

Before the School Ethics Commission
OAL Docket No.: EEC-03967-23
SEC Docket No.: C122-22
Final Decision

**Kiernan Black,
Complainant**

v.

**Michele Barbieri,
Upper Township Board of Education, Cape May County,
Respondent**

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on December 9, 2022, by Kiernan Black (Complainant), alleging that Michele Barbieri (Respondent), a member of the Upper 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(e) (in Counts 1-3), *N.J.S.A.* 18A:12-24.1(g) (in Counts 1-3), and *N.J.S.A.* 18A:12-24.1(i) (in Count 3) of the Code of Ethics for School Board Members (Code).

At its meeting on April 25, 2023, and after reviewing Respondent's Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, as well as Complainant's response thereto, the Commission adopted a decision granting the Motion to Dismiss as to the allegations set forth in Counts 2-3, but denying the Motion to Dismiss as to the claims in Count 1. The Commission also voted to find the Complaint not frivolous and to deny Respondent's request for sanctions. Based on its decision, the Commission directed Respondent to file an Answer to the Complaint (Answer), which she did on May 2, 2023, and to transmit the matter to the Office of Administrative Law (OAL) following receipt of the Answer.

At the OAL, following Respondent's motion for summary decision, the Administrative Law Judge (ALJ) issued an Initial Decision on September 5, 2024, finding that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(g), and dismissing the matter. The parties did not file exceptions to the Initial Decision.

At its meeting on October 22, 2024, the Commission discussed the above-captioned matter, and at its meeting on November 26, 2024, 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(g), and the dismissal of the above-captioned matter.

II. Initial Decision

On September 22, 2022, following a Board meeting during which health education standards were discussed, Complainant, who was a candidate running for a seat on the Board, sent an email to the Board members, stating, in part:

It is very easy for the Board President to sit there now and say how she will feel having her granddaughter raised under these new standards. But who is to say how this will all turn out? We don't know because we have never done this before. These decisions will be life altering for some and we cannot erase these moments for our children. Once they are there, they leave lasting imprints.

[*Initial Decision* at 3.]

Thereafter, Respondent posted this part of the email on her Facebook page, indicating that it was sent to her by a candidate in the upcoming Board election, but not disclosing the name of the candidate. *Ibid.*

As to a violation of *N.J.S.A.* 18A:12-24.1(e), the ALJ noted that Complainant has not provided evidence to demonstrate that Respondent “made any personal promises or took any private action that might have compromised the Board.” According to the ALJ, although Respondent copied and posted a portion of Complainant’s email, she did not mention Complainant’s name, only that “the scrivener was running for the [B]oard that year.” The ALJ maintained that Respondent did not have the capacity to act on her own to bring about any change in personnel, and therefore, the ALJ concluded that Complainant has not demonstrated that Respondent violated *N.J.S.A.* 18A:12-24.1(e).

Regarding a violation of *N.J.S.A.* 18A:12-24.1(g), the ALJ contended that despite Complainant’s assertion that Respondent disclosed “private information intended only for the [B]oard,” the email and subsequent Facebook post do not contain confidential information. Therefore, the ALJ concluded that Complainant has not demonstrated by a preponderance of evidence that Respondent violated *N.J.S.A.* 18A:12-24.1(g). The ALJ further concluded that Complainant “failed to present any proof that the disclosure of the information contained in the Facebook posting [] needlessly injured another person or the schools.” Finally, the ALJ concluded that Complainant “failed to meet her burden to prove, by a preponderance of the competent and credible evidence, that the [R]espondent’s actions violated the confidentiality provision of the [Code], *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g).” Accordingly, the ALJ dismissed the matter.

III. Analysis

Upon a thorough, careful, and independent review of the record, the Commission adopts the ALJ’s factual findings, 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(g), and the dismissal of this matter.

According to *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 that Respondent's posting of Complainant's email on social media without indicating who wrote it, while perhaps inappropriate, did not contain a personal promise, nor would it compromise the Board in this circumstance. As such, Complainant has not demonstrated that Respondent violated *N.J.S.A.* 18A:12-24.1(e).

N.J.S.A. 18A:12-24.1(g) requires a board member to hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools, and also to provide accurate information. The Commission finds that the email, which was sent from a Board candidate to all Board members, was not a confidential Board matter. Even so, Complainant has not demonstrated how Respondent's posting of the portion of Complainant's email that did not mention Complainant's name, would needlessly injure another person or the schools. Therefore, Complainant has not demonstrated that Respondent's actions violated *N.J.S.A.* 18A:12-24.1(g).

Accordingly, the Commission concurs with the Initial Decision that this matter should be dismissed.

IV. Decision

Upon review, the Commission adopts the Initial Decision's factual findings, 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(g), and the dismissal of 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:28-9.10(b) and *New Jersey Court Rule* 2:2-3(a). Under *New Jersey Court Rule* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

Robert W. Bender, Chairperson

Mailing Date: November 26, 2024

***Resolution Adopting Decision
in Connection with C122-22***

Whereas, at its meeting on April 25, 2023, 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 September 5, 2024; 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(g), 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 October 22, 2024, the Commission reviewed and discussed the record, including the ALJ's Initial Decision; and

Whereas, at its meeting on October 22, 2024, 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(g), and the dismissal of the above-captioned matter; and

Whereas, at its meeting on November 26, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on October 22, 2024; 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 November 26, 2024.

Brigid C. Martens, Director
School Ethics Commission