

***Before the School Ethics Commission***  
***Docket No.: C28-21***  
***Decision on Motion to Dismiss***

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**Thomas Hayden,**  
***Complainant***

v.

**Richard R. Labbe,**  
**Sayreville Board of Education, Middlesex County,**  
***Respondent***

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**I. Procedural History**

This matter arises from a Complaint that was filed on July 23, 2021, by Thomas Hayden (Complainant), alleging that Richard R. Labbe (Respondent), Superintendent of Schools for the Sayreville 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(b) and *N.J.S.A.* 18A:12-24(e).

On July 26, 2021, the Complaint was served on Respondent, by electronic mail, notifying Respondent that charges were filed with the School Ethics Commission (Commission), and advising that Respondent had twenty (20) days to file a responsive pleading.<sup>1</sup> On August 13, 2021, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On September 15, 2021, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated November 9, 2021, that this matter would be placed on the Commission's agenda for its meeting on November 16, 2021, in order to make a determination regarding the Motion to Dismiss. At its meeting on November 16, 2021, the Commission considered the filings in this matter and, at its meeting on December 14, 2021, 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 Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(e). The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

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<sup>1</sup> Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

## **II. Summary of the Pleadings**

### **A. *The Complaint***

Complainant asserts in January 2021 Respondent “initiated and promoted the District’s plans to conduct in-person rather than remote instruction” even though there was a “spike” in COVID cases. Complainant further asserts, “upon information and belief” and because he is a Superintendent, Respondent “became aware of the presence of extra COVID vaccines within” the community and this information was not available to the public. According to Complainant, despite Respondent being aware of numerous, at risk staff members, Respondent did not inform the District personnel or the Sayreville Education Association (SEA) of the availability of vaccines and instead “reserved himself a vaccine dose and only informed a few individuals of his choosing of the additional doses.”

With the above in mind, Complainant contends Respondent violated *N.J.S.A.* 18A:12-24(b) because he used his official position as Superintendent to secure unwarranted privileges for himself and others by accepting COVID vaccines which had not been available to the general public and would not have been available to him, if it were not for his position as Superintendent; and violated *N.J.S.A.* 18A:12-24(e) because as Superintendent he accepted a gift in the form of a vaccine which was not available to the public, and due to the “scarcity and value” of the vaccine this directly or indirectly influenced Respondent in the administration of his office.

### **B. Motion to Dismiss**

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and allegation of frivolous filing. Respondent asserts, “Contrary to the allegations in the Complaint,” Respondent “arranged to offer the opportunity for District staff” to receive vaccinations in March 2021 and another opportunity for the community to receive vaccinations in May 2021. Respondent also disputes Complainant’s account of how Respondent received his vaccine. According to Respondent, he received a telephone call on January 13, 2021, informing him that the Middlesex County Fire Academy (Academy) was conducting a “vaccine drive” and any unused vaccines would be destroyed by the end of that same day. Respondent was further informed he could “invite anyone in the vicinity who was interested in a vaccine before the doses would be destroyed.” Consequently, Respondent extended the invitation to everyone he saw that day and, in addition to Respondent, twelve other District employees received a vaccine on that day.

As to a violation of *N.J.S.A.* 18A:12-24(b), Respondent argues that Complainant did not provide any facts to support that Respondent used his position as Superintendent to obtain a vaccine and that his vaccination was “unwarranted.” Respondent maintains that it would be “absurd” for the Commission to find that Respondent “did not deserve to become vaccinated against COVID-19 when he was presented with an opportunity to do so.” Furthermore, Respondent contends that Complainant “makes bald, sweeping, and unsupported claims” that Respondent took advantage of his position as Superintendent to obtain unwarranted privileges for himself. Respondent further contends Complainant did not provide any evidence to support

his allegation that Respondent used or attempted to use his position to secure the vaccine from a public vaccination tent and that he had any obligation to inform the SEA of the availability of the vaccines in violation of *N.J.S.A.* 18A:12-24(b). Respondent asserts Complainant failed to state a claim for this violation.

Regarding a violation of *N.J.S.A.* 18A:12-24(e), Respondent asserts Complainant failed to demonstrate that Respondent “solicited or accepted a COVID-19 vaccine – allegedly as a ‘gift’ and/or ‘other thing of value’ – based on an understanding that the vaccine was given or offered in order to influence him in the discharge of his duties as a school official.” Respondent further asserts that Complainant did not provide any evidence to support that Respondent received the vaccine and the “unidentified offeror of the vaccine had an understanding of any reciprocity or quid pro quo, whereby the receipt of the vaccine would influence [Respondent] in performing his duties as Superintendent.” Respondent argues that although the vaccine was scarce, it was offered to him “along with thousands of other New Jersey residents” in January 2021. Respondent further argues that Complainant failed to demonstrate that Respondent accepted a “gift” of a vaccine and “was influenced to take action, in his capacity as a Superintendent, to benefit the individual(s) or organization(s) who provided him with the vaccine or anyone else, by way of a monetary payment, a contractual relationship, or any other type of benefit.” Respondent reiterates the Complaint does not include any facts to support that Respondent “solicited or accepted a vaccine with any understanding that he would be influenced anyway in the discharge of his duties as Superintendent as a result of the vaccination,” and, therefore, Complainant fails to state any violation of *N.J.S.A.* 18A:12-24(e).

Finally, Respondent asserts the Complaint is frivolous because it “satisfies both prongs of the definition of a frivolous complaint.” Respondent contends Complainant “clearly” filed the Complaint in bad faith, solely for the purpose of harassing and/or causing malicious injury to Respondent “by way of publicizing and attempting (although unsuccessfully) to add credibility and legitimacy [to] the [SEA’s] ongoing criticism of his performance as Superintendent.” Respondent further contends Complainant’s “baseless allegations and fail[ure] to even attempt to rely upon any factual evidence” is considered frivolous and “in bad faith, solely for the purpose of harassing and/or causing malicious injury” to Respondent. Moreover, according to Respondent, Complainant knew or should have known that the Complaint “lacked any reasonable basis in law or equity, and was not supportable by a good faith argument for and extension, modification or reversal of existing law.” Respondent argues that Complainant did not provide any “existing legal precedent, via prior decisions or advisory opinions issued by the Commission or case law from the courts, to support Complainant’s absurd contention that” Respondent obtained the vaccine “in the interest of his [] own health as well as for the public health reasons” in violation of the Act. Therefore, Respondent “respectfully requests that the Commission grant the Motion to Dismiss, find the Complaint to be frivolous and impose an appropriate sanction upon Complainant.

### ***C. Response to Motion to Dismiss and Allegation of Frivolousness***

In response to the Motion to Dismiss and allegation of frivolousness, Complainant maintains that in January 2021, “the only individuals eligible for COVID vaccinations according to the NJ Department of Health were healthcare personnel, long-term care resident[s] and staff,

and first responders.” In addition, “only senior citizens and certain individuals with specific high risk health conditions were eligible to receive COVID vaccines at the Academy at that time. [Respondent] was not a Middlesex County resident.” Complainant asserts that Respondent’s “efforts in March and May 2021 to get District employees vaccinated were only after he was already fully vaccinated and only after the [SEA] had raised concerns about how [Respondent] had gotten vaccinated.” According to Complainant, “There was no reason why [Respondent] could not have begun these vaccination efforts in January 2021. His actions in March and May 2021 do not cure his illegal actions in January 2021.”

Complainant reaffirms that Respondent’s “violation of the Act stemmed from his actions regarding COVID vaccines, his decision to cut in line to receive a vaccine, and his refusal to share this life saving information with his staff.” Complainant further reaffirms the Respondent “acted contrary to his duties and responsibilities under the Act.”

Regarding his allegation that Respondent violated *N.J.S.A. 18A:12-24(b)*, Complainant asserts Respondent “freely admits in his certification,” that on January 13, 2021, while he was “working as” Superintendent he received a telephone call (from the school nurse) informing him of available vaccines. Respondent then “notified a few other people within his physical vicinity and he then went to get the vaccine.” Complainant further asserts this information was not shared with the SEA or the public, and Respondent “was not eligible to schedule an appointment at the Academy.” Complainant maintains the only reason Respondent was able to get the vaccine on January 13, 2021 was because he is the Superintendent, because the State and the County “had strict rules in place” in January 2021 and Respondent did not meet that criteria.

