

Before the School Ethics Commission
Docket No.: C52-23
Probable Cause Notice

**Carl Tripician,
Complainant**

v.

**Robin Shaffer,
Ocean City 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 May 19, 2023,¹ by Carl Tripician (Complainant), alleging that Robin Shaffer (Respondent), a member of the Ocean City 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(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i) of the Code of Ethics for School Board Members (Code). On June 29, 2023, Respondent filed a Written Statement.

The parties were notified by correspondence dated December 12, 2023, that the above-captioned matter would be discussed by the Commission at its meeting on December 19, 2023, in order to make a determination regarding probable cause. Following its discussion on December 19, 2023, the Commission adopted a decision at its meeting on January 23, 2024, finding that there are insufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that the Act was violated as alleged in the Complaint.

II. Summary of the Pleadings

A. *The Complaint*

By way of background, Complainant attaches an article published in the Ocean City Sentinel, dated May 17, 2023, titled “[Fairness in Taxes (FIT)] criticizes school chief; he fires back[;] Group slams time off for professional development; superintendent says FIT

¹ On May 19, 2023, Complainant filed a deficient Complaint; however, on the same date, 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.

misrepresenting the facts” to the Complaint. In the article, FIT challenged the Board’s “oversight of the time and cost” the Superintendent spent on professional development, questioning “why he wasn’t terminated as soon as the [B]oard found out he would be leaving after his first year in the position.” FIT reported that the Superintendent had been “out of [the D]istrict for 43 days, or over eight (8) weeks.” Also, in the article, the Superintendent contended that he was “fully invested in working in Ocean City,” but explained that he was “physically” in South Orange at the beginning of his contract in order to transition his replacement in the South Orange-Maplewood School District. While FIT criticized the cost of professional development expenditures, including memberships for groups, the Superintendent maintained that any professional development he attended was approved by the Board, and FIT’s facts were incorrect, as much of the expenditures were for professional development for all staff, and not for him personally.

The article indicated that the Superintendent would be leaving the District for a job in Pennsylvania. Respondent was interviewed for the article and commented on the letters from FIT, saying, “I find it extremely troubling the amount of time [the Superintendent] spent outside our school district in training, at conferences and teleworking,” and stated that he was unaware the Superintendent was commuting from Pennsylvania to Ocean City until he saw it in an article. FIT asserted that the Superintendent’s 2023 Personal/Relative and Financial Disclosure form (Disclosure Statement) showed he earned \$2,000 from three sources outside the District, including two universities in Pennsylvania, and a firm that specializes in recruiting school administrators, to which Respondent stated, “[w]hen I saw the information provided by [FIT], I wasn’t aware he was working three other jobs... I question how much any person could legitimately attend to a job as demanding as superintendent, when you’re working three other jobs and you’re out of the district that often.”

The article then turned to the search for a new superintendent, and the process the Board is taking to review resumes and narrow the list of candidates. Respondent stated that this should be a “teachable moment . . . when mistakes can be openly acknowledged and learned from, I believe. After all, as an educator, I believe that’s what learning is all about and is also what leadership ought to be about.” Respondent continued that “I’m going to do everything I can to support a superintendent candidate who possesses the decisiveness, temperament and judgment to give our district the leadership it deserves... We need to identify a candidate who is as committed to us as we are to her or him. We’re going to need to find a candidate who cares about Ocean City schools, who cares about our children, who cares about our teachers, staff and taxpayers as much as we care about them.” Additionally, the Board President also commented on the search for a new Superintendent stating, “Our goal is to hire the most qualified chief school administrator as quickly as possible ... [i]deally, that will be in time for the start of the new school year.”

In Count 1, Complainant points to Respondent’s comments in the May 17, 2023, article in the Ocean City Sentinel that were critical of “the amount of time [the Superintendent] spent outside our school district in training,” and questioned the Superintendent’s Disclosure Statement. Complainant asserts Respondent did not include a disclaimer, which gives the impression that he was acting in his capacity as a Board Member. Accordingly, Complainant

argues Respondent violated *N.J.S.A.* 18A:12-24.1(c) as he did not confine his actions to policy making.

