

***Before the School Ethics Commission
Docket No.: C17-21
Decision on Motion to Dismiss***

**Virginia McGinnis,
Complainant**

v.

**Christine Skurbe,
Monroe Township Board of Education, Middlesex County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on June 7, 2021, by Virginia McGinnis, (Complainant), alleging that Christine Skurbe (Respondent), a member of the Monroe Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* The Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(j) of the Code of Ethics for School Board Members (Code) in Count 1; violated *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(i) of the Code in Count 2; and violated *N.J.S.A.* 18A:12-24.1(e) of the Code in Count 3.

On June 8, 2021, the Complaint was served on Respondent, by electronic mail, notifying Respondent that charges were filed with the School Ethics Commission (Commission), and advising that Respondent had twenty (20) days to file a responsive pleading.¹ On June 20, 2021, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and on August 25, 2021, Complainant filed a response to the Motion to Dismiss.

On October 12, 2021, the parties were subsequently notified that this matter would be placed on the Commission's agenda for its meeting on October 19, 2021, to decide Respondent's Motion to Dismiss. At its meeting on October 19, 2021, the Commission considered the filings in this matter, including whether Complainant has pleaded sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(j) in Count 1; violated *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(i) in Count 2; and violated *N.J.S.A.* 18A:12-24.1(e) in Count 3.

A. Alleged Code Violations

In the Complaint, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(j) in Count 1; violated *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(i) in Count 2;

¹ Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

and violated *N.J.S.A.* 18A:12-24.1(e) in Count 3; The relevant provisions of the Code are as follows:

b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

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.

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

j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

B. *Jurisdiction of the Commission*

In reviewing the allegations in this matter, 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. In this regard, 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).

II. Summary of the Pleadings

A. *The Complaint*

In a three (3) Count Complaint, Complainant alleges Respondent violated certain provisions of the School Ethics Act, as set forth above, as a result of Respondent's role regarding two separate social media sites, which allow for the posting and sharing of information and comments about community events and school district matters. According to Complainant, the fact that Respondent served as an "administrator" for one of the social media sites, even after Respondent joined the Board, is a violation of the Act. Complainant further alleges that Respondent's participation in a second and different social media message board, which allows for postings and comments by invited members of the group only, also violates the Act.

B. *Motion to Dismiss*

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and initially provides some background regarding Respondent's "expressional conduct." Respondent cited to caselaw that stated it is a "Board member's right to advocate for causes they feel passionately

about.” Additionally, Respondent cited to a Commission Advisory Opinion that held that “ethical restrictions of the [Act] ‘do not sharply curtail a Board member’s First Amendment rights.’”

C. *Response to Motion to Dismiss*

In response to the Motion to Dismiss, Complainant reaffirmed the allegations in the Complaint and the alleged violations of the Act.

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 asserted sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(j) in Count 1; violated *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(i) in Count 2; and violated *N.J.S.A.* 18A:12-24.1(e) in Count 3.

Count 1

As set forth in *N.J.A.C.* 6A:28-6.4(a)(10), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(j) shall include evidence that the respondent(s) acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint: (i) prior to referral to the chief administrative officer; or (ii) at a time or place other than a public meeting and prior to the failure of an administrative solution.

In Count 1, Complainant asserts Respondent was the “administrator of [the] ‘Watchdog’ Facebook group,” and remained the administrator after her election to the Board in January 2021, and until she “stepped down [(as an administrator)] ... at the very end of May 2021.” According to Complainant, prior to, and up to her election to the Board, Respondent “regularly posted defamatory remarks about” Michael Gorski, the District’s Business Administrator (BA). Subsequent to her Board election, Respondent “refrained from attacking Mr. Gorski directly”; however, “other people continued to attack school administrators ...” while Respondent remained as the website’s administrator. More specifically, on March 2, 2021, the website contained a post that “blamed the [S]uperintendent and [BA] for school closures” during the pandemic, and “implied” that other school districts were not closed because they had “superior administrators.” Also, in March 2021, the Watchdog website contained a post stating, “Michael Gorski is ‘dishonest’ and ‘stole’ from the district.” In addition, another post “demand[ed] an ‘independent audit’ of” the District’s financial statements. Complainant notes that although Respondent stepped down as the administrator of the Watchdog “at the very end of May 2021, she should “still be held accountable” because she remained the administrator for the first five months after being sworn in as a member of the Board. Based on this information, Complainant contends Respondent violated *N.J.S.A.* 18A:12-24.1(j) because “she served as the administrator of this [website] throughout the first five months on the [Board][,] because she was able to

