

Before the School Ethics Commission
Docket No.: C08-25
Decision on Probable Cause

Gabriela Zayova,
Complainant

v.

Victoria Franco-Herman,
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 February 5, 2025,¹ by Gabriela Zayova (Complainant), alleging that Victoria Franco-Herman (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)* of the Code of Ethics for School Board Members (Code). Respondent filed a Written Statement on April 23, 2025.

The parties were notified by correspondence dated September 16, 2025, that the above-captioned matter would be discussed by the Commission at its meeting on September 23, 2025, in order to make a determination regarding probable cause. Following its discussion on September 23, 2025, the Commission adopted a decision at its meeting on October 28, 2025, 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

By way of background, in 2023, the Commission received a request for an advisory opinion from members of the Board. As this advisory opinion is not public, the Commission cannot divulge its contents. However, Complainant is alleging that Respondent's actions are in contravention of the Commission's advice issued in the subject advisory opinion.

¹ On January 23, 2025, Complainant filed a deficient Complaint; however, on February 5, 2025, Complainant cured all defects and filed an Amended Complaint that was deemed compliant with the requirements detailed in *N.J.A.C. 6A:28-6.3*.

With the above in mind, Complainant maintains that on July 16, 2024, September 17, 2024, October 15, 2024, and December 17, 2024, Respondent “violated restrictions imposed on her by [the advisory opinion] and damaged the trust and confidence of the public by” participating in matters that were expressly deemed a conflict in the advisory opinion. More specifically, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24.1(a) when:

- On July 16, Respondent voted on the “Personnel Agenda,” which included resignations/retirements/recissions, appointments/renewals, and reappointments.
- On September 17, Respondent voted on the “Personnel Agenda,” the “Resolution Authorizing Administrative Leave of Employee,” and the “Resolution Approving Sidebar Agreement – APSMT Sick Bank” affecting a wide range of district employees, many of whom are members of the union according to the Complainant.
- On October 15, Respondent voted on the “Personnel Agenda,” the “Resolution Approving Settlement Agreement,” the “Resolution Approving the Termination of an Employee,” and the “Resolution Approving a Separation Agreement.”
- On December 17, Respondent voted on the “Personnel Agenda,” the “Resolution Authorizing Administrative Leave of Employee,” the “Resolution Authorizing Termination of Employee,” and the “Resolution Approving a Separation Agreement.”

B. Written Statement

Respondent denies the allegations in the Complaint and denies that she voted on items for which she was conflicted. Respondent denies that she “failed to abide by, uphold, or enforce any laws . . . and that she voted on conflicted matters.” Respondent argues that advisory opinions are not final decisions from any court of law or administrative agency, and therefore, Complainant did not provide the necessary final decision to support a violation of *N.J.S.A.* 18A:12-24.1(a).

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 Respondent violated *N.J.S.A.* 18A:12-24.1(a), and this provision of the Code. 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.

In accordance with N.J.A.C. 6A:28-6.4(a)(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.

At the outset, the Commission emphasizes that when a school official requests an advisory opinion from the Commission, the Commission expects the subject school official to adhere to the advice rendered. If a school official elects not to follow the Commission's advice, they may be subject to an ethics complaint, as here. The Commission reminds school officials, in accordance with *N.J.A.C.* 6A:28-1.2, "recuse" means "to formally disqualify and remove oneself from participating in a matter, *including, without limitation, discussions and/or votes*, because of a conflict of interest." (Emphasis added). Therefore, if one is conflicted on a matter such as the Collective Bargaining Agreement (CBA) process, he or she is conflicted from any and all matters related to the CBA process.

With the above in mind, 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 Respondent violated *N.J.S.A.* 18A:12-24.1(a). Complainant has not produced a copy of a final decision from any court of law or administrative agency of this State demonstrating Respondent failed to enforce all laws, rules and regulations of the State Board of Education or a court order pertaining to the school as required by *N.J.S.A.* 18A:12-24.1(a). To reiterate, while the Commission expects school officials to follow its Advisory Opinions, without the required final decision(s), and based on the record in its current form, the Commission is constrained to dismiss 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 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 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: October 28, 2025

***Resolution Adopting Decision
in Connection with C08-25***

Whereas, at its meeting on September 23, 2025, the School Ethics Commission (Commission) considered the Complaint and the Written Statement submitted in connection with the above-referenced matter; and

Whereas, at its meeting on September 23, 2025, 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 meeting on October 28, 2025, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on September 23, 2025; 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 October 28, 2025.

Brigid C. Martens, Director
School Ethics Commission