In Count 2, Complainant alleges that the article attacks the Superintendent and “question(s) how much any person could legitimately attend to a job as demanding as [S]uperintendent, when you’re working three other jobs and you’re out of the district that often.” Complainant asserts that Respondent’s actions violated *N.J.S.A.* 18A:12-24.1(d) as Respondent failed to provide a disclaimer and that the comments “may appear to pressure and influence either Board members or the public to make changes to matters that affect personnel or hiring decisions with respect to a new superintendent.”

In Count 3, Complainant contends that the article and the comments therein criticize the Superintendent, in violation of *N.J.S.A.* 18A:12-24.1(e), as the Respondent’s comments are beyond the scope of his duties of a Board member and Respondent’s actions constitute private action which may compromise the Board because “[a]ttacking a superintendent may intimidate the public from coming forward and addressing the Board.”

In Count 4, Complainant asserts that the article, wherein the Superintendent denies allegations by an outside group, but Respondent adopts the allegations as fact, supports the allegation that Respondent violated *N.J.S.A.* 18A:12-24.1(g), as Respondent’s comments are “not backed by evidence or accurate information.”

In Count 5, Complainant submits that Respondent’s implication in the article that the Superintendent is not performing his job violates *N.J.S.A.* 18A:12-24.1(i) as Respondent’s comments “undermine and compromise the performance of the [S]uperintendent, are inflammatory and harm the reputation of the Superintendent and his ability to perform his duties.

B. *Written Statement*

In his Written Statement, Respondent admits to having made the comments which were quoted in the Ocean City Sentinel article, but claims that nothing about his comments to the press indicate that he was offering an official comment on behalf of the Board, or that he was speaking as its representative. Respondent claims that he was only offering his opinion and that this expression is protected by the First Amendment. Additionally, Respondent asserts that the statements made in the article, namely that the Superintendent had been absent for 43 days in his first year, and that he was earning income as a private consultant, are true and accurate to his knowledge and belief at the time. Respondent further asserts that he did not believe that a disclaimer was necessary given the context that he was being interviewed by a reporter, and that nothing that he said or did would indicate he was offering an official statement.

Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(c), Respondent argues there is no evidence of any “official action” or “board action” which could be attributed to Respondent. As to *N.J.S.A.* 18A:12-24.1(d), Respondent contends that “[c]ommentary to the press, regardless of its nature, does not constitute a ‘direct order to school personnel’ or direct involvement in activities or functions that are the province of the administration.” With respect to the alleged violation of *N.J.S.A.* 18A:12-24.1(e), Respondent claims that he did not make any personal

promises, nor did his comments to the press have the potential to compromise the Board. Respondent argues that, as to *N.J.S.A.* 18A:12-24.1(g), nothing in his comment to the press was confidential, Complainant does not allege that the information in the article was inaccurate, and his comments do not needlessly injure another person, or the schools. Finally, regarding *N.J.S.A.* 18A:12-24.1(i), Respondent argues that “Board members do not surrender their ability to express their opinion respecting the performance of school employees simply by virtue of their position,” and the facts forming the basis of Respondent’s opinion were completely accurate. As such, Respondent requests that the Complaint be dismissed.

III. Analysis

This matter is before the Commission for a determination of probable cause pursuant to *N.J.A.C.* 6A:28-9.7. A finding of probable cause is not an adjudication on the merits but, rather, an initial review whereupon the Commission makes a preliminary determination as to whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted. Pursuant to *N.J.A.C.* 6A:28-9.7(a), probable cause “shall be found when the facts and circumstances presented in the complaint and written statement would lead a reasonable person to believe that the Act has been violated.”

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(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i). These provisions of the Code provide:

- c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.
- 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.
- e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.
- 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.
- i. I will support and protect school personnel in proper performance of their duties.

At the outset, the Commission seeks to set forth the framework for its decision. It has previously found that while the use of a disclaimer is recommended and can help to “clarify

whether an individual is speaking in his or her official capacity and pursuant to his or her official duties, ... the presence of a disclaimer is not dispositive.” *Aziz v. Nikitinsky et al., Monroe Township Board of Education, Middlesex County*, Docket No. C56-22 (October 17, 2022). Specifically, “if a school official utilizes an appropriate disclaimer, but the content or substance of the statements would still lead a reasonable member of the public to believe that the school official is speaking in his or her official capacity or pursuant to his or her official duties, then the disclaimer will be inadequate and of no force or effect,” and the actions could violate the Act. *Ibid.* The opposite would also be true. The lack of a disclaimer does not, on its own, render a Board member’s public statement to be made pursuant to his or her official capacity and/or official duties. When a Board member makes a statement, or in this case participates in an interview for a news article, the Commission must consider the content, substance, and context of the statements, and determine whether a reasonable person would believe that the statements were made in the Board member’s official capacity.

