

***Before the School Ethics Commission***  
***Docket No.: C40-21***  
***Decision on Motion to Dismiss***

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**Elisabeth Schwartz**  
***Complainant***

v.

**Fahim Abedrabbo and Feras Awwad**  
**Clifton Board of Education, Passaic County,**  
***Respondents***

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**I. Procedural History**

This matter arises from an Amended Complaint that was filed on September 13, 2021, by Elisabeth Schwartz alleging that Fahim Abedrabbo and Feras Awwad (Respondents), members of the Clifton Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* The Complaint avers that Respondents violated *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), and *N.J.S.A.* 18A:12-24.1(i) of the Code of Ethics for School Board Members (Code).

On September 15, 2021, the Complaint was served on Respondents, by electronic mail, notifying Respondents that charges were filed with the School Ethics Commission (Commission), and advising that Respondents had twenty (20) days to file a responsive pleading.<sup>1</sup> On October 29, 2021, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). On November 3, 2021, Complainant filed a response to the Motion to Dismiss.

On December 7, 2021, the parties were subsequently notified that this matter would be placed on the Commission's agenda for its meeting on December 14, 2021, to decide Respondents' Motion to Dismiss. At its meeting on December 14, 2021, the Commission considered the filings in this matter, including whether Complainant pleaded sufficient, credible facts to support a finding that Respondents violated the various provisions of the Act.

**A. Alleged Code Violations**

Complainant alleges that Respondents violated *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f), and *N.J.S.A.* 18A:12-24.1(i) of the Code of Ethics for School Board Members. The relevant Code provisions are as follows:

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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.

- 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.
- c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.
- 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.
- 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.
- i. I will support and protect school personnel in proper performance of their duties.

### ***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)*.

## **II. Summary of the Pleadings**

### ***A. The Complaint***

Complainant alleges Respondents violated the School Ethics Act when during the public portion of a Board meeting, they made anti-Semitic statements that were aligned with their personal political beliefs and were unrelated to educating District students and were beyond their duties as Board members. Complainant asserts that Respondents' comments negatively impacted the educational welfare of the District's Jewish students. The Complaint further alleges Respondents' comments went beyond the Board's policy making role and were so controversial and distracting that they resulted in causing the schools to be less well run, and had the potential to compromise the Board because the statements were false and intimidating to certain members of the school community. Complainant also alleges Respondents' comments harmed school personnel, especially Jewish teachers who hold beliefs that run counter to the beliefs espoused in Respondents' comments.

### ***B. Motion to Dismiss***

Following receipt of the Complaint, Respondents filed a Motion to Dismiss in lieu of an Answer. In the Motion to Dismiss, Respondents assert the comments were made in honor of, and in remembrance of America's veterans in advance of the Memorial Day holiday. Respondents also contend the Complaint failed to include any facts to support the claim that Respondents made any decision contrary to the educational welfare of children. Respondents also argue that Complainant's allegations are conjecture, and more pointedly, that their (Respondents')

comments, standing alone, did not result in any board action in violation of the Act. Respondents further argue that their comments did not amount to any personal promise or any action beyond the scope of their duties because they were personal comments absent any subsequent action taken by the Board. Respondents also argue that Complainant's claim about potential harm to school personnel is also conjecture and unsupported by any facts or evidence.

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

In response to Respondents' Motion to Dismiss, Complainant reiterated the allegations in the Complaint and argues that Respondents violated their official duties to convey controversial, political, and personal messages concerning the Israel-Palestine conflict, in violation of 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 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 asserted sufficient facts which, if true, could support a finding that Respondents violated the above-referenced provisions of the Code.

### ***Alleged Code Violations***

Complainant alleges Respondents violated the Act when, at the May 20, 2021, Board meeting, they read statements in support of Palestinians and the Free Palestine Movement, which according to Complainant, is "intensely anti-Semitic and anti-Israel." Complainant argues Respondents' statements negatively impacted the educational welfare of the District's Jewish students; exceeded Respondents' policy-making duties; were considered personal promises that compromised the Board; resulted in Respondents' surrendering their independent judgment to a special interest; and were harmful to school personnel, especially the District's Jewish teachers.

Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(b)* shall include evidence that the respondent(s) willfully made a decision contrary to the educational welfare of children, or evidence that the respondent(s) 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.

Complainant contends Respondents violated this provision when they made statements at the Board meeting that were "unrelated to educating students, and that distract from educating students." Specifically, Complainant alleges Respondent Awwad stated:

"American police forces are regularly sent to Israel 'to learn and be taught abusive tactics that are brought back to the urban communities. When George Floyd died it was because a police officer decided to put a knee to his neck. He knew to put a knee to his neck and suffocate him. That is an Israeli tactic on Palestinian people. ... It's unfortunate a country over there is being funded with \$40 billion of U.S. tax dollars to oppress the Palestinian people. ... Gaza is the most densely populated place in the world

and the biggest open air prison with Israel controlling the water – the Mediterranean – pointing missiles at them, the military building apartheid-style walls, trapping them, controlling every moment.”

