

Before the School Ethics Commission
Docket No.: C55-23
Probable Cause Notice

Paul Rohmeyer,
Complainant

v.

Zelda Spence-Wallace,
Montgomery Township Board of Education, Somerset County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on May 25, 2023, by Paul Rohmeyer (Complainant), alleging that Zelda Spence-Wallace (Respondent), a member of the Montgomery 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 Respondent violated *N.J.S.A.* 18A:12-24.1(a) (Count 2), *N.J.S.A.* 18A:12-24.1(c) (Counts 1 through 3), *N.J.S.A.* 18A:12-24.1(e) (Count 1), *N.J.S.A.* 18A:12-24.1(f) (Count 1), and *N.J.S.A.* 18A:12-24.1(j) (Count 4) of the Code of Ethics for School Board Members (Code).

On July 10, 2023, Respondent filed a Written Statement, and also alleged that the Complaint is frivolous. On July 26, 2023, Complainant filed a response to the allegation of frivolous filing.

The parties were notified by correspondence dated February 20, 2024, that the above-captioned matter would be discussed by the Commission at its special meeting on February 27, 2024, in order to make a determination regarding probable cause and the allegation of frivolous filing. Following its discussion on February 27, 2024, the Commission adopted a decision at its meeting on March 26, 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. The Commission also adopted a decision finding the Complaint not frivolous, and denying Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

By way of background, Complainant asserts that Respondent participated in the "Education Labour Relations Council" (ELRC) Programme Launch (ELRC Launch) that was

held in South Africa in February of 2023, which was a continuation of her involvement in implementing the Labor Management Collaboration Initiative (LMCI) within the Montgomery Township School District (District). According to Complainant, the foregoing programs were designed by Rutgers University, School of Management and Labor Relations (SMLR) and promoted by Dr. Saul Rubinstein, whose wife is a teacher in the District as well as a leadership member of the Montgomery Township Education Association (Union). Complainant asserts that Respondent's actions to "promote and encourage teacher participation in SMLR training, and personal participation by [Respondent] in the ELRC Launch[,] demonstrated that LMCI, as implemented in [the District], pulled the Board [P]resident into administration while simultaneously ceding influence, authority, and control to the [Union.]" Per Complainant, Respondent is "personally involved" in the LMCI implementation in the District, as well as other districts, via her affiliation with Dr. Rubenstein, and is therefore "very familiar with the nature and intended function of the LMCI as a vehicle for 'school reform.'"

In Count 1, Complainant alleges that the District paid the travel expenses for Respondent and other District administrators and teaching staff, including union leadership, to attend the ELRC Launch, which took place in South Africa. Complainant asserts that Respondent violated *N.J.S.A. 18A:12-24.1(c)* when she participated in the ELRC Launch, because she violated the requirement that school board members confine their actions to policy making, planning, and appraisal and Respondent failed to maintain independence as a Board member by engaging and working directly with Dr. Rubenstein. Furthermore, Complainant contends that Respondent was the subject of personnel discussions with the SMLR Human Resources Manager in February 2023 and failed to disclose her sources of funding for the trip despite requests to do so, in violation of *N.J.S.A. 18A:12-24.1(e)*. Finally, Complainant asserts that Respondent "allowed personal relationships to influence the functioning of the Board for the personal gain of herself and other individuals," as current and former District employees, including union leaders and administrators, who hold positions in the SMLR. Per Complainant, participation in the program provided Respondent the opportunity to enhance her "personal credentials" and the opportunity for "personal tourism." Complainant alleges that public statements made by Dr. Rubenstein indicate that he interacted with the District without a fee or any formal agreement, and instead did so based upon his personal relationships with the Board, District and union personnel. Accordingly, Complainant asserts Respondent violated *N.J.S.A. 18A:12-24.1(f)*.

In Count 2, according to Complainant, Respondent did not accurately inform all parties affected about the scope and nature of the ELRC Launch and related implementation of LMCI within the District. Complainant argues Respondent violated *N.J.S.A. 18A:12-24.1(a)* because the information provided to the public about the objectives of the ELRC Launch do not conform with the conference agenda and related materials, and that the stated rationale for the expenditure of taxpayer funds did not follow the details of the actual ELRC Launch event. Complainant maintains Respondent utilized a non-district related email account to discuss the ELRC Launch and LMCI related matters and that messages on the non-district email account were deleted. Furthermore, Respondent sought an off the record meeting to limit the public's access to the information. Complainant additionally asserts that Respondent violated *N.J.S.A. 18A:12-24.1(c)* because she failed to consult those who would be affected by her decisions, specifically the community and taxpayers, as there is no evidence that the details of the ELRC Launch or LMCI was shared with the teachers.

