

***Before the School Ethics Commission***  
***Docket No.: C41-23***  
***Probable Cause Notice***

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**Xiaohan (Shannon) Peng,  
Complainant**

v.

**Shivi Prasad-Madhukar,  
Edison Township Board of Education, Middlesex 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 April 7, 2023,<sup>1</sup> by Xiaohan (Shannon) Peng (Complainant), alleging that Shivi Prasad-Madhukar (Respondent), a member of the Edison 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), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members (Code).

On May 31, 2023, Respondent filed a Written Statement, and also alleged that the Complaint is frivolous. On July 7, 2023, Complainant filed a response to the allegation of frivolous filing.

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

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<sup>1</sup> On April 7, 2023, Complainant filed a deficient Complaint; however, on April 12, 2023, Complainant cured all defects and filed an Amended Complaint that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3.

## **II. Summary of the Pleadings**

### **A. *The Complaint***

Complainant asserts that in 2022, the Board negotiated a contract with Dr. Edward Aldarelli to become Acting Superintendent. Complainant further asserts that as a result of a conflict of interest, the Board President was prohibited from engaging in those negotiations and the matter was handled by Respondent, the Board Vice President. Complainant contends that on November 22, 2022, the Board voted to approve the appointment of the Acting Superintendent and that on December 2, 2022, the Executive County Superintendent (ECS) approved a contract for Dr. Aldarelli that included an additional monthly stipend of \$4,200. According to Complainant, the monthly stipend was not discussed at the November 22, 2022, meeting and the non-recused Board members did not learn about the stipend until after the contract was approved by the ECS.

Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(a)* by using the “power of her position . . . to negotiate a contract for the [A]cting [S]uperintendent with an extra stipend” that was never disclosed to the Board. Complainant further alleges that Respondent violated *N.J.S.A. 18A:12-24.1(d)* by using the power of her position to usurp the authority of the Board and direct Board counsel to draft a contract that included a stipend without the Board’s knowledge or approval of the additional monetary stipend. Furthermore, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(e)* by using the power of her position to take private action “which resulted in an expenditure of \$50,400 additional [yearly] stipend by keeping the majority of the [B]oard in the dark.”

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

Respondent asserts that Dr. Aldarelli was the District’s Director of Human Resources when the former Superintendent announced he was leaving the District, effective December 1, 2022. Respondent further asserts that after the unanimous selection of Dr. Aldarelli at the November 22, 2022, Board meeting, Board counsel forwarded a proposed addendum to Dr. Aldarelli for review and noted that the document “needs to be submitted to the [ECS] for approval.” According to Respondent, the ECS approved the addendum, and it was submitted to the Board for a vote. Respondent maintains that on December 20, 2022, the Board voted 6-0 to appoint Dr. Aldarelli to the position, and the employment contract approved by the Board included a “per diem stipend for all days on which [Dr. Aldarelli] provides service as Acting Superintendent in the amount of \$193.85 [per day].”

Respondent argues that “the contract was voted upon by the entire [B]oard, including [Complainant], before it was ever signed or became effective. Thus, . . . had the [B]oard objected to or balked at the inclusion of a stipend for the Director of Human Resources who was assuming additional duties as the Acting Superintendent for the [Board], they could have voted against the contract and re-negotiated with him.” With respect to the allegation that Respondent violated *N.J.S.A. 18A:12-24.1(a)*, Respondent asserts that Complainant failed to include a copy of a final decision from any court or administrative agency. As to the alleged violation of *N.J.S.A. 18A:12-24.1(d)*, Respondent contends that Complainant has not provided any evidence that Respondent

gave a direct order to school staff or became involved in the day-to-day operation of the schools, as the contract was unanimously approved by the Board. With respect to the alleged violation of *N.J.S.A.* 18A:12-24.1(e), Respondent asserts that Complainant fails to suggest how the negotiation of a contract is unrelated to Respondent's duties as Acting Board President, and ignores the fact that any expenditure in the contract did not become effective until it was approved by the full Board.

