

Before the School Ethics Commission
Docket No.: C37-23
Probable Cause Notice

Margaret Bennett,
Complainant

v.

Judith Sullivan,
Ramapo Indian Hills Regional High School District Board of Education, Bergen County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on March 29, 2023, by Margaret Bennett (Complainant), alleging that Judith Sullivan (Respondent), a member of the Ramapo Indian Hills Regional High School District 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:12-24.1(i) (Counts 1 and 2) and *N.J.S.A.* 18A:12-24.1(j) (Count 2) of the Code of Ethics for School Board Members (Code). Respondent filed a Written Statement in two parts on May 9 and May 15, 2023.

The parties were notified by correspondence dated November 20, 2023, that the above-captioned matter would be discussed by the Commission at its meeting on November 28, 2023, in order to make a determination regarding probable cause. Following its discussion on November 28, 2023, the Commission adopted a decision at its meeting on December 19, 2023, finding that there are insufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that the Act was violated as alleged in the Complaint.

II. Summary of the Pleadings

A. *The Complaint*

By way of background, Complainant previously filed another ethics complaint against Respondent (C02-23), alleging that Respondent took private actions and leveraged her position on the board to seek criminal charges against Complainant for witness tampering and harassment. Complainant based the allegations on documents she received in an Open Public Records Act (OPRA) request that she submitted to the Franklin Lakes Prosecutor's Office/Borough of Franklin Lakes (Prosecutor) in September 2022. According to Complainant, while drafting C02-23, she noticed that certain correspondence was not included in the

responsive records, and she therefore filed a second OPRA request with the Prosecutor. Complainant notes that after filing C02-23, she received a response to the second OPRA request on January 5, 2023. Complainant states that the instant Complaint refers only to allegations stemming from the documents acquired in the second OPRA request, and only asserts violations of the Act that were not previously alleged in C02-23.¹

Complainant asserts the emails acquired in the second OPRA request demonstrate that Respondent's interactions with the Prosecutor were in her capacity as a Board member. Complainant states that in one email to the Prosecutor, she identified herself as a Board member and included attachments that she received "in her capacity as a [B]oard member from a senior member of the [D]istrict's technology department." According to Complainant, Respondent told the Prosecutor that videos of Board meetings were shared with Complainant; that this was "evidence of wrongdoing but I do not have the ability to investigate as you may have"; that the "videos are not available to the public"; and that "[t]he public does not even know we have been emailing them internally." Complainant asserts that Respondent stated that the Business Administrator directs the technology staff member to produce bimonthly copies of the videos to Complainant, without Complainant filing an OPRA request, "in order to avoid harassment by [Complainant.]"

In Count 1, Complainant asserts that Respondent used her position as a Board member when she emailed the Prosecutor on November 12, 2021, seeking assistance with investigating alleged wrongdoing pertaining to the sharing of video records of Board meetings with Complainant despite Complainant's OPRA request. Complainant maintains that videos pertaining to Board meetings are a matter of public record. However, according to Complainant, Respondent created a "false narrative" to the Prosecutor that the videos were provided "through nefarious actions" by the Business Administrator and technology staff member. Complainant contends Respondent did not follow the chain of command and go to the Superintendent because she knew proper OPRA requests were filed. Instead, Complainant argues Respondent took independent action, while representing herself as a Board member, when she sought the assistance of the Prosecutor, which "gives more weight to the false accusations she makes about District staff and administrators." Additionally, Complainant contends Respondent's false assertions and requests that the Prosecutor investigate the District's OPRA process both undermined and harmed district employees, namely the Business Administrator and a member of the technology staff, as Respondent knew that the District's employees did not violate any OPRA provision when they provided links to the Board's video recordings via email. As such, Complainant maintains that Respondent "WILLFULLY AND KNOWINGLY" gave false information to the Prosecutor, which could cause harm to the District, in violation of N.J.S.A. 18A:12-24.1(i).

In Count 2, Complainant argues that Respondent "acted on and attempted to resolve her own unfounded" complaints regarding the fulfilling of OPRA requests prior to referring her

¹ The Commission granted the motion to dismiss C02-23 on May 23, 2023, finding Complainant failed to plead sufficient credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), and/or *N.J.S.A.* 18A:12-24.1(g). An appeal of that decision is pending in the Appellate Division.

concerns to the Superintendent. Complainant asserts Respondent explicitly used her status as a Board member to request assistance from the Prosecutor, thus ignoring the chain of command, in violation of *N.J.S.A.* 18A:12-24.1(j). Complainant further asserts that Respondent was so determined to achieve her goal of getting criminal charges filed against Complainant that she was “blinded to reality and willingly abandoned her obligation to protect school personnel in the proper performance of their duties and refer all complaints to the Superintendent” in violation of *N.J.S.A.* 18A:12-24.1(i).

