

Before the School Ethics Commission
Docket No.: C68-23
Probable Cause Notice

Leonard Thor,
Complainant

v.

Kathleen Amster, Christina Russotto, Valentina Mendez, Aldo Petruno,
and Annette Siewert,
Marlboro Township Board of Education, Monmouth County,
Respondents

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on September 20, 2023, by Leonard Thord (Complainant), alleging that Kathleen Amster, Christina Russotto, Valentina Mendez, Aldo Petruno, and Annette Siewert (Respondents), members of the Marlboro 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 Respondents violated *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code). On October 11, 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*

By way of background, Complainant asserts that he previously filed two ethics complaints against Board members as well as a complaint before the Government Records Council. Complainant alleges that at the March 28, 2023, public Board meeting, Board counsel read a statement “on behalf of the [B]oard” criticizing Complainant, questioning his motives for filing these complaints against “several” Board members, and alleging that taxpayer money was being wasted defending “frivolous litigation.” Complainant asserts that the word “several” means more than two, and he only previously filed ethics charges against two Board members, and the

Commission did not find those complaints to be frivolous. As such, Complainant alleges that these two claims are false, inaccurate, and/or purposefully misleading. Complainant also asserts that he contacted all Board members to inquire as to whether they had any involvement with the statement. According to Complainant, three Board members responded that they did not, and they are not named as Respondents in the Complaint, but the rest did not respond to his email. Complainant argues that as at least three Board members did not have knowledge of the statement, it did not represent the position of the entire Board. Complainant claims the statement was factually incorrect, and as such, Respondents violated *N.J.S.A.* 18A:12-24.1(g).

B. *Written Statement*

Respondents assert that none of them made a statement at the Board meeting on March 28, 2023, except for Respondent Russotto, who introduced Board counsel. According to Respondents, “Complainant theorizes that because the named Respondents refused to reply to his e-mail asking whether they were ‘involved with the statement made,’ that the statement must have been made on their individual behalf, rather than on behalf of the Board itself.”

Respondents argue that the use of the word “several” did not render the statement inaccurate, as it is “commonly-used in everyday vernacular to refer to a quantity which is more than one.” Further, Respondents argue by using the term “frivolous,” they did not state that any of the complaints filed by Complainant were found to be frivolous by the Commission, but rather Board counsel “referred to *what the Board viewed as* ‘frivolous litigation costs’ necessary to defend against Complainant’s complaints.” Respondents assert that Complainant has not shown any inaccurate statement that was not attributable to mistake, personal opinion or developing circumstances and, therefore, a violation of *N.J.S.A.* 18A:12-24.1(g) has not been established.

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, based on the conduct more fully detailed above, Respondents violated *N.J.S.A.* 18A:12-24.1(g), and this provision of the Code provides:

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), factual evidence of a violation of 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.

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(g) was violated. Initially, the Commission notes that Board counsel spoke at the Board meeting on March 28, 2023, and the Commission does not have jurisdiction over the actions of Board counsel, as the Act only applies to school officials. *N.J.S.A.* 18A:12-23.1. To the extent that Complainant alleges that Respondents provided false information to Board counsel for his statement on behalf of the Board, the Commission finds the statement did not contain inaccurate information other than reasonable mistake or personal opinion. The Commission finds that the use of the word “several” is a generalization, and whether the dictionary definition is “more than one,” or “more than two,” is immaterial. Moreover, even if the word choice was technically incorrect, it would be a reasonable mistake. Additionally, the Commission finds that the statement that taxpayer money is being wasted on “frivolous litigation costs,” is the opinion of the Board. The use of the word “frivolous,” in context, did not imply that the Commission had found Complainant’s ethics complaints to be frivolous. Accordingly, the Commission finds that Respondents did not violate *N.J.S.A.* 18A:12-24.1(g), and it, therefore, dismisses the alleged violation of *N.J.S.A.* 18A:12-24.1(g), pursuant to *N.J.A.C.* 6A:28-9.7(b).

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 C68-23***

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