

included the respondent, maintained that he should get only a “P” for passing. The complainant further asserts that the respondent’s past involvement in litigation with the District in 2001 constituted a conflict of interest pursuant to the Commissioner’s decision in Board of Education of the City of Sea Isle v. William Kennedy, 393 N.J. Super 93 (2007).¹

The respondent also denies any similarity between his 2001 case and that involving the complainant’s son. In this connection, the respondent explains that the 2001 matter involving his child concerned the district’s failure to provide legally-required accommodations. By contrast, the respondent explains that in March 2007, the complainant’s son admitted that he twice cheated in his Honors Computer Assisted Drafting (CAD) I course. The complainant’s son received an administrative withdrawal from the class, but was accorded the chance to retake the course in the summer and receive a “P” if he passed, rather than a numerical or letter grade. (Answer at pp. 5-6). After challenging the Board’s decision at the local level, the complainant filed a Petition of Appeal before the Commissioner of Education to contest the Board’s actions. (Id. at Exhibit A). The respondent argues that his litigation with the district in 2001 was “in no way comparable to the requests and petitions filed by the Petitioner resulting from her son being caught and having admitted to cheating.” (Id. at p. 9) He further explains that he consulted with independent counsel prior to filing the action with respect to his child in 2001 and was assured that there was no conflict of interest; the matter was resolved in about two weeks. The respondent affirms, “[a]t no time in the process did I have the opportunity and/or inclination for financial gain or control over any of the individuals involved.” He further states that all the individuals involved on behalf of the administration were tenured, their salary increases determined by union contract and the board did not participate in any discussions of this type with individual students. (Id. at p. 11.)

The respondent denies that the Kennedy decision is in any way controlling in this matter, asserting that there was absolutely no conflict of interest for him to participate in an action attempting to protect the educational rights of his child. (Id. at p. 13) He concludes that the within complaint before the School Ethics Commission “is seeking nothing more and nothing less than to retaliate against the Board and me personally for enforcing the Moorestown Board of Education’s policies to maintain academic integrity to Petitioner’s son and numerous other students who were caught cheating in the aforesaid CAD class during the school year 2007.” (Id. at p. 6) In so doing, the respondent asserts that the complainant has brought before the Commission very private aspects of his child’s education. “Through Petitioner’s efforts to malign and retaliate against me (and the board of education), the Petitioner has violated the civil rights of my [child].” (Id. at p. 15)

Thus, the respondent requests that the Commission dismiss the complaint, find that the complaint was filed in bad faith with the intent to harass him and also fine the complainant accordingly. (Id. at page 14). As evidence of the complainant’s bad faith, the respondent attaches two exhibits to his answer. Exhibit B is an e-mail from a member of the community which was sent to the Board on January 18, 2008. Therein, the Moorestown resident made specific reference to the respondent’s 2001 case, noting that it resulted in a change of the child’s

¹ It is noted that although the complainant references the Commissioner’s decision in the Kennedy matter, she cites to the decision issued by the Appellate Division. The Commissioner’s decision was affirmed by the State Board of Education and the Appellate Division.

grade and stated in relevant part, “If this is true, do board member’s kids get special treatment when the kids who finished CAD last summer are only entitled to Pass/Fail grades?” (*Id.* at Exhibit B) The respondent queries how this resident learned of his case from 2001 and deduces that the confidential information related to his case was provided to this resident by the complainant. Exhibit C of the answer is a copy of an e-mail sent by the complainant dated February 20, 2008 to the Board’s business administrator, with another copy to a board member. The e-mail states, in relevant part:

I also wanted to let you know that, through OPRA, I will be asking for documentation regarding possible legal expenditures that the board may be spend [sic] in the next couple months to defend a board member against an ethics violation. I just wanted to give you a “heads up” so these expenditures can be easily distinguished when the bills come in, and you can avoid the difficulties experienced when I first started asking you for CAD legal expenses last spring. Elaine Young. (*Id.* at Exhibit C)

Thus, the respondent urges the Commission that the complainant and others like her:

must be sent a message that they cannot recklessly, maliciously, mean-spiritedly and carelessly attack members of boards of education, and their families (and in the process excoriate the safeguards and protections afforded to minors and those of protected classes) simply because the Petitioner does not agree with the discipline that was imposed upon her child for breaching the standards of academic integrity. (*Id.* at p. 14)

