

***Before the School Ethics Commission***  
***Docket No.: C11-20***  
***Decision on Motion to Dismiss***

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**David Meade,**  
***Complainant***

v.

**Frank Kasyan and Peter Cahill,**  
**Manasquan Board of Education, Monmouth County,**  
***Respondents***

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**I. Procedural History**

This matter arises from a Complaint that was filed on March 4, 2020, by David Meade (Complainant), alleging that Frank Kasyan (Respondent Kasyan) and Peter Cahill (Respondent Cahill) (collectively referred to as Respondents), administrators employed by the Manasquan Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* More specifically, the Complaint alleges that Respondents violated *N.J.S.A. 18A:12-24(b)*.

On March 5, 2020, the Complaint was served on Respondents, via regular and certified mail, notifying them that charges were filed against them with the School Ethics Commission (Commission), and advising that they had twenty (20) days to file a responsive pleading. On April 1, 2020, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On April 29, 2020, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated May 11, 2020, that this matter would be placed on the Commission's agenda for its meeting on May 19, 2020, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on May 19, 2020, the Commission considered the filings in this matter and, at its meeting on June 23, 2020, the Commission voted to grant the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondents violated *N.J.S.A. 18A:12-24(b)*. The Commission also voted to find the Complaint not frivolous, and to deny Respondents' request for sanctions.

**II. Summary of the Pleadings**

**A. *The Complaint***

Complainant asserts that Respondent Kasyan, the Superintendent of the Manasquan School District (District), and Respondent Cahill, the District's Athletic Director (AD), violated *N.J.S.A. 18A:12-24(b)* because they used their respective official positions to secure employment for an "unqualified friend" for the position of paid Assistant Wrestling Coach, instead of

appointing a highly qualified candidate (Complainant) with “decades of high level coaching and wrestling experience.”

By way of background, on November 19, 2019, the Board approved the Superintendent’s recommendation for the position of paid Assistant Wrestling Coach. According to Complainant, the unqualified applicant did not list any wrestling experience on his application, “has an associate[’]s degree[,] and indicated he knows no language other than [E]nglish.” Complainant states that he has a Bachelor’s degree from Seton Hall University, and is fluent in American Sign Language. In addition, on November 24, 2019, the Head Wrestling Coach informed him (Complainant) that he (Head coach) recommended Complainant for the Assistant Coach position, but that the AD (Respondent Cahill) “overruled” his recommendation, and instead recommended the unqualified applicant. On November 26, 2019, Respondent Kasyan informed Complainant - via telephone - that Complainant’s “online application was never received.” After finding proof that he did apply for the position, Respondent Kasyan admitted, a week later, that he received Complainant’s application, and claimed that the position had not been filled (but it had been). Complainant further maintains that on December 6, 2019, Respondent Kasyan informed him (Complainant) that the Head Wrestling Coach was the person who chose the Assistant Wrestling Coach (which is contrary to what the Head Wrestling Coach said to Complainant). Finally, Complainant asserts on January 27, 2020, Respondent Kasyan sent him an email stating that the AD recommended the unqualified applicant to the Superintendent, a statement that contradicted what the Superintendent told him (Complainant) on December 6, 2019.

Complainant contends that the hiring of the unqualified candidate “was a clear act of nepotism, involving a close knit group of friends choosing a[n] unexperienced friend over a highly qualified candidate, thus ignoring the best interest of the student athletes . . . .”

**B. *Motion to Dismiss and Allegation of Frivolous Filing***

Following receipt of the Complaint, Respondents filed a Motion to Dismiss and allegation of frivolous filing. Respondents argue that the “certified facts . . . attested to by Respondents Kasyan and Cahill, along with [the Head Wrestling Coach], completely belie [Complainant’s] assertions, requiring the [C]omplaint to be dismissed with prejudice and sanctions to be entered.”

Respondents claim that Complainant has failed to demonstrate how the appointment of the Assistant Wrestling Coach was “unwarranted” under law, and counter that it was a “routine personnel action.” Respondent Cahill certified that the District credited the individual’s “in-district’ status and familiarity by the students as reasons for his appointment.” Furthermore, Complainant did not include any corroborating evidence of his conversation with the Head Wrestling Coach (including, without limitation, the date and the substance of the conversation), and the Head Wrestling Coach denied that he told Complainant he recommended Complainant for the position of Assistant Wrestling Coach. Respondents further argue that Complainant “utterly failed to demonstrate any connection” between Respondents and the individual who was appointed to the position of Assistant Wrestling Coach, and failed to show that Respondent Kasyan’s “ultimate recommendation” to the Board was improper, or that his telephone

conversation with Complainant was “anything other than simple miscommunication.” Respondents also assert that Complainant failed to cite any evidence supporting the claim that the Assistant Head Coach was appointed to the position because he was a “close friend” of Respondents. Respondents maintain that the Complaint is “insufficient as a matter of law to show that [the individual’s] hiring was unwarranted,” and, therefore, the Complaint should be dismissed.

Finally, Respondents “request the [Commission] enter sanctions against Complainant for a patently frivolous filing.” Respondents argue that Complainant “knew or should have known that there was no purported collusion to deny him the Assistant Wrestling Coach position” and that the individual’s “appointment was unwarranted.” Respondents maintain that “it is quite plain” that Complainant filed this Complaint because he is “simply a disgruntled applicant who filed this action in retaliation for his non-selection.” Respondents request that the Commission “fine Complainant the maximum amount provided under law, together with ordering Complainant to pay all of Respondents’ attorney[’s] fees and costs.”

**C. *Response to Motion to Dismiss and Allegation of Frivolous Filing***

In response to the Motion to Dismiss, Complainant reasserts his claims, and provided emails from parents (to Respondent Kasyan) voicing their concerns and anger with the Assistant Wrestling Coach’s lack of subject knowledge, and the decline in the wrestling program.

Regarding Respondents’ claim that the hiring of the Assistant Wrestling Coach was a “routine personnel action” and Respondent Cahill’s certification that the individual’s “in-district’ status and familiarity by the students as reasons for his appointment,” Complainant argues same is not the truth. According to Complainant, the Assistant Wrestling Coach is also an Assistant Football Coach (and thus considered an internal hire), and his child is a member of the wrestling team. Complainant maintains that he also would have been an internal hire because he had coached wrestling the previous season, and he had a good relationship with the wrestlers.

As to the Head Wrestling Coach’s certification that he did not tell Complainant that he said he (the Head Wrestling Coach) recommended Complainant for the position but was “overruled” by the AD, Complainant provided a copy of a text exchange between himself and the Head Wrestling Coach. In the text the wrestling coach replied, “I am not lying to you” in response to Complainant’s accusations that someone, either the Head Wrestling Coach or Respondent Cahill, lied about the hiring of the Assistant Wrestling Coach. In short, Complainant asserts that the certification of the Head Wrestling Coach is a lie.

Complainant also stated that, based on his conversations with other parents as well as the Head Wrestling Coach, the hired Assistant Wrestling Coach and Respondent Cahill are “friends,” and Respondent Cahill wanted him hired for the position. According to Complainant, friendship “is a hard thing to prove or disprove,” and had the hired Assistant Wrestling Coach “been an enemy of [Respondent Cahill and Respondent Kasyan] it is unlikely he would have been appointed to the position ... over a more qualified candidate who coached the wrestling team the prior season ... .”

In summary, Complainant reaffirms that Respondents hired a friend who did not have any knowledge about wrestling, lied about the way the hiring took place, and lied about the reasons the person was hired. Complainant notes that he “is not a disgruntled applicant who filed an action in retaliation for [his] non-selection” and that the text messages prove that the Complaint is “valid and not frivolous.” Complainant maintains that “considering the scope of all the aforementioned contradictions, ‘miscommunications,’ lies and inconsistencies coupled with all the texts and emails [he] possess[es] on the subject matter [he] would hope the [Commission] would see it necessary to further investigate this matter.”

### **III. Analysis**

#### **A. Standard for Motion to Dismiss**

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainant), and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response is reviewed by the Commission on a summary basis. *N.J.A.C. 6A:28-8.1 et seq.* Thus, the question before the Commission is whether Complainant has alleged sufficient facts which, if true, could support a finding that Respondents violated *N.J.S.A. 18A:12-24(b)*.

#### **B. Allegation of Prohibited Acts**

Complainant asserts that Respondents violated *N.J.S.A. 18A:12-24(b)*. This provision of the Act provides:

- b. 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;

More specifically, Complainant contends that, in violation of *N.J.S.A. 18A:12-24(b)*, Respondents used their respective official positions to secure employment for an “unqualified friend” for the position of paid Assistant Wrestling Coach, instead of appointing a highly qualified candidate. Respondents counter that Complainant has failed to demonstrate how the appointment of the Assistant Wrestling Coach was “unwarranted,” and “utterly failed to demonstrate any connection” between Respondents and the individual who was ultimately appointed to the Assistant Wrestling Coach position.

In order to credit the alleged violation of *N.J.S.A. 18A:12-24(b)*, the Commission must find evidence that Respondents used or attempted to use their official positions to secure an unwarranted privilege, advantage or employment for themselves, members of their immediate family, or “others.”

Based on its review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondents violated *N.J.S.A. 18A:12-24(b)*. Even if the individual - who is an “other” within the meaning of the Act - appointed to the District’s Assistant Wrestling Coach position is a

friend of both Respondent Kasyan and Respondent Cahill, and even if Complainant was “more highly qualified” than the individual ultimately appointed, Complainant has not articulated sufficient facts to demonstrate that his hiring was “unwarranted.” As the Superintendent, Respondent Kasyan is charged with recommending the individual whom he believes is the *best* qualified and suited for a position. There are a multitude of considerations, other than who has the most years of experience, has earned the highest degree, and speaks the most languages, that factor into a superintendent’s personnel decision, and the fact that there may have been, on paper, a “more highly qualified” candidate does not mean, in and of itself, that the hiring of another was unwarranted. In this instance, and based on the facts set forth in the Complaint, the Commission will not substitute its judgment for that of the individual who had the most intimate knowledge of the pool of candidates.

In addition, even if Respondent Cahill, as the District’s AD and the individual who, among other things, has oversight of the District’s coaches and athletic staff, “overruled” or “disregarded” the recommendation of the Head Wrestling Coach in favor of another candidate, that also does not mean that the hiring was unwarranted. There is no requirement for the AD to adopt, wholesale, the recommendations of head coaches. As such, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(b) should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondents violated *N.J.S.A.* 18A:12-24(b).

#### **IV. Request for Sanctions**

At its meeting on May 19, 2020, the Commission considered Respondents’ request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondents’ 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 June 23, 2020, the Commission voted to find the Complaint not frivolous, and to deny the request for sanctions.

#### **V. Decision**

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission voted to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondents violated *N.J.S.A.* 18A:12-24(b). The Commission also voted to find that the Complaint is not frivolous, and to deny Respondents’ request for sanctions.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondents that, for the reasons set forth above, this matter is 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)*

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Robert W. Bender, Chairperson  
School Ethics Commission

Mailing Date: June 23, 2020

***Resolution Adopting Decision  
in Connection with C11-20***

***Whereas***, at its meeting on May 19, 2020, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and the response to the Motion to Dismiss and allegation of frivolous filing submitted in connection with the above-referenced matter; and

***Whereas***, at its meeting on May 19, 2020, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegation that Respondents violated *N.J.S.A. 18A:12-24(b)*; and

***Whereas***, at its meeting on May 19, 2020, the Commission discussed finding the Complaint not frivolous, and denying Respondents' request for sanctions; and

***Whereas***, at its meeting on June 23, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on May 19, 2020; 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.

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Robert W. Bender, Chairperson

I certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on June 23, 2020.

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Kathryn A. Whalen, Director  
School Ethics Commission