

***Before the School Ethics Commission***  
***Docket No.: C22-23***  
***Decision on Motion to Dismiss***

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**Kenneth Chiarella,**  
***Complainant***

v.

**Katie Fabiano,**  
**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 with the School Ethics Commission (Commission) on February 16, 2023,<sup>1</sup> by Kenneth Chiarella (Complainant), alleging that Katie Fabiano (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(h) (Count 1), *N.J.S.A.* 18A:12-24.1(f) (Count 2 and Count 4), *N.J.S.A.* 18A:12-24.1(i) (Count 3), *N.J.S.A.* 18A:12-24.1(e) (Count 5), and *N.J.S.A.* 18A:12-24.1(g) (Count 6) of the Code of Ethics for School Board Members (Code).

On April 6, 2023, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On April 24, 2023, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The Commission considered the Motion to Dismiss and allegation of frivolous filing at its meeting on August 22, 2023. Following its discussion on August 22, 2023, the Commission adopted a decision at its meeting on September 26, 2023, finding that the allegations in Count 6 were untimely filed, and granting the Motion to Dismiss as to all other allegations because Complainant failed to plead sufficient facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(h) in Count 1; *N.J.S.A.* 18A:12-24.1(f) in Count 2 and Count 4; *N.J.S.A.* 18A:12-24.1(i) in Count 3; and/or *N.J.S.A.* 18A:12-24.1(e) in Count 5. The Commission also adopted a decision finding the Complaint not frivolous and denying Respondent's request for sanctions.

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<sup>1</sup> On February 16, 2023, Complainant filed a deficient Complaint; however, on February 24, 2023, Complainant cured all defects and filed an Amended Complaint that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3.

## II. Summary of the Pleadings

### A. *The Complaint*

By way of background, Complainant alleges Respondent's husband financed her campaign for the Board, along with her two running mates, and expected them to support his positions on Board issues in return for his financial support. Complainant asserts that Respondent's husband became "enraged" and "terrorize[d]" Board members who did not support his position over Covid-19 policies in 2022 and spoke out angrily against the policy at Board meetings. Complainant contends Respondent's husband was "very angry" at a 2022 Board meeting when he spoke out against the proposed referendum. According to Complainant, Respondent began both vocally and through her votes, supporting her husband's position on issues, at times even changing her position on issues to match her husband's position. As such, Complainant contends Respondent's husband "is controlling her vote from the audience" of Board meetings.

In Count 1, Complainant alleges that on January 25, 2023, Respondent was the sole member to vote against the Acting Superintendent's recommendation on the promotion of a supervisor in the District. Complainant contends that Respondent did not express any concerns as to the appointment during the meeting, but then voted "no," "as her husband had requested during Public Comment directly preceding the [B]oard's vote." Complainant notes that after the vote, Respondent congratulated the candidate and stated he would do a "great job in this new position." Complainant alleges that Respondent failed to appoint the best qualified personnel after consideration of the recommendation of the Superintendent, in violation of *N.J.S.A.* 18A:12-24.1(h), when she voted against the appointment of the supervisor and "allowed her vote to be controlled by the will of her husband who sat glaring at the Board members as they voted."

Regarding Count 2, Complainant alleges that on January 25, 2023, Respondent was the only Board member to vote against the approval of the supervisor for a promotion, after her husband made "defamatory comments" during the public comment portion of the Board meeting and demanded that the candidate resign from the District. Complainant contends that "January 25, 2023 was just another meeting where he came to the microphone at the public comment part of the meeting and tried to convince the [B]oard to vote the way he wanted." Complainant further contends, "[i]t was evident his spouse, the Respondent, listened to his plea and did as he told her to do," and therefore, Respondent "surrender[ed] her independent judgment for the gain of her husband in his vendetta against the Superintendent and Board President by voting how he directed her to do," in violation of *N.J.S.A.* 18A:12-24.1(f).

In Count 3, Complainant alleges that by voting against the supervisor's appointment after he was "defamed" by Respondent's husband, Respondent failed to "support and protect" District personnel in the proper performance of their duties, in violation of *N.J.S.A.* 18A:12-24.1(j). According to Complainant, Respondent knew the supervisor would do well in the position, given that she congratulated him after the meeting, and therefore, had no reason to vote "no."

