

Before the School Ethics Commission
Docket No.: C72-20
Probable Cause Notice

Thomas D. Williams, Jr.,
Complainant

v.

Betti Anne McVey,
Pinelands Regional Board of Education, Ocean County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on November 2, 2020, by Thomas D. Williams, Jr. (Complainant), alleging that Betti Anne McVey (Respondent), a member of the Pinelands Regional Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated November 4, 2020, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On November 10, 2020, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3. More specifically, the Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24(c).

On November 11, 2020, the Complaint was served on Respondent, via electronic mail, notifying her that charges were filed against her with the Commission, and advising that she had twenty (20) days to file a responsive pleading.¹ On January 20, 2021, Respondent filed an Answer to Complaint (Answer).

The parties were notified by correspondence dated February 16, 2021, that this matter would be placed on the Commission's agenda for its meeting on February 23, 2021, in order to make a determination regarding probable cause. At its meeting on February 23, 2021, the Commission considered the filings in this matter. Thereafter, at its meeting on March 23, 2021, and because its review is constrained by the provision of the Act cited in the Complaint, the Commission voted to find that probable cause did not exist for the alleged violations of *N.J.S.A.* 18A:12-24(c), and to dismiss the above-captioned matter.

¹ Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

II. Summary of the Pleadings

A. *The Complaint*

By way of brief background, the Pinelands Regional School District (PR) and Little Egg Harbor School District (LEH) have a Shared Services Agreement for a Superintendent (Dr. Melissa McCooley). Respondent, a PR Board member, has two children who are employed in LEH.

According to Complainant, Dr. McCooley “being the simultaneous Superintendent of [LEH] and [PR] has placed ... Respondent ... in an inexorable and irremediable conflict of interest due to [the Superintendent] being the superior of” Respondent’s two children.

Based on the fact that Respondent has two children employed in LEH, and LEH shares a Superintendent with PR, and this individual has supervisory authority over her (Respondent’s) children, Complainant asserts that Respondent violated *N.J.S.A. 18A:12-24(c)* when on:

- May 20, 2020, Respondent voted to approve the Superintendent’s 2019-2020 achieved merit goals;
- May 20, 2020, Respondent voted to approve Shared Services Agreements for the Business Administrator/Board Secretary (BA/BS), Assistant BA, Director of Special Education, and Business Services, and her (Respondent’s) children “would fall under the direction and supervision” of these individuals;
- May 20, 2020, Respondent voted to approve “the reappointment with a salary increase for John Bellone,” the Facilities Manager for PR and an LEH Board member, and a person who “approves contracts, raises and supervision” of Respondent’s children.
- June 8, 2020, Respondent sent an email to the Board that contained a summary report that Respondent “compiled” of the Superintendent’s evaluation;
- June 17, 2020, Respondent voted to approve the Superintendent’s evaluation;
- June 17, 2020, Respondent voted to approve a Shared Services Agreement for a Special Education Supervisor. In addition to both children being employed by LEH, one child is a Basic Skills Instructional Teacher, and would be directly supervised by the Special Education Supervisor; and
- July 23, 2020, Respondent sent an email to the Board “recommending and soliciting support for a three year extension” to the Superintendent’s current contract; and
- August 19, 2020, Respondent voted to approve the “qualitative and quantitative goals for the shared Superintendent for the 2020-2021 school year.”

B. *Answer to Complaint*

In her Answer, Respondent initially argues that because neither of her children lives in her household and neither is a “dependent,” the Complaint is “deficient on its face and ought to be dismissed for that reason.” Respondent further argues the Commission “previously issued an Advisory Opinion [A09-18] which approved Respondent’s participation in [PR’s] superintendent search, and her ability to vote on the appointment of the new [PR’s] superintendent,” Of note, the requestor in A09-18 did not mention, “[PR] was contemplating the hiring of the LEH [S]uperintendent [(Dr. McCooley)] as a shared superintendent with LEH.” Notwithstanding this information, PR requested and received approval from the Department of Education (DOE) to hire Dr. McCooley. Citing *Advisory Opinion* A24-17 (A24-17), Respondent also argues that “if A24-17 and [*Martinez v. Albolino et al.*, Hackensack Board of Education, Commission Docket No. C45-11] stood for the proposition that [a] potentially conflicted board member could not participate in *both* the hiring *and* the supervision of a superintendent, then it would be reasonable to assume” that Respondent would not be conflicted with matters related to Dr. McCooley after she (Respondent) was advised, in A09-18, that she could participate in “hiring Dr. McCooley.”

