GARNELL BAILEY	
v.	
JEROME PAGE AND DARLEEN BEY-BLOCKER, PLEASANTVILLE BOARD OF EDUCATION, ATLANTIC COUNTY	

BEFORE THE SCHOOL ETHICS COMMISSION

Docket No. C37-13

PROBABLE CAUSE NOTICE

PROCEDURAL HISTORY

This matter arises from a complaint filed on August 12, 2013 by complainant, Superintendent Garnell Bailey against respondents, Jerome Page and Darleen Bey-Blocker, members of the Pleasantville Board of Education (Board) alleging violations of the School Ethics Act ("Act"), <u>N.J.S.A.</u> 18A:12-21 <u>et seq</u>. The complainant specifically alleged that the respondents violated <u>N.J.S.A.</u> 18A:12-24(b) of the Act.

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On September 12, 2013, Respondent Page's counsel filed a Motion to Dismiss in lieu of an Answer and on September 13, 2013, Respondent Bey-Blocker filed her Answer, *pro se*, alleging that the complaint was frivolous. The complainant submitted her response to the Motion and "frivolous" allegation on October 2, 2013. Subsequently, counsel for Respondent Page withdrew his Motion to Dismiss and filed an Answer on October 7, 2013.

By letter dated November 8, 2013, the parties were notified that, at its meeting on October 29, 2013, the Commission voted to place this matter in abeyance, pursuant to its authority at <u>N.J.S.A.</u> 18A:12-32 until ancillary litigation involving these parties in other fora were resolved. On May 15, 2014, counsel for Respondent Page advised the Commission that all litigation had concluded and that Respondent Page wished to move forward before this tribunal. In a separate communication, the complainant expressed her interest in pursuing her claims against these respondents. By letter of July 9, 2014, the Commission notified the parties that the matter was placed on the agenda for the meeting on July 22, 2014, for a probable cause determination.

At its meeting on July 22, 2014, the Commission found the complaint not frivolous, but found no probable cause to credit the allegations of prohibited acts. The Commission, therefore, dismissed the complaint for failure to state a claim upon which relief could be granted.

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

Count 1

Complainant asserts that Board members, Respondents Page and Bey-Blocker, acted contrary to the Commission's specific advice to this Board, rendered in A02-13, not to vote on any matter regarding this Superintendent while litigation was pending against them in other fora. Moreover, the complainant affirms that at the public meeting on June 13, 2013, Respondent Page

asked that complainant's request for intermittent family leave be pulled from the agenda after which Respondent Bey-Blocker led the discussion of the pulled item. The complainant asserts this is a violation of <u>N.J.S.A.</u> 18A:12-24(b).

Count 2

The complainant also alleges that on July 26. 2013, she received correspondence from a different law firm, advising that it was retained to conduct an investigation into a matter that had already been resolved. When the State Monitor inquired who authorized it, the Board attorney advised that Board President Respondent Bey-Blocker had done so. The complainant maintains Respondent Bey-Blocker failed to follow Board procedure and involved herself in matters concerning the complainant's employment. The complainant asserts this is a violation of N.J.S.A. 18A:12-24(b).

Respondent Page maintains that upon instruction from General Counsel to remove the complainant's request for family medical leave from the agenda, he made a motion to "pull" the item for additional information. Respondent Bey-Blocker argues that this complaint is frivolous and that she tries to do the "right thing."

FINDINGS OF PROBABLE CAUSE

This matter is before the Commission for a determination of probable cause pursuant to <u>N.J.A.C.</u> 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 contends that the acts alleged in Counts 1 and 2 were each a violation <u>N.J.S.A</u>. 18A:12-24(b), which provides:

(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;

In order for the Commission to find probable cause to credit complainant's allegations that the respondents violated <u>N.J.S.A</u>. 18A:12-24(b), the Commission must find, in relevant part, that respondents used their respective official positions to secure unwarranted privileges, advantages or employment for themselves, members of their immediate families or others.

Moreover, there is no evidence in either Count that the respondents made a guarantee, promise or undertook any overt or covert action to obtain or attempt to obtain an "*unwarranted* privilege, advantage or employment" on behalf of themselves or others. There is nothing to support the allegation that either Respondent Page's removal of the complainant's family

medical leave request or Respondent Bey-Blocker's discussion of the item would result in a benefit to these the respondents. No such benefit is articulated and none can be found.

Accordingly, the Commission has determined that complainant has not met her burden of establishing probable cause in each of these violations and, therefore, finds no cause to credit the allegations that respondents violated <u>N.J.S.A</u>. 18A:12-24(b).

Moreover, in Count 2, the complainant has also failed to demonstrate that Respondent Bey-Blocker used her official position to secure unwarranted privileges for herself, her immediate family or others when she initiated an investigation into a matter regarding the complainant, which had already been resolved. Surely, this Respondent may have acted outside the scope of her authority, but that has not been alleged. The complainant provided no evidence that Respondent Bey-Blocker made a guarantee, a promise or undertook any overt or covert action to obtain or attempt to obtain an "*unwarranted* privilege, advantage or employment" on behalf of themselves or others. The complainant has articulated no such contention and the Commission will not fashion one.

Consequently, the Commission finds that the complainant has not met her burden to establish by the quantum of evidence or provide the requisite proof to support a finding of probable cause in each of these violations. Accordingly, the Commission finds no cause to credit the allegations that these respondents violated <u>N.J.S.A</u>. 18A:12-24(b) and hereby dismisses the complaint for failure to state a claim upon which relief could be granted.

REQUEST FOR SANCTIONS

The Commission considered Respondent Bey-Blocker's request that the Commission find that the complaint was frivolous and impose sanctions pursuant to <u>N.J.S.A.</u> 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 <u>N.J.S.A.</u> 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 <u>N.J.S.A.</u> 18A:12-24(b). 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. <u>See, New Jersey Court Rule</u> 2:2-3(a).

Mailing Date: August 27, 2014

Robert W. Bender, Chairperson

Resolution Adopting Decision – C37-13

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 on July 22, 2014, the Commission found no probable cause to credit the allegations of prohibited acts and dismissed the complaint; and

Whereas, the Commission further found the complaint not frivolous; and

Whereas, at its meeting on August 26, 2014, 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.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on August 26, 2014.

Joanne M. Restivo Interim Executive Director School Ethics Commission