

***Before the School Ethics Commission***  
***Docket No.: C11-21***  
***Decision on Motion to Dismiss***

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**Jason Hodrinsky,**  
***Complainant***

v.

**Robert Faussette,**  
**Hasbrouck Heights Board of Education, Bergen County,**  
***Respondent***

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**I. Procedural History**

This matter arises from a Complaint that was filed on May 3, 2021, by Jason Hodrinsky (Complainant), alleging that Robert Faussette (Respondent), a member of the Hasbrouck Heights Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated May 4, 2021, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On May 5, 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 asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members (Code).

On May 6, 2021, the Complaint was served on Respondent, via electronic 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.<sup>1</sup> On June 3, 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 June 8, 2021.<sup>2</sup>

The parties were subsequently notified by correspondence dated July 19, 2021, that this matter would be placed on the Commission's agenda for its meeting on July 27, 2021, in order to make a determination regarding the Motion to Dismiss. At its meeting on July 27, 2021, the Commission considered the filings in this matter and, at its special meeting on August 30, 2021, the Commission voted to grant the Motion to Dismiss in its entirety because Complainant failed

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

<sup>2</sup> On the evening of June 8, 2021, Respondent filed a reply to Complainant's response to the Motion to Dismiss. As this reply is not permitted by the Commission's regulations, it was not considered by the Commission at its meetings on July 27, 2021, and/or August 30, 2021, in ruling on the Motion to Dismiss.

to plead sufficient, credible facts to 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(e).

## II. Summary of the Pleadings

### A. *The Complaint*

Complainant asserts that between “June 5, 202[0],<sup>3</sup> and July 15, 2020,” Respondent “posted several incendiary and racist memes and videos on his personal Facebook page.” More specifically, Complainant maintains that Respondent’s “public social media postings” include “inflammatory” language such as: “Diversity = White Genocide,” “Stop Blaming White People ...,” and “Put your race card away and grow up.”<sup>4</sup> According to Complainant, after being confronted by his “racist postings,” Respondent claimed he “was hacked” and filed “a fraudulent police report claiming the same.” Despite the “ensuing police investigation proving” that the posts originated from Respondent’s “personal and work computers,” Complainant argues that Respondent “continues to falsely claim innocence.”

For purposes of the “180 day statute of limitations,” Complainant maintains that February 12, 2021, “should be considered as ... the date of notice of the events which form the basis for [Respondent’s] alleged violations,” as it was the date (February 12, 2021) that an article was published by NorthJersey.com “notifying the public of the result of the police investigation related to [Respondent’s] posts” between June 5, 2020, and July 15, 2020,<sup>5</sup> and concluding that Respondent was “indeed the party responsible for making the posts at issue.” Complainant notes that it would have been premature to file a Complaint against Respondent prior to February 12, 2021, because Respondent was “entitled to the benefit of the doubt.”

Based on the information above, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(b) because a “person who espouses such views cannot be entrusted to make decisions in terms of the educational welfare of all children regardless of race.” Per Complainant, “a person who continues to display such explicit racial bias and animus, clearly violates the tenets of diversity and inclusion dictated” by this provision of the Code, and “compromise[s] the integrity of the ... Board ... and its ability to represent and address the needs of all children regardless of race or social standing.” Complainant also argues that Respondent violated *N.J.S.A.* 18A:12-24.1(e) because his private actions “compromise the ... Board[’s] ... ability to appear impartial on matters of diversity, race, creed, sex, or social standing.” Complainant continues,

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<sup>3</sup> Complainant filed a deficient Complaint on May 3, 2021, and an Amended Complaint on May 5, 2021; therefore, the date of “June 15, 2021,” which had yet to occur at the time of filing, is being construed as June 15, 2020.

<sup>4</sup> The Commission acknowledges that the cited language/speech may be regarded as offensive, provocative, disagreeable, or vulgar; however, the cited language/speech is quoted directly from the parties’ submissions. The inclusion of this language/speech is not intended to disparage, offend, or disrespect the reader.

<sup>5</sup> As Complainant filed this matter prior to June 2021, the cited June and July dates are being construed as relating to 2020, and not 2021.

Respondent's "social media postings are a public contradiction to the Hasbrouck Heights School District's mission to promote inclusion and diversity, in order to meet the needs of all children."

***B. Motion to Dismiss***

Following receipt of the Complaint, Respondent filed a Motion to Dismiss<sup>6</sup> and argues, "this whole situation was fabricated and was/is complete nonsense." Respondent maintains that he filed a report with the Hasbrouck Heights Police Department and the Bergen County Prosecutor's Office, "the day the [first] of [five] articles came out in the Bergen Record." According to Respondent, the investigation was closed after six months and the investigation was deemed "inconclusive." Respondent maintains that he has "never seen a post on Facebook stating the words, 'Diversity=White Genocide' Period!"<sup>7</sup> Respondent further asserts, "Since this whole incident, [he] has closed [his] Facebook account and fellow [Board] members still notice that accounts have been open under [his] name." Despite this, he is "very comfortable saying that every [Board member] supports and knows that this was all nonsense." Respondent maintains, "Not once, did I not ever have the best interest of the kids at heart."

***C. Response to Motion to Dismiss***

In response to the Motion to Dismiss, Complainant argues that Respondent has "failed to conform to the requirements under *N.J.A.C.* 6A:28-8.1, which requires the motion to be accompanied by a brief." Complainant further argues that Respondent has not provided a "cogent legal argument nor evidence to support a dismissal of the Complaint," and instead submitted an "e-mail response contain[ing] nothing but hearsay and conjecture, including, without evidence, the unanimous support of other members of the Board ... and members of the community."

