

***Before the School Ethics Commission***  
***Docket No.: C06-24***  
***Decision on Probable Cause***

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**Cara Gagliano Costa,**  
***Complainant***

**v.**

**Josephine Garcia,**  
**Newark Board of Education, Essex County,**  
***Respondent***

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**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on January 23, 2024, by Cara Gagliano Costa (Complainant), alleging that Josephine Garcia (Respondent), a member 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 Complaint avers that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(c)* of the Code of Ethics for School Board Members (Code).

On February 16, 2024, Respondent filed a Written Statement, and also alleged that the Complaint is frivolous. On April 8, 2024, Complainant filed a response to the allegation of frivolous filing.

The parties were notified by correspondence dated August 20, 2024, that the above-captioned 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 allegation 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 Complaint and in the Written Statement to lead a reasonable person to believe that the Act was violated as alleged in the Complaint. The Commission also adopted a decision finding the Complaint not frivolous, and denying Respondent's request for sanctions.

**II. Summary of the Pleadings**

**A. *The Complaint***

By way of background, Complainant maintains that on October 30, 2023, Thomas Luna was unanimously approved by the Board to fill a vacancy on the Board, in accordance with *N.J.S.A. 18A:12-15* and Board policy 9120. According to Complainant, at the next Board meeting on November 21, 2023, Mr. Luna "was denied the oath of office." Complainant further

maintains that at the Board meeting in December 2023, Board member Frison made a “motion to amend the agenda to swear in” Mr. Luna, and Respondent voted “No.”

With the above in mind, Complainant notes that although Board members are “perfectly [within] their right” not to amend an agenda item, “refusing to swear in an appointed member of the [B]oard is not a power granted by statute to any [B]oard member,” and therefore, Respondent violated *N.J.S.A. 18A:12-24.1(a)*, because by failing to place Mr. Luna on the agenda, Respondent failed to uphold laws, rules and regulations of the State Board of Education. According to Complainant, the Board is not allowed to choose whether to swear in a selected individual and Respondent did not uphold the law. Complainant contends that Respondent also violated *N.J.S.A. 18A:12-24.1(c)*, because Respondent “has gone beyond the actions of policy making, planning and appraisal” when she voted against placing Mr. Luna on the agenda.

#### **B. *Written Statement and Allegation of Frivolous Filing***

Respondent denies that she refused to swear in an appointed Board member, denies that she failed to place Mr. Luna on the agenda, denies that she “chose” not to swear in an individual, denies that she did not uphold the law, rules and regulations of the State Board, and therefore, denies that she violated *N.J.S.A. 18A:12-24.1(a)*. Respondent further denies that she has “gone beyond the actions of policy making, planning and appraisal,” denies that she committed “any ‘overstep,’” and therefore, denies that she violated *N.J.S.A. 18A:12-24.1(c)*.

Furthermore, Respondent asserts the Complaint is frivolous. According to Respondent, after Mr. Luna was selected to fill a vacancy, but before being sworn in, it came to the Board’s attention that Mr. Luna was employed by a charter school in the same district as the Board, and therefore, was conflicted from being sworn in. Despite this, “many known as supporters” of the charter school sought to exert pressure on Respondent to vote in favor of seating Mr. Luna. Respondent argues as an individual Board member, she does not have the “power or authority” to enforce or comply with the provisions related to filling a vacancy. Respondent further argues that Complainant knew or should have known that the allegations in the Complaint are false, the Complaint was filed in bad faith to harass, delay or cause injury to Respondent, and was motivated by Complainant’s desire to harass and intimidate Respondent in an effort to persuade her, and the Board, to appoint Complainant’s desired candidate.

#### **C. *Response to Allegation of Frivolous Filing*<sup>1</sup>**

Complainant notes she disagrees with Respondent’s assertions, and further notes the Complaint was filed “the day the [B]oard voted on a replacement for Mr. Luna” and any claims that the Complaint was used “for harassment” are not supported. Complainant argues that any claims that she filed the Complaint to “persuade” Respondent to comply with her demands “is bogus” because Respondent was “made aware of this complaint . . . after the vote was taken.”

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<sup>1</sup> Complainant responded to the “Background information” and the “Statement of Facts”; however, those responses are impermissible, and therefore, only the response to the frivolous allegation was considered.

### **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 Complainant seeks 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 Complainant 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***

Complainant further submits that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(c)*, and 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.

#### ***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 Complaint and the Written Statement 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 Complainant has 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 she brought about changes through illegal or unethical procedures, when she engaged in any of the acts/conduct set forth in the 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 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.

Based on its review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(c) was violated. Board members are permitted to vote in accordance with their beliefs, and as such, it is within Respondent's prerogative to vote against amending a meeting agenda, including one regarding swearing in a Board member who may not be eligible to serve. Accordingly, by voting "No," Respondent did not take Board action to effectuate policies and plans without consulting those affected, or take 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 of *N.J.S.A.* 18A:12-24.1(c).

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

At its meeting on August 27, 2024, 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

September 24, 2024, the Commission adopted a decision finding the Complaint not frivolous, and denying the request 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 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 alleged in the Complaint and, consequently, dismisses the above-captioned 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 Complaint is not frivolous, and to deny Respondent's request 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.

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Robert W. Bender, Chairperson

Mailing Date: September 24, 2024

***Resolution Adopting Decision  
in Connection with C06-24***

***Whereas***, at its meeting on August 27, 2024, the School Ethics Commission (Commission) considered the Complaint, the Written Statement and allegation of frivolous filing, and the response to the allegation 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 Complaint and the 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 August 27, 2024, the Commission discussed finding the Complaint not frivolous, and denying the request 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.

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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 September 24, 2024.

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Brigid C. Martens, Director  
School Ethics Commission