

***Before the School Ethics Commission
Docket Nos.: C04-24 and C05-24 (Consolidated)
Decision on Probable Cause***

**Ade Kelly and Sakinah Ahmad,
Complainants**

v.

**Hasani Council,
Newark Board of Education, Essex County,
Respondent**

I. Procedural History

The above-captioned matter arises from two separate but related Complaints that were filed with the School Ethics Commission (Commission) on January 18, 2024, by Ade Kelly (C04-24) and Sakinah Ahmad (C05-24) (Complainants), alleging that Hasani Council (Respondent), Board President of the Newark Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* More specifically, the consolidated Complaints aver that Respondent violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(c)* and *N.J.S.A. 18A:12-24.1(e)* of the Code of Ethics for School Board Members (Code).

On February 8, 2024 (C05-24), and March 15, 2024 (C04-24), Respondent filed separate Written Statements, and also alleged that the Complaints are frivolous. Complainants did not file responses to the allegations of frivolous filing, despite the Commission sending warning letters advising them of their obligation to do so.

By correspondence dated August 16, 2024, the parties were advised that, pursuant to its authority as set forth in *N.J.A.C. 6A:28-6.6*, the Commission determined to consolidate the matters docketed as C04-24 and C05-24. The Commission's decision to consolidate the above-referenced Complaints was based on a review of (1) the identity of the parties in each of the matters; (2) the nature of all questions of fact and law respectively involved; (3) the advisability generally of disposing of all aspects of a controversy in a single proceeding; and (4) other matters appropriate to a prompt and fair resolution of the issues. More specifically, because both matters name the same Respondent, who is represented by the same attorney, and each Complaint alleges that the same general conduct/action forms the basis for the alleged violations of the School Ethics Act, *N.J.S.A. 18A:12-22 et seq.*, the Commission determined that, in the interest of efficiency, it can resolve both Complaints in one consolidated matter.

Following consolidation, the parties were notified by correspondence dated August 20, 2024, that the above-captioned consolidated matter would be discussed by the Commission at its meeting on August 27, 2024, in order to make a determination regarding probable cause and the allegations of frivolous filing. Following its discussion on August 27, 2024, the Commission adopted a decision at its

meeting on September 24, 2024, finding that there are insufficient facts and circumstances pled in the Complaints and in the Written Statements to lead a reasonable person to believe that the Act was violated as alleged in the Complaints. The Commission also adopted a decision finding the Complaints not frivolous, and denying Respondents' requests for sanctions.

II. Summary of the Pleadings

A. *The Consolidated Complaints*

Complainants maintain that on October 30, 2023, Thomas Luna was unanimously approved by the Board to fill a vacancy on the Board. According to Complainants, at the next Board meeting on November 21, 2023, Mr. Luna was "denied the oath of office." During that same meeting, Respondent stated the following:

Documents gathered in response to an [Open Public Records Act (OPRA)] request submitted since last month's [Board] meeting indicated facts which led to [a] review of advisory opinions of the [Commission] regarding the "Prohibited Acts" provisions of the [Act]. The Commission's published advisory opinions indicate that employment or service for other entities while serving as a member of a board of education creates an impermissible conflict[] of interest.

Complainants further maintain at the next Board meeting on December 19, 2023, Mr. Luna was not placed on the agenda, and was once again denied the oath of office. Per Complainants, Board policy indicates that the Board President is responsible for placing items on the agenda for the Board to consider, and therefore, Respondent has violated the Act because he did not place Mr. Luna on the agenda.

With the above in mind, Complainants asserts Respondent violated *N.J.S.A. 18A:12-24.1(a)*, because the Board has authority to fill a vacancy, but the statute does not permit the Board to deny the oath of office to anyone who has been elected/appointed to the Board. As such, Complainants argue Respondent failed to uphold the law, namely *N.J.S.A. 18A:12-15*, which states that the Board, including the Board President, has the authority to select a replacement member in the event of a vacancy.

