
CAROL FERGUSON

v.

**DR. JANICE FIPP, PATTY
FITZSIMONS, STEVE WYNNE
AND MICHAEL VISCOUNT,
NORTHFIELD BOARD OF
EDUCATION
ATLANTIC COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

**Docket No. C12-09
PROBABLE CAUSE NOTICE**

PROCEDURAL HISTORY

This matter arises from a complaint filed on April 16, 2009 by Carol Ferguson, alleging that Dr. Janice Fipp, a school administrator, and Patty Fitzsimons, Steve Wynne and Michael Viscount, members of the Northfield Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.* Specifically, the complainant alleges that Respondent Fipp violated N.J.S.A. 18A-12-24(b), (c) and (f); that Respondents Fitzsimons, Wayne and Viscount violated N.J.S.A. 18A:12-24.1(b), (f) and (h) and that Respondent Fitzsimons specifically violated N.J.S.A. 18A:12-24.1(b), (e) and (f). An answer was filed on behalf of Respondent Fipp on June 2, 2009. Answers were filed on behalf of Respondents Fitzsimons, Viscount and Wynne on June 1, 2009. The answers asserted that the complaint was frivolous. The matter was scheduled for a probable cause determination by the Commission on February 23, 2010, at which time the Commission voted to find no probable cause to credit the allegations in the complaint. The Commission also found that the complaint was not frivolous.¹

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

Allegations Concerning Respondent Fipp

The complainant asserts that Respondent Janice Fipp, formerly the principal of the Northfield City Elementary School, submitted an application for the position of Superintendent of Schools in or around November 2008. The complainant asserts that Respondent Fipp improperly and inappropriately used her position as principal in an attempt to secure the position of Superintendent by campaigning for Respondent Patty Fitzsimons and Respondent Michael Viscount, as well as Erland Chau for positions on the Board. Specifically, in or around mid-April 2008, Dr. Fipp wrote and distributed a letter of endorsement, and also made numerous

¹ On April 15, 2009, the State Board of Education adopted amendments to N.J.A.C. 6A:28, the regulations governing matters that come before the School Ethics Commission. These rules became effective on May 18, 2009. However, because the complaint in this matter was filed before May 18, 2009, the Commission followed procedures and rendered its determinations herein in accordance with the rules that were in effect at the time the complaint was filed. To the extent this decision cites to regulations, they are the regulations that were in effect when the complaint was filed.

phone calls to residents of Northfield personally endorsing those candidates. (Complaint at pp. 1-2) The complainant alleges that Dr. Fipp used her position to secure employment and ultimately procure financial gain for herself in violation of N.J.S.A. 18A:12-24(b) and (f).

The complainant further asserts that Respondent Fipp hired Respondent Fitzsimons' sister-in-law as a first grade teacher in August 2008, despite the fact that this teacher was not nearly as qualified as other candidates. According to the complainant, this was an attempt by Dr. Fipp to "curry the favor of Respondent Fitzsimons," in violation of N.J.S.A. 18A:12-24(b), (c) and (f), which favor was ultimately repaid when Respondent Fitzsimons voted for Respondent Fipp for the position of Superintendent. (Id. at p. 3)

In her answer, Respondent Fipp acknowledges that the Board voted on April 27, 2009 to approve her appointment to the position of Superintendent. She states that the vote was six in favor and none against, and that Respondents Fitzsimons and Viscount abstained. Respondent Fipp also notes this vote took place after the filing of "this scurrilous complaint." (Fipp Answer at paragraphs 3-6).

Dr. Fipp acknowledges that she voiced her support for the election of Respondent Fitzsimons, Respondent Viscount and Erland Chau in the April 2008 elections by leaving a one-page leaflet which she drafted in the doorways of Northfield homes and by calling residents by way of "post" and personal phone calls. (Id. at paragraphs 9-10) Dr. Fipp avers that she did so, not at the candidates' urging, but on her own accord. Dr. Fipp explains that she has supported Board candidates in the past and has called upon varied community organizations to become involved in supporting the schools. (Id. at paragraphs 13-15).

