

Before the School Ethics Commission
Docket No.: C64-20
Decision on Motion to Dismiss

Heather Barone,
Complainant

v.

Anna Polozzo,
Toms River Regional Board of Education, Ocean County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on October 27, 2020, by Heather Barone (Complainant), alleging that Anna Polozzo (Respondent), a member and President of the Toms River Regional Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* More specifically, the Complaint alleges that Respondent violated *N.J.S.A. 18A:12-24(d)*, as well as *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(f)* of the Code of Ethics for School Board Members (Code).

On October 28, 2020, the Complaint was served on Respondent, via electronic mail, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading.¹ On November 19, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On November 20, 2020, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.²

The parties were notified by correspondence dated December 14, 2020, that this matter would be placed on the Commission's agenda for its meeting on December 22, 2020, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on December 22, 2020, the Commission considered the filings in this matter and, at its meeting on January 26, 2021, 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(d)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*,

¹ Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

² On December 7, 2020, Respondent filed a brief reply to Complainant's response to the Motion to Dismiss and allegation of frivolous filing. As this reply is not permitted by the Commission's regulations, it was not considered by the Commission at its meetings on December 22, 2020, and/or January 26, 2021, in ruling on the Motion to Dismiss and allegation of frivolous filing.

and/or *N.J.S.A.* 18A:12-24.1(f) as contended in the Complaint. The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

Complainant states that, on or around October 9, 2020, the Board distributed an online survey to stakeholders requesting their input to assist in the search for a new Superintendent. At the conclusion of the survey, stakeholders were asked if they wanted to participate in "live phone sessions." Interested individuals were able to choose a date/time when Respondent (the Board President) and the search committee would call them. According to Complainant, "it was understood that ONLY stakeholders of the Toms River [Regional] School District [(District)] would speak and that [Respondent] and her committee would research each caller on the list ... to ensure that they are in fact a stakeholder in the [District]."

Up until the final day of the live sessions, it was "[B]oard policy that every speaker, whether in person, through email, or virtual on the phone was to state their name, spell their last name, and provide their address." However, on the final day (October 23, 2020), the very first person Respondent called was Robert Onofrietti, Sr. (Onofrietti, Sr.). Although he was asked to state and spell his name, and to give his address, Onofrietti, Sr. did not state his address (because he does not live in the District), and Respondent "never asked him again to provide his address." Onofrietti, Sr. then "began speaking, without interruption, and utilized this time as a political campaign against his son, Rob Onofrietti, Jr.," who was an opponent of another member of the Board (M. Williams) in the upcoming Board election, and who was also present at the live session. Complainant states that Onofrietti Sr. and his son "do not speak and have had no relationship for many years."

According to Complainant, "At no time during this call was ... Onofrietti Sr. stopped and asked by [Respondent] to get back on track as to answer only the questions she asked pertaining to the [D]istrict and the Superintendent search." Instead, Onofrietti Sr. "was given free rein to continue to degrade his son and his son's aspirations to be on the Board" and, as a result, Board "time and resources were used as a way to exploit contentious family disputes in order to paint ... Onofrietti Jr. in a negative light during the final 10 days of the campaign." Complainant argues that, as she has done previously, Respondent "had [an] obligation as Board President to stop the caller from continuing with his political and degrading rant." Instead, when Onofrietti Sr. was done speaking, Respondent thanked him and went to the next caller. In addition, "almost immediately following this call, the audio was edited to show just this call and was broadcasted on a friend of [Respondent's] [F]acebook page," and has since been disseminated throughout social media to discredit Onofrietti Jr. Complainant maintains that the audio "has caused great pain" for Onofrietti Jr. and his children. Complainant also notes that Respondent "continues to utilize her political social media page to endorse" Ms. Williams.

Complainant argues that Respondent "had ample opportunity to shut down [Onofrietti Sr.'s] call," especially "once it became clear that the caller was not giving input as a stakeholder nor was giving input about the [D]istrict or Superintendent." Instead, Respondent "allowed her personal political agenda to use [D]istrict resources as a campaign event for the three people she

supports in the upcoming [Board] election.” According to Complainant, Respondent “should be held accountable for her actions as to ... prevent any current or future [B]oard member from using their position to further their own political agendas.” Based on these facts, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24(d)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(f)*, and should be “held accountable for her actions.”

