

Before the School Ethics Commission
Docket No.: C62-23
Decision on Probable Cause

Neal McGrath,
Complainant

v.

Rosetta Treece,
Hopewell Valley Regional Board of Education, Mercer County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on September 20, 2023,¹ by Neal McGrath (Complainant), alleging that Rosetta Treece (Respondent), Superintendent of the Hopewell Valley Regional 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(c) and *N.J.S.A.* 18A:12-24(f). On October 31, 2023, Respondent filed a Written Statement, and also alleged that the Complaint is frivolous. On December 26, 2023, Complainant filed a response to the allegation of frivolous filing.

The parties were notified by correspondence dated April 23, 2024, that the above-captioned matter would be discussed by the Commission at its meeting on April 30, 2024, in order to make a determination regarding probable cause and the allegation of frivolous filing. Following its discussion on April 30, 2024, the Commission adopted a decision at its meeting on May 21, 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*

By way of background, Complainant maintains that he has complained to Respondent “numerous times” regarding teachers “running side businesses out of the school, using their positions, [Hopewell Valley Regional School District (District)] resources and [a] variety of other public assets to put money into their own pockets.” Complainant further maintains District staff

¹ Complainant filed a deficient Complaint on August 15, 2023, and a second deficient Complaint on September 15, 2023. On September 20, 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.

“use their positions . . . acting in an official capacity . . . to offer for-profit programs, using their positions and publicly owned resources to offer private instruction and other programs for which they charge money and therefore from which they derive direct financial benefit.” Complainant notes Respondent is aware of what is occurring and allows it to continue.

With the above in mind, and in Count 1, Complainant asserts Respondent allowed the Supervisor of K-12 Social Studies, Wellness and Special Projects (Supervisor) to “organize and charge money for a class offered” in the District. According to Complainant, the administrator sent an email to the high school seniors and their parents informing them that “in order to graduate from high school, New Jersey students must complete 2.5 credits . . . in Financial, Economic Business, and Entrepreneurial Business Literacy.” Further, the email “exhorted recipients to sign up for a summer course for which [the Supervisor] charges \$280.” Complainant asserts he complained to Respondent who did not do anything, and as the Superintendent, she is responsible for the “violative behavior.” Therefore, Complainant argues Respondent is in violation of *N.J.S.A. 18A:12-24(c)* because the Supervisor is “making money from this enterprise, acting in his official capacity to offer a for-profit course, and using [District] resources, facilities and work-for-hire work product to do so,” and Respondent allows it to occur. Complainant also argues Respondent is in violation of *N.J.S.A. 18A:12-24(f)* because the Supervisor is “using his position in public office to secure financial gain for himself, using [District] resources and his position as an instructor for the course” that is not available to the public for the purpose of securing financial gains, and Respondent is allowing it to occur.

B. *Written Statement and Allegation of Frivolous Filing*

Respondent notes the Supervisor does not personally charge for the course, but rather the District does, and the fee for the course is made payable to the District. According to Respondent, the course is offered “both during the school year as part of the District’s regular curriculum and on an optional basis during the summer recess. For students who take the course during the summer recess, to offset the cost of paying the teacher . . . the District does charge for the optional class.” Respondent notes she has informed Complainant that the individual who teaches the summer class is not the Supervisor, and the summer course is optional.

With respect to *N.J.S.A. 18A:12-24(c)*, Respondent argues Complainant has not identified the “interest” that Respondent or a member of her family holds, and further argues that the Complaint does not contain any facts to support that Respondent “took any actions in her official capacity at all, let alone to do so to create some benefit to herself or a member of her family.” According to Respondent, “violations by proxy” are not permitted, and Complainant has not provided any “facts to support his demonstrably false claim that the charging of tuition for summer classes is ‘unethical and probably illegal.’”

As to a violation of *N.J.S.A. 18A:12-24(f)*, Respondent maintains the Complaint does not contain a “single statement” to support that Respondent or any member of her family, or a business interest in which she is involved, obtains any financial gain from the information that she received as the Superintendent. Respondent argues, “Unless [Complainant] is insinuating that the District is paying ‘kickbacks’ to [the Supervisor], his factual statement contradicting his allegations fails to state a cognizable cause of action against [the Supervisor], let alone [Respondent].”

