

Before the School Ethics Commission
Docket No.: C80-23
Decision on Probable Cause

**Samantha Moore,
Complainant**

v.

**Norma Fernandez, Natalia Ioffe, and Noemi Velazquez,
Jersey City Board of Education, Hudson County,
Respondents**

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on December 7, 2023,¹ by Samantha Moore (Complainant), alleging that Norma Fernandez (Respondent Fernandez), Superintendent of the Jersey City School District (District), Natalia Ioffe (Respondent Ioffe), and Noemi Velazquez (Respondent Velazquez) (collectively, Respondents), members of the Jersey 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 Respondent Fernandez violated *N.J.S.A. 18A:12-24(d)* in Count 1; Respondent Ioffe violated *N.J.S.A. 18A:12-24(a)* and *N.J.S.A. 18A:12-24(b)*, as well as *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)* and *N.J.S.A. 18A:12-24.1(j)* of the Code of Ethics for School Board Members (Code) in Count 2; and Respondent Velazquez violated *N.J.S.A. 18A:12-24(a)* and *N.J.S.A. 18A:12-24(b)*, as well as *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)* and *N.J.S.A. 18A:12-24.1(g)* of the Code in Count 3. On January 23, 2024, Respondents filed a Written Statement.

The parties were notified by correspondence dated May 13, 2024, that the above-captioned matter would be discussed by the Commission at its meeting on May 21, 2024, in order to make a determination regarding probable cause. Following its discussion on May 21, 2024, the Commission adopted a decision at its special meeting on June 17, 2024, finding that the allegations in Count 1 (with the exception that Respondent Fernandez violated *N.J.S.A. 18A:12-24(d)* as to the Open Public Records Act (OPRA)), Count 2 (with the exception that Respondent Ioffe violated *N.J.S.A. 18A:12-24(b)* regarding a scholarship award in her name),

¹ On October 27, 2023, Complainant filed a deficient Complaint, and Complainant filed a second deficient Complaint on November 13, 2023. Complainant then filed an Amended Complaint on December 7, 2023, that cured all defects and was deemed compliant with the requirements detailed in *N.J.A.C. 6A:28-6.3*.

and Count 3 in its entirety were untimely filed, and therefore, dismissed; and finding that the remaining facts and circumstances pled in the Complaint and in the Written Statement would not lead a reasonable person to believe that the Act was violated.

II. Summary of the Pleadings

A. The Complaint

By way of background, Complainant maintains that Respondent Fernandez (Superintendent) misled the Board and the community by leading them to believe that Respondent Fernandez “had a signed contract” for starting an all-girls school (Academy) in the District, “disregarded” the Board’s “No vote decision,” and moved forward with renovating space for the Academy. According to Complainant, the Academy was being placed on the third floor of P.S. #39. In preparation for the Academy, P.S. #39 was undergoing unapproved renovations that were not allocated in the budget, while students and staff were in school, and these renovations were exposing the students and staff to chemicals causing breathing issues and sickness, as well as a disruption to students who were taking assessment tests because of the loud renovation noises. In addition, Complainant notes the loud noises were disruptive and frightening to the students with autism, and forced them to be relocated to another part of the building, and the third floor boys’ bathroom was shut down and unable to be used, causing a health concern. Complainant further maintains the public inquired as to the progress of the renovation and the problems that students and staff were facing, and the Superintendent did not respond and/or provided limited information. Complainant notes Respondents, in their roles as Superintendent and Board members, were aware of the hazardous conditions in the school, but did not do anything to help the students or to improve the conditions, nor to inform the community.

With the above in mind, in Count 1, Complainant asserts that Respondent Fernandez violated *N.J.S.A.* 18A:12-24(d) based on the following actions:

- In April 2022, Respondent Fernandez only had one community meeting with the parents of P.S. #39 to introduce the program, and did not focus on the community’s concerns that P.S. #39 could not house the needs of the Academy.
- On January 27, 2023, despite the Board’s vote not to approve the Academy, Respondent Fernandez continued to circumvent the Board’s decision and started renovations without a contract.
- From February 23, 2023, through March 23, 2023, Respondent Fernandez held meetings for the Academy, sent staff to workshops for a school that was not approved, and then attempted to hire a principal for the Academy, which also was not Board approved.
- On April 22 and 23, 2023, Respondent Fernandez held an open house for the Academy, which was cancelled on the second day, because the parents and the City shut down the work for the school that was not approved.