Complainants further assert Respondent violated *N.J.S.A. 18A:12-24.1(c)*, because he has "gone beyond the actions of policy making," has taken away the State's power to investigate perceived conflicts of interest and he has taken unilateral action on his own investigation. According to Complainants, not only has Respondent adjudicated Mr. Luna's perceived conflict of interest, but he has also made a ruling on this matter, in this case barring Mr. Luna from being placed on the agenda to be sworn in, which is a power only granted to the Commissioner of Education.

Finally, Complainants also assert Respondent violated *N.J.S.A. 18A:12-24.1(e)*, because he took "private action, action not condoned or voted on by the entire [Board], which may compromise the [Board]." Further, Respondent's choice not to place Mr. Luna on the agenda is not compliant with statute, as only the Commission has jurisdiction over the School Ethics Act, and the regulations do not

allow for local or internal adjudication of ethics disputes. As such, Complainants contend that Respondent has compromised the Board.

B. *Written Statements and Allegations of Frivolous Filing*

Respondent initially argues that Complainants failed to allege facts sufficient to establish a violation of the provisions cited in the Complaint. Respondent further argues that Complainants allege a violation of a statute, *N.J.S.A. 18A:12-15*, over which the Commission does not have jurisdiction, and even if the allegations in the Complaints were true, they would not lead a reasonable person to believe that the Act was violated.

As to a violation of *N.J.S.A. 18A:12-24.1(a)*, Respondent admits that Mr. Luna was not placed on the subject agenda but argues that he is not responsible for the agenda. He further argues that Complainant has not provided the required court orders to sustain a violation of *N.J.S.A. 18A:12-24.1(a)*.

Regarding a violation of *N.J.S.A. 18A:12-24.1(c)*, Respondent denies that he failed to place Mr. Luna on the agenda, and further denies that he went beyond the actions of policy making, that he has adjudicated Mr. Luna's perceived conflict of interest, or that he has made a ruling on the matter.

As to a violation of *N.J.S.A. 18A:12-24.1(e)*, Respondent admits that his rationale for not placing Mr. Luna on the agenda involved the Commission's rulings; however, he denies that any action alleged in the Complaint was private action, denies that he has taken any action that was not condoned or voted by the Board, and denies that he has taken any action that would compromise the Board or did not comply with statute.

Finally, Respondent asserts the Complaints are frivolous. According to Respondent, after Mr. Luna was selected to fill a vacancy, but before being sworn in, the Board became aware that Mr. Luna was employed by a charter school in the same district as the Board, and therefore, was conflicted from being sworn in. Nevertheless, numerous individuals "sought to persuade the Board to seat Mr. Luna despite the potential conflict of interest," and many supporters of the charter schools "sought to exert pressure on [Respondent] to assert his influence as Board President to have the [B]oard seat Mr. Luna." Respondent maintains that these Complaints were pressure tactics as Complainants are connected to the charter school and did not file the Complaints for any legitimate purpose, but rather to pressure Respondent and secure the appointment of Mr. Luna to the Board. According to Respondent, Complainants knew or should have known that Respondent's actions were in connection with filling the vacancy and that the Complaints were without any reasonable merit. Further, Respondent asserts Complainants were "improperly motivated by [their] malicious desire to harass and intimidate [Respondent] in an effort to persuade him (and, by extension, the [Board]) to appoint Complainant's preferred candidate to the Board . . . despite the Board's determination not to do so."

Despite notices sent by the Commission, Complainants did not file responses to the allegations of frivolous filing.

III. Analysis

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.”

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 Complainants seek a determination from the Commission that Mr. Luna was permitted to serve as a Board member, or that Respondent’s conduct/actions may have violated State law, specifically, *N.J.S.A.* 18A:12-15, and/or any Board policies, the Commission advises that such determinations fall beyond the scope, authority, and jurisdiction of the Commission. Although Complainants may be able to pursue a cause of action(s) in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those claims. Accordingly, those claims are dismissed.

Alleged Violations of the Act

Complainants submit that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), and *N.J.S.A.* 18A:12-24.1(e). These provisions of the Code provide:

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.
- c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.
- e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

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

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(a)* shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures.

