

***Before the School Ethics Commission***  
***Docket No.: C59-21***  
***Decision on Motion to Dismiss***

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**Jodi Goffredo,**  
***Complainant***

v.

**Robert Fortunato,**  
**Ramapo Indian Hills Regional High School District Board of Education, Bergen County,**  
***Respondent***

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**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed on October 23, 2021, by Jodi Goffredo (Complainant), alleging that Robert Fortunato (Respondent), a member of the Ramapo Indian Hills Regional High School District Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated October 27, 2021, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On January 23, 2022, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3. The Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(b) of the Code of Ethics for School Board Members (Code).

On January 24, 2022, the Complaint was served on Respondent via electronic mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading.<sup>1</sup> On February 15, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On March 3, 2022, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated March 14, 2022, that this matter would be discussed by the Commission at its meeting on March 22, 2022, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Following its discussion on March 22, 2022, the Commission adopted a decision at its meeting on April 26, 2022, granting the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(b).

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<sup>1</sup> As a result of the ongoing Coronavirus (COVID-19) pandemic, and the implementation of electronic filing, service of process was effectuated by the Commission through electronic transmission only.

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*

Complainant states that at a Board meeting on September 27, 2021, Respondent, “[c]ompletely unprovoked,” “turned to the [p]ublic and to the other Board ... members calling those” present “‘extreme right[-]wing agenda’ individuals.” By “labeling individuals of the school board, or parents attending the meetings as belonging to a class of individuals as ‘right wing’ extremists,” Respondent insinuates that these individuals “would cause harm.” Furthermore, his comment “places judgment on parents who are there just to show their concern, [and] to have their voices heard.” In addition, Respondent’s comment “attempts to discredit the voices of the parents who want to peacefully speak their concerns by attending meetings.” For these reasons, Complainant alleges Respondent violated *N.J.S.A.* 18A:12-24.1(b).

### B. *Motion to Dismiss and Allegation of Frivolous Filing*

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and allegation of frivolous filing. By way of background, Respondent notes that at the September 27, 2021, Board meeting, which he attended virtually, Respondent made a motion “to restrict [B]oard member comments to five minutes unless the [B]oard members vote to extend said time. Said restriction is equally applicable to all [B]oard members.” The motion made by Respondent passed. Thereafter, a former Board member, “falsely alleged that the vote by the majority of the Board constituted bullying,” was “horrible” and “insane,” and “bullied the minority members of the Board.” In response, Respondent confirmed “that his position on most topics differs from that of certain Board members,” and then “expressed his opinion that said individuals, as well as some members of the audience, represent an extreme right-wing view, which [Respondent] added ‘**is fine**’ as long as you are respectful about it.”

Respondent contends that, even if the allegations are true, there is no evidence that he violated *N.J.S.A.* 18A:12-24.1(b). More specifically, Complainant did not provide any facts or evidence, or even allege, that Respondent “made any ‘**decision**’ contrary to the educational welfare of children or took any ‘**action**’ to obstruct the ‘**programs and policies designed to meet the individual needs of children.**’” In fact, the Complaint “does not even allege that Respondent took any ‘action’ or made any ‘**decision,**’ only that Respondent made a comment regarding his opinion.”

Furthermore, Respondent argues he did not “disrespect any individual due to their social standing,” but rather, “pointed out that his opinion differs from those who represent right-wing view, which is not a ‘social standing’”; he “did not indicate ‘these individuals would cause harm’”; and did not “place judgment on any parents, but generally stated that some of the audience members, who have refused to abide by State mandates, represent a view that is right-wing, which Respondent adds is **fine.**” Respondent further argues that “even if” his statements could be considered as “passing judgment,” they still would not be a “decision” or an “action.” Respondent claims he is entitled to express his opinion, and “his disagreement with the position

of other Board members and members of the public, especially if their position advocates against a legal State mandate.”