- On July 24, 2023, September 29, 2023, and November 9, 2023, Complainant filed OPRA requests with the New Jersey Department of Education (Department), the Hudson County Office of Education (County), and the Board for any files that would show the Academy was approved by the County or the Department, as well as any contracts the Board may have had related to work orders, and she did not receive any records responsive to her request, except supporting documents from the Board that Respondent Fernandez held a meeting and spent money up until April 2023 for the Academy.

In Count 2, Complainant maintains Respondent Ioffe took the following actions that violated the Act and the Code:

- In January 2023: Respondent Ioffe was aware of the employee and student issues, and she was present when the Board voted not to renew the Academy. The Board lacked leadership with Respondent Ioffe as Board President and her leadership “compromises the integrity of the entire [B]oard to the point where Board trustees could not get answers to recurring issues and problems.”
- On January 27, 2023, Respondent Ioffe was “on the Board” when the Board voted not to pass the contract for the 2022-2023 and 2023-2024 school years, and therefore, was aware the line item did not pass to move forward with the Academy.
- On April 22, 2023, Respondent Ioffe and two of the Superintendent’s senior cabinet members (Mr. Williams and Ms. Smalls) had a meeting at a diner with two community leaders and Respondent Ioffe misled them to believe that the Board had a signed contract to move forward with the renovation to the boys’ bathroom.
- On April 27, 2023, two Board members called for a “No Confidence” vote regarding Respondent Velasquez because she provided misleading information to the Jersey City Education Association (JCEA) President, as well as regarding Respondents Fernandez and Ioffe, which was not voted upon because of a rally that the Respondents planned to “conspire[] to divert the parents [from] addressing many issues under this administration.” The vote was not taken, and Complainant maintains this violated Robert’s Rules of Order.
- On August 31, 2023, Respondent Ioffe (Board President) received a leadership scholarship award in her name “at the school in which her child may still be in attendance,” which will help her with her Jersey City political goals.

According to Complainant, based on the timeline above, Respondent Ioffe violated *N.J.S.A.* 18A:12-24(a),² because she did not enforce and uphold all rules when she placed the students and staff at P.S. #39 in an unsafe learning and working environment and ignored the parent and staff complaints, opening the District up to a lawsuit; violated *N.J.S.A.* 18A:12-24(b), because she has “shown poor judgment in decision making as a [] trustee and has benefited by having a scholarship in her name at the school where her children attend”; violated *N.J.S.A.* 18A:12-24.1(a), because as the Board President, she must ensure that the Superintendent follows federal law, namely regarding school safety and security, and she must protect the students, but she was not in compliance with the Occupational Safety and Health Act (OSHA), and did not keep proper records related to the buildings air quality; violated *N.J.S.A.* 18A:12-24.1(b), because the parents were not consulted before the schools in a section of the District “received disparity education treatment, the condition of the building deplorable”; violated *N.J.S.A.* 18A:12-24.1(c), because she did not consult with those who would be affected by policies, namely the employees; violated *N.J.S.A.* 18A:12-24.1(d), because she took an oath to work together with her fellow Board members to make sure the District schools were safe, but she violated that agreement when she allowed the renovations to dismantle and segregate the boys of P.S. #39; violated *N.J.S.A.* 18A:12-24.1(e), because despite knowing that the contract to start the Academy was never approved, she misled the public and the remaining Board members the she had a signed contract and moved forward with the Academy and renovations to the boys’ bathroom; violated *N.J.S.A.* 18A:12-24.1(f), because she “insert[ed] herself with removal of union officials other than teachers”; and violated *N.J.S.A.* 18A:12-24.1(j), “due to her lack of urgency” in responding to staff emails and concerns.

In Count 3, Complainant alleges that Respondent Velazquez violated the Act and Code based on the following actions:

- On January 27, 2023, Respondent Velazquez was in attendance at the meeting when the Board voted not to renew the Academy and any related contracts. Respondent Velazquez became “very hostile” with the Board members who voted against the Academy.
- On April 22, 2023, Respondent Velazquez wanted to move forward with the school and was also present at the meeting at the diner when Respondent Ioffe misled the community advocates into believing that the Board had a signed contract to start renovations on the Academy.
- On April 27, 2023, Respondent Velazquez informed the JCEA President that another trustee called for a “No Confidence” vote; however, she provided misinformation as to the individual who did so. Respondent Velazquez, along with Respondent Ioffe and the JCEA President “conspired to divert the parents for addressing the many issues under this administration.”

