

***Before the School Ethics Commission***  
***Docket No.: C53-22***  
***Decision on Motion to Dismiss***

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**Kathleen Leonard,**  
***Complainant***

v.

**Kenneth Chiarella,**  
**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 May 3, 2022, by Kathleen Leonard (Complainant), alleging that Kenneth Chiarella (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.* 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(e) of the Code of Ethics for School Board Members (Code).

On May 5, 2022, the Complaint was served on Respondent via electronic mail, notifying him that ethics charges had been filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to file a responsive pleading.<sup>1</sup> On May 16, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainant filed a response thereto on May 27, 2022.<sup>2</sup>

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(b) and/or *N.J.S.A.* 18A:12-24.1(e).

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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.

<sup>2</sup> On May 28, 2022, Respondent filed a reply to Complainant's response to the Motion to Dismiss. As this reply is not permitted by the Commission's regulations, it was not considered by the Commission at its meetings on July 26, 2022, and/or August 23, 2022, in ruling on the Motion to Dismiss.

## II. Summary of the Pleadings

### A. *The Complaint*

Complainant asserts that on two separate occasions, April 25, 2022 (at a Board meeting), and April 26, 2022 (on Facebook), Respondent made offensive, stereotypical, and disparaging comments about “an entire class of people” when he, in his official capacity as a Board member, publicly criticized a resident (who is also the President of the Booster Club) who previously filed an ethics complaint against him (Respondent).

More specifically, during the public comment portion of the meeting, the resident in question quoted other members of the Board who “admitted they made plans to f\*ck over the Booster Club” because, according to these Board members, the Booster Club had “conspired with [the] Acting Superintendent ... to confiscate money the Booster Club had raised for student scholarships.” Following the resident’s public comment, Respondent publicly stated he wanted to, “... remind our public that when you come here that this is not just some bar in Appalachia where you just drop the f-bomb and scream at people. ... That is disgusting ... .” While the resident tried to apologize, Respondent replied, “apologize later.”

The following day, on April 26, 2022, Respondent posted on Facebook, “[s]peaking as a private citizen, it felt like we were transported to Appalachia last night and the local dive bar closed early, so the patrons came to the [B]oard meeting. Everyone should have to wash their hair and jeans before they come up screaming and dropping the f-bomb. It was unsightly and nauseating.” According to Complainant, the disclaimer provided by Respondent on his post was “incomplete.”

With the above in mind, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(e) because his “professed beliefs are not those of an open minded, kind, caring individual who should be in charge of shaping the minds of children”; his “disparaging” comments “set a poor example for our students”; his “insensitivity to others is behavior unbecoming a member of the [Board]”; he “has shown himself to be a poor decision-maker in terms of his impact on the educational welfare of our children”; and his “actions also compromise the [B]oard because they give the impression that the [Board] condones these disparaging stereotypes.”

### B. *Motion to Dismiss*

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and maintains that, at the Board meeting on April 25, 2022, he “appealed to the public to respect decorum of the Board’s meeting” after an individual dropped the “f-bomb,” and posted a message on Facebook to address the behavior of the public the previous evening. Respondent argues, “nothing in the [C]omplaint alleges that [R]espondent made any ‘decision’ or took any ‘action’” to support a violation of *N.J.S.A.* 18A:12-24.1(b). In addition, and regarding the violation of *N.J.S.A.* 18A:12-24.1(e), Respondent submits that the Complaint did not include any evidence that he made “personal promises or [took] action beyond the scope of his ... duties ... .” Respondent asserts that, for the same reasons the Commission dismissed [\*Giacomini v. Chiarella, Monroe Township Board of Education, Middlesex County, Docket No. C44-20 \(Giacomini\)\*](#), it

must also dismiss the within matter. In brief, even if Respondent’s speech was offensive, Respondent’s statements do not violate the cited provisions of the Code.

