

Before the School Ethics Commission
Docket No.: C14-20
Decision on Motion to Dismiss

**Timothy Eosso,
Complainant**

v.

**Rupa Seigel,
Monroe Township Board of Education, Middlesex County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on March 13, 2020, by Timothy Eosso (Complainant), alleging that Rupa Seigel (Respondent), a member of the Monroe Township 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:12-24.1(d) of the Code of Ethics for School Board Members (Code).

On March 16, 2020, the Complaint was served on Respondent, via regular and certified mail, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading. On April 2, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On April 23, 2020, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated May 11, 2020, that this matter would be placed on the Commission's agenda for its meeting on May 19, 2020, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on May 19, 2020, the Commission considered the filings in this matter and, at its meeting on June 23, 2020, the Commission voted to grant the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(d). The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

Complainant asserts that Respondent, a Board member with two children who play baseball with Complainant's child on the high school's team, is using her position on the Board "for personal gain of retaliation against" Complainant. According to Complainant, Respondent "made complaints during the 2019 baseball season" about how Complainant "cheers" at high

school baseball games. However, at no time was Complainant ever advised, by security or a facility member, that his “cheering” was disruptive.

After Respondent was elected to the Board in November 2018, she requested to be on the Board’s Policy Committee for 2019. While on the committee, she advocated for an amendment to Board Policy #9160 to permit the Board – in addition to the District’s administration – to bar the attendance of any person at school events whose conduct constitutes a disruption. Despite apprehension from a Board member, the amendment to Board Policy #9160 was approved on December 18, 2019.

Based on the facts as set forth above, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(d) because she used her position as a Board member to amend a Board Policy (#9160) that would give the Board the authority to remove someone from a school event who poses a “disturbance.” According to Complainant, Respondent “is specifically using this [Board] Policy to directly attempt to bar me from the upcoming High School baseball season because of personal differences we have had for many years.” Complainant continues, Respondent “has a deep rooted animosity for myself and my child which relates back to when I was a coach for her [child].” In support of Respondent’s animosity toward him (Complainant), Complainant notes that Respondent has filed police reports against him “for informational purposes,” and “is using these reports to make a claim that [he] should be barred in accordance with [Board] Policy #9160 from attending games this season.” Complainant maintains that Respondent is using her power as a Board member “in retaliation” against him.

B. *Motion to Dismiss and Allegation of Frivolous Filing*

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and allegation of frivolous filing. Respondent asserts that she is a member of the Policy Committee, but “never made a request to the Policy Committee or any member thereof to review Board Policy #9160.” Respondent argues that the sentence in Board Policy #9160 that is the basis for the Complaint has “existed” since 2003, long before Respondent was a Board member. According to Respondent, the original language in the policy reads, in part, “The Board may bar the attendance of any person at a school event whose conduct constitutes disruption.” Respondent maintains that “the revisions proposed for Board Policy #9160 did not include any changes to the preexisting sentence in this policy.” According to Respondent, Board Policy #9160 underwent several reviews by the Policy Committee for revisions, one of which included the “addition of the language ‘and/or district administration’ to the first sentence in the second paragraph of this policy.”

Respondent further argues that the Complaint is “devoid of any actual facts suggesting that Respondent ‘gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school’ or took any action contrary to Board consensus.” Complainant did not provide any evidence that Respondent gave any “order” to school personnel and, to the contrary, the “evidence in this matter clearly demonstrates that Respondent fully complied with her ethical obligations to confine her board action to ‘policy making, planning, and appraisal.’” Furthermore, Board members “have the right to vote on matters as they see fit, and that merely doing so does not constitute a basis for an alleged violation.” Of note, it was the Board, and not

Respondent alone, who voted to approve the changes to Board Policy #9160. As such, Respondent maintains that the Complaint fails to state a claim for a violation of *N.J.S.A.* 18A:12-24.1(d) and should be dismissed.

Finally, Respondent asserts that “[t]he facts in this matter make it clear” that the Complaint was filed in “bad faith, and solely for the purpose of harassment and malice.” Complainant admitted to having a tenuous history with Respondent and he is “continu[ing] these tensions by filing this baseless Complaint ... which wholly lacks any factually relevant evidence” Furthermore, Complainant’s “bad faith is further highlighted by the fact” that he filed the Complaint “based on language that existed in Board Policy #9160 for more than 15 years” before Respondent ever became a Board member. Respondent further asserts that “[t]here is not one scintilla of evidence to support Complainant’s baseless assertion that the revisions to Board Policy #9160 were undertaken to bar Complainant from the upcoming High School baseball season.” Complainant “knew, or should have known that the Complaint was without reasonable basis in law or equity and could not be supported by a good faith argument for a modification of existing law.” Therefore, Respondent requests that monetary sanctions be imposed on Complainant.

