

Before the School Ethics Commission
Docket No.: C55-22
Decision on Motion to Dismiss

**Reverend Rod Williams and Reverend Charlotte Mallory,
*Complainants***

v.

**John Oliver,
Hillsborough Board of Education, Somerset County,
*Respondent***

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on May 9, 2022, by Reverend Rod Williams and Reverend Charlotte Mallory (Complainants), alleging that John Oliver (Respondent), a member of the Hillsborough Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated May 12, 2022, Complainants were notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept their filing. On May 23, 2022, Complainants 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(c), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members (Code).

On May 26, 2022, the Complaint was served on Respondent via electronic mail, notifying him that ethics charges had been filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading.¹ On June 20, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainants filed a response to the Motion to Dismiss on July 29, 2022.

The parties were notified by correspondence dated September 6, 2022, that the above-captioned matter would be discussed by the Commission at a special meeting on September 14, 2022, in order to make a determination regarding the Motion to Dismiss. Following its discussion on September 14, 2022, the Commission adopted a decision at a special meeting on October 17, 2022, granting the Motion to Dismiss in its entirety because Complainants failed to

¹ In order to conduct business during the Coronavirus (COVID-19) pandemic, the Commission implemented an electronic filing system, which remains a permissible method by which the Commission and parties can effectuate service of process. Consequently, service of process was effectuated by the Commission through electronic transmission only.

plead sufficient credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), and/or *N.J.S.A.* 18A:12-24.1(e).

II. Summary of the Pleadings

A. *The Complaint*

Complainants state that, at the Board meeting on November 8, 2021, Respondent admitted that he “contacted the [S]uperintendent’s office questioning a student’s artwork poster that was part of a display [en]titled the ‘Hall of Racial Healing’ at the Hillsborough Middle School [(HMS)] depicting the student’s point of view around policing in America ultimately resulting in the student’s artwork being removed.” In an article that appeared on November 10, 2021 (in an electronic newspaper, Patch.com), Respondent is quoted as saying at the Board meeting on November 8, 2021, that he was the Board member “involved with the poster,” but that he “only questioned the school administration about the poster after several people in town found it ‘inflammatory,’” and because he wanted “answers.” Although Respondent represented that he “had no issues with people expressing views,” he further stated, “we need to look at both sides. We don’t need to give a view. We need to give both opposing views and let our young students and let our children make the decisions for themselves.”

According to Complainants, Respondent’s statements at the November 8, 2021, Board meeting serve as an acknowledgment that he “acted outside the purview of the [Board] and before bringing the issue of any concern before the [Board] as is the procedure outlined in the [Code].” In addition, because Respondent “repeatedly contacted the [S]uperintendent’s office regarding a student’s” artwork, and his contact caused the artwork “to be removed,” Respondent acted “totally outside the realm of [Respondent’s] responsibilities” because he does not, as a Board member, have the authority to administer the school’s operations or decisions. Moreover, Respondent acted “without approval or consultation of the [B]oard or the student whose artwork was removed or the students and staff who had a right to see the display.” Therefore, Complainants argue Respondent violated *N.J.S.A.* 18A:12-24.1(c).

Complainants additionally allege that Respondent violated *N.J.S.A.* 18A:12-24.1(d) because by “contacting the school repeatedly about [a] student’s artwork that was subsequently removed[, he] was interfering in the administration of the school because the principal and members of the school’s administration along with the superintendent’s office had deemed the display to be acceptable for the cause for which it was intended.” Finally, Complainants contend that Respondent violated *N.J.S.A.* 18A:12-24.1(e) because Respondent “admitted at the [Board] meeting that he had contacted the [S]uperintendent regarding the student’s artwork because he had been contacted by several people who found it to be ‘inflammatory.’ He then went on to express his personal opinion that he felt the need to recognize a policeman attending the [B]oard meeting ... as he also said that there was a need to ‘give both opposing views’ sharing his personal opinion and not the [B]oard’s. His statements clearly indicate that he acted in his capacity as a ... [B]oard member by contacting the [S]uperintendent’s office multiple times based on his communications with private citizens and not with the approval of [or] sanction of the [B]oard.”

