

Before the School Ethics Commission
Docket No.: C87-23
Decision on Probable Cause

William and Mary Ann Moretti,
Complainants

v.

Joshua Aikens, Deborah Fagan, William (Bill) Daniella, Kristin Tufano,
Gretchen Torres, Kathleen Zagula, and Lisa Carlson,
Lafayette Board of Education, Sussex County,
Respondents

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on November 24, 2024, by William and Mary Ann Moretti (Complainants), alleging that Joshua Aikens, Deborah Fagan, William (Bill) Daniella, Kristin Tufano, Gretchen Torres, Kathleen Zagula, and Lisa Carlson (Respondents), members of the Lafayette 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) and *N.J.S.A.* 18A:12-24.1(b) of the Code of Ethics for School Board Members (Code).

On December 15, 2023, Respondents filed a Written Statement, and also alleged that the Complaint is frivolous. On January 22, 2024, Complainants filed a response to the allegation of frivolous filing. Thereafter, the Commission granted Complainants' request to consider a Supplement to the Complaint, which was filed on May 20, 2024.

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 and the allegation of frivolous filing. Following its discussion on May 21, 2024, the Commission adopted a decision at its special meeting on June 17, 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 Respondents' request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

Complainants maintain that “[a]t the beginning of the [2023-2024] school year” they “alerted the School Superintendent copying the [C]ounty [S]uperintendent [] and the [Board] including newly resigned member Lisa Carlson via email and letter” regarding their child’s “significant medical issue that would require surgery and significant time off indicating a need for home instruction.” According to Complainants, their child’s ongoing medical condition required treatment and medical visits outside of the State, which would cause “significant time away” from school, and also exceeded the allowable absences in September and October. In addition, Complainants note their child was unable to attend school in November due to testing, surgery and hospitalization.

Complainants assert on November 16, 2023, their child’s “medical team” provided them with a medical note, including restrictions for their child, and also indicated the child would need “home confinement minimally until December 11, 2023, dependent upon recovery.” Thereafter, Complainants’ child would require “significant physical therapy and a second surgery.” Consequently, Complainants sent a request for home instruction via email on November 16, 17 and 18, 2023, to each Board member and the Superintendent, “who swiftly denied the request stating requirements were not met under the act without giving any further explanation” After not receiving a response or resolution, Complainants sent follow-up correspondence on November 17, 20, and 21, 2023, to which they assert they did not receive a response. They also contend that since the beginning of this process, their child “has been deprived of home instruction he was entitled to for 5 days at educational harm.”

With the above in mind, Complainants assert Respondents violated *N.J.S.A.* 18A:12-24.1(a) because “the refusal to respond is a de facto denial of home instruction” and a violation of *N.J.A.C.* 6A:16-10.1 *et seq.* Complainants further assert *N.J.A.C.* 6A:16-10.1 *et seq.* is a State Board of Education school law and the “denial of educational services to a child qualified and in need” is a violation of the Code, and “[p]roviding a child with a medically needed home instruction is a school law, rule, [and/or] regulation stipulated by the State Board of Education.” Complainants attached an excerpt from *W.M. and M.M., o/b/o minor child v. Board of Education of the Township of Lafayette, Sussex County*, EDU 00065-23 Initial Decision (June 19, 2023), stating, “[n]otably, Lafayette also highlights that petitioners can request home instruction for health or psychological reasons . . . or other medical issues necessitating home instruction” and “petitioners can still provide medical documentation to support a medical basis for home instruction[.]”

Complainants contend Respondents also violated *N.J.S.A.* 18A:12-24.1(b) because “the refusal to respond is a de facto denial of home instruction” and a violation of *N.J.A.C.* 6A:16-10.1 *et seq.* Complainants further contend *N.J.A.C.* 6A:16-10.1 *et seq.*, is a State Board of Education school law and “[m]aking a decision to deny a child with a medically needed home instruction qualifying under both consecutive days off and cumulative days off is acting contrary to the educational welfare of [Complainants’] child in discrimination.”

