

***Before the School Ethics Commission***  
***Docket No.: C87-22***  
***Decision on Motion to Dismiss***

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**Peter S. Doss,**  
***Complainant***

v.

**Daniel Croson, Jr.,**  
**Warren Township Board of Education, Somerset County,**  
***Respondent***

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**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed on September 14, 2022, by Peter S. Doss (Complainant), alleging that Daniel Croson, Jr. (Respondent), a member of the Warren 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(a), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code) in Count 1, and violated *N.J.S.A.* 18A:12-24.1(f) of the Code in Count 2.

On September 16, 2022, the Complaint was served on Respondent via electronic mail, notifying him that ethics charges had been filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to file a responsive pleading.<sup>1</sup> On October 7, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). When Complainant failed to file a response to the Motion to Dismiss, he was advised, by correspondence dated November 9, 2022, and November 23, 2022, that failure to file a response could result in the Commission ruling on the Motion to Dismiss, without considering any written submission from him. Despite the Commission's attempts to secure a filing from Complainant, a response to the Motion to Dismiss was never filed.

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. 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(a),

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<sup>1</sup> 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.

*N.J.S.A.* 18A:12-24.1(d), and/or *N.J.S.A.* 18A:12-24.1(f) in Count 1, and/or violated *N.J.S.A.* 18A:12-24.1(f) in Count 2.

## **II. Summary of the Pleadings**

### **A. *The Complaint***

In Count 1, Complainant states that, at the Board’s meeting on August 29, 2022, Respondent, along with three (3) other unnamed Board members, voted “no” on a motion to approve the “Heath/[Physical Education] Curriculum, which was developed in accordance with the updated curriculum mandated by the” New Jersey Student Learning Standards (NJSLs). This action resulted in a “tie,” and the motion failed to carry, thereby leaving the Warren Township School District (District) out of compliance with the NJSLs. Complainant argues that, as a taxpayer, he has “the right to ensure that the children in our [D]istrict receive an education consistent with the laws, rules, and regulations of the State Board of Education.” By denying the District’s children “the opportunity to be taught a curriculum that meets the NJSLs, [Respondent] and the three other Board members have usurped the power of the State Board of Education to determine the education standards for” the District’s children in violation of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(f).

In Count 2, Complainant contends that Respondent used his position as a Board member “to advance partisan goals.” More specifically, on September 8, 2022, Respondent “hosted [a] political event paid for by the Kean for Congress campaign, prior to which he widely distributed” advertisements on social media about the event. According to Complainant, Respondent “inappropriately listed the ... Board ... in the advertisement, falsely indicating that this partisan event was sanctioned by the entire ... Board and ... superintendent.” As such, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(f).

### **B. *Motion to Dismiss***

Following receipt of the Complaint, Respondent filed a Motion to Dismiss. With respect to the allegations in Count 1, Respondent notes that at the Board’s meeting on August 29, 2022, “many community members voiced concerns about [the] proposed curriculum.” More specifically, individuals expressed concerns that the “opt out process could isolate and/or subject students to bullying as well as make parents feel uncomfortable,” and there were also requests for more information on how the opt out process would function. Furthermore, “[s]everal community members also expressed concerns about a ‘lack of transparency’ regarding the curriculum development process and requested more detailed information on the curriculum ... .” Several community members also “urged” the Board to “vote down the curriculum until there was more information” shared, and one parent even opined that adoption of the proposed curriculum “would be disregarding parental consultation during the curriculum development process.”

According to Respondent, he “consider[ed]” this feedback,” and decided to vote against the proposed health and physical education curriculum, not against the NJSLs. Moreover, he will

continue to consider and vote on proposals for curriculum for the 2022-2023 school year “that both align with the NJSLS and respond to parental feedback.”

Regarding the claims in Count 2, Respondent acknowledges that he hosted an event for the “Parents Voice Coalition” on September 8, 2022. However, Respondent denies that he created the advertisement appended to the Complaint; instead, the “political campaign itself mistakenly labeled [Respondent] as a Board member on its advertisement.” Respondent maintains that he attended this community event as a private citizen, and never identified himself as a Board member. While promoting the event on social media, Respondent submits he drafted his own content which did not identify himself as a Board member, did not indicate that the Board endorsed or sponsored the event; and all of his social media pages/accounts contain “appropriate disclaimers explicitly stating that his statements are his own and do not represent the ... District.”

