
HELMUT A. WITTREICH

v.

**PETER M. JORDAN,
NANCY LACORTE, ARUNA
METTLER, EVA M. NAGY,
BERNARD SEIGEL and
EUGENE UNGER
FRANKLIN TOWNSHIP
BOARD OF EDUCATION
SOMERSET COUNTY**

**BEFORE THE
SCHOOL ETHICS COMMISSION**

Docket No. C39-07

PROBABLE CAUSE NOTICE

This matter arises from a complaint filed on October 3, 2007 by Helmut Wittreich, alleging that Peter M. Jordan, Nancy LaCorte, Aruna Mettler, Eva M. Nagy, Bernard Seigel and Eugene Unger, members of the Franklin Township Board of Education in Somerset County (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Answers were filed on behalf of the respondents on December 14, 2007. Thereafter, based upon information received from the complainant, the Commission voted at its meeting on June 24, 2008 to place this matter in abeyance pursuant to N.J.S.A. 18A:12-32. By letter dated December 10, 2008, counsel for the respondents confirmed that all pending matters in Superior Court had been resolved and requested that the matter be scheduled by the Commission for a probable cause determination. The Commission held a probable cause hearing on this matter on February 24, 2009, at which time the Commission voted to find no probable cause to credit the allegation that the respondent violated the Act. The Commission also voted to find that this was not a frivolous complaint.

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

Much of the complaint (paragraphs 1 through 19) is dedicated to the complainant's account of his experiences addressing the district's practice of permitting its schools the discretion to establish procedures for lavatory use. The complainant objected to the practice employed by the Franklin Middle School to lock bathrooms between each class period. The complainant's child was under a physician's care and directed to have unlimited access to the bathrooms. The complainant addressed his concerns to various administrators in the District, who responded to his concerns.

By letter dated July 17, 2007, the complainant wrote to Board President Eva Nagy expressing his continued dissatisfaction with the district's response and requesting the "removal or resignation of at least 17 individuals, including board members, administrators, teachers and support personnel." (Complaint at Exhibit T) Mrs. Nagy responded by letter dated July 25, 2007 informing the complainant that after having fully examined the issue with the administration, "our position is that re-examination and possible revision of these policies will be done in due course, but not immediately." (Complaint at Exhibit U)

With respect to the issue of the lavatory procedures, the complainant alleges that:

- After being notified by him, the respondents did not investigate or respond to the incidences in which there may have been a violation of law, which was in violation of N.J.S.A. 18A:12-24.1(a), (b), (d) and (j) (Complaint at paragraph 23);
- Board member Mettler violated N.J.S.A. 18A:12-24.1(a), (b), (d), (e) and (j) when she informed him that she was aware of the problems with the lavatory policy since she had been a substitute teacher at the middle school (Id. at paragraph 24); and
- The Board President alone, with input only from the Superintendent, made decisions for the Board concerning policies, employee status and student compensation, in violation of N.J.S.A. 18A:12-24.1(a), (b), (d), (e) and (j). (Id. at paragraph 25)

The complainant also alleges that on July 26, 2007, Board President Nagy acted inappropriately at a conference session of the Board. The complainant alleges that when a list of personnel was brought before the Board for approval, one of the board members made a motion to remove one of the candidates from consideration; this candidate was a former board member. Respondent Mettler initially voted “yes” to the motion; the Board President questioned her about the vote. Mrs. Mettler then changed her vote to “no” and the motion was defeated by one vote. The complainant alleges that this incident gave the appearance that “some of the board members” may have been using their official position to gain employment for the candidate in violation of N.J.S.A. 18A:12-24(b). (Complaint at paragraph 20)

In their Answer, the respondents explain that the lavatory use policies are administrative functions that are delegated to the principals and supervisors of the schools in the District in that the needs of the children in a K-12 district vary from school to school. (Answer at paragraph 1) The respondents maintain that the administration was responsive to the complainant’s concerns and deny that the District is in violation of any State law or regulation relative to their facilities or the use of their facilities. (Id. at paragraphs 2 -18)