B. *Written Statement and Allegation of Frivolous Filing*

According to Respondents, on November 16, 2023, Complainants provided a “School Note” from a physician dated November 17, 2023,¹ which did not contain a diagnosis nor a reason as to why home instruction was necessary until December 11, 2023. Respondents note, on that same day they received the School Note, the Superintendent responded via email and informed Complainants that their “request for home instruction was denied because it does not meet the requirements set forth in *N.J.A.C. 6A:16-10.1*.” According to Respondents, Complainants did not “provide any additional correspondence indicating how they attempted to rectify any deficiencies and bring their request into compliance.” Respondents note, instead Complainants decided to “attack the Superintendent and the Board [m]embers.” Respondents contend that despite indicating that home instruction would be provided if Complainants followed the “proper procedures and compliance with the rules regarding documentation of a health condition,” Complainants have not done so.

Respondents assert that had the Board members “taken action in response to the correspondence from [Complainants],” they would have violated *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(i)* and/or *N.J.S.A. 18A:12-24.1(j)*, as Board members are “prohibited from taking action regarding an individual student without the topic being raised to them by the Chief School Administrator [(CSA)] during the appropriate portion of a public Board [m]eeting.” Moreover, the regulation that governs home instruction indicates that “[t]he parent shall submit a request to the CSA [] and school nurse that includes a written determination from the student’s physician documenting the projected need for confinement.” Per Respondents, individual Board members do not determine whether a student is entitled to home instruction, nor does the Board as a whole play a role in the decision-making process related to home instruction.

With respect to a violation of *N.J.S.A. 18A:12-24.1(a)*, Respondents argue Complainants “have failed to identify, let alone attach, ‘a final decision from any court of law or any administrative agency’ indicating that [] Respondents failed to enforce all laws or brought changes about through illegal or unethical procedures by not responding to their requests for home instruction for their child.” As to a violation of *N.J.S.A. 18A:12-24.1(b)*, Respondents contend Complainants have “failed to provide any evidence that any Respondent made any decision that was contrary to the educational welfare of children or took any action to obstruct programs and policies to meet the individual needs of all children.” Per Respondents, the named Board members acted “properly in not interfering or becoming involved with a decision that is made at the Administration level.”

Finally, Respondents assert that Complainants “have a long history of engagement with the District Administration and the Board regarding their child,” and they “repeatedly filed actions against the District personnel and the Board.” According to Respondents, despite the Superintendent’s prompt response to their request for home instruction, Complainants claim the Board members did not respond, and therefore, violated the Code. Respondents argue, “[t]o

¹ It is unclear why the physician’s note is dated November 17, 2023, when the record demonstrates that Complainants submitted it on November 16, 2023.

allow this kind of nonsensical Complaint to stand without some sort of punishment simply allows [Complainants] to continue to file actions against Board [m]embers when something they don't agree with occurs." Respondents assert, "[t]here should be no doubt that [Complainants] knew, or should have known, that the Board not responding to their emails, when the District Superintendent was, is not an ethical violation." Therefore, Respondents contend the Complaint is frivolous and Complainants should be sanctioned.

C. *Response to Allegation of Frivolous Filing*

Complainants assert, "Not one of the prongs to satisfy frivolous complaint has been remotely met by Respondents." According to Complainants, "The totality of circumstances here and the history of the Board's blatant defiance of school laws . . . prohibit frivolous claims for parents ensuring the educational welfare and safety of their child." Complainants further assert "[c]haracterizing parents taking appropriate proactive steps and following school statute procedures to ensure the educational and physical welfare of their child as an 'attack' on the Board in some far reaching way is *absolutely ridiculous*." Complainants maintain the Complaint is "far from frivolous, or unsupported in any law, nor was it made for harassment; it was made in the interests of their child receiving the education [the child] deserves." Ultimately, Complainants assert they "have clearly shown the ethical violations of the Board members . . . by showing the Board clearly failed to hold the [S]uperintendent responsible for implementing the policies and school law and for their proven willful obstruction of programs and policies designed to meet the needs of all children," and therefore, the Complaint is not frivolous and should not be dismissed.