² Several times throughout the Complaint, Complainant makes allegations of the Act, but the language of her allegation appears to be from the Code. As the Complaint already alleges violations of the same Code provisions, the Commission will not make any corrections to the alleged provisions of the Act.

- On October 19, 2023, Respondent Velazquez “still hold[s] hostility for not passing and voting for the [Academy] that never had contract approval, [a permit] and [a]ir quality test[s] before or after renovation.”

With the above in mind, Complainant contends Respondent Velazquez violated *N.J.S.A.* 18A:12-24(a), because she did not enforce and uphold all rules when she placed the students and staff at P.S. #39 in an unsafe learning and working environment and ignored the parent and staff complaints, opening the District up to a lawsuit; violated *N.J.S.A.* 18A:12-24(b), because she has “shown poor judgment in decision making as a [] trustee”; violated *N.J.S.A.* 18A:12-24.1(a), because as the Board Vice President, she has an obligation to follow federal law; violated *N.J.S.A.* 18A:12-24.1(b), because the parents were not consulted before the schools in a section of the District “received disparity education treatment, the condition of the building deplorable”; violated *N.J.S.A.* 18A:12-24.1(c), because she did not consult with those who would be affected by policies, namely the employees; violated *N.J.S.A.* 18A:12-24.1(d), because she took an oath to work together with her fellow Board members to make sure the District schools were safe, but she violated that agreement when she allowed the renovations to dismantle and segregate the boys of P.S. #39; violated *N.J.S.A.* 18A:12-24.1(e), because despite knowing that the contract to start the Academy was never approved, she misled the public and the remaining Board members that she had a signed contract and moved forward with the Academy and renovations to the boys’ bathroom; violated *N.J.S.A.* 18A:12-24.1(g), because she was endorsed by the JCEA and did not provide accurate information to the parents and Board about the renovations; and violated *N.J.S.A.* 18A:12-24.1(f), because she “took a position to engage in the wrong that was inflicted on the [c]hildren and staff[’s] health and safety.”

B. Written Statement

Respondents initially argue that most of the Complaint is time-barred and the allegations “having to do with events or actions occurring in January, February, March and April 2023” must be dismissed as untimely.

As to the remaining allegations, Respondents argue Complainant fails “to state a claim” and “are not supported by probable cause,” and therefore, should be dismissed.

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 Untimeliness

Respondents argue that most of the Complaint is time-barred and the allegations “having to do with events or actions occurring in January, February, March and April 2023” must be dismissed as untimely.

The Commission’s regulations provide a one hundred eighty (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).

With the above in mind, and 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 her Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events.

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 case, Complainant filed her first deficient Complaint on October 27, 2023, and one hundred eighty (180) days prior to that date is April 30, 2023.

After review, the Commission finds that there is not a credible basis upon which to find that Complainant was unaware of Respondent’s actions/conduct until a date(s) other than when they occurred. Although the Commission recognizes that the regulatory time period may be relaxed, in its discretion, in any case where strict adherence may be deemed inappropriate or unnecessary or may result in injustice, it finds no extraordinary circumstances in the within matter that would compel relaxation. Critical to the Commission’s determination was that the conduct either occurred at public community meetings, Board meetings, or at an open house. Moreover, Complainant does not allege that she learned of those events at a later date. Despite her knowledge of the events that occurred prior to April 30, 2023, Complainant did not first file a Complaint until October 27, 2023, to initiate the above-captioned matter.

Consequently, the stated violations of the Act set forth in Count 1 (with the exception that Respondent Fernandez violated *N.J.S.A.* 18A:12-24(d) involving OPRA requests filed in July, September, and November, 2023), Count 2 (with the exception that Respondent Ioffe violated *N.J.S.A.* 18A:12-24(b) regarding a scholarship award in her name), and Count 3 in its entirety³ are time barred and, therefore, dismissed.

