

Respondent asserts that the Complainant did not specify how an alternate email created specifically to use for Board business was a failure to uphold and enforce the law under N.J.S.A. 18A:12-24.1(a).

ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the Complaint in the light most favorable to the Complainant and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. Because the Complainant has the burden to factually establish a violation of the Code of Ethics for School Board Members, in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a), in order to prevail on a Motion to Dismiss, the Complaint must allege facts, which if true, would be sufficient to support a finding in the Complainant's favor. Thus, the question before the Commission was whether the Complainant alleged facts, which, if true, could support a finding that the Respondent violated N.J.S.A. 18A:12-24.1(a), which 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.

To prove a violation of N.J.S.A. 18A:12-24.1(a), the Commission requires that the Complainant provide factual evidence that the Respondent:

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 the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures. N.J.A.C. 6A:28-6.4(a)1.

The Complainant has not provided the requisite final decision from any court nor has she asserted that a final decision has been rendered which demonstrates that Respondent Weinstock failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools, or that the Respondent brought about changes through illegal or unethical means. Accordingly, in the Commission's review of the Complaint, even accepting as true all facts alleged by the Complainant, such facts are insufficient to support a finding of a violation of N.J.S.A. 18A:12-24.1(a). Consequently, the Commission grants the Motion to Dismiss as to these claims.

Moreover, the School Ethics Commission has jurisdiction only over those matters arising under the School Ethics Act. N.J.S.A. 18A:12-21 et seq. The Commission is not authorized to receive, hear or consider any pleadings, motion papers or documents of any kind

relating to any matter that does not arise under the School Ethics Act. N.J.A.C. 6A:28-1.4(a). The allegations raised in the Complaint concerned the Open Public Meetings Act N.J.S.A. 10:4-6 et seq., and are not cognizable under the Act and, therefore, are beyond the jurisdiction of the Commission to consider or redress.

The Commission finds, therefore, that there are no facts set forth in the Complaint that would support a conclusion that the Respondent violated the Code under this subsection. Thus, even accepting as true all facts alleged by the Complainant in the sole Count of the Complaint, the Commission determines that the Complaint, on its face, fails to allege facts sufficient to maintain a claim that the Respondent violated N.J.S.A. 18A:12-24.1(a) of the Code and hereby dismisses these allegations and, by extension, the Complaint in its entirety for failure to state a claim upon which relief could be granted.

DECISION

Based on the foregoing, and pursuant to its discretion, the Commission granted Respondent's Motion to Dismiss and voted to dismiss the matter in its entirety with respect to the sole allegation, claiming a violation of N.J.S.A. 18A:12-24.1(a), for failure to state a claim upon which relief can be granted, pursuant to N.J.A.C. 6A:28-10.8(a)1. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender
Chairperson

Mailing Date: April 27, 2016

Resolution Adopting Decision – C41-15

Whereas, the School Ethics Commission has considered the Complaint and the Motion to Dismiss filed on behalf of the Respondent, and the Complainant did not reply to the Motion; and

Whereas, at its meeting on March 22, 2016 the Commission determined to grant the Respondent's Motion to Dismiss the Complaint for failure to state a claim upon which relief could be granted; and

Whereas, at its meeting on April 26, 2016, the Commission has reviewed and approved the decision memorializing said action;

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 April 26, 2016.

Joanne M. Restivo
Acting Executive Director
School Ethics Commission