

Before the School Ethics Commission
Docket No.: C76-24
Decision on Probable Cause

**Jon Zawacki,
Complainant**

v.

**Katie Fabiano,
Monroe Township Board of Education, Middlesex County,
Respondent**

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on September 25, 2024, by Jon Zawacki (Complainant), alleging that Katie Fabiano (Respondent), a member of the Monroe 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 Respondent violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(f)* and *N.J.S.A. 18A:12-24.1(h)* of the Code of Ethics for School Board Members (Code). Respondent filed a Written Statement on November 20, 2024, and also alleged that the Complaint is frivolous. On December 3, 2024, Complainant filed a response to the allegation of frivolous filing.

The parties were notified by correspondence dated April 15, 2025, that the above-captioned matter would be discussed by the Commission at its meeting on April 22, 2025, in order to make a determination regarding probable cause and the allegation of frivolous filing. Following its discussion on April 22, 2025, the Commission adopted a decision at its meeting on May 20, 2025, 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 frivolous, and granting Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

By way of background, Complainant provides that his spouse has 19 years of experience in education and was recommended by the Superintendent for hire as a teacher at Step 10b on an 11 Step guide, and the recommendations were placed on the agenda for the April 17, 2024, Board meeting. According to Complainant, Respondent's spouse "made false claims against

[Complainant's spouse] on social media prior to the [April 17, 2024, Board] meeting in an effort to sway the vote." The social media post stated:

On this week's BOE meeting agenda, there is yet another new hire for Woodland School being hired at a step 10b! What does that mean? A new teacher is being hired at 10 steps above the starting pay we start new teachers off at. It takes a new teacher in Monroe 10 YEARS to reach this pay scale. Last month, there was a hire for Woodland that was over 90k.

We deserve an explanation of why this is happening and the union must speak up NOW and defend our existing teachers! This is a slap in the face of every hardworking teacher that has dedicated many years here, teaching our children. If this continues, we are going to drive staff morale further downward and we are going to lose more good teachers.

It shouldn't be about who you know, it should be about EQUALITY FOR ALL TEACHERS!

At the April 17, 2024 Board meeting, Respondent's spouse was approved for employment. According to Complainant, the only "no" vote for Complainant's spouse's approval was from Respondent. On May 1, 2024, the Board had a reorganization meeting, and Respondent was elected Board President.

In Count 1, Complainant contends that the agenda for the May 13, 2024, Board meeting contained reappointments for certified staff for the 2024-2025 school year and listed 96 certified staff members that the Superintendent recommended for renewal. According to Complainant, Respondent voted to approve all but one staff member, Complainant's spouse, and called Complainant's spouse out by name when voting "No." Complainant further contends that his spouse was one of 23 staff members who were on Step 10 or higher on the salary guide. Complainant asked Respondent during public session why she voted not to renew his spouse. Complainant maintains Respondent stated that she voted not to renew his spouse "because of the financial situation the district is in and [she] did not think the district should be hiring at the top of the guide." Complainant indicated that there were recently three other employees hired at the same Step or higher, and Respondent voted to approve their renewals "without question" and only "singled out" Complainant's spouse. Moreover, Respondent voted to approve the other 22 staff members on the list who were also at the top of the guide. Therefore, Complainant asserts Respondent's vote and reasoning was "arbitrary and capricious" and in violation of *N.J.S.A.* 18A:12-24.1(h).

In Count 2, Complainant asserts that his spouse was not present at the meeting on May 13, 2024, nor was she issued a *Rice* notice and Respondent discussed her employment, namely her reasoning for not wanting Mrs. Zawacki employed in the District. Therefore, Complainant maintains Respondent violated the Sunshine Law, and therefore, is in violation of *N.J.S.A.* 18A:12-24.1(a).

In Count 3, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(f) because she was the only “No” vote at the April 27, 2024, meeting, to hire Complainant’s spouse at Step 10b, and “it was clear that [Respondent] voted for the gain of her husband against [Complainant’s spouse].” Complainant further contends “it was apparent [Respondent] was voting the way her husband wanted her to based on his social media tirade.”

B. *Written Statement and Allegation of Frivolous Filing*

Respondent initially argues that “although Board [m]embers take into consideration the Superintendent’s recommendations for hiring, they still have the ability to vote their conscience and not act merely as a rubber-stamp for the Superintendent’s recommendation.”

As to a violation of *N.J.S.A.* 18A:12-24.1(h) in Count 1, Respondent maintains that Complainant “specifically note[d] that the Superintendent did recommend the hiring of his wife, and same is noted in the meeting minutes from April and May, and as such any action taken thereafter was with that recommendation.” Respondent reiterates that she is not obligated to follow the Superintendent’s recommendation, and it is “impossible to violate” *N.J.S.A.* 18A:12-24.1(h) by voting “No” for the Superintendent’s recommendation.

Regarding a violation of *N.J.S.A.* 18A:12-24.1(a) in Count 2, Respondent asserts Complainant has “failed to identify, let alone attach, ‘a final decision from any court of law or any administrative agency’ indicating that the Respondent failed to enforce all laws or brought changes about through illegal or unethical procedures” when she “openly discussed [Complainant’s spouse] at the May 13, 2024[, Board] meeting because there was no Rice notice issued 48 hours prior to the meeting.” Moreover, Respondent asserts that an alleged violation of Open Public Meetings Act (OPMA) or the Sunshine Law does not demonstrate a violation of *N.J.S.A.* 18A:12-24.1(a).