As for Mrs. Nagy’s letter to the complainant dated July 25, 2007, the respondents contend that such letter was drafted at the advice of counsel for the Board, with input from the Superintendent of Schools. There is no evidence of any independent action taken by Mrs. Nagy. (Id. at paragraph 19) With respect to the allegations that there was a failure to investigate, the respondents assert that the District’s administrative personnel were vigilant in accommodating the complainant’s son and there are no specific facts to substantiate the complainant’s broad allegations that the respondents violated N.J.S.A. 18A:12-24.1(a), (b), (d) and (j). (Id. at paragraph 23) Respondents deny that Mrs. Mettler identified the lavatory use issue as a “problem” or violated N.J.S.A. 18A:12-24.1(a), (b), (d), (e) and (j). (Id. at paragraph 24) Respondents further deny that Mrs. Nagy violated N.J.S.A. 18A:12-24.1(a), (b), (d), (e) and (j) in that she took no independent action, but merely informed the complainant that the lavatory use policy would be reviewed by the Board at a later time. (Id. at paragraph 25)

With respect to the complainant's allegations regarding the July 26, 2007 meeting, the respondents explain that the former board member who became a candidate for a position in the District was eminently qualified to hold the position and has served the District commendably since his appointment. The respondents acknowledge that one of the Board members not named in the complaint made a motion to defer the appointment of this candidate. Respondents explain:

The motion for deferment failed by a vote of 4-5. ... The allegation that Mrs. Nagy used her position on the Board to influence Mrs. Aruna Mettler's vote is completely unfounded. Mrs. Mettler sat on the Personnel Committee that supported [the candidate's] appointment to the position of Assistant to the Director of Personnel Services. Mrs. Mettler occasionally has difficulty hearing and believed that she was voting "yes" to [the candidate's] appointment as opposed to "yes" to defer his appointment. Mrs. Nagy, as it is her duty, ensured that Mrs. Mettler understood what she was voting on. (Id. at paragraph 20)

The respondents provided a DVD of the July 26, 2007 meeting in order to substantiate their position, as set forth above.

The complainant attended the Commission's meeting on February 24, 2009, along with respondents Nagy and Mettler, who were represented by counsel, Patrick Carrigg, Esq. Mr. Wittreich testified about the history of the lavatory use procedures in the District as recounted in the complaint. He stated that such procedures create a hostile environment and are detrimental to the health and welfare of children. The complainant acknowledged that he met with various administrators but was concerned that the Board was not taking action to adopt a lavatory use policy for the District.

Mrs. Nagy testified that she has been on the Board for 16 years and has been Board President for 14 years. She is an officer with the New Jersey School Boards Association (NJSBA) and has attended numerous trainings. Mrs. Nagy testified that, as a Board member, she does not deal with the day-to-day operations of the schools. The matter was duly referred to the administration. When Mrs. Nagy received the complainant's letter dated July 17, 2007, she asked the Superintendent how she should handle his concerns. Mrs. Nagy stated that they turned to legal counsel who drafted a letter which Mrs. Nagy asserted she merely "cut and pasted" into a response to the complainant. Mrs. Nagy affirmed that such procedure was typical, in that Board members never take specific action without the consent of the full Board. Mrs. Nagy testified that she researched the complainant's concerns and also contacted NJSBA to find out what policies other districts may have. NJSBA informed her that there were no sample policies adopted by other Boards concerning lavatory use; bathroom use is a building level decision.

Mrs. Nagy testified about the meeting on July 26, 2007. She had no personal relationship with the candidate for the position of Assistant to the Director of Personnel Services. Mrs. Nagy recalled that Mrs. Mettler made a plea to hire him. When the motion was made, however, to table the vote to hire, Mrs. Mettler voted "yes." Mrs. Nagy testified that she believed that Mrs.

Mettler misheard because she voted differently from what she had discussed. Mrs. Nagy clarified the motion that was on the table and Mrs. Mettler changed her vote to a “no.”

Aruna Mettler testified that she has been on the Board for two years and she had no relationship with the candidate for the position of Assistant to the Director of Personnel Services. She wanted the candidate to be appointed and it was not her intention to table the motion.

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.

The Commission first considers the complainant’s allegations that the respondents violated the Code of Ethics for School Board Members. More specifically, the complainant asserts that the respondents violated N.J.S.A. 18A:12-24.1(a), (b), (d), (e) and (j).

The complainant contends that the respondents violated N.J.S.A. 18A:12-24.1(a) as a group and that Mrs. Nagy and Mrs. Mettler did so individually. 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.

There is no evidence on this record to substantiate the allegation that the respondents violated N.J.S.A. 18A:12-24.1(a). Although the complainant points to a number of State laws and regulations which he contends were violated, at no time does he assert that a final decision has been rendered with respect to these respondents from any court of law or administrative agency of this State as would be required in order to show such a violation. (See, N.J.A.C. 6A:28-6.9(b)). Therefore, the Commission finds there is insufficient evidence to credit the allegations that respondents violated N.J.S.A. 18A:12-24.1(a).

