



State of New Jersey

DEPARTMENT OF EDUCATION

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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ANGELICA ALLEN-McMILLAN, Ed.D.
Acting Commissioner

SCHOOL ETHICS COMMISSION

April 26, 2022

For Complainant

Helen Bella Hadeb

[REDACTED]
Berkeley Heights, NJ 07922

For Respondent

Mark A. Wenczel, Esq.
Cleary Giacobbe Alfieri Jacobs, LLC
169 Ramapo Valley Road
Upper Level 105
Oakland, NJ 07436

SUBJECT: HELEN BELLA HADEF v. MELISSA VARLEY, BERKELEY HEIGHTS BOARD OF EDUCATION, UNION COUNTY, SCHOOL ETHICS COMMISSION DOCKET #C36-21

Dear Parties:

Enclosed please find the Probable Cause Notice adopted by the School Ethics Commission at its meeting on April 26, 2022.

If you have any questions, or need additional information, please feel free to contact our office at school.ethics@doe.nj.gov.

Sincerely,

A handwritten signature in blue ink that reads "Kathryn A. Whalen".

Kathryn A. Whalen, Esq.
Director, School Ethics Commission

Enclosure

Before the School Ethics Commission
Docket No.: C36-21
Probable Cause Notice

Helen Bella Hadeff,
Complainant

v.

Melissa Varley,
Berkeley Heights Board of Education, Union County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on August 18, 2021, by Helen Bella Hadeff (Complainant), alleging that Melissa Varley (Respondent), an administrator employed by the Berkeley Heights Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated August 9, 2021, Complainant was notified that the Complaint was deficient and required amendment before the School Ethics Commission (Commission) could accept her filing. On August 18, 2021, 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. The Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(f), and also violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code).

On August 23, 2021, 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 October 1, 2021, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainant filed a response to the Motion to Dismiss on October 20, 2021.

At its meeting on January 25, 2022, and after discussing the parties' submissions at a previous monthly meeting, the Commission adopted a decision granting the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(f); denying the Motion to Dismiss as to the violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(f); and directing Respondent to file an Answer to Complaint (Answer). On February 11, 2022, Respondent filed an Answer as directed.

¹ As a result of the ongoing Coronavirus (COVID-19) pandemic, and the implementation of electronic filing, service of process was effectuated by the Commission through electronic transmission only.

Thereafter, the parties were notified by correspondence dated March 14, 2022, that this matter would be discussed by the Commission at its meeting on March 22, 2022, in order to make a determination regarding probable cause. At its meeting on March 22, 2022, the Commission considered the filings in this matter, and at its meeting on April 26, 2022, the Commission adopted a decision finding probable cause for the remaining allegations in the Complaint. Based on its finding of probable cause, the Commission voted to transmit the within matter to the Office of Administrative Law (OAL) for a hearing.

II. Summary of the Pleadings

A. *Remaining Allegations in the Complaint*

Complainant states that on June 24, 2021, Respondent, the Superintendent of the Berkeley Heights School District (District), recommended her child for the position of summer elementary library intern, and the Board voted unanimously to approve the recommendation. According to Complainant, the Interim Executive County Superintendent did not approve the hiring of Respondent's child.

Based on the foregoing facts, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24(b) because she used her official position to secure employment for an immediate family member and violated *N.J.S.A.* 18A:12-24(f) because Respondent's child will receive financial compensation for the summer work, and this will result in a financial benefit for both Respondent and her child.

B. *Answer to Complaint*

In her Answer, Respondent admits that the Board unanimously approved her recommendation to hire her child as one of three (3) students to be employed as a summer elementary library intern, and to be paid on an hourly basis (minimum wage). Respondent admits neither she nor the Board sought approval from the ECS based on a good faith belief that the short-term student employment did not present a conflict with the Act or otherwise violate nepotism regulations. Respondent denies that the hiring of her child for a summer internship position violates *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(f).