Complainant also alleges Respondent Awwad also said: “Free Palestine. Free my people.” He noted that although he wished for peace for both sides, “in my parents’ homeland of Palestine there is a humanitarian issue and many families have been murdered in an uncontrollable crisis.” Respondent Awwad “called on national and state leaders to make a statement” adding, “We should all be living in peace. Hatred will never win. Colonialism will never win. Apartheid will disappear as it did in South Africa.”

Complainant contends Respondent Abedrabbo noted “the atrocities occurring all over the world, particularly in the Middle East” and stated, “children should be able to attend school without worrying whether their homes will be destroyed ‘or their neighborhoods ethnically cleansed’” and “he had been humiliated by being detained and strip-searched and having guns pointed at him while visiting relatives.”

Respondents filed a Motion to Dismiss and asserted that the statements they made during the May 20, 2021, Board meeting stemmed from “honoring and remembering America’s veterans during the upcoming Memorial Day holiday and year-round.” Respondent Abedrabbo began by expressing “his gratitude for having the good fortune to be born in this country,” having access to “advantages that others around the world do not,” “the imbalance in educational opportunity available to Palestinian children” and then concluded with a personal experience. Similarly, Respondent Awwad commented during the Board meeting “on the humanitarian crisis and violence engulfing Palestine.” Board counsel asked Respondent Awwad to clarify that “his comments were his alone, and did not represent the opinion of the Board, which he wholeheartedly did.” Respondents further assert that neither of their statements were anti-Semitic and they did not make any comments related to the Jewish faith.

Respondents contend Complainant has not provided any facts to support that Respondents “made any decision contrary to the educational welfare of children or that they took any deliberate action to obstruct the programs and policies designed to meet the individual needs of any children.” According to Respondents, “to the extent that Complainant seems to assert that the mere fact that [Respondents] made the comments which she deemed objectionable qualifies as a ‘decision’ or an ‘action,’” “she is mistaken.” Respondents further contend, “communicating, even on a potentially controversial subject, does not equate with taking action or making a decision.” Respondents argue that they made their statements during the “portion of the Board meeting specifically set aside for ... personal comments” and “neither Board policy or the law limits the subjects upon which commissioners may opine in a public forum,” as long as they make it clear that the opinions are their own and do not represent the Board, which Respondents did.

After a review of this alleged violation as pled in the Complaint, the Commission determines that even if the facts as argued are proven true by sufficient credible evidence, they would not support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(b) because the District’s existing policy permits Board Members to make personal comments on any matter a Member sees fit so long as a Member makes clear the opinion does not represent that of the Board, which Respondents did here. Further, the Commission determines that Respondents’

comments give rise to questions concerning District governance, (which is outside the jurisdiction of the Commission) specifically questions concerning the policy itself, rather than alleged violations of the School Ethics Act. Therefore, the Commission determines that the alleged violation of *N.J.S.A. 18A:12-24.1(b)* should be dismissed.

Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(c)* shall include evidence that the respondent(s) took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to:

- (i.) Develop the general rules and principles that guide the management of the school district or charter school;
- (ii.) Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- (iii.) Ascertain the value or liability of a policy.

Complainant contends Respondents violated this provision because Respondents made statements that “expanded the Board activities beyond policy making, planning, and appraisal, their statements not only have nothing to do with making sure the schools are well run, but these statements also distract from education and could serve to make the schools less well run.”

As part of their Motion to Dismiss, Respondents argue that Complainant’s allegations are “pure conjecture unsupported by any actual evidence.” Respondents further argue by making the statements at the Board meeting, they “did not take any Board action” nor any other action to develop the general rules and principles ...” and their statements do not give rise to a violation of the Act.

After a review of this alleged violation as pled in the Complaint, the Commission determines that even if the facts as argued are proven true by sufficient credible evidence, they would not support a finding that Respondents violated *N.J.S.A. 18A:12-24.1(c)* because the comments did not result in any subsequent action taken by the Board. While the Commission acknowledges the controversial nature of the comments, and the fact that the comments were likely perceived as offensive, and hurtful to members of the District’s Jewish community, the Board did not take any action following Respondents’ comments. Therefore, the Commission determines that the alleged violation of *N.J.S.A. 18A:12-24.1(c)* should be dismissed.

Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(e)* shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board.

Complainant alleges Respondents violated *N.J.S.A. 18A:12-24.1(e)* because by making these statements, Respondents took action that had the potential to compromise the Board. Complainant contends that Respondents’ statements are false and intimidating to people that believe in freedom of women, free speech, judicial due process, LGBTQ rights and religions other than the Muslim religion,” and as a result are in violation of the Act.

