
JOANNE JOHNSON,

v.

PAYMON ROUHANIFARD, ANA SHURAK,
DAVIDA COE-BROCKINGTON, AND
DARRELL STATON,
*CAMDEN CITY SCHOOL DISTRICT
BOARD OF EDUCATION,*
CAMDEN COUNTY

BEFORE THE SCHOOL
ETHICS COMMISSION

DOCKET NO.: C92-17

DECISION ON
MOTION TO DISMISS

I. PROCEDURAL HISTORY

This matter arises from a Complaint that was initially filed on December 18, 2017, by JoAnne Johnson (Complainant), alleging that Paymon Rouhanifard, Ana Shurak, Davida Coe-Brockington, and Darrell Staton (Respondents), former and present administrators employed by the Camden City School District Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By correspondence dated December 21, 2017, Complainant was notified that the Complaint was deficient, and required amendment. Complainant filed a second deficient Complaint on January 3, 2018, and a third deficient Complaint on February 15, 2018, and was directed, following the submission of each deficient Complaint, to cure all noted deficiencies before the School Ethics Commission (Commission) could accept her filing. Ultimately, on April 17, 2018, 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 Respondents violated N.J.S.A. 18A:12-22(a) and (b) in Count 1 and Count 2, and violated N.J.S.A. 18A:12-24(c) in Count 3.

On April 19, 2018, the Complaint was sent to Respondents, via regular and certified mail, notifying them that charges were filed against them with the Commission, and advising that they had twenty (20) days to file a responsive pleading. On June 21, 2018, and after receiving an extension to file from the Commission, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). On July 17, 2018, Complainant filed a Response to Respondents' Motion to Dismiss.

The parties were notified by correspondence dated August 20, 2018, that this matter would be placed on the Commission's agenda for its meeting on August 28, 2018, in order to make a determination regarding the Motion to Dismiss. At its meeting on August 28, 2018, the Commission considered the filings in this matter and, at its meeting on September 25, 2018, the Commission voted to grant the Motion to Dismiss in its entirety.

II. SUMMARY OF THE PLEADINGS

A. The Complaint

Complainant alleges that on June 16, 2017, she received an email from Respondent Staton, on the orders of his superiors (the other named Respondents), asking her to call him (Respondent Staton) on his personal phone while he was out on medical leave. Later that same day, Respondent Staton, while on medical leave, visited Complainant's classroom and informed Complainant that "a large number of 8th grade students had failed two or more subjects and were likely to be retained unless there was something that [she] could do." Complainant responded that there was nothing she could do, and proceeded to open Genesis (grading software/system) to show him that she had already done everything she could do (legally). At some point in the conversation, Complainant asked Respondent Staton to put "in writing a directive for [her] to change specific grades," but he said he could not do that. Complainant also indicated to Respondent Staton that she would give him access to Genesis, and he could change the grades himself; according to Complainant, he refused to do that as well. After trying to convince Complainant for "some time" to change the grades of certain students, Respondent Staton "made it clear" that if she did not change these grades, "he would be forced" to require her to upload documentation (by a certain date) evidencing that "parents were fully informed that their child was in jeopardy of failing [her] course." If she failed to upload this documentation, she was advised that she would be placed on a Corrective Action Plan (CAP) for the 2017-2018 school year. Later this same day, Respondent Staton sent an email to Complainant directing her to upload the documentation they discussed, and indicating she would be placed on a CAP if she failed to comply. Complainant uploaded the documentation as requested.

Complainant states that, due to illness, she was unable to work in the 2017 summer program, but had done so in previous years. At some point in the summer, Complainant received a letter from Human Resources informing her (Complainant) that the district's records indicated she had been on medical leave since June 30, 2017, and advising her that she needed to let the district know her "intentions" for her September return. Complainant denies she was on medical leave, and denies that she ever submitted any documentation evidencing a need to be on medical leave.

Complainant further asserts that teachers were required to report to school on September 1, 2017, and on August 31, 2017, she went to her assigned building to check her classroom. As she was leaving the building, she saw Respondent Brockington (Principal) and advised her that she (Complainant) would be absent on September 1, 2017, due to a doctor's appointment. On the evening of September 1, 2017, Complainant received an email indicating that she had been transferred to another school in the district.