update the group name, description, and cover photo during this period, which is something only an administrator can do” and this website “is involved in attacking and belittling [District] employees” and as the administrator, Respondent had “complete editorial control over its content.” Complainant notes although Respondent is no longer the administrator of the Watchdog group, “she should be held accountable for this violation because it has occurred during the first five months of her tenure on the [Board].”

In response, Respondent argues that Complainant “dwells on [R]espondent’s public statements about school staff before she was elected to the Board, but they are irrelevant to the charge before the Commission.” Per Respondent, and as noted by Complainant, after becoming a member of the Board, Respondent “merely served as administrator of the ‘Watchdog’ Facebook group for five months before relinquishing that position.” Respondent notes, Complainant admits that Respondent did not “post any negative messages of her own regarding school staff but contends that [R]espondent is vicariously responsible for the comments made by other members of the group.” Respondent certified that her role as “one of three administrators for the ‘Watchdog’ Facebook group was a passive one.” The administrators do not “exercise editorial control over the content of members’ posts, other than to assure that group members do not personally attack other members of the group.” Respondent contends that Complainant did not make any assertions to support that Respondent “used her role as administrator to promote or endorse any posts from group members that were critical of the district or its staff.” According to Respondent, Complainant did not provide any facts “giving rise to vicarious ethical responsibility for other posters’ comments on the ‘Watchdog’ Facebook page.”

After a review of Count 1 of the Complaint, the Commission finds that even if the facts as argued are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(j). Specifically, the Commission finds that merely serving as an “administrator” of the social media page, which may have included complaints or posts by third parties that were unflattering or critical of district administrators or employees, does not give rise to a violation of *N.J.S.A.* 18A:12-24.1(j). While the Commission cautions school officials throughout the State to be mindful of their usage and participation (and the attendant risks of potential violations of the School Ethics Act) in the ever-growing number of social media platforms, the Commission finds that in the present matter, as pled, Complainant has not provided factual evidence that Respondent, while serving as the “administrator” of the social media page, acted or attempted to resolve a complaint or conducted any inquiry related to a complaint in violation of *N.J.S.A.* 18A:12-24.1(j). Accordingly, the Commission finds that there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(j). Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(j) should be dismissed.

Count 2

As set forth in *N.J.A.C.* 6A:28-6.4(a)(2), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(b) shall include evidence that the respondent(s) willfully made a decision contrary to the educational welfare of children, or evidence that the respondent(s) took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing; and as required by *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 the respondent(s) took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

In Count 2, Complainant contends that Respondent has attended various Buildings, Grounds and Transportation (BGT) Committee meetings (January 28, 2021, March 19, 2021 and May 11, 2021²), in which the BGT Committee discussed the “plan to use equipment to manufacture the hypochlorous acid disinfectant.” According to Complainant, the District “invited” Dr. Richard Lynch to the BGT Committee meetings to provide expert testimony related to the proposed disinfectant process and the District’s current disinfectant process, BruTabs. Complainant maintains that Dr. Lynch, and Jerry Tague, Facilities Director, provided public testimony against the proposed disinfectant for several reasons and in favor of the current BruTabs. Despite their advice, Respondent is “misleading the public” and “she allowed her ‘Watchdog’ Facebook group to serve as a forum for attacking” Mr. Tague in violation of *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(i). Complainant further contends that by “promoting this equipment purchase plan and misrepresenting the testimony of a public health expert, [Respondent] is acting against the educational welfare of our children” in violation of *N.J.S.A.* 18A:12-24.1(i).

In response, Respondent contends, Complainant “is free to argue that BruTab is the best product for the [D]istrict to use, and to debate the point in the court of public opinion.” However, Complainant may not “transform [R]espondent’s First Amendment protected expression on a matter of legitimate public concern into a violation of the [Act].” Respondent further contends Complainant did not provide any facts to support “an inference that [R]espondent personally attacked a school employee” (Mr. Tague) nor did she provide any evidence to support “an inference that [R]espondent ‘willfully made a decision contrary to the educational welfare of children.’”

