

Before the School Ethics Commission
Docket No.: C25-25
Decision on Probable Cause

Orlando Mercado,
Complainant

v.

Keith Gibbons,
Gloucester Township Board of Education, Camden County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on March 13, 2025, by Orlando Mercado (Complainant), alleging that Keith Gibbons (Respondent), a member of the Gloucester 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(f)*, *N.J.S.A. 18A:12-24.1(g)*, and *N.J.S.A. 18A:12-24.1(i)* of the Code of Ethics for School Board Members (Code).

On May 20, 2025, Respondent filed a Written Statement and also alleged that the Complaint is frivolous. On June 6, 2025, Complainant filed a response to the allegation of frivolous filing.

The parties were notified by correspondence dated November 17, 2025, that the above-captioned matter would be discussed by the Commission at its meeting on November 25, 2025, in order to make a determination regarding probable cause and the allegation of frivolous filing. Following its discussion on November 25, 2025, the Commission adopted a decision at its meeting on December 16, 2025, finding that the allegations in Count 2 were untimely filed and, as to the remaining allegations, 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*

Complainant provides that he is the Human Resources Supervisor (Supervisor) for the Gloucester Township Public School District (District) and also serves as the President of the

Gloucester Township Council (Council). Respondent is on the Board, is a member of the Republican County Committee and has recently announced his candidacy for the Mayor of Gloucester Township (Township). In addition, Respondent has a podcast and website “that provides observation on [Council] meetings.” According to Complainant, during his podcast, Respondent “described [Complainant] as a tyrant and narcissist on many occasions in his role as Council President.” In addition, Respondent “has made references . . . to [Complainant’s] position in the [District].” Complainant maintains that he has reported Respondent’s behavior to Board counsel and the Superintendent, and thereafter, Respondent added disclaimers to his podcast. However, Respondent continues to discuss Complainant’s position within the District, which has caused “irreparable harm to [Complainant’s] reputation,” and has “led to undermining, opposing, compromising and harming [Complainant’s] position within the [District] and in the proper performance of his duties.”

With the above in mind, in Count 1, Complainant asserts that on March 3, 2025, Respondent referred to Complainant as “creepy” on his podcast, stating “I wish I could say more . . . I can’t even tell you how many people have told me about his creepiness.” Moreover, Respondent reminded the listeners to “think about the position he holds in town, not just Council,” and then Respondent’s cohost informed the listeners that Complainant was the District Supervisor. Complainant further asserts Respondent violated *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)* and *N.J.S.A. 18A:12-24.1(i)* because he is a known critic of Complainant and his views are public and widely known and his “inflammatory” comments “are not supportive and protective of [Complainant’s] proper performance of his duties.”

In Count 2, Complainant contends that during his podcast on May 20, 2024, Respondent informed his listeners that Complainant was not present at the May 13 Council meeting, and then stated, “I can tell you where he was at. He was across town at the [Board] meeting. His contract was up and he wanted to make sure that the taxpayers continue to pay his salary at the school district and that’s why he did not leave.” Moreover, in response to his cohost’s inquiry as to why Complainant stayed at the Board meeting, Respondent replied, “well if your life depended on it or your livelihood?” Complainant further contends Respondent violated *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)* and *N.J.S.A. 18A:12-24.1(i)* because Respondent provided inappropriate, inflammatory comments about Complainant on his podcast and Complainant’s position is not tenured, is not covered by a bargaining unit, and his reappointment is recommended by the Superintendent and approved by the Board, and this is not supportive and protective of Complainant.

B. Written Statement and Allegation of Frivolous Filing

In his Written Statement, which includes an allegation of frivolous filing, Respondent argues that the “timing and nature of the underlying ethics Complaint merits attention . . . The Complaint was suddenly lodged . . . following the Respondent’s recent announcement of his bid for office . . . in connection with two podcast comments, the first dating back to a year ago in May 2024.” Respondent further argues, “[i]f this commentary actually compromised Respondent’s independent judgment as a [Board] member, or the [B]oard’s conduct or perception thereof . . . one wonders why [] Complainant waited a year to lodge it.”

Respondent admits that he is a “known critic” of Complainant; however, the comments were made “in the purview of Complainant’s role as a public actor, and Respondent’s role as a citizen journalist and podcaster, on a matter of public concern in connection with ongoing controversy surrounding the council’s transparency and accountability” Respondent further admits that he agreed with his cohost’s description of Complainant’s behavior as “creepy,” but denies offering further commentary. Respondent further denies that the comments are “inflammatory” and “not supportive and protective of [Complainant’s] proper performance of his duties.”

As to violations of *N.J.S.A. 18A:12-24.1(f)*, Respondent asserts he is an unaffiliated voter and issued public statements that are unaffiliated with any political party, there is nothing to privately gain, nor any alleged with specificity.

Regarding violations of *N.J.S.A. 18A:12-24.1(g)*, Respondent contends Complainant has not offered any facts that connect Respondent’s statements with their school responsibilities, nor reference to characteristics or behaviors not already in the public domain, and everything else is Respondent’s opinion.

