

***Before the School Ethics Commission
Docket No.: C63-24
Decision on Probable Cause***

**Melissa McCooley and Gina Frasca,
*Complainants***

v.

**Stephanie Johnson,
Pinelands Regional Board of Education, Ocean County,
*Respondent***

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on August 7, 2024, by Melissa McCooley and Gina Frasca (Complainants), alleging that Stephanie Johnson (Respondent), a member of the Pinelands Regional 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(d), *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). Respondent filed a Written Statement on August 14, 2024, and also alleged that the Complaint is frivolous. Complainants filed a response to the allegation of frivolous filing on September 19, 2024.

The parties were notified by correspondence dated March 18, 2025, that the above-captioned matter would be discussed by the Commission at its meeting on March 25, 2025, in order to make a determination regarding probable cause and the allegation of frivolous filing. Following its discussion on March 25, 2025, the Commission adopted a decision at its meeting on April 22, 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*

According to Complainants, on August 5, 2024, Respondent posted on social media about a 2022 School Ethics Commission complaint that was “finally” having a hearing at the Office of Administrative Law (OAL). The social media post read:

Finally had an ethics hearing regarding this matter from 2022. The Super [sic] and Assist. Super [sic] showed up to support Ms. Hanadel. Kim, Missy, and Gina apparently made up lies to the attorney representing Kim as evidence by this petty letter they sent to the Judge. I never knew menopausal women could be so ridiculous.

Complainants assert that in the post, Respondent mentioned that Complainants were present at the OAL hearing in support of one of the parties in that matter. Complainants further assert that when Respondent saw them at the OAL matter, she took a picture of their signatures on the sign-in sheet, “asked them who was running the school district if they were both here, and threatened to obtain attendance records.”

Thereafter, Complainants contend that Respondent sent an email to the Board President and the District Business Administrator (BA), advising them that Complainants were in attendance at the hearing and because neither Complainant was subpoenaed, their absences should not be excused. The text of the e-mail read:

I just wanted to confirm that Melissa [McCooley] put in the correct time off today to attend an OAL hearing in AC. With us knowing how she has attempted to misuse her time off at LEH for financial gain, one can only hope she has been truthful today and entered her time out of the office correctly. It should not be excused as again she was not subpoenaed and was only there to ‘support’ voted out member Kim Hanadel. If time was not entered and used I would hate for tax-payer money to have been wasted.

Same for Gina.

Not sure in this case, where both CSA and Assist. Superintendent were out together who was responsible for running the school? I can only assume it was you [BA]?

Complainants note that Respondent is a “conflicted member of the Pinelands” Board due to her termination and subsequent lawsuit.

With the above in mind, Complainants assert Respondent violated *N.J.S.A.* 18A:12-24.1(g) because she posted about a confidential Board matter on social media. Complainants also assert Respondent violated *N.J.S.A.* 18A:12-24.1(i) because her comments in the post attributed to Complainants’ attendance at the hearing was related to “menopause” which “disrespects the dignity of school personal” and “fails to support and protect them in the proper performance of their duties.” Finally, Complainants contend Respondent violated *N.J.S.A.* 18A:12-24.1(d) because she questioned the attendance records of the Superintendent in an email to the BA and the Board President, and this “action oversteps the boundaries of her responsibilities as a [B]oard member” and these actions “can undermine the authority and credibility of the [Superintendent]” and can “disrupt the established protocols and lines of communication with the” District’s administration.

B. *Written Statement and Allegation of Frivolous Filing*

Respondent notes that she is allowed to have an opinion, she is not obligated to keep “filings confidential,” and the email that she sent was from her personal email account and not her Board email. She notes that her social media account does not mention nor is it related to her Board position and none of her posts reference her Board seat or her campaign.

Respondent argues that as per an advisory opinion, she is not permitted to evaluate Complainant McCooley and as such, she is “not obligated to ‘protect’ her as an employee” and “the Commission has voided [her] obligation under the Act section (i).” Respondent further argues that Complainant Frasca is not an employee of the Board, as the Board does not evaluate her because she is under the Superintendent’s supervision, and therefore, she is not “obligated to censor her opinions” as they relate to Complainant Frasca. Respondent denies taking a picture of the “sign-in” sheet at the OAL and notes that she was “merely questioning” that if the two administrators in charge of the District were not in the District, “*who is responsible for overseeing the district when the Superintendent and Assistant Superintendent are not present?*” Respondent notes and the ALJ concurred, that neither of the administrators were called to testify as witnesses, and therefore, Respondent contends that there “was no logical reason other than harassment to show up to support an ex-Board [m]ember.” According to Respondent, their presence at the hearing perpetuated “this hostile relationship.” Respondent notes that when the Superintendent is not going to be in the District, she is required to “inform the Board President of who is in charge of the district in her absence.” Respondent further notes Complainant Frasca was also out of the District, and Complainant McCooley did not provide the required notification, and as such, she violated her employment contract. Respondent argues “this is in no way running the District, overseeing it’s [sic] day to day but rather protecting our District and providing checks and balances.”

Finally, Respondent asserts the Complaint is frivolous, because Complainant McCooley is “intimidated and scared” that Respondent will “expose” her unethical behavior. Respondent further asserts this Complaint “is clearly another excuse for [Complainant] McCooley to harass, intimidate and try to embarrass” Respondent.