In Count 3, Complainant contends that Respondent combined Board, administrator, and union activities by her participation in the ELRC Launch, when she promoted and encouraged teacher participation in the SMLR training, in violation of *N.J.S.A.* 18A:12-24.1(c). Complainant asserts that Respondent exceeded her defined Board role by actively participating in these activities, and the implementation of LMCI is a method of circumventing community input.

In Count 4, Complainant alleges that Respondent failed to substantively respond to public complaints made by Complainant on January 28, 2023, March 28, 2023, and April 14, 2023, and therefore, violated *N.J.S.A.* 18A:12-24.1(j). According to Complainant, he submitted written complaints to Respondent regarding the benefits and necessity of participation in the LMCI and ELRC Launch, that District personnel simultaneously held positions in SMLR, and that the presentation slides from the ELRC Launch did not reflect prior representations about the event. Complainant contends that following the April 14, 2023, letter, Respondent called Complainant, followed by an email, requesting a meeting, as there was “way too much inquiry” to respond in written form.

B. *Written Statement and Allegation of Frivolous Filing*

Respondent explains that she was sworn into the Board in January of 2021, which is after the Board initially started utilizing the collaborative approach in the LMCI. Specifically, Respondent asserts that the Board started collaborating with Dr. Rubenstein and SMLR in the fall of 2014 for the purpose of shifting the District’s approach to how it handled labor-management relations. Respondent argues that while Complainant claims there is an “affiliation” between Respondent and the SMLR, “the ‘affiliation’ is between the *District* and the Rutgers [SMLR] professors, regardless of whomever may be the Board President.”

Respondent notes that on December 13, 2022, the Board authorized various expenditures related to Respondent and District personnel to attend a conference in South Africa to discuss the District’s experiences with the collaborative approach to labor issues. Respondent asserts that the trip was also attended by representatives from other New Jersey school districts and that the trip was approved by the Executive County Superintendent for Somerset County, as required for international travel by school district representatives in their official capacities. Respondent also notes that the attendance at the conference was approved by the District’s Superintendent, Business Administrator, and that Board counsel had opined that there was no conflict or violation of any District policy related to Respondent’s participation in the conference. Respondent further notes that representatives of the South African National Department of Education had previously visited the District in 2017 to learn about the SMLR endorsed program and the District’s experience with the collaboration, and this prior interaction is why District representatives were invited to participate in the conference in South Africa.

Respondent argues that the Complaint does not demonstrate a violation of *N.J.S.A.* 18A:12-24.1(a) in Count 2 because Complainant did not include a copy of the final decision from any court of law or administrative agency which demonstrates that Respondent failed to enforce all laws, rules and regulations of the State Board or a court order pertaining to schools. As to a violation of *N.J.S.A.* 18A:12-24.1(c) in Counts 1 through 3, Respondent asserts that

Complainant has not provided facts supporting an allegation that Respondent took any board action related to the LMCI or that Respondent had any involvement in the implementation of LMCI as implementation took place in 2014. Regarding a violation of *N.J.S.A.* 18A:12-24.1(e) in Count 1, Respondent asserts that Complainant does not allege that she made personal promises of any kind, and she did not take private action as the conference was approved by the Board, Superintendent, Business Administrator, and Executive County Superintendent. Additionally, Respondent argues that the emails between Rutgers employees discussing Respondent do not establish that Respondent somehow works for or with the SMLR. As to a violation of *N.J.S.A.* 18A:12-24.1(f) in Count 1, Respondent asserts that the allegations set forth in the Complaint do not provide a factual basis that there was any involvement of special interest groups or partisan political groups. Finally, regarding a violation of *N.J.S.A.* 18A:12-24.1(j), Respondent argues that the Complaint does not provide any factual allegations that suggest that Respondent attempted to resolve a complaint or conducted an investigation or inquiry related to a complaint prior to referral to the chief administrative officer, or at a time or place other than a public meeting and prior to an administrative solution.

Respondent asserts the Complaint is frivolous, and argues that Complainant intentionally overlooked the circumstances surrounding the District's utilization of a collaborative labor approach and that Respondent "implemented" something that predated her time on the Board, which is established by the documents provided by Complainant.