As to a violation of *N.J.S.A.* 18A:12-24.1(f) in Count 3, Respondent argues she “is an individual human being with her own thoughts and opinions and votes according to her beliefs and conscience – not at the bidding of her husband.” Further, Respondent contends that Complainant did not provide any evidence to support that Respondent “was aligned with any special interest or political group and took action on their behalf.” On the contrary, Respondent maintains that Complainant “speculates that somehow Mr. Fabiano ‘gains’ something from [Respondent’s] vote against hiring [Complainant’s spouse].”

Finally, Respondent alleges the Complaint is frivolous because “it does not have a factual basis and was filed merely to attack the Respondent’s reputation.” Moreover, Complainant has cited “events almost identical to the charges dismissed by this Commission against Ms. Fabiano” in C22-23. Respondent maintains that the Complaint “lacks any substance,” and Complainant obviously “took umbrage with the actions of this Board [m]ember’s [(sic)] not voting for his wife.”

C. *Response to Allegation of Frivolous Filing*

Complainant argues that he filed this Complaint “because there were clear arbitrary and capricious reasons for how the Respondent voted” against the “reappointment of an existing teacher.” Complainant further argues his claims differ from those in C22-23. Complainant maintains he filed this Complaint in good faith, he has not filed a complaint before, and he has not harassed Respondent “ever.” Ultimately, Complainant notes he filed this Complaint because Respondent did not show any respect for the oath that she took “when she voted for arbitrary and capricious reason against a teacher – none of which had anything to do with the credentials experience or recommendations from both the Superintendent and Principal who requested the reappointment.”

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 Complainant seeks a determination from the Commission that Respondent may have violated the OPMA/Sunshine Law, the Commission advises that such determinations fall beyond the scope, authority, and jurisdiction of the Commission. Although Complainant may be able to pursue a cause of action(s) in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those claims. Accordingly, those claims are dismissed.

Alleged Violations of the Act

Complainant submits that Respondent violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(f)*, and *N.J.S.A. 18A:12-24.1(h)*, 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.

f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

Count 1

In Count 1, Complainant argues Respondent violated *N.J.S.A.* 18A:12-24.1(h) when the only staff member she did not vote to approve was his spouse's appointment, although she had been recommended by the Superintendent for renewal. Respondent argues that she is not obligated to follow the Superintendent's recommendation, and therefore, she did not violate *N.J.S.A.* 18A:12-24.1(h) by voting "no."

In accordance with *N.J.A.C.* 6A:28-6.4(a)(1), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(h) shall include evidence that Respondent acted on a personnel matter without a recommendation of the chief administrative officer.

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 Respondent violated *N.J.S.A.* 18A:12-24.1(h). Board members are not obligated to simply follow the recommendations of the Superintendent and the Complaint lacks evidence that Respondent took action on a personnel matter without a recommendation of the chief administrative officer. 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:12-24.1(h) in Count 1.

Count 2

In Count 2, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24.1(a) when Respondent discussed Complainant's spouse's employment at the May 13, 2024, meeting without issuing her a *Rice* notice. Respondent asserts Complainant has "failed to identify, let alone attach, 'a final decision from any court of law or any administrative agency' indicating that the Respondent failed to enforce all laws or brought changes about through illegal or unethical procedures."

In accordance with *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 Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures.

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 Respondent violated *N.J.S.A.* 18A:12-24.1(a). Complainant has not produced a copy of a final decision from any court of law or administrative agency of this State

demonstrating Respondent failed to enforce all laws, rules and regulations of the State Board of Education or a court order pertaining to the school as required by *N.J.S.A.* 18A:12-24.1(a). 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:12-24.1(a) in Count 2.

Count 3

In Count 3, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(f) when she was the only Board member to vote “No” at the April 27, 2024, meeting, to hire Complainant’s spouse at Step 10b when Respondent’s spouse had been vocal about not hiring her. Respondent argues she “is an individual human being with her own thoughts and opinions and votes according to her beliefs and conscience – not at the bidding of her husband.”

In accordance with *N.J.A.C.* 6A:28-6.4(a)(1), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(f) shall include evidence that Respondent took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that Respondent used the schools in order to acquire some benefit for himself, a member of his immediate family or a friend.

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 Respondent violated *N.J.S.A.* 18A:12-24.1(f). The Commission notes that spouses might naturally have similar beliefs as each other, but they might also have drastically different beliefs. In any event, Complainant has not demonstrated that Respondent surrendered her independent judgment. Respondent’s actions at a Board meeting, even if those actions are similar to the beliefs of her spouse, do not establish that she took the actions at the request of her spouse. 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:12-24.1(f) in Count 3.

IV. Request for Sanctions

At its meeting on April 22, 2025, 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.

However, the Commission believes 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. At its core, the Complaint stems from a disagreement with the way Respondent voted on a matter, but board members are free to apply their judgment in voting; mere disagreement with a vote does not arise to an ethical violation under the Act.

Therefore, at its meeting on May 20, 2025, the Commission adopted a decision finding the Complaint frivolous pursuant to *N.J.S.A.* 18A:12-29(e), and granting the request for sanctions. The Commission orders that the Complainant pay a fine in the amount of \$100.00.

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 frivolous, and to grant 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: May 20, 2025

***Resolution Adopting Decision
in Connection with C76-24***

Whereas, at its meeting on April 22, 2025, 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 22, 2025, 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 22, 2025, the Commission discussed finding the Complaint frivolous, and granting the request for sanctions pursuant to *N.J.S.A.* 18A:12-29(e); and

Whereas, the Commission finds the complaint to be frivolous pursuant to *N.J.S.A.* 18A:12-29(e) and orders that the Complainant pay a fine in the amount of \$100.00; and

Whereas, at its meeting on May 20, 2025, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on April 22, 2025; 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 20, 2025.

Dana C. Jones
School Ethics Commission