

Before the School Ethics Commission
Docket No.: C64-18
Decision on Motion to Dismiss

**Donald G. Melnyk,
Complainant**

v.

**Maryann Fiel,
Highlands Borough Board of Education, Monmouth County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on October 9, 2018, by Donald G. Melnyk (Complainant), alleging that Maryann Fiel (Respondent), a former member of the Highlands Borough Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated October 16, 2018, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On November 1, 2018, 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(g) of the Code of Ethics for School Board Members (Code).

On November 5, 2018, 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. When Respondent failed to respond to the Commission, she was notified by correspondence dated December 4, 2018, that if she did not file a responsive pleading by December 17, 2018, the Commission could rule in favor of Complainant and assess an appropriate penalty against her. Ultimately, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss) on December 17, 2018, and Complainant filed a response to the Motion to Dismiss on January 22, 2019.

The parties were notified by correspondence dated January 14, 2019, that this matter would be placed on the Commission's agenda for its meeting on January 22, 2019, in order to make a determination regarding the Motion to Dismiss. At its meeting on February 26, 2019, the Commission considered the filings in this matter and, at its meeting on March 26, 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(g).

II. Summary of the Pleadings

A. The Complaint

Complainant asserts that Respondent was asked, on social media (Facebook), why she blocked other candidates, including Complainant's spouse, from participating in an "online debate" about the upcoming Board election. According to Complainant, Respondent stated it was "due to the harassment her [child] had been subjected to at Highlands Elementary School." According to Complainant, "The connection between blocking the candidates to bullying in school suggests only one conclusion – that [Complainant's child] is the source of this bullying." Of all the candidates who were blocked from the "online debate," Complainant argues that his child is the only one who is in the same school as Respondent's child (and is of a similar age).

Based on Respondent's conduct as set forth above, Complainant alleges that she violated *N.J.S.A.* 18A:12-24.1(g) because her statements were not only untrue, inaccurate, and defamatory, but they also needlessly injured the reputation of his child and his spouse. In addition, he contends that the false statements made by Respondent "follow a pattern of untruthful statements being made by [Respondent] throughout the school year," including accusations of personal threats by the Highlands Police Chief against Respondent and "multiple occasions" of plagiarism. Therefore, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(g).

B. Motion to Dismiss

Following receipt of the Complaint, Respondent filed a Motion to Dismiss. In her Motion to Dismiss, Respondent preliminarily notes that in November 2018, Complainant's spouse was a candidate for a seat on the Board and, ultimately was elected while Respondent was defeated. Respondent claims that the timing of the Complaint is "suggestive at least of using the [Commission's] process to one's advantage in the election." Moreover, Respondent argues that even if she said something defamatory, the Commission is not the proper venue for such an allegation.

As for the factual allegations in the Complaint, Respondent argues that Complainant did not cite/provide the "specific statements" that form the basis for his Complaint. Respondent also argues that the claims appear to involve "personal interactions which have not been linked to" Respondent in her capacity as a Board member, to Board membership, or to Board actions. Therefore, and because the Complaint "lacks sufficient specificity," and "only vaguely and not specifically concludes that Respondent violated" *N.J.S.A.* 18A:12-24.1(g), Respondent argues it should be dismissed. Respondent also notes that she requested that Complainant withdraw his Complaint and reserved the right to pursue sanctions for a frivolous filing if he failed to do so.

C. Response to Motion to Dismiss

In his Response to the Motion to Dismiss, Complainant stated that his spouse and Respondent had been friendly until his spouse announced her candidacy for a seat on the Board;

thereafter, Respondent “made the bold, and untrue, statement” that his spouse and child had been making fun of Respondent’s child.

Complainant also provides “screenshots” of Respondent’s defamatory statements from “September and October of 2018” which are “adequate to establish [his] petition is not unfounded.” Complainant additionally notes that “Re-Elect Maryann Fiel to the Highlands Elementary Board of Education” appears next to each defamatory statement. According to Complainant, Respondent left the defamatory remarks about his spouse on her page for “public consumption,” “never refuted any of them, but instead blocked [his spouse] from responding and fostered an atmosphere of hate toward [his spouse] by perpetuating that [his spouse] had made fun of” Respondent’s child. Complainant further states that Respondent’s personal attacks on his spouse and child were “an effort to smear [his spouse] and her family’s reputation.”

Complainant concludes by reasserting that Respondent violated *N.J.S.A. 18A:12-24.1(g)* because her depiction of his spouse “as a bully who is unfit for public service is not accurate, nor is the clear implication that [Respondent’s child] had been harassed by [his child].”

III. Analysis

A. Standard for Motion to Dismiss

In determining whether to grant a Motion to Dismiss, the Commission shall review the factual allegations 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(g)* as alleged in the Complaint.

B. Alleged Code Violation

In his Complaint, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(g)* of the Code. This provision provides:

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

Pursuant to *N.J.A.C. 6A:28-6.4(a)(7)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(g)* shall include evidence that Respondent took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that Respondent violated the inaccurate information provision of *N.J.S.A. 18A:12-24.1(g)* shall include evidence that substantiates the inaccuracy of the

information provided by Respondent and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

Although Respondent argues that the statements attributed to her by Complainant were not made in her capacity as a Board member, and do not relate to her Board membership or to Board actions, the Commission finds that the statements on her Facebook page are clearly linked to her Board membership (and candidacy). Respondent's Facebook page is clearly marked with the banner, "Re-Elect Maryann Fiel to the Highlands Elementary Board of Education," but does not appear to have a disclaimer noting that the statements are her own and unrelated to the Board.¹ Thus, it is reasonable for a member of the public, such as Complainant, to perceive the statements as being made by Respondent in her capacity as a Board member.

Notwithstanding this determination, the Commission agrees with Respondent that the crux of the Complaint is an assertion by Complainant that Respondent made several defamatory statements about his spouse and child. In this regard, the Commission notes that its authority is limited to enforcing the Act, *N.J.S.A.* 18A:12-21 *et seq.*, a set of minimum ethical standards by which all school officials must abide. The Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C.* 6A:28-1.4(a). Therefore, to the extent that Complainant seeks a determination from the Commission that Respondent's statements were "defamatory," the Commission notes that such a determination falls outside the scope, authority, and jurisdiction of the Commission. However, Complainant and/or his spouse may be able to pursue such claims in the appropriate venue, such as the Superior Court of New Jersey.

In addition, although Complainant argues that Respondent specifically mentioned his spouse and his child in her social media posts, a review of the specific factual allegations and exhibits reveal otherwise. In one post, Respondent indicates that her child has been bullied "not by all but by some." The plain import of Respondent's post is that she believes that it is not just one child, or one individual, who may have bullied her child. Further, when asked if "the candidates" were the source of this harassment, Respondent neither confirmed, nor denied, that it was the "candidates." Even if Complainant's child may attend the same school and be of a similar age to Respondent's child, there are no facts in the evidence which, on their face, "out" Complainant's spouse and/or his child as having bullied Respondent's child.

Based on its review of Complainant's factual allegations and supporting documentation, 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.*

¹ A prominent disclaimer (caps/bold), such as, "**THE FOLLOWING STATEMENTS ARE MADE IN MY CAPACITY AS A PRIVATE CITIZEN, AND NOT IN MY CAPACITY AS A BOARD MEMBER. THESE STATEMENTS ARE ALSO NOT REPRESENTATIVE OF THE BOARD OR ITS INDIVIDUAL MEMBERS, AND SOLELY REPRESENT MY OWN PERSONAL OPINIONS,**" may have avoided the appearance – actual or perceived – that the statements were made in Respondent's capacity as a Board member. The Commission additionally notes that, even if an appropriate disclaimer is used, the substance of a post/statement can, nevertheless, render the disclaimer meaningless.

18A:12-24.1(g). Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(g) 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 facts sufficient to state a claim for a violation of *N.J.S.A.* 18A:12-24.1(g). Therefore, the Commission **grants** Respondent's Motion to Dismiss in its entirety.

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 for failure to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(g).

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: March 27, 2019

***Resolution Adopting Decision
in Connection with C64-18***

Whereas, at its meeting on February 26, 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 filed in connection with this matter; and

Whereas, at its meeting on February 26, 2019, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegation that Respondent violated *N.J.S.A.* 18A:12-24.1(g); and

Whereas, at its meeting on March 26, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on February 26, 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 public meeting on March 26, 2019.

Kathryn A. Whalen, Director
School Ethics Commission