

Before the School Ethics Commission
Docket No.: C08-24
Decision on Probable Cause

Melissa McCooley,
Complainant

v.

Howard Berry, Christine Snyder, Laura Erber and Abby Martin,
Little Egg Harbor Board of Education, Ocean County,
Respondents

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on January 31, 2024, by Melissa McCooley (Complainant), alleging that Howard Berry (Respondent Berry), Christine Snyder (Respondent Snyder), Laura Erber (Respondent Erber) and Abby Martin (Respondent Martin) (collectively, Respondents), members of the Little Egg Harbor 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 Respondents violated *N.J.S.A.* 18A:12-24.1(b) of the Code of Ethics for School Board Members (Code) in Count 1, and Respondent Erber violated *N.J.S.A.* 18A:12-24.1(e) of the Code in Count 2.

On February 20, 2024, Respondents filed a Written Statement, and also alleged that the Complaint is frivolous. On March 8, 2024, Complainant filed a response to the allegation of frivolous filing.

The parties were notified by correspondence dated July 16, 2024, that the above-captioned matter would be discussed by the Commission at its meeting on July 23, 2024, in order to make a determination regarding probable cause and the allegation of frivolous filing. Following its discussion on July 23, 2024, the Commission adopted a decision at its meeting on August 27, 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 Respondents' request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

By way of background, Complainant states that she previously served as the shared Superintendent for the Little Egg Harbor School District (LEH) and the Pinelands Regional

School District (PRSD), and due to “continued harassment, micromanagement, unethical behavior of the board, and not being able to effectively perform [her] job duties, [she] made the decision to resign from [LEH].” Thereafter, Complainant accepted a full-time contract with the PRSD.

Complainant maintains that on January 16, 2024, the LEH Board “held an open discussion in which they intentionally misled the public for the sole purpose of discrediting the [PRSD Board] and the Superintendent.” More specifically, the discussion involved the sixth-grade promotion ceremony, which is held each year at the PRSD high school. According to Complainant, for the past three years, LEH has shared the cost with PRSD for a ramp and the chair rental to accommodate the needs of individuals who attend graduation. At the meeting, the LEH Board, the Business Administrator and the Superintendent “painted a picture, in public, that the [PRSD Board] and [Complainant] intentionally passed a policy in August[] 2023 for the mere purpose of charging them for the use of [their] facilities.” Complainant notes that the policy in question, Policy 7510, has “been in place since 1980 and is often revised to update costs.” Complainant states that the LEH Board stated that “they paid zero in the past for their [p]romotion [c]eremony,” which Complainant notes is a “blatant lie.” Complainant further states the LEH Board “accused the [PRSD Board] and [Complainant] of hurting their students and families.”

With the above in mind and in Count 1, Complainant asserts that Respondents violated *N.J.S.A.* 18A:12-24.1(b) because they created a “false narrative, mis[led] the public, and den[ied] the students and families an opportunity that has been provided the past three years.”

In Count 2, Complainant contends that at the PRSD Board meeting, Respondent Erber made a statement regarding the promotion ceremony and the facilities use fee, and noted, “I am here as a community member[,] not as a member of the LEH Board,” and “I don’t think [the facilities use fee] has been charged before.” Complainant further contends Respondent Erber “was speaking on behalf of the [LEH Board] while voicing her concern about a facilities use charge that [] LEH[] would have to pay.” According to Complainant, Respondent Erber’s “knowledge of this situation was as a [LEH Board] member, not as a member of the community,” and therefore, Respondent Erber violated *N.J.S.A.* 18A:12-24.1(e) because she “took private action that could compromise the [LEH Board].”

B. *Written Statement and Allegation of Frivolous Filing*

Respondents initially argue that the Complaint is “meritless and unquestionably in retaliation for [R]espondents filing a meritorious complaint with the [Commission] against Complainant.” Respondents further argue it is frivolous because Complainant has not set forth a “good faith factual basis for either allegation” in the Complaint.

As to Count 1, Respondents maintain that there was a Board discussion at the January 16, 2024, Board meeting, “as to whether or not [the PRSD] facilities used in previous years should be used for an upcoming [sixth-]grade promotion ceremony if there is a requirement to pay for the use of the facility.” According to Respondents, based on the transcript, the current LEH Interim Superintendent, “reported to the Board that she did not believe that [LEH] was required

to pay the facility use in the past, but it appeared that the Board would have to pay this year based on a revise[d] [PRSD] policy.” Consequently, the LEH Board “had a brief discussion about the fee and the promotion ceremony,” during which, Respondent Erber stated that it is, “unfortunate for the kids.” Respondents maintain that Respondent Martin also commented that they would make the ceremony special despite the situation, Respondent Berry inquired about the amount of the fee, and Respondent Snyder “d[id] not appear to respond at all.” Respondents assert this was an “appropriate and necessary Board discussion” and not a violation of *N.J.S.A. 18A:12-24.1(b)*. Respondents further assert that Complainant was not at the meeting, and therefore, “she did not witness the discussion,” nor has she provided any evidence to show that she “even reviewed the video of the meeting.” Per Respondents, Complainant has also not provided any evidence to support that Respondents “provided incorrect information to the Board regarding the past use of facilities charges” nor that the statements are inaccurate. Respondents maintain this was a basic misunderstanding because generally fees for sending districts are waived. Finally, Respondents note that Complainant could have contacted Respondents at any time to “correct any purported misunderstanding,” but instead she “decided to file this retaliatory and frivolous complaint.”

