

Before the School Ethics Commission
Docket No.: C95-22
Decision on Motion to Dismiss

Patricia Dunham,
Complainant

v.

Amber Murad,
Watchung Borough Board of Education, Somerset County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on October 17, 2022, by Patricia Dunham (Complainant), alleging that Amber Murad (Respondent), a member of the Watchung Borough 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) of the Code of Ethics for School Board Members (Code) in Count 1; *N.J.S.A.* 18A:12-24.1(b) of the Code in Count 2; *N.J.S.A.* 18A:12-24.1(i) of the Code in Counts 3-4; *N.J.S.A.* 18A:12-24.1(f) of the Code in Count 5; and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 6.

On October 19, 2022, the Complaint was served on Respondent via electronic mail, notifying her that ethics charges had been filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading.¹ On November 22, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On December 22, 2022, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

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 and allegation of frivolous filing. Following its discussion on January 31, 2023, the Commission adopted a decision at its meeting on February 21, 2023, finding that the allegations in Count 3 and Count 6 were untimely filed, and granting the Motion to Dismiss as to all other allegations because Complainant failed to plead sufficient credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) in Count 1; *N.J.S.A.* 18A:12-24.1(b) in Count 2; *N.J.S.A.*

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.

18A:12-24.1(i) in Count 4; and/or *N.J.S.A.* 18A:12-24.1(f) in Count 5. 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*

In Count 1, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(a) because, at the Board meeting on September 22, 2022, she abstained from the vote on the “Health Curriculum.” By abstaining on this vote, Complainant argues that Respondent “did not enforce all laws, rules and regulations of the State Board of Education,” and “did not support the teachers, administration, and ALL families in the [Watchung Borough School District (District)] by not supporting the Health Education curriculum.” Although Respondent represented that she was abstaining because she did not feel parental input was received, Complainant counters that Respondent’s explanation “sounded more like a no vote but [she] was not courageous enough to vote yes for ALL families due to her political affiliation and the political seat she is running for as Somerset County Commissioner backed by the Republican party.”

In Count 2, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(b) because, at the Board meeting on August 25, 2022, she voted “no” on the “Social Studies and Gifted [and] Talented Curriculum,” and because she abstained from the vote on the “Health Curriculum” at the Board meeting on September 22, 2022. Per Complainant, by voting against the “Social Studies and Gifted [and] Talented Curriculum” and abstaining from the vote on the “Health Curriculum,” Respondent did not make decisions in terms of the educational welfare of all children, and did not “seek to develop and maintain public schools [that] meet the individual needs of all children.”

In Count 3, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(i) because, at the Board meeting on January 6, 2022, Respondent stated that the Business Administrator and Superintendent were doing a “good job,” but felt that they were “gaslighting” parents regarding COVID-19 guidelines, and that the communication “between the Board ... and the PTO” regarding school closings was disappointing. By using the term “gaslight” to describe the administration’s efforts, Complainant argues that Respondent “stated that [the administration] psychologically manipulated people, usually over an extended period of time which causes the victim to question the validity of their own thought[s] [or] perception of reality” In short, Respondent criticized the administration, in public, and did not protect them in the proper performance of their duties.

In Count 4, Complainant claims that, at the Board meeting on September 22, 2022, Respondent stated: the Department of Education “clarified the new Health Education standards by saying the [S]tate generally does not mandate curriculum material adoption but that is left up to [the Board]”; she was “shocked” to see some of the proposed revisions to the “Health Curriculum”; as a Board member, she does not “feel comfortable”; “no staff member ... said they thought this will help academic excellence”; the principals had a session regarding the middle school scheduled when “parents were on vacation”; and that “the principals were forced

to have the information session for the new [H]ealth [E]ducation standards.” Per Complainant, Respondent’s statements do not protect school personnel in the proper performance of their duties; are false and misleading; and create “a false narrative to the public to create mistrust between [District] personnel and the community.” Therefore, Complainant claims that Respondent’s statements on September 22, 2022, violated *N.J.S.A. 18A:12-24.1(i)*.

