

Before the School Ethics Commission
Docket No.: C88-22
Decision on Motion to Dismiss

Robin Canetti,
Complainant

v.

Richard Ebersbach,
Ringwood Board of Education, Passaic County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on September 20, 2022, by Robin Canetti (Complainant), alleging that Richard Ebersbach (Respondent), a member of the Ringwood Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated September 22, 2022, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept the filing. On September 26, 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(f) of the Code of Ethics for School Board Members (Code) in Count 1 and Counts 4-7; *N.J.S.A.* 18A:12-24.1(a) of the Code in Count 2 and Count 6; and violated *N.J.S.A.* 18A:12-24.1(g) of the Code in Count 3.

On September 27, 2022, the Complaint was served on Respondent via electronic mail, notifying him that ethics charges had been filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading.¹ On November 7, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), which was amended on November 11, 2022. Complainant filed a response to the amended Motion to Dismiss on December 9, 2022.

The parties were notified by correspondence dated January 23, 2023, that the above-captioned matter would be discussed by the Commission at a special meeting on January 31, 2023, in order to make a determination regarding the Motion to Dismiss. Following its discussion on January 31, 2023, the Commission adopted a decision at its meeting on February 21, 2023, granting the Motion to Dismiss in its entirety because Complainant failed to plead

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.

sufficient credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(f) in Count 1 and/or Counts 4-7; *N.J.S.A.* 18A:12-24.1(a) in Count 2 and/or Count 6; and/or violated *N.J.S.A.* 18A:12-24.1(g) in Count 3.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant states that, on or about September 5, 2022, Respondent “was the signer and sender of a politically inflammatory campaign letter for one of two current slates of candidates for the Board.” Despite being required by *Advisory Opinion A36-14* (A36-14), “there is no disclaimer that would make it clear that his endorsement was as a private citizen and not as a member of the Board or on behalf of the entire Board” Therefore, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(f) “because, in the absence of a disclaimer clearly stating that this endorsement is as a private citizen, and not as a ... Board member nor is it an endorsement of behalf of the entire Board, people receiving a campaign letter for the ... Board ... signed by a sitting member of the Board ... could give it more weight than one from that of a private citizen, and his chosen candidates may gain an unfair advantage.”

In Count 2, Complainant states that, on or about September 5, 2022, Respondent signed a campaign letter “directly attacking the Governor and the State for the new Health Standards,” and included examples of his attacks, e.g., “We must stop the indoctrination of our children by the [S]tate and allow our teachers to be free to teach!” Based on his statements, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(a) “because by publicly campaigning against the Health Standards released by the ... Department, he is directly opposing the laws, rules and regulations that he was elected to uphold.”

In Count 3, Complainant states that, on or about September 5, 2022, Respondent signed a campaign letter containing a number of “blatant lies,” e.g., “Parental rights, involvement and the sound education of our children are being sacrificed at the altar of extremist policies such as teaching Critical Race Theory and forcing sex education on second grade children.” In light of his statements, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(g) because the letter contains “mistruths” that, as a Board member, he knows to be untrue. According to Complainant, the Ringwood School District (District) does not teach Critical Race Theory, as the only people who ever mentioned it are the residents complaining about it; parental involvement is always allowed, and residents can participate in various ways; the Superintendent is highly accessible; and the District is not forcing sex education on anyone, but rather following the standards set by the State. Per Complainant, Respondent’s lies about the District are a “disservice to the school system he has a duty to represent accurately.”

In Count 4, Complainant states that, on or about September 5, 2022, and September 11, 2022, Respondent “posted a donation link on a number of Facebook group posts for the Board ... candidates’ slate he promotes” in his campaign letter (which does not contain the required disclaimer). In addition, Respondent requested donations in his campaign letter. Therefore, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(f) because, “in the absence of a disclaimer clearly stating that his solicitation for monetary donations for candidates

running for [the] ... Board ... is as a private citizen, and not as a ... Board member nor is it a request on behalf of the entire Board, people receiving this request by a sitting member of that Board ... could give that request more weight than that of a private citizen, and his chosen candidates may gain an unfair advantage.”