According to Complainant, Respondent did not provide any evidence to "disprove any of [the] numerous issues raised in the Complaint or provide any legal argument as to why his action would not fall under the purview of the [Commission]." Complainant maintains that Respondent "relies solely on conclusory statements of broad support from the [Board] and community, neither of which have any bearing on the determination as to whether his action violated ethical standards." Complainant asserts, "The totality of public record of community outrage, the police investigation, and [Respondent's] numerous Facebook postings contradict every statement [Respondent] has made in his improper Motion to Dismiss." Complainant contends the Commission should reject the Motion to Dismiss on procedural grounds, or "on substance, or lack thereof." Furthermore, to the extent community support could be dispositive, he (Complainant) submits that a petition for Respondent's removal has received more than 1,000 signatures.

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<sup>6</sup> Uncertain as to whether this filing was an Answer to Complaint or Motion to Dismiss, Commission staff contacted Respondent who advised, "Yes, this e-mail is a motion for you to please dismiss the ethics complaint."

<sup>7</sup> See footnote 4, *supra*.

### 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(b) and/or *N.J.S.A.* 18A:12-24.1(e).

#### B. *Form and Substance of Respondent's Motion to Dismiss*

In his response to the Motion to Dismiss, Complainant notes that Respondent's filing fails to conform to the requirements set forth in *N.J.A.C.* 6A:28-8.1(b), in that Respondent did not file a motion or a brief, and simply submitted "an e-mail response" which was devoid of cogent arguments and evidence.

Although the Commission agrees with Complainant that the form and substance of Respondent's Motion to Dismiss did not comply with *N.J.A.C.* 6A:28-8.1(b), the Commission also has the authority, pursuant to *N.J.A.C.* 6A:28-1.8, to relax its rules when "strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice." In this case, because Respondent is a *pro se* litigant, as is Complainant, the Commission finds that strict adherence to *N.J.A.C.* 6A:28-8.1(b) is unnecessary. In practice, the Commission provides *pro se* litigants with great latitude in procedural requirements and, in this instance, believes it is appropriate to consider and accept Respondent's filing, despite the failure to abide by the requirements for filing a formal motion and accompanying brief.

#### C. *Alleged Code Violations*

In the Complaint, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(b) and *N.J.S.A.* 18A:12-24.1(e). 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.

Complainant first contends that Respondent violated *N.J.S.A.* 18A:12-24.1(b) because a "person who espouses" the views reflected in Respondent's social media posts "cannot be entrusted to make decisions in terms of the educational welfare of all children regardless of race." Per Complainant, "a person who continues to display such explicit racial bias and animus, clearly violates the tenets of diversity and inclusion dictated" by *N.J.S.A.* 18A:12-24.1(b), and "compromise[s] the integrity of the ... Board ... and its ability to represent and address the needs of all children regardless of race or social standing."

Respondent claims that his Facebook account was compromised/hacked, and denies that he ever made the comments or posted the information on his social media page that is the subject of the Complaint. Respondent maintains that the entire situation is “fabricated” and “nonsense.”

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 contended 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)*. Absent a nexus between Respondent’s Facebook page and his role/membership on the Board, Complainant cannot sustain his burden of proof. By Complainant’s own admission, the posts on Respondent’s social media page (assuming they were made by Respondent) are from his “personal” Facebook account, and there is no indication that Respondent references, or otherwise relies upon, his position on the Board on his social media account. In short, there is no factual evidence that the statements/posts on his Facebook account were made in his capacity as a member of the Board, or had the appearance of being representative of, or attributable to the Board. Nonetheless, even if the statements/posts were made in his capacity as a member of the Board, the Commission finds that his statements/posts – even if offensive, provocative, disagreeable, or vulgar – do not constitute a *decision(s)* related to the Board and/or the business of the Board or the District, and/or *action* that obstructed the District’s programs and policies. In this regard, Complainant does not cite to a particular decision(s) that Respondent made which was contrary to the educational welfare of children, and does not refer to a specific action(s) that obstructed policies or programs; instead, Complainant submits that Respondent’s social media statements/posts prohibit him, *generally*, from making decisions and taking actions, which will benefit the entirety of the student body. However, absent the predicate relationship between Respondent’s statements/posts on social media and an actual - not theoretical - decision(s) or action(s), the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(b)* should be dismissed.

Complainant also asserts that Respondent violated *N.J.S.A. 18A:12-24.1(e)* because his private actions “compromise the ... Board[’s] ... ability to appear impartial on matters of diversity, race, creed, sex, or social standing.” Complainant continues, Respondent’s “social media postings are a public contradiction to the [District’s] mission to promote inclusion and diversity, in order to meet the needs of all children.”

As to this allegation, Respondent again maintains that his social media account was compromised/hacked, and denies that he ever made the comments or posted the information on his social media page that Complainant cites to in his Complaint.

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). As above, neither the Complaint nor the evidence submitted in support thereof, establish the necessary relationship between Respondent’s Facebook page and his role/membership on the Board. Moreover, even if Respondent’s statements/posts on social media were made in his capacity as a Board member – and were offensive, provocative, disagreeable, or vulgar – the Commission determines that his statements/posts do not constitute a “personal promise,” or specific “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) 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) and/or *N.J.S.A.* 18A:12-24.1(e).

#### **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(b) and/or *N.J.S.A.* 18A:12-24.1(e).

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).*

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Robert W. Bender, Chairperson

Mailing Date: August 30, 2021

**Resolution Adopting Decision  
in Connection with C11-21**

*Whereas*, at its meeting on July 27, 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 meeting on July 27, 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(b) and/or *N.J.S.A.* 18A:12-24.1(e); and

*Whereas*, at its special meeting on August 30, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 27, 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.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at a special meeting on August 30, 2021.

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Kathryn A. Whalen, Director  
School Ethics Commission