

Before the School Ethics Commission
Docket No.: C58-24
Decision on Probable Cause

Robert Weible,
Complainant

v.

Sam Frenda,
Somerset Hills Board of Education, Somerset County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on August 2, 2024,¹ by Robert Weible (Complainant), alleging that Sam Frenda (Respondent), a member of the Somerset Hills 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(b) and *N.J.S.A.* 18A:12-24(c), as well as *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members (Code). Respondent filed a Written Statement on September 25, 2024.

The parties were notified by correspondence dated April 15, 2025, that the above-captioned matter would be discussed by the Commission at its meeting on April 22, 2025, in order to make a determination regarding probable cause. Following its discussion on April 22, 2025, the Commission adopted a decision at its meeting on May 20, 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.

II. Summary of the Pleadings

A. The Complaint

By way of background, Complainant provides that the November 2023 Board election “was closely contested,” with Respondent, the incumbent Board President, in a close race with a “newcomer,” Holly Clark-Emerly. According to Complainant, “during the campaign, an independent third-party group released an ad featuring unedited public remarks from a community member at the October 18, 2023, [Board] meeting.” In addition, the speaker in the

¹ On July 23, 2024, Complainant filed a deficient Complaint; however, on August 2, 2024, 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.

ad, “warned her district neighbors with differing political or religious views that they are no longer welcome in [Somerset Hills School District] [(SHSD)] schools” and the speaker also “highlighted [Respondent’s] failure to rebuke the divisive comments as contrary to the district’s commitment to inclusivity.”

Complainant maintains that Respondent and her husband “wrongly attributed the ad to Emery’s campaign.” Consequently, Emery received “several menacing text messages a week before” the election, from Respondent’s spouse, as well as from Respondent’s supporters. Ultimately, Emery became concerned for her safety and the safety of her family because of Respondent’s spouse’s texts and communications and filed a police report. Thereafter, another Board member, Board member Gils, requested a meeting with the Superintendent and Board counsel to discuss the text messages, among other things. At the meeting, the Superintendent informed Board member Gils that Respondent “already notified” him about the text messages and the Superintendent believed the matter was not “Board business,” and as such he was not “obligated to inform” the other Board members and Respondent was also not informing the remaining Board members. As a result, Board member Gils disclosed the meeting with the remainder of the Board. Complainant provides that Board member Gils addressed the public at the January 24, 2024, Board meeting (Board counsel told Board member Gils to make her comments as a member of the public), and because public comment has a time limit, and because Respondent constantly interrupted, a member of the public had to finish Board member Gils’s statement. Complainant further provides that at the next Board meeting on February 21, 2024, Board member Gils “attempted to deliver her remarks uninterrupted during the ‘Supplemental’ portion of the meeting”; however, “in clear violation of Roberts’ Rules []” the meeting was adjourned. Complainant also asserts that at the Board meeting on March 13, 2024, Board member Gils addressed the “improper adjournment” by Respondent and Respondent did not respond to her request.

With the above in mind, in Count 1, Complainant maintains Respondent’s actions on January 24, 2024; February 21, 2024, and March 13, 2024, “including sending racially charged, threatening text messages and publicly manipulating coerced apologies on social media, have damaged the school district’s reputation.” Complainant further maintains Respondent’s “campaign of intimidation against Emery, particularly through racially charged communications, significantly undermined the ethical foundation of” the Board. Complainant asserts a “reasonable person would be able to conclude from [Respondent’s] action on her [Board] social media page that [Respondent] was acting in her capacity as a [Board member] to benefit her reelection campaign and to protect the intimidating and harassing text messages from her husband to [Emery]” in violation of *N.J.S.A. 18A:12-24.1(e)*.

The post on Respondent’s social media page, which had the profile name of Samantha Frenda for SHSD Board of Education, read “Ms. Holly Clark-Emery who is also running for a seat on the SHSD BOE does not have any social media accounts by which she can publicly communicate. Her name and campaign information has been used in an attack ad against me and she would like to make clear that she did not authorize or endorse this campaign. Please see her message below.” The post then included a photo of a hand-written message:

To the Bernardsville Community,

This is Holly Emery and I am writing to the facebook [sic] Community via Sam. I am writing because of the facebook post that went out from Empower Parent Ed. that had my name attached to it! I had nothing to do with it!

The fact that they used my name in any capacity without my consent, without my permission is absolutely deplorable! I have zero association with this organization.

I wrote a request to this Parents Empower Ed website to remove my name and to take the post down. I also tried calling the number attached. There was no response and not [sic] action taken on their behalf.

We are running for Board of Ed for the sake of our children! When things like this is put [illegible]...This is not a popularity contest. 2nd not a venue in which to damage or hurt others in the process.

Thank you for the time and thank you for understanding.

God Bless you and your families!

Holly Emery

In Count 2, Complainant contends that Respondent's actions on January 24, February 21 and March 13, 2024, helped her coerce "an apology from Emery that she posted on her [Board] social media [account]" on November 4, 2024. Complainant further contends that by "engaging in a campaign of intimidation against a political opponent, [Respondent's] actions were motivated by a personal interest in securing her reelection" and her "personal involvement directly conflicts with her duty to maintain impartiality and objectivity in her role as a [B]oard member." Complainant alleges that Respondent's actions ultimately violate *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24(c)*.

In addition, Complainant also alleges Respondent "wrongfully stopped a meeting on February 21, 2024" in violation of Robert's Rules and Board by-laws.

