

Before the School Ethics Commission
Docket No.: C28-19
Decision on Motion to Dismiss

**Brian Cummiskey,
Complainant**

v.

**Jeffrey Simpler,
Monroe Township Board of Education, Gloucester County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on April 11, 2019, by Brian Cummiskey (Complainant), a member of the Monroe Township Board of Education (Board), alleging that Jeffrey Simpler (Respondent), also a member of the Board, violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated April 12, 2019, April 24, 2019, and May 7, 2019, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On May 15, 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(a) and *N.J.S.A.* 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code) in Count 1 and Count 2.

On May 17, 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. On June 5, 2019, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss); however, subsequent to this filing, Respondent was advised that it would not be accepted by the Commission until he provided sufficient proof of service on his adversary. After Respondent served his adversary in accordance with *N.J.A.C.* 6A:28-1.7, Complainant filed a response to the Motion to Dismiss on July 8, 2019.

The parties were notified by correspondence dated July 15, 2019, that this matter would be placed on the Commission's agenda for its meeting on July 23, 2019, in order to make a determination regarding the Motion to Dismiss. At its meeting on July 23, 2019, the Commission considered the filings in this matter and, at its special meeting on August 30, 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(a) and/or *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1 and Count 2.

II. Summary of the Pleadings

A. The Complaint

In Count 1, Complainant (a Board member) contends that, during a committee meeting on April 4, 2019, Respondent questioned Complainant's motives for postponing a "Request for Quote" [RFQ] for medical insurance. Although it had been previously agreed upon (by members of the Operations and Finance Committee) that the issue should be delayed until after contract negotiations with the teachers' union ended, the issue was raised at multiple meetings thereafter. When Complainant again voiced his position that the matter should be delayed, Respondent stated, "everyone know[s] why you don't want this" to go out for RFQ. Complainant then asked Respondent, "why is that," to which Respondent stated, "because Main Street is telling you to." With this statement, Complainant contends that Respondent "made a serious accusation of political corruption" against him because he accused him of conspiring with a "an insurance broker who is [a] community member on Main Street." Based on these facts, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(a)* because he (Respondent) improperly accused Complainant of collusion in violation of "legal and ethical procedures," and violated *N.J.S.A. 18A:12-24.1(f)* because Respondent has "a personal issue with a community member" and, therefore, did not exercise "independent judgment."

In Count 2, Complainant contends that, after the April 4, 2019, committee meeting, Respondent commented to the Assistant Superintendents and other Board members, "Sorry you had to hear that, but that kid has been pushing Main Street's Agenda since he got on the [B]oard. I can't take it anymore." Complainant asserts that by making this statement, Respondent implied that Complainant is "working with outsiders on an agenda that is corrupt," but he (Respondent) did not provide any evidence to support this allegation against Complainant. As a result, and because Respondent made serious accusations of political corruption in a committee meeting against Complainant, he (Complainant) argues that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(f)* because if he had a concern, it should have been brought through "legal and ethical" procedures to the Board President and solicitor, and should not have been broadcasted to administrators and Board members.

B. Motion to Dismiss

Following receipt of the Complaint, Respondent filed a Motion to Dismiss. After explaining that all boards of education have the right to go "out for bid" on matters in order to save money (and that he was supportive of going out to bid for medical insurance because of rising cost and other miscellaneous reasons), he admits that he accused Complainant of "fighting for Main street," but denies that he (Respondent) mentioned politics or corruption. Instead, Respondent argues that Complainant interpreted Respondent's statement as an allegation of corruption. Respondent maintains that he apologized for "losing [his] temper," and questioned the timing of the Complaint filing with the SEC (after the Board went out for RFQ). Respondent maintains that he did not violate *N.J.S.A. 18A:12-24.1(a)* or *N.J.S.A. 18A:12-24.1(f)* as alleged.

C. Response to Motion to Dismiss

In response to the Motion to Dismiss, Complainant contends that Respondent's admission to making the statement (i.e., that he accused Complainant of "fighting for Main Street") is also an admission that he accused him (Complainant) of corruption without offering corroborating evidence for his accusation. Therefore, Complainant reaffirms that Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(f).

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(a) and/or *N.J.S.A.* 18A:12-24.1(f) as set forth in Count 1 and Count 2.

B. Alleged Code Violations

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

a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

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.

Count 1

As set forth in *N.J.A.C.* 6A:28-6.4(a)(1), factual evidence of a violation of *N.J.S.A.* **18A:12-24.1(a)** shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures.

In addition, 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 himself, a member of his or her immediate family, or a friend.

In Count 1, Complainant alleges that Respondent “made a serious accusation of political corruption” against him because he (Respondent) accused him (Complainant) of conspiring with a “an insurance broker who is [a] community member on Main Street.” As such, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(a)* because Respondent improperly accused Complainant of collusion in violation of “legal and ethical procedures,” and violated *N.J.S.A. 18A:12-24.1(f)* because Respondent has “a personal issue with a community member” and, therefore, did not exercise “independent judgment.” Respondent denies that he violated *N.J.S.A. 18A:12-24.1(a)* and/or *N.J.S.A. 18A:12-24.1(f)*, and further states that, while he did accuse Complainant of “fighting for Main Street,” he (Respondent) never mentioned politics or corruption and, instead, Complainant interpreted Respondent’s comments as an allegation of corruption.

After review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)*. More specifically, the Commission finds that, despite being required by *N.J.A.C. 6A:28-6.4(a)(1)*, Complainant has not provided **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when he accused Complainant of “political corruption” and/or “collusion.” Absent such a final decision, and even if the accusations may be actionable in another forum, the Commission finds that there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and, therefore, this allegation should be dismissed.

In addition, and based on its review of the Complaint, the Commission finds that even if the facts as alleged therein 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)*. Complainant has not offered any facts to suggest that Respondent’s accusation was “action” taken on behalf of, or at the request of, a special interest group, or that Respondent’s comment constituted “use” of the schools in order to acquire a benefit for himself, a member of his family, or a friend. Instead, the Complaint alleges that Complainant takes issue with what he perceived as unsubstantiated accusations by Respondent about action (or inaction) taken by Complainant regarding certain Board business. However, in order to find a violation of *N.J.S.A. 18A:12-24.1(f)*, facts needed to be adduced to establish that Respondent’s accusations constituted “action” on behalf of a special interest group, or constituted use of the schools for a personal benefit (or the benefit of a family member or friend). Without these facts, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(f)* in Count 1 should be dismissed.

In addition, 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 himself, a member of his or her immediate family, or a friend.

Count 2

As stated above, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(a)* shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures. In addition, 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 himself, a member of his or her immediate family, or a friend.

In Count 2, Complainant argues that because Respondent made serious accusations of political corruption against Complainant (and implied that Complainant is “working with outsiders on an agenda that is corrupt”) and did not offer any evidence in support of his allegations, Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(f)* because if he (Respondent) had a concern, it should have been brought through “legal and ethical” procedures to the Board President and solicitor, and should not have been broadcasted to administrators and Board members. Respondent again denies that he violated *N.J.S.A. 18A:12-24.1(a)* and/or *N.J.S.A. 18A:12-24.1(f)*, and while he admits that he accused Complainant of “fighting for Main Street,” it was Complainant who interpreted Respondent’s comments as an allegation of corruption.

After review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)*. Again, and although required by *N.J.A.C. 6A:28-6.4(a)(1)*, Complainant has not provided **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when he accused Complainant of “working with outsiders on an agenda that is corrupt.” Without such a final decision, and even if the accusations made by Respondent could serve as the basis for a complaint in a different legal proceeding, the Commission finds that there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and, therefore, this allegation should be dismissed.

In addition, and based on its review of the Complaint, the Commission finds that even if the facts as alleged therein 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)*. As indicated above, Complainant has not offered any facts to suggest that Respondent’s accusation (which Respondent argues was insinuated by Complainant, and not stated by Respondent) constituted “action” on behalf of, or at the request of, a special interest group, or constituted “use” of the schools in order to acquire a benefit for himself, a member of his family, or a friend. Therefore, and as in Count 1, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(f)* in Count 2 should be dismissed.

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(a) and/or *N.J.S.A.* 18A:12-24.1(f) as set forth in Count 1 and Count 2.

IV. 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(a) and/or *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1 and Count 2.

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: August 30, 2019

***Resolution Adopting Decision
in Connection with C28-19***

Whereas, at its meeting on July 23, 2019, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the response to the Motion to Dismiss submitted in connection with the above-referenced matter; and

Whereas, at its meeting on July 23, 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(a)* and/or *N.J.S.A. 18A:12-24.1(f)* as alleged in Count 1 and Count 2; and

Whereas, at its special meeting on August 30, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 23, 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 its special meeting on August 30, 2019.

Kathryn A. Whalen, Director
School Ethics Commission