

Before the School Ethics Commission
Docket No.: C18-23
Decision on Motion to Dismiss

Stephanie Siegel,
Complainant

v.

Sahar Aziz,
Westfield Board of Education, Union County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on February 6, 2023,¹ by Stephanie Siegel (Complainant), alleging that Sahar Aziz (Respondent), a member of the Westfield 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(e) of the Code of Ethics for School Board Members (Code) in Counts 1-5.

On April 26, 2023, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On May 16, 2023, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated November 20, 2023, that the above-captioned matter would be discussed by the Commission at its meeting on November 28, 2023, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Following its discussion on November 28, 2023, the Commission adopted a decision at its meeting on December 19, 2023, 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). The Commission also adopted a decision finding the Complaint not frivolous, and denying Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

By way of background, Complainant alleges that Respondent has made public statements “to attack the Jewish people, advancing vituperation utilizing Nazi terminology, involving the

¹ Prior to the filing of a responsive pleading, Complainant filed an Amended Complaint on March 30, 2023.

Jewish commitment to Zion as proof that Jews believe themselves to be the ‘master race.’” Complainant further alleges that Respondent used her public Twitter account “to attack the right of the Jewish people to self-determination in their historic homeland of Israel” and to attack the Jewish religious commitment to Zion. According to Complainant, these attacks equate to discrimination against Israelis and Israeli Americans based on their nationality. Complainant further states that these social media posts failed to include a disclaimer indicating that the views were Respondent’s private views, and not representative of the Board.

The Complaint alleges that Respondent’s numerous racist, anti-Israel, anti-Semitic, and anti-Zionist statements, which compromised the Board, may further fuel bias incidents against the Jewish community in the Westfield schools, and these incidents are currently on the rise. The Complaint states that Respondent has denounced the existence of the State of Israel as a “settler colonial state” which equates to an explicit denial that the Jewish people have any connection to the land of Israel, their religion, their ethnic identity, and their Israeli nationality. Complainant asserts that Respondent’s statements/actions fall under the definition of anti-Semitism as defined under the International Holocaust Remembrance Alliance (IHRA), which the Township of Westfield adopted on September 14, 2021.

In Count 1, Complainant asserts that Respondent signed a document entitled, *Palestine & Praxis: Scholars for Palestinian Freedom* (Praxis), which supports anti-Israel activism in the classroom. Complainant alleges that the opening paragraph of the Praxis document states, “[Israel’s] policies constitute apartheid, bolstered by a brute force that enshrines territorial theft and the racial supremacy of Jewish-Zionist nationals.” According to Complainant, signers of the document commit to the following:

- Pressuring our academic institutions and organizations to respect the Palestinian call for Boycott, Divestment and Sanctions of Israel by instating measures that remove complicity and partnership with military, academic, and legal institutions involved in entrenching Israel’s policies.
- Supporting student activism on campus, including, but not limited to sponsoring joint events and holding our universities[] accountable for violations of academic freedom.
- Highlighting Palestinian scholarship on Palestine in syllabi, our writing, and through invitation of Palestinian scholars and community members to speak at departmental and university events.
- Extending the above approach to any and all [I]ndigenous scholars within the university, and any Indigenous communities within the vicinity.
- Centering Indigenous analyses in teaching and drawing links to intersectional oppression and transnational liberation movements.

Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(e)* because the document meets the IHRA definition of anti-Semitism. Specifically, Complainant states that the opening paragraph of the Praxis document not only describes the Jewish state as if it has no connection to the land of Israel, but it mischaracterizes Israeli nationals, Jews, and Zionists as racial supremacists practicing apartheid. Accordingly, Complainant maintains that by signing the document, Respondent committed to these anti-Semitic remarks, which were “mendacious, dehumanizing, demonizing.”

In Count 2, Complainant asserts that on March 15, 2023, Respondent used her professional Twitter account to retweet, without a disclaimer, a social media post “using Nazi ideology to express hatred of Israelis and Jews.” According to Complainant, the post stated:

Israeli protesters take to streets to safeguard master-race democracy[.]
“The protesters seek to beautify an Israel that has always been nothing more than a predatory settler-colony that grants racial privileges to Jewish colonists[.]”
Joseph Massad

Complainant asserts this post to be a violation of *N.J.S.A. 18A:12-24.1(e)* because in characterizing Israel as a “master race” democracy, in claiming Israel is a “predator colony,” and in referring to Jews as “settler-colonists,” it demonstrates hatred and prejudice against Israelis and Jews. Complainant maintains this conduct will cause the Board to “lose the confidence and respect of the people, and create the impression that their trust has been violated.”

In Count 3, Complainant contends that on November 30, 2022, Respondent retweeted a social media post on her professional Twitter account, without a disclaimer, that was openly hostile against Israelis and Zionists, which stated:

Today, @alhaq_org and a coalition of Palestinian human rights organizations are launching a new landmark report that reclaims the current discourse on Israeli apartheid and examines its reality and origin as an integral part of Israel’s settler-colonial regime.

