

Before the School Ethics Commission
Docket No.: C03-19
Decision on Motion to Dismiss

Melissa Godesky-Rodriguez,
Complainant

v.

Michael Alonso,
Bayonne Board of Education, Hudson County,
Respondent

I. Procedural History

This matter arises from two (2) Complaints that were filed on January 14, 2019, by Melissa Godesky-Rodriguez (Complainant), alleging that Michael Alonso (Respondent), a member of the Bayonne Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated January 17, 2019, Complainant was notified that the Complaints were deficient, and required amendment before the School Ethics Commission (Commission) could accept her filings. Complainant was also directed to consolidate the allegations in one (1) Complaint. On February 1, 2019, Complainant cured all defects and filed a consolidated Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3. The Complaint alleges that Respondent violated *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) in Count 1, and violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(j) in Count 2.

On February 7, 2019, the Complaint was served on Respondent, via regular and certified 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. On March 1, 2019, Respondent filed an Answer to Complaint (Answer). By correspondence dated March 5, 2019, Respondent requested leave to file a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). On March 11, 2019, Respondent was advised that his request was granted, and that he was excepted to file his Motion to Dismiss by no later than April 1, 2019. On March 29, 2019, Respondent filed his Motion to Dismiss. When Complainant failed to file a response to the Motion to Dismiss, she was provided with a courtesy extension. Despite the courtesy extension provided to Complainant, she never filed a response to the Motion to Dismiss.

The parties were notified by correspondence dated May 13, 2019, that this matter would be placed on the Commission's agenda for its meeting on May 21, 2019, in order to make a determination regarding the Motion to Dismiss. At its meeting on May 21, 2019, the Commission considered the filings in this matter and, at a special meeting on June 19, 2019, 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(e) and *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1, and/or violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(j) as argued in Count 2.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant alleges that on November 5, 2018, Respondent was “*allegedly*” seen (as documented by pictures and video) “trespassing on people’s property,” removing “campaign literature” from their homes, and “placing the [campaign literature] in the trash.” According to Complainant, the “campaign literature” was intended to inform the public about the candidates running for the Board. The only materials that were not “removed” by Respondent were those containing information about Respondent’s wife (a candidate). Complainant alleges that Respondent’s actions violated *N.J.S.A.* 18A:12-24.1(e) because he, as a Board member, took campaign matters into his “own hands” and, thereby, took action that “may be representative of the [B]oard as a whole.” Complainant further alleges that Respondent’s actions violated *N.J.S.A.* 18A:12-24.1(f) because he was only interested in protecting a friend/family member to gain voting power on the Board, and this may not have been in the Board’s best interest.

In Count 2, Complainant asserts that before she could finish her public comments at a Board meeting on November 28, 2018 (which were about Respondent’s actions as detailed in Count 1), Respondent interrupted her, yelled at Complainant, and “wrongfully accused” her nine-year-old, special needs child (Bayonne student), of “getting the literature and placing [it] at those locations.” Complainant maintains that her child is not capable of such actions, due to his multiple diagnoses/conditions. Complainant continues, “For [Respondent] to accuse [her child] and defame him in a public setting is unacceptable and wrong.” Based on his actions, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24.1(j) because he acted “out of emotion and responded to the public without first seeking any legal [advice] or addressing [the issue] with the” superintendent. Complainant additionally claims that Respondent violated *N.J.S.A.* 18A:12-24.1(b) because he wrongfully accused a current student with special needs of an act in a public forum, without fact, knowledge or guidance from the Board and/or its attorney.

B. *Motion to Dismiss*

Following receipt of the Complaint, Respondent filed a Motion to Dismiss. Regarding Count 1, Respondent argues that Complainant merely “alleges” that Respondent “*allegedly*” committed the acts complained of, but does not have personal knowledge of and/or facts to support her allegations. As argued by Respondent, “If Complainant has a basis to allege that Respondent trespassed and removed mail from the property where he trespassed, she should be required to affirmatively make that assertion and certify to the truth... Here, Complainant is certifying only that there is an allegation that Respondent committed the acts complained of. She is not certifying that the allegations are true.” On this basis alone, the allegations in Count 1 should be dismissed. However, to the extent that the SEC considers the merits of Count 1, Respondent asserts that on the day the video (which was surreptitiously made and never authenticated) was made, an unknown individual covered Respondent’s property with campaign

literature. When he came out of his house and noticed the literature all over his property, he also noticed an individual “walking away and entering an apartment building a block away.” Respondent proceeded to the apartment building in an effort to identify the individual. Respondent argues that he “did not take any mail or anything else from anyone’s mailbox, nor did he trespass,” and the video only shows Respondent walking up the street, entering the apartment building and returning to his home. It does not prove that he trespassed or removed any mail from the building. Therefore, Respondent asserts the allegations in Count 1 should be dismissed.

As for the allegations in Count 2, Respondent “vehemently” denies making the comments he is accused of making, and argues that the transcript from the Board meeting confirms that he never referenced Complainant’s child. Nonetheless, even if the accusations were true, they could not be “construed as a violation of *N.J.S.A.* 18A:12-24.1(b) and/or *N.J.S.A.* 18A:12-24.1(j), and there is insufficient evidence to support these allegations.” Therefore, Respondent asserts that the allegations in Count 2 should be dismissed.