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.

The Commission finds there is nothing in the record to suggest that the respondents took action or made decisions that were contrary to the educational welfare of children. Rather, it appears that they duly relied on the administration to address the complainant's concerns and take measures to address the individual needs of the complainant's son. Therefore, the Commission finds there is insufficient evidence to credit the allegations that respondents violated N.J.S.A. 18A:12-24.1(b).

N.J.S.A. 18A:12-24.1(d) states:

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.

To administer the schools means that a board member has become directly involved in activities or functions that are the responsibility of school personnel or the day to day administration of the school district. N.J.A.C. 6A:28-7.1. Indeed, the record before the Commission and all documents provided by the complaint show the contrary. It was the administration that responded to the complainant's concerns without interference from the Board members. Therefore, the Commission finds there is insufficient evidence to credit the allegations that respondents violated N.J.S.A. 18A:12-24.1(d).

The complainant contends that Respondents Nagy and Mettler violated N.J.S.A. 18A:12-24.1(e), which provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

Here, it is important to note that "private action" means any action taken by a member of a district board of education that is beyond the scope of the duties and responsibilities of the member. N.J.A.C. 6A:28-7.1. With respect to Mrs. Mettler, there is nothing on this record to show that she took any private action. With respect to Mrs. Nagy, while she acknowledged that she wrote a letter dated July 25, 2007 in response to the complainant's letter dated July 17, 2007, she testified that she did so in her role as Board President and only after consulting with the Superintendent and the Board's counsel. Indeed, the complainant's letter was specifically addressed to Mrs. Nagy. Moreover, Mrs. Nagy copied the members of the Board on her letter. The letter confirmed the actions that were taken by the administration and stated that the Board will not immediately take up the issue of developing a lavatory policy. (Complaint at Exhibit U). As such, Mrs. Nagy made no personal promises; nor does the letter in any way suggest that she failed to recognize that authority rests with the Board of Education. Therefore, the Commission finds there is insufficient evidence to credit the allegations that respondents violated N.J.S.A. 18A:12-24.1(e).

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.

On this record, there is no evidence to suggest that the respondents failed to refer a complaint to the Superintendent; indeed, it appears that the Superintendent was directly contacted by the complainant and also consulted when the matter was addressed to Mrs. Nagy through the complainant's letter of July 17, 2007. Moreover, there is no evidence to suggest that the administration failed to duly address the problem or that the respondents acted on the complaint outside of a public meeting prior to the failure of an administrative solution. Therefore, the Commission finds there is insufficient evidence to credit the allegations that respondents violated N.J.S.A. 18A:12-24.1(j).

Finally, the complainant contends that Mrs. Nagy violated N.J.S.A. 18A:12-24(b) at the Board meeting on July 26, 2007. N.J.S.A. 18A:12-24(b) provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

Both Mrs. Nagy and Mrs. Mettler credibly testified as to the events of that evening with respect to the motion to defer voting on the candidate for the position of Assistant to the Director of Personnel Services. Moreover, the respondents provided a DVD of the meeting which leaves no doubt that the events occurred as explained by the respondents both in their testimony and in their Answer to the complaint. This record is devoid of any suggestion that Mrs. Nagy attempted to use her position as Board President to secure and unwarranted privilege for the candidate. Therefore, the Commission finds there is insufficient evidence to credit the allegations that respondents violated N.J.S.A. 18A:12-24(b).

REQUEST FOR SANCTIONS

At its February 24, 2009 meeting, the Commission considered the respondents' request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence which might show that the complainants filed the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also has no information to suggest that the complainants 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. Rather, the Commission accepts, based on the complainant's testimony, that he was genuinely frustrated that the Board did not take action to adopt a District-wide lavatory use policy. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondent's request for sanctions against the complainant.

NOTICE

Pursuant to N.J.S.A. 18A:12-29b, the Commission hereby notifies the complainant and respondents that it finds no probable cause to credit the allegations that the respondents violated the Act and the Commission dismisses the complaint. 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).

Robert W. Bender
Acting Chairperson

Resolution Adopting Decision – C39-07

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 February 24, 2009, the Commission found no probable cause to credit the allegations that the respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against them; and

Whereas, at its meeting of February 24, 2009, the Commission found that the complaint was not frivolous; 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 directs its staff to notify all parties to this action of the Commission's decision herein.

Robert W. Bender, Acting Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on March 24, 2009.

Joanne Boyle, Executive Director
School Ethics Commission