

***Before the School Ethics Commission***  
***Docket No.: C03-20***  
***Final Decision***

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**William Feinstein,**  
***Complainant***

v.

**Angela Midgette-David,**  
**City of Englewood Board of Education, Bergen County,**  
***Respondent***

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**I. Procedural History**

This matter arises from a Complaint that was filed on January 15, 2020, by William Feinstein (Complainant), alleging that Angela Midgette-David (Respondent), a member of the City of Englewood Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-25 in Count 1 and *N.J.S.A.* 18A:12-26 in Count 2.

On January 17, 2020, the Complaint was served on Respondent, via regular and certified mail, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading. On February 10, 2020, Respondent filed an Answer to Complaint (Answer).

The parties were notified by correspondence dated February 14, 2020, that this matter would be placed on the Commission's agenda for its meeting on February 25, 2020, in order to make a determination regarding probable cause. At its meeting on February 25, 2020, the Commission considered the filings in this matter and, at a special meeting on March 27, 2020, the Commission voted, pursuant to its authority as set forth in *N.J.A.C.* 6A:28-10.2(a)(2), to administratively dismiss the above-captioned matter because it was not timely filed pursuant to *N.J.A.C.* 6A:28-6.5.

**II. Summary of the Pleadings**

**A. The Complaint**

In Count 1, Complainant alleges that on March 3, 2018, Respondent's spouse "submitted an application on behalf of ESTEPNJ, INC." to use one of the Englewood Public School District's (District) schools to operate a "Summer Theatre & Arts Camp." Complainant further asserts that on April 19, 2018, the Board approved the request to use the facility at a rental fee of \$24,750.00, and on or about June 7, 2018, ESTEPNJ, INC. submitted a partial payment of \$4,800.00 to the District. According to Complainant, after the Board approved ESTEPNJ, INC.'s

request to use the District's facility, and ESTEPNJ, INC. made a partial payment to the Board, "ESTEPNJ[, INC.] and the ... Board ... entered into a contract." Complainant further notes that Respondent, her spouse, and her child are listed as officers/directors for ESTEPNJ, INC. In addition, ESTEPNJ, INC. "failed to pay" the full amount of the rental fee, and owes the District \$4,535.00. The District is currently suing ESTEPNJ, INC. for outstanding monies owed. Based on these facts, and because Respondent answered "no" to "question #2 and question #3 under Section II of her Personal Disclosure Statement for calendar year 2018, and certified that her answers were truthful," Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-25 on or about March 9, 2018, because she "willfully falsified" her "Personal Disclosure Statement."

In Count 2, Complainant asserts that Respondent "failed to report income from ESTEPNJ, INC. on her Financial Disclosure Statement for financial information under Section III for calendar year 2018." As above, Complainant states that Respondent, her spouse, and her child are all officers/directors for ESTEPNJ, INC., and that Respondent's spouse submitted an application to use one of the District's schools for a "Summer Theatre & Arts Camp." According to the application submitted by ESTEPNJ, INC., each student would be charged one hundred forty dollars (\$140.00) to attend camp per week, and eighty (80) students were anticipated to attend. Based on the number of children expected, the duration of the camp (ten (10) weeks), and the fee to be assessed each week, Complainant estimates ESTEPNJ, INC. would have earned approximately one hundred twelve thousand dollars (\$112,000). In fact, Complainant submits there is documentation which revealed that ninety-six (96) children attended the "Summer Theatre & Arts Camp." Despite all this information, including that Respondent was listed on the camp's registration flyer as the camp director, Respondent "indicated 'Not Applicable' to question 3 under Section III, when in fact ... [she], her husband, and [child] are all directors/officers of ESTEPNJ, INC. and were personally running the daily operations of the camp, so all three held an interest in this business organization." Furthermore, Respondent "certified that her answers were truthful under Section IV of her 2019 Personal Disclosure Statement ... ." As a result, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-26 on March 14, 2019, because she "willfully falsified her financial information statement."

## **B. Answer to Complaint**

Following receipt of the Complaint, Respondent filed an Answer and "completely" denies the allegations set forth therein. Respondent acknowledges that she and her spouse "incorporated" ESTEPNJ, INC. in 2018 "for the purposes of trying to create a camp for kids ... that would lead to a therapeutic environment." In order to use the District's facilities for this camp, "[t]here was a rental of school facilities that required ESTEP[NJ, INC.] to pay more than \$24,000.00 to use the facilities." However, as a result of "toxic politics and the smear campaigns that were waged against [her], the Englewood Health Department shut the camp down for no good reason for about two weeks." As a result of the "bad press" and "word of mouth negativity caused by this," the camp did not run effectively. In fact, and because of "scurrilous, scandalous and false complaints" made by a "disgruntled former employee," the camp "actually lost money." Although Complainant "made a guess" that the camp "should have made money," Complainant fails to realize that the camp was "shut down for two weeks at the height of the season and the camp lost campers." Not only did the camp "not turn any profit or earnings; it ran

at a huge deficit ... ." Respondent additionally claims that her spouse "paid for the camp losses causing both [her spouse] and [her] to declare bankruptcy in 2019." Further, her income tax returns for the 2018 fiscal year are reflective of those losses, and show that the camp "had no reportable income or earnings whatsoever ... ." Therefore, Respondent denies that she "answered question #3 falsely."

As for the filing of her Personal/Relative and Financial Disclosure Statements (Disclosure Statements) generally, Respondent states that she "reviewed [her] answers with the Board of Education attorney and the President of the ... Board," and that "[t]hey approved all of [her] disclosures." Thus, "if there is an error on any of these forms, [she] relied on the President of the Board and the attorney."