In Count 5, Complainant states that several District residents sent a letter to Respondent and the Board that was read at the Board meeting on September 14, 2022. This letter noted that certain District residents believed Respondent violated the Code by failing to include a disclaimer on his campaign letter, and asked him to publicly correct his omission of a disclaimer. Respondent declined, and publicly threatened legal action against the signers while seated at the dais. The Board attorney then approached Respondent with what appears to have been a prepared statement, but Respondent “motioned him away.” Board counsel then spoke with the Chair, and an Executive Session was called. Although there was a suggestion that there “might” be action following Executive Session, no such action took place. Based on these facts, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(f)* because, “in the absence of a disclaimer clearly stating that his endorsement is as a private citizen, and not as a ... Board member nor is it an endorsement on behalf of the entire Board, people receiving a campaign letter for the ... Board ... signed by a sitting member of that Board ... could give it more weight than one from that of a private citizen, and his chosen candidates may gain an unfair advantage.” In addition, and despite being “given the opportunity to correct his omission of a disclaimer,” he declined to do so.

In Count 6, Complainant states that, on or about September 5, 2022, Respondent signed a campaign letter that is “partisan and political,” and included “multiple attacks on the Governor.” Therefore, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(f)* because “no one is ‘imposing social policy,’ the [B]oard is just doing its job in complying with new standards coming down from the State ... which he is supposed to follow as a Board [m]ember.” Moreover, “[m]isrepresenting the purpose of the Health Education standards conflicts directly with his need to uphold all laws, rules and regulations” (in violation of *N.J.S.A. 18A:12-24.1(a)*), and “perpetuates a message being used by partisan, political groups attempting to defy the State Standards, thereby” also violating *N.J.S.A. 18A:12-24.1(f)*.

In Count 7, Complainant states that even after it was suggested, at the Board meeting on September 14, 2022, that he was violating the Code by not including a disclaimer on his campaign letter, “the campaign team he’s chairing posted the same letter” on September 20, 2022, “still without a disclaimer, on their Facebook page.” Based on his conduct, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(f)* because, “in the absence of a disclaimer clearly stating that his endorsement is as a private citizen, and not as a ... Board member nor is it an endorsement on behalf of the entire Board, people viewing a campaign letter for the ... Board ... signed by a sitting member of that Board ... could give it more weight than one from that of a private citizen, and his chosen candidates may gain an unfair advantage.” Furthermore, instead of correcting his omission, which was requested of him at the Board’s meeting on September 14, 2022, Respondent “doubled down on September 20, continuing to use his position for the gain of his friends.”

B. *Amended Motion to Dismiss*

In his amended Motion to Dismiss, and as to the alleged violation of *N.J.S.A.* 18A:12-24.1(f) in Count 1, Respondent argues that advisory opinions “are fact specific and have had several iterations.” Respondent further argues, “Most of the opinions apply to when ... people include their titles in the information disseminated,” and Respondent did not include his title in the at-issue campaign letter. Therefore, Complainant’s suggestion that Respondent violated an advisory opinion “fails to state [a] proper pleading.” Respondent maintains his “alleged[]” campaign letter “is not evidence that [] Respondent suspended his independent judgement to any special interest or partisan political groups” despite his lack of a disclaimer. According to Respondent, Complainant did not provide any direct evidence that he (Respondent) was “acting in his official capacity, nor has she claimed that he did” and “[e]xercising a constitutional right to speak is not a suspension of judgment.” Respondent further asserts the “Code is meant to apply to people performing their duties, not to people exercising their free expression.”

As to the purported violation of *N.J.S.A.* 18A:12-24.1(a) in Count 2, Respondent argues Complainant has not provided the required “copy of a final decision from any court” In addition, Respondent notes Complainant did not allege that Respondent “violated any laws,” and did not provide any “evidence relating to speech that shall be required as evidence to support a violation of the Code.”

Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in Count 3, Respondent notes “the content is political, and opinion based,” and contends Complainant has not provided any evidence that Respondent’s comments were inaccurate and, instead, merely provides “conclusory statements and assertions.” Respondent further contends Complainant did not provide any evidence that his statements were other than his opinions, and were not due “to the developing circumstances.”

