

***Before the School Ethics Commission***  
***Docket No.: C29-22***  
***Decision on Motion to Dismiss***

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**Deborah Mutterer,**  
***Complainant***

v.

**Vivian Yudin King,**  
**Ramapo Indian Hills Board of Education, Bergen County,**  
***Respondent***

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**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed on March 19, 2022, by Deborah Mutterer (Complainant), alleging that Vivian Yudin King (Respondent), a member of the Ramapo Indian Hills Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated March 22, 2022, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On March 23, 2022, 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. The Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code).

On March 24, 2022, 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.<sup>1</sup> On April 12, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On April 27, 2022, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated June 20, 2022, that the above-captioned matter would be discussed by the Commission at its meeting on June 28, 2022, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Following its discussion on June 28, 2022, the Commission adopted a decision at its meeting on July 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(f). The Commission also adopted a decision finding the Complaint not frivolous and to denying Respondent's request for sanctions.

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<sup>1</sup> 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***

By way of background, Complainant states that Respondent was elected to the Board in November 2020, and was sworn-in as a Board member in January 2021. Respondent was also elected to an “Oakland, NJ Republican County Committee seat before [the] November 2020” Board election, and remains as a member of that committee. In addition, Respondent was appointed by the Mayor and Council to serve as an “Alternate II” on the New Jersey Zoning Board of Adjustment. Despite holding various positions, when the Board was asked whether any member held any other “elected seat,” Respondent “failed to acknowledge” or answer the question posed by the public. The question was asked of the Board at its meeting on February 15, 2022.

Based on these facts, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(f)* because Respondent “accepted” her position on the Board “while still maintaining another [S]tate elected position”; Respondent “was and is aware that according to State laws, a person elected to public office in this State shall not hold simultaneously any other elected public office”; when questioned, in public, at the Board’s meeting on February 15, 2022, Respondent “did not offer an answer” to the question posed (of whether other elected seats were held), and “failed to acknowledge [and] answer the public question – leaving the public at large to question her integrity and transparency”; one of her elected positions is as a member of the “Republican” County Committee, and positions on the Board are non-partisan; and Respondent “did not uphold [her] duties and obligations as [she] is sworn to do” as a Board member.

### **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. Respondent maintains that, “Although Complainant’s allegations are geared towards [Respondent’s] alleged conduct as a ... Board member ... Complainant’s true grievance with [Respondent] stems from events occurring within the scope of her position on the Zoning Board,” a position to which she was appointed. In this regard, after Respondent questioned whether masks would be worn at Zoning Board meetings, she was berated by a fellow member of the Zoning Board, and his actions ultimately resulted in an investigation. Following the conclusion of the investigation, Respondent read a statement at a public Zoning Board meeting expressing her frustration with the process and, immediately thereafter, Complainant “stood up and went on a lengthy tirade – in public – against [Respondent].” The next day, Complainant filed this matter.

In more specific response to the Complaint, Respondent argues that “the Complaint does not even attempt to articulate how the alleged conduct [pled in the Complaint] either violates any State Board of Education rule or regulation, and certainly does not explain how [Respondent] surrendered her independent judgment to anyone else.”

Regarding Respondent holding other “elected” positions, while Respondent is a member of the “Oakland, NJ Republican County Committee,” Complainant has “falsely concluded the

impropriety of these circumstances.” According to Respondent, review of the statute that prohibits dual office holding, namely *N.J.S.A. 40A:9-4(1)*, clearly shows that Respondent is not in violation thereof because membership on the “Oakland, NJ Republican County Committee” is “not a position voted on by “the general electorate.” In this case, Respondent was “elected” to this position “through only the vote of Republican voters in the Republican Primary election.” Per Respondent, her membership on the “Oakland, NJ Republican County Committee” “is no more consequential ... than would be her election to team captain on an intramural sports team.”

As for Respondent’s lack of response during public comment at the Board meeting on February 15, 2022, even if a response was required, which Respondent denies because she does not hold two elected positions in violation of the law, Board policy “dictates that a response would have been inappropriate at that time.” By virtue of Board policy, Respondent “was not permitted to answer the member of the public’s question unless directed by the School Board President, which did not happen.” Therefore, “even assuming [Respondent] had a legal duty to disclose – she did not – of her position on the Republican Committee – a position which does not violate any law or regulation – this allegation *still* falls short because [Respondent] was not permitted to answer the question at hand.”