C. *Response to Motion to Dismiss*

Complainant did not file a response to the Motion to Dismiss.

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 alleged sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1, and/or violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(j) as argued in Count 2.

B. *Alleged Code Violations*

In the Complaint, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) in Count 1, and violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(j) in Count 2. These provisions of the Code provide, respectively:

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.

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.

j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

Count 1

In Count 1, Complainant alleges that Respondent was “*allegedly*” seen “trespassing on people’s property,” removing “campaign literature” from their homes, and “placing the [campaign literature] in the trash.” According to Complainant, the only “campaign literature” *not* removed was that which contained information about Respondent’s wife (a candidate). Complainant alleges that Respondent’s actions violated *N.J.S.A. 18A:12-24.1(e)* because he, as a Board member, took campaign matters into his “own hands” and, thereby, took action that “may be representative of the [B]oard as a whole,” and violated *N.J.S.A. 18A:12-24.1(f)* because he was only interested in protecting a friend/family member to gain voting power on the Board, and this may not have been in the Board’s best interest.

Respondent counters that Complainant merely “alleges” that Respondent “allegedly” committed the acts complained of, but does not have personal knowledge of and/or facts to support her allegations. In addition, Respondent denies taking anything from anyone’s mailbox, denies trespassing on anyone’s property, and asserts that the video merely shows him walking up the street, entering the apartment building and returning to his home.

Pursuant to *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 his duties such that, by its nature, had the potential to compromise the Board.

As set forth in *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 himself, a member of his immediate family, or a friend.

After review of Complainant’s allegations, the Commission finds that even if the facts as alleged 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(e)* and/or *N.J.S.A. 18A:12-24.1(f)*. As an initial matter, the Commission agrees with Respondent that Complainant does not appear to allege that Respondent engaged in any particular/definitive act(s), but rather alleges that he *may* have, “allegedly,” engaged in the behavior set forth in the Complaint. Even if Complainant did

affirmatively assert that Respondent actually committed the act(s) enumerated in the Complaint, those facts are insufficient to establish how those actions were beyond the scope of his duties as a Board member (as opposed to being related to his personal life/as a private citizen), or how he “used the schools” to benefit himself or his spouse. Therefore, the Commission finds that the alleged violations of *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* in Count 1 should be dismissed.

Count 2

In Count 2, Complainant asserts that before she could finish her public comments at a Board meeting on November 28, 2018 (to discuss the allegations in Count 1), Respondent interrupted her, yelled at Complainant, and “wrongfully accused” her nine-year-old, special needs child of “getting the literature and placing [it] at those locations.” Based on his actions, Complainant asserts Respondent violated *N.J.S.A. 18A:12-24.1(b)* because he wrongfully accused a current student with special needs of an act in a public forum, without fact, knowledge or guidance from the Board and/or its attorney, and violated *N.J.S.A. 18A:12-24.1(j)* because he acted “out of emotion and responded to the public without first seeking any legal [advice] or addressing [the issue] with the” superintendent.

Respondent “vehemently” denies making the comments he is accused of making, and argues that the transcript from the Board meeting confirms that he never referenced Complainant’s child. Nonetheless, even if the accusations were true, he denies they could be “construed as a violation of *N.J.S.A. 18A:12-24.1(b)* and/or *N.J.S.A. 18A:12-24.1(j)*.”

Pursuant to *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.

As set forth in *N.J.A.C. 6A:28-6.4(a)(10)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(j)* shall include evidence that Respondent acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint (i) prior to referral to the chief administrative officer, or (ii) at a time or place other than a public meeting and prior to the failure of an administrative solution.

Based on its review of Complainant’s allegations, the Commission finds that even if the facts as alleged 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(b)* and/or *N.J.S.A. 18A:12-24.1(j)*. The Commission agrees with Respondent that the transcript from the meeting is devoid of any reference to Complainant’s child (by Respondent), and there is no evidence that Respondent referred to, or otherwise made allegations against, Complainant’s child. Absent Respondent’s reference to Complainant’s child, and sufficient facts to support an assertion that Respondent willfully made a decision contrary to the educational welfare of children (or took action to obstruct the programs and policies designed to meet the needs of all students), or that Respondent took unilateral action to resolve a complaint related to the Board/Board business,

Complainant cannot sustain her burden of proof. Therefore, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(j) in Count 2 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:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1, and/or violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(j) as argued in Count 2.

IV. 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(e) and *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1, and/or violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(j) as argued in Count 2.

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: June 20, 2019

**Resolution Adopting Decision
in Connection with C03-19**

Whereas, at its meeting on May 21, 2019, 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 this matter; and

Whereas, at its meeting on May 21, 2019, 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 *N.J.S.A.* 18A:12-24.1(f) as alleged in Count 1, and/or violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(j) as argued in Count 2; and

Whereas, at a special meeting on June 19, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from May 21, 2019; 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 June 19, 2019.

Kathryn A. Whalen, Director
School Ethics Commission