



Police Department and used the Security Office to arbitrarily dismiss the complainant from work. Complainant asserts that the respondent acted outside the scope of her authority and used her position to secure privileges for herself. The complainant asserts this is a violation of N.J.S.A. 18A:12-24(a) and (b).

### Count 3

The complainant alleges that the respondent hired her as a part-time teacher yet reported her service to the Department of Labor (DOL) as full time. In addition, the complainant asserts that the respondent refused to pay her for duties performed beyond her teaching responsibilities and kept the balance of complainant's wages for herself. The complainant asserts this is a violation of N.J.S.A. 18A:12-24(e) and (f).

The respondent argues that she never demanded money for the receipt of her doctorate. Rather, her staff surprised her with a cake, flowers and bracelet. The respondent also maintains that on June 20, 2014, she called the complainant into her office along with her union representative to discuss the complainant's actions in distributing to the students a letter to the parents, advising them that their children would not be taught Spanish the following year because her contract was not renewed. The respondent also asserts that she had no contact with the Department of Labor nor did she hire the complainant as those are functions performed by others. Finally, the respondent asserts that the complainant did not suffer disparate treatment as all teachers who have a free period are assigned lunch duty without additional remuneration.

### **FINDINGS OF PROBABLE CAUSE**

This matter is before the Commission for a determination of probable cause pursuant to N.J.A.C. 6A:28-10.7. That is, the Commission must determine, based on the evidence before it, whether probable cause exists to credit the allegations in the Complaint. A finding of probable cause is not an 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.

#### Allegations of Prohibited Acts

The complainant alleges that the Respondent violated N.J.S.A. 18A:12-24(a), (b), (e), and (f) of the Act, which provide, respectively:

- a. No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.
- b. 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.

- e. No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties.
- f. 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.

In order to prove a violation of N.J.S.A. 18A:12-24(a), the Complaint must produce evidence that the respondent retains an interest in a business or business activity which is in substantial conflict with the proper discharge of her duties as a Board member. The Commission notes that “interest” is defined under the Act at N.J.S.A. 18A:12-23 *et seq.* as the ownership or control of more than 10% of the profits, assets or stock of a business. In order to find a violation of N.J.S.A. 18A:12-24(a), the complainant must prove that the respondent maintains more than ten percent interest so as to have had the requisite control of the business or enterprise. The complainant offers no support by way of certification or other evidence that the respondent holds an interest in any measure of such an activity which is in conflict with the proper discharge of respondent’s duties. Consequently, this allegation is unsustainable. Accordingly, the Commission finds no probable cause to credit complainant’s allegation that the respondent violated N.J.S.A. 18A:12-24(a). Accordingly, this allegation is dismissed.

In order to find a violation of N.J.S.A. 18A:12-24(b), the complainant must be able to prove that the respondent’s removal of the complainant during class or call to Security and the Police Department was an attempt by the respondent to use her position as a Principal to secure unwarranted privileges, advantages or employment for herself or another. The complainant fails to allege how such actions could benefit the respondent or another, nor is there evidence in the complainant’s submissions to suggest the respondent received some unwarranted privilege or advantage for herself or others. No such benefit is articulated, and none will be fashioned.

In contrast, the respondent argues that her actions were the result of the complainant’s behavior. The respondent explains that on June 20, 2014, she called the complainant into her office along with her union representative to discuss the complainant’s actions in distributing to the students that day a letter to the parents, advising them that their children would not receive Spanish instruction the next year because her contract was not renewed. The respondent has produced the letter which the complainant sent to parents in support of her argument to the Commission to consider. The complainant did not deny that she sent the letter home for her students’ parents to read. Upon review, the Commission determined that the respondent acted within the scope of her duties as Principal to question the complainant that day in an attempt to stop distribution. Thus, the

allegation is unsustainable. Consequently, the Commission finds no probable cause to credit complainant's allegation that the respondent violated N.J.S.A. 18A:12-24(b). Accordingly, this allegation is dismissed.

In order to credit this allegation with respect to a violation of N.J.S.A. 18A:12-24(e), the Commission would have to find evidence that the respondent or a member of her immediate family accepted or solicited any gift, favor or loan for the purpose of influencing her in the discharge of her official duties. The complainant alleges that the respondent reported her service to the DOL as full time employment although she was paid a part-time wage. Yet, the complainant offers no evidence to support the allegation that the respondent accepted or solicited a favor which would influence her decisions or actions. In contrast, the respondent argues that she had no contact with the DOL and that she had no role in the hiring of the complainant as those functions are not within the scope of her authority. Without more, this allegation is unsustainable. Consequently, the Commission finds no probable cause to credit complainant's allegation that the respondent violated N.J.S.A. 18A:12-24(e). Accordingly, this allegation is dismissed.

In order to credit this allegation with respect to a violation of N.J.S.A. 18A:12-24(f), the Commission would have to find evidence that the respondent used her office, position, or information acquired by dint of her position for her benefit or the benefit of others. The complainant maintains that the respondent demanded and accepted cash gifts for the completion of her doctoral program and also retained the portion of the complainant's salary which exceeded part-time pay for her services. The complainant offers no evidence to support the allegation that the respondent coerced staff members for financial gain. Rather, the respondent asserts that her staff surprised her with a cake, flowers, and bracelet to commemorate her success. Moreover, the Commission finds it difficult to explain how the respondent could have retained a portion of the complainant's salary since paychecks are prepared by central payroll. The complainant offers nothing more than bald accusations without any factual support. Thus, these allegations are unsustainable. Consequently, the Commission finds no probable cause to credit complainant's allegation that the respondent violated N.J.S.A. 18A:12-24(f). Accordingly, this allegation is dismissed.

Taking into consideration the totality of the complainant's allegations and the respondent's arguments thereto, the Commission finds that the complainant has not met her burden to establish by a quantum of credible evidence or to provide the requisite proof sufficient to support a finding of probable cause in each of these violations. Accordingly, the Commission finds no cause to credit the allegations that these respondent violated N.J.S.A. 18A:12-24(a), (b) (e), and (f) and hereby dismisses the Complaint for failure to state a claim upon which relief could be granted.

## **REQUEST FOR SANCTIONS**

The Commission considered the respondent's 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 complainant 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 complainant 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. For the foregoing reasons, the Commission finds that the Complaint is not frivolous and denies the request for sanctions against the complainant.

## **NOTICE**

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies the complainant and respondent that it finds the Complaint not frivolous and further finds no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(a), (b), (e) and (f). The Complaint is, therefore, 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).

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Robert W. Bender, Chairperson

Mailing Date: March 25, 2015

## **Resolution Adopting Decision – C44-14**

**Whereas**, the School Ethics Commission has considered the pleadings filed by the parties and all documents submitted by the parties; and

**Whereas**, at its meeting of February 24, 2015, the Commission found no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(a), (b), (e) and (f) and dismissed the Complaint; and

**Whereas**, the Commission determined that the Complaint was not frivolous; and

**Whereas**, the Commission has reviewed, and agrees with, the proposed Probable Cause Notice; and

**Whereas**, at its meeting on March 24, 2015 the Commission has reviewed and approved the decision memorializing said action;

**Now Therefore Be It Resolved**, that the Commission hereby adopts the proposed Probable Cause Notice in this matter and directs its staff to notify all parties to this action of said notice.

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Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on March 25, 2015.

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Joanne M. Restivo  
Acting Executive Director  
School Ethics Commission