

Before the School Ethics Commission
Docket No.: C14-24
Decision on Probable Cause

Carl Shotwell,
Complainant

v.

Jessica DeCicco,
Washington Township Board of Education, Morris County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on February 6, 2024, by Carl Shotwell (Complainant), alleging that Jessica DeCicco (Respondent), a member of the Washington Township 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)* of the Code of Ethics for School Board Members (Code).

On March 14, 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*

Complainant maintains that Respondent "proposed and promulgated a policy change based upon inaccurate and false information." Complainant further maintains that Respondent knew that the information that she provided to the Board and the public was false and "had the tendency to mislead fellow Board members." According to Complainant, Respondent's false and

misleading information resulted in a policy change during a “Lame Duck” Board meeting. More specifically, Complainant provides that at the November 14, 2023, Board meeting, Respondent “introduced a new motion under New Business,” proposing the adoption of a new policy related to “Gender Identity and Expression.” Complainant further provides that Respondent proposed replacing current Policy 5756, with Policy 5757, and although her original request was two separate motions, “it ultimately became one motion, the abolishing of Policy 5756 and a first reading of Policy 5757.” Complainant maintains that Respondent modified and provided the Board with the newly proposed policy approximately an hour before the Board meeting, and also falsely informed the Board and the public that Board counsel wrote and approved it. Therefore, according to Complainant, at the November 14, 2023, meeting, the Board approved the first reading of Policy 5757 and rescinded Policy 5756.

Thereafter, per Complainant, at the December 12, 2023, Board meeting, the Board President informed the Board and the public that she spoke with Board counsel, who stated he did not review Policy 5757, and therefore, the Board President indicated that “the vote to adopt the policy should be tabled and it would otherwise be ‘negligent’ to approve of such a policy without attorney approval, given the substantive nature of the policy.” Complainant notes that Respondent admitted “on record that she did not get approval from the Board’s attorney as she had originally represented but had conferred with various other counsel.”

With the above in mind, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24.1(a) because she “worked in an unethical manner by lying to the Board and public and did so with the clear purpose to push through a change in policy before the new board members took their oath.”

B. *Written Statement and Allegation of Frivolous Filing*

Respondent initially argues that the Board was aware at the November 14, 2023, meeting that Policy 5757 “may not have been written by” Board counsel based on the statement made by another Board member, who indicated that the policy was written by “[New Jersey School Boards Association (NJSBA)] policy writing services,” and then the changes were made by the “Communication and Governance Committee.” Respondent further argues that although the policy adoption was done during a “Lame Duck” Board meeting, “action upon routine matters that do not bind a future Board are permissible.”

As to a violation of *N.J.S.A.* 18A:12-24.1(a), Respondent asserts Complainant has “failed to identify, let alone attach, ‘a final decision from any court of law or administrative agency,’” and therefore, the Complaint should be dismissed.

Finally, Respondent contends the Complaint is frivolous because “it does not have a factual basis and was filed merely to attack [] Respondent’s reputation.” According to Respondent, Complainant “accuses [Respondent] of lying with the intent to sway the votes of other Board [m]embers”; however, the Board members who voted in favor of the policy were part of the committee involved “in the collaboration of adopting the alternative policy” and also voted in favor of the policy “a second time after it was discovered that inaccurate information was initially provided.” Moreover, Respondent maintains that Complainant’s “speculation as to

[Respondent's] alleged intent in misspeaking demonstrates the targeted nature of this Complaint." In sum, Respondent asserts the Complaint "unjustifiably attacks duly elected officials and a public servant who was properly acting in her role as a Board [m]ember." Respondent further asserts the Complaint is "wholly without merit and is purely designed to attack [Respondent's] character and reputation," and, therefore, Complainant should be sanctioned and the Complaint should be dismissed.

C. *Response to Allegation of Frivolous Filing*

Complainant notes that the Complaint is "based solely on facts," which include that Respondent "convinced the Board to vote to table an abrupt motion in October because they didn't have adequate time to make a decision" and at the "very next Board meeting, [Respondent] did the same thing she was against the month prior and sought to ram through a policy for first reading after only sending it" the night before the meeting. As for the request for sanctions, Complainant notes he is not a school official, and therefore, the Commission "has no jurisdiction over [him] to sanction or take any other action against [him]."¹

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 submits that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A.* 18A:12-24.1(a), and this provision of the Code provides:

- 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.

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.

¹ Pursuant to *N.J.S.A.* 18A:12-29(e), if the Commission determines that a complaint is frivolous, it "may impose on the complainant a fine not to exceed \$500." Notably, the Commission's authority to impose sanctions for frivolous filings is not limited to school officials.

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(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. Accordingly, while Respondent's alleged conduct may be a violation of another provision of the Act or Code, a violation *N.J.S.A.* 18A:12-24.1(a), which is the only provision alleged in this matter, has not been established. 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(a).

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.

Robert W. Bender, Chairperson

Mailing Date: September 24, 2024

***Resolution Adopting Decision
in Connection with C14-24***

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.

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