Regarding Count 4, Complainant alleges that Respondent's husband is leading a social media campaign against Board approval for the March 14, 2023, proposed referendum, believing

it to be “half-assed, overinflated and costly.” Respondent had voted in favor of the referendum in September and October of 2022. However, according to Complainant, Respondent changed her vote and voted “no” on Board approval of the Referendum on January 12, 2023, matching her husband’s opinion. Complainant acknowledges that the referendum still passed; however, all Board members financially supported in their election campaigns by Respondent’s husband voted “no.” Complainant alleges that Respondent surrendered her independent judgment “for the benefit of her husband’s plea to oppose the March 2023 referendum when she voted NO on January 12, 2023, to allow the administration to put the already approved plan on the ballot for March 2023” in violation of *N.J.S.A. 18A:12-24.1(f)*.

As to Count 5, Complainant alleges that on January 25, 2023, Respondent attempted to explain her vote against the referendum by stating that the Board had been divided by “attacks on social media, ethics complaints and slanderous emails.” Complainant asserts that “[b]y taking this personal action during a [B]oard meeting and acting in her official capacity, she shared her personal opinion which created an illusion that the [B]oard itself had filed multiple ethics complaints, wrote slanderous emails and wrote attacks on social media when in fact it is her husband that is guilty of all that.” According to Complainant, Respondent’s stated reason for voting against the referendum was because she did not have “ample time” to review the information she received only two days and some two hours before the meeting, but that in actuality the new information was just a clarification on a minor amendment. Complainant alleges that “Respondent’s speech attempted to undermine the [B]oard by making the accusation that the [B]oard [wasn’t] acting transparent” without offering evidence in support of that accusation. Complainant alleges Respondent violated *N.J.S.A. 18A:12-24.1(e)* by taking personal action that compromised the Board when she made “false and inaccurate statements” to try and “shed a bad light” on the Board and the administration.

Regarding Count 6, Complainant alleges that on February 8, 2022, Respondent’s husband posted confidential employee information on social media that he could have only obtained from Respondent. According to Complainant, Respondent removed herself from the personnel committee last year after similar allegations were made, but that Respondent continued to attend closed session meetings where the same confidential information was discussed. Complainant alleges this violates *N.J.S.A. 18A:12-24.1(g)*.

#### **B. *Motion to Dismiss and Allegation of Frivolous Filing***

After receipt of the Complaint, Respondent filed a Motion to Dismiss and alleged that the Complaint is frivolous. Respondent contends that the Complaint is “replete with unadulterated misogyny.” Respondent maintains that all of the allegations in the Complaint are “wholly within her purview as an elected official.” With respect to Count 1, Respondent asserts that, as a Board member, absent any undue influence, she is permitted to vote for or against any resolution as she determines appropriate, and the Commission should “not tolerate” the “unfounded and belittling accusation” that Respondent’s votes are controlled by the will of her husband. Respondent asserts Count 2 should be dismissed for the same reason as Count 1, and notes that it is “simply ridiculous” that but for her husband’s public opinions, Respondent would vote differently. Regarding Count 3, Respondent contends that merely voting against the appointment of an individual cannot be considered a violation of the Code. As to Count 4, Respondent again argues

that voting against a resolution is not a violation of the Code, and there is no evidence that Respondent's vote was corrupted by undue influence. With respect to Count 5, Respondent asserts that her personal statement at a Board meeting was within her right and was the truth. Respondent maintains that her statement cannot be considered a personal promise or private action, nor did it compromise the Board, as she was speaking her opinion at a Board meeting in her official capacity as a Board member. Finally, as to Count 6, Respondent contends that the allegation is time-barred as it is alleged to have occurred more than a year from the filing of the Complaint, but even if it were timely filed, Complainant fails to identify the confidential information Respondent purportedly divulged. Accordingly, Respondent submits the Complaint should be dismissed.

Respondent further submits the Complaint is frivolous because Complainant's allegations "cannot be supported by a good faith argument," Complainant "abused the process" with this "thinly veiled attack against Respondent's husband, and employs unadulterated misogyny to accomplish its goal." Respondent contends this is simply an attempt to "silence" her husband because Complainant cannot file an ethics complaint against him, as he is not a Board member. As such, Respondent requests the Commission impose sanctions on 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 submits that his Complaint was not filed in bad faith. Complainant asserts that Respondent's husband's actions have caused Respondent to become conflicted and recuse herself many times, including the Superintendent's evaluation. Complainant maintains that it is apparent that Respondent's husband directs her votes "from the podium." Complainant reiterates that Respondent voted "no" to the promotion of a supervisor, but then walked up to him congratulating him and saying he will do a great job, and changed her vote on the referendum following her husband's social media campaign against it. While spouses can share the same opinion, Complainant contends that "public perception is that Respondent is no longer acting in the best interest of the school district but in the best interest of her husband's vendetta against the Superintendent and Board President." As such, Complainant argues the Commission should deny Respondent's Motion to Dismiss.