B. *Motion to Dismiss*

In his Motion to Dismiss, Respondent states that, on November 2, 2021, he was contacted by “multiple constituents” after they visited the HMS, who “raised concerns” regarding an “inflammatory” poster that was displayed in the building. Consequently, Respondent contacted the then Superintendent to inquire “about the nature of the poster.” According to Respondent, the then Superintendent advised that the then “Assistant Superintendent for Curriculum and Instruction ... would look into his inquiry.” On November 8, 2021, the then Superintendent contacted Respondent, and explained that, per the HMS principal, the “poster was part of a larger display that was put up during the 2020-2021 school year to celebrate Martin Luther King Day ... and Black History Month” According to Respondent, the then Superintendent further explained that the HMS principal “acknowledged that the display was supposed to be removed in June 2021 and that it needed to be removed.” Subsequently, the display was removed and “a new display celebrating “Indigenous Peoples Month” was installed.

In summary, Respondent argues, contrary to Complainants’ argument, he “did not order” the then Superintendent, or any other school personnel, “to remove the poster or display”; he did not “promise any constituents that the poster or display would be removed”; the administration “did not remove the poster and display as a result of any Board policy, plan, or decision”; and the Board has not “taken any official action as a result of or in connection with the information that [Respondent] obtained from [the then Superintendent].”

As for the alleged violation of *N.J.S.A.* 18A:12-24.1(c), Respondent argues that the Complaint “utterly lacks factual evidence that Respondent took any action on behalf of the Board, or that the Board took any action as a result of the information Respondent obtained from the Superintendent about the poster, to effectuate any policies or plans.” Further, Respondent’s inquiry about the poster does not constitute “action,” and there is not “a scintilla of factual evidence ... that he ordered” any personnel to remove the poster. Although the Board minutes indicate that the HMS principal “*believed* [the direction to remove the poster] to be censorship at the direction of a [B]oard member,” Respondent avers that such a belief “cannot satisfy Complainant[s]’ burden of proof that [Respondent] took any ‘action’ in violation of the [Code].” Moreover, in response to the HMS principal’s comments, Respondent maintained (at two different Board meetings), that he only reached out to the administration after being contacted by constituents, asked the administration to look into the issue and report back, and did not direct anyone to do anything (including removing the poster) – he merely sought answers to constituent concerns. Finally, to the extent he engaged in any “action,” same was “wholly within” his ethical responsibilities as a Board member. In short, “the evidence included with the Complaint simply does not support Complainants’ conclusion that [Respondent] took any “action” that caused the removal of the poster.” His inquiry, at worst, prompted a series of conversations among three different administrators, and those conversations ultimately led to the removal of the poster. Without any evidence “that establishes or allows for the inference that [Respondent] directly caused the administrator to remove the poster,” the alleged violation of *N.J.S.A.* 18A:12-24.1(c) must be dismissed.

Regarding the purported violation of *N.J.S.A. 18A:12-24.1(d)*, Respondent argues that “the Complaint lacks any factual evidence that when [he] contacted [the then Superintendent], he ordered her to remove the poster or to direct another staff member to remove the poster, or that he became directly involved in the removal of the poster.” Per Respondent, Complainants have also “failed to establish any causal connection between [Respondent’s] contact with [the then Superintendent] and the subsequent removal of the poster.” Further, the reason they are unable to do so is because Respondent only “inquired” about the nature of the poster, did not direct any school personnel to remove it, and he was not involved in any of the communications that ultimately led to the removal of the poster. At most, Respondent’s inquiry “prompted a chain of conversations involving three administrators that led to the poster being removed.” Respondent’s inquiry to the Superintendent cannot rise to a violation of *N.J.S.A. 18A:12-24.1(d)*.

Finally, as for the alleged violation of *N.J.S.A. 18A:12-24.1(e)*, Respondent argues that the allegations in the Complaint “do not meet the threshold for factual evidence that [Respondent] made personal promises to any constituents that the poster would be removed or took any action *at all*, let alone action that could compromise the Board.” Even if, at a public Board meeting, Respondent acknowledged a police officer and expressed his personal opinion that “both sides” of an issue need to be shared, this does did not change the fact that Respondent “only made an inquiry to the Superintendent about the nature of the poster,” and did not make a personal promise to anyone about the removal of the poster. Therefore, the Commission must dismiss the alleged violation of *N.J.S.A. 18A:12-24.1(e)*.