As to violations of *N.J.S.A. 18A:12-24.1(i)*, Respondent maintains Complainant has not “attested to what duties or what actual harm the public comments concerning his Town Council Presidency impede on his private employment contract with the school, nor how such actions are deliberate to undermine his duties.”

Finally, Respondent asserts the Complaint is frivolous, because Respondent “believes the Complaint has been lodged to upset his current bid for mayoral office.”

C. *Response to Allegation of Frivolous Filing*

In response to the allegation of frivolous filing, Complainant argues the Complaint is not frivolous and was presented in “good faith with supporting documentation.” Complainant maintains the Complaint was “a necessary measure to address [] Respondent’s conduct, which has the potential to undermine the integrity of [his] duties as [Supervisor], and of the [Board].”

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 Untimeliness

In his Complaint, Complainant alleges that Respondent violated the Act relating to actions on May 20, 2024, in Count 2. However, Complainant filed the complaint on March 13, 2025, which would be 297 days after the actions.

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 that form the basis of the alleged violation(s) when the complainant knew of the events, or when such events were made public so that one using reasonable diligence would know or should have known (emphasis added).

With the above in mind, and pursuant to *N.J.A.C. 6A:28-6.5(a)*, the Commission must determine when Complainant knew of the events which form the basis of Count 2 of the Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events.

After review, the Commission finds that there is not a credible basis upon which to find that Complainant was unaware of Respondent's actions/conduct until the date he filed the Complaint. Complainant should have known of the contents of Respondent's podcast when it was published on or around May 20, 2024. However, Complainant did not file his Complaint until 297 days later, considerably later than the 180 days provided for in the regulations.

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 does not find extraordinary circumstances exist within the Complaint that would compel relaxation.

Therefore, the Commission finds the allegations in Count 2 that Respondent violated the Act when he made comments on his podcast on May 20, 2024, which Complainant alleges violated *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)* and *N.J.S.A. 18A:12-24.1(i)*, should be dismissed as untimely.

Alleged Violations of the Act

Complainant further submits that Respondent violated *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)* and *N.J.S.A. 18A:12-24.1(i)* in Count 1, these provisions of the Code provide:

- 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.

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

i. I will support and protect school personnel in proper performance of their duties.

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

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 himself, a member of his immediate family or a friend.

7. Factual evidence of a violation of the confidentiality provision of *N.J.S.A. 18A:12-24.1(g)* shall include evidence that Respondent took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that Respondent violated the inaccurate information provision of *N.J.S.A. 18A:12-24.1(g)* shall include evidence that substantiates the inaccuracy of the information provided by Respondent and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

9. Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(i)* shall include evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

In Count 1, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)* and *N.J.S.A. 18A:12-24.1(i)* when he called Complainant “creepy” on his podcast. Respondent admits that his co-host called Complainant creepy, that he agreed with his co-host’s comments on the podcast, but denies that the comments are “inflammatory” and “not supportive and protective of [Complainant’s] proper performance of his duties.”

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(f)*, *N.J.S.A. 18A:12-24.1(g)* and/or *N.J.S.A. 18A:12-24.1(i)* were violated as alleged in Count 1. As to *N.J.S.A. 18A:12-24.1(f)*, the Complaint is unclear as to

what special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause Respondent is alleged to be affiliated. Notwithstanding the above, the Commission notes that school board members are entitled to their own personal political views and even if Respondent belonged to a group or political organization, this would not demonstrate that the individual took action, *on behalf of, or at the request of*, the special interest or political group. As such, Complainant has not demonstrated that Respondent surrendered his independent judgment. Additionally, Complainant has not shown how Respondent used the schools to acquire a benefit for himself. Therefore, a violation of *N.J.S.A. 18A:12-24.1(f)* cannot be sustained. With regard to *N.J.S.A. 18A:12-24.1(g)*, Complainant has not suggested that any information Respondent shared on his podcast was confidential. In addition, Complainant has not shown that any statements made by Respondent on his personal podcast are not simply that of his personal opinion. Accordingly, a violation of *N.J.S.A. 18A:12-24.1(g)* cannot be substantiated. Lastly, Complainant has not shown how Respondent's opinion resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties as required by *N.J.S.A. 18A:12-24.1(i)*.

Consequently, 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(f)*, *N.J.S.A. 18A:12-24.1(g)* and *N.J.S.A. 18A:12-24.1(i)* in Count 1.

IV. Request for Sanctions

At its meeting on November 25, 2025, 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 December 16, 2025, 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 the allegations in Count 2 were untimely filed and, as to the remaining allegations, 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: December 16, 2025

***Resolution Adopting Decision
in Connection with C25-25***

Whereas, at its meeting on November 25, 2025, 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 meeting on November 25, 2025, the Commission discussed finding that the allegations in Count 2 were untimely filed; and

Whereas, at its meeting on November 25, 2025, the Commission discussed finding that, as to the remaining allegations, 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 November 25, 2025, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on December 16, 2025, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 25, 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 December 16, 2025.

Brigid C. Martens, Director
School Ethics Commission