

Before the School Ethics Commission
Docket No.: C30-24
Decision on Probable Cause

Ceane Bentzley,
Complainant

v.

Salvatore Giordano,
Old Bridge Board of Education, Middlesex County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on April 2, 2024, by Ceane Bentzley (Complainant), alleging that Salvatore Giordano (Respondent), a member of the Old Bridge 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) (Counts 1-3) and *N.J.S.A.* 18A:12-24.1(i) (Count 2) of the Code of Ethics for School Board Members (Code).

On April 23, 2024, Respondent filed a Written Statement, and also alleged that the Complaint is frivolous. On April 26, 2024, Complainant filed a response to the allegation of frivolous filing.

The parties were notified by correspondence dated December 10, 2024, that the above-captioned matter would be discussed by the Commission at its meeting on December 17, 2024, in order to make a determination regarding probable cause and the allegation of frivolous filing. Following its discussions on December 17, 2024, and January 28, 2025, the Commission adopted a decision at its meeting on January 28, 2025, 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. 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*

By way of background, Complainant states that the recently revised New Jersey health curriculum standards were not adopted by the Board,¹ and in addition, Policy 5756, which was established to protect transgender students, was rescinded at the February 20, 2024, Board meeting. According to Complainant, at that same meeting, Respondent made a statement, using the phrase “the LGBTQ and the rest of the alphabet,” which Complainant found to be “dismissive and offensive.” Subsequently, Complainant discovered that Respondent had “liked” several posts on X, formerly Twitter, which included “a significant number of anti-transgender and anti-LGBTQ+” posts as well as “derogatory and offensive” posts referring to teachers and women. Complainant notes that Respondent did not include a disclaimer on his X profile.

With the above in mind, in Count 1, Complainant asserts Respondent’s comments, posts and behavior violate *N.J.S.A.* 18A:12-24.1(e) because his “comment and anti-LGBTQ+ social media content could potentially ‘compromise’ the [Board], [t]ransgender and LGBTQ+ students and their families, staff members and residents could perceive that they are being defamed, marginalized and/or subject to potential discrimination, particularly given [Respondent’s] voting record on the health curriculum and policy 5756.”

In Count 2, Complainant contends Respondent violated *N.J.S.A.* 18A:12-24.1(e) because “his anti-teacher and anti-public school social media content ‘could potentially compromise’ the [Board]” because teachers “could perceive that they are being defamed and devalued, which could negatively impact morale and staff retention,” and his negative views of public education are “ironic and troubling given his position.” Complainant further contends Respondent violated *N.J.S.A.* 18A:12-24.1(i) because his “anti-teacher and anti-public school social media content could suggest that he may not ‘support school personnel in the proper performance of their duties.’”

In Count 3, Complainant contends Respondent violated *N.J.S.A.* 18A:12-24.1(e) because his “anti-woman social media content could potentially ‘compromise’ the [Board], female students, staff members (the majority of whom are women), and residents could perceive that they are being defamed, marginalized and/or subject to potential discrimination.”

B. *Written Statement and Allegation of Frivolous Filing*

Respondent argues as to Count 1, that he used the statement, “and the rest of the alphabet” to indicate that “there are many different subdivisions of that ideology/group.” Respondent further argues that “likes” are not statements and further Complainant did not

¹ By way of this Decision, the Commission reminds the Old Bridge Board of Education that district boards of education are required to ensure that the curriculum and instruction provided to students aligns with the New Jersey Student Learning Standards (NJSLs). The failure of a district board of education to comply with the NJSLs for Comprehensive Health and Physical Education could support a violation of *N.J.S.A.* 18A:12-24.1(a). See Advisory Opinion A12-22.

provide any quotes from Respondent to support her claims. Respondent notes his voting record is “irrelevant to this count.” Regarding Count 2 and Count 3, Respondent reasserts that “likes on a social media account are not statements and there are no quotes from [him] in the exhibits.”