After review, the Commission finds that there are insufficient facts and circumstances presented in the Complaints and the Written Statements to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(a)* was violated. Despite being required by *N.J.A.C. 6A:28-6.4(a)(1)*, the Commission finds that Complainants have not provided a copy of a final decision from any court of law or other administrative agency demonstrating or specifically finding that Respondent violated a specific law, rule, or regulation of the State Board of Education and/or court orders pertaining to schools, or that he brought about changes through illegal or unethical procedures, when he engaged in any of the acts/conduct set forth in the consolidated Complaint. Without the required final decision, a violation of *N.J.S.A. 18A:12-24.1(a)* cannot be supported. Consequently, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violation(s) of *N.J.S.A. 18A:12-24.1(a)*.

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

In accordance with *N.J.A.C. 6A:28-6.4(a)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(c)* shall include evidence that Respondent took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondent's duty to (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy.

Following its assessment, the Commission finds that there are insufficient facts and circumstances presented in the Complaints and the Written Statements to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(c)* was violated. The Commission finds that it is within Respondent's prerogative as Board President to determine which matters should appear on an agenda, and any disagreement on that topic is a matter of Board governance. Additionally, Respondent's alleged failure to place Mr. Luna on the agenda was due to concerns regarding his ability to serve as a Board member while simultaneously working at a charter school in the same District as the Board. However, Respondent's hesitancy to swear in a Board member who may not be eligible to serve until such concerns could be addressed does not amount to Board action to effectuate policies and plans without consulting those affected, or action unrelated to Respondent's duty as a Board member. Therefore, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violation(s) of *N.J.S.A. 18A:12-24.1(c)*.

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

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(e)* shall include evidence that Respondent made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the board.

Based on its review, the Commission finds that there are insufficient facts and circumstances presented in the Complaints and the Written Statements to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(e) was violated. Respondent's alleged failure to place Mr. Luna onto an agenda to be sworn in was not beyond the scope of his duties as it was within his role as Board President. Additionally, Complainant has failed to demonstrate how Respondent's alleged actions had the potential to compromise the Board. Accordingly, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violation(s) of *N.J.S.A.* 18A:12-24.1(e).

IV. Request for Sanctions

At its meeting on August 27, 2024, the Commission considered Respondent's requests that the Commission find the Complaints 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 Complainants filed the Complaints in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainants knew or should have known that the Complaints were without any reasonable basis in law or equity, or that they 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 September 24, 2024, the Commission adopted a decision finding the Complaints not frivolous, and denying the requests for sanctions.

V. Decision

In accordance with *N.J.S.A.* 18A:12-29(b), and for the reasons detailed herein, the Commission hereby notifies Complainants and Respondent that there are insufficient facts and circumstances pled in the Complaints and in the Written Statements to lead a reasonable person to believe that the Act was violated as alleged in the Complaints and, consequently, dismisses the above-captioned consolidated matter. *N.J.A.C.* 6A:28-9.7(b). The Commission further advises the parties that, following its review, it voted to find that the Complaints are not frivolous, and to deny Respondent's requests for sanctions.

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). Under *New Jersey Court Rule* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

Robert W. Bender, Chairperson

Mailing Date: September 24, 2024

***Resolution Adopting Decision
in Connection with C04-24 and C05-24 (Consolidated)***

Whereas, at its meeting on August 27, 2024, the School Ethics Commission (Commission) considered the Complaints and the Written Statements and allegations of frivolous filing submitted in connection with the above-referenced matter; and

Whereas, at its meeting on August 27, 2024, the Commission discussed finding that the facts and circumstances presented in the Complaints and the Written Statements would not lead a reasonable person to believe that the Act was violated and, therefore, dismissing the above-captioned consolidated matter; and

Whereas, at its meeting on August 27, 2024, the Commission discussed finding the Complaints not frivolous, and denying the requests for sanctions; and

Whereas, at its meeting on September 24, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on August 27, 2024; 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 September 24, 2024.

Brigid C. Martens, Director
School Ethics Commission