As to Respondent’s participation in matters related to the BA, Assistant BA, Director of Special Education, and Business Services, Respondent maintains that given the Commission’s advice in A09-18, “it would stand to reason that she could also participate in the approval of these agreements.” Respondent notes, “there does not appear to be either a prior Advisory Opinion or Decision from the [Commission] on this topic.”

Regarding Respondent’s potential conflict regarding Mr. Bellone, Respondent maintains that the Superintendent recommended the “reappointment of Mr. Bellone.” In addition, although Mr. Bellone is a member of the LEH Board, his involvement in matters related to Respondent’s children is “extremely attenuated” because he only acts on the recommendation of the Superintendent, and would not be directly involved in employment matters related to Respondent’s children.

Finally, Respondent contends that, since the filing of this matter, she requested and received advice from the Commission, namely Advisory Opinion A20-20 (A20-20) (October 27, 2020). Upon receipt of A20-20, Respondent “has gone on record stating that she will not have any future involvement in and will not participate, nor vote, on any matters that involve shared services agreements with LEH.” Based on the reasons stated above, Respondent “respectfully requests” that the Complaint be dismissed.

III. **Analysis**

This matter is before the Commission for a determination of probable cause pursuant to *N.J.A.C.* 6A:28-10.7, processing of Complaints alleging solely prohibited acts. 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.

In order to determine whether probable cause exists, the Commission must determine whether there is a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that the Act, and *N.J.S.A.* 18A:12-24(c) in particular, was violated as asserted in the Complaint. *N.J.A.C.* 6A:28-10.7.

Alleged Prohibited Act Violations

In this case, Complainant contends that Respondent violated N.J.S.A. 18A:12-24(c) on multiple dates. This provision of the Act states:

- c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

More specifically, Complainant claims that, despite the fact that Respondent's children are employed in LEH, she (Respondent) took action (as a PR Board member) in connection with eight (8) different matters, on five (5) different dates, that directly related to and impacted the supervisors of her children in LEH. Because of Respondent's action in these matters, Complainant maintains that Respondent violated N.J.S.A. 18A:12-24(c).

Respondent counters that because neither of her children lives in her household and neither is a "dependent," the Complaint "... ought to be dismissed ..."; the Commission "previously issued an Advisory Opinion [A09-18] which approved Respondent's participation in [the PR] superintendent search, and her ability to vote on the appointment of the new [PR] superintendent, ..."; given the Commission's advice in A09-18, "it would stand to reason that she could also participate in the approval of ... agreements [for the BA, Assistant BA, Director of Special Education, and Business Services]"; and consistent with the advice she (Respondent) recently received from the Commission, Respondent "has gone on record stating that she will not have any future involvement in and will not participate, nor vote, on any matters that involve shared services agreements with LEH."

In order to credit the alleged violations of N.J.S.A. 18A:12-24(c), the Commission must find evidence that Respondent acted in her official capacity in a matter where she, or a member of her immediate family, had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity, or in a matter where she had a personal involvement that created some benefit to her, a member of her immediate family, or to "others."

Based on its review and analysis, which is limited to the facts and the provision of the Act cited in the Complaint, the Commission finds that Complainant has not articulated a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that N.J.S.A. 18A:12-24(c) was violated.

Complainant submits that by virtue of the employment of Respondent's "children" in LEH, and Respondent's subsequent involvement in PR Board matters which directly related to and impacted the individuals who supervised her children, Respondent violated N.J.S.A. 18A:12-24(c) each time she took action regarding such matters. However, in order to establish a violation of N.J.S.A. 18A:12-24(c), Complainant must plead and prove that Respondent's "children" are, in fact, members of her immediate family. Pursuant to N.J.S.A. 18A:12-23, "Member of immediate family" means the "spouse or dependent child of a school official residing in the same household" (emphasis added). In its review, not only does Respondent deny that her children are "dependent" children but, more importantly, Complainant has not presented any facts which could lead to the belief that Respondent's "children" are, in fact, dependent children. Complainant also has not suggested, or provided facts to support a position, that Respondent herself had a direct or indirect financial involvement in these matters; instead, it is Complainant's position that only Respondent's children had such an interest. Without the necessary facts and circumstances articulated in the Complaint, the Commission cannot find probable cause.

