

Before the School Ethics Commission
Docket No.: C46-22
Decision on Motion to Dismiss

Lisa Santangelo and Sandy Ostrander,
Complainants

v.

Noelle O'Donnell,
Hunterdon Central Regional Board of Education, Hunterdon County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on April 14, 2022, by Lisa Santangelo (Complainant Santangelo) and Sandy Ostrander (Complainant Ostrander) (collectively referred to as Complainants), alleging that Noelle O'Donnell (Respondent), a member of the Hunterdon Central Regional Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1 (f) of the Code of Ethics for School Board Members (Code).

On April 18, 2022, the Complaint was served on Respondent via electronic mail, notifying her that ethics charges had been filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading.¹ On May 11, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On May 27, 2022, Complainants filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated July 18, 2022, that the above-captioned matter would be discussed by the Commission at its meeting on July 26, 2022, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Following its discussion on July 26, 2022, the Commission adopted a decision at its meeting on August 23, 2022, finding that Complainants failed to plead sufficient credible facts 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(f), but dismissing the matter on the grounds that the Complaint was frivolous. The Commission also voted to impose a fine in the amount of one hundred dollars (\$100.00) for Complainants' frivolous filing.

¹ As a result of the ongoing Coronavirus (COVID-19) pandemic, and the implementation of electronic filing, service of process was effectuated by the Commission through electronic transmission only.

II. Summary of the Pleadings

A. *The Complaint*

Complainants state that, on February 28, 2022, the Board held a meeting. At this meeting, “over 300 people” were “in attendance predominantly representing the [Lesbian, Gay, Bisexual, and Transgender (LGBT)] community,” as were “school faculty, students, Pastors, a Reverend, Rabbi, parents and grandparents representing all beliefs, opinions and political persuasion.” While at this meeting, Respondent “wore a [P]ride mask on the school board panel clearly demonstrating her support for the LGBT community” and, in so doing, “display[ed] support for a special interest group, the LGBT community.”

A March 2, 2022, article about the February 28, 2022, Board meeting states, “School Board member Noelle O’Donnell, who chairs the [Hunterdon Central Regional High School District’s (District)] Equity, Racism and Diversity Committee, called the Feb. 28 meeting, ‘by far the best board of education meeting’” Respondent is also reported to have said, “I want to thank everyone who came tonight as I have learned so much and I am so hopeful even though it has been hard to be hopeful at times,” and “You students are amazing, and don’t ever hesitate to come to a [B]oard meeting, as boring as they can be. Tell us what’s on your mind because we work for you.”

According to Complainants, Respondent “not only stated who she supports but also shows who she doesn’t support,” and her “display of support towards one particular group of students sends a message to other students, parents and community of various opinions and beliefs that they are not supported.” By “overtly supporting one special group” of students, Complainants submit that Respondent violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(f).

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, and argues that not only must it be dismissed for failing to allege that Respondent took any action, but it must also be found frivolous because it was designed to harass Respondent “without even the pretense of a good faith legal basis.” By way of background, Respondent notes that, prior to the February 28, 2022, meeting, members of the public became aware that a “right wing parents’ group” would be attending the February 28, 2022, meeting and advocating for the elimination of “[Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, and Asexual/Agender (LGBTQIA+)] representation in books and curriculum.” As a result, numerous people attended the February 28, 2022, Board meeting, a large number of whom were there to support the LGBTQIA+ students who wanted to address the Board.

With the above in mind, Respondent argues that, other than alleging that Respondent “wore a rainbow mask” to the Board’s meeting on February 28, 2022, Complainants have not provided any evidence that Respondent “willfully made any decision contrary to the educational welfare of children, or that she took deliberate action to obstruct a program or policy” in

violation of *N.J.S.A.* 18A:12-24.1(b). In fact, the Complaint does not allege that Respondent “took any affirmative action whatsoever.”

As for the stated violation of *N.J.S.A.* 18A:12-24.1(f), Respondent submits that the Complaint does not aver that Respondent took any affirmative action, does not allege that Respondent wore the mask at the request of a special interest group, and does not suggest that Respondent used the schools to acquire a benefit for herself or anyone else. Per Respondent, “Complainants’ personal objections to [B]oard members supporting LGBTQIA+ students do not convert the simple act of wearing a rainbow mask to actual, actionable conduct.” Respondent submits, even if it could be regarded as action, “it is exactly the kind of action that the Code compels rather than prohibits.” In addition, providing support to LGBTQIA+ students “is in alignment with the policies of the Board and the State of New Jersey, and it supports the educational welfare of students.” Respondent further asserts that LGBTQIA+ students are not a “special interest group” and “[i]mplicit in [the Code] is the inclusion of LGBTQIA+ students, whose needs are just as valid as any other group of students.” Respondent notes that the wearing a mask was not action, and was a message of inclusion, not exclusion.