Dr. Fipp asserts that she submitted her application for the position of Superintendent in response to a published statewide advertisement; she was interviewed twice by the Board; they contacted her references, conducted an onsite visit to her elementary school and interviewed her staff. The process, according to Dr. Fipp, was open and subject to public scrutiny. Thus, Dr. Fipp reasons that the allegations that Respondents Fitzsimons and Viscount "agreed to vote for my ascendancy to the [S]uperintendent's position in exchange for what amounted to nine (9) hours of rudimentary political support is both incredible and fantastic." (Id. at paragraphs 20-25)

On the issue of campaigning for the respondent Board members, Respondent Fipp affirms that on April 12 and 13, 2008 she left the leaflet in 225 doorways. The leaflet does not identify her or connect her to the Northfield Schools, but, rather, identifies her as a resident and a taxpayer. In this connection, Dr. Fipp also states that she did not call upon or utilize any resource available to her as a principal; she did not ask for support from parents, teachers and staff, while on school grounds or during any school activity; she did not ask any teacher, staff member or parent for a vote in exchange for any favor or service; she did not appear with any subject candidate in public or private to voice her support; she held no formal position with the respondents' campaign; and she made no monetary donation to the campaign (Id. at paragraphs 27-35) The leaflets were copied on her personal printer.

Dr. Fipp states that she arranged for the "post calls" to be made on behalf of Fitzsimons, Viscount and Chau by paying approximately \$35 for access to software that could make a

recorded call to registered voters on a list provided by Respondent Michael Wynne. On April 11, 2008, Dr. Fipp states that she also made approximately 30 personal phone calls in support of Fitzsimons, Viscount and Chau to her friends in the Northfield Community. Dr. Fipp clarifies that there was no coordinated effort between her and the campaign. She was never approached by any Board member “with any hint of assurance that the Northfield [S]uperintendent’s job was mine for the taking simply because I had supported his/her election to the Board.” (Id. at paragraphs 38-44)

Addressing the complainant’s “frivolous allegation” that she had the “temerity” to hire Fitzsimons’ sister-in-law in exchange for Fitzsimons’ vote to become Superintendent, Dr. Fipp notes that, at the time this teacher was hired, she was principal of the Northfield Elementary School and she did not have the power and authority to hire anyone. Rather, she made the recommendation to hire the teacher, but the decision was left to the Superintendent and the Board. Prior to recommending this teacher, Dr. Fipp elicited the recommendations of three experienced first grade teachers who were provided with qualifications for each candidate, but no name or biographical information. Each teacher made a “blind” recommendation of the teacher who was ultimately selected. (Id. at paragraphs 54-56)

Finally, Respondent Fipp asserts the complaint is frivolous and nothing more than “the rehashed complaint (of the letter complaint presented to the Board in late January 2009) of a disgruntled and disappointed candidate for the Northfield superintendent’s position.” (Id. at paragraph 62)

Allegations Concerning Respondents Fitzsimons, Viscount and Wynne

The complainant asserts that Respondents Fitzsimons, Wynne and Viscount knew that Respondent Fipp was campaigning on behalf of Viscount and Fitzsimons, and actively engaged in the solicitation of Respondent Fipp to campaign for Viscount and Fitzsimons. Despite the “conflict of interest,” according to the complainant, Respondents Fitzsimons, Wynne and Viscount interviewed Respondent Fipp for the position of Superintendent and ultimately recommended her for the position over other more qualified candidates. Mr. Chau recused himself from the selection process. The complainant asserts that Respondents Fitzsimons, Wynne and Viscount violated N.J.S.A. 18A:12-24.1(b), (f) and (h) when they accepted the endorsement of the principal, then voted for her to be Superintendent, “despite the fact that there were more qualified candidates.” (Complaint at pp. 2-3) The complainant adds that “Respondent Fitzsimons appears to have violated N.J.S.A. 18A:12-24.1(b), (e) and (f)” in connection with the hiring of her sister-in-law by Dr. Fipp. (Id. at p. 3)