As to the purported violation of *N.J.S.A.* 18A:12-24.1(f) in Count 4, Respondent asserts a “Facebook post requesting a donation for candidates running together for [the B]oard is not evidence that Respondent suspended his independent judgment when doing school activities. Nor is it evidence that he suspended his independent judgment at all.” Respondent claims his post “is only evidence that he supports these candidates for office,” and Complainant did not provide any evidence to support that the candidates “are associated with any special interest groups or political groups, nor has she offered anything to suggest he is using the schools for his personal gain”

Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(f) in Count 5, Respondent maintains Complainant “does not plead any facts; she only pleads speculations based on what she believes.” Moreover, Respondent argues that none of the facts pled in this Count “remotely address the evidentiary standards required” to support a violation of *N.J.S.A.* 18A:12-24.1(f). Respondent further maintains that, despite his objection, “the letter was read into the record” at the Board meeting, and it should have “remained confidential due to the potential litigation that may result from the letter”; therefore, Respondent “acknowledged he would be speaking to his attorney.” Per Respondent, Complainant did not plead “any allegations or provide[] any evidence

that surrender his independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.”

As to the purported violation of *N.J.S.A* 18A:12-24.1(a) in Count 6, Respondent again argues Complainant has not provided the required “copy of a final decision from any court” As to the violation of *N.J.S.A* 18A:12-24.1(f), Respondent argues, despite Complainant’s belief that Respondent’s “letter contains language that is partisan and political, including multiple attacks on the Governor,” a violation of the “Code is content based” and, as previously noted, “speaking out in public against elected officials’ policies is a legal method of changing policy pursuant to the First Amendment.”

Regarding the alleged violation of *N.J.S.A* 18A:12-24.1(f) in Count 7, Respondent once again argues that Complainant has not provided any evidence that the “lack of a disclaimer” equates to evidence that “the schools or resources were used in any manner” nor that “allegedly” reposting is evidence that he “suspended his independent judgment.”

In summary, Respondent maintains he was within his First Amendment and Fourteenth Amendment rights to author the campaign letter, and a reasonable person could not “possibly perceive” that Respondent’s “campaign statements and support for candidates and policy choices and positions taken by Respondent is the official action of the board or [] that he acted in his official capacity in any manner.” Furthermore, “it is not a logical inference that a [B]oard member could be perceived as acting in his role or on behalf of the entire [B]oard without disclosing that he is a [B]oard member but not acting in his official capacity.”

C. Response to Amended Motion to Dismiss

In response to the amended Motion to Dismiss, Complainant asserts that contrary to Respondent’s claim, A36-14, “contains the exact set of facts in this situation.” According to Complainant, Respondent signed the letter, which contained references to “we” throughout, and as “chairman of these candidates, [Respondent] is putting forward a highly partisan agenda that directly attacks [the District’s schools], its administration and its teachers.” Complainant further asserts Respondent’s statements undermine the Board, and contain “extremely inflammatory language against his own school district in the promotion of his friends who are running for office.” Complainant notes, the “For the Kids candidates ran this campaign as Republicans,” and the “existence” of A36-14 leads Complainant “to understand that Board [m]embers are expected to NOT be this openly partisan without separating their personal beliefs from their role as [a] . . . Board [m]ember.”

Complainant notes that she did not allege that Respondent used the schools for personal gain; however, she does believe “he used his position on the [Board] for the gain of friends and for the benefit of a partisan political group.” Complainant reasserts that “by spreading misinformation and using such inflammatory political rhetoric as a [Board] member,” Respondent “IS taking ‘action on behalf of, or at the request of, a special interest group or persons”

Complainant reiterates the September 14, 2022, letter from members of the public “was sent to the Board first, hoping to avoid a formal complaint to correct what many of us believed reflected poorly on the [Board], and was one of a number of unethical actions on behalf of Respondent.” Complainant notes, had Respondent stated he was not “speaking on behalf of the [Board],” it would have saved time and money.

Complainant reaffirms Respondent “did not conduct himself in such a way as to hold the respect and confidence of the people, and by his actions as stated in [] the complaint, he did create a justifiable impression that such trust was violated.”

