the facts as enumerated in the Complaint could be proven true by sufficient credible evidence, they would not support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a) and/or *N.J.S.A.* 18A:12-24.1(f). First, and with regard to the alleged violation of *N.J.S.A.* 18A:12-24.1(a), Complainant needed to provide **a copy of a final decision** from any court of law or other administrative agency demonstrating or finding that Respondents, individually or collectively, violated a specific law(s), rule(s), or regulation(s) of the State Board of Education and/or court order(s) pertaining to schools, or that they brought about changes through illegal or unethical procedures, when they engaged in any of the actions/conduct set forth in the Complaint. In the absence of the required final decision(s), the Commission is compelled to dismiss the stated violation of *N.J.S.A.* 18A:12-24.1(a).

Next, and regarding the purported violation of *N.J.S.A.* 18A:12-24.1(f), Complainant has not provided any factual evidence that Respondents voted to approve the resolution in question “on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause.” Moreover, Complainant has not presented a cognizable theory, let alone sufficient factual evidence, of how they or their “friends” may have benefitted from the vote to approve the resolution. In this regard, there is no factual evidence that Respondents initiated or otherwise directed the drafting of the resolution, and/or that the basis for the resolution was without sufficient justification or cause (even if Complainant refutes the relevant events). Further, even if the named Respondents, whether individually or collectively, may have known the “offended graduate’s family,” exactly how they or their “friends” would have acquired or received an unspecified “benefit” from their vote to adopt the resolution is specious, at best.

Consequently, the Commission finds that, even if the Complaint had been filed timely, Complainant did not adduce sufficient factual evidence to support a determination(s) that Respondents violated *N.J.S.A.* 18A:12-24.1(a) and/or *N.J.S.A.* 18A:12-24.1(f).

IV. 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 find that the Complaint was untimely filed and, even if had been filed timely, the Motion to Dismiss would have been granted in its entirety because Complainant failed to plead sufficient credible facts to support a determination that Respondents violated *N.J.S.A.* 18A:12-24.1(a) and/or *N.J.S.A.* 18A:12-24.1(f).

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 23, 2023

***Resolution Adopting Decision
in Connection with C08-23***

Whereas, at its meeting on April 25, 2023, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the response to the Motion to Dismiss submitted in connection with the above-referenced matter; and

Whereas, at its meeting on April 25, 2023, the Commission discussed finding that the Complaint was untimely filed; and

Whereas, at its meeting on April 25, 2023, the Commission discussed finding that, even if the Complaint had been filed timely, the Motion to Dismiss would have been granted in its entirety because Complainant failed to plead sufficient credible facts to support a violation(s) of *N.J.S.A.* 18A:12-24.1(a) and/or *N.J.S.A.* 18A:12-24.1(f); and

Whereas, at its meeting on May 23, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on April 25, 2023; 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 23, 2023.

Jeannine Pizzigoni
Staff Member, School Ethics Commission