Finally, Respondent asserts the Complaint is frivolous because the “exhibits include a phrase that does not have a negative connotation and likes from social media that have statements that are not even [his].” Respondent further asserts Complainant “is separating the exhibits into three separate counts to make the complaint appear less farcical.” Moreover, Respondent asserts the “likes” are beyond the 180-day statute of timely filing.² Respondent maintains “there is no reasonable basis for this ethics complaint and the logic used to even suggest that there is a violation of the [Act] strains credulity.”

C. *Response to Allegation of Frivolous Filing*

In response to the allegation of frivolous filing, Complainant reaffirms her allegations and notes that she separated the counts in the Complaint to demonstrate that Respondent has negative views towards three different groups, not to make the allegations “less farcical.” Complainant notes that the term “less farcical” “indicates to [her] that he apparently denies the seriousness of potentially compromising the [Board],” as well as that he is “dismissive of those whose opinions and concerns differ from his own.” Complainant hopes this explains her “serious, well-considered reasons for filing the complaint, which” is “not frivolous by any means.”

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.”

² Pursuant to *N.J.A.C.* 6A:28-6.5(a), complaints shall be filed within 180 days of notice of the events that form the basis of the alleged violation(s). The Commission notes that some of Respondent’s “likes” on his X profile are on posts that are older than 180 days. However, other posts that Respondent liked were dated January 1, 2024, January 19, 2024, and January 27, 2024, and therefore, fall within the timeliness.

Alleged Violations of the Act

Complainant submits that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(i), and these provisions of the Code provide:

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.

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

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

Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(e) in Counts 1-3 when he made the comment “LGBTQ and the rest of the alphabet” at a public meeting, as well as by “liking” posts on social media that are anti-LGBTQ+, anti-teacher, and anti-women. Respondent counters that he used the statement “and the rest of the alphabet” to indicate that “there are many different subdivisions of that ideology/group,” and “likes on a social media account are not statements.”

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 the Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(e) was violated as to his comment at a public meeting (Count 1). Respondent’s comment of “LGBTQ and the rest of the alphabet” at a public meeting is not on its face a slur and Respondent, as a Board member, may speak his opinion at a public Board meeting.

As for the “likes” on social media and Respondent’s lack of a disclaimer, following its review, the Commission finds that even if the facts as asserted in 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(e) in Counts 2 and 3. As the Commission explained in *Aziz v. Nikitinsky et al., Monroe Township Board of Education, Middlesex County*, Docket No. C56-22 (October 17, 2022)

... Although social media activity by a school official can be regarded as action [I/M/O *Treston, Randolph Township Board of Education, Morris County*, Docket No. C71-18 (April 27, 2021) and *Kwapniewski v. Curioni, Lodi Board of Education, Bergen County*, Docket No. C70-17 (December 17, 2019)], it is only when certain competent and credible factual evidence is proffered therewith that a violation can be substantiated.

As a general matter, a school official does not violate the Act merely because he/she engages in social media activity. Instead, the Commission’s analysis is guided by whether a reasonable member of the public could perceive that the school official is speaking in his or her official capacity or pursuant to his or her official duties. Whether a school official is perceived as speaking in his or her official capacity and pursuant to his or her official duties turns, in large part, on the content of the speech. If the speech in question has absolutely no correlation or relationship to the business of the Board and/or its operations and, therefore, could not possibly be regarded as a statement or position on behalf of the Board (as a body), a school official will not violate the Act. Conversely, if the speech in question does relate to the business of the Board and/or its operations, it is then reasonable for the reader to perceive the speech as being offered in an official capacity and pursuant to his or her official duties. Nonetheless, the filing party would still need to prove all elements of the cited provision of the Act ...

The Commission has also explained that in order for a social media post to be offered pursuant to official duties, there must be a sufficient nexus between the social media page and the role/membership on the Board. *Hodrinsky v. Faussette, Hasbrouck Heights Board of Education, Bergen County*, Docket No. C11-21 (August 30, 2021); *Donnerstag, et al. v. Borawski, Central Regional Board of Education, Ocean County*, Docket No. C20-22 (August 22, 2023); *Donnerstag, et al. v. Koenig, Central Regional Board of Education, Ocean County*, Docket No. C19-22 (August 22, 2023). Moreover, the use of a disclaimer on social media can “help to clarify whether an individual is speaking in his or her official capacity and pursuant to his or her official duties; however, “the presence of a disclaimer is not dispositive.” *Aziz*, Docket No. C56-22 (October 17, 2022).