C. Response to Allegation of Frivolous Filing

Complainant argues that the Complaint is not frivolous and has been presented in good faith with supporting documentation. Complainant maintains that a letter from Board counsel providing a legal opinion on the matter demonstrates that if the District was concerned enough to request a legal opinion, the allegations in the Complaint are clearly not frivolous. Complainant additionally argues that the travel funding expenditures were not actually approved as the travel funding request, but rather the approvals were for the "South African Democratic Teachers Union Convention," and not the "ELRC Labour Management Partnership Launch." Per Complainant, the funds for the non-existent "South African Democratic Teachers Union Convention" were diverted to the ELRC Labour Management Partnership Launch improperly. Complainant maintains that the funding request did not include all of the anticipated costs and lacked itinerary details that would have affected the Board's evaluation of the request.

III. Analysis

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."

Alleged Violations of the Act

Complainant submits that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, and *N.J.S.A. 18A:12-24.1(j)*, and these provisions of the Code provide:

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.

c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

Pursuant to *N.J.A.C. 6A:28-6.4(a)*, a violation(s) of *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, and/or *N.J.S.A. 18A:12-24.1(j)* need to be supported by certain factual evidence, more specifically:

1. 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 Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures.

3. Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(c)* shall include evidence that Respondent took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondent's duty to (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy.

5. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) shall include evidence that Respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the board.

6. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(f) shall include evidence that Respondent took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that Respondent used the schools in order to acquire some benefit for herself, a member of her immediate family or a friend.

10. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(j) shall include evidence that Respondent acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint (i) prior to referral to the chief administrative officer, or (ii) at a time or place other than a public meeting and prior to the failure of an administrative solution.

Count 1

In Count 1, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(c) when she worked directly with Dr. Rubenstein and attended the ELRC Launch in South Africa that was paid for by the District, *N.J.S.A.* 18A:12-24.1(e) when she was the subject of personnel discussions with the SMLR Human Resources Manager, and *N.J.S.A.* 18A:12-24.1(f) when she “allowed personal relationships [with Dr. Rubenstein] to influence the functioning of the Board for the personal gain of herself and other individuals,” as current and former District employees, including union leaders and administrators, hold positions in the SMLR. Respondent counters that the Board started collaborating with Dr. Rubenstein and SMLR to implement the LMCI in the fall of 2014, years before Respondent became a Board member in 2021. Additionally, Respondent contends that the trip to South Africa was approved by the Board, Superintendent, Business Administrator, and Executive County Superintendent, and the Board authorized various expenditures related to the conference.

Following its assessment, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and/or *N.J.S.A.* 18A:12-24.1(f) were violated. The Commission notes that the Board voted to reimburse the travel expenses for Respondent and others to attend the conference in South Africa in a unanimous vote, with Respondent and one other Board member abstaining. As the Board authorized the trip expenses, and the international travel was approved by the Superintendent and the Interim Executive County Superintendent, Respondent did not violate *N.J.S.A.* 18A:12-24.1(c) by traveling to South Africa to attend a conference. Such action is not unrelated to her duties as a Board member, nor is it effectuating policies or plans without consulting those affected. Additionally, to the extent Complainant alleges that Respondent’s work with Dr. Rubenstein and the SMLR to implement the LMCI also violates *N.J.S.A.* 18A:12-24.1(c), the Commission finds that as the initiative was implemented prior to Respondent’s membership on the Board, Respondent’s

continuation of the LMCI is not taking Board action to effectuate policies and plans without consulting those affected by such policies and plans, or taking action that was unrelated to her duties as a Board member. As to *N.J.S.A.* 18A:12-24.1(e), Complainant fails to explain how an email between Rutgers employees discussing Respondent, that Respondent was not a part of, demonstrates that she made a personal promise or took private action that may compromise the Board. Finally, as to *N.J.S.A.* 18A:12-24.1(f), Complainant has not established that Respondent allowed her personal relationships with Dr. Rubenstein to influence the functioning of the Board for the personal gain of herself. Respondent did not initiate the Board's interaction with the SMLR, as the Board had been collaborating with the SMLR to implement the LMCI for years. Additionally, Complainant has not established how Respondent took action by, or on behalf of a special interest group, or how Respondent used the schools to acquire a benefit through the continuation of the established collaboration. Therefore, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violations of *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f).

