

Before the School Ethics Commission
Docket No.: C10-21
Decision on Motion to Dismiss

Ann-Margaret Shannon,
Complainant

v.

Kalisha Morgan,
Township of Union Board of Education, Union County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on April 29, 2021, by Ann-Margaret Shannon (Complainant), alleging that Kalisha Morgan (Respondent), a member of the Township of Union Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated April 30, 2021, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On May 10, 2021, 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. More specifically, the Complaint posits that Respondent violated *N.J.S.A.* 18A:12-24.1(i) of the Code of Ethics for School Board Members (Code) in Count 1, and violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(d) in Count 2.

On May 11, 2021, the Complaint was served on Respondent via electronic mail, notifying her that charges were filed against her with the Commission, and advising that she had twenty (20) days to file a responsive pleading.¹ On June 15, 2021, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainant filed a response to the Motion to Dismiss on July 26, 2021.

The parties were notified by correspondence dated August 20, 2021, that this matter would be placed on the Commission's agenda for a special meeting on August 30, 2021, in order to make a determination regarding the Motion to Dismiss.² At its special meeting on August 30, 2021, the Commission considered the filings in this matter and, at its meeting on September 21, 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.*

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

² The parties were initially advised, by correspondence dated August 16, 2021, that this matter would be discussed by the Commission at its regularly scheduled meeting on August 24, 2021. Unfortunately, due to lack of a quorum, the meeting scheduled for August 24, 2021, was cancelled.

18A:12-24.1(i) in Count 1, and/or *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c), and/or *N.J.S.A.* 18A:12-24(d) in Count 2.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant (a teaching staff member and President of the Union Township Education Association (UTEA)) states that at a Board meeting (conducted via Zoom) on February 18, 2021, Respondent “made comments about the alleged poor performance of students at Union High School” (UHS). More specifically, and “[w]ithout evidence,” Respondent “attributed the alleged poor reading results on teachers in lower grades” by stating, in relevant part: “I know that the conversation started with the high school ranking ... we must look at what’s coming to our high school ... if we are not doing what we need to do at the lower levels we’re going to continue to get these results ... Are they students that have been in Union since kindergarten? That would indicate to me that there’s something wrong with our teaching staff” Based on her (Respondent’s) comments, Complainant asserts that Respondent violated *N.J.S.A.* 18A: 12-24.1(i) because she “deliberately made comments casting blame for alleged poor student performance on teachers in the Union Township School District [(District)].” These comments, according to Complainant, were “admittedly made without consulting data on teacher performance or teacher evaluations.” Furthermore, Respondent’s “disparaging comments about the [D]istrict’s teachers at a public meeting have the effect of undermining public confidence in the performance and effectiveness of teachers” in the District by “generally blaming poor student performance on teachers.” As such, Respondent’s comments “resulted in undermining, opposing, compromising, and/or harming school personnel in the proper performance of their duties.”

In Count 2, Complainant indicates that Respondent is employed by the Montclair Board of Education as an Assistant Superintendent for Equity, Curriculum and Instruction, but is part of the Board’s negotiations team for collective negotiations, and has participated in collective negotiations. As such, and since April 29, 2021 (“and the 180 days prior to that date”), Complainant submits that Respondent has violated *N.J.S.A.* 18A:12-24(a) because, based on the Commission’s interpretation in [*Advisory Opinion A13-13 \(A13-13\)*](#), Respondent’s “relationship with her employer creates in the public a perception that she might be compromised and her judgment or objectivity impaired, such that Respondent will be unable to enforce all laws, rules, and regulations of the State Board of Education”; *N.J.S.A.* 18A:12-24(c) because, based on the Commission’s interpretation in A13-13, Respondent’s “relationship with her employer creates in the public a perception that she might be compromised and her judgment or objectivity impaired, such that Respondent may take Board action to effectuate policies and plans without consulting ... those affected by such policies and plans, or take action that is unrelated to her policy-making duties as a Board member”; *N.J.S.A.* 18A:12-24(d) because, based on the Commission’s interpretation in A13-13, Respondent’s “relationship with her employer creates in the public a perception that she might be compromised and her judgment or objectivity impaired, such that Respondent may become directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district”; and A13-13 because “Respondent’s employment as an administrator in another school district creates in the public a

perception that she might be compromised and her judgment or objectivity impaired in violation of the Act.”³

