

***Before the School Ethics Commission***  
***Docket No.: C50-22***  
***Decision on Motion to Dismiss***

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**Katie Fabiano,**  
***Complainant***

v.

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

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**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed on April 28, 2022, by Katie Fabiano (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.* By correspondence dated April 29, 2022, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. Later that same day (April 29, 2022), 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 avers that Respondent violated *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(j) of the Code of Ethics for School Board Members (Code).

On May 2, 2022, the Complaint was served on Respondent via electronic mail, notifying her that ethics charges had been filed against her with the Commission, and advising that she had twenty (20) days to file a responsive pleading.<sup>1</sup> On May 10, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainant filed a response to the Motion to Dismiss on May 30, 2022.

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. Following its discussion on July 26, 2022, the Commission adopted a decision at its meeting on August 23, 2022, granting 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(e), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(j).

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<sup>1</sup> 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***

Complainant (a new Board member, whose term began in January 2022) states that, at the Board's meeting on April 25, 2022, her (Complainant's) spouse offered public comment. When her spouse returned to his seat, Respondent "engaged in an argument with [Complainant's spouse], whereby [Respondent] publicly accused [Complainant] ... of sharing confidential Board ... information to [her] spouse without ever offering any evidence at all." Despite Complainant's "immediate" denial of Respondent's accusation, Respondent said, "that is under ... well we will see," thereby implying that she (Complainant) was under investigation. According to Complainant, she has "NOT been made aware of any concerns about [her] behavior, investigations, or any possible violations of the ... Act." Not only do Respondent's false public accusations undermine Complainant's credibility, they also "represent a clear effort to defame [Complainant] in [the] community," compromise the integrity of the Board, and were levied solely "to retaliate against [her] for [her spouse's] criticisms of [Respondent]."

With the above in mind, Complainant contends Respondent violated *N.J.S.A.* 18A:12-24.1(e) because she "jeopardized the [B]oard when she took it upon herself to make a public claim that confidential information was being leaked by the [Board], through one of its elected members." Complainant further asserts Respondent "took private action during the televised open public meeting, without the knowledge of [Complainant] or the [Board] [as] a whole to make this claim and insinuate an investigation was taking place." Complainant maintains that Respondent's "actions caused an immediate response within the community, social media, parent groups, and other social settings whereby [Complainant's] credibility, the [B]oard's credibility and the confidentially [(sic)] of the schools was [(sic)] being compromised." Further, Respondent's "close friend" (Tim Eosso), "continued with the claims of leaked information" and stated an investigation was taking place, causing one to wonder how he would know that, but the Board did not.

Complainant also argues that Respondent violated *N.J.S.A.* 18A:12-24.1(g) because she "provided inaccurate information to the public that confidential information was being leaked to the community and did so without being in concert with her fellow board members." Moreover, "this information was never discussed with the [B]oard and if there was an investigation taking place, [Respondent] should have known [that] ... such information should be held confidential."

In addition, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(j) because "[t]here is no evidence that [Respondent's] claims were made with the [a]dministration ... or that the administration did not address [those claims]." Instead, Respondent "acted on what she perceived as her own 'complaint' in a public setting that not only disregarded the [a]dministration but also the [B]oard."

### **B. *Motion to Dismiss***

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and initially argues that, because this case "involves an allegation of unfair criticism of an elected official by another member of the same government body," Complainant's "allegations must accommodate

the expansive First Amendment protections the federal courts have accorded political speech by and about elected officials and other public figures.” Furthermore, Complainant “alleges that [R]espondent’s statement was defamatory” and the Commission does not have jurisdiction to adjudicate common law torts. In addition, Respondent notes that, in the course of preparing her defense for a different matter pending before the Commission (docketed as C37-22), she was provided with a text message(s) involving Complainant’s spouse (and the Board Vice President) which states, “listen, if I’m going to know something ‘inside’ it’s going to be from my [spouse], she’s a [B]oard member” and “you don’t need to feed me secrets when I’m married to a [B]oard member.” Also of note, during public comment, Complainant’s spouse “complained that the Board was refusing to take public action on a matter some Board members ... had been discussing privately,” and accused the Board Vice President of “leaking information about those private discussions to the public,” and “repeatedly challeng[ed] the Board to explain how he otherwise could have known of the Board’s confidential discussions.”

With the above in mind, Respondent asserts that Complainant did not provide any evidence that, while she (Respondent) was “presiding over a public Board meeting,” Respondent made any personal promises or took action beyond the scope of her duties in violation of *N.J.S.A.* 18A:12-24.1(e). Instead, when a member of the public stated something, she (Respondent) reasonably believed was untrue, “she attempted to set the record straight.”

As to a violation of *N.J.S.A.* 18A:12-24.1(g), Respondent maintains Complainant failed to demonstrate that Respondent’s comments were “inaccurate” or that “the inaccuracy was other than reasonable mistake or personal opinion ... .” Respondent notes based on the text message between Complainant’s spouse and the Board Vice President, Complainant “is free to contradict her husband’s own admission if she dares, but there’s no question that, at a minimum, [R]espondent had a reasonable belief in the truthfulness of her statement” at the time it was made.

Regarding the violation of *N.J.S.A.* 18A:12-24.1(j), Respondent notes it “was intended to ... prohibit[] [B]oard members from engaging in the day-to-day administration of the schools.” Moreover, this provision “is limited to matters that are appropriately the domain of the chief school administrator for investigation and has no bearing on the gathering of information by [B]oard members, with their own resources, to assist in their defense of ethics charges pending against them.”

