

Before the School Ethics Commission
Docket No.: C60-23
Probable Cause Notice

D.M.
Complainant

v.

**Douglas Biagi, Kim Bassford, Lori Abbott, John Baker, Michael Hagelgans,
and James Quinlan,
Ventnor City Board of Education, Atlantic County,
*Respondents***

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on July 26, 2023,¹ by D.M. (Complainant), alleging that Douglas Biagi, Kim Bassford, Lori Abbott, John Baker, Michael Hagelgans, and James Quinlan (Respondents), members of the Ventnor City 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(a) (Count 1), *N.J.S.A.* 18A:12-24.1(b) (Count 2 and Count 3), and *N.J.S.A.* 18A:12-24.1(g) (Count 3) of the Code of Ethics for School Board Members (Code). On August 21, 2023, Respondents filed a Written Statement.

The parties were notified by correspondence dated March 19, 2024, that the above-captioned matter would be discussed by the Commission at its meeting on March 26, 2024, in order to make a determination regarding probable cause. Following its discussions on March 26, 2024, and April 30, 2024, the Commission adopted a decision at its meeting on April 30, 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.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant alleges that Respondents failed to “enforce proper handling of disciplinary actions,” claiming that there have been numerous violations she has observed. Complainant further alleges that Respondents are not being transparent regarding disciplinary incidents and have compromised her children’s educational welfare. Complainant asserts that Board

¹ On July 26, 2023, Complainant filed a deficient Complaint; however, on July 31, 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.

counsel informed her on March 17, 2023, that the Board was not required to advise her of certain disciplinary actions involving her child. Thereafter, Complainant contends that on March 22, 2023, she expressed concerns to Respondents regarding the lack of notification of her child’s disciplinary record and administrative referral, and that “it became evident that their actions were not in compliance with the [] code of conduct.” According to Complainant, “instead of addressing the matter, [Respondents] had the [S]uperintendent respond on their behalf” in an email the following day. Complainant argues that Respondents’ actions violate *N.J.S.A. 18A:12-24.1(a)*.

In Count 2, Complainant re-alleges the factual assertions contained in Count 1. Complainant further alleges that Harassment Intimidation and Bullying (HIB) instances have been “mishandled” by the Board and Respondents. Complainant asserts that reports have surfaced indicating that Respondents are “falsifying documents and records to conceal the existence of a racist cultural climate within the school.” According to Complainant, despite the concerns she expressed at the Board meeting on March 22, 2023, and instead of being directly addressed by Respondents, the Superintendent emailed her, “suggesting that there may have been a misunderstanding,” and advised her to speak with the teacher herself, which Complainant contends was not possible because she was unaware of the teacher’s name. Complainant maintains that the incident, in which her child was referred to as an “ugly animal” can be “perceived as an act of passive racism.” Complainant also indicates that she expressed concerns to the Board regarding the “lack of assignments being uploaded to the grade book.” Complainant argues that Respondents’ failure to address her concerns regarding a serious HIB matter, as well as regarding the failure to upload assignments into the grade book, is a violation of *N.J.S.A. 18A:12-24.1(b)*.

In Count 3, Complainant alleges that on July 26, 2023, during the public comment session of the Board’s meeting, Respondents publicly supported the Superintendent and endorsed a “false, anonymous, unfounded and disrespectful claim” about Complainant.² Complainant further alleges that Respondents endorsed these claims without considering the extent of the claim’s impact on her and her family and that it breached confidentiality. Complainant asserts that her child was “inappropriately mandated for psychiatric evaluation” based on the false claim. According to Complainant, a teacher is under investigation for assaulting her child on June 6, 2023, but Respondents failed to hold the teacher accountable. As such, Complainant alleges that Respondents violated *N.J.S.A. 18A:12-24.1(b)* and *N.J.S.A. 18A:12-24.1(g)*.

B. *Written Statement*

Respondents assert, as to Count 1 and Count 2, that Board counsel advised Complainant that the code of conduct “did not require parental notification of certain disciplinary actions.” According to Respondents, thereafter, during public comment at the March 22, 2023, Board meeting, Complainant expressed concerns about not being notified regarding her child’s disciplinary record, and the next day, the Superintendent advised her that her concerns could be addressed with the teacher. Respondents maintain that they did not violate the code of conduct, as the email correspondence demonstrates that “Complainant’s concerns, despite being unfounded, still were addressed appropriately by the District.” Furthermore, Respondents argue that the Complaint does not include the required final decision of a New Jersey court or administrative agency holding that

² Although Complainant provides the exact language used in the claim, the quote is not being included due to its sensitive nature.

Respondents failed to enforce any laws, rules, regulations, or court orders, and also is devoid of a single fact, let alone evidence, that Respondents used illegal or unethical procedures to effectuate any changes, and therefore, they did not violate *N.J.S.A. 18A:12-24.1(a)*.

As to the alleged violation of *N.J.S.A. 18A:12-24.1(b)*, Respondents argue that Complainant makes conclusory statements without details or evidence that investigations were mishandled and that her concerns about the racial climate of the school were ignored. Respondents assert that Complainant fails to identify any individuals involved in the alleged incidents. Respondents note that Complainant makes allegations related to reports surfacing regarding the falsification of documents concerning the school administration but does not provide any facts which implicate Respondents, and Complainant has failed to provide a copy of these alleged reports. As such, Respondents argue that the Complaint fails to provide any factual evidence that Respondents' actions on March 22, 2023, and/or March 23, 2023, constituted willful decisions contrary to the educational welfare of children or deliberate actions to obstruct the district's programs and policies, and the alleged violation of *N.J.S.A. 18A:12-24.1(b)* must be dismissed.

