

Before the School Ethics Commission
Docket No.: C07-22
Decision on Motion to Dismiss

Filomena Laforgia,
Complainant

v.

Robert Fortunato,
Ramapo Indian Hills Regional High School District Board of Education, Bergen County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on January 13, 2022, by Filomena Laforgia (Complainant), alleging that Robert Fortunato (Respondent), a member of the Ramapo Indian Hills Regional High School District Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members (Code).

On January 20, 2022, 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 February 11, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On February 18, 2022, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated March 14, 2022, that this matter would be discussed by the Commission at its meeting on March 22, 2022, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Following its discussion on March 22, 2022, the Commission adopted a decision at its meeting on April 26, 2022, granting 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(a) and/or *N.J.S.A.* 18A:12-24.1(e). The Commission also adopted a decision finding the Complaint not frivolous, and denying Respondent's request for sanctions.

¹ As a result of the ongoing Coronavirus (COVID-19) pandemic, and the implementation of electronic filing, service of process was effectuated by the Commission through electronic transmission only.

II. Summary of the Pleadings

A. *The Complaint*

Complainant, the President of the Board, states that at a Board meeting on September 27, 2021, at which she (Complainant) was not present, Respondent stated: "... If you don't already know my position on a lot of these things, it should be clear ... that I DO not agree with Mr. Butto, I DO not agree with [Complainant] on most topics, and I do not agree with Miss SULLIVAN on most topics. Okay? They represent an EXTREME RIGHT-WING, as do some members of this audience ..."

According to Complainant, she "did not attend that meeting, nor did [she] attend the prior meeting due to personal reasons, and thus did not warrant any verbal attack based on circumstance or dialogue of the evening proceedings." She also notes that she never "engaged in any brief or in-depth conversation with [Respondent] regarding or that revealed [Complainant's] personal, political, physiological, or spiritual stance or position on anything that would lead to [Respondent's] personal [attack] and egregious statement." Despite more than one opportunity, as of the time she filed her Complaint, Respondent had not apologized for his public statement.

With the above in mind, Complainant further contends Respondent violated *N.J.S.A.* 18A:12-24.1(a) because:

[Respondent's] spoken and public defamation is libel, and in the [United States], defamation is a 'tort' or civil wrong, and under the law, a person who has been defamed [Complainant] can seek damages from the perpetrator. As an elected official, [Respondent's] conduct as a member of the local Board ... holds the respect and confidence of the people. And as such, [Respondent] must avoid conduct that violates their public trust or creates a justifiable impression among the public that such trust is being violated. Further, [Complainant] retains the right to slander and defamation and may consider bringing an action against [Respondent].

Respondent also violated *N.J.S.A.* 18A:12-24.1(e) because:

[Respondent's] spoken and public defamation reflected a personal statement AND took private action toward [Complainant] by pronouncing that she represents an 'extreme right-wing [view]' is libel and may compr[om]ise the Board because in the [United States], defamation is a 'tort' or civil wrong, and under the law, a person who has been defamed [Complainant] can seek damages from the perpetrator. As an elected official, [Respondent's] conduct as a member of the local Board ... holds the respect and confidence of the people. And as such, [Respondent] must avoid conduct that violates their public trust or creates a justifiable impression among the public that such trust is being violated. Further, [Complainant] retains the right to slander and defamation and may consider bringing an action against [Respondent].

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, and maintains the statement he made at the September 27, 2021, Board meeting was made in “response to the false allegations of ‘bullying’” levied against him (Respondent). Respondent clarifies that after stating “his opinion that said individuals as well as some members of the audience represent an extreme right-wing view,” he ended with “which **is fine** as long as you are respectful about it.” In addition, Complainant’s “allegations revolve solely around her perceptions of a claim of defamation, which are not within the purview of the Commission.”

As for the alleged violation of *N.J.S.A.* 18A:12-24.1(a), Respondent maintains Complainant has not submitted a copy of any decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education. Moreover, Complainant has not submitted “any court order pertaining to schools or that the Respondent brought about changes through illegal or unethical procedures.” As such, there is no evidence to find a violation.

Regarding the purported violation of *N.J.S.A.* 18A:12-24.1(e), Complainant has not provided any evidence that Respondent made any personal promises or took any action beyond the scope of his duties such that, by its nature, had the potential to compromise the Board. Respondent further contends Complainant’s allegations “center around her misperceived claims of defamation” and a “determination of whether a statement by a board member is defamatory, false, slanderous, derogatory and/or discriminatory, falls outside the scope, authority, and jurisdiction of the Commission.” Moreover, Respondent notes “absent a judicial determination that Respondent’s comments were in fact defamatory, and absent a finding that Respondent’s comments were made in his capacity as a Board member and not as a private citizen ... Complainant cannot establish that Respondent’s comments had the potential to compromise the Board.” Respondent further notes Complainant has not demonstrated that Respondent’s comments were “anything more than an expression of his personal opinion, nor has she provided any facts to show how Respondent’s comment compromised the Board.”

Finally, Respondent asserts the Complaint is frivolous because Complainant “knew, or should have known, that the complaint is without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.” Respondent further asserts the Commission “has repeatedly stated that allegations of defamation are outside the scope, authority, and jurisdiction of the Commission. There is simply no ambiguity.” According to Respondent, the Complaint was filed “in bad faith, solely for the purpose of harassment, or malicious injury” and Complainant “is using this body as a political tool to harass current [B]oard members who do not agree with the Complainant, especially any Board member who has refused to remain silent when the educators in the [Ramapo Indian Hills Regional High School District (District)] asked the Board for support in enforcing the State mask mandate for the safety of the [D]istrict’s staff, students and community.” With the above in mind, Respondent “respectfully” requests that the Commission grant the Motion to Dismiss and impose sanctions on Complainant.

