

Before the School Ethics Commission
Docket No.: C44-20
Decision on Motion to Dismiss

Regina Giacomini,
Complainant

v.

Kenneth Chiarella,
Monroe Township Board of Education, Middlesex County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on August 7, 2020, by Regina Giacomini (Complainant), alleging that Kenneth Chiarella (Respondent), a member of the Monroe Township Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. More specifically, the Complaint asserts that Respondent violated N.J.S.A. 18A:12-24.1(b) of the Code of Ethics for School Board Members (Code) in Count 1 and Count 3, and violated N.J.S.A. 18A:12-24.1(e) in Count 2.

On August 10, 2020, the Complaint was served on Respondent, via electronic mail, notifying him that charges were filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to file a responsive pleading.¹ On September 21, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On October 11, 2020, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated November 16, 2020, that this matter would be placed on the Commission's agenda for its meeting on November 24, 2020, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on November 24, 2020, the Commission considered the filings in this matter and, at its meeting on December 22, 2020, 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) as alleged in Count 1 and Count 3, and/or violated *N.J.S.A.* 18A:12-24.1(e) as argued in Count 2. The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

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

II. Summary of the Pleadings/Public Comment

A. The Complaint

In Count 1, Complainant states that on August 1, 2020, Respondent posted a “derogatory comment” on his Facebook page when he stated that a local family had “[c]hromosome issues.” Based on this post, Complainant asserts Respondent violated *N.J.S.A. 18A:12-24.1(b)* because this “horrible comment . . . can be viewed as anti special needs and differently disabled people.” According to Complainant, if Respondent believes his comment is appropriate, then he is not “qualified to make decisions for the special needs students” in the Monroe Township School District (District).

In Count 2, Complainant states that, also on August 1, 2020, Respondent used derogatory terms to refer to members of the public in his Facebook posts, e.g., “Cranky Christine” and “Craziz.” According to Complainant, “these comments are completely unacceptable” and violate *N.J.S.A. 18A:12-24.1(e)* because his “actions towards members of the public create an atmosphere of mistrust towards the [B]oard by the public.”

In Count 3, Complainant states that, on or about August 2, 2020, Respondent “wrote an explanation of his actions” and admitted that his comment regarding the “chromosome issues” was not “made without thought but was discussed with his son before posting it.” Respondent also indicated he removed the comment from his Facebook page but only after being told, “it could be hurtful.” According to Complainant, this proves Respondent did not consider the “feelings of special needs children or their families and [he] would have left it up if not told to remove it.” Based on his “explanation,” Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(b)* because “[t]he fact that [he] had to be told it was a hurtful comment and discussed it before posting the comment shows that he has no regard for [the District’s] special needs children,” and confirms “he should not be making decisions for [the District’s] children.”

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. As to the alleged violations of *N.J.S.A. 18A:12-24.1(b)* in Count 1 and Count 3, Respondent argues that Complainant’s allegations are “conclusory,” and she did not provide any factual evidence to support either allegation. Respondent maintains that his Facebook posts were not “directed at any student in the [D]istrict,” nor did they mention any of the District’s schools. Regarding Complainant’s issue with his apology, Respondent notes that he “promptly issued an apology within twenty-four hours of the post.” Respondent admits that he was not aware “the context in which his comment could be taken,” and it was not until after speaking with a parent of a student with special needs that he realized that his statement could be hurtful to a child with special needs. Respondent again notes that his post was not “directed toward any child in the . . . [D]istrict, and was not made” in his capacity as a Board member. Respondent argues that Complainant “somehow draws the conclusion” that Respondent’s posts were “premeditated”; however, Complainant does not provide any evidence to support her allegations. On the contrary, Complainant’s evidence demonstrates that Respondent made the statement in response to “election-season stimuli.” Respondent concludes that he did not make “a decision against the educational welfare of children . . .,” Complainant “fails to establish any facts of that

nature,” and “the Complaint fails to state a claim” for violations of *N.J.S.A. 18A:12-24.1(b)* in Count 1 and Count 3; therefore, these Counts should be dismissed.

Regarding Count 2, Respondent argues that Complainant fails to provide any evidence how Respondent’s comments on Facebook compromised “the Board or made any personal promises under the guise of Board authority.” Respondent maintains that his Facebook post was in reply to a “libelous satire post on Facebook,” his reply was made in his capacity as a private citizen, and he (Respondent) “was not speaking in his official capacity as a [Board member].” According to Respondent, Complainant did not provide any evidence to support her assertion that Respondent’s “derogatory statements” had the ability to compromise the Board. As such, “the Complaint fails to state a claim for a violation of *N.J.S.A. 18A:12-24.1(b)*,” and Count 2 should be dismissed.