B. *Written Statement*

Respondent initially argues that the Complaint must be dismissed as being filed out of time. Respondent argues that the Complaint was not filed within the 180-day period prescribed by *N.J.A.C.* 6A:28-6.5(a). Respondent asserts that all facts alleged by Complainant took place in 2021. Respondent contends that while Complainant characterizes the “date of occurrence” as January 5, 2023, the date she received a response to her second OPRA request, Complainant “cannot hide behind the fact that she did not have these documents from the prosecutor” in order to file the instant Complaint, while also alleging that the claims are based on the same underlying fact pattern as C02-23.

As a second procedural matter, Respondent argues that Complainant’s certification is inaccurate as it states the subject matter is not pending in any court of law or administrative agency. Respondent asserts that the subject matter is the same as C02-23, previously filed by Complainant against Respondent.

As to the merits, Respondent argues that reporting a potential crime to the Prosecutor cannot be a violation of *N.J.S.A.* 18A:12-24.1(i) as a crime cannot be part of the proper performance of school personnel’s duties. Respondent alleges she reported the *improper* function of district personnel, namely the improper response to OPRA requests and sharing of District records. According to Respondent, “reporting the manner in which Complainant received the information she used to allegedly tamper and intimidate Respondent does not undermine the Business Administrator.”

Respondent further asserts that reporting the improper functions of district personnel to the prosecutor did not violate *N.J.S.A.* 18A:12-24.1(j) as it was intertwined with the allegations of witness tampering and intimidation. According to Respondent, such matters, even if they involve OPRA requests, are not handled at the Board level. While Respondent has a duty to report matters to the chief administrative officer and only act after the failure of an administrative solution, Respondent maintains there is no administrative solution to the commission of a crime (witness tampering).

III. Analysis

A. *Standard for Probable Cause*

This matter is before the Commission for a determination of probable cause pursuant to *N.J.A.C.* 6A:28-9.7. A finding of probable cause is not an adjudication on the merits but, rather,

an initial review whereupon the Commission makes a preliminary determination as to 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:28-9.7(a), probable cause “shall be found when the facts and circumstances presented in the complaint and written statement would lead a reasonable person to believe that the Act has been violated.”

B. *Jurisdiction of the Commission*

In reviewing the allegations in this matter, the Commission notes that its authority is limited to enforcing the Act, *N.J.S.A.* 18A:12-21 *et seq.*, a set of minimum ethical standards by which all school officials must abide. In this regard, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C.* 6A:28-1.4(a).

With the jurisdiction of the Commission in mind, to the extent that either party seeks a determination from the Commission that the other may have violated a State or municipal criminal law, any other State or municipal law (criminal, civil, or otherwise), and/or OPRA, the Commission advises that such determinations fall well beyond the scope, authority, and jurisdiction of the Commission. Although Complainant and/or Respondent may be able to pursue a cause of action in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those issues. Consequently, those claims are dismissed.

C. *Alleged Untimeliness*

Respondent submits that the allegations in the Complaint stem from actions that took place in 2021, and were already part of another ethics complaint, and should therefore be dismissed as time-barred. Complainant argues that the Complaint is timely because it refers only to information that she learned through documents she received in an OPRA request on January 5, 2023, and that she is alleging different violations of the Act than were raised in C02-23.

The Commission’s regulations provide a one hundred eighty (180) day limitation period for filing a complaint. More specifically, *N.J.A.C.* 6A:28-6.5(a) provides, in relevant part:

- (a) 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*** (emphasis added).

The Commission recognizes that limitation periods of this type 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 complainant(s). In addressing potential violations of the 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 the Commission 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).

The Commissioner notes that when Complainant received the response to her first OPRA request on September 25, 2022, she first learned of the events at issue, namely the communications between Respondent and the Prosecutor, which led to the filing of C02-23. Thereafter, on January 5, 2023 (the same day she filed C02-23), Complainant received the response to her second OPRA request, and then filed the instant Complaint, solely addressing the new documents and alleging different violations of the Act, on March 29, 2023. From the date that Respondent first learned of the events, September 25, 2022, the 180-day limitations period would make the filing deadline March 25, 2023, four days before Complainant filed the present Complaint.