In addition, when she answered the questions on the Disclosure Statements, she "interpreted the forms as indicating that if [she] earned under \$2,000.00 [we lost money there were no earnings in 2018] [she] did not have to report anywhere on the [Disclosure Statements] ... that [she] had with [her spouse] a company called ESTEP." Regarding the question that discusses "business organizations," Respondent thought "that since the camp had no earnings [she] did not have [to] list this" in response to Question 3, but also acknowledges that she "may have misread what 'business organization' means," and "did not visit with the website for the Department of Education before [she] filled out" these forms. According to Respondent, as of February 7, 2020, she has been informed that ESTEPNJ, INC. "should have been listed" in response to Question 3 regardless of whether the entity lost money. Consequently, Respondent asks the Commission "to amend" her previously filed Disclosure Statements to reflect inclusion of this information.

Respondent also asserts that, after consulting with Board President and Board attorney, the rental application submitted to the Board (for the use of the District's facilities) was not "a contract within the meaning" of Questions 2 and 3. To the extent that the Commission believes she should have answered "yes" to these questions, she requests that "the rental application and approval of such by the Board ... be amended for the same for completeness and accuracy." Finally, Respondent maintains that she is not guilty of any of the allegations in the Complaint, and she did not "intentionally or with willful disregard mislead or falsify" her Disclosure Statements.

### III. Analysis

This matter is before the Commission for a determination of probable cause. In order to determine whether probable cause exists, the Commission must determine whether there is a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that the Act was violated as asserted 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 as to whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted.

In this matter, which was filed with the Commission on **January 15, 2020**, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-25 (Count 1) on **March 9, 2018**, and violated *N.J.S.A.* 18A:12-26 (Count 2) on **March 14, 2019**.

Pursuant to *N.J.A.C.* 6A:28-10.2(a)(2), the Commission is authorized, in its discretion, to administratively dismiss a complaint for several reasons, including that a complaint was not timely filed pursuant to *N.J.A.C.* 6A:28-6.5. The Commission's regulations provide a **one hundred eighty (180) day** limitation period for filing a complaint. More specifically, *N.J.A.C.* 6A:28-6.5(a) provides, in relevant part:

- (a) Complaints shall be filed within 180 days of notice *of the events which form the basis of the alleged violation(s)*. A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) *when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known* (emphasis added).

As required by *N.J.A.C.* 6A:28-6.5(a), the Commission must determine when Complainant knew of the events which form the basis for the allegations in the Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events. In its review of the pleadings, and because Disclosure Statements are public records that are maintained on the Commission's website, the Commission determines that, as of the date Respondent's Disclosure Statements were filed, which was March 9, 2018, for her 2018 Disclosure Statements (Count 1), and March 14, 2019, for her 2019 Disclosure Statements (Count 2), Complainant had notice of the events which form the basis for his Complaint. *See also Scala v. Bubba*, Wayne Township Board of Education, Passaic County, C44-17 (July 25, 2017).

With March 9, 2018, as the starting point for the allegations in Count 1, Complainant had one hundred eighty (180) days, or until September 5, 2018, to file a Complaint with the Commission regarding Respondent's **2018 Disclosure Statements**. However, because the Complaint was not received by the Commission until January 15, 2020, approximately **five hundred (500) days** beyond the one hundred eighty (180) day limitation period, the Commission finds that Count 1 of the Complaint is untimely, and time barred.

In addition, and with March 14, 2019, as the starting point for the allegations in Count 2, Complainant had one hundred eighty (180) days, or until September 10, 2019, to file a Complaint with the Commission regarding Respondent's **2019 Disclosure Statements**. However, because the Complaint was not received by the Commission until January 15, 2020, approximately **one hundred thirty (130) days** beyond the one hundred eighty (180) day limitation period, the Commission finds that Count 2 of the Complaint is also untimely, and time barred.

The Commission recognizes that limitation periods of this type serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. *Kaprow v. Berkley Township Bd. of Educ.*, 131 *N.J.* 571, 587 (1993). Thus, "notice of the alleged violation" must be interpreted in a manner that anticipates the reasonable diligence of complainant(s). In addressing potential violations of the Act, the Commission must balance the public's interest in knowing of potential violations against the important policy of repose and a respondent's right to fairness. The time limitations set forth in the regulations must be enforced if the Commission is to operate

in a fair and consistent manner. *Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County*, C19-03 (June 24, 2003). Although the Commission recognizes that the regulatory time period may be relaxed, in its discretion, in any case where strict adherence may be deemed inappropriate or unnecessary or may result in injustice, it finds no extraordinary circumstances in this matter that would compel relaxation.

Accordingly, and for the reasons set forth above, the Commission finds that the Complaint, on its face, was not timely filed pursuant to *N.J.A.C. 6A:28-6.5*.

**V. Notice**

Based on the foregoing, and pursuant to its authority as set forth in *N.J.A.C. 6A:28-10.2(a)(2)*, the Commission administratively dismisses the above-captioned matter because it was not timely filed pursuant to *N.J.A.C. 6A:28-6.5*.

This decision is a final decision of an administrative agency and, therefore, it is appealable 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 27, 2020

***Resolution Adopting Decision  
in Connection with C03-20***

***Whereas***, at its meeting on February 25, 2020, the School Ethics Commission (Commission) considered the Complaint and Answer to Complaint (Answer) submitted by the parties in connection with this matter; and

***Whereas***, at its meeting on February 25, 2020, the Commission discussed, pursuant to its authority as set forth in *N.J.A.C. 6A:28-10.2(a)(2)*, administratively dismissing the above-captioned matter because it was not timely filed pursuant to *N.J.A.C. 6A:28-6.5*.

***Whereas***, at a special meeting on March 27, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on February 25, 2020; and

***Now Therefore Be It Resolved***, that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at a special meeting on March 27, 2020.

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Kathryn A. Whalen, Director  
School Ethics Commission