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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1255-22**

W.M. and M.A.M,

Complainants-Appellants,

v.

JOSHUA AIKENS, LISA
CARLSON, REBECCA BROWN,
JOHN KANSON, MELISSA
GEANEY, FREDRICK GREAVER,
KATHLEEN ZAGULA, KAREN
MITCHELL, ERIN VOGLER, and
LAFAYETTE TOWNSHIP
BOARD OF EDUCATION,
SUSSEX COUNTY,

Respondents-Respondents.

Submitted February 27, 2024 – Decided May 24, 2024

Before Judges Mayer and Enright.

On appeal from the School Ethics Commission, Docket
No. C58-22.

W.M. and M.A.M., appellants pro se.

Methfessel & Werbel, attorneys for respondents Joshua Aikens, Lisa Carlson, Rebecca Brown, John Kanson, Melissa Geaney, Frederick Greaver, Kathleen Zagula, Karen Mitchell, Erin Vogler, and Lafayette Township Board of Education, Sussex County (Eric L. Harrison, of counsel; Angela M. Gurrera, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent The School of Ethics Commission (Colin Klika, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Plaintiffs M.A.M. (Meg) and her husband, W.M. (Wes),¹ appeal from the October 17, 2022 dismissal of one of their consolidated complaints by the School Ethics Commission (SEC). We affirm.

I.

On January 17, 2020, Meg was informed by her disabled and communication-impaired child, R.M. (Ray), that he was the victim of harassment, intimidation, and bullying (HIB) at his school in Lafayette Township. Ray claimed the HIB occurred in several areas of the school over the course of a week or longer. Meg promptly filed a complaint with the school district's HIB coordinator, who investigated the complaint and determined Ray did not experience HIB. After learning the outcome of the HIB investigation,

¹ We use initials and pseudonyms to protect the privacy of plaintiffs' child.

plaintiffs asked to review video footage from various locations in the school, believing the footage would support their son's HIB allegations.

In March 2020, the Lafayette Township Board of Education (Board) met and voted to adopt the HIB investigator's conclusion that Ray was not an HIB victim. In December 2021, New Jersey's Acting Commissioner of Education ordered the Board to issue a written decision regarding the Board's March 2020 vote; it also directed the Board to provide the video footage Meg requested in connection with the alleged January 2020 HIB incidents. The Board later issued the requisite written decision.

In February 2022, the Board's attorney wrote to plaintiffs to advise them that their discovery request for video footage encompassed "approximately 1200 clips . . . spanning more than 800 hours." Counsel also stated he would "be responding with a proposed mechanism for the orderly exchange of relevant video." Two days later, the Board's attorney emailed Meg "links to downloadable video clips totaling approximately six hours of footage," which counsel claimed Meg "previously reviewed at the school." Moreover, counsel offered to arrange for Meg to review additional footage at the school "with security present," noting the footage was "voluminous."

In the interim, plaintiffs individually and jointly filed various appeals with the New Jersey Commissioner of Education, challenging the Board's decision and alleging the Board violated the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13.2 to -37. In three of plaintiffs' appeals, they asserted the Board and Sussex County failed to responsibly address plaintiffs' HIB allegations. In a fourth appeal, they alleged the Board, Sussex County, and Jennifer Cenatiempo, the school superintendent at the time of the alleged HIB incidents, failed to properly respond to the HIB allegations.

After receiving decisions in these cases, plaintiffs filed a series of appeals before us. Those appeals subsequently resolved as noted below.²

² In A-1073-20, Meg appealed from a November 5, 2020 decision of the Acting Commissioner involving a case against the Board and Sussex County. After Meg appealed to the Acting Commissioner, the matter was referred to the Office of Administrative Law (OAL). In an initial decision, the Administrative Law Judge (ALJ) determined Meg had not exhausted her administrative remedies because she did not request a hearing in front of the Board before appealing to the Acting Commissioner. The ALJ further found the school district substantially complied with her request for access to the video recordings taken at the school. Meg then appealed to the Acting Commissioner, who, after a review of the record, issued a final decision, adopting the ALJ's initial decision. On July 15, 2021, we granted a cross-motion filed by the New Jersey Commissioner of Education for a remand back to the OAL for a determination regarding whether the Board issued a decision on petitioners' underlying HIB complaint.

In May 2022, plaintiffs filed four separate, albeit related, complaints with the SEC, under docket numbers C58-22 through C61-22.³ The four complaints generally alleged all nine members of the Board, i.e., respondents Joshua

In A-719-21, a case directly related to A-1073-20, we denied Meg's request for a stay of the remanded matter.

