

Before the School Ethics Commission
Docket No.: C59-24
Decision on Probable Cause

Marlene Somerville,
Complainant

v.

Kenneth Martin,
Hackensack Board of Education, Bergen County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on August 2, 2024,¹ by Marlene Somerville (Complainant), alleging that Kenneth Martin (Respondent), a member of the Hackensack 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 4), *N.J.S.A.* 18A:12-24.1(b) (Count 3), *N.J.S.A.* 18A:12-24.1(c) (Counts 2 and 3), *N.J.S.A.* 18A:12-24.1(d) (Counts 2 and 3), *N.J.S.A.* 18A:12-24.1(e) (Counts 1 and 3), *N.J.S.A.* 18A:12-24.1(f) (Count 2), *N.J.S.A.* 18A:12-24.1(g) (Counts 1 and 3), *N.J.S.A.* 18A:12-24.1(h) (Count 2), and *N.J.S.A.* 18A:12-24.1(i) (Count 3) of the Code of Ethics for School Board Members (Code). Respondent filed a Written Statement on August 1, 2024, and also alleged that the Complaint is frivolous. Complainant filed a response to the allegation of frivolous filing on August 14, 2024.

The parties were notified by correspondence dated April 15, 2025, that the above-captioned matter would be discussed by the Commission at its meeting on April 22, 2025, in order to make a determination regarding probable cause and the allegation of frivolous filing. Following its discussion on April 22, 2025, the Commission adopted a decision at its meeting on May 20, 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. The Commission also adopted a decision finding the Complaint not frivolous, and denying Respondent's request for sanctions.

¹ On July 30, 2024, Complainant filed a deficient Complaint; however, on August 2, 2024, 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.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant asserts Respondent has “retained his own counsel with whom he consults on [Board] matters.” Complainant notes, “(a)lthough exceptions exist, as a general rule board members cannot divulge confidential information. This includes attorneys retained by a board member in their individual capacity, even though the attorney is also bound by confidentiality.” Complainant further asserts by unilaterally disclosing confidential information, Respondent took private actions which could compromise the Board in violation of *N.J.S.A.* 18A:12-24.1(e).

In Count 2, Complainant contends Respondent recommended individuals and/or law firms, who may be “friends or confidants,” for hire and as a Board member, he should not be involved in the hiring process. Specifically, Complainant contends with the exception of the Superintendent, “hiring of personnel is a purely administrative function” and is “entirely outside the purview of the Board until it is time to consider the recommendations of the Superintendent.” Therefore, Complainant alleges Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(f).

In Count 3, Complainant maintains that Respondent “voted against plans set forth by the Superintendent, which had been discussed at length, without giving good reason” with the dates of occurrence listed in the Complaint as May 22, 2024, and June 19, 2024. Complainant notes that although Respondent is “permitted to vote against actions he disagrees with, [] it is ill-advised to oppose an otherwise supported action, without discussion, as it runs the risk of violating this obligation,” and therefore, *N.J.S.A.* 18A:12-24.1(i). Furthermore, Complainant asserts that “[v]oting against a matter does not automatically violate this obligation; however, by voting against a “previously and extensively discussed plan that would serve to benefit the students” “without any apparent reason or basis,” violates *N.J.S.A.* 18A:12-24.1(b). Complainant further maintains Respondent has “communicated with and provided information to outside groups regarding Board matters, above and beyond allegedly consulting a private attorney regarding [B]oard matters, including union members engaged in negotiates [(sic)] with the Board” in violation of *N.J.S.A.* 18A:12-24.1(g) and this communication could also be seen as “taking private and unauthorized actions in his capacity as a board member” in violation of *N.J.S.A.* 18A:12-24.1(e) “while also undermining the efforts of the Superintendent to negotiate with the union.”

In Count 4, Complainant asserts Respondent has “attempted to circumvent the proper procedures and contact District-appointed legal counsel” in direct violation of Bylaw 0174, and therefore, in violation of *N.J.S.A.* 18A:12-24.1(a).