In his answer, Respondent Wynne states that he was not a candidate in 2008; he only tangentially knew Respondent Viscount and had no involvement in his campaign. To the best of his knowledge, none of the candidates presented themselves as a group or a slate. Wynne states he knew Dr. Fipp from his service on the Board, but not personally. (Wynne Answer at p. 3) He acknowledges that he participated in all interviews of candidates for the Superintendent’s position, including Dr. Fipp’s. He believed she was an outstanding candidate. Wynne notes that Mr. Chau was advised by the Board attorney not to participate since his mother is employed by the District. Wynne affirms that he could not have accepted any endorsement of Dr. Fipp’s since he was not running in 2008. Respondent Wynne states that the complainant’s allegations with

respect to voting for Dr. Fipp are baseless. (Id. at pp. 4-5) Respondent Wynne provides a full statement of the search process for a Superintendent, which included the Board selecting him as Chair of the Search Committee, contracting with the New Jersey School Boards Association for consultation services, conducting community and staff forums, accepting and reviewing applications, conducting “first round” interviews of seven candidates (which included the complainant), conducting “second round” interviews of three candidates (which did not include the complainant), then performing a site visit of Dr. Fipp’s school and interviewing her staff. At the March 23, 2009 public meeting, the Board announced Dr. Fipp as the finalist for the position. The matter was to be voted upon by the newly-constituted Board at the April 27, 2009 reorganization meeting. (Id. at pp. 5-10)

Respondent Viscount admits that he was aware that Dr. Fipp was supporting him in his run for the Board in 2008, but he affirms that he never solicited her support. Mr. Viscount also states that the complainant approached him during his campaign and indicated her support, as well. Respondent Viscount avers that he only tangentially knew Respondent Wynne; he personally ran and financed his own campaign. (Viscount Statement at p. 3). Viscount affirms that he participated in all Superintendent candidate interviews, including Dr. Fipp’s and supported her selection. He abstained from voting for her on April 27, 2009, “but only in an attempt to insulate the Board’s action from unwarranted attacks based on this ethics complaint.” (Id. at pp. 4-5) Mr. Viscount notes that since he was not a “school official” during the campaign of 2008, he could not have violated the Act at that time. Although he appreciated Dr. Fipp’s endorsement, he took no action to “accept” it. He made no promises to, express or implied, to Dr. Fipp. (Id. at p. 5). Respondent Viscount’s statement includes a review of the Superintendent’s search process, as set forth above.

Respondent Fitzsimons admits that she was aware that Dr. Fipp was supporting her in her run for the Board in 2008, but she affirms that she never solicited Dr. Fipp’s support. Ms. Fitzsimons avers that she ran her own campaign and was not a part of an organized slate or block of candidates. (Fitzsimons Statement at p. 3) She affirms that she knew Respondent Viscount and Erland Chou only casually. Ms. Fitzsimons affirms that she participated in all the Superintendent candidate interviews, including Dr. Fipp’s and supported her selection. She abstained from voting for her on April 27, 2009, “but only in an attempt to insulate the Board’s action from unwarranted attacks based on this ethics complaint.” (Id. at pp. 4-5) Although she appreciated Dr. Fipp’s endorsement, she took no action to “accept” it; she made no promises, express or implied, to Dr. Fipp and had no reason to expect that Dr. Fipp’s endorsement would affect her decisions as a Board member, if she were reelected (Id. at p. 5). Respondent Fitzsimons’ statement includes a review of the Superintendent’s search process, as set forth above.

With respect to the allegation regarding the hiring of her sister-in-law, although Ms. Fitzsimons notes that the allegation is really against Dr. Fipp, the complainant’s assertion is inaccurate because only the Board of Education has the legal authority to employ staff and only upon the recommendation of the Superintendent. Respondent Fitzsimons asserts that there is no relationship between Dr. Fipp and the employee that would have precluded Dr. Fipp from making any recommendation to the former Superintendent. (Id. at pp. 5-6) Fitzsimons specifically denies any attempt by Dr. Fipp to “curry her favor” and even if there had been, she

would never have given any promise to reward or pay back anyone. Moreover, Respondent Fitzsimons did not vote on the appointment of her sister-in-law to the teaching position. (*Id.* at p. 6) This fact alone, according to Fitzsimons, should negate any claim that she violated the Code of Ethics relating to the hiring of her sister-in-law and there are no other facts presented by the complainant to support her allegations of violations.