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. Respondent first argues that the Complaint should be dismissed because it is “procedurally defective,” in that the Complaint does not contain “individually numbered paragraphs,” and did not “identify what facts support each of the four violations alleged.” Respondent maintains, “These procedural defects prejudice [] Respondent’s ability to respond and answer the Complaint” Nonetheless, Respondent maintains that the Complaint is “fatally flawed” and “fails to include sufficient facts to establish” a violation of the Code or a prohibited act.

Next, Respondent argues that Complainant “incorrectly alleges that [] Respondent [] violated *N.J.S.A. 18A:12-24(d)*.” According to Respondent, in order to credit a violation of *N.J.S.A. 18A:12-24(d)*, Complainant would need to provide evidence that Respondent “engaged in another venture and that venture must present a conflict of interest with [her] position as a [B]oard member.” However, the Complaint fails to allege that Respondent was engaged in another venture. Instead, “[t]he closest [] Complainant even comes to suggesting that Respondent [] is engaged in another venture is the allegation that [] Respondent has used the phrase ‘Children First’ in the past.” Respondent maintains that this slogan is not “another employment or service venture,” and Complainant fails to identify what conflict of interest is presented by the slogan. Respondent maintains that there are “no facts before the Commission that are sufficient to support a finding that Respondent” violated *N.J.S.A. 18A:12-24(d)* and, therefore, this allegation should be dismissed.

Regarding the alleged violations of *N.J.S.A. 18A:12-24.1(c)* and *N.J.S.A. 18A:12-24.1(e)*, “the same set of facts cannot establish a violation” of each subsection of the Code because subsection (c) requires “board action,” whereas (e) requires “private action.” Therefore, “a violation of (c) and (e) cannot both occur based upon the same set of facts as a Respondent cannot be engaging in ‘board action’ and ‘private action’ simultaneously.”

In more specific response to the alleged violation of *N.J.S.A. 18A:12-24.1(c)*, Respondent contends that while it “is undisputed” that she was acting in her role as Board President during the meeting on October 23, 2020, Complainant has failed to provide a sufficient factual basis to support a finding that Respondent “failed to confine her actions to ‘policy, (sic) making, planning and appraisal’ or was otherwise acting within her role as a member of the Board.” Therefore, Respondent asserts that the alleged violation of *N.J.S.A. 18A:12-24.1(c)* should be dismissed.

Regarding the alleged violation of *N.J.S.A. 18A:12-24.1(e)*, Respondent argues that the facts in the Complaint demonstrate that Respondent was acting within her role as Board President during the meeting and, therefore, was not engaged in the required “private action.” In

addition, the Complaint fails to allege facts to demonstrate how Respondent's actions could have compromised the Board. Therefore, the alleged violation of *N.J.S.A.* 18A:12-24.1(e) should also be dismissed.

As to the alleged violation of *N.J.S.A.* 18A:12-24.1(f), Respondent argues that Complainant has failed to provide any factual basis for the position that Respondent was "involved in a special interest group or partisan political group or that she used the school for her own personal gain or the gain of friends." Furthermore, Complainant also did not demonstrate how Respondent "surrendered her independent judgment or that she was somehow not being objective in leading the Board meeting on October 23, 2020." Therefore, Respondent asserts the alleged violation of *N.J.S.A.* 18A:12-24.1(f) should also be dismissed.