## **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.*<sup>2</sup> Thus, the question before the Commission is whether

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<sup>2</sup> References to the administrative code in this decision refer to the regulations that were in effect at the time the Complaint was filed.

Complainant has pled sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(h) (Count 1), *N.J.S.A.* 18A:12-24.1(f) (Count 2 and Count 4), *N.J.S.A.* 18A:12-24.1(i) (Count 3), *N.J.S.A.* 18A:12-24.1(e) (Count 5), and *N.J.S.A.* 18A:12-24.1(g) (Count 6).

### **B. *Alleged Untimeliness***

In the Motion to Dismiss and allegation of frivolous filing, Respondent argues that Count 6 is untimely filed because the Complaint alleges the date of violation was February 8, 2022, more than one year prior to the filing of the Complaint. Of note, Complainant did not offer any substantive response to Respondent's untimeliness allegation.

The Commission's regulations provide a one hundred eighty (180) day limitation period for filing a complaint. More specifically, *N.J.A.C.* 6A:28-6.5(a) provides, in relevant part:

- (a) Complaints shall be filed within 180 days of notice ***of the events which form the basis of the alleged violation(s)***. A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) ***when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known*** (emphasis added).

In this case, Complainant filed his Complaint on February 16, 2023, and one hundred eighty (180) days prior thereto is August 19, 2022.<sup>3</sup>

With the above in mind, and pursuant to *N.J.A.C.* 6A:28-6.5(a), the Commission must determine when Complainant knew of the events which form the basis of his Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events.

The Commission recognizes that limitation periods of this type serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. *Kaprow v. Berkley Township Bd. of Educ.*, 131 *N.J.* 571, 587 (1993). Thus, "notice of the alleged violation" must be interpreted in a manner that anticipates the reasonable diligence of complainant(s). In addressing potential violations of the Act, the Commission must balance the public's interest in knowing of potential violations against the important policy of repose and a respondent's right to fairness. The time limitations set forth in the regulations must be enforced if the Commission is to operate in a fair and consistent manner. *Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County*, C19-03 (June 24, 2003).

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<sup>3</sup> Technically, one hundred eighty (180) days prior to February 16, 2023, is Saturday, August 20, 2022; however, construing the facts in the light most favorable to Complainant, the deadline is extended to the preceding business day, which is Friday, August 19, 2022.

After review, the Commission finds that there is not a credible basis upon which to find that Complainant was unaware of Respondent's actions/conduct until a date(s) other than when they occurred. Although the Commission recognizes that the regulatory time period may be relaxed, in its discretion, in any case where strict adherence may be deemed inappropriate or unnecessary or may result in injustice, it finds no extraordinary circumstances in the within matter that would compel relaxation. Consequently, the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in Count 6 is time barred and, therefore, dismissed.

### **C. *Alleged Code Violations***

Complainant submits that, based on the conduct asserted in the Complaint, Respondent violated *N.J.S.A.* 18A:12-24.1(h) in Count 1; *N.J.S.A.* 18A:12-24.1(f) in Count 2 and Count 4; *N.J.S.A.* 18A:12-24.1(i) in Count 3; and/or *N.J.S.A.* 18A:12-24.1(e) in Count 5 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.

f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

i. I will support and protect school personnel in proper performance of their duties.

Pursuant to *N.J.A.C.* 6A:28-6.4(a), violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(f), and *N.J.S.A.* 18A:12-24.1(i) 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.

6. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(f) shall include evidence that Respondent took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that Respondent used the schools in order to acquire some benefit for herself, a member of her immediate family or a friend.

8. Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(h)* shall include evidence that Respondent acted on a personnel matter without a recommendation of the chief administrative officer.

9. Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(i)* shall include evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

***Alleged Violations of N.J.S.A. 18A:12-24.1(h), N.J.S.A. 18A:12-24.1(f),  
and N.J.S.A. 18A:12-24.1(i)***  
***(Counts 1-3)***

