

Before the School Ethics Commission
Docket No.: C79-22
Decision on Motion to Dismiss

Lisa-ann Moyer,
Complainant

v.

Lisa Strutin,
Allamuchy Township Board of Education, Warren County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on August 8, 2022, by Lisa-ann Moyer (Complainant), alleging that Lisa Strutin (Respondent), a member of the Allamuchy 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(c)* and *N.J.S.A. 18A:12-24.1(e)* of the Code of Ethics for School Board Members (Code).

On August 9, 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 September 16, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On October 2, 2022, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated November 14, 2022, that the above-captioned matter would be discussed by the Commission at its meeting on November 22, 2022, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Following its discussion on November 22, 2022, the Commission adopted a decision at its meeting on December 20, 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(c)* and/or *N.J.S.A. 18A:12-24.1(e)*. The Commission also adopted a decision finding the Complaint not frivolous, and denying Respondent's request for sanctions.

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.

II. Summary of the Pleadings

A. *The Complaint*

Complainant states that on July 20, 2022, she was engaged in a discussion related to state politics “on a private person’s [F]acebook page,” and this individual “had blocked [Respondent] from her page.” During this discussion, Complainant “made it perfectly clear that [she] was speaking as a taxpayer and parent and in no way was [she] commenting as a [B]oard member or speaking in any way as anyone affiliated with the school.” According to Complainant, and because Respondent was “blocked” from this person’s page, she “engaged a member of the public and personal friend of hers to use a fictitious alias to engage [Complainant] on this person’s page and repeatedly make statements to [Complainant] in a derogatory fashion in an attempt to make it appear that [Complainant] was talking in a biased malicious nature and speaking as a ... [B]oard member despite [Complainant] stating several times that [she] was not.” Thereafter, Complainant submits that the member of the public “reported” back to Respondent about what transpired in the online discussion, and then Respondent sent “a barrage of emails” to Complainant, with the Superintendent and Board counsel on copy, reminding Complainant about her responsibilities as a Board member and threatening Complainant “in an attempt to intimidate [her].” After Complainant reminded Respondent that she had First Amendment rights, Respondent proceeded to “yell” at and “harass” Complainant. Per Complainant, Respondent has told her on several occasions that she is no longer a private citizen, and does not have First Amendment rights (because she is a Board member). Respondent’s “assault” on Complainant’s liberties has left her “struggling to perform the duties” she agreed to assume as a member of the Board, and Respondent’s actions cannot be permitted to continue.

Based on the above, Complainant contends Respondent violated *N.J.S.A.* 18A:12-24.1(c) because Respondent “clearly was outside the boundaries of her position when she engaged a member of the public, to spy on another [B]oard member, using an alias, and then report back to her for the purposes of intimidating and harassing that [B]oard member when she clearly has no authority to do so.” Complainant further contends Respondent violated *N.J.S.A.* 18A:12-24.1(e) because by “going outside her responsibilities as [B]oard [P]resident, and enlisting the aid of a member of the public to collect information on another [B]oard member and then use it to intimidate that [B]oard member compromises the integrity of the [B]oard as a whole and is outside of its function and what the members were elected to do.” According to Complainant, Respondent’s actions undermine “the capability of the affected [B]oard member and the [B]oard as a whole to function as intended[,] and diminishes its capacity to do what it was elected by the public to do.”

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. In her filing, Respondent notes that, on July 20, 2022, Complainant was “posting online” about “proposed recommendations of the Department of Education regarding sexual education curriculum.” According to Respondent, a commenter to Complainant’s initial post stated, “You have a choice to opt out so opt them out and as a [B]oard member you need to be [(sic)] see both sides not just your own.” Respondent notes that Complainant then responded,

“I’m a parent with three children in the [Allamuchy Township School District (District)]. I don’t have to identify that every time I speak.”

After being made aware of Complainant’s online activity/comments, Respondent sent Complainant a “gentle reminder” to be mindful of the District’s social media policy. Complainant subsequently responded “indignantly,” and the email conversation between Complainant and Respondent “became heated” and “devolved.”

With the above in mind, and regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(c), Respondent argues that Complainant’s online activity directly involved school curriculum; there is “absolutely no evidence that [Respondent] ‘engaged a member of the public, to spy on another [B]oard member, using an alias and then report back to her’”; and Complainant was posting about potential issues that could come before the Board, and on the page “of a person who happens to be the town’s Mayor.” Contrary to Complainant’s “fantastical conspiracy theories,” a “reasonable conclusion” is that someone who knows Complainant to be a Board member advised Respondent that Complainant “was posting about issues that could potentially be before the Board.” Moreover, no “policy or plan” was effectuated by Respondent when she reminded Complainant “of her obligations as a Board [m]ember, and that she is to be held to a higher standard when posting online”; no student or resident was “‘affected’ by the private reminder via email”; and the fact that Complainant felt aggrieved by Respondent’s reminder does not transform it to a policy or plan, or private action. For these reasons, Complainant has failed to state a claim for a violation of *N.J.S.A.* 18A:12-24.1(c).

