

Before the School Ethics Commission
Docket No.: C44-23
Probable Cause Notice

Everett E. Garnto, Jr.,
Complainant

v.

Giovanni Cusmano,
Garfield Board of Education, Bergen County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on April 14, 2023,¹ by Everett E. Garnto, Jr. (Complainant), alleging that Giovanni Cusmano (Respondent), the Business Administrator/Board Secretary of the Garfield 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(a), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(e), and *N.J.S.A.* 18A:12-24(f) in Counts 1-3. On June 9, 2023, Complainant filed an Addendum to the Complaint.

On July 10, 2023, Respondent filed a Written Statement, and also alleged that the Complaint is frivolous. On July 31, 2023, Complainant filed a response to the allegation of frivolous filing.

The parties were notified by correspondence dated February 20, 2024, that the above-captioned matter would be discussed by the Commission at its special meeting on February 27, 2024, in order to make a determination regarding probable cause and the allegation of frivolous filing. Following its discussion on February 27, 2024, the Commission adopted a decision at its meeting on March 26, 2024, finding the Complaint untimely, and administratively dismissing the above-captioned matter in accordance with its authority as set forth in *N.J.A.C.* 6A:28-9.2(a)(2).

¹ On April 14, 2023, Complainant filed a deficient Complaint. On May 15, 2023, Complainant filed an Amended Complaint, but the Commission advised that the Amended Complaint appeared to be untimely and requested an explanation as to why the Complaint should be considered timely. Complainant submitted an explanation as to the timeliness of the Complaint on May 25, 2023, and therefore, the Commission deemed the Amended Complaint filed on May 15, 2023, to be compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3.

II. Summary of the Pleadings

A. *The Complaint*

By way of background, Complainant maintains that in June 2022,² Carmin Breonte stepped down from the Board citing personal reasons, which created a vacancy. According to Complainant, contrary to his stated reason, Mr. Breonte stepped down from the Board because Respondent promised he would appoint Mr. Breonte as the Assistant Facility Director for the Garfield School District (District). Thereafter, Complainant maintains that Respondent “advocated for [a close friend, Alban Gaba,] and stopped at nothing to persuade [Complainant] and other members of the Board to appoint his friend.” According to Complainant, during the summer of 2022 through the fall of 2022, there was “a contentious campaign for the upcoming [B]oard election in November [2022].” Per Complainant, certain candidates who were running, known as “Team Garfield,” were politically aligned with the mayor, who is also the middle school principal, and Respondent “firmly believed he would become [S]uperintendent” if Team Garfield won the election.

With the above in mind, and in Count 1, Complainant asserts that he was contacted by Respondent on July 27, 2022, and Respondent asked Complainant if he would be “willing to vote for his personal friend, Alban Gaba to fill the vacancy,” and stated that “if [he] did vote for Gaba, [Respondent] would guarantee [Complainant] a victory” in the upcoming election. Respondent alleges that by soliciting Complainant’s vote for Mr. Gaba and by involving himself in the upcoming election for the purpose of securing himself a promotion and increase in salary, Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(e)* and *N.J.S.A. 18A:12-24(f)*.

In Count 2, Complainant contends Respondent contacted another Board member, Richard Derrig, in July 2022, to solicit his vote for Mr. Gaba, and in exchange for his vote, Respondent promised “he would find money in the budget to change [Mr. Derrig’s] wife’s [employment] status from [p]art time to full time so that she would be eligible for health benefits.” Complainant notes, “This did eventually happen.” Complainant further contends Respondent solicited Mr. Derrig’s vote for his friend to ultimately secure a promotion and raise for himself, in a quid pro quo by promising Mr. Derrig that his wife would be provided a full-time position within the District, in violation of *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(e)* and *N.J.S.A. 18A:12-24(f)*.

In Count 3, Complainant asserts that Respondent promised Mr. Breonte that if he stepped down from the Board, Respondent would appoint Mr. Breonte as the Assistant Facility Director in violation of *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(e)* and *N.J.S.A. 18A:12-24(f)*.

In his statement as to timeliness, Complainant indicates that Respondent’s intentions were “not evident until after the new [B]oard was swor[n] in at the reorganization meeting in January 2023.” Complainant contends that Respondent “conspired with the newly elected

² It appears the Complaint mistakenly indicated that this occurred in June 2023.

members to create an agenda, not known to the [S]uperintendent, and believed that he would be [S]uperintendent once they entered into a separation agreement with the seated [S]uperintendent.” Complainant argues that the Complaint is timely from the January 4, 2023, Board meeting, and “[i]t took months” to gather the information.