Finally, Respondent asserts the Complaint is frivolous because it is “clearly without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.” According to Respondent, “stating certain members of the [B]oard and audience represent a right-wing view cannot be ‘a **decision** contrary to the educational welfare of children,’ or an ‘**action** to obstruct the programs and policies designed to meet the individual needs of all children.’” Respondent further asserts “even if Complainant alleges that she was not aware of the statute to which she has cited in her Complaint, any continuation of this matter is clearly without any basis in law or equity and solely for the purpose of harassment, delay, or malicious injury.” Therefore, Respondent “respectfully request[s]” the Complaint be dismissed, and sanctions be imposed on Complainant.

### **C. *Response to Motion to Dismiss and Allegation of Frivolous Filing***

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant indicates she is “not sure why” Respondent (through counsel) provided the article from NorthJersey.com regarding “Audience Members defy mask rules” (January 27, 2022), and suggests it “must have been an error.”

Nonetheless Complainant reasserts that at a Board meeting on September 27, 2021, Respondent made a statement, which in part called members of the public “extreme right wing.” According to Complainant, the members of the public that Respondent was referring to were “parents of high schoolers, some impoverished parents, some belonging to different groups in society, some with disabilities, some with medical issues, all having different political views and all various ethnic groups.” According to Complainant, Respondent “just looked at a group of people and judged them for what he thought they were” and, as a Board member, Respondent “serves the Board as a non-partisan member and labeled members of the public in a partisan [manner].” Complainant asserts Respondent’s behavior “was so wrong and hurtful. It was name calling, it was bullying, it was humiliating.” Moreover, Complainant notes, as a result of Respondent’s actions, some parents have not attended Board meetings.

Finally, Complainant argues the Complaint is not frivolous. Per Complainant, “What [her] complaint seeks to do is to make sure that [Respondent] does not speak about members of the public like that again. [Respondent] should not be able to bully parents like that.” Complainant notes that Respondent “reflected on his own words and apologized for his words at a later [Board] meeting. His apology was a good start.”

## **III. Analysis**

### **A. *Standard for Motion to Dismiss***

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainant), and determine whether the allegation(s), if true, could establish a violation(s) of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response is reviewed by the Commission on a summary basis. *N.J.A.C. 6A:28-8.1 et seq.* Thus, the question before the Commission is whether

Complainant has pled sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(b).

**B. *Alleged Code Violations***

As set forth above, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(b), and this provision of the Code provides:

- b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

As set forth in *N.J.A.C.* 6A:28-6.4(a)(2), factual evidence of a violation of ***N.J.S.A.* 18A:12-24.1(b)** shall include evidence that Respondent willfully made a decision contrary to the educational welfare of children, or evidence that Respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

Following its review of the Complaint, the Commission finds that even if the facts as asserted are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(b). Although it is clear that Complainant, and possibly others, found Respondent's reference to other Board members and to members of the public as being "extreme right wing individuals" to be objectionable, inappropriate, and/or offensive, Respondent's public comment/statement from the dais cannot, under any set of circumstances, be construed as a "decision" or "deliberate action," let alone one that could possibly obstruct programs and/or policies. Absent facts and evidence demonstrating that Respondent made a specific "decision" or took "deliberate action" to obstruct programs and/or policies, a violation of *N.J.S.A.* 18A:12-24.1(b) cannot be substantiated. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(b) should be dismissed.

**IV. Request for Sanctions**

At its meeting on March 22, 2022, 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 April 26, 2022, the Commission voted to find the Complaint not frivolous, and to deny the request for sanctions.

**V. Decision**

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission voted to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that

Respondent violated *N.J.S.A.* 18A:12-24.1(b). The Commission also voted to find that the Complaint is not frivolous, and to deny Respondent's request for sanctions.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that, for the reasons set forth above, this matter is dismissed. This 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).*

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Robert W. Bender, Chairperson

Mailing Date: April 26, 2022

***Resolution Adopting Decision  
in Connection with C59-21***

***Whereas***, at its meeting on March 22, 2022, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and the response to the Motion to Dismiss and allegation of frivolous filing submitted in connection with the above-referenced matter; and

***Whereas***, at its meeting on March 22, 2022, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(b); and

***Whereas***, at its meeting on March 22, 2022, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

***Whereas***, at its meeting on April 26, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on March 22, 2022; 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.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on April 26, 2022.

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Kathryn A. Whalen, Esq.  
Director, School Ethics Commission