B. *Written Statement and Allegation of Frivolous Filing*

Respondent denies “each and every allegation described” in the Complaint and notes his responses “may lack the required specificity because [Complainant’s] baseless allegations lack specificity, facts, or evidence of any kind to respond to.”

More specifically, and as to Count 1, Respondent argues he does not have his own counsel, Complainant does not identify any individual to whom he may have disclosed information, nor what or when information was disclosed, and Complainant makes “‘unknown’ statements” “provided by unidentified ‘individuals’” that “do not qualify as ‘evidence’ in any formal proceeding of any kind.”

Regarding Count 2, Respondent maintains it is “not clear” “exactly what [Complainant] is actually alleging that” he did. According to Respondent, Complainant has not provided any evidence to demonstrate that Respondent “‘attempted’ to insert” himself in the “‘hiring process and put forward candidates for employment.’” Moreover, Respondent notes the “‘Date of Occurrence’ was allegedly at a Board Retreat on March 1, 2024,” and therefore, “none of that makes sense concerning this false allegation.”

As to Count 3, Respondent contends that Complainant’s “belief that a Board [m]ember who votes their conscience commits an ethical violation if she disagrees with their vote, is disturbing, and an obvious attempt at intimidation.” Respondent further contends that Complainant’s allegation that he “provided information concerning Board matters to outside groups, a private attorney and union members” is “speculation.” Per Respondent, Complainant’s “evidence is ‘statements during meetings’ without identifying a single group or individual to whom [he] gave information, what information was discussed, or even ‘if the information in question was confidential.’”

Regarding Count 4, Respondent asserts Complainant has not provided any evidence to support her “false allegation.” Respondent further asserts he did not attempt “to circumvent proper procedures.”

Finally, Respondent asserts the Complaint is *frivolous* because Complainant did not provide any “*credible evidence* of any kind to support her allegations despite her clear knowledge of the legal requirement to do so,” did not provide any “*specific information* whatsoever to support her false allegations,” could not “identify whether the alleged violations took place at Board meetings or at a Board retreat,” filed an ethics complaint because she disagreed with Respondent’s vote, “admits that she doesn’t know if a violation was committed,” files complaints against Board members “to control” their actions, and as a “veteran Board [m]ember” she is “keenly aware of the evidentiary requirements associated with filing an ethics complaint.

C. *Response to Allegation of Frivolous Filing*

Complainant reasserts her allegations² and notes that “Respondent is known to have a friendly/working relationship with a local attorney, and former board member, whom the Complainant reasonably believes may either be officially representing [] Respondent behind the

² In addition to her response to the allegation of frivolous filing, Complainant included an additional certification and exhibit, which is not permitted, and therefore, will not be considered by the Commission.

scenes with respect to confidential matters of the Board or more casually consulting with Respondent with respect to confidential matters of the Board.” Complainant contends that her justification and the “factual bases [(sic)] set forth in [her] certification” support the fact that her Complaint is not frivolous.

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.”

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)*.

With the jurisdiction of the Commission in mind, to the extent that Complainant seeks a determination from the Commission that Respondent may have violated Board policies, the Commission advises that such determinations fall beyond the scope, authority, and jurisdiction of the Commission. Although Complainant may be able to pursue a cause of action(s) in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those claims. Accordingly, those claims are dismissed.

Alleged Violations of the Act

Complainant submits that Respondent violated *N.J.S.A. 18A:12-24.1(a)* through (i) 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.

b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

- 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.
- d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.
- 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.
- 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.
- h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.
- 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(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)*, *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:

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.
2. Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(b)* shall include evidence that Respondent willfully made a decision contrary to the educational welfare of children, or evidence that Respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.
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.

4. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(d) shall include, but not be limited to, evidence that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.

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 his 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 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.

8. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(h) shall include evidence that Respondent acted on a personnel matter without a recommendation of the chief administrative officer.

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.