Alleged Violations of the Act

As to the remaining allegations, Complainant submits that, based on the conduct more fully detailed above, Respondent Fernandez violated *N.J.S.A.* 18A:12-24(d) in Count 1 and Respondent Ioffe violated *N.J.S.A.* 18A:12-24(b) in Count 2. These provisions of the Act state:

b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

Count 1 **(Respondent Fernandez, *N.J.S.A.* 18A:12-24(d))**

In Count 1, Complainant asserts that Respondent Fernandez violated *N.J.S.A.* 18A:12-24(d) when Complainant filed OPRA requests with the Department, the County, and the Board on July 24, 2023, September 29, 2023, and November 9, 2023, respectively, for any files that would show the Academy was approved by the County or the Department, as well as any contracts the Board may have had related to work orders, and she did not receive any records responsive to her request, except supporting documents from the Board that Respondent Fernandez held a meeting and spent money up until April 2023 for the Academy. Respondents counter that the OPRA requests do not assert any action by Respondent Fernandez.

In order to credit a violation of *N.J.S.A.* 18A:12-24(d), Complainant must provide sufficient factual evidence that Respondent Fernandez engaged in employment or service, regardless of whether compensated, which might reasonably be expected to prejudice her independence of judgment in the exercise of her official duties.

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(d) was violated in Count 1. The allegation that Complainant made a request for records involving Respondent Fernandez does not allege any action by

³ The Complaint indicates that on October 19, 2023, Respondent Velazquez “still hold[s] hostility” related to prior actions that are time-barred. The Commission finds that Complainant does not allege that Respondent Velazquez violated any specific provisions of the Act or Code in connection with the “hostility” on October 19, 2023.

Respondent Fernandez, and accordingly, does not allege a basis for a violation of the Act. To the extent that Complainant alleges that the supporting documents received from the Board in response to her OPRA request, which demonstrate Respondent Fernandez held a meeting and spent money up until April 2023 for the Academy, were the basis of the violation, the Commission finds that the underlying conduct does not amount to a violation of *N.J.S.A. 18A:12-24(d)*. Complainant does not allege that Respondent Fernandez held any other employment or service outside of her position as Superintendent, and as such, Respondent Fernandez did not engage in any employment or service that could prejudice her independence of judgment in the exercise of her duties as Superintendent. 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(d)* in Count 1.

Count 2
(Respondent Ioffe, *N.J.S.A. 18A:12-24(b)*)

In Count 2, Complainant contends that Respondent Ioffe violated *N.J.S.A. 18A:12-24(b)* because she has “shown poor judgment in decision making as a [] trustee and has benefited by having a scholarship in her name at the school where her children attend,” which will help her with her Jersey City political goals. Respondents counter that there is “no indication that [Respondent] Ioffe had any involvement in the award of any scholarship or that she or her [child] was the beneficiary of any official act by [Respondent] Ioffe.”

In order to credit a violation of *N.J.S.A. 18A:12-24(b)*, Complainant must provide sufficient factual evidence that Respondent Ioffe used or attempted to use her official position to secure an unwarranted privilege, advantage or employment for herself, members of her immediate family, or “others.”

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(b)* was violated in Count 2. The Complaint does not allege that Respondent Ioffe had any part in creating the scholarship, or in choosing the recipient. Moreover, the Complaint does not allege beyond speculation how Respondent Ioffe, or a member of her family, will benefit from the scholarship. As such, Complainant fails to demonstrate how Respondent Ioffe used or attempted to use her official position to secure an unwarranted privilege, advantage or employment. 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(b)* in Count 2.

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 the allegations in Count 1 (with the exception that Respondent Fernandez violated *N.J.S.A. 18A:12-24(d)* as to OPRA), Count 2 (with the exception that Respondent Ioffe violated *N.J.S.A. 18A:12-24(b)* regarding a scholarship award in her name), and Count 3 in its entirety were untimely filed, and therefore, dismissed; and the remaining facts and circumstances pled in the Complaint and in the Written Statement would not lead a reasonable person to believe that the Act was violated.

Consequently, the Commission further advises that the above-captioned matter is dismissed.
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: June 17, 2024

***Resolution Adopting Decision
in Connection with C80-23***

Whereas, at its meeting on May 21, 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 meeting on May 21, 2024, the Commission discussed finding the allegations in Count 1 (with the exception that Respondent Fernandez violated *N.J.S.A.* 18A:12-24(d) as to OPRA), Count 2 (with the exception that Respondent Ioffe violated *N.J.S.A.* 18A:12-24(b) regarding a scholarship award in her name), and Count 3 in its entirety were untimely filed, and therefore, dismissed; and

Whereas, at its meeting on May 21, 2024, the Commission discussed finding that the remaining facts and circumstances pled in the Complaint and in 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 special meeting on June 17, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on May 21, 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 special meeting on June 17, 2024.

Brigid C. Martens, Director
School Ethics Commission