### **C. *Response to Motion to Dismiss***

In response to the Motion to Dismiss, Complainant submits that, in her filing, Respondent “clearly states that the presumed ‘leak of information’ was discovered in research for her PERSONAL ethics complaint,” and this reinforces Complainant’s contention that Respondent “took private actions that compromised the [B]oard.” Complainant argues, “If there was a matter that concerned the [Board], relating to [her] conduct, the [B]oard as a whole should have been notified and involved in any investigations.” Per Complainant, public Board meetings are “not forums to ‘set the record straight’ for [B]oard members to provide defenses for their personal actions of pending ethics complaints.”

Complainant maintains contrary to Respondent’s “attempts to disguise the context of the conversation [(texts between Complainant’s spouse and the Board Vice President)] by only providing a couple of lines,” Complainant provided the entire text exchange and argues that her spouse’s “comments were an attempt to reassure [the Board Vice President] that he wouldn’t leak the confidential information *she* was sharing”; moreover, the text exchange between her spouse (Complainant’s) and the Board Vice President is “not a defense for [Respondent’s] personal actions.” According to Complainant, the text exchange relied upon by Respondent demonstrates that the Board Vice President discussed “[B]oard business but at no time does [Respondent] allude to an ‘investigation’ into [the Board Vice President’s] comments.” Complainant notes, “This clearly shows [Respondent’s] actions are not only biased but are designed to undermine only certain individuals on this [B]oard.”<sup>2</sup>

Complainant contends that, in her filing, Respondent “offers no defense on comingling [B]oard business with her own personal ethics complaints.” Moreover, her Complaint “is not about one elected official making ‘unflattering’ comments about another but seeks to address personal actions that are presented as [B]oard actions that ultimately undermine the [B]oard.” As such, Complainant requests that the Motion to Dismiss be denied.

#### **D. *Public Comments Offered at the Commission’s Meeting on July 26, 2022***

At the Commission’s meeting on July 26, 2022, members of the public appeared by telephone and offered public comment regarding the above-captioned matter. More detailed information regarding the substance of those public comments can be found in the [minutes](#) from the Commission’s meeting on July 26, 2022.

### **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(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 Complainant has pled sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(g)*, and/or *N.J.S.A. 18A:12-24.1(j)*. The Commission notes that, despite the offering of public comment at its meeting on July 26, 2022, the Commission’s review of this matter was limited solely to the parties’ written submissions.

#### **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

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<sup>2</sup> The Commission notes that the Vice President of the Board is not a named Respondent in the above-captioned matter; therefore, to the extent that Complainant seeks to file a Complaint against her/him with the Commission, she is free to do so.

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).

With the jurisdiction of the Commission in mind, to the extent that Complainant seeks a determination from the Commission that Respondent's statements at the Board meeting on April 25, 2022, were defamatory, the Commission advises that such a determination(s) falls beyond the scope, authority, and jurisdiction of the Commission. Although Complainant may be able to pursue a cause of action(s) in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate this issue(s). Accordingly, those claims are *dismissed*.

### C. *Alleged Code Violations*

Complainant submits that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(j), and these provisions of the Code provide:

- 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.
- 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.
- 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.

Pursuant to *N.J.A.C.* 6A:28-6.4(a), violations of *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(j) need to be supported by certain factual evidence, more specifically:

- 5. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(e) shall include evidence that Respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the board.
- 7. Factual evidence of a violation of the confidentiality provision 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.

10. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(j) shall include evidence that Respondent 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.

Following a comprehensive review of the Complaint, the Commission finds that even if the facts as contended 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), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(j). In this case, Complainant takes issue with Respondent's seven-word response, namely "that is under ... well we will see," to Complainant's public declaration that she had not, despite an accusation to the contrary, disclosed confidential information to her spouse. While Complainant clearly found the retort from Respondent to be offensive and inappropriately suggestive of wrongdoing, the Commission finds that the response could not possibly be construed as a personal promise or as "action" beyond the scope of her duties as a Board member and as Board President, the latter of which includes moderating and presiding over a public Board meeting (*N.J.S.A.* 18A:12-24.1(e)).

In addition, to the extent that Respondent's seven-word response ("that is under ... well we will see,") could reasonably be construed to mean that an investigation regarding Complainant's actions may have been ongoing, which is not entirely clear, the Commission finds that Complainant did not provide any evidence to establish that the inaccuracy of what she insinuated from Respondent's seven-word response was "other than reasonable mistake or personal opinion or was not attributable to developing circumstances" (*N.J.S.A.* 18A:12-24.1(g)). Finally, Respondent's seven-word response cannot possibly be contorted as "action" on a pending complaint (or an attempt to resolve a complaint), or as evidence that she (Respondent) conducted an investigation or inquiry *regarding a complaint within the purview of the administration to address and/or resolve (in the first instance)*. If a Board member is disclosing confidential information to a member of the public, and thereby undermining or threatening the integrity of the Board's operations, there is no requirement for the chief school administrator to review and resolve such a complaint in the first instance.

Therefore, and for the foregoing reasons, the Commission finds that the purported violations of *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(j) should be dismissed.

As a final note, the Commission reminds all members of the public that the Commission is not a medium through which vendettas, quarrels, grudges, and sour grapes are to be filed. The filing of Complaints which are designed solely to "settle the score" unnecessarily delay the processing of other Complaints which concern behavior and conduct that may actually violate the Act.

#### **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(e), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(j).

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: August 23, 2022

***Resolution Adopting Decision  
in Connection with C50-22***

***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 the response to the Motion to Dismiss submitted in connection with the above-referenced matter; and

***Whereas***, at its meeting on July 26, 2022, 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(e), *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(j); 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.

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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 August 23, 2022.

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