
**AMY M. FANKHAUSER AND
JEANETTE SMITH**

v.

**MARY CERRETANI,
HOWELL TOWNSHIP BOARD OF EDUCATION
MONMOUTH COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO. C23-14

PROBABLE CAUSE NOTICE

PROCEDURAL HISTORY

This matter arises from a complaint filed on May 16, 2014 by Amy M. Fankhauser and Jeanette Smith, a member of the Howell Township Board of Education (Board) at the time the controversy arose, alleging that Board member, Mary Cerretani violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The complainants specifically alleged that the respondent violated N.J.S.A. 18A:12-24(b) and (c), of the Act and N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code).

The respondent timely filed his Answer on July 24, 2014. By letter of July 31, 2014, the complainant and the respondent were notified that the Commission would review this matter at its meeting on August 26, 2014, in order to make a probable cause determination, in accordance with N.J.A.C. 6A:28-10.9. At its meeting on August 26, 2014, the Commission found the complaint was filed out of time and dismissed the complaint.

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

The complainants assert that the respondent/Board member was sworn into office for two successive three-year terms and overall served 15 years as Board member. They allege that on a number of occasions, while still employed by the Manalapan-Englishtown Board of Education and still a member of the NJEA, the respondent/Board member was present in Executive Session during which the Board and the Association were in contract negotiations and no tentative agreement had yet been reached. The respondent retired from her position as social worker with the Manalapan-Englishtown School District in November 2013—long after the negotiations were completed. The complainants allege that the respondent’s involvement in contract negotiations violated N.J.S.A. 18A:12-24(b) and (c) of the Act and N.J.S.A. 18A:12-24.1(f) of the Code

In her Answer, the respondent admits that at all relevant periods, she was employed as a social worker with the Manalapan-Englishtown Board of Education and a member of the NJEA, but denies taking any action in violation of the Act. She avers that she did not serve on the negotiating committee and recused herself from all discussions of negotiating matters. The respondent also maintains that Board’s Labor counsel advised conflicted Board members that they could vote on the settlement proposed by the Fact Finder report and later on the settlement proposed and MOU of the Super Conciliator. The respondent argues that the complaint is out of

time and exceeds the time limitation set forth in N.J.A.C. 6A:28-6.5, which provides that a complaint must be filed within 180 days' notice of the alleged event, 429 days after the alleged event.

FINDINGS OF PROBABLE CAUSE

This matter is before the Commission for a determination of probable cause pursuant to N.J.A.C. 6A:28-10.9, processing of complaints alleging *both* prohibited acts and a violation of the Code of Ethics for School Board Members. 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.

Pursuant to N.J.A.C. 6A:28-10.9, in a "combination" complaint such as this, the Commission first determines whether, based on the record before it, probable cause exists to credit the allegations in the complaint that the respondent engaged in prohibited acts. Here, and as set forth below, the Commission found no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b). Consequently, this allegation is dismissed and the complaint shall proceed in accordance with N.J.A.C. 6A:28-10.8. That is, because the only remaining allegations are those that arise under the Code of Ethics for School Board Members, the complainant has the burden to factually establish that the respondent violated N.J.S.A. 18A:12-24.1(a), (e) and (g) of the Code of Ethics for School Board Members. N.J.S.A. 18A:12-29(b).

Allegations of Prohibited Acts

Failure to Meet Commission's Filing Regulations: Allegations that are Time-Barred

As a preliminary matter, the respondent asserts that the complaint is untimely, pursuant to N.J.A.C. 6A:28-6.5 in that any complaint related to the respondent's Board actions should have been filed no later than 180 days after the last incident of March 21, 2013. She argues that the complaint should have been filed on or before September 17, 2013. Instead, the complaint was filed on May 16, 2014, thereby making the complaint untimely. The Commission's regulations provide, in relevant part:

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 which form the basis of the alleged violation(s) when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known.** N.J.A.C. 28-6.5(a). (emphasis added)

The Commission recognizes that limitation periods of the type herein serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. Kaprow v. Berkley

Township Bd. of Educ., 131 N.J. 571, 587 (1993). Thus, “notice of the alleged violation” must be interpreted in a manner that anticipates the reasonable diligence of the complainant(s). In addressing potential violations of the School Ethics Act, the Commission must balance the public’s interest in knowing of potential violations against the important policy of repose and a respondent’s right to fairness. The time limitations set forth in the regulations must be enforced if it is to operate in a fair and consistent manner. Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County, C19-03 (June 24, 2003).

Thus, the Commission concurs with the respondents that the entire complaint is untimely. To the extent the complainants state that they were not aware of the respondent’s employment until she retired on or about November 19, 2013. The Commission is aware that Respondent Smith was a Board member at all times complained of and upon its authority to investigate, pursuant to N.J.S.A. 18A:12:28, the Commission determined that the respondent filed the appropriate Disclosure Statements, indicating her employment with the Manalapan-Englishtown Board of Education. These statements are public recorders and available by filing an OPRA request. As noted above, “A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known.” N.J.A.C. 28-6.5. Further, although the Commission recognizes that the regulatory time period may be relaxed, in its discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice, N.J.A.C. 6A:28-1.8, it finds no extraordinary circumstances in this matter that would compel relaxation. Accordingly, the complaint is dismissed as untimely.

DECISION

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies the complainants and respondent that it finds the complaint was filed out of time and is, therefore, dismissed. This 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).

Robert W. Bender
Chairperson
School Ethics Commission

Mailing Date: September 24, 2014

Resolution Adopting Decision – C23-14

Whereas, the School Ethics Commission has considered the pleadings filed by the parties;

Whereas, at its meeting of August 26, 2014, the Commission found the complaint to filed untimely, and dismissed the complaint in its entirety; and

Whereas, the Commission has reviewed, and agrees with, the proposed probable cause notice;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed probable cause notice in this matter and directs its staff to notify all parties to this action of said notice.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on August 26, 2014.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission