

Before the School Ethics Commission
Docket No.: C75-22
Decision on Motion to Dismiss

Christina Hoggan,
Complainant

v.

Angela Reading,
Northern Burlington County Regional Board of Education, Burlington County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on July 14, 2022, by Christina Hoggan (Complainant), alleging that Angela Reading (Respondent), a member of the Northern Burlington County Regional Board of Education violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated July 18, 2022, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On August 18, 2022, Complainant 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. 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).

On August 19, 2022, the Complaint was served on Respondent via electronic mail, notifying her that ethics charges had been filed against her with the Commission, and advising that she had twenty (20) days to file a responsive pleading.¹ On October 12, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On November 23, 2022, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated December 12, 2022, that the above-captioned matter would be discussed by the Commission at its meeting on December 20, 2022, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous

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.

filing.² Following its discussion on December 20, 2022, the Commission adopted a decision at its special meeting on January 31, 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*

Complainant states that on January 18, 2022, Respondent, “without posting the requisite disclaimer,” “created a post on a Facebook Page for Northern Burlington Parents in which she accused the Burlington County Department of Health of malfeasance” in relation to “a correction they made regarding a misprint regarding COVID-19 guidance related to schools.”

Following her post, several members of the community posted comments, “which included divisive statements.” Among the comments made, were several by Respondent in which she “repeatedly accused the [Burlington County Department of Health] of lying to the public about a change they made to COVID-19 guidance,” and “continually alleged that the [Burlington County Department of Health’s] correction of a misprint ... was based on politics and not because it was actually a misprint.” When one community member questioned Respondent’s motivation for the initial post, Respondent “then posted what can only be categorized as a contentious attack” In her initial post, and in the comments thereafter, Respondent posted disparaging remarks about the Burlington County Department of Health “without posting the requisite disclaimer”

Based on these facts, Complainant asserts that Respondent violated *N.J.S.A. 18A:12-24.1(e)* because she “took private action, without issuing the requisite disclaimer, that could compromise the Board.” Without consulting with the Board, Respondent “took it upon herself to create a post on a parent based Facebook page for [the Northern Burlington County Regional School District (District)] in which she accused the [Burlington County Department of Health] of lying to the public ... because she believed they changed their guidance not do [sic] to misprint, but based on politics.” According to Complaint, Respondent’s actions could have compromised the Board because “it could have caused parents and guardians to doubt that the Board could and would work cooperatively with the [Burlington County Department of Health] and properly enforce their guidance” Respondent’s actions “further could have compromised the Board as [Respondent] disparaged the [Burlington County Department of Health] despite the fact that the [D]istrict needed to be able to work” with the Burlington County Department of Health, and “debasing them by calling their veracity into question could create tension and conflict.” Moreover, Respondent compromised the Board because her treatment of community members

² The scheduling letter initially sent to the parties on December 12, 2022, failed to note that Respondent’s Motion to Dismiss included an allegation of frivolous filing; however, an amended scheduling letter was sent to the parties on December 12, 2022, correcting this error.

was demeaning, and “could cause parents and guardians, especially those who disagreed with her, to be afraid to speak up and ask questions before the Board or to the school.”

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, and initially notes that the “about” section of the Northern Burlington Parents Group “makes it clear that it is a parent’s group and is not sanctioned by” the District. In addition, Respondent maintains that her “personal and private Facebook page, which is the account she utilized to post and comment in the Parent’s Group has a publicly visible disclaimer that the Respondent’s opinions are her own.”

Furthermore, because Respondent posted in a private parents’ Facebook group in her capacity as a parent; the private Facebook page has no affiliation with the Board or the District; Respondent did not identify herself as a Board member or reference the Board; the information she posted was not confidential or inaccurate; and when questioned about being a Board member, Respondent explicitly stated that she was not speaking on behalf of the Board, Respondent argues that Complainant failed to present sufficient facts to support a violation of *N.J.S.A.* 18A:12-24.1(e). Respondent maintains that her speech was not made in her capacity as a Board member, her criticism is not about the Board and/or the District in particular, and her personal Facebook page has a clear public disclaimer.

Finally, Respondent asserts the Complaint is frivolous because, as a Board member, 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.” In addition, Respondent notes Complainant filed another Complaint (C81-22), and both Complaints “include irrelevant information and merely reiterate and republish degrading comments by the public regarding Respondent.” Therefore, Respondent contends the Complaint “was filed in bad faith or solely for the purpose of harassment, delay, or malicious injury,” and “respectfully” requests the Complaint be dismissed and sanctions imposed on Complainant.

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

In her response to the Motion to Dismiss and allegation of frivolous filing, Complainant asserts that she pled sufficient facts, which if accepted as true, would establish a finding of a violation of the Act. Complainant maintains that Respondent failed to include a proper disclaimer when she created a post on the Parent Group page. Had Respondent included the disclaimer, it would have clearly disavowed her connection as a public official to the statement being made. However, even if the disclaimer had been provided, Respondent is still required to exercise caution when making statements that could essentially void the purpose of the disclaimer.

Complainant also argues that the disclaimer on her Facebook page, which states, “Opinions are my own,” does not comport with the Commission’s disclaimer requirements. More specifically, the disclaimer fails to identify Respondent as a Board member, and fails to,

“clearly disclaim” that the statements are not being offered in an official capacity and/or on behalf of the Board. Moreover, Complainant states that Respondent’s disclaimer was insufficient because the disclaimer was not prominently displayed on the Parent Group page and, instead, was on her personal Facebook page. Without the disclaimer, the statements offered could be viewed as being in her capacity as a Board member. Although, at some point, Respondent did disclaim her speech in a comment, her use of same was rendered ineffectual since the disclaimer did not appear in her initial posts. Complainant further states that Respondent’s inclusion of a disclaimer, “I am not speaking as a BOE member ...” at the end of her response to the community member was insufficient because it appeared in the ninth sentence of a 13-sentence comment. Moreover, Complainant argues that none of the advisory opinions and decisions relied upon by Respondent to support dismissal of the Complaint are relevant to the facts at issue in this matter.

Complainant maintains that based on the facts, Respondent failed to demonstrate that the Complaint is frivolous. Complainant further states that she filed the Complaint only after reviewing Commission’s advisory opinions and decisions to ensure that the Complaint satisfied legal standards as specified by the Commission.

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 are 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)*.

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(e)*, 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)(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.

Following its review, the Commission finds that even if the facts as set forth 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)*. Although, as evidenced by the substance of her

social media activity, Respondent clearly questions whether the Burlington County Department of Health merely issued a “misprint” regarding COVID-19 guidance, same does not constitute, based on the factual evidence as pled, a “personal promise” or “action” beyond the scope of her duties as a Board member. While COVID-19 guidance clearly impacted all school districts throughout the State, Respondent’s social media activity primarily regards her perception of whether the Burlington County Department of Health actually issued a “misprint,” the catalyst for the “misprint” being disclosed, and her concern with how the “misprint” could unnecessarily “confuse” the public, parents, and school leaders in the community at large. Moreover, there is absolutely no mention of the District *specifically*, and no mention of how the District’s administration was adversely impacted by the “misprint.” As such, and based on the specific factual evidence at issue here, it is not reasonable for a reader to perceive Respondent’s social media activity as being offered in an official capacity and pursuant to his or her official duties as a Board member. In fact, when her status of a school official was mentioned by another commenter(s), Respondent replied, “First, I am allowed to share readily available guidance online. Second, I am a mother first. The guidance impacts my children. *Third, I am not speaking as a [Board] member or sharing any information particularized*” (sic) to the District” Thus, to the extent that someone may have perceived Respondent’s social media activity on the “Northern Burlington Parents” Facebook page as being in an official capacity, the Commission finds that her statement, although it does not parrot the disclaimer recommended by the Commission, sufficiently disclaimed the capacity in which she was speaking. *See Aziz v. Nikitinsky et al., Monroe Township Board of Education, Middlesex County, Docket No. C56-22.*

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

IV. Request for Sanctions

At its meeting on December 20, 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 special meeting on January 31, 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: January 31, 2023

***Resolution Adopting Decision
in Connection with C75-22***

Whereas, at its meeting on December 20, 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 its meeting on December 20, 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(e)*; and

Whereas, at its meeting on December 20, 2022, the Commission discussed finding the Complaint not frivolous, and denying Respondent’s request for sanctions; and

Whereas, at its special meeting on January 31, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on December 20, 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 special meeting on January 31, 2023.

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