By letter dated February 11, 2010 and received by the Commission on February 16, 2010, counsel for Respondents Fitzsimons, Viscount and Wynne presented an Affirmation that was signed by over 300 Northfield residents in support of the respondents. By letter dated February 9, 2010 and received by the Commission on February 16, 2010, counsel for the complainant submitted a copy of four emails, along with a letter from the complainant's former counsel asserting his position with respect to whether Respondents Fitzsimons and Viscount should have recused themselves from participating in the selection of the Superintendent.²

The Commission invited the parties to attend its meeting on February 23, 2010 to aid in its investigation of this matter. The complainant appeared with counsel, Jeffrey Caccese, Esq. Respondent Fipp appeared with counsel, Robert Merenich, Esq. Respondents Fitzsimons, Viscount and Wynne also appeared with counsel, David Carroll, Esq. Counsel were accorded the opportunity to make arguments on behalf of their clients, which were consistent with the positions set forth above in the pleadings.

The complainant, Dr. Carol Ferguson, testified that she filed the complaint because she felt that she should be assured that the selection of a new Superintendent was an unbiased process and she believed that, based upon the "high profile" campaigning conducted by Dr. Fipp, the respondent Board members should have recused themselves when the Board voted to appoint Dr. Fipp to the position of Superintendent.

With respect to the hiring of Respondent Fitzsimons sister-in-law, the complainant acknowledged that the recommendation for hiring came from former Superintendent Stepura, but stated that "in the real world," such a recommendation for the hiring of a teacher would come from the school principal, who, at the time, was Dr. Fipp. The complainant testified that she "voiced her concerns" that other candidates should have been considered, but the Superintendent "always takes the recommendation of the principal." In response to a question from the Commission, the complainant acknowledged that she was a friend of one of the candidates who ran for the Board in 2008 and she "put a sign on the lawn for her."

Dr. Fipp testified that the copies of emails that were presented to the Commission by the complainant were sent to her and she did not ask for them to be sent. One of the senders used her home email address and one used her school email address.

² Acknowledging that the Commission's regulations require that submissions to the record in probable cause proceedings be submitted no later than 10 days prior to the Commission's scheduled meeting, N.J.A.C. 6A:28-6.7(d)4, the Commission found that extraordinary circumstances (*i.e.*, a snow emergency on February 10, 2010 and a furlough day on February 12, 2010) left the Department of Education unable to ensure the receipt of its mail in a timely manner. Consequently, the Commission accepted these submissions.

FINDINGS OF PROBABLE CAUSE

This matter was before the Commission for a determination of probable cause. That is, the Commission must determine, based on the documentary and testimonial evidence before it, whether probable cause exists to credit the allegations in the complaint. A finding of probable cause is not an adjudication on the merits, but, rather, an initial review whereupon the Commission makes a preliminary determination whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted.

When making a probable cause determination, the Commission reviews the complaint and answer provided by the complainant and respondent, together with any relevant documentation. N.J.A.C. 6A:28-6.7(d). Additionally, in order to carry out the Commission's responsibilities under the School Ethics Act to determine whether probable cause exists, the Commission is authorized to conduct investigations, hold hearings, compel the attendance of witnesses and the production of documents and examine such witnesses under oath. N.J.S.A. 18A:12-28(b); N.J.A.C. 6A:28-6.7(b)