In A-2860-21, Meg appealed from a March 4, 2022 decision of the Acting Commissioner involving Meg's request for video footage of the alleged HIB incidents in January 2020. The Acting Commissioner found Meg had an appeal pending before the OAL regarding the same claims, and the issues Meg presented were previously considered. In November 2022, we granted a motion filed by the New Jersey Department of Education to dismiss the appeal.

In A-69-23, plaintiffs appealed from an August 1, 2023 decision by the Acting Commissioner after an ALJ rendered an initial decision finding plaintiffs were re-litigating issues previously presented to the OAL, including allegations the school district did not provide video footage. The Acting Commissioner concurred with the ALJ. On March 20, 2024, we dismissed plaintiffs' appeal for failure to pay the filing fee.

In A-370-23, Meg filed an appeal from an August 21, 2023 decision of the Acting Commissioner regarding her case against the Board, Sussex County, and the school superintendent, Jennifer Cenatiempo. The ALJ scheduled an in-person hearing for June 30, 2023, and denied Meg's request to appear virtually. After Meg failed to appear, the ALJ dismissed the case. Meg appealed to the Acting Commissioner, who concurred with the ALJ's decision to dismiss the case. Following Meg's appeal, we dismissed the case in February 2024, due to her failure to timely cure her deficient submissions.

³ Although plaintiffs only included the complaint under docket number C58-22 in their appendix, details regarding the other three complaints are set forth in the SEC's October 17, 2022 decision.

Aikens, Lisa Carlson, Rebecca Brown, John Kanson, Melissa Geaney, Fredrick Greaver, Kathleen Zagula, Karen Mitchell, and Erin Vogler, as well as three administrators, namely Jennifer Cenatiempo, Karen Roccisano, and Erin Siipola, violated the Code of Ethics for School Board Members (Code). N.J.S.A. 18A:12-24.1.

The complaint at issue in this appeal, C58-22, alleged that all nine Board members violated various provisions of the Code, specifically N.J.S.A. 18A:12-24.1(a), (b), (f), (i) and (j).⁴ Plaintiffs further claimed individual Board members refused to provide the video footage they requested and, instead, mocked them. Additionally, plaintiffs asserted one Board member erroneously set off an alarm

⁴ N.J.S.A. 18A:12-24.1(a) states: "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." N.J.S.A. 18A:12-24.1(b) provides: "I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing." N.J.S.A. 18A:12-24.1(f) states: "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." N.J.S.A. 18A:12-24.1(i) states: "I will support and protect school personnel in proper performance of their duties." N.J.S.A. 18A:12-24.1(j) provides: "I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution."

in response to Meg's appearance at an October 2021 Board meeting,⁵ and, contrary to existing Executive Orders, Aikens failed to wear a mask at a Board meeting during the COVID-19 pandemic. Plaintiffs also claimed Roccisano, a school counselor, refused to provide HIB counseling to Ray, and a teacher discriminated against Ray by failing to educate him.

In July 2022, the Board members and administrators moved to dismiss all four complaints. The following month, the SEC notified the parties it would consolidate the complaints.

On October 17, 2022, the SEC adopted a decision granting respondents motion to dismiss. Initially, the SEC noted that "its authority [wa]s limited to enforcing the Act," and it "ha[d] jurisdiction only over matters arising under the Act." Accordingly, the SEC dismissed various claims in the consolidated complaints based on a lack of jurisdiction, stating the claims "f[e]ll beyond the scope, authority, and jurisdiction of the Commission."

Additionally, the SEC voted to grant the motion to dismiss the remaining claims in the consolidated complaints "in [their] entirety," finding that even after "reviewing the facts in the light most favorable to . . . [plaintiffs]," dismissal

⁵ A police report from the incident reflects Meg was yelling at Board members during the meeting, prompting a Board member to trigger the alarm. The report also reflects Meg left the meeting before the police arrived.

was appropriate "because [plaintiffs] failed to plead sufficient credible facts to support their claimed violations of the Act."

In separately addressing the allegations in the consolidated complaints, the SEC determined plaintiffs failed to establish a violation of N.J.S.A. 18A:12-24.1(a) (compelling Board members to uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools). The SEC found even if plaintiff's allegations were proven true, they

ha[d] not provided a copy of a final decision[] from any court of law or administrative agency demonstrating or finding that any of the named [r]espondents violated a specific law[], rule[], or regulation[] of the State Board of Education and/or court orders pertaining to schools, or that [respondents] brought about changes through illegal or unethical procedures, when they engaged in any of the actions/conduct set forth in this consolidated matter.

Further, even though plaintiffs provided a decision from the Acting Commissioner which required the Board "to provide [plaintiffs] with the video/surveillance evidence they requested and believed was necessary to pursue their HIB appeal," the SEC found plaintiffs "did not provide a final decision[] from any court of law or other administrative agency finding that the individually named [r]espondents, not the Board, failed to comply with the Commissioner's directive to produce the video/surveillance evidence

requested." Thus, the SEC concluded that "without a final decision[] 'demonstrating or finding that' [r]espondents defied or otherwise failed to comply with the Commissioner's directive, . . . the [SEC] was constrained to dismiss the alleged violations of N.J.S.A. 18A:12-24.1(a)."

