

---

<b>IN THE MATTER OF</b> <b>JEROME DUNN AND ALBERTO MARSAL</b>  <i>ELIZABETH BOARD OF EDUCATION</i> <i>UNION COUNTY</i>	: : : : : : :	<b>BEFORE THE SCHOOL</b> <b>ETHICS COMMISSION</b>  <b>OAL DKT. NO. EEC 14401-11</b> <b>SEC Docket No. C35-11</b>  <b>FINAL DECISION</b>
--	---------------------------------	---

---

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on July 20, 2011, by Michelle Cetta alleging that Jerome Dunn, Assistant Superintendent of the Elizabeth School District (“District”) and Alberto Marsal, Coordinator of Network and Computer Services in the District, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Specifically, the complainant asserts that the respondents, both school administrators, pursuant to N.J.S.A. 18A:12-23, violated N.J.S.A. 18A:12-24(b), (c) and (f).

An answer was filed on behalf of the respondents on August 10, 2011, alleging that the complaint was frivolous. The School Ethics Commission (Commission) reviewed this matter at its meeting on October 25, 2011 in order to make a probable cause determination, in accordance with procedures set forth at N.J.A.C. 6A:28-10.7 and to make a determination regarding the allegation of frivolousness. The Commission found that the complaint was not frivolous, pursuant to the standard set forth at N.J.A.C. 6A:28-1.2. The Commission also found probable cause to credit the allegations in the complaint that the respondents had violated N.J.S.A. 18A:12-24(b), (c) and (f). On November 23, 2011, in accordance with N.J.A.C. 6A:28-10.7(c)2, the Commission transmitted the matter to the Office of Administrative Law (OAL) for hearing. After several days of hearing, the Administrative Law Judge (ALJ) rendered her Initial Decision on August 8, 2013.

The Initial Decision was transmitted electronically to the Commission on August 8, 2013 and mailed to the parties the same day. Because the 45-day statutory period for issuing a final decision would expire on September 22, 2013, the Commission requested a 45-day extension of time for issuing its decision to allow the Commission, which meets only one day each month, to receive and review the full record of the matter, including exceptions and reply arguments. An Order granting the Extension was executed on August 12, 2013.

The Commission has reviewed the record of this matter, the Initial Decision of the ALJ, the exceptions and the reply thereto submitted in accordance with N.J.A.C. 1:1-18.4. At its meeting of August 27, 2013, the Commission adopted the conclusions of the ALJ and dismissed the probable cause finding.

The Complainant first argues that the ALJ failed to provide adequate support for her determination that the demeanor and testimony of the SEC’s witnesses were unconvincing and lacked credibility. She did find, however, the respondents’ witnesses credible.

The Complainant next argues that the ALJ erred in finding Respondent Marsal's testimony credible. By offering a number of seemingly inconsistent and conflicting accounts of his logging into the District's database, the Complainant maintains that the ALJ failed to discern his lack of honesty and sincerity. Moreover, the Complainant contends that Respondent Marsal demonstrated a further lack of truthfulness as he explained his involvement in the annual report upgrade, which records reflect he had never done before or since the event, which gave rise to the alleged violation.

The Commission recognizes that these are matters that turn on the credibility of witnesses. In this regard, the Commission must give deference to the credibility determinations of the ALJ. "The reason for this rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses, and, consequently, is better qualified to judge their credibility." In the Matter of Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div.), cert. denied, 121 N.J. 615 (1989)." Upon review of the record, the Commission hereby concludes that the ALJ's credibility determinations in this matter must be given deference and her findings based on those determinations cannot be overturned.

Last, the Complainant argues that the ALJ erred in dismissing the probable cause finding that Respondents violated N.J.S.A. 18A:12-24(b), (c) and (f) when she determined that the Commission failed to prove its case by a preponderance of the credible evidence. The ALJ's decision is flawed for concluding that the facts as presented by the Complainant did not establish a reasonable probability that the events unfolded as argued.

To the extent that the Complainant contends that the ALJ misjudged the testimony and the documentary evidence, the Commission determines that the findings issued by the ALJ provide a sufficient basis for reviewing her conclusions and recommendations. In this connection, the Commission recognizes that "the ultimate determination of the agency and the ALJ's recommendations must be accompanied by basic findings of fact sufficient to support them." State, Dept. of Health v. Tegnazian, 194 N.J. Super. 435 at 442, 443. The purpose of such findings "is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefore." (Id. at 443) Here, the Commission finds that the ALJ fairly summarizes the testimony and evidence. Because the Commission determines that the ALJ's factual findings provide a reasonable basis for her conclusions, there is no cause to disturb her decision.

## **DECISION**

For the foregoing reasons, the Commission accepts the conclusions of the Administrative Law Judge, dismisses the probable cause finding against Respondents and adopts the Initial Decision of the ALJ. This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division pursuant to New Jersey Court Rule 2:2-3(a).

---

Robert W. Bender, Chairperson

Mailing Date: September 25, 2013

## Resolution Adopting Decision – C35-11

**Whereas**, the Commission found probable cause to credit the allegation that respondents, Jerome Dunne and Alberto Marsal, violated N.J.S.A. 18A:12-24(b), (c) and (f), in connection with conduct that they engaged in as Assistant Superintendent of the Elizabeth School District and as Coordinator of Network and Computer Services in the District, respectively; and

**Whereas**, the Commission transmitted the matter to the Office of Administrative Law for a hearing; and

**Whereas**, the Administrative Law Judge concluded that the charges had not been sustained and therefore dismissed the finding of probable cause; and

**Whereas**, the complaining party filed exceptions to the ALJ's decision and respondents replied; and

**Whereas**, the Commission fully considered all of the documentation filed in response to the ALJ's decision and voted to accept the findings of fact and conclusions of law recited in the ALJ's decision; and

**Whereas**, at its meeting of September 24, 2013, the Commission determined to adopt the Initial Decision; and

**Whereas**, the Commission finds that the within decision accurately memorializes its adoption of the Initial Decision; and

**Now Therefore Be It Resolved**, the Commission hereby adopts the within decision as a Final Decision and directs its staff to notify all parties to this action of the decision.

---

Robert W. Bender, Chairperson

I hereby certify that the School Ethics Commission adopted this decision at its public meeting on September 24, 2013.

---

Joanne M. Restivo  
Interim Executive Director