Allegations as to Respondent Fipp

The complainant asserts two claims against Respondent Fipp: (1) that she violated N.J.S.A. 18A:12-24(b) and (f) when she “improperly and inappropriately used her position as a Principal in an attempt to secure a position as Superintendent by campaigning for Respondent Patty Fitzsimmons [sic], Respondent Michael Viscount and Erland Chau for positions as members of the BOE” (Complaint at pp. 1-2) and (2) that she “had the temerity to hire Respondent Fitzsimmon's [sic] sister-in-law...as a first grade teacher in August 2008 despite the fact that she was not nearly as qualified as other candidates, both internally and externally, for the position” which was an attempt to “curry favor” with Respondent Fitzsimons in violation of N.J.S.A. 18A:12-24(b), (c) and (f). (Id. at p. 3)

The Commission thus begins its analysis with N.J.S.A. 18A:12-24(b), which provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

With respect to the campaign claim, the complainant appended to the complaint a copy of the leaflet that Respondent Fipp undisputedly distributed during the April 2008 campaign. That flyer states, in full:

To My Dear Friend and Northfield Neighbor

Although I see your name on the voter list as one who votes, I cannot locate your current phone number, so as a Northfield resident and a taxpayer and one who watches spending and quality, just like you.....I wanted to share who I have chosen to support for the

THREE School Board Seats this Tuesday.

**2 pm until 9 pm on TUESDAY, APRIL 15
THIS TUESDAY!!!!!!!!!!**

#3 Erland Chau

#5 Michael Viscount

#7 Patti Fitzsimons

Read the Current the past two weeks (Current online) for more about them and call me at home at [phone number] if you can't locate it. Again, this is my view as a taxpayer and a Northfield resident just like you.

I AM SUPPORTING BOTH SCHOOL BUDGETS
Northfield and Mainland

Also, if you are interested in supporting these three candidates
Chau, Viscount and Fitzsimons, numbers 3, 5, and 7 on the ballot

Call five friends to do the same!!! Just five and it will make a difference.

Thanks so much.

Janice DeCicco Fipp [home number]

Important! Do No Carry Any Campaign Material to the Polls

This Tuesday	2PM to 9 Pm	Northfield School Cafeteria
School Board Seats		#3, #5 #7
Chau	Viscount	Fitzsimons

(Exhibit A of Complaint, Emphasis in text)

In support of this claim, the complainant also offers four emails, as follows:

- (1) An email from Regina Viscount to Janice Fipp dated February 25, 2008, 3:56 PM, attaching an article "about Michael" and noting that "[h]e submitted his form for the BOE nomination today."
- (2) An email from Regina Viscount to Janice Fipp dated February 25, 2008, 4:13 PM, stating, "Michael wants to know when a good time is to call you about the BOE."

- (3) An email from “Steve” dated April 2, 2008, 4:12 PM, sent to Patti Fitzsimons and copied to Janice Fipp attaching a list of registered voters.
- (4) An email from Patti Fitzsimons to Dr. Fipp dated April 2, 2008, 5:11 PM, stating, “Doc, Let me play with the list to make it a little more organized and in alphabetical order.”

Additionally, Respondent Fipp does not deny that she made phone calls and arranged for “post calls” to be made on behalf of Fitzsimons, Viscount and Chau.

In order to credit this allegation, the Commission must find evidence that the respondent used, or attempted to use, her former position as a principal to secure some *unwarranted* privilege, advantage or employment for herself, members of his immediate family or others. Respondent Fipp does not deny that she campaigned for the respondent Board members, but asserts that she did so in her role as a private citizen.