As to Count 3, concerning the July 26, 2023, Board meeting, Respondents argue that Complainant has failed to provide any details of what information was shared by Respondents at the Board meeting and what information was inaccurate and/or confidential in violation of *N.J.S.A. 18A:12-24.1(g)*. Respondents note that Complainant's vague allegations do not otherwise assert what Respondents did to breach confidentiality, what dishonest actions were taken by Respondents, or what inappropriate actions were taken by Respondents. Additionally, Respondents argue that there is simply no evidence that, based on their actions at the July 26, 2023, Board meeting, Respondents willfully made any decision contrary to the educational welfare of Complainant's children and/or obstructed the programs and policies in violation of *N.J.S.A. 18A:12-24.1(b)*.

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, based on the conduct more fully detailed above, that Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), and *N.J.S.A.* 18A:12-24.1(g). 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.

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.

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

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(b), and/or *N.J.S.A.* 18A:12-24.1(g), 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 Respondents failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondents brought about changes through illegal or unethical procedures.

2. 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.

7. Factual evidence of a violation of the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that Respondents took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that Respondents violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by Respondents and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

Count 1

In Count 1, Complainant argues that Respondents violated *N.J.S.A.* 18A:12-24.1(a) when they failed to act in accordance with the District's code of conduct and referred the matter to the Superintendent rather than addressing Complainant's concerns regarding the handling of disciplinary actions. Respondents counter that they did not violate the code of conduct as Complainant's concerns were addressed appropriately by the District, and certain disciplinary actions do not require parental notification.

After 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 Respondents violated a specific law, rule, or regulation of the State Board of Education and/or court orders pertaining to schools, or that they brought about changes through illegal or unethical procedures, when they engaged in any of the acts/conduct alleged in the Complaint. Without the required final decision(s), a violation of *N.J.S.A.* 18A:12-24.1(a) is not supported. Consequently, the Commission must dismiss the alleged violation of *N.J.S.A.* 18A:12-24.1(a) in Count 1, pursuant to *N.J.A.C.* 6A:28-9.7(b).

Count 2

In Count 2, Complainant contends that Respondents violated *N.J.S.A.* 18A:12-24.1(b) when they falsified records to conceal the existence of a racist cultural climate, failed to address her concerns regarding a HIB matter and instead had the Superintendent respond, and dismissed her concerns about the failure to upload assignments into the grade book. Respondents argue that Complainant makes conclusory statements without any detail and fails to identify any individuals involved in the incidents.

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(b) was violated. The Commission finds that Complainant fails to allege what documents were falsified, how such documents concealed the existence of a racist cultural climate, or what decision Respondents made that was contrary to the educational welfare of children; as such, Complainant fails to allege the factual basis of a violation of *N.J.S.A.* 18A:12-24.1(b). Additionally, Complainant's allegations regarding the improper handling of a HIB matter, the referral of the matter to the Superintendent for a response, and the dismissal of Complainant's concerns regarding uploading grades in the grade book are District concerns and do not implicate the Act. The Commission further notes that *N.J.S.A.* 18A:12-24.1(j) requires Board members to refer complaints to the chief administrative officer, so requesting that the Superintendent reply to concerns regarding the District's handling of disciplinary or HIB matters, and/or the grade book, is not inappropriate. Therefore, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the claimed violation of *N.J.S.A.* 18A:12-24.1(b) in Count 2.

Count 3

In Count 3, Complainant argues that Respondents violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(g) when they endorsed a “false, anonymous, unfounded and disrespectful claim” about Complainant without considering the effect it would have on her family, and mandated that her child undergo a psychiatric evaluation. Respondents contend that Complainant fails to provide any details regarding what confidential information was revealed by Respondents. Respondents also contend that Complainant does not provide evidence that they willfully made any decision contrary to the educational welfare of Complainant’s children and/or obstructed the programs and policies.

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) and/or *N.J.S.A.* 18A:12-24.1(g) were violated. The Commission finds that, as to *N.J.S.A.* 18A:12-24.1(b), Complainant has not demonstrated how Respondents, by allegedly requiring that a student undergo a psychiatric evaluation, made a decision contrary to the educational welfare of children, or took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children. Additionally, Complainant has not alleged what confidential Board information was improperly disclosed, by whom, and to whom. Without details or evidence regarding the nature of the breach of confidentiality, a violation of *N.J.S.A.* 18A:12-24.1(g) cannot be established. Accordingly, 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(b) and/or *N.J.S.A.* 18A:12-24.1(g) in Count 3.

IV. 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 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: April 30, 2024

***Resolution Adopting Decision
in Connection with C60-23***

Whereas, at its meetings on March 26, 2024, and April 30, 2024, the School Ethics Commission (Commission) considered the Complaint and the Written Statement submitted in connection with the above-referenced matter; and

Whereas, at its meetings on March 26, 2024, and April 30, 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 April 30, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meetings on March 26, 2024, and April 30, 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 April 30, 2024.

Brigid C. Martens, Director
School Ethics Commission