C. Response to Motion to Dismiss and Allegation of Frivolous Filing

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant reaffirms his allegations, and asserts that Respondent “has a long history of using her roles within the school district to leverage control over various administrators in the district.” Complainant maintains that contrary to Respondent’s claim that she was “appointed” to the Policy Committee, she fails to state that the appointment “was at her request” to the Board President. Furthermore, and in addition to an incident described at the middle school, Complainant provides information regarding a letter that the high school principal released to the parents of students on the baseball team. According to Complainant, “[t]his letter was not sent to all sports parents in the school, but rather only to baseball parents and it is specific that any parents having prior issues with each other will not be allowed to attend games or any other activities around the baseball season.” Moreover, “this letter is the first of its kind ever sent to parents prior to a season.” Complainant further asserts that this letter should have come from the Athletic Director or coach, but instead was written by a “non-tenured” principal. This letter, as argued by Complainant, shows “a clear intent of the Respondent to have [Complainant] excluded from all baseball activities.”

Complainant maintains that although the language in Board Policy #9160 appeared prior to the December 18, 2019, meeting, the “Policy Committee made substantial changes to the original policy to give the school administration the ability to limit attendance of anyone at a school event, which includes sporting events.” According to Complainant, the policy change and the “subsequent meetings” between the high school principal and the Board “to specifically discuss parent involvement in the 2020 baseball season shows a clear intent of the Respondent to use her role as a [Board] member to influence members of the school administration.” Complainant maintains that the Complaint is not frivolous, and should not be dismissed.

III. Analysis

A. Request for Abeyance

In correspondence to the Commission dated May 14, 2020, Complainant requested, in accordance with *N.J.S.A.* 18A:12-32 and *N.J.A.C.* 6A:28-1.5, that the above-captioned matter be placed in abeyance until he receives information and documents responsive to Open Public Records Act (OPRA) requests that he submitted to the District. Complainant asserts that receipt of responsive information and documents will corroborate and substantiate the allegations in his Complaint. Respondent filed an opposition to Complainant's request on May 14, 2020.

At its meeting on May 19, 2020, the Commission reviewed Complainant's request, as well as Respondent's opposition, and determined that because Complainant's OPRA requests were not "actually pending in any court of law or administrative agency of this State," it was not appropriate to hold the above-captioned matter in abeyance. As a result, the Commission denied Complainant's request.

B. Standard for Motion to Dismiss

Having found that the above-captioned matter should not be placed in abeyance, the Commission reviewed the merits of the 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 sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(d) as alleged in the Complaint.

C. Alleged Code Violation

In the Complaint, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(d). This provision of the Code provides:

- d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(d) because she used her position as a Board member to amend a Board Policy (#9160) that would give the Board the authority to remove someone (Complainant) from a school event who poses a "disturbance." According to Complainant, Respondent "is specifically using this [Board P]olicy to directly attempt to" bar him from high school baseball games because of their "personal differences." Respondent counters the Complaint is "devoid of any actual facts suggesting that Respondent 'gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school' or took any action contrary to Board consensus."

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(4), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(d) shall include, but not be limited to, evidence that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.

After review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(d). Even if Respondent asked to be on the Board's Policy Committee and even if, as a member of the Board's Policy Committee, Respondent recommended a change to the Board Policy referenced by Complainant, there are insufficient facts set forth in the Complaint demonstrating how participation on the Policy Committee, and/or recommending a revision to a Board Policy, constituted "a direct order to school personnel," constituted direct involvement "in activities or functions that are the responsibility of school personnel," and/or constituted direct involvement in "the day-to-day administration of the school district." As a member of the Board's Policy Committee, Respondent is tasked with, among other things, reviewing Board policies and regulations and recommending revisions, changes, or amendments as appropriate. In other words, Respondent is tasked with the very conduct that serves as the basis for the Complaint in this matter. Absent an allegation that Respondent misused her Board position, exceeded her Board authority, or otherwise took action to benefit herself (or an "other," including an immediate family member), and because it is constrained by the facts and alleged violation of the Code set forth in the Complaint, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(d) should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(d).

IV. Request for Sanctions

At its meeting on May 19, 2020, the Commission considered Respondent's request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondent'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 June 23, 2020, 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 Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that

Respondent violated *N.J.S.A.* 18A:12-24.1(d). The Commission also voted to find that the Complaint is not frivolous, and to deny Respondent's request for sanctions.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondent 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
School Ethics Commission

Mailing Date: June 23, 2020

***Resolution Adopting Decision
in Connection with C14-20***

Whereas, at its meeting on May 19, 2020, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and the response to the Motion to Dismiss and allegation of frivolous filing submitted in connection with the above-referenced matter; and

Whereas, at its meeting on May 19, 2020, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(d); and

Whereas, at its meeting on May 19, 2020, the Commission discussed finding the Complaint not frivolous, and denying Respondent’s request for sanctions; and

Whereas, at its meeting on June 23, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on May 19, 2020; 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 certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on June 23, 2020.

Kathryn A. Whalen, Director
School Ethics Commission