Finally, Respondent argues that the Complaint is frivolous because it does not contain merit and was not filed in good faith. Instead, Complainant “harbors a not so insignificant amount of resentment towards [Respondent] for unrelated and innocuous events,” related to the Zoning Board. After she (Complainant) lashed out at Respondent, she filed this Complaint the next day. Moreover, the allegations in the Complaint prove neither unlawful nor unethical conduct by Respondent. Instead, Complainant has filed this action “simply to harass Respondent for daring to challenge public officials for insufficiently addressing public, unadulterated misogyny ... at the Zoning Board meeting.”

For the foregoing reasons, Respondent argues that the Complaint should be dismissed, and the matter deemed frivolous.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant maintains her Complaint was not baseless or frivolous, nor was it retaliation. Per Complainant, Respondent’s filing is a “shameless attempt to avoid addressing her violations” and, sadly, a waste of time and resources. It is Complainant’s position that what occurred at the Zoning Board meeting has nothing to do with her Complaint, and should not be considered by the Commission in ruling on the Motion to Dismiss and allegation of frivolous filing. Based on the facts as pled in her Complaint, Complainant reasserts that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(f)*.

### 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(f)*.

#### 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 simultaneous service on the Board and on the "Oakland, NJ Republican County Committee" may implicate or possibly violate *N.J.S.A. 19:3-5.2*<sup>2</sup> and/or *N.J.S.A. 40A:9-4(1)*<sup>3</sup>, the Commission advises that those statutes fall beyond the scope, authority, and jurisdiction of the Commission to enforce. Although Complainant may be able to pursue purported violations of *N.J.S.A. 19:3-5.2* and/or *N.J.S.A. 40A:9-4(1)* in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate such issues. As such, those claims are dismissed.

#### C. *Alleged Code Violations*

Complainant submits that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(f)*, and those 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.

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.

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<sup>2</sup> Pursuant to *N.J.S.A. 19:3-5.2(a)*, "For elective public office other than as provided in R.S.19:3-5 or N.J.S.40A:9-4, a person elected to public office in this State shall not hold simultaneously any other elective public office."

<sup>3</sup> As set forth in *N.J.S.A. 40A:9-4(1)*, "It shall be unlawful for a person to hold simultaneously an elective county office and an elective municipal office."

Pursuant to *N.J.A.C.* 6A:28-6.4(a), violations of *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(f) need to be supported by certain factual evidence, more specifically:

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.

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 herself, a member of her immediate family or a friend.

#### ***Alleged Violation of N.J.S.A. 18A:12-24.1(a)***

Following a thorough review of the Complaint, the Commission finds that even if the facts as pled 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(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 including, without limitation, *N.J.S.A.* 19:3-5.2 and/or *N.J.S.A.* 40A:9-4(1), when she engaged in any of the acts/conduct set forth in the Complaint. In the absence of the required final decision(s), the Commission is constrained to dismiss the alleged violation of *N.J.S.A.* 18A:12-24.1(a).

#### ***Alleged Violation of N.J.S.A. 18A:12-24.1(f)***

Based on its review, the Commission finds that even if the facts as asserted 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(f). Even if Respondent is a member of the “Oakland, NJ Republican County Committee,” and the “Oakland, NJ Republican Committee” is a “special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause,” Complainant has not articulated what action(s), if any, Respondent purportedly undertook in her capacity as a Board member on behalf of, or at the request of, the “Oakland, NJ Republican County Committee.” Complainant has also failed to identify exactly how Respondent, in her capacity as a Board member, may have used the schools to acquire a benefit for herself, a member of her immediate family, or a friend. Instead, Complainant’s gripe appears to be with Respondent’s membership in the “Oakland, NJ Republican County Committee” without more. However, absent some suggestion that Respondent took action on behalf of the “Oakland, NJ Republican County Committee,” or otherwise used the schools in an unethical way because of her membership in and association with the “Oakland, NJ Republican County Committee”, a violation of *N.J.S.A.* 18A:12-24.1(f) cannot be sustained. Mere membership and association with an organization, even if partisan, without more, is not a viable basis for a violation of the Act. Accordingly, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(f) should also be dismissed.

#### IV. Request for Sanctions

At its meeting on June 28, 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 July 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(f). 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).*

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Robert W. Bender, Chairperson

Mailing Date: July 26, 2022

***Resolution Adopting Decision  
in Connection with C29-22***

***Whereas***, at its meeting on June 28, 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 June 28, 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(f); and

Whereas, at its meeting on June 28, 2022, the Commission discussed finding the Complaint not frivolous and denying the request for sanctions; and

Whereas, at its meeting on July 26, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on June 28, 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.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 26, 2022.

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