After a review of Count 2 of the Complaint, the Commission finds that even if the facts as argued are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(i). Specifically, the Commission finds that Respondent did not make any decision or take any action contrary to the educational welfare of children by merely questioning the purported experts, at a public meeting, about the District’s cleaning protocols, including the use of certain disinfectants during the unprecedented COVID-19 global pandemic. As a Board member, Respondent had the right (and obligation) to question officials about the District’s cleaning protocols, including raising questions about certain disinfectants, used and or to be used during the pandemic to ensure the safety of students and staff as school buildings reopened for in-person learning. The Commission finds that in the present matter, as pled, Complainant has not provided factual evidence that Respondent, while raising questions about District’s cleaning protocols, including debating the use of specific disinfectants during the pandemic, acted contrary to the educational welfare of

² Complainant provides two dates for the May Buildings, Grounds and Transportation Committee meeting; May 5, 2021 and May 11, 2021.

children. Accordingly, the Commission finds that there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(i). Therefore, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(i) should be dismissed.

Count 3

As set forth in *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 the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board.

In Count 3, Complainant asserts that Respondent “currently serves as administrator of a private Facebook group, ‘Monroe Twp. Unity in Community’” in which she posts information related to the District. Complainant notes, “this group is not open to the public and some members of the public are blocked from joining this group.” Complainant further notes, per the [American Civil Liberties Union] (ACLU), “it may be against the law for elected officials to do this” and “a NJ court ruled that a local elected official’s personal Facebook group can be subject to [Open Public Records Act] if it is used to discuss official business.” Complainant further asserts “after stepping down as administrator of the public ‘Watchdog’ Facebook group, it is now possible for [Respondent] to use this [] other private group, ‘Monroe Twp. ...,’ to host defamatory remarks about school district employees without this information becoming widely accessible.” Complainant contends Respondent has violated *N.J.S.A.* 18A:12-24.1(e) because she has taken a “private action that may compromise the [B]oard.”

In response, Respondent claims that Complainant “does not allege that [R]espondent posted any unethical messages on” the “Monroe Twp. Unity in Community” Facebook page nor does Complainant allege that Respondent is “ethically responsible for offensive messages posted by others.” Respondent argues, Complainant is alleging, “after stepping down as administrator of the ‘Watchdog’ Facebook group, it is now *possible* [R]espondent may use this other Facebook page to host defamatory remarks about school district employees.” Respondent contends Complainant did not provide any facts to support that Respondent “‘made personal promises’ to anyone, or ‘took action beyond the scope of [her] duties that, by its nature, had the potential to compromise the board.’” Respondent asserts Complainant’s citing of the ACLU article “is entirely inapposite.” Respondent notes, “Assuming (but not conceding) it is an accurate statement of the law, it only addresses Facebook pages maintained by public officials ‘in their official roles.’” According to Respondent’s certification, “her involvement with the ‘Monroe Twp. Unity’ Facebook group is not in her official capacity but entirely as a private citizen.”

After a review of Count 3 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(e). The Commission finds that in the present matter, as pled, Complainant has not provided factual evidence that Respondent’s role as an administrator for a private social media group that is by invitation only violates the Act. As discussed above, the Commission urges school officials to exercise caution while navigating the inter-connected world of social media. Notwithstanding this admonition, the Commission finds

Complainant has failed to provide any factual evidence that Respondent, as administrator of the social media page, took any action that had the potential to compromise the Board. Accordingly, the Commission finds that there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e). Therefore, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(e) should be dismissed.

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(j) in Count 1; violated *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(i) in Count 2; and violated *N.J.S.A.* 18A:12-24.1(e) in Count 3.

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: November 16, 2021

***Resolution Adopting Decision
in Connection with C17-21***

Whereas, at its meeting on October 19, 2021, 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 October 19, 2021, 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(j) in Count 1; violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(i) in Count 2; and violated *N.J.S.A.* 18A:12-24.1(e) in Count 3; and

Whereas, at its meeting on November 16, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on October 19, 2021; 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 November 16, 2021.

Salma T. Chand, Executive Director
School Ethics Commission