B. Motion to Dismiss

Following receipt of the Complaint, Respondent filed a Motion to Dismiss. As to the alleged violation of *N.J.S.A.* 18A: 12-24.1(i) in Count 1, Respondent argues that “board members do not surrender their First Amendment rights when they become members of a school board,” the First Amendment rights of board members are codified in various federal and state court decisions, as well as in the decisions of the Commission. At the Board meeting in question, Respondent submits she was “participating in a policy discussion about improving educational outcomes in the [D]istrict,” and maintains that she was “expressing her views on an important matter of legitimate concern to the school community, entirely within the purview of her role as” a Board member. Respondent argues that she did not “attack or criticize any individual employee, nor did she imply that [] the teaching staff as a whole [was] incompetent.” Instead, she merely acknowledged that the “quality of teaching is a contributing factor in student performance, and that teachers need to be given the professional development and other resources necessary to be at the top of their game.”

Regarding the allegations in Count 2, Respondent notes that A13-13 concerned the disqualification of two board members from negotiations who had specific (and direct) relationships to the NJEA, and one board member was also employed by a special services school district that had contracts with the Board on which the official was a member. Importantly, none of those facts are present here. Instead, Respondent argues, “The Commission has never held that employment as an administrator in another district *per se* disqualifies a board member [from] participating in negotiations.” To the contrary, in [Advisory Opinion A13-15 \(A13-15\)](#), the Commission “explicitly approved such participation as long as there is no linkage between the contracts being negotiated and the board members’ terms and conditions of employment in the districts where they work.” In this case, no such allegation has been made (i.e., of a linkage), and Complainant has not cited any other basis for barring Respondent’s participation in contract negotiations with the UTEA.

Based on the above, Respondent contends that the Complaint should be dismissed in its entirety.

C. Response to Motion to Dismiss

In her response to the Motion to Dismiss, Complainant agrees that a board member does not “surrender the rights that they have as citizens such as freedom of speech”; however, a board member must also “comply with the standards set forth in the” Act. Citing *Advisory Opinion A02-06* (A02-06), Complainant notes that a board member “may express their viewpoint as long

³ Although Complainant cites violations of *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(d), she refers to the language from *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), and *N.J.S.A.* 18A:12-24.1(d) of the Code. However, because Complainant relies on A13-13, and A13-13 discusses alleged violations of *N.J.S.A.* 18A:12-24 (“Prohibited Acts”), and not alleged violations of the Code, the Commission is construing the alleged violations as pled, namely as violations of *N.J.S.A.* 18A:12-24 (“Prohibited Acts”), and not as violations of the Code (*N.J.S.A.* 18A:12-24.1).

as ‘those views are expressed in an appropriate manner’” Furthermore, “a school board member may not make libelous statements about a district’s teaching staff and expect to be protected by freedom of speech” According to Complainant, Respondent “implied that the cause of the low scores among the [D]istrict’s high school students was the result of poor teaching performance by stating that there was ‘something wrong’ with the teaching staff,” and Respondent made this statement without providing any evidence or data to support her statement. Complainant asserts that Respondent “implied that the reason for the low student scores and performances was because of the failure of the teachers,” and she did so at a public Board meeting where “[s]uch a statement undermines the confidence that [D]istrict parents have in their children’s teachers, especially when coming from a [B]oard member whose statements ... carry ... greater credibility than other members of the public as a result of their positions.” Complainant further asserts, “Although [Respondent] is entitled to free speech rights ... she must also abide by the [Act] and cannot make statements that are violative of the Act without facing the consequences” Therefore, Complainant reaffirms that Respondent violated *N.J.S.A.* 18A:12-24.1(i) as alleged in Count 1.