In this circumstance, the Commission finds a reasonable person would not believe that Respondent’s statements were made in his official capacity. Considering the context of the article as a whole, FIT raised concerns about the Superintendent’s physical presence in the District, commitment to the District, use of District resources, and employment in other positions out-of-state. The Superintendent participated in the article and made comments on his own behalf to defend himself. In response, Respondent stated, “I find it extremely troubling the amount of time [the Superintendent] spent outside our school district in training, at conferences and teleworking,” and that he was unaware the Superintendent was commuting from Pennsylvania to Ocean City until he saw it in an article. Additionally, Respondent stated, “When I saw the information provided by [FIT], I wasn’t aware he was working three other jobs... I question how much any person could legitimately attend to a job as demanding as superintendent, when you’re working three other jobs and you’re out of the district that often.” Importantly, Respondent provides commentary on public information, not Board business, and the substance of Respondent’s comments does not ascribe a position or statement to any person or entity other than to himself. As such, a reasonable person would perceive Respondent’s comments, including his surprise and concern as to information that he appears to have just learned, to be his opinion and on his own behalf. With respect to the search for a new superintendent, Respondent indicated: “I’m going to do everything I can to support a superintendent candidate who possesses the decisiveness, temperament and judgment to give our district the leadership it deserves... We need to identify a candidate who is as committed to us as we are to her or him. We’re going to need to find a candidate who cares about Ocean City schools, who cares about our children, who cares about our teachers, staff and taxpayers as much as we care about them.” A reasonable person would view those comments as indicative of his personal view on the type of candidate he hopes to find for the Superintendent position, especially considering that another Board member also made comments about the hiring process.

Turning to the allegations in the Complaint:

N.J.S.A. 18A:12-24.1(c)

Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(c)* when he made comments for an article in the Ocean City Sentinel that were critical of the amount of time the

Superintendent spent outside of the District at trainings and of the Superintendent's other sources of income as indicated on his Disclosure Statement, and without a disclaimer, it gives the impression that he is speaking on behalf of the Board. Respondent counters that there is not any evidence of "official action" or "board action" which could be attributed to Respondent.

Pursuant to *N.J.A.C.* 6A:28-6.4(a), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(c) shall include evidence that Respondent "took board action to effectuate policies and plans without consulting those affected by such policies and plans," or took action that was unrelated to Respondent's duty to "(i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy."

Following its assessment, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(c) was violated. As Respondent's comments in the article were not in his official position as a Board member, he did not take Board action to effectuate policies and plans. Accordingly, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violation of *N.J.S.A.* 18A:12-24.1(c).

N.J.S.A. 18A:12-24.1(d)

Complainant alleges Respondent violated *N.J.S.A.* 18A:12-24.1(d) when he implied that the Superintendent was not attending to his position because he was "working three other jobs" and is out of the District frequently, as Respondent did not provide a disclaimer and the comments "may appear to pressure and influence either Board members or the public to make changes to matters that affect personnel or hiring decisions with respect to a new superintendent." Respondent counters that "[c]ommentary to the press, regardless of its nature, does not constitute a 'direct order to school personnel' or direct involvement in activities or functions that are the province of the administration."

Pursuant to *N.J.A.C.* 6A:28-6.4(a), 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."

Based on its review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(d) was violated. Complainant fails to establish how Respondent's statements about the Superintendent are either a direct order to school personnel, or how Respondent became directly involved in activities or functions that are the responsibility of school personnel, or the day-to-day administration of the District. Expressing an opinion, or even making critical statements, are not functions of school personnel. Therefore, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violation of *N.J.S.A.* 18A:12-24.1(d).

N.J.S.A. 18A:12-24.1(e)

Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(e)* when he made comments in the Ocean City Sentinel that criticized the Superintendent, which was private action that may compromise the Board as “[a]ttacking a superintendent may intimidate the public from coming forward and addressing the Board.” Respondent maintains that his comments to the press did not have the potential to compromise the Board.

