

Before the School Ethics Commission
Docket No.: C51-23
Probable Cause Notice

Christine Newman,
Complainant

v.

Joanna Filak,
Montgomery Township Board of Education, Somerset County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on May 12, 2023, by Christine Newman (Complainant), alleging that Joanna Filak (Respondent), a member of the Montgomery 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(c)*, *N.J.S.A. 18A:12-24.1(d)*, and *N.J.S.A. 18A:12-24.1(f)* of the Code of Ethics for School Board Members (Code).

On June 1, 2023, Respondent filed a Written Statement, and also alleged that the Complaint is frivolous. On June 12, 2023, Complainant filed a response to the allegation of frivolous filing.

The parties were notified by correspondence dated December 12, 2023, that the above-captioned matter would be discussed by the Commission at its meeting on December 19, 2023, in order to make a determination regarding probable cause and the allegation of frivolous filing. Following its discussion on December 19, 2023, the Commission adopted a decision at its meeting on January 23, 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 alleges that in November 2022,¹ the Montgomery Township residents voted to support the implementation of a full-day kindergarten program for the 2023-2024 school year, which was a change from the half-day program that was in place. According to Complainant, prior to the vote, the Board provided residents with detailed information regarding the referendum and the costs associated therewith. Complainant asserts that on March 28, 2023, Respondent was present at the public Board meeting when the former Board president, who resigned in 2019, made a presentation calling for the Board to suspend the kindergarten program and the related tax levies until an analysis could be done. Complainant contends that near the end of the meeting, Respondent made a motion to suspend all plans and efforts for full-day kindergarten until a complete analysis could be performed, and it appeared that Respondent was reading from the paper the former Board President provided. According to Complainant, in response to Respondent's motion, the Board attorney expressed concerns that the motion to postpone expenditures for full-day kindergarten would negate the public vote to implement it for the 2023-2024 school year, and indicated that the Board does not have the legal authority to do that, to which Respondent stated, "Yes. I'm glad you're hearing."

Complainant argues Respondent violated *N.J.S.A.* 18A:12-24.1(a) as Respondent "does not have the legal right to negate the vote of the public." Complainant also argues that Respondent violated *N.J.S.A.* 18A:12-24.1(c) as Respondent "had not discussed making this motion with the Board prior to making it and, more significantly, she made the motion at the request of one resident without consulting with all the parents of kindergartners" who would be affected. Additionally, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(d) because "the motion to halt full[-]day kindergarten is a clear attempt to administer schools." Complainant lastly asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(f) because Respondent made the motion "at the specific request of a partisan township resident" and read directly from materials the resident provided to the Board, thus surrendering her judgment.

B. *Written Statement and Allegation of Frivolous Filing*

In her Written Statement and allegation of frivolous filing, Respondent asserts that the information provided to the public regarding full-day kindergarten was inaccurate as it "significantly underrepresented" the per-household cost of the full-day kindergarten program, and that the Superintendent issued a statement apologizing for the error. Respondent argues that she was concerned with the contradictory financial information and, as such, proceeded to make a motion to "have a vote in favor of suspending all plans and efforts for full-day [k]indergarten" and the tax levies to be stopped until a complete analysis could be performed, and if the program is viable, "it should be brought out again for a referendum." According to Respondent, the motion was seconded, and argument and discussion ensued on the merits of the motion. Thereafter, Respondent indicates she withdrew her motion after the Superintendent committed to

¹ It appears the Complainant mistakenly indicated that the vote happened in November 2023.

making the financial information public. Respondent asserts that during the April 25, 2023, Board meeting, Complainant demanded Respondent's resignation, and the instant complaint is based upon Complainant's frustration that Respondent did not resign.

With respect to *N.J.S.A. 18A:12-24.1(a)*, Respondent argues that Complainant failed to provide a final decision of any court of law or administrative agency demonstrating that Respondent failed to enforce the laws, rules, and regulations of the State Board or court orders pertaining to schools. As to *N.J.S.A. 18A:12-24.1(c)*, Respondent contends that Board members are "not required to consult with each and every individual who may, through some indirect means, be affected by a Board decision." Additionally, Respondent asserts that she is permitted by Board policy to raise new matters during any Board meeting so long as it does not immediately alter existing policies. Moreover, Respondent maintains that *N.J.S.A. 18A:12-24.1(c)* was intended to prevent Board members from taking actions that impact District employees. Regarding the alleged violation of *N.J.S.A. 18A:12-24.1(d)*, Respondent argues Complainant failed to allege facts "as to *why* she believes making a motion during a Board meeting regarding [full-day kindergarten] is an attempt to administer the schools," and maintains that making a motion at a meeting is the "precise action" a Board member should take. Finally, as to *N.J.S.A. 18A:12-24.1(f)*, Respondent argues Complainant did not offer factual support that Respondent's motion was "at the request of a 'partisan township resident,'" nor does the Complaint identify any special interest group or political party to which Respondent acted. Respondent maintains that she "considered the input from concerned residents and exercised her independent judgment when determining to propose a delay in the implementation of [full-day kindergarten]."

