

Before the School Ethics Commission
Docket No.: C05-19
Final Decision

**Alan Amey, Sandra Morrisette, and Matt Scerbo,
Complainants**

v.

**Bernard Brotzman,
Phillipsburg Board of Education, Warren County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on January 23, 2019, by Alan Amey (Complainant Amey), Sandra Morrisette (Complainant Morrisette), and Matt Scerbo (Complainant Scerbo) (collectively referred to as Complainants), alleging that Bernard Brotzman (Respondent), a member of the Phillipsburg Board of Education (Education), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* By correspondence dated January 25, 2019, and February 7, 2019, Complainants were notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept their filing. On February 22, 2019, Complainants 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 alleges that Respondent violated *N.J.S.A. 18A:12-24.1(f)* of the Code of Ethics for School Board Members (Code).

On February 25, 2019, the Complaint was served on Respondent, via regular and certified mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading. When Respondent failed to file a responsive pleading, he was advised, by correspondence dated March 28, 2019, that failure to file an Answer to Complaint (Answer) or Motion to Dismiss in Lieu of Answer (Motion to Dismiss) by April 10, 2019, could result in the Commission finding in favor of Complainants and assessing him a penalty for the actions deemed admitted in the Complaint. On April 4, 2019, Respondent filed an Answer.

By correspondence dated April 23, 2019, the parties were advised that this matter would be placed on the Commission's agenda for a special meeting on May 2, 2019. As further detailed in its correspondence, and in accordance with *N.J.A.C. 6A:28-10.8*, the Commission advised the parties that it could take one of several actions at its meeting, including: (1) retaining the matter for a hearing by the Commission at a later date; (2) transmitting the matter to the Office of Administrative Law for a hearing; (3) tabling the matter; or (4) dismissing the matter.

At a special meeting on May 2, 2019, the Commission considered the filings in this matter and, at its meeting on May 21, 2019, the Commission voted, pursuant to its authority as set forth in

N.J.A.C. 6A:28-10.2(a)(7) and *N.J.A.C.* 6A:28-10.8(a), to dismiss the above-captioned matter in its entirety for failure to state a claim upon which relief could be granted.

II. Summary of the Pleadings

A. *The Complaint*

According to Complainants, “During the School Board election of November[] 2018,” residents of Phillipsburg received a mailer paid for by the “Leadership [Political Action Committee (PAC)] for Better Government, Robert Larsen, Chairman,” which contained “four allegations” about Complainant Amey and Complainant Scerbo. The “source” for the “allegations” in the mailer was attributed to attendees at the 2017 New Jersey School Board Association Convention (NJSBA Convention). Complainants contend that the only individuals who attended the 2017 NJSBA Convention and who were also on the Board during the “2018 School Board election” were Respondent and Rosemarie Person.

Based on the above, Complainants contend that Respondent violated *N.J.S.A.* 18A:12-24.1(f) because he “directly aided special interests and partisan political groups.” The mailers were paid for by the Republican Leadership PAC for Better Government, which was founded by two individuals, one of whom – Doug Steinhardt – has represented the Board and presided over Board meetings. According to Complainants, Respondent served on the Board, along with Ms. Person, during the time that Mr. Steinhardt’s law firm represented the Board. The flyers were “designed to cast aspersion” on Complainant Amey and Complainant Scerbo’s tenure on the Board, and the “source” of the allegations in the flyers/mailers stemmed from someone who was at the 2017 NJSBA Convention. Complainants argue that Respondent and Ms. Person “were the only individuals who could have been the sources of these false allegations” in the flyers paid for by the Leadership PAC for Better Government.

B. *Answer*

Following receipt of the Complaint, Respondent filed an Answer and, generally, denied the allegations as stated. Although Respondent admits that he and Ms. Person attended the NJSBA Convention in 2017, he counters that other Phillipsburg Board members, including Complainant Amey and Complainant Scerbo, also attended the NJSBA Convention. Respondent also states that, while Complainant Amey and Complainant Scerbo were at the NJSBA Convention, they “openly discussed...going fishing.” Respondent further denies that he provided any information to any third party regarding the purported mailer or the campaign referenced in the Complaint. Respondent also contends that Complainant Morrisette does not have standing in this matter because she was neither a candidate nor a subject discussed in the mailer.

III. Analysis

A. *Standing*

In his Answer, Respondent claims that Complainant Morrisette does not have standing because she was not a candidate at the time the mailer was disseminated to the public, and was not specifically discussed in the mailer. The Commission disagrees.

In enacting the Act, the Legislature found that, "...it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people." *N.J.S.A.* 18A:12-22(a). As such, the Legislature declared that, "These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated." In light of the purpose of the Act, *N.J.A.C.* 6A:28-6.1(a) provides, "*Any person* may file a complaint with the Commission alleging a violation of the Act" (emphasis added).

With the above in mind, and contrary to Respondent's argument, the fact that Complainant Morrisette was neither a candidate nor a subject in the mailer does not preclude her from filing a complaint against a school official. Any person and member of the public can be aggrieved by the conduct of a school official and, as such, is permitted to file a complaint if he/she believes that a provision(s) of the Act may have been violated. Therefore, and without any limitations on who may file a complaint set forth in the Act, the Commission finds that Complainant Morrisette, as any other member of the public, has standing to file the within matter.

B. *Alleged Violation of the Code*

Complainants have the burden to factually establish a violation of the Code in accordance with the standards set forth in *N.J.A.C.* 6A:28-6.4(a). A complaint must include, among other requirements, specific allegations and the facts supporting them that gave rise to the alleged violation(s) of the Act. *N.J.A.C.* 6A:28-6.3(b)(3). The Commission's regulations authorize it, in its discretion, to dismiss a complaint when, on its face, it fails to allege facts sufficient to maintain a claim under the Act. *N.J.A.C.* 6A:28-10.2(a)(7); *N.J.A.C.* 6A:28-10.8(a)(5).

Complainants allege that Respondent violated *N.J.S.A.* 18A:12-24.1(f) of the Code, which provides:

- 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;

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 immediate family or a friend.

Based on its review of the allegations in the Complaint, the Commission finds that Complainants have not provided any facts or argued that Respondent took any specific action "on behalf of" or at "the request of" a special interest or partisan political group, such as the Leadership PAC for Better Government. Instead, the Complaint seems to focus on identifying the "source" of the information/allegations in the flyer paid for by the Leadership PAC for Better Government and deduces, without factual support, that it "had" to have been Respondent; importantly, Complainants acknowledge that it could have been another individual who is not named as a Respondent. Even if it was Respondent, Complainants have not argued that Respondent provided this information "on behalf of" or at "the request of" the Leadership PAC for Better Government.

The Commission further finds that Complainants have not offered any facts or claimed that Respondent allegedly provided information to the Leadership PAC for Better Government to acquire a benefit for himself or for any other person. The crux of the Complaint is that whoever provided the information to the Leadership PAC for Better Government – which Complainants *assume* was Respondent but acknowledge could have been Ms. Person – provided false and inaccurate information. To the extent that Complainants seek a determination from the Commission that the allegations were “false” and/or impugned their reputations as Board members, such a determination falls outside the scope, authority, and jurisdiction of the Commission. However, Complainants may be able to pursue such claims in the appropriate venue, such as the Superior Court of New Jersey.

Accordingly, and for the reasons set forth above, the Commission finds that the Complaint, on its face, fails to allege facts sufficient to find a violation of *N.J.S.A.* 18A:12-24.1(f).

IV. Decision

Based on the foregoing, and pursuant to its authority as set forth in *N.J.A.C.* 6A:28-10.2(a)(7) and *N.J.A.C.* 6A:28-10.8(a), the Commission dismisses the above-captioned matter in its entirety for failure to state a claim upon which relief could be granted.

This decision is a final decision of an administrative agency and, therefore, it is appealable to the Superior Court, Appellate Division. *See, New Jersey Court Rule 2:2-3(a).*

Robert W. Bender, Chairperson

Mailing Date: May 22, 2019

***Resolution Adopting Decision
in Connection with C05-19***

Whereas, at a special meeting on May 2, 2019, the School Ethics Commission (Commission) considered the Complaint, and the Answer to Complaint (Answer) filed in connection with this matter; and

Whereas, at a special meeting on May 2, 2019, the Commission discussed finding that the Complaint, on its face, fails to allege facts sufficient to find a violation of *N.J.S.A.* 18A:12-24.1(f); and

Whereas, at a special meeting on May 2, 2019, the Commission discussed, pursuant to its authority as set forth in *N.J.A.C.* 6A:28-10.2(a)(7) and *N.J.A.C.* 6A:28-10.8(a)(5), dismissing this matter; and

Whereas, at its meeting on May 21, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on May 2, 2019; and

Now Therefore Be It Resolved, that the Commission hereby adopts the decision and directs its staff to notify all parties of its decision.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on May 21, 2019.

Kathryn A. Whalen, Director
School Ethics Commission