

Before the School Ethics Commission
Docket No.: C07-19
Decision on Motion to Dismiss

Stanley A. Kober,
Complainant

v.

Amy Langevin,
Ho-Ho-Kus Board of Education, Bergen County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on January 28, 2019, by Stanley A. Kober (Complainant), alleging that Amy Langevin (Respondent), a member of the Ho-Ho-Kus Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated January 29, 2019, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On February 13, 2019, 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 alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(c) of the Code of Ethics for School Board Members (Code) in Count 1, violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e) in Count 2, and violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) in Count 3.

On February 19, 2019, the Complaint was served on Respondent, via regular and certified 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. On March 29, 2019, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On April 16, 2019, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated May 13, 2019, that this matter would be placed on the Commission's agenda for its meeting on May 21, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on May 21, 2019, the Commission considered the filings in this matter and, at a special meeting on June 19, 2019, the Commission voted to grant the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) as contended in Count 3. 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

In Count 1, Complainant asserts that “on or about October 22, 2018, through at least November 6, 2018,” Respondent displayed a sign on her front lawn that was an “advertisement” of a local interest group, and which displayed, “vote ‘YES’” for the Board’s Separate Spending Proposal (SSP). The voting for the SSP was to take place on November 6, 2018. Complainant asserts that Respondent violated *N.J.S.A. 18A:12-24.1(c)* because she “promoted actions outside of her responsibilities of the [Board] by placing a yard sign on the front lawn of her residence ... promoting the affirmative side of the ballot question.”

In Count 2, Complainant asserts that on or about October 18, 2018, Respondent engaged in a conversation with someone on Facebook and promised to provide the individual (a potential voter) with a yard sign promoting the affirmative side of the ballot question. In this conversation/thread, Respondent agreed to drop the sign off at her (the recipient’s) residence. Complainant asserts that Respondent violated *N.J.S.A. 18A:12-24.1(c)* and *N.J.S.A. 18A:12-24.1(e)* because she “conducted and promoted actions outside of her responsibilities of the [Board] by promising in a Facebook conversation/thread to provide to at least one potential voter at least one yard sign promoting the affirmative side of the ballot question.”

In Count 3, Complainant asserts that “on or about October 18, 2018, through November 1, 2018,” Respondent did not state, in Facebook communications about the yard sign, that she was speaking on her own behalf (as opposed to on behalf of the Board). Complainant asserts that Respondent violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* because she “committed and promoted actions outside of her responsibilities of the [Board] by not stating that she was a Board member speaking only on her own behalf in a Facebook conversation/thread regarding the acquiring of a favorable yard sign by at least one of the Facebook group members in the thread AND by also making multiple affirmations for the interest group promoting the favorable side of the ballot on their Facebook page.”

B. Motion to Dismiss and Allegation of Frivolous Filing

Following receipt of the Complaint, Respondent filed a Motion to Dismiss, and also alleges the Complaint is frivolous. According to Respondent, “Time to Align” was a group formed by community members/parents who were supportive of the passage of the SSP. The Board, including Respondent, did not have any involvement with the formation, operation or promotion of the group. In addition to creating lawn signs, Time to Align also started a public Facebook page to advocate for the approval of the ballot question regarding the SSP. Respondent joined the group as a parent, using her personal Facebook account. This account does not, in any way, indicate her position as a Board member, or otherwise suggest that action she takes through the account is representative of the Board’s opinion on any topic – of note, Respondent admits that, both in her capacity as a Board member and as a private citizen, she was supportive of the SSP. Furthermore, Respondent is one of four of the five Board members who posted a sign on their lawn, and one of four of the five Board members who “liked” a post on the Facebook page;

however, she is the only Board member against whom Complainant filed a Complaint. Respondent believes that is because she is the only Board member who is up for re-election in 2019.

Respondent asserts that in Count 1 and Count 2, Complainant alleges Respondent's personal support for the SSP violates *N.J.S.A.* 18A:12-24.1(c). More specifically, Complainant asserts that Respondent placed a lawn sign on her property in support of the SSP (Count 1) and then, while on social media, Respondent offered to provide an extra lawn sign to another community member (Count 2). According to Respondent, neither of these actions constitutes Board action that violates the Code. Respondent argues that even assuming the facts are true, Respondent's conduct was private action beyond and outside the scope of her responsibilities as a Board member and, therefore, the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(c) in Counts 1 and 2 should be dismissed.

Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 2 as it relates to the lawn sign, Respondent argues that even assuming *arguendo* that the display of the lawn sign constituted impermissible private action, which it does not, the facts presented are not sufficient to establish a violation of the Code. Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(e) as it relates to Respondent's failure to include a disclaimer when she commented in the Facebook posts (Count 3), Respondent argues that when she responded to the request from another individual for a lawn sign, she simply replied that she had an extra sign and would drop it off to the requestor. Respondent maintains that it was not necessary to include a disclaimer in that instance. As for her post on her personal Facebook account, when she used social media to promote the approval of the SSP, Respondent included the statement, "I am a member of the HHK BOE, however the views expressed here are my own and not expressed on behalf of the HHK BOE." Respondent asserts that Complainant did not provide any factual evidence to support a violation of *N.J.S.A.* 18A:12-24.1(e) and, therefore, the alleged violations of *N.J.S.A.* 18A:12-24.1(e) in Count 2 and Count 3 should be dismissed.

As for the alleged violation of *N.J.S.A.* 18A:12-24.1(f) in Count 3, Respondent argues that Complainant has not presented factual evidence that Respondent took action on behalf of, or at the request of, a special interest group. Respondent's social media posts were consistent with her position that the SSP should be passed, and she did not surrender her independent judgment to Time to Align, nor did she take any action that she would not have otherwise taken, if Time to Align did not also support the SSP. In addition, the Board made it "unequivocally" clear that they were in favor of the SSP. Complainant has failed to establish that Respondent surrendered her independent judgment, and has not presented any factual evidence to establish a violation of *N.J.S.A.* 18A:12-24.1(f) in Count 3.

Finally, as stated above, Respondent was one of four Board members to place a yard sign in her front yard, and one of four Board members to "like" a post(s) by Time to Align. Notwithstanding the fact, Complainant only filed against Respondent. Furthermore, Respondent's actions were permissible under the Act. Therefore, Respondent asserts that the Complaint is frivolous, and sanctions should be imposed.

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 contends that Respondent is known in the community as a member of the Board, and despite this, publicly made “affirmations and/or declarations” on multiple social media forums without identifying herself as a Board member in favor of the SSP. Furthermore, any action taken by a Board member in public, which is not “transparent” creates an appearance or perception to the public that is “contrary to the public trust” such as, “telling people to vote one way or another.” Complainant asserts that this is unethical because Board members must place the interest(s) of the public above their own, and should only “inform” the public, not “advocate” for a particular ballot question. As argued by Complainant, doing so creates a “justifiable impression among the public” that their trust is being violated. Complainant argues that Respondent was not “objective and impartial” because she is a known Board member who posted a sign on her property that told the public how to vote, “VOTE YES,” in addition to, advocating for a position placed on a referendum proposal when she should only “inform the public.”

Complainant further argues that Respondent’s references/citations to previous cases are not “on point with the underlying criterion,” which is that this case is about a Board member’s public action (posting a sign to vote “yes”), and semi-private/public actions (use of social media without the appropriate disclaimer) that were meant to influence voters and tell the community *how* to vote on a ballot question.

Finally, Complainant argues that he did not file this complaint because Respondent was up for reelection, but rather because he noticed the sign on Respondent’s lawn and the postings on social media, where she did not identify herself as a Board member, and believed that Respondent violated the Act. Complainant asserts he was not aware that other Board members engaged in similar activity and, now that he is aware, he may file separate/future complaints for their actions. Based on the above, Complainant requests that Respondent’s Motion to Dismiss be denied, and appropriate penalties imposed.

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 sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(c)* as alleged in Count 1, violated *N.J.S.A. 18A:12-24.1(c)* and *N.J.S.A. 18A:12-24.1(e)* as argued in Count 2, and/or violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* as contended in Count 3.

B. *Alleged Code Violations*

In the Complaint, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(c) in Count 1, violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e) in Count 2, and violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) in Count 3. These provisions of the Code provide, respectively:

c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

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.

1. **Count 1**

In Count 1, Complainant asserts that by displaying a sign on her front lawn that was an “advertisement” of a local interest group, and which displayed, “vote ‘YES’” for the Board’s SSP, Respondent violated *N.J.S.A.* 18A:12-24.1(c) because she “promoted actions outside of her responsibilities of the [Board].” Respondent counters that this action does not constitute Board action that violates the Code and moreover, was private action wholly unrelated to her duties and responsibilities as a Board member.

As set forth in *N.J.A.C.* 6A:28-6.4(a)(3), factual evidence of a violation of *N.J.S.A.* **18A:12-24.1(c)** shall include evidence that Respondent took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy.

After 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(c). The display of a sign on the front lawn of Respondent’s personal residence does not, in and of itself, establish that Respondent took “board action” to effectuate policies and plans, or “took action” that was unrelated to her duties as a Board member. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(c) in Count 1 should be dismissed.

2. Count 2

In Count 2, Complainant asserts that Respondent engaged in a conversation with someone on Facebook and promised to provide the individual (a potential voter) with a yard sign promoting the affirmative side of the ballot question. Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e) because she “conducted and promoted actions outside of her responsibilities of the [Board] by promising in a Facebook conversation/thread to provide to at least one potential voter at least one yard sign promoting the affirmative side of the ballot question.” Respondent counters that, regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(c), her communications on Facebook were private action wholly unrelated to her duties and responsibilities as a Board member. As for the alleged violation of *N.J.S.A.* 18A:12-24.1(e), Respondent argues that the facts presented are not sufficient to establish a violation of the Code.

As indicated above, factual evidence of a violation of ***N.J.S.A. 18A:12-24.1(c)*** shall include evidence that Respondent took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy. In addition, and pursuant to *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 her duties such that, by its nature, had the potential to compromise 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(c) and/or *N.J.S.A.* 18A:12-24.1(e). Communications on Facebook by Respondent about her willingness to post a lawn sign on her personal residence, and about her willingness to provide another member of the community with a lawn sign (at the community member’s request), does not, in and of itself, establish that Respondent took “board action” to effectuate policies and plans, or “took action” that was unrelated to her duties as a Board member. These facts also do not establish, without more, that Respondent made personal promises or took action beyond the scope of her duties that had the potential to compromise the Board. Instead, the facts alleged in the Complaint merely establish that Respondent was willing to post a sign on the front lawn of her personal residence, and was also willing to provide a member of the community with a sign (at the community member’s request). Therefore, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e) in Count 2 should be dismissed.

3. Count 3

In Count 3, Complainant asserts that by failing to indicate, in her Facebook communications about the yard sign, that she was speaking on her own behalf (as opposed to on behalf of the Board), Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) because she “committed and promoted actions outside of her responsibilities of the [Board] by

not stating that she was a Board member speaking only on her own behalf in a Facebook conversation/thread regarding the acquiring of a favorable yard sign by at least one of the Facebook group members in the thread AND by also making multiple affirmations for the interest group promoting the favorable side of the ballot on their Facebook page.” Respondent counters that, regarding the alleged violation of *N.J.S.A. 18A:12-24.1(e)*, it was not necessary for her to include a disclaimer on her communications, and further argues that when she promoted the approval of the SSP, she included the statement, “I am a member of the HHK BOE, however the views expressed here are my own and not expressed on behalf of the HHK BOE.” As for the alleged violation of *N.J.S.A. 18A:12-24.1(f)*, Respondent argues that Complainant has not presented factual evidence that Respondent took action on behalf of, or at the request of, a special interest group.

As indicated above, 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 her duties such that, by its nature, had the potential to compromise the Board. In addition, and as set forth in *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 herself, a member of her immediate family, or a friend.

After 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)* and/or *N.J.S.A. 18A:12-24.1(f)*. The facts in the Complaint do not establish, without more, that Respondent’s failure to include a disclaimer on/in her Facebook communications were tantamount to making personal promises or taking action beyond the scope of her duties as a Board member that had the potential to compromise the Board. The communications centered on Respondent’s willingness to post a sign on the front lawn of her personal residence, and her agreement to provide another member of the community (at the community member’s request) with a sign. In addition, although the facts do establish that Respondent posted the sign on the front lawn of her personal residence at the request of Time To Align, the communications with Respondent were on her personal e-mail account and on/through her personal Facebook page. As such, Respondent’s agreement to post the sign and to drop off a sign was as a community member, and in her capacity as a private citizen. Therefore, the Commission finds that the alleged violations of *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* in Count 3 should be dismissed.

Notwithstanding the determination as set forth herein, the Commission feels compelled to note that, as it has stated previously, Board members do not abdicate their state and federal constitutional rights upon being sworn-in. Although Board members, unlike other citizens, are bound by and must adhere to the provisions of the Act, the facts as alleged in the Complaint do not rise to the level of a violation. Without any suggestion that Respondent and/or other members of the Board utilized or expended taxpayer dollars to advocate only one side of the issue, or any suggestion that Respondent – in her capacity as a Board member – endorsed the issue, the Commission is restrained by the provisions of the Act, and its implementing regulations. The facts in the Complaint relate to actions taken by Respondent in her capacity as a

citizen, community member, and taxpayer, and do not implicate her standing as a Board member. In addition, whenever Respondent actually endorsed the issue (in favor of the SSP), as opposed to discussing the logistics of posting a sign or dropping off a sign at another community member's request, Respondent did include a disclaimer noting that her opinion was as a private citizen, and did not reflect the position of the Board (or her standing as a Board member).

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) as contended in Count 3.

IV. Request for Sanctions

At its meeting on May 21, 2019, 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 that 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, at a special meeting on June 19, 2019, the Commission voted to find the Complaint not frivolous, and to deny the 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 voted to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) as contended in Count 3. The Commission also voted to find that the Complaint is not frivolous, and to deny 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).*

Robert W. Bender, Chairperson

Mailing Date: June 20, 2019

***Resolution Adopting Decision
in Connection with C07-19***

Whereas, at its meeting on May 21, 2019, 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 submitted in connection with this matter; and

Whereas, at its meeting on May 21, 2019, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(c) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) as contended in Count 3; and

Whereas, at its meeting on May 21, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at a special meeting on June 19, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from May 21, 2019; 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 a special meeting on June 19, 2019.

Kathryn A. Whalen, Director
School Ethics Commission