Respondent also pled twenty-four (24) "Affirmative Defenses," namely:

- Complainant fails to state a claim upon which relief may be granted;
- Respondent's actions, even if true, do not rise to a violation of *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(f), and were not unethical or unlawful;
- Respondent acted at all times in accordance with her duties as the Superintendent;
- At all times relevant to this matter, Respondent complied with the requirements of the Act, and complied with a good faith interpretation of Board policy and nepotism;

- At all times of her limited engagement as a summer elementary library intern, Respondent's child was and remains a high school student in a neighboring public school district;
- Respondent's child was only approved by the Board to serve as a summer elementary library intern as all other applicants for the position were afforded the opportunity to serve in the position, and the Board required assistance with the reconfiguration of its elementary school libraries before the start of the school year;
- Due to a realignment of the District's elementary schools, it was necessary to pack and move many books and materials from one school to another, and two librarians were not able to handle the "reconfiguration" in the time available;
- On June 7, 2021, the District posted the availability of three summer intern positions on Applitrack and then the Board's website and the public school employment portal;
- The District received four online applications, and one of the applicants withdrew her application after being informed of the short-term nature of the position and the minimum salary;
- Three applicants remained, and all three were high school students;
- The Director of Elementary Education and Intervention was tasked with handling the interviews and confirmed the three students were qualified for the summer intern positions;
- Respondent did not have any communication with the applicants, including the applicant who withdrew her application;
- Based on the District's need of library interns to assist with the reconfiguration, Respondent recommended the three remaining applicants;
- Respondent's child was included in the recommendations because a search was conducted for interested candidates for the temporary assignment, and no other interested applicants were available or deprived of the opportunity to provide the necessary services as a result of Respondent's child's employment;
- No privilege or unwarranted advantage was provided to Respondent's child, as the child was only permitted to provide the necessary assistance after all other interested applicants were first considered and granted the opportunity to work in the temporary position(s);
- At the time of the Board's approval of the resolution appointing the three applicants to the temporary position, Respondent did not believe there to be any potential conflict of interest to preclude her appointment;

- After the meeting, and following the questioning of her child’s employment as an elementary library intern from a member of the public, Respondent consulted with Board counsel and, in an abundance of caution, decided to remove her child from the position;
- At the time of her child’s removal, Respondent’s child had already provided twenty-two (22) hours of service to the District, for a total of \$260.00, which remains in a separate account pending the Commission’s decision; and
- Respondent did not attempt to, and did not, provide her child with any unwarranted benefit, privilege, advantage, or employment as a result of Respondent’s employment.

With the above in mind, Respondent requests that the Complaint be dismissed with prejudice, the Commission find Respondent complied with the Act, and “award such other and further relief as the Court deems just and proper.”

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.² 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(b) and *N.J.S.A.* 18A:12-24(f) specifically, was violated. *N.J.A.C.* 6A:28-10.7.

A. Alleged Prohibited Acts

In the remaining allegations of the Complaint, it is asserted that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(f), and these provisions provide:

- 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;

² Although the Complaint initially alleged violations of both prohibited acts (*N.J.S.A.* 18A:12-24) and the Code (*N.J.S.A.* 18A:12-24.1), the alleged violations of the Code were dismissed by the Commission at a previous meeting; therefore, this matter will continue to be processed in accordance with *N.J.A.C.* 6A:28-10.7, and not with *N.J.A.C.* 6A:28-10.9.

f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

Alleged Violation of N.J.S.A 18A:12-24(b)

In order to credit the alleged violations of *N.J.S.A. 18A:12-24(b)*, the Commission must find evidence that Respondent 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 review, the Commission finds that Complainant has 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(b)* was violated. In this regard, Respondent admits that the Board, following her recommendation as the District Superintendent, approved the hiring of her child to serve as one of three students to serve as a *paid* summer elementary library intern, and that she did not obtain approval from the Interim Executive County Superintendent for the hiring of her child. In addition, Respondent’s child appears to fall within the definition of “member of immediate family”³ or, alternatively, an “other.” Of note, there is also no evidence that “student employees” are exempted from the District’s nepotism policy. Therefore, a violation of *N.J.S.A. 18A:12-24(b)* may be supported.