Finally, Respondent contends the Complaint is frivolous because it has “no credible basis in the law” and Complainants filed it “to harass a [B]oard member who supports LGBTQIA+ students.” According to Respondent, Complainants are using “the Code as a weapon,” and they are “trying to scare [B]oard members into neutrality.” The Code does not dictate that “[B]oard members are prohibited from disagreeing with members of the public, or that they must only do so quietly.” Respondent reasserts the Complaint was “knowingly devoid of any reasonable basis in law, intended only to harass a [B]oard member with whom [Complainants] do not agree.” Therefore, the Commission should find the Complaint to be frivolous to “deter future filings of this nature, and [to] avoid expending its limited resources processing complaints driven purely by ideology.”

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainants note that Complainant Santangelo offered public comment at the February 28, 2022, Board meeting, which “focused on parental rights and highlighted how [P]olicy 5756 allows the school district to take action without parental consent and how this is in possible conflict with other school policies and state guidelines.” Complainants further note that Complainant Santangelo’s “comments were about sexual content, both heterosexual and homosexual, being added to the curriculum.” Complainants clarify that Complainant Santangelo’s comments “did not discuss banning books.” Complainants argue they have not “shown any bias or hostility towards the LGBTQ community,” nor towards Respondent. Complainants further clarify that contrary to Respondent’s assertions, neither Complainant is a member of the “[Protect Your Children] group.”

According to Complainants, “Two LGBTQ special interest groups” attended the meeting and approximately 300 rainbow masks were purchased and distributed to interested attendees. Furthermore, Complainants maintain due to the large anticipated audience, the “meeting venue was moved in advance of the meeting.” Complainants further maintain a “reasonable person can conclude ... that someone from the [District] administration, faculty or [Board] invited two

special interest groups to attend the meeting. The special interest group(s) purchased and handed out Rainbow masks, of which the Principal and [Respondent] wore.” According to Complainants, “Since the meeting was moved to a larger venue, the [Board] had to approve the move and had advance notice.” Complainants assert that, although they do not know who invited the two special interest groups to attend the February 28, 2022, meeting, “a reasonable person could believe” that Respondent was responsible because she is, among other things, the chairperson for the Equity, Racism and Diversity Committee.

Complainants maintain that Respondent’s “display of one particular group of students sends a message to other students, parents and the community of various opinions and beliefs that they are not supported.” Complainants contend that Respondent “created an environment [at the February 28, 2022, Board meeting] where at least two students who attended with their parents did not speak due to the fear of harassment and bullying by peers and those in attendance.” Complainants reaffirm that by wearing the Pride mask, Respondent “impact[ed] students of differing opinions,” “illustrate[d] how her bias affects the functioning of the [Board] meetings,” and “created an environment that made everyone with a contrary view fearful to speak their perspective.” Complainants argue that Respondent “intentionally took actions that led to public comment being stifled because of her own bias.” As such, the Commission must “reject” Respondent’s Motion to Dismiss, and “reject” Respondent’s request to classify “the complaint as frivolous.”

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 (Complainants), and determine whether the allegation(s), if true, could establish a violation(s) 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 Complainants have pled sufficient facts which, if true, could 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(f)*.

B. *Alleged Code Violations*

Complainants submit that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A. 18A:12-24.1(b)* and *N.J.S.A. 18A:12-24.1(f)*, and these provisions of the Code provide:

- 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.
- 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.

Pursuant to *N.J.A.C.* 6A:28-6.4(a), violations of *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(f) need to be supported by certain factual evidence, to wit:

2. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(b) shall include evidence that Respondent willfully made a decision contrary to the educational welfare of children, or evidence that Respondent 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.
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.

Following a thorough review, the Commission finds that even if the facts as set forth 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(b) and/or *N.J.S.A.* 18A:12-24.1(f). Even if Respondent voluntarily chose to wear a Pride mask while seated on the dais at a public Board meeting, and even if Respondent (in a subsequent article regarding the February 28, 2022, Board meeting) publicly acknowledged and thanked the students who attended the Board's meeting, neither the wearing of a Pride mask nor the making of a public statement commending the District's students, could even remotely be construed as a "decision(s)" contrary to the educational welfare of children, or "deliberate action(s)" to obstruct the District's programs and policies designed to meet the individual needs of all children (*N.J.S.A.* 18A:12-24.1(b), or "action(s)" 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 use of the District's schools for her or another's benefit (*N.J.S.A.* 18A:12-24.1(f)). Neither Respondent's decision to wear a Pride mask, nor her public comments, directly impacted the business or operation of the District and/or the Board. Regardless of whether the Board, as a public body, may have taken action regarding the District's books and/or the curriculum at the February 28 2022, meeting (or a subsequent meeting), that subsequent action was wholly unrelated to Respondent's decision to wear a mask, and her decision to publicly thank the students who attended the Board's meeting, and to encourage their feedback in the future. Moreover, Complainants' disagreement with Respondent's display of support does not mean that Respondent made a "decision(s)" or engaged in an "action(s)" that was unethical and violative of the cited provisions of the Code.

