

EDWARD OPORTO

v.

NANETTE ROTONDA,
BELLEVILLE BOARD OF EDUCATION,
ESSEX COUNTY

BEFORE THE SCHOOL
ETHICS COMMISSION

DOCKET NO.: C40-17

DECISION ON
MOTION TO DISMISS

PROCEDURAL HISTORY

This matter arises from a Complaint filed on March 3, 2017 by Edward Oporto, alleging that Nanette Rotonda, an administrator/school official employed by the Belleville 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(b) of the Act.

On March 6, 2017, the Complaint was sent to Respondent, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to answer the Complaint. On March 15, 2017, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). On April 7, 2017, Complainant filed a response to the Motion to Dismiss.

The parties were notified by correspondence dated April 17, 2017, that this matter would be placed on the Commission's agenda for its meeting on April 25, 2017 in order to make a determination regarding the Motion to Dismiss. At its meeting on April 25, 2017, the Commission discussed granting Respondent's Motion to Dismiss based on untimeliness. At its meeting on June 27, 2017, the Commission voted to adopt a decision memorializing its discussion from April 25, 2017.¹

SUMMARY OF THE PLEADINGS

A. The Complaint

Complainant asserts that Respondent, a Principal, violated N.J.S.A. 18A:12-24(b) of the Act because she secured unwarranted employment for her son, Joseph R. Rotonda (Mr. Rotonda).² Complainant claims that Mr. Rotonda was employed by the Board as an Assistant Principal and that in "early 2016," Mr. Rotonda was investigated for subjecting Complainant to "bias hostility." Following this investigation, Complainant asserts that Mr. Rotonda was promoted to the position of Principal for the 2016-2017 school year, and that Complainant was removed from the substitute list and no longer offered employment in the Belleville School District.

¹ The Commission notes that its regularly scheduled meeting for the month of May was cancelled.

² Joseph Rotonda, who is also employed by the Board as an administrator/school official, was the named Respondent in a separate matter (C31-16) filed by the same Complainant. In that matter, the SEC granted Respondent's Motion to Dismiss in its entirety (discussed in November, and adopted in December, 2016).

In his Complaint, Complainant suggests that Mr. Rotonda's promotion "is attributed in large part due to [Mr. Rotonda's] mother," i.e., Respondent, and that "[s]he used her official position to make [the promotion] a reality for her son," "along with the social and political influences strengthened by [Respondent's] husband who served as Belleville Chief of Police." Complainant argues that Respondent "used her leverage to promote her son," an individual whom he describes as "unprofessional" and "unfit" to perform his job. According to Complainant, the Board, on behalf of Respondent, awarded Mr. Rotonda with a promotion and transferred him out of his previous work location in order to "evade any further suspicion." Complainant suggests there is a "close alliance" between the Rotonda family and the Board. Complainant cites the date of occurrence for this violation as September 6, 2016, the first day of the 2016-2017 school year.

Based on the above, Complainant alleges that Respondent violated N.J.S.A. 18A:12-24(b) of the Act.

B. Motion to Dismiss

Respondent filed a Motion to Dismiss in which she argues that the Complaint is time barred and, even if not time barred, fails to state a claim under the Act. According to Respondent, the Board approved the promotion and transfer of her son, Mr. Rotonda, from Assistant Principal at the High School to the Principal of Schools #9 and #10 at a Board meeting on May 19, 2016. This transfer, according to the minutes submitted by Respondent, was to become effective September 1, 2016. Because the transfer of Respondent's son was approved by the Board on May 19, 2016, Respondent argues that Complainant's filing on March 3, 2017, is time barred because it occurred more than ten (10) months after the Board's action, and more than three (3) months after the expiration of the one hundred eighty (180) day period of limitation to file a complaint under the Act, pursuant to N.J.A.C. 6A:28-6.5.

Alternatively, Respondent argues that the Complaint fails to articulate any facts as to how Respondent used her position and the position of her husband to have her son transferred to the Principal position and to violate N.J.S.A. 18A:12-24(b) as alleged. For these reasons, Respondent argues that the Complaint should be dismissed.

C. Response to Motion to Dismiss

In response to the Motion to Dismiss, Complainant asserts that he used September 6, 2016 as the date of occurrence for purposes of triggering the one hundred eighty (180) day period of time to file a complaint, because that was the first day of the 2016-2017 school year and, according to Complainant, the date he learned of Mr. Rotonda's promotion. Complainant denies having knowledge of "School Board meetings and their minutes in general," and of the fact that minutes from Board meetings are posted and publicly available. Complainant additionally asserts that in May 2016, he had a family emergency that required him to be in Staten Island, New York and, therefore, he had no way of knowing about the actions at the Board meeting. Finally, Complainant denies that his Complaint fails to allege *how* Respondent used her position and title to benefit her son in an unwarranted manner. Instead, he submits that his Complaint, and the accompanying documentation, details how Respondent misused her official

position for personal gain. Consequently, Complainant argues that the Motion to Dismiss should be denied.