Because Respondent's children are not members of her immediate family, they are considered "others." However, Complainant has not asserted that Respondent violated the provision of the Act, namely N.J.S.A. 18A:12-24(b), which prohibits a school official from using her official position to secure an unwarranted privilege, advantage, or employment for herself or for "others." As such, the Commission cannot presently consider whether Respondent's actions may have violated N.J.S.A. 18A:12-24(b).

Accordingly, and pursuant to N.J.A.C. 6A:28-10.7(d), the Commission dismisses the alleged violations of N.J.S.A. 18A:12-24(c) because Complainant failed to provide sufficient facts to support a finding of probable cause.

Notwithstanding the Commission's determination as set forth herein, it is compelled to clarify and address a few arguments raised by Respondent. First, in A09-18, the individual who requested the advisory opinion merely indicated that, in reviewing the resumes of interested candidates for the position of PR Superintendent, one candidate (who was not identified) was employed in LEH, a neighboring school district, and one in which Respondent's children are employed. Based on this information, and this information alone, the Commission did not find that Respondent was prohibited from being involved in the search for and/or the hiring of the PR Superintendent. Importantly, at the time the advice was given, it was **not** disclosed that there was, or potentially could be, a Shared Services Agreement between PR and LEH for the position of Superintendent, nor that the neighboring school district was indeed LEH. Moreover, A09-18 is clear that the advice set forth therein was based on the information provided in the advisory opinion request; as such, A09-18 was not based on all of the operative facts, including the fact that PR and LEH had a shared Superintendent or were even contemplating such a contractual arrangement. Had this information been disclosed, the advice rendered by the Commission would have been markedly different. As such, to say that the Commission approved of Respondent's involvement in the search and hire for the PR Superintendent **in this case** is wholly inaccurate and belied by the **totality** of the facts. Moreover, the fact that PR may have

received approval from the DOE to hire Dr. McCooley is completely irrelevant to the issue of whether Respondent's involvement in the search and hiring of Dr. McCooley (and other actions) violated the Act.

In addition, the Commission did not discuss whether, if the LEH candidate for Superintendent was selected as the PR Superintendent, the subject of the request in A09-18 (Respondent) would have any future prohibitions or restrictions on her Board activity. Any extrapolation from the advice rendered by the Commission in A09-18, which again, was not issued based on all of the facts presented here, is also misleading. However, the advice in A09-18 did caution, "that although there is no presumption of conflict based on the facts presented in [the] request, the Commission cannot determine if a conflict between the Board member and the Superintendent Candidate **may** present itself, or if one of a different nature may develop, but is unknown at this time to the Commission, the Board or Board Member A" (Respondent).

Finally, and as the Commission appropriately advised in A20-20 when **all** of the relevant facts were presented for consideration, as a member of the PR Board, Respondent is unequivocally prohibited from being involved in any and all matters related to the Superintendent and/or any other individual who may have supervisory authority over her children in connection with their LEH employment.

IV. Notice

Pursuant to *N.J.S.A.* 18A:12-29(b), and because its review is restricted to the provision of the Act articulated in the Complaint, the Commission hereby notifies Complainant and Respondent that it does not find probable cause to credit the alleged violations of *N.J.S.A.* 18A:12-24(c) and, therefore, dismisses the above-captioned matter.

This 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).*

Robert W. Bender, Chairperson

Mailing Date: March 23, 2021

***Resolution Adopting Decision
in Connection with C72-20***

Whereas, at its meeting on February 23, 2021, the School Ethics Commission (Commission) considered the Complaint and the Answer to Complaint (Answer) submitted by the parties in connection with this matter; and

Whereas, at its meeting on February 23, 2021, and because its review and analysis is controlled by the provision of the Act referenced in the Complaint, the Commission discussed finding that probable cause did not exist for the alleged violations of *N.J.S.A. 18A:12-24(c)* and, therefore, dismissing this matter; and

Whereas, at its meeting on March 23, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on February 23, 2021; 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 March 23, 2021.

Kathryn A. Whalen, Director
School Ethics Commission