

***Before the School Ethics Commission***  
***Docket No.: C46-23***  
***Probable Cause Notice***

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**Robert Zywicki,**  
***Complainant***

v.

**Antoine Gayles, Jennifer Aquino, Elizabeth Ouimet, Anthony Giordano, Louisa Menendez,**  
**Anthony Strillacci, and Christopher Zeier,**  
**Mount Olive Township Board of Education, Morris County,**  
***Respondents***

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**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on April 24, 2023, by Robert Zywicki (Complainant), alleging that Antoine Gayles (Respondent Gayles), Jennifer Aquino (Respondent Aquino), Elizabeth Ouimet (Respondent Ouimet), Anthony Giordano (Respondent Giordano), Louisa Menendez (Respondent Menendez), Anthony Strillacci (Respondent Strillacci), and Christopher Zeier (Respondent Zeier) (collectively, Respondents), members of the Mount Olive Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint avers that Respondents violated *N.J.S.A.* 18A:12-24.1(a) of the Code of Ethics for School Board Members (Code). On June 22, 2023, Respondents filed a Written Statement.

The parties were notified by correspondence dated December 12, 2023, that the above-captioned matter would be discussed by the Commission at its meeting on December 19, 2023, in order to make a determination regarding probable cause. Following its discussion on December 19, 2023, the Commission adopted a decision at its meeting on January 23, 2024, finding that there are insufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that the Act was violated as alleged in the Complaint.

**II. Summary of the Pleadings**

**A. *The Complaint***

Complainant, the Superintendent of the Mount Olive Township School District (District),<sup>1</sup> alleges that on March 13, 2023, Respondents “[i]mproperly and in bad faith” determined that a quorum of the Board was conflicted from voting on personnel matters involving Complainant, and therefore, improperly invoked the Doctrine of Necessity in order to vote and certify Tenure Charges against Complainant, cutting off Complainant’s compensation and health benefits. Complainant asserts that

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<sup>1</sup> Complainant was the Superintendent at the time of filing.

Respondents Gayles, Strillacci, Ouimet, and Giordano were conflicted and unable to vote on issues related to Complainant's employment, leaving a quorum of five eligible members to vote on matters related to Respondent's employment. Specifically, Complainant alleges that the remaining Board members, Respondent Zeier, Respondent Aquino, Respondent Melendez, Ms. Narcise and Ms. Fenton were not conflicted, but the Board improperly determined that Respondent Zeier and Ms. Narcise had conflicts. According to Complainant, if the Board had not improperly invoked the Doctrine of Necessity, the vote on Tenure Charges would have failed.

According to Complainant, Respondent Zeier was not conflicted on March 13, 2023, as the ethics complaint filed by Respondent Zeier against Complainant was not filed until March 15, 2023, two days after the vote. Additionally, Complainant alleges that Ms. Narcise's filing of two Petitions of Appeal with the Commissioner of Education seeking Complainant's reinstatement to his position as Superintendent did not result in a conflict. Nevertheless, Complainant argues that the logic utilized to determine that Ms. Narcise (a supporter of Complainant) was conflicted should also have conflicted Respondent Aquino (an opponent of Complainant), who signed the Tenure Charges at issue and expressed "prejudgment of the Charges" and an "inability to fairly and impartially consider them more clearly . . . ." Complainant alleges that the determination of Ms. Narcise's conflict was a "ham handed attempt to create a situation in which the Doctrine of Necessity could be invoked to save Tenure charges, which would, to a certainty, not have been certified if only the five Members who were actually non-conflicted had voted, since all five votes would have been required to certify." Based on these facts, Complainant requests that the Commission "reverse[] and set aside immediately" the certification of Tenure Charges and Respondent's suspension without pay and health benefits.

Complainant additionally alleges that Respondents and the Board did not follow their own procedures for invoking the Doctrine of Necessity, as they did not provide notice of it on the agenda in advance of the meeting. Complainant asserts that Respondents also violated the June 25, 2018, School Ethics Commission Resolution on Invoking the Doctrine of Necessity, in violation of *N.J.S.A.* 18A:12-24.1(a).

## **B. *Written Statement***

In their Written Statement, Respondents deny that they improperly invoked the Doctrine of Necessity, and assert they fully complied with all legal requirements for the invocation of the Doctrine of Necessity. Nevertheless, Respondents argue that assuming Complainant's allegations are true, the Complaint does not establish a violation of *N.J.S.A.* 18A:12-24.1(a). Respondents assert that pursuant to *N.J.A.C.* 6A:28-6.4(a)(1), to factually establish a violation of *N.J.S.A.* 18A:12-24.1(a), Complainant must "include a copy of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules, and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent(s) brought about changes through illegal or unethical procedures." Respondents assert that Complainant has not introduced or provided any such final decision from a New Jersey court or an administrative agency.