By letter dated April 16, 2008, the respondent forwarded a copy to the Commission of the final decision issued by the Commissioner of Education in connection with the above-cited CAD matter, wherein the Commissioner concluded that the petitioners failed to sustain their burden of establishing that the Board’s actions in disciplining the students were arbitrary, capricious, unreasonable or an abuse of the Board’s discretion. See, T.B.-M, o/b/o minor child, M.M. v. Board of Education of the Township of Moorestown, Burlington County and R.Y. and E.Y. o/b/o T.Y., v. Board of Education of the Township of Moorestown, Burlington County, Commissioner of Education Decision No. 163-08, (decided April 7, 2008). On November 17, 2008, prior to the probable cause hearing, the respondent submitted additional arguments and reiterated his request that the Commission find this complaint was frivolous.

The complainant did not appear at the Commission’s meeting on December 16, 2008. The respondent appeared, with counsel, Michael P. Madden, Esq. Mr. Kreimer explained that he has devoted his time and energy to serving on Boards of Education for twelve years. He testified that it was important for him to appear, as he fears the chilling effect of this type of action, where the Commission is being used as a means for retaliation. The respondent explained the circumstances of his actions taken with respect to his child in 2001, underscoring that the matter concerned the provision of services and did not involve any money. Mr. Kreimer emphasized that the action he initiated against the Board in 2001 was quite different from that

initiated by the complainant with respect to her son in 2007. According to the respondent, the complainant's son admitted to plagiarism in connection with "a massive cheating scandal" in the district during the 2007 school year. The complainant appealed the Board's decision to discipline the student; she wanted an "A" for her son and also wanted his record expunged.

Mr. Kreimer stated that the within complaint filed by the complainant in 2008 cites to the 2001 case involving his child, and, in so doing, violated the child's right to confidentiality under federal law. Thereafter, according to the respondent, the complainant systematically spread rumors that a board member was under investigation. The respondent referenced Exhibits B and C attached to his answer as further evidence of bad faith and harassment by the complainant.

The respondent specifically addressed the standards set forth in the Commission's regulations for finding that a complaint was frivolous. He testified that the complaint was indeed filed in bad faith with the intent to harass. Mr. Kreimer stated that the complainant filed an OPRA request on a monthly basis to ascertain legal fees in connection with the very complaint she filed; she wrote a letter to the editor on the same topic and also wrote to Office of Attorney Ethics questioning the Board attorney's professional ethics in connection with the 2001 matter. Mr. Kreimer further testified that the law was clear in 2001 that there was no violation associated with his bringing a suit against the District to obtain services for his child.

FINDINGS OF PROBABLE CAUSE

This matter was before the Commission for a determination of probable cause. That is, the Commission must determine, based on the documentary and testimonial evidence before it, whether probable cause exists to credit the allegations in the complaint. A finding of probable cause is not adjudication on the merits, but, rather, an initial review whereupon the Commission makes a preliminary determination whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted. In making this decision, the Commission must consider whether sufficient evidence exists to support a claim of violation under the School Ethics Act. Here, the Commission finds there is insufficient evidence to proceed.

As a threshold matter, the Commission initially notes that, pursuant to N.J.A.C. 6A:28-6.1(b), "[a]ll complaints must be filed within one year of notice of the alleged violation." On this record, there appears to be no dispute that the complainant learned of the events which formed the basis of the complaint in 2007, pursuant to an OPRA request. Thus, the Commission considered the matter to be timely filed.

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24(f) of the Act when, in 2001, he challenged the District's provision of services to his child. N.J.S.A. 18A:12-24(f) states,

No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of

securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

There is nothing in the record before the Commission to indicate that the respondent used, or allowed to be used, his public office or any information, not generally available to the members of the public, which he received or acquired in the course of and by reason of his office, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated. Rather, on the face of the papers provided by the Department of Education pursuant to the complainant's OPRA request, it is evident that the respondent and his wife, as parents and through their own attorney, were seeking a grade adjustment for their child. Although the petition also requested reimbursement for costs which the parents expended in ensuring that their child received an appropriate education, as well as reimbursement for attorney's fees, the agreement reached by the parties clearly states that the petitioners agreed to drop all requests for such fees and costs. (OPRA Documents, Attachment to Complaint) Thus there is nothing on this record to indicate that the respondent "used his office" for the purpose of financial gain for himself or his family.