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(f) in Count 1 and/or Counts 4-7; *N.J.S.A.* 18A:12-24.1(a) in Count 2 and/or Count 6; and/or violated *N.J.S.A.* 18A:12-24.1(g) in Count 3.

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(f) in Count 1 and/or Counts 4-7; *N.J.S.A.* 18A:12-24.1(a) in Count 2 and/or Count 6; and/or violated *N.J.S.A.* 18A:12-24.1(g) in Count 3, and these provisions 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.

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(a), *N.J.S.A.* 18A:12-24.1(f), and/or *N.J.S.A.* 18A:12-24.1(g) 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.

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.

Alleged Violation of N.J.S.A. 18A:12-24.1(a)
(Count 2 and Count 6)

After review, the Commission finds that even if the facts as enumerated in Count 2 and/or Count 6 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)*. Despite being required by *N.J.A.C. 6A:28-6.4(a)(1)* to substantiate a violation of *N.J.S.A. 18A:12-24.1(a)*, Complainant has not provided **a copy of a final decision** 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 the Complaint.

To the extent that Complainant can provide, within the period of limitations, “a final decision from any court of law or administrative agency of this State” demonstrating that an individual school official, including Respondent, acted contrary to the laws, rules, and regulations promulgated by the State Board of Education, he could *then* be found in violation of *N.J.S.A. 18A:12-24.1(a)* for the conduct set forth in Count 2 and/or Count 6. In the absence of the required final decision(s), and based on the current record, the Commission is compelled to dismiss the alleged violations of *N.J.S.A. 18A:12-24.1(a)* in Count 2 and Count 6.

Alleged Violations of N.J.S.A. 18A:12-24.1(f) and N.J.S.A. 18A:12-24.1(g)
(Count 1, Counts 3-7)

Based on its review, the Commission additionally finds that even if the facts as pled in Count 1 and/or Counts 3-7 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)* and/or *N.J.S.A. 18A:12-24.1(g)*. The evidence adduced by Complainant solely consists of a campaign flyer bearing the name “For the Kids,” of which Respondent is listed as the Chairman, as well as a social media post by “Richard Ebersbach” with a “PayPal” link to the “For the Kids” campaign. The “For the Kids” campaign offers its support and endorsement of three individuals running for the then upcoming Board election. However, and of critical importance, neither Respondent’s role on the Board, nor the Board itself, is referenced in the campaign letter. Although there are multiple references to “we” in the campaign letter, it is clear that “we,” when read in context, refers to those who support the “For the Kids” campaign, and not to the Board.

As such, and because it clear that the campaign letter – and the statements made therein – emanated from the “For the Kids” campaign, and not from Respondent, the Commission finds that a reasonable person could not possibly perceive the campaign letter as being from Respondent in his official capacity as a Board member (or on behalf of the Board). This is true even though the campaign letter was ultimately shared with the Board and read at a public Board meeting. In this way, it was certain members of the public, and not Respondent himself, who attempted to make the campaign letter a Board issue when, in fact, it was not.

Accordingly, neither the campaign letter nor the social media post could possibly constitute “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 use of the schools in order “to acquire some benefit for himself, a member of his immediate family or a friend” (*N.J.S.A. 18A:12-24.1(f)*), and/or 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, or the provision of inaccurate information that is other than reasonable mistake or personal opinion, or was not attributable to developing circumstances (*N.J.S.A. 18A:12-24.1(g)*).

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(f)* in Count 1 and/or Counts 4-7; *N.J.S.A. 18A:12-24.1(a)* in Count 2 and/or Count 6; and/or violated *N.J.S.A. 18A:12-24.1(g)* in Count 3.

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: February 21, 2023

***Resolution Adopting Decision
in Connection with C88-22***

Whereas, at a special meeting on January 31, 2023, the School Ethics Commission (Commission) considered the Complaint, the amended Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the response to the amended Motion to Dismiss submitted in connection with the above-referenced matter; and

Whereas, at a special meeting on January 31, 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(f) in Count 1 and/or Counts 4-7; *N.J.S.A.* 18A:12-24.1(a) in Count 2 and/or Count 6; and/or violated *N.J.S.A.* 18A:12-24.1(g) in Count 3; and

Whereas, at its meeting on February 21, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on January 31, 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 February 21, 2023.

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