The Commission has determined that school officials have the right to endorse candidates for public office. I/M/O Alphonse A. DeMao, Belleville Board of Education, C09-04, (September 30, 2004), Commissioner Decision No. 464-04, decided November 17, 2004. Where a board member may run afoul of the School Ethics Act, however, is by using his/her official position to the potential advantage of the candidate.³ The circumstances in this matter, however, may fairly be distinguished from those in DeMao. While it is undisputed that Respondent Fipp campaigned in support of Respondents Fitzsimons and Viscount as evidenced by the leaflet at Exhibit A of the complaint and, less directly, the emails set forth above, the Commission finds that she did so in her role as a citizen and taxpayer of Northfield. Indeed, there is nothing in the text of the leaflet offered by the complainant as “Exhibit A” that would suggest that Dr. Fipp used her position as principal to support these candidates, as there is no mention of Dr. Fipp’s role as a principal. Neither is there any allegation that Dr. Fipp used either school property or personnel to carry out her support. Similarly, the emails offered by the complainant merely show that Respondents Wynne and Fitzsimons communicated with Dr. Fipp and provided a list of registered voters, which Dr. Fipp acknowledges were used for the post calls. (Fipp Answer at paragraph 39). Thus, with respect to the campaign claim, the Commission finds that Respondent Fipp did not “use her position” in an improper manner and, therefore, finds no need to reach to the remainder of the provision which prohibits using one’s official position *to secure unwarranted privileges, advantages or employment*.

With respect to the hiring claim, as noted above, in order to credit the allegation that Dr. Fipp violated N.J.S.A. 18A:12-24(b) in connection with the hiring of Respondent Fitzsimons’ sister-in-law, there must be some indication that the respondent used, or attempted to use, her former position as a principal to secure some unwarranted privilege, advantage or employment

³ Indeed, in DeMao, the Board President publicly endorsed a candidate running for the Belleville Municipal Council through a mailing to the Belleville community. The envelope bore Mr. DeMeo’s official title, “President, Board of Education” under his name followed by his law office address. The letterhead bore the words “From the Desk of” in a light font. Those words were above and to the left of Mr. DeMeo’s name “Alphonse A. DeMeo, Esq.” The words “Board of Education President” appeared below the name in a regular size black font similar to the font in the letter. The Commission therein found that the respondent violated N.J.S.A. 18A:12-24(b) of the School Ethics Act in that “[t]he totality of the endorsement including the letterhead, the content of the letter, and the nature of the return address on the envelope, could lead someone reading the letter to reasonably assume that the endorsement was made by Mr. DeMao in his official capacity as the President of the Board.” DeMao, slip op. at 5.

for Respondent Fitzsimons' sister-in-law. However, the Commission notes that as a principal, her ability to "use her position" to effectuate any hiring was limited since, in accordance with N.J.S.A. 18A:27-4.1, it is the Board that must appoint personnel, upon the recommendation of the Superintendent, and such matters are not reviewable by the Commission.⁴ Even assuming, *arguendo*, that Dr. Fipp was instrumental in the selection of this teacher, there is simply nothing on this record that would suggest that the teacher's selection was an *unwarranted* privilege, advantage or employment. (See, I/M/O Doris Graves, Pleasantville Board of Education, C45-07 (May 27, 2008), Commissioner of Education Decision No. 301-08, decided July 10, 2008, rejecting a claim of violation of N.J.S.A. 18A:12-24(b) because the record did not demonstrate that the respondent Board member's relative did not deserve the continued appointment to the position of head custodian; Freeman v. Jackson, Camden City Bd. of Ed., C18-02 (October 29, 2009) where the Commission declined to find probable cause that the respondent violated N.J.S.A. 18A:12-24(b) without information to show that when she voted on the reinstatement of her friend/occasional live-in companion to employment in the district, such reinstatement was unwarranted.) Accordingly, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b).

The complainant asserts that Respondent Fipp violated N.J.S.A. 18A:12-24(c) in connection with the hiring of Respondent Fitzsimons' sister-in-law. N.J.S.A. 18A:12-24(c) provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

In order to credit this allegation, the Commission would have to find some evidence that Respondent Fipp had either: 1) taken action in her official capacity in a matter where she, or a member of her immediate family⁵ had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment or 2) acted in her official capacity in a matter where she or a member of her immediate family had a personal involvement that is or created some benefit to him or the member of his immediate family. On this record, the Commission cannot find support for either clause. Even assuming that Dr. Fipp's

⁴ There is apparently no dispute that Respondent Fitzsimons recused herself from the Board's vote on the hiring of her sister-in-law. (Fitzsimons' Answer at p. 6)