In support of his allegation that Respondent violated *N.J.S.A. 18A:12-24(e)*, Complainant contends that Respondent noted that he was contacted in January 2021 to provide District nurses to assist in administering vaccines at the Academy “as part of the efforts to get a COVID vaccination site at their location.” According to Complainant, District nurses did in fact report to the Academy, and “at least one of [the nurses] notified the District of ‘extra’ vaccines.” Therefore, Complainant argues that “in exchange for [Respondent] sending District nurses to the Academy, he was provided information which enabled him to get a COVID vaccination before almost the entire community at large and well before he would otherwise be able to schedule an appointment.” Respondent claims that “once we have an opportunity to utilize discovery,” there will be more evidence of Respondent’s mention of Complainant’s lack of proving a quid pro quo. Therefore, Complainant asserts “whether it was [Respondent’s] power over the nurses he agreed to send to the Academy or part of the arrangements in sending nurses there, Respondent received a benefit for agreeing to send nurses to the Academy” and he “clearly received a personal benefit [(the vaccine)] in exchange of his exercising his official duties.” Therefore, Complainant contends the Commission must deny Respondent’s Motion to Dismiss.

Finally, Complainant asserts that he filed the Complaint in good faith and has certified to the allegations in the Complaint. Complainant further asserts he has “buttressed the instant Complaint by providing an additional certification from himself, as well as from Victoria Kilpatrick and Ken Veres.” Complainant contends these certifications provide “a link between [Respondent’s] duties toward his employees, his awareness of said responsibilities, and his dereliction of his duties. According to Complainant, Respondent did not “dispute any of the

allegations,” instead he argued that as the “chief administrative officer of the District he apparently has no duty to take even minimal steps to protect his employees’ safety, and that he was allowed to use for priceless personal gain non-public information gleaned only because of his job title.” Complainant asserts Respondent’s Motion to Dismiss and request for sanctions should be denied.

### **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 Respondent violated *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(e)*.

#### **B. Allegations of Prohibited Acts**

In the Complaint, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24(b)*, and *N.J.S.A. 18A:12-24(e)*. These provisions of the Act provide:

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;

e. No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

#### ***Alleged Violation of N.J.S.A. 18A:12-24(b)***

To credit the alleged violation of *N.J.S.A. 18A:12-24(b)*, the Commission must find evidence that Respondent used or attempted to use his official position to secure an unwarranted privilege, advantage or employment for himself, members of his 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 Respondent violated *N.J.S.A. 18A:12-24(b)*. In his Complaint, Complainant has neither claimed nor presented any facts which suggest, let alone prove, that Respondent used his position as the Superintendent to secure a specific and identifiable unwarranted privilege, advantage, or employment for himself or for anyone else. Complainant's allegations that Respondent received information about vaccination availability and inferences therefrom that Respondent was required to inform the SEA do not amount to an unwarranted privilege, advantage or employment for himself, members of his immediately family, or "others." Consequently, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(b)* should be dismissed.

#### ***Alleged Violation of N.J.S.A. 18A:12-24(e)***

To credit the alleged violation of *N.J.S.A. 18A:12-24(e)*, the Commission must find evidence that Respondent, or member of his immediate family, or business organization in which he has an interest, solicited or accepted any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties.

After 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 Respondent violated *N.J.S.A. 18A:12-24(e)*. There are no facts in the Complaint which could possibly support a contention that Respondent, a member of his immediate family, or a business organization in which he has an "interest," solicited or accepted any "thing" of value with the understanding that such "thing" was given or offered to influence him in the performance of his duties as the Superintendent. More specifically, the Complaint fails to demonstrate that Respondent accepted a COVID vaccination with the understanding that the vaccine was given or offered to him as a "thing of value" in order to influence Respondent in the discharge of his duties as Superintendent. Consequently, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(e)* should be dismissed.

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

At its meeting on November 16, 2021, 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 December 14, 2021, 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 **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(e). The Commission also voted to find that the Complaint is not frivolous, and to deny Respondent's request for sanctions.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondent 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

Mailing Date: December 14, 2021

***Resolution Adopting Decision  
in Connection with C28-21***

***Whereas***, at its meeting on November 16, 2021, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and the allegation of frivolous filing, and the response to the Motion to Dismiss and the allegation of frivolous filing submitted in connection with the above-referenced matter; and

***Whereas***, at its meeting on November 16, 2021, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A. 18A:12-24(b)* and/or *N.J.S.A. 18A:12-24(e)*; and

***Whereas***, at a meeting on November 16, 2021, the Commission discussed finding the Complaint not frivolous, and denying Respondent’s request for sanctions; and

***Whereas***, at its meeting on December 14, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 16, 2021; 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 hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on December 14, 2021.

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Salma T. Chand, Executive Director  
School Ethics Commission