

Before the School Ethics Commission
Docket No.: C68-22
Decision on Motion to Dismiss

Lisa-ann Moyer and Venita Prudenti,
Complainants

v.

Harriet Gaddy,
Allamuchy Township Board of Education, Warren County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on June 21, 2022, by Lisa-ann Moyer and Venita Prudenti (Complainants), alleging that Harriet Gaddy (Respondent), a member of the Allamuchy Township 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) of the Code of Ethics for School Board Members (Code).

On June 23, 2022, the Complaint was served on Respondent via electronic mail, notifying her that ethics charges had been filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading.¹ On August 5, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainants filed a response to the Motion to Dismiss on August 6, 2022.

The parties were notified by correspondence dated September 6, 2022, that the above-captioned matter would be discussed by the Commission at a special meeting on September 14, 2022, in order to make a determination regarding the Motion to Dismiss. Following its discussion on September 14, 2022, the Commission adopted a decision at a special meeting on October 17, 2022, granting the Motion to Dismiss in its entirety because Complainants failed to plead sufficient credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e).

¹ In order to conduct business during the Coronavirus (COVID-19) pandemic, the Commission implemented an electronic filing system, which remains a permissible method by which the Commission and parties can effectuate service of process. Consequently, service of process was effectuated by the Commission through electronic transmission only.

II. Summary of the Pleadings

A. *The Complaint*

Complainants assert that during executive session on May 23, 2022, a “heated” discussion ensued among Board members related to a disagreement about matters and at some point, during the discussion, Respondent turned to Complainant Moyer and stated, “Do you want to get punched tonight?” According to Complainants, Complainant Moyer asked Respondent if she was threatening her, and Respondent repeated, “Do you want to get punched tonight?” Complainants contend that the remaining Board members said nothing about the potential threat, except for Complainant Prudenti, who accompanied Complainant Moyer to the State Police to file a report. Complainants maintain that Board President Strutin was “asked to provide a response to the board as advised by [the New Jersey School Boards Association (NJSBA)] and she refused.” Citing [*I/M/O John Talty and Sharon Kight, Brick Township BOE, Ocean County, Docket Nos. C18-05 and C19-05 \(Kight\)*](#), Complainants note Respondent violated *N.J.S.A.* 18A:12-24.1(e) because Respondent threatened bodily harm and because board members have no choice whether to attend meetings, and if they do not “feel comfortable speaking or voicing concerns on issues for fear of intimidation and threats of bodily harm” it could have a “chilling effect on all members which in turn compromises the board because it undermines the integrity of the board and intimidates us from coming and doing work.”

B. *Motion to Dismiss*

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and argues, although her statements in executive session were “likely unkind and impolite, [they] are protected free speech.” Respondent maintains she was expressing her “frustration with [Complainant] Moyer’s actions and attitude towards Board [m]embers and the Superintendent during the Executive Session.” Respondent further argues Complainants have not provided any evidence to support that Respondent’s statements, “assuming” she made them, were a “personal promise” or had the “potential to compromise” the Board.

Respondent asserts this matter differs from Complainants’ cited case, because unlike in *Kight*, Respondent “allegedly made a passing comment which did not occur in public, nor is it alleged to have included profanities or even a raised voice.” Respondent further asserts Complainants admit that none of the other Board members reacted to the statement “with any alarm or needed to separate the individuals from further interaction.” Furthermore, Complainants did not allege that Respondent “was in any physical proximity” or “made any aggressive moves” toward Complainant Moyer. Respondent contends her “alleged statement was regrettable, not actionable.”

C. *Response to Motion to Dismiss*

In response to the Motion to Dismiss, Complainants argue that Respondent’s claims that her statements “do not constitute a threat solely because they took place in executive session and not in public”; are “unkind and impolite”; were justified because she “was frustrated”; and are “protected speech” and, therefore, do not have the potential to compromise the Board are

“ludicrous.” Complainants argue that an individual may not “threaten another person because of First Amendment rights, nor are physical threats ever taken so lightly as to be considered ‘unkind or impolite.’” As to Respondent’s use of “allegedly,” Complainants maintain there “were seven other witnesses present . . . it’s preposterous to pretend her threat may not have been uttered or meant something other than what was exactly said.”

Finally, Complainants note that Respondent’s reference to the date of filing as June 21, 2022 is incorrect. In this regard, Complainants clarify that a police report was filed on May 24, 2022, the day after the Board meeting and after “seeking direction from the NJSBA,” but that their ethics complaint was filed on June 21, 2022.

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

B. Alleged Violation of the Act

Complainants submit that, based on the conduct more fully detailed above, 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.

Pursuant to *N.J.A.C. 6A:28-6.4(a)(5)*, a violation of *N.J.S.A. 18A:12-24.1(e)* needs to be supported by certain factual evidence, more specifically, “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 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(e)*. The actions at issue in the above-captioned matter are markedly different from those in *Kight*. Although the Commission certainly does not condone the comment made by Respondent in executive session, and agrees it was entirely inappropriate, Respondent did not approach Complainant Moyer in an aggressive manner; did not scream at Complainant Moyer; did not have physical contact with Complainant Moyer such that restraint by another member of the Board was necessary; and did not utter her comment in public session

and/or to a member of the public. Instead, and during executive session (during which only members of the Board and Board counsel were present), Respondent made a comment to another member of the Board (Complainant Moyer) when discussing the Superintendent's evaluation. Of note, and based on the facts as pled, the other members of the Board (other than Complainant Prudenti) did not appear phased, to any extent, by what Respondent uttered. As such, Respondent's comment is best resolved as an internal governance issue and adjudicated (as deemed appropriate by law enforcement) as a criminal matter; however, based on the facts and circumstances here, it not as an ethics violation. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) should be dismissed.

IV. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainants), the Commission voted to ***grant*** the Motion to Dismiss in its entirety because Complainants failed to plead sufficient credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e).

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainants 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).*

Robert W. Bender, Chairperson

Mailing Date: October 17, 2022

***Resolution Adopting Decision
in Connection with C68-22***

Whereas, at a special meeting on September 14, 2022, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the response to the Motion to Dismiss submitted in connection with the above-referenced matter; and

Whereas, at a special meeting on September 14, 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(e)*; and

Whereas, at a special meeting on October 17, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on September 14, 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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at a special meeting on October 17, 2022.

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