⁵ The School Ethics Act at N.J.S.A. 18A:12-23 defines "member of the immediate family" as the spouse or dependent child of a school official residing in the same household. The Commission's regulations at N.J.A.C. 6A:28-1.2 define "spouse" as "the person to whom the school official is legally married under New Jersey law and also includes a partner in a civil union couple as established in N.J.S.A. 37:1-33."

recommendation to hire Respondent Fitzsimons' sister-in-law constitutes action in her capacity as a school official,⁶ this record does not support the conclusion that, in doing so, Dr. Fipp had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment. Neither can the Commission find that in recommending Respondent Fitzsimons' sister-in-law, Dr. Fipp acted in a manner where she had a personal involvement that is or creates some benefit to her or a member of her immediate family. Accordingly, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c).

The Commission next considers the complainant's allegation that Respondent Fipp violated N.J.S.A. 18A:12-24(f), which provides:

No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

With respect to the campaign issue, as noted in the above analysis, there is no information on this record to suggest that Respondent Fipp "used her public office or employment," in any manner, let alone for the purpose of securing financial gain for herself any member of her immediate family, or any business organization with which she is associated. With respect to the hiring issue, even assuming that Respondent Fipp was instrumental in the hiring of Respondent Fitzsimons' sister-in-law and thus, "used her public office or employment," it was not for the purpose of securing financial gain for herself, any member of her immediate family, or for any business organization with which she is associated. Accordingly, the Commission finds no cause to credit the allegation that Respondent Fipp violated N.J.S.A. 18A:12-24(f).

Allegations Concerning Respondents Fitzsimons, Wynne and Viscount

The complainant asserts the following claims: (1) that Respondents Fitzsimons, Wynne and Viscount "appear to have violated N.J.S.A. 18A:12-24.1(b), (f) and (h) in that they accepted the endorsement of the Principal of Northfield Elementary Schools regarding Respondent Viscount and Respondent Fitzsimmons [sic] and then they voted for her to be Superintendent, "despite the fact that there were other more qualified candidates." (Complaint at pp. 2-3)⁷ and (2) that Respondent Fitzsimons "appears to have violated" N.J.S.A. 18A:12-24.1(b), (e) and (f) by voting for Respondent Fipp for the position of Superintendent after Respondent Fipp hired Fitzsimons' sister-in-law in August 2008. (Id. at p.3)

⁶ The term "school official" is defined in N.J.S.A. 18A:12-23 as a board member, an administrator or a managerial employee or officer of the New Jersey School Boards Association (NJSBA), as well as members of the board of trustees of a charter school. N.J.S.A. 18A:12-23.1.

⁷ On this claim, counsel for Respondents Fitzsimons, Wynne and Viscount underscored, and complainant did not dispute, that Respondent Viscount was not a candidate for the Board in the 2008 election.

The Commission initially considers the complainant's assertion that the respondents violated N.J.S.A. 18A:12-24.1(b), which provides:

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.

Even assuming that Respondents Viscount and Fitzsimons "accepted" Dr. Fipp's endorsement in their 2008 campaigns, then participated in the interview process and ultimate selection of Dr. Fipp for the position of Superintendent, the Commission takes note of the respondents' attestations as to the Superintendent search, interview and selection process and finds there is simply nothing in the record that would suggest the respondents made a decision that was contrary to the educational welfare of children; nor is there any evidence that, in interviewing and selecting Dr. Fipp, the respondents took actions that were inconsistent with their duty to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

Similarly, with respect to the claim that Respondent Fitzsimons "appears to have violated" N.J.S.A. 18A:12-24.1(b) by voting for Respondent Fipp for the position of Superintendent after Respondent Fipp hired her sister-in-law in August 2008, the Commission does not find on this record that Respondent Fitzsimons failed to make decisions in terms of the educational welfare of children, or failed to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing. Accordingly, the Commission finds no cause to credit the allegation that these respondents violated N.J.S.A. 18A:12-24.1(b).

