

***Before the School Ethics Commission***  
***Docket No.: C41-21***  
***Decision on Motion to Dismiss***

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**Michael Marinelli**  
***Complainant***

v.

**Christine Dye**  
**Cedar Grove Board of Education, Essex County,**  
***Respondent***

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**I. Procedural History**

This matter arises from a Complaint that was filed on August 30, 2021, by Michael Marinelli (Complainant), alleging that Christine Dye (Respondent), a member of the Cedar Grove Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* The Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(c) of the Code of Ethics for School Board Members (Code).

On September 1, 2021, the Complaint was served on Respondent, by electronic mail, notifying Respondent that charges were filed with the School Ethics Commission (Commission), and advising that Respondent had twenty (20) days to file a responsive pleading.<sup>1</sup> On September 9, 2021, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), which included an allegation the Complaint was frivolous, and a request for sanctions. Despite being notified that a response to the Motion to Dismiss and allegation of frivolous filing was due on or before October 25, 2021, Complainant did not submit a response.

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 Respondent's Motion to Dismiss and allegation of frivolous filing. 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 Respondent violated *N.J.S.A.* 18A:12-24.1(c).

**A. Alleged Code Violation**

In the Complaint, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(c) of the Code. The relevant Code provision is 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.

- 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.

### ***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 Respondent violated the Code when she made a slanderous remark about Complainant during a Board meeting. The Complainant, who is a resident and is employed in the community, alleges Respondent accused him by name of “standing outside threatening people.” Complainant contends Respondent’s comment was not only untrue but went beyond the scope of Respondent’s duties as a Board member in violation of the Code. Complainant further argues Respondent’s comments, which were made in public and recorded for viewing on the District’s website, “publicly embarrassed him” and could negatively impact his reputation and his employment.

### ***B. Motion to Dismiss and Allegation of Frivolous Filing***

Following receipt of the Complaint, Respondent filed a Motion to Dismiss, which included an allegation of frivolous filing and a request for sanctions. In the Motion to Dismiss, Respondent asserts she acted within the scope of her duties as Board President by enforcing the Board’s policy requiring reasonable public decorum near the conclusion of a public Board meeting. Respondent further asserts Complainant failed to allege any facts that would support a violation of this provision of the Code. Complainant argues the Complaint is frivolous because it is without merit, made in bad faith, and is intended to harass Respondent.

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

Complainant failed to submit a response to Respondent’s Motion to Dismiss and allegation of frivolous filing.

## **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 Respondent violated *N.J.S.A.* 18A:12-24.1(c) of the Code.

### *Alleged Code Violation*

Complainant alleges Respondent violated the Code when she accused Complainant of “standing outside threatening people” following the August 17, 2021 Board meeting. Complainant further alleges Respondent’s comments were untrue, humiliating, and may cause concern with his employer. Complainant argues Respondent’s comments, which were recorded and available for viewing on the District’s website, went beyond Respondent’s duties as a Board member in violation of *N.J.S.A.* 18A:12-24.1(c) of the Code.

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 Respondent violated this provision of the Code when she made a slanderous comment about Complainant accusing him of “of standing outside threatening people.” Complainant further asserts the accusation was “inappropriate” and a “blatant lie.” According to Complainant, in addition to there being approximately 130 individuals in attendance at the meeting, it was also live streamed on YouTube. Complainant notes that he is a community member and employed in the town and Respondent’s comment “has tarnished [his] reputation” and “may cause concern with [his] employer. Complainant contends Respondent’s behavior at the Board meeting “is unacceptable behavior by an elected official.” Complainant further asserts Respondent has “clearly stepped out of the boundaries of governance” and “has shown she can no longer fairly and objectively represent the community she was elected to serve.”

Respondent filed a Motion to Dismiss and allegation of frivolous filing and initially notes that following a Board meeting on July 20, 2021, Complainant “made statements towards community members as they exited the public portion of the meeting.” According to Respondent, the police department “received at least one complaint from an attendee that Complainant ‘threatened’ the individual.” Respondent maintains as a result of the behavior following the last Board meeting, she “enforced Board Policy requiring reasonable public decorum near the conclusion of the public Board meeting” on August 17, 2021. Respondent further maintains that as Board President she “acted within her duties as the presiding officer and commented about Complainant’s behavior so as to deter it from re-occurring at the end of the subsequent Board meeting.” Respondent asserts that Complainant failed to allege facts that would support a violation of *N.J.S.A.* 18A:12-24.1(c) and, therefore, the Complaint should be dismissed in its entirety.

Finally, Respondent asserts that the Complaint is frivolous, is without merit and made in bad faith. Respondent further asserts Complainant filed the Complaint to “harass and embarrass Respondent for her compliance with the new [S]tate law requiring diversity and inclusion courses” and Complainant “is blatantly attempting to coerce Respondent to resign from the Board.”

Complainant did not submit a response to the Motion to Dismiss and allegation of frivolous finding.

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 Respondent violated *N.J.S.A.* 18A:12-24.1(c) because her duties as Board President require her to preside over Board meetings, which at times requires the Board President to limit and/or quell highly emotional comments from the public on matters that are highly controversial. The Commission acknowledges that the current political climate at the national and local level is highly charged. Consequently, public discourse can often be debased by highly partisan and highly personal attacks – this is also true at the local school board level. The Commission encourages Board members, school officials, parents, and community members to recommit to civility while debating the myriad of public policy matters implicating the delivery of education and educational services to New Jersey’s public-school students.

Nonetheless, in this matter, the Commission determines that Respondent’s actions did not go beyond her policy making duties as a Board member. Therefore, the Commission determines that the alleged violation of *N.J.S.A.* 18A:12-24.1(c) should be dismissed. The Commission also finds the Complaint is not frivolous because it was not filed in bad faith or for the purpose of harassment, delay, or malicious injury as set forth in the Commission’s regulations.

#### **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 because the Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c). The Commission also voted to find that the Complaint is not frivolous.

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: January 25, 2022

***Resolution Adopting Decision  
in Connection with C41-21***

***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 allegation that the Complaint was frivolous, 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 as to the alleged violation *N.J.S.A.* 18A:12-24.1(c), and

***Whereas***, at its meeting on December 14, 2021, the Commission discussed finding the Complaint not frivolous; 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