In accordance with, *N.J.A.C. 6A:28-6.4(a)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(e)* shall include evidence that Respondent “made personal promises or took action beyond the scope” of his duties such that, “by its nature, had the potential to compromise the board.”

After review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(e)* was violated. Providing critical opinions about the Superintendent does not, on its own, compromise the Board. Furthermore, the statements alleged to be critical about the Superintendent were not inflammatory. The only statements that could be construed as negative toward the Superintendent are: “I find it extremely troubling the amount of time [the Superintendent] spent outside our school district in training, at conferences and teleworking... When I saw the information provided by [FIT], I wasn’t aware he was working three other jobs... I question how much any person could legitimately attend to a job as demanding as superintendent, when you’re working three other jobs and you’re out of the district that often.” Notably, Respondent does not “attack” the Superintendent, but rather expresses his belief and opinion that any individual may lack the ability to be fully devoted to a certain position when he or she holds multiple jobs, and in this case, Respondent’s main concern is being devoted to the District. The remainder of Respondent’s comments look forward to a new Superintendent and the qualities that he is looking to encapsulate in a candidate. Such statements do not have the potential to compromise the Board. While participating in an interview with the press, without a disclaimer, is not recommended, the Commission finds that Respondent’s actions do not, in this instance, compromise the Board or violate the Act. Consequently, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violation of *N.J.S.A. 18A:12-24.1(e)*.

N.J.S.A. 18A:12-24.1(g)

Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(g)*, by providing comments to the press that are “not backed by evidence or accurate information.” Respondent counters that nothing in his comments to the press was confidential, and Complainant does not allege that the information in the article was inaccurate.

Pursuant to *N.J.A.C. 6A:28-6.4(a)*, 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.”

Based on its review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(g)* was violated. Complainant does not allege that Respondent violated the confidentiality provision of *N.J.S.A. 18A:12-24.1(g)*. As to the inaccurate information provision, *N.J.A.C. 6A:28-6.4(a)* requires that Complainant provide evidence that “substantiates the inaccuracy of the information” and that the “inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.” While Complainant makes the conclusory statement that the comments given by Respondent were inaccurate, he has not provided any documentary evidence supporting such statement, and without the required evidence, a violation of *N.J.S.A. 18A:12-24.1(g)* cannot be supported. Moreover, as the Commission established above, Respondent’s statements were his opinions, which do not violate *N.J.S.A. 18A:12-24.1(g)*. Consequently, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violation of *N.J.S.A. 18A:12-24.1(g)*.

N.J.S.A. 18A:12-24.1(i)

Complainant asserts that Respondent violated *N.J.S.A. 18A:12-24.1(i)* when he implied in the Ocean City Sentinel article that the Superintendent is not performing his job because the comments “undermine and compromise the performance of the [S]uperintendent, are inflammatory and harm the reputation of the Superintendent and his ability to perform his duties.” Respondent argues that “Board members do not surrender their ability to express their opinion respecting the performance of school employees simply by virtue of their position,” and the factual basis for his opinion is completely accurate.

According to *N.J.A.C. 6A:28-6.4(a)*, 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.”

Following its assessment, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(i)* was violated. Complainant has not alleged how Respondent’s statements, indicating commentary on public information and the search for a new superintendent, resulted in harm to the Superintendent. Notably, the Superintendent was already in the process of leaving the District when the article was published. Therefore, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violation of *N.J.S.A. 18A:12-24.1(i)*.

IV. Decision

In accordance with *N.J.S.A. 18A:12-29(b)*, and for the reasons detailed herein, the Commission hereby notifies Complainant and Respondent that there are insufficient facts and

circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that the Act was violated as alleged in the Complaint and, consequently, dismisses the above-captioned matter. *N.J.A.C.* 6A:28-9.7(b).

The within 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)*. 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: January 23, 2024

***Resolution Adopting Decision
in Connection with C52-23***

Whereas, at its meeting on December 19, 2023, the School Ethics Commission (Commission) considered the Complaint and Written Statement submitted in connection with the above-referenced matter; and

Whereas, at its meeting on December 19, 2023, the Commission discussed finding that the facts and circumstances presented in the Complaint and Written Statement would not lead a reasonable person to believe that the Act was violated and, therefore, dismissing the above-captioned matter; and

Whereas, at its meeting on January 23, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on December 19, 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 January 23, 2024.

Brigid C. Martens, Director
School Ethics Commission