Respondent asserts that the Complaint is frivolous and Complainant should be sanctioned as it was filed in "bad faith to attack a perceived rival former Board [m]ember" and for the purposes of harassment. Respondent argues that the "weaponization" of the Act "to file a Complaint against a former Board member who undertook her responsibility to negotiate a contract prior to its execution by the Board should not be tolerated."

### ***C. Response to Allegation of Frivolous Filing***

Complainant asserts that at the December 15, 2022, Board meeting, Board counsel reported that he submitted the employment contract, which included a stipend, to the ECS at the direction of Respondent. According to Complainant, Board counsel believed that Respondent was acting on behalf of a majority of the Board when making the request, but at least three of the seven voting members were not aware of the inclusion of the stipend. Respondent maintains that "by falsely representing consensus by the Board to the Board's attorney and unilaterally inserting the monthly stipend, [Respondent] effectively tied the hands of the Board. There was no time to discuss the monthly stipend or to revise the contractual language and resubmit same for approval" by the ECS.

## **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 Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(e), 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.

d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

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.

Pursuant to *N.J.A.C.* 6A:28-6.4(a), a violation(s) of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), and/or *N.J.S.A.* 18A:12-24.1(e), need to be supported by certain factual evidence, more specifically:

1. 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.

4. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(d) shall include, but not be limited to, evidence that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.

5. 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 her duties such that, by its nature, had the potential to compromise the board.

Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(e) when she negotiated a stipend for the Acting Superintendent without seeking approval from the Board. Respondent counters that the Board (including Complainant) voted 6-0 to approve the contract after the stipend had been approved by the ECS.

Based on its 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(a), *N.J.S.A.* 18A:12-24.1(d), and/or *N.J.S.A.* 18A:12-24.1(e) were violated. With respect to *N.J.S.A.* 18A:12-24.1(a) 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 when she engaged in any of the acts/conduct alleged in the Complaint. Without the required final decision(s), the Commission must dismiss the alleged violation of *N.J.S.A.* 18A:12-24.1(a).

As to *N.J.S.A.* 18A:12-24.1(d), the Commission finds that even if Respondent directed Board counsel to draft a contract for the Acting Superintendent without notifying the Board, such conduct would not violate *N.J.S.A.* 18A:12-24.1(d). Board counsel is not a member of the school

personnel, and as such, any request she made of Board counsel does not implicate *N.J.S.A.* 18A:12-24.1(d). Nevertheless, the Commission finds that Respondent's communications with Board counsel were not inappropriate as she was tasked with negotiating the details of the Acting Superintendent's contract, and based on the exhibits attached to the filings, her communications did not contain a direct order.

With respect to *N.J.S.A.* 18A:12-24.1(e), the Commission finds that Respondent's efforts to negotiate the Acting Superintendent's contract were part of her duties as Acting Board President, and as such, her actions did not go beyond the scope of her duties as a Board member. Regardless of whether she informed the Board of the stipend in advance, it is clear from Respondent's response to the allegation of frivolous filing that that Board was aware on December 15, 2022, at the latest, as Board counsel discussed it at the Board meeting on that date. Nevertheless, the Board, including Complainant, unanimously approved the contract at its meeting on December 20, 2022. If Complainant, or any other Board member, disagreed with the contract, they had the opportunity to vote against approval, and re-negotiate the terms. Accordingly, Respondent's actions did not have the potential to compromise the Board, and do not violate *N.J.S.A.* 18A:12-24.1(e).

Therefore, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(e).

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

At its meeting on January 23, 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 special meeting on February 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 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: February 27, 2024

***Resolution Adopting Decision  
in Connection with C41-23***

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

***Whereas***, at its special meeting on February 27, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on January 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.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its special meeting on February 27, 2024.

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Brigid C. Martens, Director  
School Ethics Commission