Finally, Respondent contends the Complaint is frivolous because Complainant did not provide any evidence that Respondent violated the Act or participated in any wrongdoing. Respondent asserts that Complainant has been advised by the District “on multiple occasions” that the course is optional and permitted, and therefore, he should have known that his Complaint was “without any reasonable basis in law or equity.”

C. *Response to Allegation of Frivolous Filing*

Complainant maintains that the Complaint was “undertaken in good faith,” based on what he believes is unethical behavior. Complainant notes that the District never advised him “they disagreed with [his] assessment that the behavior was problematic,” or that it was legal. According to Complainant, contrary to Respondent’s justifications, the summer course is “a cram class designed to prepare students for the full-year course, it is NOT the same as an existing class offered free of charge during the school year.” Complainant maintains those students who take the summer course will have an “advantage over those students who cannot afford the summer cram class” and it “creates a conflict of interest as any parent who pays for their child to take the summer cram preparatory class will expect their child to do better ... which similarly creates pressure on the teacher to unfairly grade students who paid for this to receive a better grade.” Complainant further maintains “it is absurd to assert no one profits” from offering the course. Per Complainant, he undertook the course of action “in good faith” and only after his numerous reports to Respondent were ignored.

D. *Public Comments Offered at the Commission’s Meeting on April 30, 2024*

At the Commission’s meeting on April 30, 2024, a member of the public appeared and offered public comment regarding the above-captioned matter. More detailed information regarding the substance of those public comments can be found in the [minutes](#) from the Commission’s meeting on April 30, 2024.

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.” The Commission notes that, despite the offering of public comment at its meeting on April 30, 2024, the Commission’s review of this matter was limited solely to the parties’ written submissions.

A. *Jurisdiction of the Commission*

In reviewing the allegations in this matter, the Commission notes that its authority is limited to enforcing the Act, *N.J.S.A. 18A:12-21 et seq.*, a set of minimum ethical standards by which all school officials must abide. In this regard, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C. 6A:28-1.4(a)*.

With the jurisdiction of the Commission in mind, to the extent that Complainant seeks a determination from the Commission regarding the legality of a Board policy, such determination falls beyond the scope, authority, and jurisdiction of the Commission. Although Complainant may be able to adjudicate that issue in the appropriate tribunal, the Commission is not the appropriate entity to make that determination. Accordingly, those claims are dismissed.

B. *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(c)* and *N.J.S.A. 18A:12-24(f)*, and these provisions of the Act state:

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

To credit a violation of *N.J.S.A. 18A:12-24(c)*, Complainant must provide sufficient factual evidence that Respondent acted in her official capacity in a matter where she, or a member of her immediate family, had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity, or in a matter where she had a personal involvement that created some benefit to her or to a member of her immediate family.

To credit a violation of *N.J.S.A. 18A:12-24(f)*, Complainant must provide sufficient factual evidence that Respondent used her public employment, or any information not generally available to the public, and which she received in the course of and by reason of her employment, for the purpose of securing financial gain for herself, her business organization, or a member of her immediate family.

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(c) and/or *N.J.S.A.* 18A:12-24(f) were violated. Complainant has not alleged that Respondent had a financial and/or personal involvement in the course offering, nor that Respondent sought personal financial gain for herself or a member of her family. While the teacher of the course may receive a stipend or income for teaching the course during the summer months, that would be approved by the Board, and Complainant does not allege that Respondent, or a family member, profited in any way from the District offering the optional summer class. The Program of Studies catalog attached to the Written Statement demonstrates that “[i]n addition to [the economics] course being offered during the regular school year, there will be an online/blended summer course offered for a fee.” As such, the fee is required by the District, and is Board approved, and not approved by Respondent, or any other District employee. 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(c) and *N.J.S.A.* 18A:12-24(f).

IV. Request for Sanctions

At its meeting on April 30, 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 April 30, 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: April 30, 2024

***Resolution Adopting Decision
in Connection with C62-23***

Whereas, at its meeting on April 30, 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 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 discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on May 21, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on 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 May 21, 2024.

Brigid C. Martens, Director
School Ethics Commission