It is also important to note that the School Ethics Act specifically carves out an exception to the enumerated prohibited acts, with the following provision set forth at N.J.S.A. 18A:12-24(j):

Nothing shall prohibit any school official, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests;

Thus, while the complainant is correct that the Commissioner, the State Board of Education and the Appellate Division in Kennedy determined that N.J.S.A. 18A:12-24(j) does not serve as an exception to N.J.S.A. 18A:12-2, the statute which prohibits an individual from qualifying for board membership when s/he has a claim against the district, the Supreme Court of New Jersey affirmed and modified the Appellate Division's decision in July 2008, when it determined that not all controversies and disputes that may arise between a local school district and a parent who is also a sitting board member should require the member's removal from office. While in Kennedy the Court found that removal was appropriate because of the concrete pecuniary aspects of that dispute, it specifically noted that the School Ethics Act (at N.J.S.A. 18A:12-24(j)) recognized a limited need to except board members from an absolute prohibition against pursuing their family member's interest in negotiations and proceedings involving the Board. Harmonizing N.J.S.A. 18A:12-24(j) and N.J.S.A. 18A:12-2, the Court found that a Board member should not automatically be removed from office merely for advancing a claim in a proceeding against a school district involving his or his family member's interests. Instead, the Commissioner of Education must conduct a fact-specific inquiry in order to draw the line between acceptable and prohibited activity. Board of Education of the City of Sea Isle v. William J. Kennedy, 196 N.J. 1 (2008). In any event, Kennedy concerned a respondent board member's qualification for membership pursuant to N.J.S.A. 18A:12-2, a statute over which the Commission has no jurisdiction.

Thus, the Commission finds that further review of this matter is not warranted because insufficient evidence exists to support a claim of violation N.J.S.A. 18A:12-24(f).

REQUEST FOR SANCTIONS

The respondent has asked that the Commission find that the complaint was frivolous and impose sanctions pursuant to its expressed authority to do so under N.J.S.A. 18A:12-29(e). A “frivolous complaint” is defined as a complaint determined by the Commission to be *either*:

- 1) Commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) One which the complainant knew, or should have known, was without any reasonable basis in law or equity and 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.

As per the language of the regulation, the Commission need only find that one prong is applicable to support a finding of violation. In so doing, the Commission considers the totality of the circumstances in determining whether a complaint meets the above standard. See, Patricia Lee v. Barri Beck, Union Township Bd. of Education, C51-05 (September 27, 2005). Here, on the basis of the record before it, the Commission finds that this complaint satisfies both prongs of the standard set forth above.

The record herein shows that the complainant’s son was charged with plagiarism in March 2007 and disciplined as a result of his written admission to this violation. After local appeals, the complainant appealed the Board’s disciplinary determinations to the Commissioner of Education, filing an application for emergent relief, which was denied by the Commissioner on June 1, 2007. R.Y. and E.Y. o/b/o minor child, T.Y. v. Moorestown Board of Education, Commissioner of Education Decision No. 203-07E. Subsequently, the complainant’s case was consolidated with another case and the matter was set for review on the merits. According to the complainant, in preparation for her hearing, she “discovered” that on October 11, 2001, the respondent filed an action against the school district with respect to his child. (Letter #1 Attachment to Complaint at p. 2)

Thereafter, on November 29, 2007, the complainant filed an OPRA request with the Department of Education “requesting copies of all documents related to a case: A.K. and R.K. o/b/o [student initials] vs. Moorestown Board of Education dated October 11, 2001 filed with the Commissioner of Education.” (OPRA Request; Attachment to Complaint) As noted, the Department of Education redacted all identifying student information from the documents it released.

As noted above, the complainant also sent a letter (undated) to the Office of Attorney Ethics, the Commissioner of Education, the Burlington County Superintendent of Schools, the Office of the Attorney General and the Attorney General’s Office of Government Integrity. That letter was later appended to the within complaint. By letter dated January 24, 2008, the Director

of Controversies and Disputes responded on behalf of the Commissioner of Education and specifically advised the complainant:

You are quite correct that a board of education member who files an action against his/her own board has a conflict of interest in violation of N.J.S.A. 18A:12-2 and is subject to removal from the board. The conflict you reference in your letter appears to have been resolved years ago, however If you believe there is a current conflict which would require removal of a board member, you may file a petition of appeal with the Commissioner of Education pursuant to N.J.A.C. 6A:3-1.4. (Letter from Director of Bureau of Controversies and Disputes, Attachment to Complaint)

The letter from the Department of Education further advised:

With respect to your comments concerning school ethics law, please be advised that the authority of the School Ethics Commission is limited to enforcing the School Ethics Act, N.J.S.A. 18A:12-24 et seq., a set of minimum ethical standards by which all school officials must abide. While the provisions are quite broad in their scope, they simply do not prohibit all conduct by a school official which might be considered as unprofessional or inappropriate. To the extent that a person wishes to submit a complaint alleging a violation of the School Ethics Act, please be advised that a complaint must: (1) set forth in individually-numbered paragraphs the specific facts that cause the complainant to believe that a violation under the School Ethics Act has occurred; (2) cite the section(s) of the School Ethics Act that the complainant believes to have been violated; (3) include the date(s) of the occurrence(s) upon which the complaint is based, in that all complaints must be filed within one year of notice of the alleged violation; and (4) be signed and notarized. N.J.A.C. 6A:28-6.1 and N.J.A.C. 6A:28-6.3. (Id.)

While the complainant asserts that it was this response from the Department of Education that “led [her] to bring the complaint before the School Ethics Commission,” the Commission finds this assertion to be disingenuous, given the totality of the circumstances. The letter from the Department of Education initially informed the complainant that the (2001) conflict referenced in her letter was resolved long ago, thereby precluding any valid claim under N.J.S.A. 18A:12-2. The same letter merely recites the complainant’s right under the law to file a complaint alleging a violation of the School Ethics Act (see, N.J.S.A. 18A:12-29(a)); it makes no individual assessment of her potential claims under the Act. It is critical to note that the right to file a complaint against a school official must be balanced with the concomitant obligation to set forth in the complaint the *specific facts* that cause a complainant to believe that a violation of the School Ethics Act has occurred. N.J.A.C. 6A:28-6.3.

Having been advised by the Department of Education that a claim based on these facts pursuant to N.J.S.A. 18A:12-2 was no longer viable, it appears that the complainant merely “repackaged” the information that was initially addressed to the Commissioner of Education by completing a School Ethics Commission complaint form and appending the above-noted series of documents to the form. On February 4, 2008, the complainant filed the within complaint, stating:

I found out about A.J. Kreimer’s ethical misconduct (violating N.J.S.A. 18A:12-24(f) as written on your Web site) in the fall of 2007. I am involved in a Due Process matter with the Moorestown Board of Education. In comparing how other students have been treated in similar situations, it was brought up that A.J. Kreimer’s [child] was in a situation in which [the child’s] grade was changed after Mr. Kreimer brought suit against the district. It was also mentioned that [the child] faired quite well under the suit. Through an OPRA request I received from the DOE, I found out that this was true. I have used this information for my own case, but also felt I should bring this to the attention of the proper authorities for the ethical aspects of this matter. (Complaint at paragraph 1)

The complainant failed to allege even one fact that could support a potential violation of N.J.S.A. 18A:12-24(f), *i.e.*, that Mr. Kreimer used, or allowed to be used, his public office or any information, not generally available to the members of the public, which he received or acquired in the course of and by reason of his office, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated. Neither do the documents appended to the complaint lend any support to the complainant’s bare allegation of violation.

Instead, “the complaint” is really about what the complainant did not get: the relief for her son that she requested:

From my review of the Kreimer litigation, the School Board resolved the matter within two weeks, October 22, 2001, by giving Mr. Kreimer’s [child] the letter grade of “B” rather than a “P”, or a “D” by averaging [the child’s] failed grade during the school year with [the child’s] “one-to-one grade. ... Interestingly, the Kreimer request is the same request that I made. (Letter #1, Attachment to Complaint at p. 2)

Thus, on the very face of the complainant’s papers, one may reasonably conclude that the complainant commenced this action because she was troubled that the respondent’s proceedings with the Board yielded a swift and favorable result for his child, when her appeal before the Commissioner of Education was far less promising.² Further, while the Commission can draw

² According to the ALJ’s recommended decision pursuant to Ms. Young’s application for emergent relief, the petitioners failed to satisfy any of the four requirements for establishing that emergent relief was warranted and were

no conclusive inferences as to the complainant's bad faith from Exhibit B, the e-mail from the Moorestown resident to the Board, the Commission finds that the complainant's own writing at Exhibit C serves as additional evidence of harassment. Here, the complainant forthrightly told the business administrator that she intended to monitor the legal costs associated with the respondent's defense in connection with the very complaint which she filed against him, thus embarking on a course to keep a watchful eye on a board member who had a legal right to defend himself in this action. Viewing the totality of the circumstances, the Commission finds that the complainant commenced, used or continued this action in bad faith, solely for the purpose of harassment or malicious injury to the respondent. The Commission also finds that the complainant knew, or should have known, that a complaint which alleged no facts relevant to the claimed violation was without any reasonable basis in law or equity.

In Guinta v. O'Dowd, Cherry Hill Township Board of Education, C45-05 (March 28, 2006) and Guinta v. Trubin, Cherry Hill Township Board of Education, C46-05 (March 28, 2006) the Commission found the complaints to have been frivolous in that they were devoid of any factual evidence that would prove the allegations. Both cases were dismissed pursuant to a motion made by the respondent and, in both cases, the complainant was fined \$100. The Commission determines that a greater fine is warranted in this matter as it finds compelling the respondent's testimony with respect to the potential chilling effect of matters such as this. The respondent persuasively argued, both in his papers and in his testimony, that he believed this complainant "is seeking nothing more and nothing less than to retaliate against the Board and me personally for enforcing the Moorestown Board of Education's policies to maintain academic integrity to Petitioner's son and numerous other students who were caught cheating in the aforesaid CAD class during the school year 2007." (Answer at p. 6) In so doing, the respondent asserts, and the Commission concurs, that the complainant has brought before the Commission very private aspects of his child's education. Such a complaint takes on the appearance of a personal attack against the respondent rather than an action to safeguard the public's trust.

In this connection, the Commission notes that the School Ethics Act, and the specific prohibitions set forth therein, were intended to establish ethical standards for school officials along with a mechanism "to weed out the few people who would use our schools for personal gain." (Office of the Governor, News Release, January 16, 1992, "Governor Florio Signs Law Imposing Greater Accountability for School Districts") The Commission recognizes that Board members are volunteers who make considerable sacrifices to hold their public offices. Quite aside from the many demands that the Commission faces with limited time and increasingly limited resources to adjudicate complaints, the Commission cannot allow itself to become a vehicle for the community to retaliate against individual board members for duly carrying out their Board's policies and procedures.³ That the complainant chose to do so in disregard of the rights of the respondent's child is particularly disturbing to the Commission. For the foregoing

unlikely to prevail on the merits of their claim. R.Y. and E.Y. o/b/o minor child, T.Y. v. Moorestown Board of Education, Commissioner of Education Decision No. 203-07E at slip op. 6-7.

³ In so finding, the Commission underscores that the Commissioner of Education ultimately determined that the petitioners failed to establish that the Board's actions were arbitrary, capricious, unreasonable or an abuse of the Board's discretion. T.B.-M. o/b/o minor child, M.M. v. Board of Education of the Township of Moorestown, Burlington County and R.Y. and E.Y. o/b/o T.Y., v. Board of Education of the Township of Moorestown, Burlington County, Commissioner of Education Decision No. 163-08, (decided April 7, 2008).

reasons, the Commission finds the complaint to be frivolous pursuant to N.J.S.A. 18A:12-29(e) and orders that the complainant pay a fine in the amount of \$500.00.

NOTICE

Pursuant to N.J.S.A. 18A:12-29b, the Commission hereby notifies the complainant and respondent that it finds no probable cause to credit the allegations that A. J. Kreimer violated the Act and the Commission dismisses the complaint against him. The Commission also concludes that the within complaint was frivolous, pursuant to its authority set forth at N.J.S.A. 18A:12-29(e) and hereby fines the complainant \$500.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C02-08

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and the testimony presented; and

Whereas, at its meeting of December 16, 2008, the Commission found no probable cause to credit the allegations that A. J. Kreimer violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* and therefore dismissed the charges against him; and

Whereas, the Commission finds that the complaint meets the standard set forth at N.J.A.C. 6A:28-1.2 for a frivolous complaint and further finds that a sanction of \$500.00 is appropriate; and

Whereas, the Commission directed its staff to prepare a decision consistent with the aforementioned conclusion; and

Whereas, the Commission has reviewed the decision and agrees with the decision;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed decision referenced as its decision in this matter and the complainant is hereby **ORDERED** to pay a \$500.00 fine for the filing of a frivolous complaint. The Commission directs its staff to notify all parties to this action of the Commission's decision herein and to collect the fine imposed above.

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on January 27, 2009.

Joanne Boyle, Executive Director
School Ethics Commission