In the Addendum, Complainant indicates that Mr. Gaba was appointed to the vacant seat on the Board on August 22, 2022, and at the same meeting, Mr. Derrig’s wife was hired to a full-time position.

B. *Written Statement and Allegation of Frivolous Filing*

Respondent maintains that Complainant failed to provide evidence that Respondent took improper actions in support of Mr. Gaba’s appointment to the Board in order to become the District’s next Superintendent. Respondent asserts that Complainant voted in support of appointing Mr. Gaba to the Board and also voted in support of giving Mr. Derrig’s wife a full-time position with the District. Respondent maintains that these votes were unanimous. Respondent further asserts that the claim that Mr. Breonte resigned as a result of an improper promise goes directly against the evidence submitted, including the resignation letter indicating that the resignation was due to personal reasons. Respondent also points out that his “efforts to help one individual be seated on the Board would not change the fact that there were seven other [B]oard [m]embers who no longer felt [the Superintendent] was the proper person to lead the District.” Finally, Respondent notes that while there is a general allegation of improper conduct during the election campaign, there are no factual allegations regarding this conduct in the Complaint.

Respondent asserts that the alleged conduct took place in June and July of 2022, and that the Complaint was not filed until April 2023. Respondent asserts that this is well outside the 180-day period for filing complaints established by *N.J.A.C. 6A:28-6.5*. As a result, Respondent argues that the Complaint must be dismissed as untimely.

As to the substance of the Complaint, Respondent asserts that Complainant has not alleged any facts that support the conclusion that the alleged support of a friend’s candidacy for the Board would violate the Act. As to *N.J.S.A. 18A:12-24(a)*, Respondent maintains that there is no “business organization” or “business, transaction, or professional activity” alleged to be in conflict with Respondent’s duties. With respect to *N.J.S.A. 18A:12-24(c)*, Complainant has not identified an “interest” held by Respondent or member of his family, or an action taken by Respondent in which he or a family member has an interest or financial involvement. Additionally, as to *N.J.S.A. 18A:12-24(e)* and *N.J.S.A. 18A:12-24(f)*, Respondent argues that Complainant does not establish that Respondent solicited or received anything of value in exchange for influence over the exercise of his duties, or that he derived financial gain from any information he received by virtue of his employment.

Respondent asserts that the Complaint is frivolous and filed in bad faith to attack Respondent, whom he had clashed with in the past.

C. *Response to Allegation of Frivolous Filing*

Complainant argues that his Complaint had a factual and legal basis and demonstrates that Respondent “used bribery” when he promised Complainant an election victory in exchange for supporting Mr. Gaba, and promised Mr. Derrig that his wife would be hired as a full-time employee.

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.”

In the Written Statement and allegation of frivolous filing, Respondent argues that the Complaint is untimely as the alleged conduct took place in June and July of 2022, and the Complaint was not filed until April 2023. Complainant contends that he was not aware until January of 2023, when the new Board was sworn in, that Respondent “conspired with the newly elected members to create an agenda, not known to the [S]uperintendent, and believed that he would be [S]uperintendent once they entered into a separation agreement with the seated [S]uperintendent.” Complainant argues that the Complaint is timely from the January 4, 2023, Board meeting, and “[i]t took months” to gather the information.

The Commission’s regulations provide a 180-day limitation period for filing a complaint. More specifically, *N.J.A.C. 6A:28-6.5(a)* provides, in relevant part:

- (a) Complaints shall be filed within 180 days of notice of the events which form the basis of the alleged violation(s). A complainant shall be deemed to be notified of events that form the basis of the alleged violation(s) when the complainant knew of the events, or when such events were made public so that one using reasonable diligence would know or should have known (emphasis added).

The Commission recognizes that limitation periods of this type serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. *Kaprow v. Berkley Township Bd. of Educ.*, 131 N.J. 571, 587 (1993). Thus, “notice of the alleged violation” must be interpreted in a manner that anticipates the reasonable diligence of complainant(s). In addressing potential violations of the Act, the Commission must balance the public’s interest in knowing of potential violations against the important policy of repose and a respondent’s right to fairness. The time limitations set forth in the regulations must be enforced if the Commission is to operate in a fair and consistent manner. *Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County*, C19-03 (June 24, 2003).