Finally, Respondent asserts the Complaint is frivolous because Complainant filed the Complaint “for the sole purpose of satisfying a personal vendetta against Respondent,” and because she “has a longstanding, pre-existing disgust for Respondent.” In addition, according to Respondent, Complainant has a “long history of going after members of the Monroe Township community with wild, unsubstantiated allegations.” Respondent notes that two years ago, he “publicly denounced” actions that Complainant took regarding a “hate packet” and, ever since then, Complainant has “taken to social media to participate in attacks on Respondent and other Board [m]embers and [a]dministration [o]fficials who publicly denounced her behavior.” Respondent has evidence demonstrating that Complainant does not like Respondent, “admitted her intent to do harm to Respondent,” and argues that this Complaint is “just another attempt to disparage him for his actions to denounce the Complainant’s prior acts in 2018.” Therefore, and “because this action was brought as recourse for a personal and political vendetta,” the Complaint should be deemed frivolous and sanctions should be imposed.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant initially notes that the recording that Respondent submitted was “secretly made” during a conversation among Complainant, the affiant, and another Board member. Complainant admits that when Respondent’s name came up in the conversation, she “expressed [her] anger and disgust” regarding a decision that Respondent made that “impacted” Complainant’s child, as well as other children in the District. Complainant further notes the recording was “made with tortious intent,” and should be “thrown out of evidence.” Complainant will be filing a criminal complaint and a civil action based on Respondent’s use of the recording.

Complainant reaffirms that the Board is “charged with making decisions in the best interest of the students.” Complainant further reaffirms Respondent’s statement that he posted on social media, which characterized “a member of the community as having chromosomal damage,” demonstrates that Respondent does not have an “understanding of the severity of the damage of chromosomal damage” and, therefore, he “does not have the ability to consider that overall impact” of what parents who have children with special needs experience. According to Complainant, “any person that reads that comment can see that it indicates discrimination against a specific group and a limitation in [Respondent’s] understanding of what constitutes appropriate language and behavior for” a Board member. Respondent’s comments on social media indicate

that he has a “clear prejudice against the special needs community.” As for Respondent’s apology, Complainant argues, he “never actually apologized to the family,” and his “so-called apology” reads more like a justification of his actions than an apology. Complainant further argues that Respondent’s “name calling” on social media is “inappropriate” and shows the public that he has a “negative” opinion of the Board. Complainant maintains that when Respondent posted his negative comments on social media, he did not note that he was doing so as a “private citizen and not as a Board member.”

Complainant notes that her “dislike” of Respondent is based on his actions as a Board member related to ongoing concerns; however, her filing this Complaint has nothing to do with how she feels about him, but rather is related to Respondent posting the inappropriate statements on social media. Complainant further notes that “it boggles her mind” as to why Respondent would post “horrible slanderous things” about a parent volunteer without providing evidence to support his claims and then try to “slander” Complainant’s character. Complainant maintains that Respondent’s negative posts “show his true character.” Complainant further maintains that she does not understand how Respondent’s explanation of responding to a political satire relates to her or how it is an excuse for his behavior. For these reasons, Complainant asserts that she has “met her burden of proof” for establishing violations of *N.J.S.A. 18A:12-24.1(b)* and *N.J.S.A. 18A:12-24.1(e)*.

As to the allegation that the Complaint is frivolous, Complainant argues that it is not filed in bad faith, and she is “within her rights to report inappropriate comments” that a Board member has made. According to Complainant, the fact that she has filed another ethics complaint, related to another Board member, has nothing to do with Respondent and his actions, and Complainant “believe[s]” Respondent noted this to “distract from” the charges against him. Complainant “respectfully requests” that the Commission deny the Motion to Dismiss in its entirety, and that the Commission “complete a full and thorough investigation of [Respondent’s] actions and impose sanctions” on him.

D. Public Comments Offered at the Commission’s Meeting on November 24, 2020

At the Commission’s meeting on November 24, 2020, Complainant appeared by telephone and offered public comments in support of her filing. More detailed information regarding the substance of Complainant’s public comments can be found in the public minutes from the Commission’s meeting on November 24, 2020.²

² See <https://www.nj.gov/education/ethics/meetings.shtml>.

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.* Therefore, 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(b)* as contended in Count 1 and Count 3, and/or violated *N.J.S.A. 18A:12-24.1(e)* as asserted in Count 2. The Commission notes that, despite the offering of public comments at its meeting on November 24, 2020, the Commission's review of this matter was limited to the parties' written submissions.

B. Alleged Code Violations

Complainant claims that Respondent violated *N.J.S.A. 18A:12-24.1(b)* in Count 1 and Count 3, and violated *N.J.S.A. 18A:12-24.1(e)* in Count 2. These provisions of the Code provide:

- 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.