In this matter, the Commission finds that, while the subject matter of some of the X posts that Respondent liked – “summers off. Still whines about OT,” “[t]he only way to fix education in the US is school choice,” and “I’m calling all teachers Groomers until they stop this” with an article with the headline “New Jersey to require 2nd graders learn about gender identity in fall, alarming parents” – may relate to the business of the Board, there is an insufficient nexus between Respondent’s personal X page and his membership on the Board, such that a reasonable member of the public would not perceive that Respondent is speaking pursuant to his official duties. *See Hodrinsky*, Docket No. C11-21 (dismissing a Complaint when there lacked a nexus between the respondent’s Facebook account and his role/membership on the Board as there was no indication that he referenced, or otherwise relies upon, his position on the Board on his social media account). The posts at issue in the present matter do not mention Respondent’s membership on the Board nor does he advertise or rely upon his Board membership when publishing (or “liking”) material on his social media page. In short, there is no factual evidence that the statements/likes on his X account were made in his capacity as a member of the Board, or had the appearance of being representative of, or attributable to the Board. The fact that some people may be aware that Respondent is a Board member, as they know who he is, does not result in his private posts/likes becoming in his official capacity. As Respondent’s social media likes were made from his personal social media account that did not reference his Board membership, the lack of a disclaimer does not render Respondent’s conduct as being offered in an official capacity and pursuant to his official duties.

Notwithstanding, the Commission cautions school officials throughout the State to be mindful of their usage and participation (and the attendant risks of potential violations of the School Ethics Act) in the ever-growing number of social media platforms.

Accordingly, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violations of *N.J.S.A.* 18A:12-24.1(e) in Counts 1-3.

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

In Count 2, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24.1(i) because Respondent's "anti-teacher and anti-public school social media content could suggest that he may not 'support school personnel in the proper performance of their duties.'" Respondent argues that "likes on a social media account are not statements and there are no quotes from [him] in the exhibits."

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(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 review, the Commission finds that even if the facts as asserted in 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(i). Complainant contends that by liking anti-teacher public statements on social media, without a disclaimer, Respondent is showing that he does not or would not support school personnel. However, Respondent is permitted to have his own views and taking different positions on issues concerning teachers does not equate to undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

While the Commission again cautions school officials throughout the State to be mindful of their usage and participation (and the attendant risks of potential violations of the School Ethics Act) in the ever-growing number of social media platforms, the Commission finds that in the present matter, as pled, Complainant has not provided factual evidence that Respondent's "likes" on social media posts constitute a deliberate action that resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties in violation of *N.J.S.A.* 18A:12-24.1(i).

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) in Count 2.

IV. Request for Sanctions

At its meeting on December 17, 2024, 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 meeting on January 28, 2025, the Commission adopted a decision finding the Complaint not frivolous and denying the request for sanctions.

V. 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 Commission further advises the parties that, following its review, it voted to find that the Complaint is not frivolous, and to deny Respondent's request for sanctions.

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 28, 2025

***Resolution Adopting Decision
in Connection with C30-24***

Whereas, at its meetings on December 17, 2024, and January 28, 2025, the School Ethics Commission (Commission) considered the Complaint, the Written Statement and allegation of frivolous filing, and the response to the allegation of frivolous filing submitted in connection with the above-referenced matter; and

Whereas, at its meetings on December 17, 2024, and January 28, 2025, the Commission discussed finding that the facts and circumstances presented in the Complaint and the 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 meetings on December 17, 2024, and January 28, 2025, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on January 28, 2025, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meetings on December 17, 2024, and January 28, 2025; 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 28, 2025.

Brigid C. Martens, Director
School Ethics Commission