The SEC similarly rejected plaintiffs' argument that individual Board members violated N.J.S.A. 18A:12-24.1(b) (compelling Board members to "make decisions in terms of the educational welfare of children and . . . seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing"). The SEC found plaintiffs only "offer[ed] conclusory allegations as fact" against respondents, rather than "concrete and specific factual support" of respondents' alleged violations of N.J.S.A. 18A:12-24.1(b).

Additionally, the SEC concluded plaintiffs failed to demonstrate a violation of N.J.S.A. 18A:12-24.1(f) (requiring Board members to act in a non-partisan manner). The SEC explained that "even if . . . [r]espondent Aikens [wa]s the 'president of a partisan political and religious group with specific views,'" as plaintiffs alleged, they failed to provide "factual evidence that . . . Aikens took specific Board action on behalf of, or at the request of this 'partisan political and religious group.'" The SEC also noted, "[m]ere membership in a

partisan political group [wa]s not, without more, evidence that a school official engaged in any action violative of the Act."

Regarding plaintiffs' assertions that respondents violated N.J.S.A. 18A:12-24.1(i) (compelling Board members to "support and protect school personnel in proper performance of their duties"), the SEC determined plaintiffs "merely ascribe[d] an action to the Board without explaining what specific action, if any, any of the individually[-]named [r]espondents may have taken" to violate N.J.S.A. 18A:12-24.1(i).

Turning to plaintiffs' claim that respondents violated N.J.S.A. 18A:12-24.1(j) (directing Board members to refer all complaints to a chief administrative officer), the SEC stated:

even if, as claimed, the Board did not strictly adhere to and/or abide by the process by which [plaintiffs] could pursue with the Board a "staff complaint" against [r]espondent Cenatiempo and/or [the school counselor], there are no facts and/or evidence explaining how or when any of the individually [-]named [r]espondents may have acted on, or attempted to resolve, [plaintiffs'] complaint or engaged in an investigation or inquiry related to [plaintiffs'] complaint in violation of the Code. The failure of the Board to follow its own policies and procedures, which could be actionable through a petition of appeal with the Commissioner, does not mean that the named [r]espondents, based on the facts and circumstances presented, acted in contravention of their duties and responsibilities. Accordingly, the Commission finds

that the alleged violation of N.J.S.A. 18A: 12-24.1 (j) should be dismissed.

The SEC added:

The central tenet in this consolidated matter is that the Board failed to produce the video/surveillance evidence that the Commissioner directed the Board to provide and, as a direct result thereof, certain of the named [r]espondents benefitted; benefitted in that their errors or omissions were not unearthed, or that certain information or people were protected from the non-production of the video/surveillance evidence. Although [plaintiffs] seemingly ask the Commission to determine whether the Board strictly complied with the Commissioner's directive, the Commission is not the appropriate body to adjudicate that issue. Instead, the relief that [plaintiffs] seek must be sought elsewhere. Moreover, even if [plaintiffs] are successful in obtaining a finding or determination that the Board failed to strictly comply with the Commissioner's directive, such a finding or determination would not be enough for the Commission to find that any of the named [r]espondents engaged in conduct violative of the Act. Absent the proffer of at least a scintilla of identifiable action taken or directive given by the individuals named as [r]espondents to withhold the video/surveillance evidence, and evidence offered in support thereof, the Commission cannot hold individual school officials accountable for the actions of the body, or the actions of the Board's counsel (on its behalf).

II.

On appeal, plaintiffs challenge the dismissal of the complaint under docket number C58-22, raising the following arguments:⁶ (1) The applicable legal standard; (2) Error in dismissal based on limited jurisdiction; (3) Sufficiency of factual evidence; (4) Proper application of legal standards; (5) The Commission erred in dismissing the allegations that the Board violated N.J.S.A. 18A:12-24.1(a); (6) The Commission's decision defies decisional law; (7) A fair final decision cannot be reached in the matter without compliance with the order in the decision from the Commissioner; (8) No case or decision under [Docket No.] 94-5/20[,] including EDU 5225-20 and EDU 7169-2021⁷ ha[s] been reviewed d[e] novo; (9) [Plaintiffs] have already been denied th[e] ordered discovery evidence by the judge in [Docket No.] 216-11/21[,] in contradiction to the Commissioner's order and in violation of due process in [Docket No.] 216-11/21⁸; (10) The Commission erred in dismissing the complaint instead of reading it liberally and generously; (11) A liberal and generous reading of

⁶ We recite plaintiffs' arguments verbatim, except where indicated by brackets.