Respondents also argue that the Complaint must be dismissed because there is no basis for the Commission to hear a Complaint regarding an alleged violation of the June 25, 2018, School Ethics Commission Resolution on Invoking the Doctrine of Necessity. Respondents assert that pursuant to *N.J.A.C.* 6A:28-1.4(a), the Commission only has jurisdiction to hear matters which arise under the

School Ethics Act and that the Commission “shall not receive, hear, or consider any pleadings, motion papers, or documents of any kind relating to any matter that does not arise under to the Act.” Respondents assert that the Commission’s Resolution is not mentioned anywhere in the Act and as such, cannot arise under the Act. Therefore, Respondents contend the Complaint be dismissed.

### **III. Analysis**

#### ***A. Standard for Probable Cause***

This matter is before the Commission for a determination of probable cause pursuant to *N.J.A.C. 6A:28-9.7*. 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. Pursuant to *N.J.A.C. 6A:28-9.7(a)*, probable cause “shall be found when the facts and circumstances presented in the complaint and written statement would lead a reasonable person to believe that the Act has been violated.”

#### ***B. Jurisdiction of the Commission***

In reviewing the allegations in this matter, the Commission notes that its authority is limited to enforcing the Act, *N.J.S.A. 18A:12-21 et seq.*, a set of minimum ethical standards by which all school officials must abide. In this regard, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C. 6A:28-1.4(a)*. Additionally, when the Commission finds a violation of the Act, it is authorized to recommend to the Commissioner of Education (Commissioner) an appropriate penalty, which may range from reprimand to removal, and does not have the authority to issue other forms of relief. *N.J.S.A. 18A:12-29(c)*.

With the jurisdiction of the Commission in mind, to the extent that Complainant requests that the Commission enforce the Doctrine of Necessity, such by finding Respondents improperly invoked the Doctrine of Necessity and/or by vacating certain actions of the Board that occurred as a result, including the certification of Tenure Charges and the suspension of Respondent, the Commission advises that such determinations fall well beyond the scope, authority, and jurisdiction of the Commission. As relief for a violation of the Act is limited to sanctions ranging from reprimand to removal, the Commission does not have the authority to vacate actions of a Board. Although Complainant may be able to pursue a cause of action in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those issues or those requests for relief. Consequently, those claims are dismissed.

#### ***C. Alleged Violations of the Act***

Complainant submits that, based on the conduct more fully detailed above, Respondents violated *N.J.S.A. 18A:12-24.1(a)*, and this provision of the Code provides:

a. 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.

Pursuant to *N.J.A.C. 6A:28-6.4(a)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(a)* shall include “a copy of a final decision from any court of law or administrative agency of this State” demonstrating that Respondents “failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools” or that Respondents brought about changes through illegal or unethical procedures.

Based on its review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(a)* was violated. Despite being required by *N.J.A.C. 6A:28-6.4(a)(1)*, the Commission finds that Complainant has not provided a copy of a final decision from any court of law or other administrative agency demonstrating or specifically finding that Respondent violated a specific law, rule, or regulation when she engaged in any of the acts/conduct alleged in the Complaint. To the extent that Complainant alleges that the final decision of an administrative agency at issue is the June 25, 2018, School Ethics Commission Resolution on Invoking the Doctrine of Necessity, such Resolution is not a final decision of the School Ethics Commission. Additionally, the Resolution does not determine when invoking the Doctrine of Necessity is appropriate, but rather advises boards of education to consult with counsel. The Resolution simply provides guidance as to the procedures boards of education must take when invoking the Doctrine of Necessity is required. Moreover, to the extent that the Complaint can be construed as alleging that the Board’s procedures for invoking the Doctrine of Necessity qualifies as a rule or regulation, the Commission notes that Board policies and procedures are not laws, rules, or regulations. Therefore, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violation of *N.J.S.A. 18A:12-24.1(a)*.

#### **IV. Decision**

In accordance with *N.J.S.A. 18A:12-29(b)*, and for the reasons detailed herein, the Commission hereby notifies Complainant and Respondents that there are insufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that the Act was violated as alleged in the Complaint and, consequently, dismisses the above-captioned matter. *N.J.A.C. 6A:28-9.7(b)*.

The within 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)*. Under *New Jersey Court Rule 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

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Robert W. Bender, Chairperson

Mailing Date: January 23, 2024

***Resolution Adopting Decision  
in Connection with C46-23***

***Whereas***, at its meeting on December 19, 2023, the School Ethics Commission (Commission) considered the Complaint and Written Statement submitted in connection with the above-referenced matter; and

***Whereas***, at its meeting on December 19, 2023, the Commission discussed finding that the facts and circumstances presented in the Complaint and Written Statement would not lead a reasonable person to believe that the Act was violated and, therefore, dismissing the above-captioned matter; and

***Whereas***, at its meeting on January 23, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on December 19, 2023; 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 its public meeting on January 23, 2024.

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Brigid C. Martens, Director  
School Ethics Commission