With respect to the allegations against the three (3) other unnamed Board members, Respondent asserts that, pursuant to *N.J.A.C. 6A:28-6.3(a)(b)*, an ethics complaint must set forth the names and address of each Respondent. Because Complainant failed to comply with *N.J.A.C. 6A:28-6.2(a)* with respect to the three (3) unnamed Board members, the allegations against them must be dismissed.

As for the alleged violation of *N.J.S.A. 18A:12-24.1(a)* in Count 1, Respondent argues that Complainant “bears the burden to provide ‘factual evidence’ in the form of ‘a copy of a final decision from any court of law or administrative agency of this State demonstrating that [he] failed to enforce all laws, rules[,] and regulations of the State Board of Education, and/or court orders pertaining to schools or that [he] brought about changes through illegal or unethical procedures’”; however, the Complaint “is devoid of reference to, and does not include a copy of, any such decision or order.” In addition, by voting against the proposed curriculum, Respondent did not usurp any power of the State Board of Education, but “exercised his legitimate discretion to approve or reject curriculum and determine what is appropriate for the thorough and efficient education of the students in the [D]istrict.” Moreover, so long as alternative curricula exist, Complainant has failed to demonstrate how Respondent is denying curriculum that aligns with the NJSLS. In summary, Complainant fails to assert a factual basis for the alleged violation of *N.J.S.A. 18A:12-24.1(a)*, as “it is within the Board’s discretion to vote yes or no to any locally-proposed curriculum.”

Regarding the alleged violation of *N.J.S.A. 18A:12-24.1(d)* in Count 1, Respondent argues that Complainant failed “to produce any evidence or allege sufficient facts that would show (1) Respondent gave a direct order to any school personnel, or (2) Respondent became directly involved in anyone else’s responsibilities.” Instead, Respondent submits that it is within his discretion to deny or approve curriculum, and a “no” vote is not “micromanaging” or otherwise running the schools, but rather “taking the precise action which an elected ... [B]oard member may take.”

As for the alleged violation of *N.J.S.A. 18A:12-24.1(f)* in Count 1, Complainant fails to identify any special interest group, political party, or cause to which Respondent acted on behalf of” when he voted “no.” Instead, Respondent maintains his vote was driven by parental input and

his independent judgment when determining whether the proposed policy met the District’s goals. Moreover, Complainant failed to allege factual evidence that Respondent secured some benefit for himself, a member of his immediate family, or a friend “simply by voting against a proposed curriculum.”

With respect to the alleged violation of *N.J.S.A.* 18A:12-24.1(f) in Count 2, Respondent submits that Complainant failed “to allege any action in which Respondent purportedly undertook in his capacity as a Board member on behalf of, or at the request of, the Parents Voice Coalition.” Instead, and unlike in *Nazir v. Patel*, Respondent acted as a private citizen when promoting and hosting the community event on September 8, 2022; all of Respondent’s social media accounts “include disclaimers that explicitly state his posts reflect his own views, and not those of the Board”; and Respondent’s “post was not a political endorsement but an advertisement for a community event.” In fact, nowhere in Respondent’s post(s) did he endorse the candidate, encourage others to vote for him, or seek financial contributions for him. Instead, the sole purpose of the event was to facilitate a meet and greet with the community. Furthermore, Complainant failed “to allege any facts that suggest Respondent—even assuming the advertisement created by the campaign alone indicates Respondent acted in his capacity as a Board member—used the school to acquire a benefit for himself, a member of his immediate family or a friend.”

**C. *Response to Motion to Dismiss***

As further detailed above, and although the Commission’s staff sent correspondence to Complainant dated November 9, 2022, and November 23, 2022, Complainant never filed a response to the 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 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(a), *N.J.S.A.* 18A:12-24.1(d), and/or *N.J.S.A.* 18A:12-24.1(f).

**B. *Unnamed Parties***

In Count 1 of the Complaint, Complainant submits that Respondent, along with three (3) other unnamed Board members, voted “no” on a motion regarding the adoption of proposed curriculum and, therefore, violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(f).

Pursuant to *N.J.A.C.* 6A:28-6.3, a Complaint filed with the Commission “shall” include the full name and home address of each respondent. *N.J.A.C.* 6A:28-6.3(b)(2). In the within matter, there is only one school official specifically named in the Complaint as a Respondent. Because Complainant did not file a Complaint naming anyone other than Respondent Croson; Complainant has not offered any reasonable explanation for why he would have been unable to identify the other three (3) Board members who voted “no” on the motion; and without sufficient identifying information, the other three (3) Board members have not been afforded any due process, including the opportunity to file a responsive pleading, the Commission will not consider whether they may have violated the cited provisions of the Code. Consequently, any purported violations that may have been committed by the three (3) unnamed Board members referenced in the Complaint are *dismissed*.

### C. *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(a) (in Count 1), *N.J.S.A.* 18A:12-24.1(d) (in Count 1), and *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-2), and these provisions of the Code provide:

a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

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.

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(d), and *N.J.S.A.* 18A:12-24.1(f) need to be supported by certain factual evidence, more specifically:

1. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures.

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.

### *Count 1*

Following its review, the Commission finds that even if the facts as set forth in Count 1 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(a), *N.J.S.A.* 18A:12-24.1(d), and/or *N.J.S.A.* 18A:12-24.1(f) as argued in Count 1.

Regarding the stated violation of *N.J.S.A.* 18A:12-24.1(a), despite being required by *N.J.A.C.* 6A:28-6.4(a)(1), Complainant has not provided **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating or finding that Respondent violated any specific law(s), rule(s), or regulation(s) of the State Board of Education and/or court orders pertaining to schools, or that he brought about changes through illegal or unethical procedures, when he engaged in any of the actions/conduct set forth in Count 1 of the Complaint.

As for the alleged violation of *N.J.S.A.* 18A:12-24.1(d), there is no factual evidence that, by voting against (“no”) a motion to approve a proposed form of health/physical education curriculum, 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 District. Voting on a motion is part and parcel of a board member’s duties and responsibilities, and is not an activity or function that is borne by anyone other than the Board and its individual members.

In a similar manner, and regarding the purported violation of *N.J.S.A.* 18A:12-24.1(f), Complainant has not provided any factual evidence which could possibly show that, by voting against a motion to approve a form of health/physical education curriculum, Respondent took action on behalf of, or at the request of, any unnamed special interest group, or that he did so in order to acquire some unarticulated benefit for himself, a member of his immediate family, or a friend. Instead, the facts pled merely indicate that Respondent voted on a motion, but do not ascribe, to any extent, any nefarious or unethical benefit resulting from his vote. Instead, Respondent voted on a motion, and certain constituents, including Complainant, did not believe that the outcome was best for the District’s students. Although the outcome may not have been well-received by all members of the community, this does not mean, based on the facts as pled, that Respondent violated the Act.

As such, and because the Complaint lacks the necessary factual evidence, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), and/or *N.J.S.A.* 18A:12-24.1(f) as argued in Count 1 must be dismissed.

## *Count 2*

Based on its review, the Commission additionally finds that even if the facts as enumerated in Count 2 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(f). Although Complainant argues that Respondent “inappropriately listed the ... Board ... in [an] advertisement,” there is no factual evidence that Respondent created the advertisement, that he affirmatively authorized any individual or group to utilize his Board position or title in connection with the advertisement, and/or that he took any official action in connection with the events set forth in the Complaint without the required or necessary disclaimer. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(f) in Count 2 must also be dismissed.

### **IV. 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(a), *N.J.S.A.* 18A:12-24.1(d), and/or *N.J.S.A.* 18A:12-24.1(f) in Count 1, and/or violated *N.J.S.A.* 18A:12-24.1(f) in Count 2.

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: January 31, 2023

***Resolution Adopting Decision  
in Connection with C87-22***

***Whereas***, at its meeting on December 20, 2022, the School Ethics Commission (Commission) considered the Complaint and the Motion to Dismiss in Lieu of Answer (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(a), *N.J.S.A.* 18A:12-24.1(d), and/or *N.J.S.A.* 18A:12-24.1(f) in Count 1, and/or violated *N.J.S.A.* 18A:12-24.1(f) in Count 2; 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.

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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.

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