As for the alleged violation of *N.J.S.A.* 18A:12-24.1(e), Respondent argues that Complainant did not provide any factual allegations suggesting that Respondent “made personal promises of any kind,” or that she took any private action which could have compromised the Board. Although she admits that she sent Complainant a “private email reminder” about the Board’s social media policy, she did not tell Complainant that she could not post or publicly speak about an issue, but rather “reminded her that when speaking she should follow Board [p]olicy.” Respondent further maintains that her “reminder” to Complainant was not “private action that could compromise the Board,” but rather she was “seeking to prevent a situation wherein [Complainant’s] public statements had the potential to compromise the Board.” According to Respondent, Complainant was “discussing controversies related to curriculum changes in the state,” and did not include a disclaimer noting she was speaking privately/in her personal capacity. Respondent reaffirms sending a “private email reminder from one Board [m]ember to another to be mindful of Board [p]olicies for social media use is in no way private action that may compromise the Board.” As such, Complainant has failed to state a claim for a violation of *N.J.S.A.* 18A:12-24.1(e).

Finally, Respondent asserts the Complaint is frivolous, and Respondent’s exhibits “demonstrate that the allegations contained in the [C]omplaint are clearly contradicted by these documents.” Furthermore, Respondent argues that the Complaint “does not have a factual basis,” and “its gratuitous use of inflammatory language to describe [Respondent’s] reminder of a Board [p]olicy regarding the obligations of a Board [m]ember to include a disclaimer when posting to social media as some sort of threat demonstrates that the Complaint is brought for improper purposes.” Respondent further asserts this Complaint “unjustifiably demonizes a public servant

who was [(sic)] simply made a reminder via email for a fellow Board [m]ember to act in accordance with the Board's" policy and is "devoid of any facts" to substantiate the allegations. Therefore, the Commission must dismiss the Complaint, and sanction Complainant.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant argues, "No attack against the First Amendment is ever frivolous." According to Complainant, Respondent's account of the events that transpired "is false." Complainant restates that Respondent "uses her friends as members of the public to gain the information that she needs" and who "act on behalf of [Respondent]." Complainant maintains that she provided a disclaimer several times to make it clear that she was "speaking as a parent and not a board member." Complainant contends, contrary to Respondent's claim that she was "only trying to inform" Complainant of the Board policy, Respondent "'weaponized her position' as [B]oard president" by "trying to intimidate [Complainant] as evidenced by the fact that she included the [S]uperintendent and [B]oard attorney on all of her emails."

Complainant notes this "incident cannot be looked at in isolation." According to Complainant, Respondent has continually "harass[ed], intimidate[ed] and bull[ied]" Complainant for months, and Complainant has "had to endure [Respondent's malicious unfounded attacks because she does not agree with [Complainant] personally and politically." Complainant "implore[s]" the Commission to "please stop this out of control and unhinged behavior."

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

B. *Alleged Violations of the Act*

Complainant submits that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A. 18A:12-24.1(c)* 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.

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), a violation(s) of *N.J.S.A.* 18A:12-24.1(c) and/or *N.J.S.A.* 18A:12-24.1(e) needs 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.

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.

Based on its review, the Commission finds that even if the facts as pled 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(c) and/or *N.J.S.A.* 18A:12-24.1(e). Other than offering baseless supposition about the conduct that Respondent "must" have engaged in because Complainant received an email from Respondent which stated, in relevant part, "... please be mindful of [B]oard policy 0169.02 [B]oard members use of social networks," Complainant has not proffered a scintilla of factual evidence to prove that Respondent engaged in the conduct set forth in the Complaint. Even if Respondent did engage "a member of the public and personal friend of hers to use a fictitious alias to engage [Complainant]" on a social media page (from which Respondent was blocked) to "repeatedly make statements to [Complainant] in a derogatory fashion in an attempt to make it appear that [Complainant] was talking in a biased malicious nature and speaking as a ... [B]oard member despite [Complainant] stating several times that [she] was not," there is absolutely no factual evidence that Respondent did so in her official capacity as a Board member (or as Board President); no factual evidence that Respondent took Board action to effectuate a policy or plan or took action unrelated to her duties as a Board member; and no factual evidence that Respondent made a personal promise or took action beyond the scope of her duties that, by its nature, had the potential to compromise the Board.

Instead, the factual evidence demonstrates that Respondent, in her capacity as Board President, sent an email message to Complainant which encouraged/reminded her, while using social media, to be "mindful" of the Board's policy regarding use of same. It is clear, based on the substance and the tenor of the email messages that ensued, that Complainant was personally affronted by the email message that she received from Respondent (as well as the fact that the Superintendent and Board counsel were copied on the communication), and that Complainant believed her social media activity was protected by the First Amendment. Even if Complainant's social media activity was appropriate and did not run afoul of the Act and/or the Board's policy,

it is far from unethical for a Board President to, nonetheless, remind a Board member that the Board has a policy, and that all social media activity should comport with the expectations that the Board has for its members.

In the absence of any factual evidence that Respondent engaged in official action violative of the Act, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e) should be dismissed.

IV. Request for Sanctions

At its meeting on November 22, 2022, the Commission considered Respondent's request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondent's argument, the Commission cannot find evidence that might show that Complainant filed the Complaint in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainant knew or should have known that the Complaint was without any reasonable basis in law or equity, or that it 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. Therefore, at its meeting on December 20, 2022, the Commission voted to find the Complaint not frivolous, and to deny the request for sanctions.

V. 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(c) and/or *N.J.S.A.* 18A:12-24.1(e). The Commission also voted to find that the Complaint is not frivolous, and to deny Respondent's request for sanctions.

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: December 20, 2022

***Resolution Adopting Decision
in Connection with C79-22***

Whereas, at its meeting on November 22, 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 November 22, 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) and/or *N.J.S.A.* 18A:12-24.1(e); and

Whereas, at its meeting on November 22, 2022, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on December 20, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 22, 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 December 20, 2022.

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