Based on the information above, Complainant alleges that on June 16, 2017, Respondents violated N.J.S.A. 18A:12-22(a) and (b) because forcing teachers to treat grades as anything other than legal documents is illegal, and a breach of the most basic trust in any school. In addition, from June 16, 2017, through June 19, 2017, Respondents violated N.J.S.A. 18A:12-22(a) and (b) because not only did they make decisions that were harmful to the educational welfare of the

students, “they willfully ignored circumstances that existed that were equally harmful to the students [and] that could have been rectified to some extent if they had lent their support to the teachers, when the request was formally made, to the students who needed guidance and direction to change the course of the predicted outcome...” Finally, from June 16, 2017, through June 19, 2017, Respondents violated N.J.S.A. 18A:12-24(c) because they willfully surrendered independent judgment, and did not make decisions for the betterment of students. Although Complainant alleges that “falsifying data ...is done with some sort of personal gain in mind,” she admits that “[w]hat the personal motivation was or is, remains a mystery,” and “would require a thorough investigation into the extent of false data that has been created...and who stands to gain what.”

B. Motion to Dismiss

Upon receipt of the Complaint, Respondents filed a Motion to Dismiss. As an initial matter, Respondents argue that the Complaint is time barred and should be dismissed. More specifically, Respondents argue that because the events giving rise to the Complaint occurred on June 16, 2017, the Complaint should have been filed by December 13, 2017, but was not filed until April 17, 2018. By filing in April, Respondents argue the Complaint was filed four (4) months after the statute of limitations expired.

If the Complaint is considered timely, Respondents argue that the alleged violation of N.J.S.A. 18A:12-24(c) should be dismissed because Complainant has failed to allege any facts establishing that Respondents had a direct or indirect financial involvement and/or personal involvement in her (Complainant’s) students’ grades that impaired their objectivity or independence of judgment. Respondents also argue that, by her own admission, Complainant cannot articulate what Respondents’ personal motivation was or what they stood to gain by allegedly asking her to change the students’ grades.

Respondents further maintain that the alleged violation of N.J.S.A. 18A:12-22(a) and (b) should be dismissed as to Respondents Rouhanifard, Shurak and Coe-Brockington (but not Respondent Staton) because Complainant has failed to allege any facts establishing that they engaged in conduct in violation of their public trust (allegations only relate to conduct by Respondent Staton). According to Respondents, at no point does Complainant “allege any facts establishing the means, method, or manner in which [the other Respondents] directed Respondent Staton to undertake” the action complained of, namely coercing, intimidating, and harassing Complainant to change students’ grades.

For all of the foregoing reasons Respondents argue that the Complaint should be dismissed with prejudice.

C. Response to Motion to Dismiss

In her response to the Motion to Dismiss, Complainant reiterates her claims that Respondents coerced teachers to change students’ failing grades and to promote students who should have been retained. In this way, she reaffirms her allegations that Respondents violated

N.J.S.A. 18A:12-22(a) and (b) in Count 1 and Count 2, and violated N.J.S.A. 18A:12-24(c) in Count 3.

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 facts which, if true, could support a finding that Respondents violated N.J.S.A. 18A:12-22(a) and (b) as alleged in Count 1 and Count 2, and violated N.J.S.A. 18A:12-24(c) as alleged in Count 3.

B. Timeliness Issue / Statute of Limitations

In their Motion to Dismiss, Respondents preliminarily argue that because the Complaint was filed on April 17, 2018, and the events which formed the basis of the alleged violations occurred on June 16, 2017, the Complaint is untimely, and should be dismissed.

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).

As applied here, although Complainant did not file a Complaint that was deemed compliant with the Commission's regulations (N.J.A.C. 6A:28-6.3) until April 17, 2018, she filed her first deficient Complaint on December 18, 2017, her second deficient Complaint on January 3, 2018, and her third deficient Complaint on February 15, 2018. Therefore, because Complainant's amendments relate back to the date her Complaint was first received by the Commission, the Commission will use December 18, 2017, as the date to determine whether this matter is timely. See N.J.A.C. 6A:28-6.7(b).

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. In its review of the pleadings, the Commission determines that Complainant knew of the events which form the basis of her Complaint as early as June 16, 2017, or as late as June 19, 2017.