In Count 5, Complainant states that, on September 1, 2022, Respondent conducted a radio interview with a radio personality “and political campaign fundraiser, who is known for incendiary, right-wing blustering that is intended to blur the line between politics and our non-political school boards.” According to Complainant, Respondent appeared on the show in her capacity as a Board member and, thereby, “politicized her position ... to gain votes in her political campaign as Somerset County Commissioner.” In addition, Respondent never disclaimed that her statements were being offered in her personal/private capacity. Therefore, Complaint alleges that Respondent violated *N.J.S.A. 18A:12-24.1(f)* on September 1, 2022. In addition, because she voted “no” on the “Social Studies and Gifted [and] Talented Curriculum” on August 25, 2022, and she abstained from the vote on the “Health Curriculum” at the Board meeting on September 22, 2022, Complainant additionally alleges that Respondent violated *N.J.S.A. 18A:12-24.1(f)*. Per Complainant, and in connection with these votes, Respondent “continues to use political party talking points in most of her statements during [B]oard ... meetings to promote her campaign for Somerset County Commissioner.

In Count 6, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(j)* because, at the Board meeting on January 6, 2022, Respondent accused the administration of “gaslighting” parents with the administration’s response to the COVID-19 pandemic. Per Complainant, Respondent “should have informed the administration of her concerns prior to CRITIQUING their job performance at a public meeting.”

B. *Motion to Dismiss and Allegation of Frivolous Filing*

In her Motion to Dismiss and allegation of frivolous filing, Respondent preliminarily argues that any claims regarding conduct that purportedly occurred on January 6, 2022 (namely, the alleged violations of *N.J.S.A. 18A:12-24.1(i)* in Count 3, and *N.J.S.A. 18A:12-24.1(j)* in Count 6), are time barred and must be dismissed. Per Respondent, “[b]ecause Complainant[] did not file [her] Complaint ... until October 17, 2022, over nine months after [Respondent] made the allegedly improper statements in violation of the ... Act, any such claims are time-barred and must be dismissed.”

Regarding the alleged violation of *N.J.S.A. 18A:12-24.1(a)* in Count 1, Respondent argues that Complainant “failed to cite or include a copy of any law, rule, regulation, or court order pertaining to schools and thus failed to comply with the implementing regulation of the alleged violated statute.” In addition, “the general reference provided as to the reasons for [Respondent’s] decision to abstain from voting, on an issue which she felt she needed more information on in order to vote, is nothing more than [Complainant’s] unsubstantiated opinion, and irrelevant.” As a result, Count 1 should be dismissed.

As for the purported violation of *N.J.S.A.* 18A:12-24.1(b) in Count 2, Respondent counters that Complainant “failed to provide any evidence that [Respondent] made any decision that was contrary to the educational welfare of children or took any action to obstruct programs and policies to meet the individual needs of all children.” Instead, Complainant merely asserts that Complainant voted against the “Social Studies and Gifted [and] Talented Curriculum,” and a vote “against a curriculum which [Respondent] believed was placed in the wrong subject area is not contrary to the educational welfare of children, nor is it obstruction of programs or policies in the schools.” Therefore, Count 2 should be dismissed.

Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(i) in Count 4, Respondent argues that Complainant did not offer any evidence that Respondent’s “statements regarding principals being forced to have an informational session regarding the new health education curriculum undermined, opposed, compromised or harmed school personnel in proper performance of their duties.” In previous cases, such as *Bey v. Brown*, the Commission has found that a violation of *N.J.S.A.* 18A:12-24.1(i) requires “more flagrant action” than that at issue here. Per Respondent, while her comment may have been “potentially incorrect,” “it is not sufficiently flagrant to constitute a violation of *N.J.S.A.* 18A:12-24.1(i).” As a result, Count 4 should be dismissed.

As for the purported violation of *N.J.S.A.* 18A:12-24.1(f) in Count 5, Respondent counters that “Complainant provides no facts whatsoever to support a finding that Respondent was aligned with any special interest or political group and took action on their behalf”; Complainant did not provide “any facts to support a claim that Respondent used the schools for some personal, familial or friend-based benefit”; Respondent “appeared on a radio show to promote her campaign for Somerset County Commissioner, not her position as a [B]oard member”; during the radio interview, Respondent did not “demand or receive any special requests upon which she could have or did act in alliance with any special interest or political group”; and “[t]here was no unique personal benefit to her, nor any other special interest group, based upon her position as a [B]oard ... member.” Therefore, Count 5 should be dismissed.