⁷ The docket numbers set forth in this argument involve cases predating the instant appeal.

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[plaintiffs'] complaint was required; (12) The Commission's failure to read the complaint liberally prevented [plaintiffs] from showing that [the] Board[']s actions also caused the educational welfare of the child to be compromised as a result [of] their violations under N.J.S.A. 18A:12-24.1(a)[,] thus proving violation of N.J.S.A. 18A:12-24.1(b); (13) The Commission['s] failure to read the complaint liberally prevented [plaintiffs] from showing that [the] Board[']s actions also caused a compromise [of] the trust of [plaintiffs] and their child and ultimately a compromise in public trust; and (14) [The] Commission erred in granting dismissal[,] due to the administrative agency not issuing [a] decision that individually named . . . respondents[;] . . . respondents were members of the collective group that upholds school laws.

These arguments lack merit. R. 2:111-3(e)(1)(E). We add the following comments.

Appellate review of administrative agency decisions is limited. In re DiGuglielmo, 252 N.J. 350, 359 (2022); see also Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018). "An agency's determination on the merits 'will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record.'" Saccone v. Bd. of Trs., Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014) (quoting

Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)); see also Bd. of Educ. of Sea Isle v. Kennedy, 393 N.J. Super. 93, 101-02 (App. Div. 2007) (applying limited review to agency decision made under School Ethics Act (Act), N.J.S.A. 18A:12-21 to -34), aff'd as modified, 196 N.J. 1 (2008). The party challenging an administrative agency's decision bears the burden of showing that the agency's decision was arbitrary, capricious, or unreasonable. Lavezzi v. State, 219 N.J. 163, 171 (2014).

As our Supreme Court recently observed:

the judicial role [in reviewing an agency action] is generally restricted to three inquiries: (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[In re Renewal TEAM Acad. Charter Sch., 247 N.J. 46, 74 (2021) (quoting In re Proposed Quest Acad. Charter Sch., 216 N.J. 370, 385-86 (2013)).]

"A reviewing court 'must be mindful of, and deferential to, the agency's expertise and superior knowledge of a particular field.'" Allstars, 234 N.J. at 158 (quoting Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009)). Therefore, "[w]e will defer to an agency's interpretation of

both a statute and implementing regulation, within the sphere of the agency's authority, unless the interpretation is 'plainly unreasonable.'" In re Election L. Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010) (quoting Reilly v. AAA Mid-Atlantic Ins. Co. of N.J., 194 N.J. 474, 485 (2008)).

The Code is part of the Act, enacted in 1991 by the Legislature, which found it was "essential that the conduct of members of local boards of education . . . hold the respect and confidence of the people. [Thus,] . . . board members . . . 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." N.J.S.A. 18A:12-22(a). The Legislature further determined that "[t]o ensure and preserve public confidence, school board members . . . 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." N.J.S.A. 18A:12-22(b). Accordingly, the Code consists of ten specific affirmations that all school members commit to follow, N.J.S.A. 18A:12-24.1, many of which are reflected in the SEC's October 17, 2022 decision.

The SEC is charged with resolving complaints of unethical conduct filed against school board members. N.J.S.A. 18A:12-29. Pursuant to the Act, once a complaint is filed against a member of a local school board, the SEC "shall

determine whether the conduct complained of constitutes a violation of . . . th[e A]ct or in the case of a board member, th[e A]ct or the [C]ode . . . , or whether the complaint should be dismissed." N.J.S.A. 18A:12-29(c). The SEC is authorized to dismiss a complaint, "or specific allegations in [a] complaint[]," based on a "[l]ack of jurisdiction," N.J.A.C. 6A:28-9.2(a)(1), or when "[t]he complaint, on its face, fails to state a claim under the Act," N.J.A.C. 6A:28-9.2(a)(7).

N.J.A.C. 6A:28-6.4(a) provides that a "complainant has the burden to factually establish a violation, in accordance with the standards set forth" in the statute. Thus, by way of example:


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 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.
2. Factual evidence of a violation of N.J.S.A. 18A:12-24.1[(b)] shall include evidence that the respondent(s) willfully made a decision contrary to the educational welfare of children, or evidence that the respondent(s) took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed, or social standing.

[N.J.A.C. 6A:28-6.4(a)(1) and (2).]

Here, the SEC found plaintiffs "failed to plead sufficient credible facts to support their alleged violations of the Act." This determination is well supported by the record and is neither arbitrary, capricious, nor unreasonable. Therefore, given our deferential standard of review, we discern no basis to disturb the dismissal of plaintiffs' complaint under docket number C58-22, and affirm substantially for the reasons expressed in the SEC's thoughtful and thorough October 17, 2022 decision.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION