

***Before the School Ethics Commission***  
***Docket No.: C74-19***  
***Decision on Motion to Dismiss***

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**Susan M. Swezeny,**  
***Complainant***

v.

**Carla Thomas,**  
**Pleasantville Board of Education, Atlantic County,**  
***Respondent***

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**I. Procedural History**

This matter arises from a Complaint that was filed on December 16, 2019, by Susan M. Swezeny (Complainant), alleging that Carla Thomas (Respondent), a member and President of the Pleasantville Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated December 17, 2019, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On December 30, 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(f) of the Code of Ethics for School Board Members (Code) in Count 1, and violated *N.J.S.A.* 18A:12-24.1(i) of the Code in Count 2.

On December 31, 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 January 23, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On February 18, 2020, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated March 23, 2020, that this matter would be placed on the Commission's agenda for a special meeting on March 27, 2020, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At a special meeting on March 27, 2020, the Commission considered the filings in this matter and, at its meeting on April 21, 2020, 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(f) as alleged in Count 1, and/or violated *N.J.S.A.* 18A:12-24.1(i) as argued in Count 2. 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 November 5, 2019, Respondent (Board President) was “seen handing out flyers” in support of three (3) candidates on Pleasantville School District (District) property (Leeds Avenue School), and the flyers “clearly stated that the candidates were Democrats.” As such, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(f).

In Count 2, Complainant contends that on November 5, 2019, while she (Complainant) was campaigning for the Pleasantville Education Association (PEA) endorsed candidates on District grounds, Respondent “approached [her] and aggressively started asking” why she supported the candidates. According to Complainant, the questioning went on for “10-15 minutes,” and Respondent “became quite loud and stayed within 10 inches of [her] face.” Complainant states that Respondent’s family members were standing nearby, called her (Complainant) a liar, and asked if she (Complainant) “was only picking up a paycheck because [she] didn’t live in Pleasantville.” Complainant contends that Respondent did not attempt to stop her family members, and she felt as though Respondent was “trying to intimidate [her] and goad [her] into a fight.” According to Complainant, after this occurred, Respondent went to another polling place, told two teachers about the incident, and also told them that she wanted to punch Complainant in the face. Respondent also told the Business Administrator (BA) about the incident. Complainant states that, “[h]aving to perform [her] duties after such a threat was issued is a distraction to the performance of [her] duties, as [she] feel[s] [she] is operating in a hostile work environment.” Based on these facts, and Respondent’s aggressive behavior, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(i) because she failed to protect Complainant and “engaged in and condoned the behavior targeting [her].”

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

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and allegation of frivolous filing. Respondent admits to being present at the Leeds Avenue School on November 5, 2019, but denies that she was handing out flyers. Even if true, Respondent “has a right to support the candidates of her choosing” even if they are Democrats, and the facts in the Complaint do not support a violation of *N.J.S.A.* 18A:12-24.1(f).

Regarding Count 2, Respondent denies the hearsay statements attributed to her by Complainant, denies that she and/or her family members threatened Complainant, and counters that it was Complainant who exhibited violent behavior toward her (Respondent). Respondent maintains that there are insufficient facts to support a violation of *N.J.S.A.* 18A:12-24.1(i), and submits that the Complaint is frivolous and should be dismissed.

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

In response to the Motion to Dismiss and frivolous allegation, Complainant reasserts her allegations. Regarding Count 1, and although she supports Respondent’s “right to support the candidates of her choice,” Board elections are non-partisan and the flyers were lacking the required “Paid for by ...” notice. Complainant asserts that just as Respondent “has the right” to

support the candidate of her choosing, so does Complainant, and she deserves the right to do so “without being harassed by anyone, let alone the [Board President].”

As to Count 2, Complainant provided statements from witnesses who can corroborate the fact that Respondent “approached [her] and started berating [her] choice of candidate.” According to Complainant, Respondent was “standing so close that [she] felt [she] had to lean back.” Complainant notes that when “others saw this they were compelled to come to [her] aid.” As for Respondent’s comment about wanting to punch Complainant in the face, the teacher who reported this to Complainant is not comfortable coming forward unless subpoenaed. Finally, Complainant reaffirms that Respondent contacted the BA, to inform him about the incident, and the BA (according to Complainant) asked Respondent why she “would even” approach Complainant.

### **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(f)* as alleged in Count 1, and/or violated *N.J.S.A. 18A:12-24.1(i)* as argued in Count 2.

#### **B. *Alleged Code Violations***

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

- 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.
- i. I will support and protect school personnel in proper performance of their duties.

### *Count 1*

Complainant alleges that Respondent was “seen handing out flyers” in support of three (3) democratic candidates on District property and, therefore, violated *N.J.S.A.* 18A:12-24.1(f). Although Respondent admits she was present on District property, she denies that she was handing out flyers but, even if she was, she “has a right to support the candidates of her choosing,” even if they are Democrats.

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 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(f). Even if Respondent was “seen handing out flyers” in support of multiple democratic candidates, an allegation which Respondent refutes, Complainant has not articulated any facts which could prove, or even imply, that her actions (distributing the flyers) were taken 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 that Respondent was using the schools in order to secure a specific and identifiable benefit for herself, a member of her immediate family, or a friend. Based on the facts set forth in the Complaint, there is no suggestion that Respondent was present on District property in her capacity as a Board member or as Board President, or that she was otherwise engaged in Board-related business or action; instead, it appears Respondent, among others (including Complainant) was there in her personal capacity to support the candidates of her choice. Personal advocacy in this regard cannot constitute a violation of the Act. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(f) in Count 1 should be dismissed.

### *Count 2*

Complainant argues that while she (Complainant) was campaigning for PEA endorsed candidates, Respondent “approached [her] and aggressively started asking” why she supported the candidates; Respondent’s family members also directed inappropriate questions to her (Complainant); and Respondent went to another polling place and told two teachers about the incident, and also stated she wanted to punch Complainant in the face. Based on these facts, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(i) because she failed to protect Complainant and “engaged in and condoned the behavior targeting [her].” Respondent denies the hearsay statements attributed to her, denies that she and/or her family members threatened Complainant, and counters that it was Complainant who exhibited violent behavior toward her (Respondent).

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(9), factual evidence of a violation of *N.J.S.A.* **18A:12-24.1(i)** shall include evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

Based on its 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(i)*. Even if Respondent engaged in all of the conduct as contended by Complainant, allegations which Respondent denies, Complainant has not articulated any facts which identify specific action taken by Respondent as Board member/President which resulted in undermining, opposing, compromising, or harming school personnel *in the proper performance of her duties*. Again, and based on the facts set forth in her Complaint, both Complainant and Respondent were present on District property for polling and election-related activities, and not because of their professional duties and responsibilities. Both Complainant and Respondent have the constitutional right to engage in polling and election-related activities, and without any facts to explain how this private conduct resulted in Respondent taking specific and deliberate Board action, in her capacity as a Board member/President, which impacted Complainant in the proper performance of her duties, a violation of *N.J.S.A. 18A:12-24.1(i)* cannot be substantiated. Although the Commission does not condone Respondent's actions (if true), because there is no nexus between Respondent's private conduct and her role as a school official, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(i)* 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(f)* as alleged in Count 1, and/or violated *N.J.S.A. 18A:12-24.1(i)* as argued in Count 2.

#### **IV. Request for Sanctions**

At a special meeting on March 27, 2020, 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 its meeting on April 21, 2020, 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(f)* as alleged in Count 1, and/or violated *N.J.S.A. 18A:12-24.1(i)* as argued in Count 2. 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).*

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Robert W. Bender, Chairperson

Mailing Date: April 21, 2020

***Resolution Adopting Decision  
in Connection with C74-19***

***Whereas***, at a special meeting on March 27, 2020, 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 the above-referenced matter; and

***Whereas***, at a special meeting on March 27, 2020, 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(f) as alleged in Count 1, and/or violated *N.J.S.A.* 18A:12-24.1(i) as argued in Count 2; and

***Whereas***, at a special meeting on March 27, 2020, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

***Whereas***, at its meeting on April 21, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on March 27, 2020; 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.

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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 April 21, 2020.

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Kathryn A. Whalen, Director  
School Ethics Commission