The complainant also asserts that Respondent Fitzsimons violated N.J.S.A. 18A:12-24.1(e), which provides:

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.

There is no evidence on this record that Respondent Fitzsimons failed to recognize that authority rests with the Board. Neither is there any evidence that Respondent Fitzsimons made any personal promises or took any private action that may compromise the Board. Here, it is important to note that "private action" means any action taken by a member of a district board of education that is beyond the scope of the duties and responsibilities of the member. N.J.A.C. 6A:28-7.1. If Respondent Fitzsimons participated in the interview and selection of Dr. Fipp for the Superintendent's position, she did so within the scope of her duties as a Board member. Accordingly, the Commission finds no cause to credit the allegation that Respondent Fitzsimons violated N.J.S.A. 18A:12-24.1(e).

The complainant asserts that Respondents Fitzsimons, Wynne and Viscount violated N.J.S.A. 18A:12-24.1(f) and 24.1(h) when they accepted the endorsement of Dr. Fipp, then voted for her to be Superintendent, “despite the fact that there were other more qualified candidates.” (Complaint at pp. 2-3) N.J.S.A. 18A:12-24.1(f) and (h) provide, respectively:

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.

I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

Because there is no allegation or suggestion that the respondents surrendered their independent judgment to special interest or partisan political groups or used the schools for personal gain, the Commission presumes that the complainant’s contention in alleging a violation of N.J.S.A. 18A:12-24.1(f) is that, in supporting the selection of Dr. Fipp to the Superintendent’s position, these respondents used the schools for the gain of their friend. Similarly, since there is no allegation that the respondents acted on a personnel matter without the recommendation of the chief administrative officer, the Commission presumes that the complainant’s contention in alleging a violation of N.J.S.A. 18A:12-24.1(h) is that the respondents failed to appoint the “best qualified candidate.” It would be impossible for the Commission to credit either allegation without discrediting the sworn statements of all of the respondents in this matter who set forth the detailed process for the interview and selection of the Superintendent. Simply put, the weight of the attestations, as set forth above in the respondents’ answers, wholly belies this unsupported claim.

Finally, the complainant asserts that Respondent Fitzsimons violated N.J.S.A. 18A:12-24.1(f), as set forth above, with respect to the hiring of her sister-in-law. It is noted that Ms. Fitzsimons specifically denied any attempt by Dr. Fipp to “curry her favor” and even if there had been, she would never have given any promise to reward or pay back anyone. Moreover, Respondent Fitzsimons did not vote on the appointment of her sister-in-law to the teaching position. (Fitzsimons Statement at p. 6) The Commission finds that the complainant’s allegation that Respondent Fitzsimons violated N.J.S.A. 18A:12-24.1(f) is without any support in this record. Therefore, the Commission finds no cause to credit the allegation that Respondents Fitzsimons, Wynne and Viscount violated N.J.S.A. 18A:12-24.1(f) and 24.1(h) by voting for Dr. Fipp to be Superintendent. The Commission also finds no cause to credit the allegation that Respondent Fitzsimons violated N.J.S.A. 18A:12-24.1(f) in connection with the hiring of her sister-in-law.

REQUEST FOR SANCTIONS

The respondents alleged that the complaint herein is frivolous. At its meeting on February 23, 2010, the Commission considered the respondents’ request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence which might show that the complainant filed the

complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also has no information to suggest that the complainant 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. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondent's request for sanctions against the complainant.

NOTICE

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies the complainant and respondents that it finds no probable cause to credit the allegations that the respondents violated the School Ethics Act and the complaint is, therefore, dismissed. This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender
Chairperson

Resolution Adopting Decision – C12-09

Whereas, the School Ethics Commission has considered all documents filed by the parties, together with testimony presented on February 23, 2010; and

Whereas, at its meeting on February 23, 2010, the Commission found no probable cause to credit the allegations that the respondents violated the School Ethics Act and further found that the complaint was not frivolous; and

Whereas, at its meeting on March 23, 2010, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on March 23, 2010.

Joanne Boyle, Executive Director