IV. Request for Sanctions

Respondent's Motion to Dismiss included an allegation that the Complaint is frivolous and requested that sanctions be imposed against Complainants. More specifically, Respondent argues that the Complaint is frivolous because it has "no credible basis in the law" and was filed "to harass a [B]oard member who supports LGBTQIA+ students," and is "knowingly devoid of any reasonable basis in law, intended only to harass a [B]oard member with whom [Complainants] do not agree."

The Commission's regulations state, in relevant part:

- (a) Within 20 days from receipt of the motion to dismiss in lieu of an answer, the complainant shall file an original and two copies of a responsive brief
 1. Where a motion to dismiss alleges that a complaint is frivolous pursuant to N.J.S.A. 18A:12-29(e), the complainant shall respond to that allegation within the responsive brief.

N.J.A.C. 6A:28-8.2.

In their response to the allegation that the Complaint is frivolous, Complainants maintain that Respondent's "display of one particular group of students sends a message to other students, parents and the community of various opinions and beliefs that they are not supported" and by wearing the Pride mask, Respondent "impact[ed] students of differing opinions," "illustrate[d] how her bias affects the functioning of the [Board] meetings," and "created an environment that made everyone with a contrary view fearful to speak their perspective."

When there is an allegation of frivolous filing, as here, the Commission's regulations state:

- (a) Upon receipt of the complainant's response to an allegation that the complaint is frivolous pursuant to *N.J.A.C. 6A:28-7.2(b)* or *8.2(a)* or the expiration of the time for filing such a response, the Commission shall make a determination by majority vote as to whether a complaint is frivolous.
 1. Where the Commission finds that a complaint is frivolous, such a finding shall constitute sole grounds for dismissal. Such dismissal shall constitute final agency action.
- (b) Pursuant to *N.J.S.A. 18A:12-29(e)*, the Commission may impose a fine not to exceed \$500.00.

N.J.A.C. 6A:28-10.4.

A “frivolous complaint” is defined as a complaint determined by the Commission to be *either*:

- 1) Commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) One which the complainant knew, or should have known, was without any reasonable basis in law or equity and 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.

In order to find a Complaint frivolous, the Commission need only be satisfied that one of the two aforementioned prongs is satisfied. In rendering its determination, the Commission considers the totality of the circumstances. *See, Patricia Lee et al. v. Barri Beck, Union Township Bd. of Ed., Union County*, C01-05 (September 27, 2005). Here, and on the basis of the record before it, the Commission finds that the Complaint is frivolous because Complainants knew, or should have known, that this Complaint was without any reasonable basis in law or equity, and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.

As discussed above, the Commission finds that, even when granting all inferences in favor of the non-moving party (Complainants), Complainants failed to plead sufficient credible facts 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(f)*.

The crux of the Complaint is that Respondent wore a Pride mask at a public Board meeting, and then later publicly thanked the students who attended the meeting and offered their input about a matter of public importance to the community, and to the District’s student body. While it is evident that Complainants do not agree with Respondent’s displays of support for LGBTQIA+ students, their disagreement with her position does not mean that Respondent engaged in unethical behavior. Overt and public displays of support for LGBTQIA+ students do not mean, without more, that Respondent opposes and does not advocate for all other groups of students, and Complainants’ suggestion that it does is flawed, imprudent, and insensitive. In today’s culture and climate, it is now more important than ever that all students feel included, and represented, and Respondent’s decisions were an attempt to support a particular group of students who felt threatened by an impending decision regarding curriculum and books. Importantly, Respondent did not make these decisions to the detriment of any other group of students, but rather to ensure equality and inclusion for all students, and Complainants’ attempt to subvert her efforts is most unfortunate.

For the foregoing reasons, the Commission finds the Complaint to be frivolous pursuant to *N.J.S.A. 18A:12-29(e)*, and orders Complainants to pay a fine in the amount of one hundred dollars (\$100.00).

V. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainants), the Commission voted to find that Complainants failed to plead sufficient credible facts 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(f), but to dismiss the above-captioned matter on the grounds that the Complaint was frivolous. The Commission also voted to impose a fine in the amount of one hundred dollars (\$100.00) for Complainants' frivolous filing.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainants 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 23, 2022

***Resolution Adopting Decision
in Connection with C46-22***

Whereas, at its meeting on July 26, 2022, 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 its meeting on July 26, 2022, the Commission discussed finding that Complainants failed to plead sufficient credible facts 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(f); and

Whereas, at its meeting on July 26, 2022, the Commission discussed finding that the Complaint was frivolous, and imposing a fine in the amount of one hundred dollars (\$100.00) for the frivolous filing; and

Whereas, at its meeting on August 23, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 26, 2022; 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 August 23, 2022.

Kathryn A. Whalen, Esq.
Director, School Ethics Commission