After review, the Commission finds that, due the circumstances in this matter, including Complainant's indication that this Complaint stems solely from the information she learned on January 5, 2023, when she received the response to her second OPRA request, the regulatory time period for filing a complaint should be relaxed in this matter pursuant to *N.J.A.C. 6A:28-1.8*, and that strict adherence thereto is not, based on the facts and circumstances as pled, required. Consequently, the Commission finds that the allegations in the Complaint were timely filed.

D. *Alleged Violations of the Act*

Complainant submits that Respondent violated *N.J.S.A. 18A:12-24.1(i)* and *N.J.S.A. 18A:12-24.1(j)*, and these provisions of the Code provide:

- i. I will support and protect school personnel in proper performance of their duties.
- j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

N.J.S.A. 18A:12-24.1(i)

Pursuant to *N.J.A.C. 6A:28-6.4(a)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(i)* shall include evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

In Counts 1 and 2, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(i)* by representing herself as a Board member when she willfully and knowingly gave false information to the Prosecutor, which undermined and harmed the Business Administrator and technology staff member, as it falsely claimed they were acting in violation of OPRA.

Respondent counters that reporting the manner in which Complainant received the information she used to allegedly tamper and intimidate Respondent does not undermine the Business Administrator or technology staff member.

After review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(i) was violated. Complainant has not demonstrated that Respondent's actions "*resulted in* undermining, opposing, compromising or harming school personnel in the proper performance of their duties." There is insufficient evidence that the Business Administrator or technology staff member suffered any harm, such as an adverse employment action, reprimand, or other penalty, nor evidence that they were undermined or otherwise prevented from performing their job activities as a result of Respondent contacting a Prosecutor regarding concerns about witness tampering and intimidation. Accordingly, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the purported violation of *N.J.S.A.* 18A:12-24.1(i) in Counts 1 and 2.

N.J.S.A. 18A:12-24.1(j)

Pursuant to *N.J.A.C.* 6A:28-6.4(a), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(j) shall include evidence that Respondent acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint (i) prior to referral to the chief administrative officer, or (ii) at a time or place other than a public meeting and prior to the failure of an administrative solution.

In Count 2, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(j), when she "acted on and attempted to resolve her own unfounded" complaints regarding the fulfilling of OPRA requests prior to referring her concerns to the Superintendent, thus ignoring the chain of command. Respondent counters that the issues involving OPRA are intertwined in allegations of witness tampering and intimidation, and therefore, would not be handled at the Board level, as there is no administrative solution to the commission of a crime.

Following its assessment, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(j) was violated. When a board member or member of school personnel believes that a crime has occurred, they have the authority and obligation to take that matter to the police or other authorities, just as any member of the public would. The Act does not require a school official or employee to follow a chain of command when the concern involves potentially criminal behavior. *N.J.S.A.* 18A:12-24.1(j) requires board members to refer matters to the chief school administrator prior to attempting to "resolve a complaint" or "conduct[ing] an investigation or inquiry related to a complaint." In this matter, Respondent did not attempt to resolve a complaint; rather, Respondent contacted the Prosecutor as a private citizen regarding concerns with a matter in which Complainant was allegedly involved with witness tampering and harassment, and in connection with that matter, information related to Complainant's alleged improper filing of OPRA requests was discussed. The initial matters of witness tampering and harassment were criminal, and therefore, Respondent was not required to report them to the chief school administrator. The fact that the alleged inappropriate OPRA filing

was divulged during the witness tampering and harassment allegations is of no consequence, because the alleged inappropriate OPRA filing is secondary to the witness tampering and harassment claim. Therefore, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violation of *N.J.S.A. 18A:12-24.1(j)*.

IV. Decision

In accordance with *N.J.S.A. 18A:12-29(b)*, and for the reasons detailed herein, the Commission hereby notifies Complainant and Respondent that there are insufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that the Act was violated as averred in the Complaint and, consequently, dismisses the above-captioned matter. *N.J.A.C. 6A:28-9.7(b)*.

The within 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

Mailing Date: December 19, 2023

***Resolution Adopting Decision
in Connection with C37-23***

Whereas, at its meeting on November 28, 2023, the School Ethics Commission (Commission) considered the Complaint and Written Statement submitted in connection with the above-referenced matter; and

Whereas, at its meeting on November 28, 2023, the Commission discussed finding that the facts and circumstances presented in the Complaint and Written Statement would not lead a reasonable person to believe that the Act was violated and, therefore, dismissing the above-captioned matter; and

Whereas, at its meeting on December 19, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 28, 2023; 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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on December 19, 2023.

Brigid C. Martens, Director
School Ethics Commission