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WALTER FIELDS,

v.

ELIZABETH BAKER,  
SOUTH ORANGE-MAPLEWOOD  
BOARD OF EDUCATION,  
ESSEX COUNTY

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BEFORE THE SCHOOL  
ETHICS COMMISSION

DOCKET NO.: C35-18

DECISION ON  
MOTION TO DISMISS

## I. PROCEDURAL HISTORY

This matter arises from a Complaint that was filed on June 4, 2018, by Walter Fields (Complainant), alleging that Elizabeth Baker (Respondent), a member and President of the South Orange-Maplewood Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. More specifically, the Complaint alleges that Respondent violated N.J.S.A. 18A:12-24.1(e), N.J.S.A. 18A:12-24.1(f), and N.J.S.A. 18A:12-24.1(j) of the Code of Ethics for School Board Members (Code).

On June 7, 2018, the Complaint was sent to Respondent, via regular and certified mail, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading. On July 31, 2018, and after receiving a brief extension, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On September 10, 2018, Complainant filed a Response to Respondent's Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated September 17, 2018, that this matter would be placed on the Commission's agenda for its meeting on September 25, 2018, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on September 25, 2018, the Commission considered the filings in this matter and, at its meeting on October 30, 2018, the Commission voted to grant the Motion to Dismiss in its entirety. The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

## II. SUMMARY OF THE PLEADINGS

### A. The Complaint

By way of background, on May 2, 2018, the Board of Trustees of the Township of South Orange Village voted unanimously to send a memorandum (memo) to Respondent, the Board President, expressing its concerns with the behavior of Board member Lawson-Mohammad during a routine traffic stop on April 27, 2018 (incident). Respondent, in her capacity as President of the Board, received the memo on May 8, 2018, along with a USB drive containing

the police dashcam video of the incident. On May 14, 2018, Complainant sent an email to Respondent (and copied the entire Board) inquiring whether she had knowledge of the incident. That same day the Board held a meeting, and the incident was not discussed. On May 16, 2018, the incident became public, and Board member Lawson-Mohammad apologized to the police officer for speeding and driving without a valid insurance card (not her behavior), and also apologized to the police chief for referring to him as a “skinhead.” On May 19, 2018, the memo became public knowledge. At a Board meeting on May 21, 2018, Respondent issued her first statement about the incident. Two (2) Board members publicly stated that Respondent did not share the memo with the Board, and they were informed by Respondent and counsel that the memo was of a personal nature and its details could not be discussed within or by the Board.

Complainant asserts that based on the information above, Respondent violated N.J.S.A. 18A:12-24.1(e) because, as Board President, she overstepped her authority by knowingly withholding information from at least two Board members, concealing the conduct of another Board member, purposely deceiving the Board by claiming the memo could not be discussed, and inferring that she was acting on the advice of counsel; N.J.S.A. 18A:12-24.1(f) because by not sharing the memo, she sought to cover-up the incident with the intent to deceive the public as well as the voters of the Townships of Maplewood and South Orange Village for political purposes, and for the gain and protection of a political ally, Ms. Lawson-Mohammad; and N.J.S.A. 18A:12-24.1(j) because she did not refer the complaint (memo) to the chief administrative officer, failed to pursue an administrative solution and to act on a complaint, and sought to conceal the incident which ultimately prevented the Board from exercising its legal responsibilities and rights.

**B. Motion to Dismiss and Allegation of Frivolous Filing**

Upon receipt of the Complaint, Respondent filed a Motion to Dismiss and also argued that the Complaint is frivolous. Respondent first argues that upon receipt of the referenced memo, she “promptly” sought guidance from the Superintendent and counsel and relied on their advice, which concluded that Board member Lawson-Mohammad’s behavior was a personal or law enforcement matter not within the Board’s jurisdiction; involved privacy issues because minors were in the car; and that official action could not be taken by the Board publicly. Respondent asserts that she insisted that Board member Lawson-Mohammad (a) “promptly make amends” with the law enforcement community and (b) personally inform her fellow Board members prior to the next public meeting of the Board, otherwise, Respondent would inform the Board herself. Respondent notes that this process had already begun prior to Complainant’s email (May 14, 2018), which was also in advance of the May 14, 2018, Board meeting. Respondent asserts that she also emailed the Board prior to the May 14, 2018, meeting, stating she did not believe the matter could be acted upon by the Board or placed on an agenda for executive session. None of the Board members questioned Respondent’s decision to not place the matter on the agenda (public or executive), no one asked for a copy of the memo, no one addressed the issue in public session, and no one made any motion to amend the agenda or order of business.

Respondent further argues that she informed necessary South-Orange Maplewood School District (District) personnel namely, the Superintendent and counsel, who advised her not to

discuss this matter. Respondent asserts it was her understanding that Ms. Lawson-Mohammad had, or was in the process of, speaking to all of the Board members personally about the incident. Moreover, Complainant does not provide any facts as to how Respondent's action compromised the Board; therefore, the allegation that Respondent violated N.J.S.A. 18A:12-24.1(e) should be dismissed. Regarding the violation of N.J.S.A. 18A:12-24.1(f), Respondent states that she told Ms. Lawson-Mohammad that if she did not inform the Board about the incident prior to the May 14, 2018, meeting, she (Respondent) would tell the Board, and she also recommended that Ms. Lawson-Mohammad apologize to the officer and the police chief. Therefore, Respondent asserts that Complainant's allegation that Respondent surrendered her independent judgment to special interest or partisan political groups, or used the schools for personal gain, should be dismissed. Regarding the violation of N.J.S.A. 18A:12-24.1(j), Respondent argues that the memo was not presented as a complaint. The memo was marked "confidential" and did not request that Respondent take any action with regard to the incident. As stated by Respondent, she immediately consulted with the superintendent and counsel and acted upon their advice and then presented the advice to the Board who did not take any action. Therefore, the allegation that Respondent violated N.J.S.A. 18A:12-24.1(j) should be dismissed.

Finally, Complainant did not have any personal knowledge of the events that took place after the incident and regarding Respondent's actions. Because he is relying on hearsay, and some of the facts are untrue or misconstrued, Respondent argues that the Complaint is frivolous and Complainant should be fined.

**C. Response to Motion to Dismiss and Allegation of Frivolous Filing**

In his response to the Motion to Dismiss and allegation of frivolous filing, Complainant reiterates the allegations in his Complaint, and reasserts that Respondent concealed information from the public and fellow Board members regarding the behavior of Ms. Lawson-Mohammad. Respondent asserts that the Complaint was initiated out of "grave concern over the dereliction of duty" by Respondent in her official capacity as President. Complainant further asserts that Respondent's lack of transparency was an attempt to protect a political ally (Ms. Lawson-Mohammad) and by doing so, she failed in her responsibility to "serve impartially and with the intent of serving the public's interest."

**III. ANALYSIS**

**A. Standard for Motion to Dismiss**

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainant), and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response is reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.1 et seq. Thus, the question before the Commission is whether Complainant has alleged facts which, if true, could support a finding that Respondent violated N.J.S.A. 18A:12-24.1(e), N.J.S.A. 18A:12-24.1(f), and N.J.S.A. 18A:12-24.1(j) as alleged in the Complaint.

**B. Alleged Code Violations**

Complainant alleges that Respondent violated N.J.S.A. 18A:12-24.1(e), N.J.S.A. 18A:12-24.1(f), and N.J.S.A. 18A:12-24.1(j) of the Code, and these provisions provide, respectively:

e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

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.

j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

**1. Alleged Violations of N.J.S.A. 18A:12-24.1(e)**

As set forth in N.J.A.C. 6A:28-6.4(a)(5), factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that Respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the Board.

Complainant argues that Respondent, the Board President, violated N.J.S.A. 18A:12-24.1(e) because she knowingly withheld information from at least two Board members, concealed the conduct of another Board member, purposely deceived the Board by claiming that the memo could not be discussed, and inferred that she was acting on the advice of counsel. Respondent counters that she consulted with appropriate personnel about the memo, was directed not to discuss the matter, and that, to her knowledge, Ms. Lawson-Mohammed was going to speak with the other members of the Board about the incident. Moreover, Respondent argues that there are no facts in the Complaint evidencing how Respondent's alleged actions compromised the Board.

Based on its review of Complainant's allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated N.J.S.A. 18A:12-24.1(e). In this regard, Complainant has not identified any specific action that Respondent took which was "beyond the scope" of her duties as Board President. Even if Complainant does not agree with the way Respondent communicated with certain members of the Board (and the community) about the incident and the memo, there is no basis to argue that *how* Respondent chose to handle the matter, which relates to internal Board governance and appears to have been based on advice of/from Board counsel, exceeded the scope of her authority. Moreover, the Commission agrees that Complainant has not indicated how Respondent's handling of the memo and the incident had the

“potential to compromise” the Board. Therefore, the Commission finds that the alleged violation of N.J.S.A. 18A:12-24.1(e) should be dismissed.

**2. Alleged Violations of N.J.S.A. 18A:12-24.1(f)**

Pursuant to N.J.A.C. 6A:28-6.4(a)(6), 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 Respondent, a member of his or her immediate family or a friend.

Complainant asserts that Respondent violated N.J.S.A. 18A:12-24.1(f) because, by not sharing the memo, Respondent sought to cover-up the incident with the intent to deceive the public, as well as the voters of the Townships of Maplewood and South Orange Village for political purposes, and for the gain and protection of a political ally, Ms. Lawson-Mohammad. Respondent denies the allegations and counters that she told Ms. Lawson-Mohammad to inform the Board about the incident by a certain date, and that if she (Ms. Lawson-Mohammad) failed to do so, she (Respondent) would tell the other Board members about it herself. Respondent also stated that she recommended to Ms. Lawson-Mohammad that she apologize to the officer and the police chief.

Based on its review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated N.J.S.A. 18A:12-24.1(f). There is nothing in the Complaint evidencing what specific action Respondent took “on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion.” Complainant’s declaration, without more, that Ms. Lawson-Mohammad is Respondent’s “political ally” is insufficient to establish that Respondent’s actions were predicated on, or at the request of, a special interest group or other organized persons. Even if Ms. Lawson-Mohammad were a “friend” of Respondent’s, there is also nothing in the Complaint evidencing what “benefit” Ms. Lawson-Mohammad received from Respondent’s actions because, as indicated in the Complaint, the incident and memo were known to the Board (even if the memo itself was not “shared” with two individual Board members), and the matter was acknowledged and addressed at a public Board meeting. As such, the Commission finds that the alleged violation of N.J.S.A. 18A:12-24.1(f) should be dismissed.

**3. Alleged Violations of N.J.S.A. 18A:12-24.1(j)**

As indicated in N.J.A.C. 6A:28-6.4(a)(10), factual evidence of a violation of N.J.S.A. 18A:12-24.1(j) shall include evidence that Respondent acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint (i) prior to referral to the chief administrative officer, or (ii) at a time or place other than a public meeting and prior to the failure of an administrative solution.

Complainant alleges that Respondent violated N.J.S.A. 18A:12-24.1(j) because she did not refer the complaint (memo) to the chief administrative officer, failed to pursue an

administrative solution and to act on a complaint, and sought to conceal the incident which ultimately prevented the Board from exercising its legal responsibilities and rights. Respondent counters that the memo was not presented as a complaint, it was marked “confidential,” and did not request that any specific action be taken. Upon receipt of the memo, and following consultation with the Superintendent and counsel, Respondent argues she took appropriate action.

Based on its review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated N.J.S.A. 18A:12-24.1(j). According to the Complaint, the memo expressed “great concerns” with Ms. Lawson-Mohammad’s “response to a routine traffic stop for speeding.” There is nothing indicating that the Board of Trustees of the Township of South Orange Village was filing a “complaint” with the expectation that the Board would take any specific action relative to its “great concerns” with Ms. Lawson-Mohammad’s conduct. Absent an allegation that there was a complaint, a violation of N.J.S.A. 18A:12-24.1(j) cannot be sustained. Consequently, the Commission finds that the alleged violation of N.J.S.A. 18A:12-24.1(j) should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that Complainant has not alleged any facts which, if true, could support a finding that Respondent violated N.J.S.A. 18A:12-24.1(e), N.J.S.A. 18A:12-24.1(f), or N.J.S.A. 18A:12-24.1(j). Therefore, the Commission grants the Motion to Dismiss in its entirety.

#### **IV. REQUEST FOR SANCTIONS**

At its meeting on September 25, 2018, 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 which might show that Complainant 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 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. Therefore, the Commission finds that the Complaint is not frivolous, and denies Respondent’s request for sanctions.

#### **V. DECISION**

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission grants the Motion to Dismiss in its entirety. The Commission also finds that the Complaint is not frivolous, and denies Respondent’s request for sanctions.

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that, for the reasons set forth above, this matter is dismissed. 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).

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Robert W. Bender, Chairperson

Mailing Date: October 31, 2018

**RESOLUTION ADOPTING DECISION IN  
CONNECTION WITH C35-18**

**WHEREAS**, at its meeting on September 25, 2018, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and the Response to the Motion to Dismiss and allegation of frivolous filing, filed in connection with this matter; and

**WHEREAS**, at its meeting on September 25, 2018, the Commission discussed granting the Motion to Dismiss in its entirety, and dismissing this matter; and

**WHEREAS**, at its meeting on September 25, 2018, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

**WHEREAS**, at its meeting on October 30, 2018, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on September 25, 2018; and

**NOW THEREFORE BE IT RESOLVED**, that the Commission hereby adopts the decision and directs its staff to notify all parties of its decision.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 30, 2018.

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Kathryn A. Whalen, Director  
School Ethics Commission