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 law firm representing Respondent “was part of an RFQ process” that began in September of 2021, and “the firm remains in place as a possible contender in the selection process of the future” Board counsel. Moreover, as the former Board President, Complainant “confided in this firm”; “recall[s] telling them about the ‘Vote of No Confidence’”; and shared “privileged information about the Board and the members’ dynamics.” According to Complainant, she feels “extremely uncomfortable AND VIOLATED” and believes the Machado Law Group has a conflict of interest and should recuse themselves from this matter “and/or” requests the Commission “opine on this matter.”²

Notwithstanding the above, Complainant submits Respondent’s Motion to Dismiss and allegation of frivolous filing “is a distraction, ridiculous, and a poor attempt to divert the seriousness of [Respondent’s] unethical conduct,” and Complainant “finds it an extremely unfortunate attempt by [Respondent] to victimize the victim.” Complainant maintains that instead of offering an apology, Respondent chose to “double[] down” for his “irrational and unfounded diatribe.” Complainant further maintains that her allegations are “warranted and founded,” and she is “[p]roceeding pro se, and such sanctions against a community member, parent, taxpayer, and stakeholder may be viewed as bad faith in order not to disparage legitimate filing and complaint concerns.”

As to Respondent’s “Statement of Facts,” Complainant offers the following summary of “corrections”: Complainant’s “Vote of No Confidence” came from the Union President who has since left the District “and was granted by the” Board an “[immediate] leave of absence” followed by a resignation; Complainant did not direct “any law enforcement official to or not enforce the Governor’s Executive Orders 251 mandating masks against any maskless or other[] individuals” on August 23, 2021; to the best of Complainant’s knowledge, Board counsel “made a verbal statement, denouncing the ‘Vote of No Confidence’”; medical exemptions are permissible to the Governor’s Executive Order, and the Board did not have a policy “in place at the time to address” Complainant’s medical exemption or anyone from the public’s potential medical exemption; the statement “under duress” is inaccurate because Complainant wore her mask despite her medical condition; Respondent’s reference to Vivian Yudin King as Board President is not correct; the newspaper articles referenced were written by a friend of the King family and, therefore, are “biased and intended to cause harm and tarnish [Complainant’s] reputation in her community during her re-election campaign and the author never contacted Complainant to “get her side of the story”; and finally, although Respondent is entitled to

² On February 23, 2022, electronic correspondence (on behalf of the Commission) was sent to Complainant advising, in relevant part, “If you have concerns with whether Ms. Machado and/or the Machado Law Group may have a conflict of interest in this matter, I would encourage you to contact the [NJ Office of Attorney Ethics \(https://www.njcourts.gov/attorneys/oe.html\)](https://www.njcourts.gov/attorneys/oe.html). The NJ Office of Attorney Ethics is the most appropriate office to review and advise on your concerns as, unfortunately, my office cannot adjudicate or otherwise determine whether Ms. Machado and/or her law firm may have a conflict of interest such that her/its involvement in this matter violates attorney ethics rules or regulations.”

“express his personal opinion,” he may not violate the Act in doing so and “broadcasting disparaging, libelous, political rhetoric” violates the Act.

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

B. *Jurisdiction of the Commission*

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 from the Commission that Respondent’s public comments/statements constituted defamation, slander, libel, and/or a “tort,” and/or that counsel for Respondent may have a conflict of interest, the Commission advises that such determinations fall outside the scope, authority, and jurisdiction of the Commission. Nonetheless, Complainant may be able to pursue each of 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 Violations*

Complainant submits that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(e)*, and these provisions of the Code provide:

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.
- 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.

As set forth in *N.J.A.C. 6A:28-6.4(a)(1)*, factual evidence of a violation of ***N.J.S.A. 18A:12-24.1(a)*** shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and

regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures.

Based on its review of the Complaint, the Commission finds that even if the facts as argued are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a). Despite being required by *N.J.A.C.* 6A:28-6.4(a)(1), the Commission finds that Complainant has not provided a **copy of a final decision(s)** from any court of law or other administrative agency demonstrating or specifically finding that Respondent violated a specific law, rule, or regulation when he engaged in any of the acts/conduct set forth in the Complaint. Absent such a final decision, the Commission is constrained to find that the stated violation of *N.J.S.A.* 18A:12-24.1(a) should be dismissed.

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.

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(e). While Complainant was clearly offended and affronted by Respondent's public statement/comment claiming that she, among others, was an "extreme right-wing" individual, Respondent's public statement/comment from the dais does not constitute a "personal promise" or "action." As a Board member, Respondent's duties allow him to make statements/comments about Board business even if that statement/comment is not well-received or appreciated by others, including other members of the Board (and the Board President). If Respondent's statement/comment constitutes slander then, as discussed *supra*, Complainant can pursue any action she may feel appropriate. Consequently, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) should be dismissed.

IV. Request for Sanctions

At its meeting on March 22, 2022, 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 April 26, 2022, 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(a) and/or *N.J.S.A.* 18A:12-24.1(e). 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: April 26, 2022

***Resolution Adopting Decision
in Connection with C07-22***

Whereas, at its meeting on March 22, 2022, 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 March 22, 2022, 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(a) and/or *N.J.S.A.* 18A:12-24.1(e); and

Whereas, at its meeting on March 22, 2022, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on April 26, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on March 22, 2022; 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 April 26, 2022.

Kathryn A. Whalen, Esq.
Director, School Ethics Commission