Respondent alleges that the Complaint is frivolous as Complainant "appears to have some vendetta" against Respondent. Respondent asserts that Complainant demanded that Respondent resign, and when she did not, Complainant filed the Complaint "without taking even a moment to assure that the proposed facts align with the statutory definitions of the alleged violations." As such, Respondent requests that Complainant be sanctioned.

C. *Response to Allegation of Frivolous Filing*

In her response to the allegation of frivolous filing, Complainant reasserts that Respondent attempted to "overturn the popular vote in response to the concern of one resident," and that she only "reluctantly" withdrew the motion after the Board President suggested it. Respondent maintains that "[h]er belief that election results can be negated because one resident demanded such an action is appalling," and that Respondent's assertion that the Complaint is harassment is "absurd."

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(c), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(f). 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.
- 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.
- f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

N.J.S.A. 18A:12-24.1(a)

Complainant argues Respondent violated *N.J.S.A.* 18A:12-24.1(a) when she made a motion that would negate the vote of the public without the legal right to do so. Respondent counters that Complainant has not provided a final decision of a court of law or administrative indicating that she was in violation of the law.

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.

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) 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 when she engaged in any of the acts/conduct set forth in the Complaint. Without such a final decision, a violation of *N.J.S.A.* 18A:12-24.1(a) cannot be substantiated. 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).

N.J.S.A. 18A:12-24.1(c)

Complainant contends that Respondent violated of *N.J.S.A. 18A:12-24.1(c)* by making the motion at the March 28, 2023, Board meeting without discussing it with the Board in advance and “without consulting with all the parents of kindergartners” who would be affected. Respondent counters that Board members are “not required to consult with each and every individual who may, through some indirect means, be affected by a Board decision,” and that she is permitted by Board policy to raise new matters during any Board meeting so long as it does not immediately alter existing policies.

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(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.”

After 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(c)* was violated. The vast majority of decisions made at a Board meeting have the potential to impact students, directly or indirectly, and it would be nearly impossible to consult with every student in the District prior to effectuating policies. In this circumstance, Respondent made a motion at a Board meeting, as she is permitted to do as a Board member, and ultimately withdrew the motion after discussion. As such, Respondent did not take Board action to effectuate policies or plans without consulting those affected by them. Additionally, whether a Board member is permitted to raise new matters at a Board meeting is a matter of Board governance and does not implicate the Act or fall under its jurisdiction. *N.J.A.C. 6A:28-1.4(a)*. 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(c)*.

N.J.S.A. 18A:12-24.1(d)

Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(d)* when she made a motion to halt full-day kindergarten as it was a “clear attempt to administer schools.” Respondent contends that Complainant does not provide evidence as to why a motion during a Board meeting would be an attempt to administer the schools, and maintains that making motions at a meeting is the “precise action” a Board member should take.

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(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.”

Following its assessment, 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(d) was violated. Respondent’s motion at the March 28, 2023, Board meeting to suspend the implementation of full-day kindergarten until a complete analysis is performed does not constitute a direct order to school personnel, or becoming directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the District. Approval to implement full-day kindergarten is not a function of school personnel, but rather that of the Board. Additionally, making a motion at a Board meeting is within a Board member’s role, and is not an attempt to administer the schools. 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(d).

N.J.S.A. 18A:12-24.1(f)

Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(f) when she made the motion at the March 28, 2023, board meeting “at the specific request of a partisan township resident” and read directly from materials the resident provided to the Board, thus surrendering her judgment. Respondent argues Complainant did not offer factual support that her motion was “at the request of a ‘partisan township resident,’” and maintains that she “considered the input from concerned residents and exercised her independent judgment” in making the motion to delay the implementation of full-day kindergarten.

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(f) shall include evidence that Respondent “took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause;” or evidence that Respondent “used the schools in order to acquire some benefit” for herself, a member of her immediate family or a friend.

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(f) was violated. Board members are permitted to consider public comment at a Board meeting and make motions and/or vote in accordance with the Board member’s opinion. In this circumstance, the allegations in the Complaint all stem from actions that occurred in public at a Board meeting and were not improper. 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(f).

IV. Request for Sanctions

At its meeting on December 19, 2023, 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 January

23, 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 pled 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: January 23, 2024

***Resolution Adopting Decision
in Connection with C51-23***

Whereas, at its meeting on December 19, 2023, 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 December 19, 2023, 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 December 19, 2023, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on January 23, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on December 19, 2023; 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 January 23, 2024.

Brigid C. Martens, Director
School Ethics Commission