B. Written Statement

Respondent initially notes Complainant was also running for a Board seat in the same election, but did not win. Respondent maintains her spouse sent four text messages, "on his own," and the texts were "ill advised, and not authorized by Respondent." Respondent further maintains her spouse is not a Board member, and therefore, "not subject to the School Ethics Laws." Respondent provides that she "assisted Emery with a post Emery had written independently denouncing the unauthorized video" and as far as Respondent was concerned, "there was no ill will towards Emery." Respondent further asserts that the "speculation that pervades the complaint seeks to make innocent matters appear devious. None of the speculations

are true.” To clarify Complainant’s account of Board member Gils, Respondent notes that Board counsel advised the board member that “an election conduct issue is not a matter for the BOE,” and she was “repeatedly advised that the issue of texts was not board business, but was clearly a private matter.” Respondent notes that Emery “clearly understood this as she reported the matter to the police . . . not the [Board].” As to Board member Gils’s public comment, Respondent avers that the Board member had her opportunity to speak in public and at the time, the “texts were known, Respondent’s reactions or non-reactions to the texts were known, and [Board member Gils’s] view on the propriety of Respondent’s conduct was fully aired in public and in the presence of the complainant.” Respondent denies that she had a conflict, and notes the allegations are unsupported and the meetings took place as usual.

Respondent further argues that the Complaint is “replete with false statements and do not warrant rebutting line by line.” Respondent further argues, “a reasonable person would understand that [Respondent’s] campaign actions and posts are her own personal acts and not that of the BOE.”

Respondent asserts these “allegations are simply not supported by the facts of the matter.” Respondent further asserts, “that there was no apology and the posted statement was written exclusively by Emery and the posting of the statement was jointly coordinated with Ms. Emery rather than coerced.”

As to the February Board meeting, Respondent contends that “a Board member made a motion to adjourn while no public business was pending.” To the extent Robert’s Rules were violated, Respondent notes it is beyond the Commission’s jurisdiction. Respondent maintains she did not “garner any unwarranted privilege” and the “wordiness of the Complaint does not, in itself, give substance to the allegations.”

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.”

Jurisdiction of the Commission

In reviewing the allegations in this matter, the Commission notes that its authority is limited to enforcing the Act, *N.J.S.A.* 18A:12-21 *et seq.*, a set of minimum ethical standards by which all school officials must abide. In this regard, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C.* 6A:28-1.4(a).

With the jurisdiction of the Commission in mind, to the extent that Complainant seeks a determination from the Commission that Respondent, or her spouse, may have violated any criminal laws when sending “racially charged” text messages, the determination falls beyond the scope, authority, and jurisdiction of the Commission. Likewise, a determination from the Commission that Board policies and/or Robert’s Rules have been violated falls beyond the scope, authority, and jurisdiction of the Commission. Although Complainant may be able to pursue a cause of action(s) in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those claims. Accordingly, those claims are dismissed.

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(b) and *N.J.S.A.* 18A:12-24(c), and these provisions of the Act state:

b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

Complainant further submits that Respondent violated *N.J.S.A.* 18A:12-24.1(e), and this provision of the Code provides:

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.

Count 1

In Count 1, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(e) when she coerced and then posted a public apology of her opponent on her social media. Respondent argues that she “assisted Emery with a post Emery had written independently denouncing the unauthorized video” and further asserts that “a reasonable person would understand that [Respondent’s] campaign actions and posts are her own personal acts and not that of the BOE.”

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 her 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 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). 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 there is an insufficient nexus between the social media page and the role/membership on the Board as the social media page indicates it is the Respondent's official campaign page. The page does not indicate that Respondent is a current Board member and does not reference her Board position. In addition, the Commission finds that the content of the post could not be construed by any reasonable person as being official board business. Respondent only shared a letter written by another candidate for office, who was not a Board member, on her page with the other candidate's permission. More importantly, the post, which is about the Board election, does not reference any action that was before the Board or could constitute Board business.

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(e)* in Count 1.

Count 2

In Count 2, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24(c)* when her actions on January 24, February 21 and March 13, 2024, helped her coerce “an apology from Emery that she posted on her [Board] social media [account]” on November 4, 2024. Respondent maintains she did not “garner any unwarranted privileges” from her actions and the social media post was not coerced.

In order to credit a violation of *N.J.S.A. 18A:12-24(b)*, Complainant must provide sufficient factual evidence that Respondent used or attempted to use her official position to secure an unwarranted privilege, advantage or employment for herself, members of her immediate family, or “others.” In order to credit a violation of *N.J.S.A. 18A:12-24(c)*, Complainant must provide sufficient factual evidence that Respondent acted in her official capacity in a matter where she, or a member of her immediate family, had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity, or in a matter where she had a personal involvement that created some benefit to her, or to a member of her immediate family.

Following its assessment, 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(b)* was violated. Respondent’s action when she posted on behalf of another candidate on social media was an attempt to handle a matter concerning the school board election. As the Commission finds that a reasonable person could not perceive the post as being made by Respondent in her official capacity as a Board member, her social media activity cannot constitute use or attempted use of her official position to secure an unwarranted privilege, advantage or employment for herself, members of her immediate family, or “others” in violation of *N.J.S.A. 18A:12-24(b)*. Likewise, as the post was not made by Respondent in her official capacity, the Complaint does not articulate any official actions that Respondent took as a Board member in this matter as required by *N.J.S.A. 18A:12-24(c)*. Therefore, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violation(s) of *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24(c)* in Count 2.

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 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: May 20, 2025

***Resolution Adopting Decision
in Connection with C58-24***

Whereas, at its meeting on April 22, 2025, the School Ethics Commission (Commission) considered the Complaint, and the Written Statement submitted in connection with the above-referenced matter; and

Whereas, at its meeting on April 22, 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 meeting on May 20, 2025, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on April 22, 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 May 20, 2025.

Dana C. Jones
School Ethics Commission