C. *Response to Allegation of Frivolous Filing*

Complainants reaffirm their allegations and assert that the “facts clearly indicate that [Respondent’s] actions on August 5, 2024, were inappropriate and warrant the ethical complaint filed against her.” Complainants further assert the Complaint is not frivolous, but rather a “necessary measure to address [Respondent’s] conduct, which has the potential to undermine the integrity of the [] administration and governance.”

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

Complainants submit that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i), and these provisions of the Code provide:

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.

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.

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

Complainants assert that Respondent violated *N.J.S.A.* 18A:12-24.1(d) when she questioned the attendance records of the Superintendent in an email to the BA and the Board President as these actions “can undermine the authority and credibility of the [Superintendent]” and can “disrupt the established protocols and lines of communication with the” District’s administration. Respondent argues that she “merely was questioning” “*who is responsible for overseeing the district when the Superintendent and Assistant Superintendent are not present.*” Respondent asserts that “this is in no way running the District, overseeing it’s [sic] day to day but rather protecting [the] District and providing checks and balances.”

Pursuant to *N.J.A.C.* 6A:28-6.4(a), in order to credit a violation of *N.J.S.A.* 18A:12-24.1(d), Complainants 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.

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:12-24.1(d) was violated. In this matter, the Commission finds that Respondent did not give a direct order to school personnel or become directly involved in activities or functions that are the responsibility of school personnel when she asked the BA and Board President if the Superintendent took personal time for the OAL hearing. As the Board oversees the Superintendent, Respondent is allowed to inquire about the attendance records of a

Superintendent. 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(g)

Complainants assert that Respondent violated *N.J.S.A. 18A:12-24.1(g)* when she posted about a confidential Board matter on social media. Respondent argues that she is not obligated to keep “filings confidential.”

In accordance with *N.J.A.C. 6A:28-6.4(a)*, in order to credit a violation of *N.J.S.A. 18A:12-24.1(g)*, Complainants 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.

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(g)* was violated. Pursuant to *N.J.A.C. 6A:28-6.6(g)*, the Commission shall hold all information confidential regarding any pending matter until the Commission finds that a school official has violated the Act, or until the matter is settled, withdrawn, or dismissed. However, the above provision does not apply to the parties of the matter. Complainants failed to include any evidence that Respondent disclosed confidential 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. 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(g)*.

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

Complainants assert Respondent violated *N.J.S.A. 18A:12-24.1(i)* when she made inappropriate remarks on social media about the women in the administration by attributing their actions to menopause which “fails to support and protect them in the proper performance of their duties.” Respondent argues that she is allowed to have an opinion and that her social media account does not mention nor is it related to her Board position with none of her posts referencing her Board seat.

Pursuant to *N.J.A.C. 6A:28-6.4(a)*, in order to credit a violation of *N.J.S.A. 18A:12-24.1(i)*, Complainant 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)*. 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. *Hodrinksky 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 there is an insufficient nexus between Respondent's personal social media page and her membership on the Board, such that a reasonable member of the public would not perceive that Respondent is speaking pursuant to her official duties. See *Hodrinksky*, 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 post at issue in the present matter does not mention Respondent's membership on the Board nor does she advertise or rely upon her Board membership when publishing material on her social media page. In short, there is no factual evidence that the

statements on her social media account were made in her 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 she is, does not result in her private posts becoming acts in her official capacity. As Respondent's social media post was made from her personal social media account that did not reference her Board membership, the post does not render Respondent's conduct as being offered in an official capacity and pursuant to her 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(i)*.

IV. Request for Sanctions

At its meeting on March 25, 2025, 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 Complainants 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 Complainants 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 April 22, 2025, the Commission adopted a decision finding the Complaint not frivolous, and denying the request for sanctions.

Despite the Commission finding the Complaint not frivolous, the Commission would be remiss if it did not address the hostile, negative environment that both parties have created. As school officials, you are tasked with being role models for children, and such behavior deviates from the mission of the board of education and ultimately has the greatest detrimental impact on the very people you are charged with serving – the students. The behavior that both parties have demonstrated, has no place in the educational setting, and overshadows your responsibilities as school officials to protect the public trust and to honor your obligations to serve the interests of the public and the Board. Accordingly, the Commission reiterates that the purpose of the Act is not to “allow the Commission to become involved in every dispute between a [board member] and [District personnel].” *Spicer v. Della Vecchia et al., Pleasantville Charter School for Academic Excellence, Atlantic County*, C31-04, (February 22, 2005). As such, the parties are reminded that the Commission should not be used as a weapon and instead, ethics complaints should only be filed when the parties believe an actual violation of the Act has occurred, and not because of their mutual dislike of each other.

V. Decision

In accordance with *N.J.S.A.* 18A:12-29(b), and for the reasons detailed herein, the Commission hereby notifies Complainants 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: April 22, 2025

***Resolution Adopting Decision
in Connection with C63-24***

Whereas, at its meeting on March 25, 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 meeting on March 25, 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 March 25, 2025, the Commission discussed finding the Complaint is not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on April 22, 2025, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on March 25, 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 April 22, 2025.

Dana C. Jones
School Ethics Commission