D. *Supplement to the Complaint*

Complainants submitted an exhibit providing a timeline of the history of prior matters before the Commissioner of Education and the Appellate Division.

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."

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 Complainants seek a determination from the Commission that Respondents may have violated *N.J.A.C. 6A:16-10.1 et seq.*, or any other State law or regulation, and/or Board policy, the Commission advises that such determinations fall beyond the scope, authority, and jurisdiction of the Commission. Although Complainants may be able to pursue a cause of action in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those issues. Consequently, those claims are dismissed.

Alleged Violations of the Act

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

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

Pursuant to *N.J.A.C. 6A:28-6.4(a)(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.

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(a)* was violated. Despite being required by *N.J.A.C. 6A:28-6.4(a)(1)*, the Commission finds that Complainants have 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 set forth in the Complaint, namely failing to provide home instruction for Complainants' child. While Complainants allege that Respondents violated *N.J.A.C. 6A:16-10.1 et seq.*, a court of law or administrative agency has not specifically found that Respondents violated that regulation, which is a prerequisite to the finding of a violation of *N.J.S.A. 18A:12-24.1(a)*. The Initial Decision attached to the Complaint does not order Respondents to provide home instruction for Complainants' child. To the contrary, although the decision references the availability of home instruction for medical

reasons, Complainants had not submitted the appropriate medical documentation, and the matter was dismissed as duplicative of other pending matters. Further, the individually named Respondents were not parties to that matter. Without the required final decision(s) demonstrating that Respondents violated *N.J.A.C. 6A:16-10.1 et seq.* and are required to provide home instruction for Complainants' child, a violation of *N.J.S.A. 18A:12-24.1(a)* is not supported. 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(b)

Pursuant to *N.J.A.C. 6A:28-6.4(a)(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.

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 by Respondents' "de facto denial of home instruction" for Complainants' child because they did not respond to the request/correspondence. Complainants acknowledge that the Superintendent "swiftly denied the request" for home instruction, but argue that Respondents (Board members) refused to respond, and therefore, denied home instruction and acted contrary to the educational welfare of Complainants' child. The Commission finds that a determination regarding home instruction is a decision for school administration, namely the chief school administrator, and not Board members. In this circumstance, the Superintendent responded to the request, and whether Complainants disagree with the determination of the Superintendent does not render the determination to be an ethical violation by Respondents, individual Board members, who were not responsible for handling the request. If any of the Respondents acted regarding Complainants' request for home instruction when the Superintendent had already sent a response, such action arguably could have constituted improper administration of the schools or an attempt to resolve a complaint outside of a Board meeting and prior to an administrative solution, in violation of the Code. Respondents acted appropriately in not involving themselves in a decision of the administration that was not before the Board. As such, the failure to respond to Complainants' correspondence regarding home instruction does not amount to a willful decision by the individual Respondents contrary to the educational welfare of Complainants' child, and does not violate *N.J.S.A. 18A:12-24.1(b)*. 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(b)*.

IV. Request for Sanctions

At its meeting on May 21, 2024, the Commission considered Respondents' request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A. 18A:12-29(e)*. Despite Respondents' argument, the Commission cannot find evidence that might show that Complainants 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

Complainants 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 special meeting on June 17, 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 Complainants 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 Commission further advises the parties that, following its review, it voted to find that the Complaint is not frivolous, and to deny Respondents' 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: June 17, 2024

***Resolution Adopting Decision
in Connection with C87-23***

Whereas, at its meeting on May 21, 2024, the School Ethics Commission (Commission) considered the Complaint, the Written Statement and allegation of frivolous filing, the response to the allegation of frivolous filing, and the supplement to the Complaint submitted in connection with the above-referenced matter; and

Whereas, at its meeting on May 21, 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 May 21, 2024, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; 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