According to Complainant, the tweet that Respondent retweeted was itself a retweet of a tweet that stated:

Israeli #apartheid is a tool of Zionist settler #colonialism. What does this mean & what are the origins, logic & institutions of Israeli oppression of the Palestinian people as a whole? All of this & more are discussed in our new report for @alhaq_org . . .

Complainant asserts that the fact that the original tweet was made on November 29th is symbolic since, on that date in 1947, the United Nations voted to partition Palestine into a Jewish and Arab state. Per Complainant, although the Palestinian Jews accepted and declared a state about six months later, the Palestinian Arabs rejected and attacked the new Jewish state. Complainant

argues the retweet fits under the IHRA definition of “[d]enying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor,” and therefore, constitutes a violation of *N.J.S.A.* 18A:12-24.1(e) as it compromised the Board.

In Count 4, Complainant alleges that on February 27, 2023, Respondent tweeted on her professional Twitter account:

Vilifying #Arab and/or #Muslim women has become the new strategy of #Zionist groups. #Islamophobia and #Orientalism is pervasive. For more, read The #RacialMuslim @BernieSanders @AOC @IlhanMN @RepRashida

According to Complainant, Respondent’s tweet also attached a tweet by the Center for Security, Race and Rights, for which Aziz serves as director, that included the following: “[StandWithUs] interest isn’t in student well-being but rather to slander ... Galvanizing racist, anti-#Arab and anti-#Palestinian tropes is not difficult in a post-911 era. StandWithUs just had to redact every name but mine and let racism/sexism do its job.” Complainant asserts that Respondent’s tweet expresses prejudice and contempt against people who support the Jewish state, groups which are “well-represented” within the District. Accordingly, Complainant contends Respondent violated *N.J.S.A.* 18A:12-24.1(e) by causing the community of Westfield to lose the confidence and respect of the Board.

In Count 5, Complainant argues that on August 23, 2022, Respondent posted a tweet on her personal Twitter account in support of a woman “who has openly expressed hatred of Jews, Israelis, and people supportive of Israel’s existence,” without using a disclaimer. Complainant asserts Respondent mischaracterized why the woman was fired as a school athletic trainer, posting that it was for her pro-Palestinian stance, while ignoring her “history of expressing hatred toward Jews, Israelis, and Zionists.” Complainant argues Respondent’s conduct undermines confidence in the Board by Jewish families in the District, and as such is a violation of *N.J.S.A.* 18A:12-24.1(e).

B. Motion to Dismiss and Allegation of Frivolous Filing

Respondent asserts that Complainant is an activist who is attempting to dismantle her “academic scholarship and freedom of speech rights and censor any debate or criticism of Israel.” Respondent points out that in her position as a professor of law, she examines the “intersection of national security, race, religion, and civil rights,” and teaches courses on Islamophobia, critical race theory, and Middle Eastern Law. Respondent contends that Complainant “strategically” filed this Complaint in order to point out her disagreement with Respondent’s viewpoints on Middle Eastern politics, Israel, race and religion. According to Respondent, “calls for freedom, justice, and/or equality for Palestinians, or statements that criticize Israeli policies, are not the same as anti-Jewish hate” and “[b]lurring those lines results in censorship of constitutionally protected political speech and academic freedom.”

With respect to the alleged violations of *N.J.S.A.* 18A:12-24.1(e), Respondent cites *Elizabeth Schwartz v. Abedrabbo, et al., Clifton Board of Education, Passaic County*, Docket

No. C40-21 (January 25, 2022), for the proposition that “personal comments do not ‘amount to taking action,’” nor do they compromise the Board. Respondent contrasts *I/M/O Daniel Leonard, Toms River Regional Board of Education, Ocean County*, Docket Nos. C56-19 and C57-19 (Consolidated) (November 23, 2021), which found “disparaging” personal social media posts could violate *N.J.S.A. 18A:12-24.1(e)*. Respondent asserts that the posts in *Leonard* were found actionable only because they were discriminatory on their face, including calls for certain Muslim leaders to die, and did not need an explanation to understand they were offensive. Respondent asserts that all of the allegations against her in the Complaint represent the free exercise of her First Amendment rights.

Respondent alleges that the Complaint “launches baseless, meritless claims without providing any detail of any factual evidence.” As such, Respondent contends the Complaint is frivolous and sanctions should be imposed on Complainant.

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

Complainant reiterates her arguments that Respondent violated *N.J.S.A. 18A:12-24.1(e)* in Counts 1-5. Complainant cites to *I/M/O Daniel Leonard*, Docket Nos. C56-19 and C57-19 (Consolidated) (November 23, 2021) for the proposition that board members may not engage in conduct that undermines the public’s trust in the Board, including if it has “the potential to discourage members of the public,” namely members of religious groups, from engaging with the Board, as it may “seem to be an apparent bias.” Complainant maintains that “barring bias” does not violate the First Amendment.

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)* in Counts 1-5.