Finally, Respondent maintains that the Complaint is frivolous and notes that the Complaint was filed "in bad faith solely for the purpose of harassment, delay or malicious injury" "just days before the election." According to Respondent, Complainant "centers" her Complaint around what a member of the public said during open public meeting, but Complainant does not specify what that individual stated or how long he spoke. Furthermore, Complainant focused her Complaint on the actions of Onofrietti Sr., not on Respondent's actions. Respondent notes that regardless of whether Complainant "agrees or disagrees" with the statement from Onofrietti Sr., Respondent did not violate the Act by letting him speak during public session. As to the recording of the speech being posted on Facebook, Complainant does not allege that Respondent posted the recording. For these reasons, Complainant "knew or should have known that her Complaint ... was without any reasonable basis in law or equity" when she filed a Complaint that "focuses on the actions of [Onofrietti, Sr.] and an unidentified person on Facebook. Respondent requests that the Commission dismiss the Complaint, find the Complaint frivolous, and impose sanctions.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant reiterates her allegations, and notes that Respondent posted the Complaint to her Facebook page. Complainant reaffirms that Respondent "had an obligation and duty" not to allow a non-stakeholder to use the Board's "time and resources for personal political attacks," particularly because students were listening to the meeting. Complainant provided numerous instances when Respondent "interrupted" other callers, and notes that Respondent could have done the same with Onofrietti Sr. Complainant reasserts that Respondent "purposefully and willfully allowed this call as a means to get negative comment about her friend's opponents out to the public before election day" Complainant notes that by allowing this call, Respondent "left [the] [D]istrict open for a defamation lawsuit by not only orchestrating the call but by allowing this man ample time and resources to degrade his son" Complainant further notes that as Board President, Respondent "chose the committee and was in charge of that committee" and, therefore, she "is responsible to conduct of (sic) every meeting she chairs and that the meetings stay on topic and are conducted in a respectful manner."

As to the Complaint being frivolous, Complainant counters, "it is not." Complainant argues that if Respondent thought the Complaint was frivolous, "she would not be utilizing tax payer dollars in order [to] defend herself." Complainant asserts the Code "is clear" that

Respondent's "actions and lack thereof put the [Board] in a position to at the very least be named as a defendant in a defamation of character lawsuit by ... Onofrietti Jr." Complainant further asserts, "at the heart of this matter is why all of the sudden this call of all calls was allowed to continue uninterrupted by [Respondent] when she has consistently interrupted caller after caller to either interject her opinion or to ask tell (sic) them this is not the time to talk about that topic." According to Complainant, Respondent used "this moment, in order to surrender her independent [judgment] to partisan politics to make sure the voters listening to this call" and those who viewed it on Facebook, "would think negatively of Onofrietti Jr. and would not vote for him."

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 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 asserted sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24(d)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, and/or *N.J.S.A. 18A:12-24.1(f)*.

B. Alleged Prohibited Act

In the Complaint, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24(d)*. This provision of the Act provides:

- d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

Complainant claims that, by permitting a member of the public to participate in a "live phone session" who is not a resident of the community or otherwise invested in searching for the District's next Superintendent, and by permitting this member of the public to disparage a candidate for the upcoming Board election to the benefit of Respondent's allies, Respondent violated *N.J.S.A. 18A:12-24(d)*. Respondent counters that, in order to credit a violation of *N.J.S.A. 18A:12-24(d)*, Complainant would need to provide evidence that Respondent "engaged in another venture and that venture must present a conflict of interest with [her] position as a [B]oard member." However, the Complaint fails to allege that Respondent was engaged in another venture.

In order to credit the alleged violation of *N.J.S.A. 18A:12-24(d)*, the Commission must find evidence that Respondent engaged in employment or service, regardless of whether compensated, which might reasonably be expected to prejudice her independence of judgment in the exercise of her official duties.

After review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent

violated *N.J.S.A.* 18A:12-24(d). Complainant has not identified any “employment or service” purportedly undertaken by Respondent which might reasonably be expected to prejudice her independence of judgment as a Board member and/or as Board President. Without any factual averment, or support, for the position that Respondent engaged in employment or service unrelated to her position as a school official, and an argument that such “employment or service” might reasonably be expected to prejudice her independent of judgment in the exercise of her official duties, a violation of *N.J.S.A.* 18A:12-24(d) cannot be substantiated. In this way, a violation of *N.J.S.A.* 18A:12-24(d) requires a credible link between a school official’s *external* employment or service, and a resulting prejudice to his/her independence of judgment as a school official. In the absence of such facts, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(d) should be dismissed.

C. Alleged Code Violations

In the Complaint, Complainant also asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) of the Code, and these provisions provide:

- c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.
- 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.
- f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(c) because she allowed a member of the public to participate in a “live phone session” who is not a resident of the community or otherwise invested in searching for the District’s next Superintendent, and allowed this member of the public to criticize a candidate for the upcoming Board election to the advantage of Respondent’s allies. Respondent counters that Complainant has failed to provide a sufficient factual basis to support a finding that Respondent “failed to confine her actions to ‘policy, (sic) making, planning and appraisal.’”

