

knows that he or she will be absent, he or she must call a designated telephone number before 6:30 a.m. The substitute callers retrieve those messages from the designated number and call substitutes to fill the positions. The callers may call any person on the substitute list.

However, if any member of the administration, including the principal, assistant principal, or subject area chair, or the teacher in whose classroom the substitute teacher worked is not satisfied with the performance of the substitute, he or she may request that the caller not call the substitute again for that school or that teacher's classroom. The Superintendent of Schools does not select the substitute teachers who are placed on the substitute list nor who receive daily assignments. The decision of who substitutes in a school mainly rests with the callers and administration in a particular school. The head teacher and the teacher may also have a say in who is desirable as a substitute.

Mr. DiDomenica contends that the Superintendent has chosen substitutes to serve in the district based on favoritism and political cronyism in violation of N.J.S.A. 18A:12-24(b).¹

In his defense, Mr. Ferraina contends that when Mr. DiDomenica served as a substitute in the Long Branch Middle School, the teachers for whom he substituted reported that he did not follow their lesson plans and did not control the classes assigned to him. As a result, Assistant Principal Roland Pierson requested that the caller for the Middle School not call Mr. DiDomenica to substitute there. The high school and elementary school callers were still free to call him. Sometime later, Mr. Ferraina consented to Mr. DiDomenica's request to be called to substitute again in the Middle School. However, again Mr. Ferraina received complaints from students, parents, and teachers concerning the inadequacy of Mr. DiDomenica's performance. Thus, the callers did not call him again. He did, however, remain on the substitute list. Mr. Ferraina contends that his only concern was always the welfare of the students.

ANALYSIS

For the purposes of determining whether the respondent has violated the School Ethics Act, N.J.S.A. 18A:12-24(b), it matters not whether Mr. DiDomenica was a poor substitute. Rather, Mr. DiDomenica must set forth facts to show that Mr. Ferraina violated N.J.S.A. 18A:12-24(b), which reads:

No school official shall use his official position to secure unwarranted privileges, advantages, or employment for others.

Mr. DiDomenica cannot prove that Mr. Ferraina violated subsection (b) of the Act just by showing that the district should have called him to substitute more often. This is all that the complainant has set forth. Mr. DiDomenica must show that Mr. Ferraina had the

¹ Mr. DiDomenica did not actually set forth a provision of the School Ethics Act that Mr. Ferraina violated, but N.J.S.A. 18A:12-24(b) is the only one applicable.

callers contact other persons to substitute for no other reason than they had a political or social connection to him.

There are no facts to set forth that Mr. Ferraina has favored others on the substitute list due to nepotism or politics. The unsupported allegations of bias and reverse discrimination have no factual support. In any event, complainant makes the latter claims against the substitute callers who are not under the jurisdiction of the School Ethics Commission. They are not against Mr. Ferraina. Similarly, there is no factual support for Mr. DiDomenica's allegations that the substitutes are called on the basis of whether the substitutes are Mr. Ferraina's friends, acquaintances, or supporters. Mr. Ferraina's role in the selection of who is called to serve as a substitute is minimal at best. It appears that he has intervened in the process only when the complainant asked him to do so. If Mr. Ferraina intervened in order to secure unwarranted employment for others, there is no evidence of such conduct and the Commission was unable to discern such conduct during its investigation.

CONCLUSION

For all the foregoing reasons, the Commission does not find probable cause to credit the allegations that Mr. Ferraina violated the School Ethics Act and hereby dismisses the complaint.

Respondent's request that complainant be sanctioned for filing a frivolous complaint will be addressed in a separate decision after the complainant has the opportunity to respond.

The Commission's finding of no probable cause is a final agency decision that can be appealed only to the New Jersey Superior Court - Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C11-96

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof and has considered the arguments raised by parties in testimony; and

Whereas, the Commission has not found probable cause to credit the allegations in the complaint; and

Whereas the Commission has reviewed the proposed decision of its staff setting forth the above findings; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby dismisses the complaint, adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties of the Commission's decision herein.

Paul C. Garbarini, Chairman

I hereby certify that the Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on October 22, 1996

Lisa James-Beavers
Executive Director

[(1196dec)c:cmplnt/decisions]