Regarding the suggestion that Respondent needed a disclaimer for his social media posts, Respondent asserts he “explicitly stated he was speaking as a private citizen, but even if he didn’t his statement does not violate the Act.” Citing several cases, Respondent maintains, “Since even an explicit disclaimer may be insufficient if, in context, the public might be misled into thinking a [B]oard member was speaking for the [B]oard, it stands to reason that if a reasonable observer would know a [B]oard member’s statement is *not* made on behalf of the [B]oard, the absence of an explicit disclaimer should not be dispositive.” According to Respondent, and citing the Commission’s decision in *Giacomini*, “[e]ven if Respondent’s posts are appropriately characterize[d] as ‘unacceptable,’ ... his posts do not constitute a ‘personal promise,’ or formal ‘action’ related to the Board and/or the business of the Board.” For all these reasons, Respondent contends the Complaint should be dismissed.

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

In response to the Motion to Dismiss, Complainant maintains that she is not in “a conspiracy” with any of the individuals that Respondent named in his Motion to Dismiss, no one “prompted [her] to file” her Complaint, and Respondent has not “produced” any evidence that Complainant has “political aspirations” or that a member of the public “physically accosted” a Board member – even if a member of the public did so, that has “no bearing” in this matter.

Complainant reaffirms her factual allegations, and notes that Respondent’s behavior “is part of an overall pattern of making offensive and stereotypical remarks,” and “has shown a pattern of using hateful speech when confronted by people with differing views.” According to Complainant, Respondent “has not learned from his mistakes or shown any personal growth and continues to demean entire classes of people.” Complainant maintains that Respondent is “unfit to serve the [Board] and make decisions in terms of the ‘educational welfare’ of ‘all children’ ... His bigoted behavior both at a [B]oard meeting and on social media are actions that ‘compromise the [B]oard’ and gives the appearance that the [Board] condones offensive and hurtful stereotyping.”<sup>3</sup>

### **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.

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<sup>3</sup> In her response to the Motion to Dismiss, Complainant included factual averments that were not pled in her original Complaint. Although Complainant may file a new Complaint explaining how those factual assertions constitute a violation(s) of the Code, they will not be further discussed and/or analyzed here.

### 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(b)* and/or *N.J.S.A. 18A:12-24.1(e)*. 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. *Alleged Code Violations*

Complainant contends 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(e)*, and these provisions of the Code state:

- 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.

As set forth in *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(e)* need to be supported by certain factual evidence, namely:

- 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.
- 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 his duties such that, by its nature, had the potential to compromise the board.

Following its review, the Commission finds that even if the facts as asserted 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)*. More specifically, neither Respondent's "appeal" to the public to be mindful of the proper decorum of a Board meeting (following a resident's use of profanity during public comment) nor his post on social media (assuming it was made in his capacity as a Board member, and not in his capacity as a private citizen) constitute a "decision" contrary to the educational welfare of children, or "deliberate action" related to the Monroe Township School District's (District) programs or policies (*N.J.S.A. 18A:12-24.1(b)*), and/or a

“personal promise” or Board “action” beyond the scope of his duties such that, by its nature, had the potential to compromise the Board (*N.J.S.A.* 18A:12-24.1(e)). Even if the substance of Respondent’s “appeal” to the public and/or his post on social media was crass, insensitive, and boorish, and Respondent clearly could have used more appropriate and respectful language to reclaim order at the Board meeting, a violation(s) of the Code cannot be substantiated without the necessary factual evidence being adduced. Accordingly, and bound by the standards that apply to finding a violation(s), the Commission is compelled to dismiss the alleged violations of *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(e).

As noted by the Commission in *Giacomini*, which also concerned use of speech by Respondent on social media that was described by the named Complainant as derogatory, horrible, and unacceptable, the Commission reiterates that, “[a]lthough Respondent’s gross error in judgment cannot be penalized by the Commission ... that does not mean Respondent’s words were not offensive and/or that the Commission condones his speech.” It is incumbent upon the Monroe Township community to determine whether, at the time of election, an individual who repeatedly makes the kinds of statements at issue here, and in *Giacomini*, should be elected to serve the needs of the District, and its students. Although the Commission can sanction a school official who violates the Act, the voting members of the community have the power to choose the individuals who they feel are most fit to serve.

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

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 C53-22***

*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(b)* and/or *N.J.S.A. 18A:12-24.1(e)*; 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