In this matter, Complainant filed his Complaint on April 14, 2023, and 180 days prior to that date is October 16, 2022. The allegations in Count 1, 2, and 3, occurred on July 27, 2022, in July 2022, and in June 2022, respectively, which are outside the limitations period.

Pursuant to *N.J.A.C. 6A:28-6.5(a)*, the Commission must determine when Complainant knew of the events which form the basis of his Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events. In this regard, a careful and thorough review of the record reveals the following events/facts regarding Counts 1 through 3.

The allegations in Count 1 stem from a phone call made by Respondent to Complainant, in which Complainant alleges that Respondent indicated that if he voted for Mr. Gaba to fill a vacancy on the Board, Respondent would “guarantee” that Complainant would be re-elected in the upcoming election. As the phone call was received by Complainant, it is clear that he knew of the facts that formed the basis of the alleged violation on the date of the call, July 27, 2022.

Count 2 stems from allegations that in July 2022, Respondent solicited a vote for Mr. Gaba from Mr. Derrig, and promised “he would find money in the budget” to change Mr. Derrig’s wife’s employment status from part time to full time. At the latest, Complainant knew of the facts by the August 22, 2022, Board meeting when both Mr. Gaba was appointed to the Board and Mr. Derrig’s wife’s employment status was changed. However, Complainant filed the instant Complaint well more than 180 days later.

In Count 3, Complainant alleges that in June 2022, Respondent promised Mr. Breonte that if he stepped down from the Board, he would appoint Mr. Breonte as the Assistant Facility Director. The record does not allege a date in which Mr. Breonte was appointed to that position, or if he was ever appointed as the Assistant Facility Director, but rather just that a promise was made in June 2022. Given the totality of the events alleged to have occurred in the summer of 2022, including the resignation of Mr. Breonte, the efforts Respondent made to secure the appointment of Mr. Gaba to the Board by contacting Complainant and Mr. Derrig, and the subsequent August 22, 2022, Board meeting in which Mr. Gaba was appointed, Complainant should have known the facts that formed the basis of his Complaint by that date, at the latest. Nevertheless, Complainant filed the Complaint approximately two months beyond the 180-day deadline.

The Commission does not find Complainant’s argument that the limitations period should start at the reorganization meeting in January 2023, when he became aware that Respondent “conspired” with the newly elected Board members to oust the Superintendent, to be persuasive. The allegations in the instant Complaint stem from the resignation of Mr. Breonte and the appointment of Mr. Gaba to the vacancy. The election that occurred in November 2022, the Board members who were elected in that election, and the actions that the new Board took in January 2023, do not have any bearing over Mr. Gaba’s appointment to a vacancy. Any alleged improper actions that Respondent took to encourage Mr. Breonte to resign and/or to secure the appointment of Mr. Gaba to the Board occurred in the summer of 2022, and Complainant was required to file a Complaint within the 180 days from that time, but failed to do so.

Accordingly, and for the reasons set forth above, the Commission finds that the Complaint, on its face, was not timely filed pursuant to *N.J.A.C.* 6A:28-6.5. As the Commission is authorized, in accordance with *N.J.A.C.* 6A:28-9.2(a)(2), to administratively dismiss a complaint that is not timely filed pursuant to *N.J.A.C.* 6A:28-6.5, the Commission finds that the Complaint should be dismissed.

IV. Request for Sanctions

At its special meeting on February 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 March 26, 2024, the Commission adopted a decision finding the Complaint not frivolous, and denying the request for sanctions.

V. Decision

Based on the foregoing, and pursuant to its authority as set forth in *N.J.A.C.* 6A:28-9.2(a)(2), the Commission administratively dismisses the above-captioned matter because it was not timely filed pursuant to *N.J.A.C.* 6A:28-6.5. Additionally, the Commission advises the parties that 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: March 26, 2024

***Resolution Adopting Decision
in Connection with C44-23***

Whereas, at its special meeting on February 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 special meeting on February 27, 2024, the Commission discussed administratively dismissing the above-captioned matter in accordance with its authority as set forth in *N.J.A.C. 6A:28-9.2(a)(2)* because it was not timely filed pursuant to *N.J.A.C. 6A:28-6.5*; and

Whereas, at its special meeting on February 27, 2024, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on March 26, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on February 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 March 26, 2024.

Brigid C. Martens, Director
School Ethics Commission