After a thorough review, the Commission finds that even if the facts as pled in Counts 1-3 of 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(h)*, *N.J.S.A. 18A:12-24.1(f)*, and/or *N.J.S.A. 18A:12-24.1(i)*. Even if Respondent heard her husband speak against the promotion of a supervisor during the public session portion of the January 25, 2023, Board meeting, and Respondent then decided to vote against the candidate's approval, such action does not violate *N.J.S.A. 18A:12-24.1(h)*, *N.J.S.A. 18A:12-24.1(f)*, and/or *N.J.S.A. 18A:12-24.1(i)*. There is no evidence that Respondent voted on a personnel matter without the recommendation of the chief administrative officer, as required for a violation of *N.J.S.A. 18A:12-24.1(h)*. In this circumstance, Respondent voted against the recommendation of the Superintendent, but it is within Respondent's role as a Board member to vote for or against personnel actions based on her personal opinion. Respondent did not surrender her independent judgment to special interest or political groups, or use the schools for personal gain or for the gain of friends. Despite Complainant's allegation, voting against a personnel action is not taking action on behalf of a political group, or using the schools to acquire a benefit. Additionally, Respondent's husband spoke publicly at a Board meeting, and Respondent's vote also occurred at the Board meeting; as such, there is no evidence that Respondent surrendered her judgment, and as such a violation of *N.J.S.A. 18A:12-24.1(f)* cannot be established. Finally, the Complaint fails to allege any facts that demonstrate that Respondent did not support and protect school personnel. Complainant fails to allege deliberate action that resulted in undermining, harming, or compromising school personnel in the proper performance of their duties. To the contrary, Respondent properly exercised her duties as a Board member to attend Board meetings and vote on actions items. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(h)* in Count 1, *N.J.S.A. 18A:12-24.1(f)* in Count 2, and *N.J.S.A. 18A:12-24.1(i)* in Count 3 should be dismissed.

***Alleged Violation N.J.S.A. 18A:12-24.1(f)***  
***(Count 4)***

Following its review of the Complaint, the Commission finds that even if the facts as asserted in Count 4 are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(f)*. Even if Respondent voted "no" on the Board approval of the Referendum, matching her husband's opinion, Board members are

undoubtedly free to vote on any and all agenda items in the way that they feel is best for the District, its staff, and its students, regardless of whether their viewpoints are shared by the community at-large or by other Board members. Referendums, by their nature, may have varying viewpoints, and the evidence fails to establish that Respondent surrendered her independent judgment to a special interest or political group (or her husband), or took action for personal gain or the gain of friends, when she exercised her right to vote as a Board member. As such, Respondent's vote against an action item cannot, without more, constitute a violation of *N.J.S.A.* 18A:12-24.1(f); therefore, the Commission finds the alleged violation of *N.J.S.A.* 18A:12-24.1(f) in Count 4 should be dismissed.

***Alleged Violation N.J.S.A. 18A:12-24.1(e)***  
***(Count 5)***

After review of the Complaint, the Commission finds that even if the facts as alleged in Count 5 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). Respondent's public statement at the January 25, 2023, Board meeting to explain why she voted against the referendum was not a personal promise or private action that may compromise the Board. Respondent is not alleged to have made any promises in her public statement, nor can her statement constitute private action, as it was at a Board meeting and within her role as a Board member. Respondent is permitted to make comments at Board meetings, even if others disagree with her position. Respondent's public statements, even mentioning the division on the Board, social media attacks, and ethics complaints, were her opinions, expressed publicly and within her role as a Board member at a Board meeting, which does not compromise the Board. Therefore, the Commission finds the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 5 should be dismissed.

**IV. Request for Sanctions**

At its meeting on August 22, 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 September 26, 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 find the allegations in Count 6 were untimely filed, and grant the Motion to Dismiss as to all other allegations because Complainant failed to plead sufficient facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(h) in Count 1; *N.J.S.A.* 18A:12-24.1(f) in Count 2 and Count 4; *N.J.S.A.* 18A:12-24.1(i) in



Count 3; and/or *N.J.S.A.* 18A:12-24.1(e) in Count 5. 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).*

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Robert W. Bender, Chairperson

Mailing Date: September 26, 2023

***Resolution Adopting Decision  
in Connection with C22-23***

***Whereas***, at its meeting on August 22, 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 August 22, 2023, the Commission discussed finding the allegations in Count 6 were untimely filed, and granting the Motion to Dismiss as to all other allegations because Complainant failed to plead sufficient facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(h) in Count 1, *N.J.S.A.* 18A:12-24.1(f) in Count 2 and Count 4, *N.J.S.A.* 18A:12-24.1(i) in Count 3, and/or *N.J.S.A.* 18A:12-24.1(e) in Count 5; and

***Whereas***, at its meeting on August 22, 2023, the Commission discussed finding the Complaint not frivolous and denying the request for sanctions; and

***Whereas***, at its meeting on September 26, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on August 22, 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.

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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 September 26, 2023.

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Brigid C. Martens, Acting Director  
School Ethics Commission