

Before the School Ethics Commission
Docket No.: C47-23
Probable Cause Notice

Jeri Cenziper, Jessica Sarlin, Michael Wald,
Complainants

v.

John Holly,
Washington Township Board of Education, Morris County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on April 25, 2023, by Jeri Cenziper, Jessica Sarlin, and Michael Wald (Complainants), alleging that John Holly (Respondent), a member of the Washington 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(d) (Count 2), *N.J.S.A.* 18A:12-24.1(f) (Counts 1 and 2), and *N.J.S.A.* 18A:12-24.1(g) (Count 1) of the Code of Ethics for School Board Members (Code). On May 15, 2023, Respondent filed a Written Statement.

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 probable cause. Following its discussion on November 28, 2023, the Commission adopted a decision at its meeting on December 19, 2023, finding that there are insufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that the Act was violated as alleged in the Complaint.

II. Summary of the Pleadings

A. *The Complaint*

By way of background, Complainants allege that on December 13, 2022, Respondent spoke during the public comment section of the Board meeting and asked that the rainbow “safe space” signs be removed from classrooms at the Long Valley Middle School. According to Complainants, Respondent “suggested that the student-led, entirely voluntary initiative to show support for LGBT+ students was prejudicial against other groups.” At the time Respondent spoke at the Board meeting, he had been elected to the Board, but was not sworn in until January 2023. Complainants assert that prior to the January meeting, the rainbow “safe space” signs were

removed, and at the January meeting, the Superintendent and Board attorney indicated that the “display could somehow make the school vulnerable to litigation,” and denied that Respondent’s remarks influenced the decision.

In Count 1, Complainants allege that on January 20, 2023, after the rainbow safe space signs were removed, the media outlet *The Epoch Times* published an article featuring Respondent discussing and celebrating the Board’s removal of the signs. Complainants allege that Respondent provided *The Epoch Times* with pictures of the inside of the school for the article. Complainants allege that Respondent violated *N.J.S.A.* 18A:12-24.1(f), claiming that Respondent has a personal partisan political agenda and that his actions are motivated by these partisan beliefs as opposed to for the benefit of the school. Complainants also allege that Respondent violated *N.J.S.A.* 18A:12-24.1(g), alleging Respondent provided commentary regarding school business to *The Epoch Times* and provided pictures of the school, needlessly putting students and the school at risk.

In Count 2, Complainants allege that on February 28, 2023, Respondent spoke at a campaign event for two political candidates. According to Complainants, during the comments, Respondent stated, “I would like to briefly share with you the success we’ve had in removing the lesbian gay bisexual transgender safe space stickers from the classroom doors in our Middle School...” and that the Respondent is “proud of what we accomplished for our kids” and asked for the public to join him and help elect conservative candidates. Complainants allege that the foregoing conduct is a violation of *N.J.S.A.* 18A:12-24.1(d), because based upon his public comment before the Board, *The Epoch Times* article, and the comments made during the campaign event, Respondent interfered with the administration of the school, resulting in the removal of the rainbow safe space signs, which was a student led initiative that had been on display without incident since 2019 without any evidence of harm or legal liability for the district. Complainants maintain that despite community support, the signs were taken down as a result of Respondent’s interference. Complainants also maintain Respondent violated *N.J.S.A.* 18A:12-24.1(f), as he actively uses his position as a member of the Board to further his political ambitions and align himself with partisan political groups.

B. *Written Statement*

Respondent contends that his comments at the Board meeting in December 2022 were not politically motivated, but rather were because the safe space signs were centered on “selective inclusivity” and “bringing politics into the school space.” Respondent argues that the matter was discussed solely during public comment, the Board took no action on the issue, and the signs were removed based upon the advice of Board counsel. Respondent asserts he included a disclaimer with his statements to *The Epoch Times*, noting that he was giving his opinion and not speaking in his capacity as a board member, and that he also indicated at the campaign event that he was not speaking in his capacity as a Board member.

Respondent argues that he never took action as a Board member on behalf of a political group and as such, the Complaint does not properly assert a violation of *N.J.S.A.* 18A:12-24.1(f), as he simply engaged in First Amendment speech. Respondent also argues that the Complaint does not assert a violation of *N.J.S.A.* 18A:12-24.1(g) as there is no factual evidence that the

Respondent took action to reveal confidential information. Respondent admits that he provided a picture of a single window sticker to *The Epoch Times*, but maintains the assertion that the picture places the school in danger is without merit. Additionally, Respondent contends that the Complaint fails to demonstrate a violation of *N.J.S.A. 18A:12-24.1(d)* as the expression of an opinion does not amount to interfering with the administration of a school. According to Respondent, neither he nor the Board took any action to remove the stickers, and Complainants fail to produce any evidence or sufficient facts that would show Respondent gave a direct order to any school personnel or that Respondent became directly involved in anyone else's responsibilities.

III. Analysis

This matter is before the Commission for a determination of probable cause pursuant to *N.J.A.C. 6A:28-9.7*. A finding of probable cause is not an adjudication on the merits but, rather, an initial review whereupon the Commission makes a preliminary determination as to whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted. Pursuant to *N.J.A.C. 6A:28-9.7(a)*, probable cause "shall be found when the facts and circumstances presented in the complaint and written statement would lead a reasonable person to believe that the Act has been violated."

Alleged Violations of the Act

Complainants submit that Respondent violated *N.J.S.A. 18A:12-24.1(f)* and *N.J.S.A. 18A:12-24.1(g)* in Count 1, and *N.J.S.A. 18A:12-24.1(d)* and *N.J.S.A. 18A:12-24.1(f)* in Count 2. These provisions of the Code provide:

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.

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.

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

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

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.

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 himself, a member of his immediate family or a friend.

7. Factual evidence of a violation of the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that Respondent took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that Respondent violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by Respondent and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

Count 1

In Count 1, Complainants assert that Respondent violated *N.J.S.A.* 18A:12-24.1(f) and *N.J.S.A.* 18A:12-24.1(g) when he celebrated the removal of rainbow safe space signs in an article published in *The Epoch Times*, which included pictures from inside the school. After review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(f) and/or *N.J.S.A.* 18A:12-24.1(g) were violated. The article stated that Respondent was “giving his personal opinion and not speaking in his capacity as a board member or military officer,” and Complainants have not established that Respondent’s assertions in the article were anything other than his own opinion. As such, Complainants have not demonstrated that Respondent’s statements were made on behalf of, or at the request of, a special interest group or that Respondent used the schools to acquire a benefit, in violation of *N.J.S.A.* 18A:12-24.1(f). Additionally, the picture submitted by Respondent for the article was a close up of a safe zone sign in a window. Such a photo does not include the image of any student or reveal confidential information, nor did Respondent’s commentary reveal confidential Board information, in violation of *N.J.S.A.* 18A:12-24.1(g). Therefore, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violations of *N.J.S.A.* 18A:12-24.1(f) and *N.J.S.A.* 18A:12-24.1(g) in Count 1.

Count 2

In Count 2, Complainants contend that Respondent violated and *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(f) when he spoke at a political campaign event and shared the “success we’ve had in removing the” safe space signs from classroom windows, and that he was “proud of what we accomplished for our kids.” Respondent asserts that he used a disclaimer in his speech.

Complainants also contend that through his public comment before the Board, *The Epoch Times* article, and the comments made during the campaign event, Respondent interfered with the administration of the school, resulting in the removal of the rainbow safe space signs. Following its assessment, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(d) and/or *N.J.S.A.* 18A:12-24.1(f) were violated. Complainant has not presented any evidence that Respondent gave a direct order to school personnel or became involved in the day-to-day administration of the District, in violation of *N.J.S.A.* 18A:12-24.1(d). By the time Respondent made comments in *The Epoch Times* article or spoke at the campaign event, the signs had already been removed. Complainants have not demonstrated how statements that occurred after the safe space signs were removed interfered with the administration of the school or resulted in the removal of the signs. To the extent that Complainants allege that Respondent's public comments at the December 13, 2022, Board meeting interfered with the administration of the school, the Commission notes that it only has jurisdiction over school officials, such that Respondent's comments prior to becoming a Board member would not fall within the Commission's authority. As to a violation of *N.J.S.A.* 18A:12-24.1(f), the Commission finds that participation at a political campaign event does not, on its own, constitute action on behalf of, or at the request of, a special interest group. Board members are not prohibited from privately participating in political speech by virtue of their Board membership. Additionally, while Respondent expressed his opinion at an event in support of political candidates, Complainants have not demonstrated that Respondent took any "action" on behalf of a political group. The removal of the signs occurred prior to Respondent becoming a Board member, and the Board itself did not take action as it never held a vote on whether to remove the signs. Accordingly, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violations of *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(f) in Count 2.

IV. Decision

In accordance with *N.J.S.A.* 18A:12-29(b), and for the reasons detailed herein, the Commission hereby notifies Complainants and Respondent that there are insufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that the Act was violated as alleged in the Complaint and, consequently, dismisses the above-captioned matter. *N.J.A.C.* 6A:28-9.7(b).

The within 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 C47-23***

Whereas, at its meeting on November 28, 2023, the School Ethics Commission (Commission) considered the Complaint and Written Statement submitted in connection with the above-referenced matter; and

Whereas, at its meeting on November 28, 2023, the Commission discussed finding that the facts and circumstances presented in the Complaint and Written Statement would not lead a reasonable person to believe that the Act was violated and, therefore, dismissing the above-captioned matter; 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