

NANCY LoPRESTI,	:	
Complainant	:	
V.	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
MARLENE LINDHARDT-MAZER,	:	Docket No.: C08-01
Respondent,	:	
	:	
<i>RANDOLPH BOARD OF EDUCATION,</i>	:	DECISION
<i>MORRIS COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed by Nancy LoPresti on February 22, 2001 alleging that Respondent Marlene Lindhardt-Mazer violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Specifically, Ms. LoPresti alleges that Respondent used her position to lobby against and vote down the recommendation for Ms. LoPresti to serve as a middle school Spanish teacher because she had conflicts with the School Age Care Program that Ms. LoPresti coordinated and directed in violation of N.J.S.A. 18A:12-22 and 24(c) of the Act.

Ms. Lindhardt-Mazer filed an Answer stating that the Complaint is an attempt at retaliation by a school district employee against a board member who voted against her appointment. She answers that she had legitimate reasons for voting against Ms. LoPresti's appointment as a middle school Spanish teacher and that, in any event, Ms. LoPresti's allegations have not set forth a violation of the School Ethics Act.

The Commission asked the parties whether they would be available to testify before the Commission on this Complaint at its meeting of May 22, 2001. They were advised of their right to attend and present witnesses and testimony to aid in the Commission's investigation. Ms. LoPresti attended with her husband. Ms. Lindhardt-Mazer appeared with her attorney, David Rubin.

At the public meeting of May 22, 2001, the Commission found no probable cause and dismissed the complaint.

FACTS

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted and its investigation.

Respondent is a member of the Randolph Board of Education. Ms. LoPresti was an employee of Randolph School District for seven years prior to filing the present complaint. Ms. LoPresti was the coordinator of the Randolph School Aged Child Care Program. Respondent has used the program for her son since 1996.

On November 11, 2000, the Randolph Board of Education (Board) voted upon the Superintendent of Schools' recommendation to appoint Ms. LoPresti to the position of a middle school Spanish teacher. The recommendation was supported by the World Language District Supervisor and the Director of Personnel. Prior to the meeting, Ms. Lindhardt-Mazer sent an e-mail to board members voicing opposition to the hiring of Ms. LoPresti. At the meeting, Ms. Lindhardt-Mazer participated in the closed session meeting of the Board at which Ms. LoPresti was discussed. She then voted against the motion. The motion failed by a five to four vote.

Eventually, the motion to appoint Ms. LoPresti was again placed on the agenda and the motion to approve her was carried.

ANALYSIS

The Complainant first alleges that Respondent violated N.J.S.A. 18A:12-22. It provides:

In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

The School Ethics Commission has previously ruled that it cannot find a violation of the School Ethics Act based solely upon N.J.S.A. 18A:12-22. This section sets forth the Legislature's findings and declarations. Although it provides guidance as to how to interpret the School Ethics Act, it does not set forth conduct that is prohibited under the Act. For that, the Commission must look to N.J.S.A. 18A:12-24.

Complainant also alleges that Respondent acted in her official capacity in a matter in which she had a personal involvement in violation of N.J.S.A. 18A:12-24(c), which provides, in pertinent part:

...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.

Complainant alleges that Respondent has a clear conflict of interest both by being a client of the Randolph Community School's School Age Care Program in which her son attends and also because of personal issues related to this client relationship that have clouded her judgment.

Respondent says in response that she had legitimate reasons to question the hiring of the Complainant.

The Commission can discern no benefit that Respondent or any member of her immediate family could derive from voting on Ms. LoPresti's appointment to a position teaching Spanish in the middle school. The only one suggested by Ms. LoPresti is that the Respondent has the benefit of retaliating against her because she did not like the way that her son was treated in the program. The Commission is not convinced that Respondent's only motive for questioning the hiring of Ms. LoPresti was retaliation. In any event, the Commission previously decided in *In the Matter of George Schwenger and John Knorr*, SEC Docket No. C12-99 (January 31, 2000), that satisfaction from retaliation is not the type of "benefit" contemplated by the Legislature when it amended N.J.S.A. 18A:12-24(c). Therefore, the Commission does not find probable cause that Respondent had a personal involvement with the hiring of Ms. LoPresti that constituted a benefit to her or a member of her immediate family in violation of N.J.S.A. 18A:12-24(c).

DECISION

For the foregoing reasons, the Commission dismisses the Complaint against Respondent Marlene Lindhardt-Mazer.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C08-01

Whereas, the School Ethics Commission has considered the pleadings and documents;
and

Whereas, the Commission has found no probable cause to credit the allegations in the
Complaint and therefore dismisses the complaint; and

Whereas the Commission has reviewed a draft decision; and

Whereas, the Commission agrees with the draft decision;

Now Therefore Be It Resolved that the Commission hereby directs its staff to notify all
parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the School
Ethics Commission adopted
this decision at its public meeting
on June 26, 2001.

Lisa James-Beavers
Executive Director