

Before the School Ethics Commission
OAL Docket No.: EEC-06644-22
SEC Docket No.: C90-21
Final Decision

Martin Welzmuller,
Complainant

v.

Elizabeth Ouimet,
Mount Olive Township Board of Education, Morris County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on December 12, 2021,¹ by Martin Welzmuller (Complainant), alleging that Elizabeth Ouimet (Respondent), a member of the Mount Olive Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* The Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(f), as well as *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), and *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code) in Counts 1-2.

At its meeting on April 26, 2022, and after reviewing Respondent's Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and Complainant's response thereto, the School Ethics Commission (Commission) adopted a decision finding Count 2 of the Complaint time barred in part; granting the Motion to Dismiss as to Count 1 (in its entirety) and as to the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in Count 2; and denying the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(f), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) in Count 2. Based on its decision, the Commission also directed Respondent to file an Answer to Complaint (Answer) as to the remaining allegations, which she did on May 16, 2022.

At its meeting on July 26, 2022, the Commission voted to find no probable cause to credit the alleged violations of *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(f) in Count 2. Having found no probable cause for any subsection of *N.J.S.A.* 18A:12-24 ("Prohibited acts"), pursuant to N.J.A.C 6A:28-10.9,² the Commission voted to transmit the remaining Code allegations to the

¹ On December 12, 2021, Complainant filed a deficient Complaint; however, on December 29, 2021, 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.

² This citation refers to the regulation that was in effect at the time of the probable cause determination.

Office of Administrative Law (OAL) for a plenary hearing where Complainant shall carry the burden to prove that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) of the Code.

Following cross-motions for Summary Decision and oral argument on the motions, the Administrative Law Judge issued an Initial Decision on May 17, 2023. The parties did not file exceptions to the Initial Decision.

At its meeting on June 27, 2023, the Commission discussed the above-captioned matter, and at its meeting on July 25, 2023, the Commission voted to adopt the Initial Decision's findings of fact, the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f), and the dismissal of the above-captioned matter.

II. Initial Decision

In February 2021, the Superintendent issued Respondent a cell phone at the Board President's direction to be used for Board business, and Respondent returned the cell phone in November 2021.³ *Initial Decision* at 3. During that time, the Board paid \$501.34 in service fees for Respondent's cell phone and \$0.00 in usage fees. *Ibid.* The phone recorded a total of 8 calls, 13 texts and received 3 images, and was not used at all in April, nor in July through October 2021. *Ibid.* While there is no evidence that Respondent requested the phone or used it improperly, she voted to approve the Verizon invoices which included her phone. *Id.* at 3-4.

In concluding Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) or *N.J.S.A.* 18A:12-24.1(f), the ALJ found that Respondent did not receive any personal benefit as there is no evidence she used the phone for personal business. *Initial Decision* at 21. Further, the ALJ found Respondent was not conflicted when she voted to approve the Verizon bill as her portion of the District's \$8,000 monthly bill amounted to less than one percent. *Id.* at 22. According to the ALJ, the cell phone "was neither a *de facto* nor a *de jure* personal benefit" to Respondent as she did not receive a personal gain. *Id.* at 25. Accordingly, the ALJ concluded that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) or *N.J.S.A.* 18A:12-24.1(f), and dismissed the Complaint. *Ibid.*

III. Analysis

Upon a thorough, careful, and independent review of the record, the Commission agrees with the ALJ that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f) when she received a cell phone for Board use. Under *N.J.S.A.* 18A:12-24.1(e), a board member must recognize that authority rests with the board and a board member shall not make any personal promises or take any action that may compromise the board. The Commission finds Respondent did not make any personal promises or take any action beyond the scope of her duties that had the potential to compromise the Board. The record does not contain any evidence

³ Respondent was previously issued a cell phone in January 2019, which was returned in February 2020. *Initial Decision* at 3. All allegations related to this time period were dismissed.

that she used the phone for personal use or for any purpose beyond the scope of her duties, nor did the use of her phone for Board purposes have the potential to compromise the Board.

Under *N.J.S.A.* 18A:12-24.1(f), a board member must refuse to surrender independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends. Here, the evidence does not show that Respondent took action on behalf of a special interest group, nor that she used the schools for a benefit to herself or others. As found by the ALJ, Respondent did not request the phone, rather the Superintendent issued her the phone at the Board President's direction. Respondent did not receive a personal benefit through her possession of a phone that she hardly used at all, and to the extent she used it, she only used it for proper Board business. As such, the Commission agrees that the ALJ appropriately dismissed the Complaint.

IV. Decision

Upon review, the Commission adopts the Initial Decision concluding that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f), and dismissing the above-captioned matter.

Therefore, this is a final agency decision and is appealable only to the Superior Court-Appellate Division. *See, N.J.A.C.* 6A:28-10.11 and *New Jersey Court Rule* 2:2-3(a).

Robert W. Bender, Chairperson

Mailing Date: July 25, 2023

***Resolution Adopting Decision
in Connection with C90-21***

Whereas, at its meeting on July 26, 2022, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, the Administrative Law Judge (ALJ) issued an Initial Decision dated May 17, 2023; and

Whereas, in the Initial Decision, the ALJ found that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f), and ordered the dismissal of the above-captioned matter; and

Whereas, the parties did not file exceptions to the Initial Decision; and

Whereas, at its meeting on June 27, 2023, the Commission reviewed and discussed the record, including the ALJ's Initial Decision; and

Whereas, at its meeting on June 27, 2023, the Commission discussed adopting the Initial Decision's findings of fact, the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f), and dismissing the above-captioned matter; and

Whereas, at its meeting on July 25, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on June 27, 2023; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its meeting on July 25, 2023.

Brigid C. Martens, Acting Director
School Ethics Commission