C. Response to Motion to Dismiss

In response to the Motion to Dismiss, and as to the violation of *N.J.S.A. 18A:12-24.1(c)*, Complainants note that Respondent “admits that he acted unilaterally and neither consulted other [Board] members nor were his actions to contact the [S]uperintendent’s office ... sanctioned by the [B]oard.” Complainants reaffirm Respondent “did not relay the concern of the ‘constituents’ to the [B]oard for their consideration and/or actions nor was he instructed to contact the [S]uperintendent by the [B]oard regarding the poster.”

Regarding the violation of *N.J.S.A. 18A:12-24.1(d)*, Complainants reassert that Respondent’s “words from the article,” namely the repeated reference to “we,” “conveys that his belief is that the [B]oard will intervene in the administration of the schools’ educational efforts in determining what students will be taught as opposed to how the schools are run.” Furthermore, Complainants note that at the “following [] [B]oard meeting,” Respondent “doubled down stating that he would ‘not be silenced’ when it comes to matters that he ‘feels strongly about’ which ... have nothing to do with how ‘they (the schools) are well run.’”

Finally, as to the violation of *N.J.S.A. 18A:12-24.1(e)*, Complainants reassert Respondent’s “own words” support that he took “private action” when he contacted the Superintendent, and this contact caused a “confrontation with” the Board, which compromised the Board’s position. Moreover, Complainants note that Respondent contacted the Superintendent on behalf of “several residents” because they found the poster to be “inflammatory,” and this action supports that Respondent “was not acting in concert with the [B]oard but on behalf of those who were familiar enough to contact him and with whom he

agreed with their views.” Complainants maintain, Respondent “shared the same view as the ‘several residents,’” and that is “evidence of his private action and motivation to unilaterally contact the [S]uperintendent’s office without consent or authorization from the [B]oard.”

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(c), *N.J.S.A.* 18A:12-24.1(d), or *N.J.S.A.* 18A:12-24.1(e).

B. Alleged Violations of the Act

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

c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

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.

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

3. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(c) shall include evidence that Respondent took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondent’s duty to (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy.

4. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(d) shall include, but not be limited to, evidence that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.

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.

Based on its review of the Complaint, the Commission finds that even if the facts as claimed are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), and/or *N.J.S.A.* 18A:12-24.1(e). Even if Respondent contacted the Superintendent's office after he received "concerns" from a constituent(s) regarding a student's poster at the HMS, even if Respondent "questioned" the administration about the student's poster, and even if Respondent publicly expressed his opinion that "both opposing views" of the subject of the poster should be considered, there is still no factual evidence that Respondent took board action to effectuate a policy or plan without consulting those affected by such a policy or plan, or took action unrelated to his duties as a Board member (*N.J.S.A.* 18A:12-24.1(c)); no factual evidence that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the Hillsborough School District (*N.J.S.A.* 18A:12-24.1(d)); and/or no factual 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 (*N.J.S.A.* 18A:12-24.1(e)).

Although it appears that the administration removed the student's poster following Respondent's contact with the Superintendent, there is no factual evidence that Respondent directed anyone, including the Superintendent, or any other member of the administration, to do anything about the poster. The fact that the poster was removed by the administration does not mean, based on the factual evidence as pled, that Respondent directed or mandated that it be removed. Moreover, when a Board member receives a complaint from a constituent, he or she is required, pursuant to *N.J.S.A.* 18A:12-24.1(j), to refer it to the chief school administrator/Superintendent for whatever action, if any, is deemed appropriate. Absent factual evidence that Respondent tried to resolve the complaint, or inappropriately inserted himself in the administration's efforts to resolve or address the constituent's complaint (including providing directives as to how *he* wanted the Complaint resolved), which has not been submitted here, violations of the Code cannot be substantiated. Accordingly, and because Respondent acted in accordance with his duties and responsibilities as a Board member, and not in contravention thereof, the Commission finds that the purported violations of *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), and *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 (Complainants), the Commission voted to *grant* the Motion to Dismiss in its entirety because Complainants failed to plead sufficient credible facts to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, 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 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: October 17, 2022

***Resolution Adopting Decision
in Connection with C55-22***

Whereas, at a special meeting on September 14, 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 a special meeting on September 14, 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(c)*, *N.J.S.A. 18A:12-24.1(d)*, and/or *N.J.S.A. 18A:12-24.1(e)*; and

Whereas, at a special meeting on October 17, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on September 14, 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 a special meeting on October 17, 2022.

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