Regarding Count 2, Complainant maintains that Respondent’s simultaneous service as a Board member and as an administrator in another school district creates an impression that Respondent’s employment in Montclair, “may create a question in the public perception that her objectivity or judgment as a [Board member] is impaired.” Complainant maintains that Respondent’s dual position holding could support a finding that Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), and A13-13; therefore, the Motion to Dismiss should be denied.

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(i) in Count 1, and/or *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c), and/or *N.J.S.A.* 18A:12-24(d) in Count 2.

B. *Jurisdiction of the Commission*

As an initial matter, in reviewing the allegations in this matter, the Commission notes that its authority is limited to enforcing the Act, *N.J.S.A.* 18A:12-21 *et seq.*, a set of minimum ethical standards by which all school officials must abide. In this regard, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C.* 6A:28-1.4(a).

With the jurisdiction of the Commission in mind, to the extent that Complainant seeks a determination that Respondent’s conduct, whether actions or speech, may constitute defamation,

libel, and/or slander, the Commission advises that such a determination(s) falls outside the scope, authority, and jurisdiction of the Commission. Nonetheless, Complainant may be able to pursue those claims in the appropriate tribunal; however, the Commission is not the appropriate entity to adjudicate such issues. As such, those claims are dismissed.

C. *Alleged Code Violation*

In Count 1 of the Complaint, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(i), and this provision of the Code states:

- i. I will support and protect school personnel in proper performance of their duties.

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(9), factual evidence of a violation of *N.J.S.A.* **18A:12-24.1(i)** shall include evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

In Count 1, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(i) because, at a public Board meeting, she, “[w]ithout evidence ... attributed the alleged poor reading results on teachers in lower grades” by stating, in relevant part: “I know that the conversation started with the high school ranking ... we must look at what’s coming to our high school ... if we are not doing what we need to do at the lower levels we’re going to continue to get these results ... Are they students that have been in Union since kindergarten? That would indicate to me that there’s something wrong with our teaching staff” Complainant submits that Respondent “deliberately made comments casting blame for alleged poor student performance on teachers in the” District, and her “disparaging comments about the [D]istrict’s teachers at a public meeting have the effect of undermining public confidence in the performance and effectiveness of teachers” in the District.

Respondent counters that “board members do not surrender their First Amendment rights when they become members of a school board”; at the Board meeting in question, Respondent was “participating in a policy discussion about improving educational outcomes in the [D]istrict,” and maintains that she was “expressing her views on an important matter of legitimate concern to the school community, entirely within the purview of her role as” a Board member; and argues that she did not “attack or criticize any individual employee, nor did she imply that [] the teaching staff as a whole [was] incompetent.”

Based on 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(i). Of importance, even if not well-received by Complainant (and/or other members of the District’s teaching staff), Respondent’s comments did not identify a single District teaching staff member (by name or grade level) as being “bad” or *the sole reason* why student performance may be stymied. Instead, Respondent simply questioned what could possibly be driving the results/educational outcomes for students in the District, and cited quality of teaching as a possible source thereof. As such, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(i) in Count 1 should be dismissed.

D. *Alleged Prohibited Acts*

In Count 2 of the Complaint, Complainant additionally alleges that Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(d). These provisions of the Act provide:

- a. No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;
- c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;
- 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;

In order to credit the alleged violation of *N.J.S.A. 18A:12-24(a)*, the Commission must find evidence that Respondent, or a member of her immediate family, has an interest in a business organization, or engaged in any business, transaction, or professional activity which was in substantial conflict with the proper discharge of her duties in the public interest.

To credit the alleged violation of *N.J.S.A. 18A:12-24(c)*, the Commission must find evidence that Respondent acted in her official capacity in a matter where she, or a member of her immediate family, had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity, or in a matter where she had a personal involvement that created some benefit to her, a member of her immediate family, or to “others.”