Finally, Respondent argues that the Complaint is frivolous because it does not have a factual basis; it “unjustifiably demonizes a public servant who was simply exercising her right as a sitting [B]oard member to vote, or abstain, from voting based upon her desire for more information regarding curriculum changes ...”; and because Complainant is the mother of the current Board President, “it could be argued that her filing ... is simply retaliation for [Respondent] not agreeing and/or voting with [Complainant’s] daughter on” the issues set forth in the Complaint.

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 notes that she is relying “upon the facts and evidence provided” in her Complaint, and requests that the Complaint not be dismissed. However, Complainant did not directly address Respondent’s claim that the Complaint is frivolous, or that certain of her claims were untimely filed with 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 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(a)* in Count 1; *N.J.S.A. 18A:12-24.1(b)* in Count 2; *N.J.S.A. 18A:12-24.1(i)* in Counts 3-4; *N.J.S.A. 18A:12-24.1(f)* in Count 5; and/or *N.J.S.A. 18A:12-24.1(j)* in Count 6.

B. *Alleged Untimeliness*

In her Motion to Dismiss and allegation of frivolous filing, Respondent argues that any claims regarding conduct that purportedly occurred on January 6, 2022, are time barred and must be dismissed. Per Respondent, “[b]ecause Complainant[] did not file [her] Complaint ... until October 17, 2022, over nine months after [Respondent] made the allegedly improper statements in violation of the ... Act, any such claims are time-barred and must be dismissed.” Of note, Complainant did not offer any substantive response to Respondent’s untimeliness allegation.

The Commission’s regulations provide a one hundred eighty (180) day limitation period for filing a complaint. More specifically, *N.J.A.C. 6A:28-6.5(a)* provides, in relevant part:

- (a) Complaints shall be filed within 180 days of notice ***of the events which form the basis of the alleged violation(s)***. A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) ***when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known*** (emphasis added).

In this case, Complainant filed her Complaint on October 17, 2022, and one hundred eighty (180) days prior thereto is April 20, 2022.

With the above in mind, and pursuant to *N.J.A.C. 6A:28-6.5(a)*, the Commission must determine when Complainant knew of the events which form the basis of her Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events.

The Commission recognizes that limitation periods of this type serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. *Kaprow v. Berkley Township Bd. of Educ.*, 131 *N.J.* 571, 587 (1993). Thus, “notice of the alleged violation” must be interpreted in a manner that anticipates the reasonable diligence of complainant(s). In addressing

potential violations of the Act, the Commission must balance the public's interest in knowing of potential violations against the important policy of repose and a respondent's right to fairness. The time limitations set forth in the regulations must be enforced if the Commission is to operate in a fair and consistent manner. *Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County*, C19-03 (June 24, 2003).

After review, the Commission finds that there is not a credible basis upon which to find that Complainant was unaware of Respondent's actions/conduct until a date(s) other than when they occurred. Although the Commission recognizes that the regulatory time period may be relaxed, in its discretion, in any case where strict adherence may be deemed inappropriate or unnecessary or may result in injustice, it finds no extraordinary circumstances in the within matter that would compel relaxation. Consequently, the alleged violation of *N.J.S.A. 18A:12-24.1(i)* in Count 3, and the alleged violation of *N.J.S.A. 18A:12-24.1(j)* in Count 6 are time barred and, therefore, *dismissed*.

C. *Alleged Violations of the Act*

In the remaining Counts of the Complaint (Counts 1-2 and Counts 4-5), 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(b)* in Count 2; *N.J.S.A. 18A:12-24.1(i)* in Count 4; and *N.J.S.A. 18A:12-24.1(f)* in Count 5, 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.

b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

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.

i. I will support and protect school personnel in proper performance of their duties.

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(b)*, *N.J.S.A. 18A:12-24.1(f)*, and *N.J.S.A. 18A:12-24.1(i)* 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.

2. Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(b)* shall include evidence that Respondent willfully made a decision contrary to the educational welfare of children, or evidence that Respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

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 herself, a member of her immediate family or a friend.

9. Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(i)* shall include evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

Alleged Violation of N.J.S.A. 18A:12-24.1(a)
(Count 1)

Based on its review, the Commission finds that even if the facts as averred 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)*. 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 she brought about changes through illegal or unethical procedures, when she 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, she could *then* be found in violation of *N.J.S.A. 18A:12-24.1(a)* for the conduct set forth in Count 1 of the Complaint. However, without the required final decision(s), and based on the record in its current form, the Commission is constrained to dismiss the alleged violation of *N.J.S.A. 18A:12-24.1(a)* in Count 1.

***Alleged Violations of N.J.S.A. 18A:12-24.1(b), N.J.S.A. 18A:12-24.1(i)
and N.J.S.A. 18A:12-24.1(f)
(Count 2 and Counts 4-5)***

After a thorough review, the Commission finds that even if the facts as pled in Count 2 and Counts 4-5 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(b)*, *N.J.S.A. 18A:12-24.1(i)*, and/or *N.J.S.A. 18A:12-24.1(f)*. Even if Respondent voted “no” on the “Social Studies and Gifted [and] Talented Curriculum” at the Board meeting on August 25, 2022, and abstained from the vote on the “Health Curriculum” at the Board meeting on September 22, 2022 (as argued in Count 2 and Count 5); made public statements from the dais regarding the new health and physical education standards and commented on the District’s staff and administration’s reaction and response to the new standards (as contended in Count 4); and conducted a radio interview on September 1, 2022, without providing a disclaimer (as asserted in Count 5), there is still no evidence that Respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing (*N.J.S.A. 18A:12-24.1(b)* in Count 2); no evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties (*N.J.S.A. 18A:12-24.1(i)* in Count 4); and/or no 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 that she used the schools in order to acquire some benefit for herself, a member of her immediate family or a friend (*N.J.S.A. 18A:12-24.1(f)* in Count 5).

As a voting member of the Board, Respondent is undoubtedly free to make comments about, and to discuss, any and all agenda items, even if her comments are unpopular and her viewpoint is not shared by the community or a majority of the Board. Moreover, Respondent is free to vote on any and all agenda items in the way that she feels, based on the available information, and what she believes is best for the District, its staff, and its students, regardless of whether her viewpoint is shared by the community at-large or by her fellow Board members. Discussing and then voting in favor of, or against, any agenda item cannot, without more, constitute a violation of the Act. In the absence of additional facts and circumstances which could possibly establish a violation, merely offering critical viewpoints and a vote contrary to the majority of the Board does not violate *N.J.S.A. 18A:12-24.1(b)* (Count 2), *N.J.S.A. 18A:12-24.1(i)* (Count 4), and/or *N.J.S.A. 18A:12-24.1(f)* (Count 5).

Furthermore, even if Respondent conducted a radio interview with a controversial radio personality, she was not required to affirmatively disclaim the capacity in which she was speaking unless there were facts and evidence, none of which are present here, that the capacity in which she was speaking was unclear. By Complainant’s own admission, Respondent conducted the interview to promote her campaign for Somerset County Commissioner. However, there is nothing in the Complaint evidencing how Respondent utilized her Board position in the course of the radio interview in order to promote her candidacy for Somerset County Commissioner in violation of *N.J.S.A. 18A:12-24.1(f)* (Count 5).

IV. Request for Sanctions

At its special meeting on January 31, 2023, 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 discussed finding the Complaint not frivolous, and denying 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 find that the allegations in Count 3 and Count 6 were untimely filed, and to **grant** the Motion to Dismiss because Complainant failed to plead sufficient credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) in Count 1; *N.J.S.A.* 18A:12-24.1(b) in Count 2; *N.J.S.A.* 18A:12-24.1(i) in Count 4; and *N.J.S.A.* 18A:12-24.1(f) in Count 5. 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: February 21, 2023

***Resolution Adopting Decision
in Connection with C95-22***

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

Whereas, at a special meeting on January 31, 2023, the Commission discussed finding that the allegations in Count 3 and Count 6 were untimely filed; and

Whereas, at a special meeting on January 31, 2023, the Commission discussed granting the Motion to Dismiss for failure to plead sufficient credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(a) in Count 1; *N.J.S.A.* 18A:12-24.1(b) in Count 2; *N.J.S.A.* 18A:12-24.1(i) in Count 4; and *N.J.S.A.* 18A:12-24.1(f) in Count 5; and

Whereas, at a special meeting on January 31, 2023, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; 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