Count 2

In Count 2, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(a) when she provided information to the public about the objectives for the ELRC Launch that did not conform with the conference agenda and related materials, and when she communicated using a non-District email address. Additionally, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(c) when she failed to consult those who would be affected by her decisions, specifically the community and taxpayers, as there is no evidence that the details of the ELRC Launch or LMCI were shared with the teachers. Respondent counters that Complainant has not established that Respondent took any board action related to the LMCI or had any involvement in the implementation of LMCI as implementation took place in 2014.

Based on its review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(a) and/or *N.J.S.A.* 18A:12-24.1(c) were violated. As to *N.J.S.A.* 18A:12-24.1(a), 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 set forth in the Complaint. Without the required final decision(s), the Commission must dismiss the alleged violation of *N.J.S.A.* 18A:12-24.1(a). With regard to *N.J.S.A.* 18A:12-24.1(c), the Board approved the expenditures for Respondent's trip at a public meeting, and the Superintendent and the Interim Executive County Superintendent approved the trip. Complainant has not demonstrated that teachers or administrators were unaware of the trip or its purpose, and therefore, Respondent did not take board action to effectuate policies and plans without consulting those affected by such policies and plans. Additionally, with regard to implementing the LMCI, Respondent did not take board action to effectuate policies and plans without consulting those affected, as the LMCI was implemented in 2014. Accordingly, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violations of *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(c).

Count 3

In Count 3, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(c) when she combined Board, administrator, and union activities by her participation in the ELRC Launch, and when she promoted and encouraged teacher participation in the SMLR training. Respondent counters that Complainant has not established that Respondent took any board action related to the LMCI or had any involvement in the implementation of LMCI as implementation took place in 2014.

After review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(c) was violated. Participation in the ELRC Launch in South Africa was an approved trip, and the Board had an established collaboration with the SMLR prior to Respondent's membership on the Board. As such, Complainant has not demonstrated how Respondent's participation in the ELRC Launch and/or promoting and encouraging teacher participation in the SMLR training constitutes taking board action to effectuate policies and plans without consulting those affected by such policies and plans, or how Respondent took action unrelated to her Board duties. 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(c).

Count 4

In Count 4, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(j) when she failed to substantively respond to public complaints made on three occasions by Complainant regarding the LMCI and ELRC Launch, and ultimately after the third communication, offered to schedule a meeting as it was "way too much inquiry" to respond in written form. Respondent counters that the Complaint fails to provide any factual allegations that suggest that Respondent attempted to resolve a complaint or conducted an investigation or inquiry related to a complaint prior to referral to the chief administrative officer, or at a time or place other than a public meeting and prior to an administrative solution.

Following its assessment, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(j) was violated. Complainant's allegations do not establish that Respondent acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint prior to the referral to the chief administrative officer. Instead, the allegations establish that Respondent did not respond to several communications, and then offered to discuss the matters with Complainant, but Complainant does not allege that such a discussion ever took place. As such, there is not any evidence that Respondent acted on a complaint or conducted an investigation or inquiry related to that complaint. 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(j).

IV. Request for Sanctions

At its special meeting on February 27, 2024, the Commission considered Respondent's request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondent's argument, the Commission cannot find evidence that might show that Complainant filed the Complaint in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainant knew or 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. *N.J.A.C.* 6A:28-1.2. Therefore, at its meeting on March 26, 2024, the Commission adopted a decision finding the Complaint not frivolous, and denying the request for sanctions.

V. Decision

In accordance with *N.J.S.A.* 18A:12-29(b), and for the reasons detailed herein, the Commission hereby notifies Complainant and Respondent 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 Commission further advises the parties that following its review, it voted to find that the Complaint is not frivolous, and to deny Respondent's request for sanctions.

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.

Robert W. Bender, Chairperson

Mailing Date: March 26, 2024

***Resolution Adopting Decision
in Connection with C55-23***

Whereas, at its special meeting on February 27, 2024, the School Ethics Commission (Commission) considered the Complaint, the Written Statement and allegation of frivolous filing, and the response to the allegation of frivolous filing submitted in connection with the above-referenced matter; and

Whereas, at its special meeting on February 27, 2024, the Commission discussed finding that the facts and circumstances presented in the Complaint and the 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 special meeting on February 27, 2024, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on March 26, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on February 27, 2024; 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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on March 26, 2024.

Brigid C. Martens, Director
School Ethics Commission