ANALYSIS

A. 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:28-8.3. Thus, the question before the Commission is whether Complainant has alleged facts which, if true, could support a finding that Respondent N.J.S.A. 18A:12-24(b) of the Act.

Timeliness Issue / Statute of Limitations

In her Motion to Dismiss, Respondent preliminarily argues that because the Complaint was filed on March 3, 2017, and the events which formed the basis of the alleged violation in the Complaint occurred on May 19, 2016, 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, the Complaint was received by the Commission on March 3, 2017. Because the events which form the basis of the alleged violation of the Act, namely the Board's approval of Mr. Rotonda's transfer and promotion, occurred on May 19, 2016, Respondent argues that the Complaint was filed more than three (3) months late. Complainant counters that it was not until the first day of the 2016-2017 school year, or September 6, 2016, that he became aware of Mr. Rotonda's promotion and that this date, not May 19, 2016, should be the starting point for calculating one hundred eighty (180) days. Using September 6, 2016 as the starting point, Complainant suggests that his Complaint was timely filed on March 3, 2017.

Pursuant to N.J.A.C. 6A:28-6.5(a), the Commission must determine when Complainant knew or would have known, had he used due diligence, of the events which form the basis of his complaint. In its review of the pleadings, the Commission determines that, as of May 19, 2016, Complainant and the general public had notice of the events which formed the basis of the alleged violation of the Act as detailed in his Complaint. Although Complainant would instead like to rely upon the date he represents he personally "learned" of Mr. Rotonda's promotion,

which he claims was September 6, 2016, the date of his "actual knowledge" is not the legal standard by which timeliness is determined.

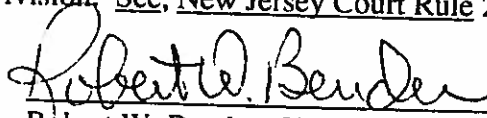
With May 19, 2016 as the starting point, Complainant had one hundred eighty (180) days, or until November 15, 2016, to file his Complaint with the Commission. Because the Complaint was not received by the Commission until March 3, 2017, nearly four (4) months beyond the one hundred eighty (180) day limitation period, the Commission finds that the Complaint is untimely, and time barred.³

Even if the Commission gives Complainant the benefit of the doubt, and instead uses the date that the Board approved its minutes and memorialized its actions from the May 19, 2016 meeting, which likely occurred at the June, 2016 meeting, the Complaint still would have been filed nearly three (3) months beyond the one hundred eighty (180) day limitation period.

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). Although the Commission recognizes that the regulatory time period may be relaxed, in its discretion, in any case where strict adherence may be deemed inappropriate or unnecessary or may result in injustice, it finds no extraordinary circumstances in this matter that would compel relaxation. Accordingly, the Complaint is dismissed as untimely, and time barred.

DECISION

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that it finds the Complaint was filed out of time and is, therefore, dismissed in its entirety. 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: June 28, 2017

³ The Commission also notes that, as part of his submission, Complainant submitted an article from May 23, 2016 confirming the promotion and transfer of Mr. Rotonda. This article would also serve as a means for a member of the general public, using due diligence, to be aware of actions taken by the Board at its May 19, 2016 meeting.

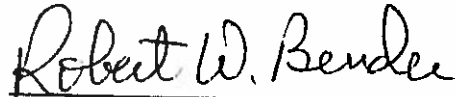
RESOLUTION ADOPTING DECISION – C40-17

Whereas, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the Response to Motion to Dismiss; and

Whereas, at its meeting on April 25, 2017, the Commission discussed finding the Complaint untimely, and time barred; and

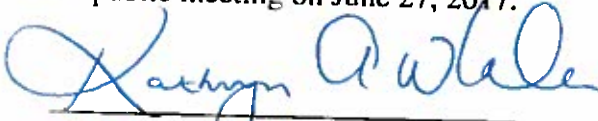
Whereas, at its meeting on June 27, 2017, the Commission reviewed and voted to approve the within decision memorializing its discussion from April 25, 2017; and

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.



Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on June 27, 2017.



Kathryn A. Whalen, Director
School Ethics Commission