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.

With the standards for establishing violations of *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(d)* in mind, and in Count 2, Complainant argues that strictly because Respondent is employed as an administrator in a New Jersey school district, her involvement on the Board’s collective negotiations committee/team violates *N.J.S.A. 18A:12-24(a)* because, based on A13-13, Respondent’s “relationship with her employer creates in the public a perception that she might be compromised and her judgment or objectivity impaired,

such that Respondent will be unable to enforce all laws, rules, and regulations of the State Board of Education”; violates *N.J.S.A. 18A:12-24(c)* because, based on the Commission’s interpretation in A13-13, Respondent’s “relationship with her employer creates in the public a perception that she might be compromised and her judgment or objectivity impaired, such that Respondent may take Board action to effectuate policies and plans without consulting ... those affected by such policies and plans, or take action that is unrelated to her policy-making duties as a Board member”; and violates *N.J.S.A. 18A:12-24(d)* because, based on the Commission’s interpretation in A13-13, Respondent’s “relationship with her employer creates in the public a perception that she might be compromised and her judgment or objectivity impaired, such that Respondent may become directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district.”

Respondent counters that, “The Commission has never held that employment as an administrator in another district *per se* disqualifies a board member [from] participating in negotiations,” and, in fact, has “explicitly approved such participation as long as there is no linkage between the contracts being negotiated and the board members’ terms and conditions of employment in the districts where they work.” In this case, Respondent notes there is no evidence of such linkage, and Complainant has not cited any other basis for barring Respondent’s participation in UTEA contract negotiations.

After review of the Complaint, the Commission finds that even if the facts as contended are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, and/or *N.J.S.A. 18A:12-24(d)*. As an initial matter, Complainant’s reliance on A13-13 is wholly misplaced. In A13-13, which analyzed whether two recently elected board members had conflicts of interest which precluded their involvement in contract negotiations with the *local* education association, the subjects of the request were (1) a board member who was employed by the *Statewide* education association as a field representative, and (2) a board member who was employed by a school district that had a contract with the board of education on which the new board member served. Critically, none of the operative facts and circumstances from A13-13 are present here. Although Respondent may be employed as an administrator in another school district (in another county), there is no suggestion that she is a member of the *same Statewide* union/education association as the individuals who sit “across the table” from her as a member of the Board’s negotiations team.

In addition, in [*Advisory Opinion A24-17 \(A24-17\)*](#), the Commission more recently addressed the circumstances when a board member is precluded from participating in contract negotiations with the local education association because of their own (or an immediate family member’s or relative’s) relationship with and involvement in the same Statewide union. In short, and most relevant here, unless the board member is a member of the *same* Statewide public union, there is no *per se* prohibition on their involvement in contract negotiations with the local education association. In this case, Respondent is arguably a member of an administrator’s union/association but, in her capacity as a Board member, is negotiating against the teacher’s union/association. Further, absent some suggestion or evidence of a financial linkage between the union/education association that Respondent is a member of, and the local education association against which Respondent is negotiating (as a member of the Board’s negotiations committee), there are no facts upon which the Commission can find a violation of the Act. *See*

A13-15. Therefore, the Commission finds that the purported violations of *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(d) 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(i) in Count 1, and/or *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c), and/or *N.J.S.A.* 18A:12-24(d) 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(i) in Count 1, and/or *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c), and/or *N.J.S.A.* 18A:12-24(d) 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: September 21, 2021

***Resolution Adopting Decision
in Connection with C10-21***

Whereas, at its special meeting on August 30, 2021, 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 its special meeting on August 30, 2021, 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(i) in Count 1, and/or *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c), and/or *N.J.S.A.* 18A:12-24(d) in Count 2; and

Whereas, at its meeting on September 21, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on August 30, 2021; 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 September 21, 2021.

Kathryn A. Whalen, Director
School Ethics Commission