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(3), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(c) shall include evidence that Respondent took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondent’s duty to (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy.

Based on its review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c). The facts in the Complaint clearly demonstrate

that Respondent was acting within the scope of her authority as a Board member and Board President during the “live phone session.” It is equally clear that Complainant takes issue with the manner in which Respondent handled the “live phone session,” and believes that Respondent should have taken more affirmative step(s) to curtail or stop comments, which were irrelevant to the purpose of the “live phone session.” Although Complainant may not agree with the manner in which the “live phone session” was conducted, this does not mean, based on the facts as presented, that Respondent took action unrelated to her duties and responsibilities. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(c)* should be dismissed.

Complainant further alleges that, by permitting a member of the public to participate in a “live phone session” who is not a resident of the community or otherwise invested in searching for the District’s next Superintendent, and by permitting this member of the public to disparage a candidate for the upcoming Board election to the benefit of Respondent’s allies, Respondent violated *N.J.S.A. 18A:12-24.1(e)*. Respondent counters that the facts in the Complaint demonstrate that Respondent was acting within her role as Board President during the meeting and, therefore, was not engaged in the required “private action.” In addition, the Complaint fails to allege facts to demonstrate how Respondent’s actions could have compromised the Board.

As set forth in *N.J.A.C. 6A:28-6.4(a)(5)*, 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 alleged 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 this regard, the Complaint is devoid of any facts indicating that Respondent made a personal promise, including to whom such a promise was made and/or the substance of any such promise, and is also devoid of facts demonstrating that Respondent exceeded the scope of her duties as a Board member and Board President when she conducted the “live phone session.” Disagreement with the manner and method by which the presiding officer conducts a public meeting (including the receiving of public comment) does not mean, based on the facts as alleged, that Respondent exceeded the scope of her duties. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(e)* should be dismissed.

Complainant additionally contends that Respondent violated *N.J.S.A. 18A:12-24.1(f)* because she allowed a member of the public to participate in a “live phone session” who is not a resident of the community or otherwise invested in searching for the District’s next Superintendent, and allowed this member of the public to criticize a candidate for the upcoming Board election to the advantage of Respondent’s allies. Respondent counters that Complainant has failed to provide any factual basis for the position that Respondent was “involved in a special interest group or partisan political group or that she used the school for her own personal gain or the gain of friends.” Furthermore, Complainant did not demonstrate how Respondent “surrendered her independent judgment or that she was somehow not being objective in leading the Board meeting on October 23, 2020.”

Pursuant to *N.J.A.C. 6A:28-6.4(a)(6)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(f)* shall include evidence that Respondent took action on behalf of, or at the request of, a

special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that Respondent used the schools in order to acquire some benefit for herself, a member of her immediate family or a friend.

Based on its review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(f). Complainant has not provided any facts evidencing that Respondent conducted any portion of the “live phone session” on behalf of, or at the request of, a special interest group or other group of persons organized and voluntarily united in opinion. In addition, absent some factual assertion that Respondent knew that the constituent would provide off-topic commentary about a Board candidate to the benefit of Respondent’s “friend” and that Respondent deliberately permitted it to occur, the Commission cannot reasonably interpret the facts in the Complaint to support a possible violation of this provision of the Code. Even if the Commission agrees that Respondent should have attempted to stop the member of the public’s comments when she (Respondent) realized it was off-topic, the Commission is not in a position to regulate or police how the Board President presides over a Board meeting, including the taking and receiving of public comment. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(f) should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined 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(d), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and/or *N.J.S.A.* 18A:12-24.1(f) as asserted in the Complaint.

IV. Request for Sanctions

At its meeting on December 22, 2020, 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 26, 2021, 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(d), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and/or *N.J.S.A.* 18A:12-24.1(f) as claimed in the Complaint. 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).*

Robert W. Bender, Chairperson

Mailing Date: January 26, 2021

***Resolution Adopting Decision
in Connection with C64-20***

Whereas, at its meeting on December 22, 2020, 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 December 22, 2020, 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(d), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and/or *N.J.S.A.* 18A:12-24.1(f) as argued in the Complaint; and

Whereas, at its meeting on December 22, 2020, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at its meeting on January 26, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on December 22, 2020; 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 26, 2021.

Kathryn A. Whalen, Director
School Ethics Commission