Construing the facts in the light most favorable to Complainant, the Commission will use June 19, 2017, and not June 16, 2017, as the starting point for the one hundred eighty (180) day statute of limitations. Using June 19, 2017, as the starting point for determining the statute of limitations, Complainant had until December 16, 2017, to file her Complaint with the Commission. However, because December 16, 2017, was a Saturday, Complainant had until the next business day, or until Monday, December 18, 2017, to file her Complaint. Because the Complaint was received by the Commission on December 18, 2017, the Commission finds that it is timely, and not time barred.

C. Allegations in Count 1 and Count 2

In Count 1 and Count 2 of her Complaint, Complainant contends that Respondents violated N.J.S.A. 18A:12-22(a) and (b). These provisions provide:

The Legislature finds and declares:

a. In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

b. To ensure and preserve public confidence, school board members and local school administrators should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards among them.

In I/M/O Wesley Smith, Hazlet Twp., Monmouth County, C28-97 (April 28, 1998), the Commission noted that N.J.S.A. 18A:12-22 sets forth the Legislature’s findings and declarations for the Act, indicates the Legislature’s purpose for setting the standards that are set forth in N.J.S.A. 18A:12-24, and gives guidance on how to interpret prohibited acts. Importantly, the Commission held that N.J.S.A. 18A:12-22 “does *not* set forth a prohibited act that the Commission can charge a school official with violating.” The Commission reasoned that if a school official could be charged with violating N.J.S.A. 18A:12-22, “it would hinder the performance of school officials who would not know exactly what conduct would be considered creating a justifiable impression that the public trust is being violated.” Although these provisions provide guidance to the Commission on how to interpret N.J.S.A. 18A:12-24 and N.J.S.A. 18A:12-24.1, they do not contain standards that can be enforced by the Commission, and cannot serve as a basis to find wrongdoing by a school official.

Based on the above, the Commission dismisses Count 1 and Count 2 of the Complaint, and the allegations that Respondents violated N.J.S.A. 18A:12-22(a) and (b).

D. Allegations in Count 3

In Count 3, Complainant asserts that Respondents 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 order to credit the allegation of a violation of N.J.S.A. 18A:12-24(c), the Commission must find evidence that Respondents acted in their official capacity in a matter where they, a member of their immediate families, or a business organization in which they have an interest, has a direct or indirect financial involvement that might reasonably be expected to impair their objectivity or independence of judgment, or it must find evidence that Respondents acted in their official capacity in a matter where they or a member of their immediate families had a personal involvement that created some benefit to them or to a member of their immediate families. Based on Complainant's own admission, she does not know and, therefore, could not allege, what personal gain and/or benefit any of the named Respondents received, or could have received, as a result of the actions complained of in her Complaint. Without the facts necessary to establish a violation of N.J.S.A. 18A:12-24(c), the Commission is left with no choice but to find that there is a lack of evidence to support a violation of N.J.S.A. 18A:12-24(c).¹

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that Complainant has not alleged any facts which, if true, could support a finding that any of the named Respondents violated N.J.S.A. 18A:12-22(a) or (b) in Count 1 and Count 2, or N.J.S.A. 18A:12-24(c) in Count 3. Therefore, the Commission grants the Motion to Dismiss in its entirety, and dismisses the matter.

IV. DECISION

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission grants the Motion to Dismiss in its entirety, and dismisses the matter.

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

¹ Notwithstanding this determination, Complainant can still choose to pursue her claims, and potential causes of action(s), against Respondents in a more appropriate forum.

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 26, 2018

**RESOLUTION ADOPTING DECISION IN
CONNECTION WITH C92-17**

WHEREAS, at its meeting on August 28, 2018, 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 filed in connection with this matter; and

WHEREAS, at its meeting on August 28, 2018, the Commission discussed finding that the Complaint was timely filed;

WHEREAS, at its meeting on August 28, 2018, the Commission, nonetheless, discussed granting the Motion to Dismiss in its entirety, and dismissing this matter; and

WHEREAS, at its meeting on September 25, 2018, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on August 28, 2018; and

NOW THEREFORE BE IT RESOLVED, that the Commission hereby adopts the decision and directs its staff to notify all parties of its decision.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 25, 2018.

Kathryn A. Whalen, Director
School Ethics Commission