

***Before the School Ethics Commission***  
***Docket No.: C64-21***  
***Decision on Motion to Dismiss***

---

**Sharon DeVito,**  
***Complainant***

v.

**Richard Young,**  
**Robbinsville Board of Education, Mercer County,**  
***Respondent***

---

**I. Procedural History**

This matter arises from a Complaint that was filed on October 27, 2021, by Sharon DeVito (Complainant), alleging that Richard Young (Respondent), a member of the Robbinsville 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(e)* and *N.J.S.A. 18A:12-24.1(f)* of the Code of Ethics for School Board Members (Code).

On October 28, 2021, 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.<sup>1</sup> On December 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 December 23, 2021.

The parties were notified by correspondence dated February 17, 2022, that this matter would be placed on the Commission's agenda for a special meeting on February 25, 2022, in order to make a determination regarding the Motion to Dismiss. At its special meeting on February 25, 2022, the Commission considered the filings in this matter and, at its meeting on March 22, 2022, 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(e)* and/or *N.J.S.A. 18A:12-24.1(f)*.

**II. Summary of the Pleadings**

**A. *The Complaint***

Complainant asserts Respondent violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* because he used his position as a member of the Board to endorse his friend, Mike Cipriano, for a position on the Robbinsville Township Council. According to Complainant,

---

<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.

Respondent made the alleged unethical endorsement on “several” Facebook pages, and the audio from his video endorsement “DOES NOT include the disclaimer [that Respondent] is speaking as a private citizen” and, as a result, “the posting gives the impression that [Respondent] is endorsing Mr. Cipriano in his official capacity as a Board ... member.” In support of her claims, Complainant provided social media postings from the “Re-Elect Cipriano, Elect Blakely & Todd for Robbinsville Township Council” Facebook campaign page; from the “Chris Ciaccio” Facebook page; and from the “Mike Cipriano” Facebook page.

**B. *Motion to Dismiss***

Following receipt of the Complaint, Respondent filed a Motion to Dismiss. Respondent acknowledges that he recorded a video supporting Mr. Cipriano’s re-election, and notes that the video was later posted to a campaign Facebook page run by the campaign, not Respondent, and that the campaign account, not Respondent, created the caption (which referenced Respondent’s position on the Board). In this regard, the “screenshots” appended to the Complaint “are postings from *the campaign or personal accounts of the candidate and another individual,*” and do not belong to Respondent (emphasis added). In addition, in the video, Respondent “makes no statement regarding his Board membership, and in no way indicates that the Board is endorsing a candidate for the Township Council.” Respondent notes that because the opinions expressed in the video are Respondent’s personal opinions, and he did not identify himself as a member of the Board, he did not need to include a disclaimer.

In more specific response to the allegations in the Complaint, and regarding the alleged violation of *N.J.S.A. 18A:12-24.1(e)*, Respondent maintains Complainant “has failed to set forth any factual allegations, which if proven true, suggest that Respondent made any personal promises or took any private action which could have compromised the Board.” Respondent further maintains that because his “personal remarks regarding the candidacy” of Mr. Cipriano are protected free speech, Respondent “took no private action on any matter related to the Board or its business when he endorsed a candidate for Township Council in his capacity as a resident.”

As for the purported violation of *N.J.S.A. 18A:12-24.1(f)*, Respondent contends his “statement of endorsement did not implicate the [Board] in any manner, and therefore there can be no determination that he ‘used the schools’ for anyone’s benefit.” Consequently, Complainant did not state a claim for a violation of *N.J.S.A. 18A:12-24.1(f)*.

For all these reasons, Respondent asserts that the Motion to Dismiss should be granted, and the Complaint should be dismissed with prejudice.

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

In response to the Motion to Dismiss, Complainant maintains that although Respondent’s verbal endorsement does not mention his Board position, “the caption on the posting is extremely misleading,” and implies that, as a Board member, Respondent is endorsing the candidate who is his friend. Complainant also notes that the social media post was edited after she filed her Complaint, in that “School Board Member” was removed from the caption. While conceding that Respondent “may have been within his rights to express his opinion in the audio section of the posting, the phrase “School Board Member” that appeared on the post could be

interpreted as Respondent speaking on behalf of the Board. For these reasons, Complainant “respectfully requests” that Respondent’s Motion to Dismiss be denied.

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

#### B. *Alleged Code Violations*

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

- 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.

According to Complainant, Respondent violated both *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* because he endorsed his friend, Mr. Cipriano, for a position on Robbinsville’s Township Council on social media, but did not include a disclaimer on his endorsements/the social media posts noting that his endorsement was as a private citizen, and not as a member of the Board. Complainant argues that because a disclaimer was not included, “the posting gives the impression that [Respondent] is endorsing Mr. Cipriano in his official capacity as a Board ... member.”

Respondent counters that the video he made supporting Mr. Cipriano was posted to a campaign Facebook page run by the campaign, not Respondent; the campaign account, not Respondent, created the caption (which referenced Respondent’s position on the Board); the “screenshots” appended to the Complaint “are postings from *the campaign or personal accounts of the candidate and another individual*,” and do not belong to Respondent (emphasis added); and, in his video, Respondent never mentioned his membership on the Board, or otherwise indicated that the “Board is endorsing a candidate for the Township Council.” Instead, Respondent maintains that the opinions/positions offered in the video were his own and, therefore, did not require a disclaimer.

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. In addition, in order to establish a violation of *N.J.S.A. 18A:12-24.1(f)*, there must be factual 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 himself, a member of his immediate family or a friend.

After review of the Complaint, the Commission finds that even if the facts as claimed 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)* and/or *N.J.S.A. 18A:12-24.1(f)*. In its independent review of the video provided by Complainant, the Commission finds no factual evidence that Respondent referred to or otherwise relied upon his membership on the Board in supporting Mr. Cipriano for a position on Robbinsville's Township Council. The Commission has long recognized that Board members do not abdicate their First Amendment rights when elected to serve their communities. Although publicly elected school officials must always be mindful of how others may view or perceive the capacity in which they are speaking about a matter, when, as here, speech and expression is wholly unrelated to the Board, the First Amendment rights of the school official are beyond reproach.

In addition, although Respondent's video/image was reposted or shared on the social media pages of other individuals and groups, and his position on the Board was mentioned thereon, there is no factual evidence suggesting, let alone establishing, that those social media pages ("Re-Elect Cipriano, Elect Blakely & Todd for Robbinsville Township Council"; "Chris Ciaccio"; and "Mike Cipriano") belong to or are otherwise associated with, Respondent. Instead, the social media pages are those of Mr. Cipriano's campaign and/or the personal social media pages of others. Consequently, the Commission finds that Respondent cannot be found liable, and adjudged to have engaged in unethical behavior for the content of a social media page that he does not own, operate, or control. To the extent that another individual (or group/entity) may inappropriately refer to or rely upon a school official's position or standing on a Board to bolster or support a position, idea, or candidate, it would be incumbent upon the school official to take affirmative steps to remedy any perception of unethical behavior. However, there is no factual evidence to support such a position here. Therefore, the Commission finds that the stated violations of *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* 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(e)* and/or *N.J.S.A. 18A:12-24.1(f)*.

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

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: March 22, 2022

***Resolution Adopting Decision  
in Connection with C64-21***

***Whereas***, at a special meeting on February 25, 2022, 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 a special meeting on February 25, 2022, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f); and

***Whereas***, at its meeting on March 22, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on February 25, 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 March 22, 2022.

---

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