In their Motion to Dismiss, Respondents maintain the statements that they made at the Board meeting did not “remotely amount to personal promises or action beyond the scope of

their duties.” Moreover, Respondents contend they did not take any action at all, and Complainant asserts Respondents only action is speaking. Once again, personal comments do not “amount to taking action” and Complainant’s allegations “lack any basis upon which to conclude that Respondents’ conduct in making public comments did, or had the potential to, compromise the Board.” Respondents further maintain that for conduct to be violative of this provision, its potential “to compromise the Board must be real and the allegations must not be entirely speculative or hypothetical, as is the case here.”

After a review of this alleged violation as pled in the Complaint, the Commission determines that even if the facts as argued are proven true by sufficient credible evidence, they would not support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(e) because the comments did not result in any action that could compromise the Board. While the Commission acknowledges the highly controversial nature of Respondents’ personal comments during the public portion of the Board meeting, the Board did not take any action following Respondents’ comments. Therefore, the Commission determines that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) should be dismissed.

Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(f) shall include evidence that the respondent(s) 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 the respondent(s) used the schools in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend.

Complainant alleges Respondents violated *N.J.S.A.* 18A:12-24.1(f) because Respondents took action on behalf of a special interest group who adhere to a particular political party or cause by supporting Palestinians. In Complainant’s view, Respondents clearly advocated for a political cause, and made incorrect statements that were clearly guided by their own personal and political beliefs that have nothing to do with educating the District’s students.

In the Motion to Dismiss, Respondents argue, “the second prong of Section 24.1(f) is plainly irrelevant to the present matter.” As to the first prong of *N.J.S.A.* 18A:12-24.1(f), Respondents further argue that Complainant did not provide any evidence to demonstrate that Respondents “took action on behalf of, or at the request of a special interest group . . . .” nor that either Respondent is a member of “any special interest group.” Furthermore, “making a public statement is not an ‘action’ under the Act” and even assuming that this was an action, Complainant did not provide any evidence, “besides plain conjecture and her own unsupported assumptions regarding Respondents’ motivations that could show that they took any action on behalf of any special interest group.” Therefore, Respondents maintain a violation of *N.J.S.A.* 18A:12-24.1(f) cannot be found and should be dismissed.

After a review of this alleged violation as pled in the Complaint, the Commission determines that even if the facts as argued are proven true by sufficient credible evidence, they would not support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(f) because the comments did not result in any action on behalf of a special interest group. Further, there is no evidence that Respondent(s) used the schools to acquire some benefit for themselves or any member of their immediate family or friends. Putting aside the personal and controversial nature of the comments, (the Commission does not do so lightly), the Board did not take any action

following Respondents' comments. Therefore, the Commission determines that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) should be dismissed.

Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(i) shall include evidence that the respondent(s) took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

Complainant contends Respondents violated this provision because Respondents "took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties"; and because "Jewish teachers, especially those who support Israel, could now be targeted by people that listened to Respondents" and "this harm extends to any school professional who holds beliefs counter to those of Respondents."

In their Motion to Dismiss, Respondents assert that Complainant has not provided any evidence to support a violation of this provision. Respondents further contend Complainant "supports her allegation with nothing more than vague supposition that District staff 'could now be targeted' by people who heard Respondents' comments." According to Respondents, Complainant's allegations are "pure conjecture" and "unsupported claims of theoretical future harm, without any basis in reality, cannot serve as evidence" to support a violation of *N.J.S.A.* 18A:12-24.1(i) and therefore, should be dismissed.

After a review of this alleged violation as pled in the Complaint, the Commission determines that even if the facts as argued are proven true by sufficient credible evidence, they would not support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(i) because neither Respondents nor the Board took any deliberate action that resulted in compromising or harming school personnel. Even though Respondents' comments were likely offensive to certain members of the school community, neither Respondents nor the Board took any action following the delivery of Respondents' comments. While the Commission acknowledges the Board's existing personal comment policy may give rise to questions under a Board governance analysis, here Respondents' (controversial and likely offensive) comments, standing alone, do not give rise to a violation of the School Ethics Act. Therefore, the Commission determines that the alleged violation of *N.J.S.A.* 18A:12-24.1(i) should be dismissed.

#### **IV. Decision**

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainants), 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 Respondents violated *N.J.S.A.* 18A:12-24.1(b) *N.J.S.A.* 18A:12-24.1(c); *N.J.S.A.* 18A:12-24.1(e); *N.J.S.A.* 18A:12-24.1(f); and *N.J.S.A.* 18A:12-24.1(i).

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondents 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: January 25, 2022

***Resolution Adopting Decision  
in Connection with C40-21***

***Whereas***, at its meeting on December 14, 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 December 14, 2021, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient credible facts to support the allegations that Respondents violated *N.J.S.A.* 18A:12-24.1(b); *N.J.S.A.* 18A:12-24.1(c); *N.J.S.A.* 18A:12-24.1(e); *N.J.S.A.* 18A:12-24.1(f); and/or *N.J.S.A.* 18A:12-24.1(i); and

***Whereas***, at its meeting on January 25, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on December 14, 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 its public meeting on January 25, 2022.

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Salma T. Chand, Executive Director  
School Ethics Commission