Count 1

Complainant alleges Respondent violated *N.J.S.A. 18A:12-24.1(b)* because he posted a "derogatory" and "horrible" comment on Facebook (i.e., when he stated a local family had "[c]hromosome issues") which "can be viewed as anti special needs and differently disabled people." Respondent counters that his Facebook post was not "directed at any student in the [D]istrict," and did not mention any of the District's schools; his post was not "directed toward any child in the ... [D]istrict, and was not made" in his capacity as a Board member; Complainant did not provide evidence to support her allegations; and he did not make "a decision against the educational welfare of children"

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.

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(b)*. Assuming, for purposes of ruling on Respondent's Motion to Dismiss, that Respondent's posts/comments on Facebook were made in his capacity as a Board

member, the Commission finds that his post/comment, even if appropriately characterized as “derogatory” and “horrible,” does not constitute a “decision” in connection with his membership on the Board, and/or formal “action” related to a Board program or policy. In addition, there is no correlation between Respondent’s post/comment on Facebook and any specific Board decision, issue, matter, or action. Without this relationship, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(b)* in Count 1 should be dismissed.

Count 2

Complainant argues Respondent violated *N.J.S.A. 18A:12-24.1(e)* because he posted derogatory terms about members of the public on Facebook, e.g., “Cranky Christine” and “Craziz,” and these “unacceptable” comments “towards members of the public create an atmosphere of mistrust towards the [B]oard by the public.” Respondent counters that Complainant fails to provide any evidence how Respondent’s comments on Facebook compromised “the Board or made any personal promises under the guise of Board authority, and his post was made in his capacity as a private citizen, and he (Respondent) “was not speaking in his official capacity as a [Board member].”

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.

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(e)*. Even if Respondent’s posts on social media were made in his capacity as a Board member, and even if his posts are appropriately characterized as “unacceptable,” the Commission determines that his posts do not constitute a “personal promise,” or formal “action” related to the Board and/or the business of the Board. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(e)* in Count 2 should be dismissed.

Count 3

Complainant contends that, based on his stated “explanation” for posting his comment about a local family having “chromosome issues,” Respondent violated *N.J.S.A. 18A:12-24.1(b)* because “[t]he fact that [he] had to be told it was a hurtful comment and discussed it before posting the comment shows that he has no regard for [the District’s] special needs children,” and confirms “he should not be making decisions for [the District’s] children.” Respondent counters that he “promptly issued an apology within twenty-four hours of the post,” and admits that he was not aware of “the context in which his comment could be taken,” and it was not until after speaking with a parent of a student with special needs that he realized that his statement could be hurtful to a child with special needs. Moreover, the post was not “directed toward any child in the ... [D]istrict, and was not made” in his capacity as a Board member. Respondent maintains that he did not make “a decision against the educational welfare of children”

As indicated above, 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. *N.J.A.C. 6A:28-6.4(a)(2)*.

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(b)*. Again, assuming Respondent's post/comment on social media was made in his capacity as a Board member, the Commission finds that his "explanation" does not constitute a "decision" in connection with his membership on the Board, and/or formal "action" related to a Board program or policy. As in Count 1, there is no relationship between Respondent's "explanation" on Facebook and any specific Board decision, issue, matter, or action. Absent this nexus, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(b)* in Count 3 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(b)* as asserted in Count 1 and Count 3, and/or violated *N.J.S.A. 18A:12-24.1(e)* as claimed in Count 2.

Although the Commission is constrained to dismiss the above-captioned matter based upon the standard of review that applies to its review, it still finds that Respondent's comments were grossly inappropriate and clearly insensitive. As a publicly elected member of the Board, Respondent must always be cognizant of how his words, despite his intent, may be received by **all** of the families and students he serves, even when posted on his personal Facebook page. While the Commission has the authority to penalize a school official, it can only do so when his conduct violates a provision of the Act. Although Respondent's gross error in judgment cannot be penalized by the Commission in this matter, that does not mean Respondent's words were not offensive and/or that the Commission condones his speech.

IV. Request for Sanctions

At its meeting on November 24, 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 December 22, 2020, 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) as alleged in Count 1 and Count 3, and/or violated *N.J.S.A.* 18A:12-24.1(e) as argued in Count 2. 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: December 22, 2020

***Resolution Adopting Decision
in Connection with C44-20***

Whereas, at its meeting on November 24, 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 November 24, 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:12-24.1(b) as contended in Count 1 and Count 3, and/or violated *N.J.S.A.* 18A:12-24.1(e) as asserted in Count 2; and

Whereas, at its meeting on November 24, 2020, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at its meeting on December 22, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 24, 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 December 22, 2020.

Kathryn A. Whalen, Director
School Ethics Commission