B. *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)* in Counts 1-5, and this provision of the Code provides:

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), 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 [B]oard.”

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(e). Complainant contends that by making anti-Semitic public statements on social media and in an academic publication, without a disclaimer, Respondent demonstrates bias and undermines the public’s confidence in the Board, in violation of *N.J.S.A.* 18A:12-24.1(e), as it is action beyond the scope of her duties that, by its nature, has the potential to compromise the Board.

As the Commission explained in *Aziz v. Nikitinsky et al., Monroe Township Board of Education, Middlesex County*, Docket No. C56-22 (October 17, 2022)

... Although social media activity by a school official can be regarded as action [*I/M/O Treston, Randolph Township Board of Education, Morris County*, Docket No. C71-18 (April 27, 2021) and *Kwapniewski v. Curioni, Lodi Board of Education, Bergen County*, Docket No. C70-17 (December 17, 2019)], it is only when certain competent and credible factual evidence is proffered therewith that a violation can be substantiated.

As a general matter, a school official does not violate the Act merely because he/she engages in social media activity. Instead, the Commission’s analysis is guided by whether a reasonable member of the public could perceive that the school official is speaking in his or her official capacity or pursuant to his or her official duties. Whether a school official is perceived as speaking in his or her official capacity and pursuant to his or her official duties turns, in large part, on the content of the speech. If the speech in question has absolutely no correlation or relationship to the business of the Board and/or its operations and, therefore, could not possibly be regarded as a statement or position on behalf of the Board (as a body), a school official will not violate the Act. Conversely, if the speech in question *does* relate to the business of the Board and/or its operations, it is then reasonable for the reader to perceive the speech as being offered in an official capacity and pursuant to his or her official duties. Nonetheless, the filing party would still need to prove *all* elements of the cited provision of the Act ...

The Commission has also explained that in order for a social media post to be offered pursuant to official duties, there must be a sufficient nexus between the social media page and the role/membership on the Board. *Hodrinisky v. Faussette, Hasbrouck Heights Board of Education, Bergen County*, Docket No. C11-21 (August 30, 2021); *Donnerstag, et al. v. Borawski, Central Regional Board of Education, Ocean County*, Docket No. C20-22 (August 22, 2023); *Donnerstag, et al. v. Koenig, Central Regional Board of Education, Ocean County*, Docket No. C19-22 (August 22, 2023). Moreover, the use of a disclaimer on social media can “help to clarify whether an individual is speaking in his or her official capacity and pursuant to

his or her official duties; however, “the presence of a disclaimer is not dispositive.” *Aziz*, Docket No. C56-22 (October 17, 2022).

In this matter, the Commission finds that, Respondent’s statements, while controversial and likely perceived as offensive and hurtful to members of the District’s Jewish community as well as to the Jewish community as a whole, did not relate to the business of the Board and/or its operations, nor was there a nexus between the social media page and/or academic publication to her Board membership. Respondent’s social media posts were made from her personal professional social media account that did not reference her Board membership. In this circumstance, where the content of the speech lacks a connection to the Board, and the posts were from a private social media account that does not mention or advertise Respondent’s position on the Board, the lack of a disclaimer does not render Respondent’s conduct as being offered in an official capacity and pursuant to her official duties. Similarly, her participation in the *Praxis* document stemmed from her position as a law school professor, and did not otherwise relate to her Board membership.

The Commission finds the facts in the present matter to be similar to *Schwartz*, Docket No. C40-21 (January 25, 2022), affirmed, 2023 *N.J. Super. Unpub. LEXIS* 1682 (App Div. Oct. 6, 2023). In *Schwartz*, the Commission dismissed a Complaint that alleged two Board members made statements at the public portion of a Board meeting in support of Palestinians and the Free Palestine Movement, which the Complainant asserted was anti-Semitic and anti-Israel. With respect to *N.J.S.A.* 18A:12-24.1(e), the Commission found the comments did not result in any action that could compromise the Board. While Complainant contends that *I/M/O Daniel Leonard*, Docket No. C56-19 and C57-19 (Consolidated) (November 23, 2021) is more apposite to this matter, the Commission disagrees. The alleged statements in *Leonard* involved attacking individual members of the Muslim community, namely referring to a Congresswoman as a “Terrorist...100%” as well as stating “My life would be complete if she/they die....” The statements at issue in *Leonard* are not factually similar to the alleged statements in the present matter. Political speech criticizing Israel’s policies and/or existence, while it may be offensive and distasteful, is not the same as a personal attack with calls for death.

Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Counts 1-5 should be dismissed.

IV. Request for Sanctions

At its meeting on November 28, 2023, 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 19, 2023, 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(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 19, 2023

***Resolution Adopting Decision
in Connection with C18-23***

Whereas, at its meeting on November 28, 2023, 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 28, 2023, 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) in Counts 1-5; and

Whereas, at its meeting on November 28, 2023, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on December 19, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 28, 2023; 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 19, 2023.

Brigid C. Martens, Director
School Ethics Commission