Regarding Count 2, Respondents contend that Complainant did not “identify a single statement made by [Respondent] Erber at the PRSD Board meeting which compromises the [LEH Board], makes a personal promise, or refuses to recognize its authority.” Respondents further contend that the alleged statements, “the facilities use fee is the issue” and “I don’t think that has been charged before,” “are *entirely consistent*” with the deliberations of the LEH Board. Complainant has not alleged that Respondent Erber “made a single statement contravening the official position of the [LEH] Board on moving forward with [the] sixth grade promotion ceremonies [or] compromising the board’s ability to conduct further deliberations regarding the same.” Respondents argue the Complaint does not contain an allegation that when Respondent Erber “identified herself as a member of the [LEH] Board, represented that she was present as a member of the community and not speaking on behalf of the Board, [and] then proceeded to make statements about an issue before the board about which she had an opinion” that she “misrepresented the [LEH’s] position on the matter” or violated *N.J.S.A. 18A:12-24.1(e)*.

Finally, Respondents argue Complainant “knowingly” filed this frivolous Complaint in “retaliation for” an appropriate complaint filed against her, and therefore, seek sanctions against Complainant.

C. Response to Allegation of Frivolous Filing

Complainant asserts she “meticulously gathered and presented factual evidence to support [her] claims,” and the “evidence was not only based on personal observations but also substantiated by documented occurrences and transcripts of relevant interactions.” Therefore, Complainant “stand[s] by her assertion that her Complaint is rooted in verifiable facts rather than mere conjecture or speculation.” Complainant further asserts she provided “a verbatim transcript of a portion of the [LEH] Board meeting” and copies of invoices and email exchanges, all of which support her allegations. Finally, Complainant maintains her Complaint is not retaliatory, but rather “a necessary course of action to address multiple ethics violations,” and the ethics complaint against her is a “separate matter.”

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.”

Alleged Violations of the Act

Complainant further submits that, based on the conduct more fully detailed above, Respondents violated *N.J.S.A.* 18A:12-24.1(b) and Respondent Erber violated *N.J.S.A.* 18A:12-24.1(e). These provisions of the Code provide:

b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

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.

Count 1

In Count 1, Complainant asserts that Respondents violated *N.J.S.A.* 18A:12-24.1(b) because they created a false narrative and misled the public when they discussed the costs of holding the sixth-grade promotion ceremony at PRSD and indicated that they had not paid those costs in the past. Respondents counter that they simply inquired as to the cost and stated that it was “unfortunate for the kids,” which was part of an “appropriate and necessary Board discussion.”

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(b) shall include evidence that Respondents willfully made a decision contrary to the educational welfare of children, or evidence that Respondents took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

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(b) was violated. Making statements or asking questions at a Board meeting, during a discussion, regarding the cost of a promotion ceremony does not amount to a violation of the Code. Indeed, Board members are permitted to deliberate on matters

at issue at Board meetings. In this circumstance, even if Complainant's contention is true that the premise of the discussion was misleading because LEH had split costs for the promotion in the past, Respondents' participation in that discussion is not a decision contrary to the educational welfare of children or a deliberate action to obstruct the programs and policies designed to meet the individual needs of all children. Accordingly, 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(b)*.

Count 2

In Count 2, Complainant contends that Respondent Erber violated *N.J.S.A. 18A:12-24.1(e)* because she attended a meeting of the PRSD Board and, although she said she was attending as a community member when she expressed that she did not think the facilities use fee has been charged before, she was speaking on behalf of the LEH Board, using knowledge that she would not have known as a member of the community. Respondents counter that Respondent Erber did not identify herself as a member of the Board when she expressed her opinion, and her statement was entirely consistent with the deliberations of the Board.

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 Erber made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the board.

Following its assessment 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(e)* was violated. Respondent Erber indicated that she was commenting at the PRSD Board meeting as a member of the public. Despite Complainant's assertion that Respondent Erber spoke as a Board member because she used knowledge that she only knew by virtue of her Board membership, the Commission notes that the LEH Board meeting in which the same topic was discussed was open to the public, and therefore, any member of the public would have the same information or understanding of the issue. Further, Complainant has not demonstrated how Respondent Erber's comment at the Board meeting, simply that "the facilities use fee is the issue" and "I don't think that has been charged before," has the potential to compromise the Board. 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(e)*.

IV. Request for Sanctions

At its meeting on July 23, 2024, 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 August

27, 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 Respondents 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 Respondents' 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.

Robert W. Bender, Chairperson

Mailing Date: August 27, 2024

***Resolution Adopting Decision
in Connection with C08-24***

Whereas, at its meeting on July 23, 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 July 23, 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 July 23, 2024, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on August 27, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 23, 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 August 27, 2024.

Brigid C. Martens, Director
School Ethics Commission