Alleged Violation of N.J.S.A. 18A:12-24(f)

To credit the alleged violations of *N.J.S.A. 18A:12-24(f)*, the Commission must find evidence that Respondent used her official position or used information, not generally available to the public, which she acquired by reason of her employment, to secure financial gain for herself, members of her immediate family, or any business organization with which she is associated.

Based on its analysis, the Commission finds that Complainant has 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(f)* was violated. As above, Respondent admits that the Board, following her recommendation as the District Superintendent, approved the hiring of her child to serve as one of three students to serve as a *paid* summer elementary library intern, and that she did not secure approval from the Interim Executive County Superintendent prior to recommending her child for this paid position in the District. Not only could Respondent’s child receive a financial benefit from her paid summer employment, which strictly emanated from Respondent’s recommendation, so too could

³ Pursuant to *N.J.S.A. 18A:12-23*, “member of immediate family” is defined as the spouse or dependent child of a school official residing in the same household.

Respondent herself, albeit in a less direct and impactful way. Once again, there is no indication that the District has excluded “student employees” from its nepotism policy. Consequently, a violation of *N.J.S.A.* 18A:12-24(f) may be sustained.

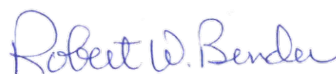
Notwithstanding the above, the Commission notes that although Respondent’s good faith belief that the employment of her child would not violate Board policy and/or constitute nepotism is certainly relevant, as are her responsive actions following the “questioning” of her child’s hiring from a member of the public, those facts and arguments do not preclude the finding of a violation of the Act. Instead, these facts and arguments would serve to mitigate the recommended penalty for a violation(s).

V. Decision

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that it finds probable cause for the remaining allegations in the Complaint, namely the alleged violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(f).

Pursuant to *N.J.A.C.* 6A:28-10.7(c)(2), where the Commission finds probable cause to credit the allegations of prohibited acts, and where the material facts are not admitted by Respondent or where the Commission otherwise determines necessary, Complainant and Respondent shall be advised that the matter is being transmitted to the OAL for a hearing to be conducted pursuant to the Uniform Administrative Procedure Rules (*N.J.A.C.* 1:1 *et seq.*). The hearing shall be limited to those allegations which the Commission found probable cause to credit. Complainant and Respondent are thus notified that this matter shall be transmitted to the OAL for a hearing, and that they will be notified about a date/time for such a hearing. *N.J.S.A.* 18A:12-29(b).

Additionally, Complainant shall no longer be a party to the Complaint. Where the Commission finds probable cause and transmits a Complaint to the OAL, the attorney for the Commission shall prosecute those allegations in the Complaint for which the Commission found probable cause to credit. *N.J.A.C.* 6A:28-10.7(b)(1).



Robert W. Bender, Chairperson

Mailing Date: April 26, 2022

***Resolution Adopting Decision
in Connection with C36-21***

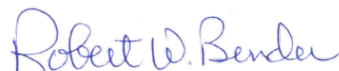
Whereas, at its meeting on March 22, 2022, the School Ethics Commission (Commission) considered the Complaint and Answer to Complaint (Answer) submitted by the parties in connection with this matter; and

Whereas, at its meeting on March 22, 2022, the Commission discussed finding probable cause for the alleged violations of *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24(f)*; and

Whereas, at its meeting on March 22, 2022, and pursuant to *N.J.A.C. 6A:28-10.7*, the Commission discussed transmitting the within matter to the Office of Administrative Law for a hearing; and


Whereas, at its meeting on April 26, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on March 22, 2022; 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 April 26, 2022.



Kathryn A. Whalen, Esq.
Director, School Ethics Commission