Count 1

In Count 1, Complainant asserts Respondent has “retained his own counsel with whom he consults on [Board] matters” and has disclosed confidential information in violation of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g). Respondent argues that he does not have his own counsel and Complainant has not identified to whom he may have disclosed information, nor what or when information was disclosed.

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(e) and/or *N.J.S.A.* 18A:12-24.1(g) were violated in Count 1. Complainant has not provided any evidence that Respondent has a personal attorney nor has Complainant shown or demonstrated that Respondent has discussed or disclosed confidential information with said attorney as required by *N.J.S.A.* 18A:12-24.1(g). Complainant has also not shown that Respondent made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the board as required by *N.J.S.A.* 18A:12-24.1(e). 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(e) and *N.J.S.A.* 18A:12-24.1(g) in Count 1.

Count 2

In Count 2, Complainant contends Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(f) when he recommended individuals and/or law firms, who may be “friends or confidants,” for hire and involved himself in the hiring process, which is the purview of the Superintendent. Respondent asserts that Complainant has not provided any evidence to demonstrate that Respondent “‘attempted’ to insert” himself in the “‘hiring process and put forward candidates for employment.” Respondent argues that the “‘Date of Occurrence’ was allegedly at a Board Retreat on March 1, 2024,” and therefore, “none of that makes sense concerning this false allegation.”

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(d) and/or *N.J.S.A.* 18A:12-24.1(f) were violated in Count 2. The Complaint lacks specificity as to what board action Respondent might have taken to effectuate policies and plans without consulting those affected by such policies and plans, or what 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 has been undertaken by Respondent as required by *N.J.S.A.* 18A:12-24.1(c). As required by *N.J.S.A.* 18A:12-24.1(d), Complainant has not provided any evidence that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school. Complainant has also not provided any 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 as required by *N.J.S.A.* 18A:12-24.1(f). 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) in Count 3.

Count 3

In Count 3, Complainant maintains that Respondent “voted against plans set forth by the Superintendent, which had been discussed at length, without giving good reason” in violation of *N.J.S.A.* 18A:12-24.1(i) and *N.J.S.A.* 18A:12-24.1(b). In addition, Complainant asserts that Respondent has provided information to outside groups, including union members, and consulted a private attorney regarding Board matters in violation of *N.J.S.A.* 18A:12-24.1(g) and *N.J.S.A.* 18A:12-24.1(e). Respondent argues that Complainant’s allegation that he “provided information concerning Board matters to outside groups, a private attorney and union members” is “speculation.” Respondent also asserts that Complainant’s “evidence is ‘statements during meetings’ without identifying a single group or individual to whom [he] gave information, what information was discussed, or even ‘if the information in question was confidential.’”

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(b), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(i) were violated in Count 3. As for *N.J.S.A.* 18A:12-24.1(b), the Complaint lacks specificity as to how Respondent has willfully made a decision contrary to the educational welfare of children, and lacks evidence showing that Respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing. The Complaint also lacks specificity as to how or when Respondent made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the board as required by *N.J.S.A.* 18A:12-24.1(e). As for *N.J.S.A.* 18A:12-24.1(g), the Complaint lacks specificity and detail as to what information Respondent took action to make public, reveal or disclose 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. Lastly, the Complaint fails to include evidence that Respondent took deliberate action which 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). 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(b), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i) in Count 3.

Count 4

In Count 4, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24.1(a) as he has “attempted to circumvent the proper procedures and contact[ed] District-appointed legal counsel” in direct violation of Board by-laws. Respondent asserts Complainant has not provided any evidence to support her “false allegation.”

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(a) was violated in Count 4. Complainant has not provided 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 as required by *N.J.S.A.* 18A:12-24.1(a). 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(a) in Count 4.

IV. Request for Sanctions

At its meeting on April 22, 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 May 20, 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 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: May 20, 2025

***Resolution Adopting Decision
in Connection with C59-24***

Whereas, at its meeting on April 22, 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 April 22, 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 April 22, 2025, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on May 20, 2025, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on April 22, 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 May 20, 2025.

Dana C. Jones
School Ethics Commission