

Before the School Ethics Commission
Docket No.: C02-23
Decision on Motion to Dismiss

Margaret Bennett,
Complainant

v.

Judith Sullivan,
Ramapo Indian Hills Regional High School Board of Education, Bergen County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on January 5, 2023, by Margaret Bennett (Complainant), alleging that Judith Sullivan (Respondent), a member of the Ramapo Indian Hills Regional High School 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)*, *N.J.S.A. 18A:12-24.1(f)*, and *N.J.S.A. 18A:12-24.1(g)* of the Code of Ethics for School Board Members (Code).

On January 6, 2023, the Complaint was served on Respondent via electronic mail, notifying her that ethics charges had been filed against her with the Commission, and advising that she had twenty (20) days to file a responsive pleading.¹ On March 8, 2023, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On March 27, 2023, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated April 17, 2023, that the above-captioned matter would be discussed by the Commission at its meeting on April 25, 2023, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Following its discussion on April 25, 2023, the Commission adopted a decision at its meeting on May 23, 2023, granting the Motion to Dismiss in its entirety because Respondent was not acting in her official capacity when she engaged in the conduct set forth in the Complaint and, even if she was, Complainant failed to plead sufficient credible facts to support a finding that Respondent violated *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-*

¹ In order to conduct business during the Coronavirus (COVID-19) pandemic, the Commission implemented an electronic filing system, which remains a permissible method by which the Commission and parties can effectuate service of process. Consequently, service of process was effectuated by the Commission through electronic transmission only.

24.1(g). The Commission also adopted a decision finding the Complaint not frivolous, and denying Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

According to Complainant, Respondent engaged in a series of “purposeful and deliberate actions” in her capacity as a Board member, and without the knowledge or authority from the Board to “weaponize” Board “content” in order to retaliate against Complainant for ethics charges that were filed against Respondent in March 2022, but not by Complainant. More specifically, and in the course of municipal court charges that Respondent filed against Complainant for harassment and witness tampering, Complainant asserts: all of Respondent’s “private actions,” as further detailed in the Complaint, were taken without the knowledge of, or authorization from, the Board; Respondent made “410 references” to the Board and the Ramapo Indian Hills Regional High School District (District) in her submissions/filings to local authorities regarding the charges against Complainant, but never included a disclaimer; therefore, affirming she was acting in her official capacity as a member of the Board in violation of *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(g); made “110 references” to the Board and the District during a probable cause hearing (in municipal court), and did so while acting in her capacity as a Board member in violation of *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(g); and misused and misrepresented confidential documents and executive session information during the municipal court matter in violation of *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(g).

In addition, Respondent misused and misrepresented official Board correspondence (including emails) in violation of *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(g); misused and misrepresented public comment from public Board meetings in municipal court in violation of *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(g); and misused “other miscellaneous false accusations” and “false narratives” related to the Board so that she could retaliate against and pursue what would ultimately be deemed unfounded harassment and witness tampering accusations against Complainant in violation of *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(g).

In summary of her allegations, Complainant states:

... given Respondent's actions, which Complainant having witnessed now firsthand the impact of what can happen if Respondent seeks to retaliate and take action against an individual she seeks to silence or punish, Complainant feels it is imperative for Respondent to be held accountable for her violations of portions of the ... Code ... If not, then Complainant is convinced Respondent will not stop at Complainant but will take similar actions against other individuals whose opinions she does not like ... Respondent names many other members of the public in her official [Board] emails and her communications with local authorities. All of those individuals have expressed opinions regarding Respondent's actions as a [B]oard member. They are unaware that she has been

reporting them to the local prosecutor and police. Complainant believes the Board is unaware that she is taking these private actions against individual members of the public who have a ... protected right to express themselves to public officials and boards of education. Additionally, Respondent took aim at fellow [B]oard members in her statements to local authorities which Complainant argues compromises the [B]oard, most especially when Respondent even makes accusations about those [B]oard member's family members. Complainant has observed a pattern through many other instances over the past two years in which Respondent issued personal attacks all cushioned in a blanket of untruths and mischaracterizations – even from the dais. Complainant feels that Respondent's actions defined herein demonstrate a serious potential for future similar actions. This behavior distracts [D]istrict administration and staff from the thing they and [B]oard members should have unity on ... Similarly, it results in a [B]oard member being the source of divisiveness in the school district. When a fellow [B]oard member names other fellow [B]oard members in a criminal indictment riddled with falsehoods, about them and their [B]oard it means that [a B]oard member's priorities are completely off the rails and that they have violated portions of the ... Code ... Similarly, that one [B]oard member's actions could cause fear in other [B]oard members which could impact those [B]oard member's (sic) being able to trust that their own actions will not be targeted if they disagree with Respondent. Complainant ... feels the actions of this rogue [B]oard member could continue to have a detrimental and costly effect on the [D]istrict. And so, [Complainant] informs that she has given tremendous thought and consideration to the filing of this [C]omplaint and feels it is the only avenue that can stop the ongoing damage.

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

In her Motion to Dismiss and allegation of frivolous filing, Respondent briefly details the different complaints that Complainant and/or her “friends” have filed against Respondent because of what Respondent characterizes as Complainant's “personal vendetta.” Respondent also offers the following information: during Complainant's own service as a board of education member (in another school district), Complainant was alleged to have engaged in unethical conduct; in November 2020, Complainant (a member of the public) wrote a letter to the Board objecting to the hiring of a certain candidate for interim superintendent; because the hiring process should have been confidential, Respondent was advised that Board counsel sent a letter to Complainant “instructing her to keep confidential [certain] information” because she should have never been in possession of it; in November 2021, because Respondent feared for her safety from Complainant's personal and targeted attacks, Respondent filed harassment charges against Complainant (to later include witness tampering); in March 2022, and in retaliation for Respondent's filing of harassment and witness tampering charges against Complainant, Complainant had her “friends” file ethics complaints against Respondent; in September 2022, Respondent offered the November 2020 letter from Board counsel to the municipal court in order “to demonstrate” Complainant's unethical practices, and also provided, as evidence, Complainant's commentary on Respondent's social media posts (because the “obsessive dissection of [Respondent's] public social media posts [by Complainant] was so alarming to

[Respondent]”); in November 2022, and in retaliation for the municipal court charges, Complainant filed a Notice of Tort Claim against Respondent; when Complainant filed a Notice of Tort Claim against Respondent in November 2022, Respondent learned for “the first time” that the November 2020 letter from Board counsel had *not* been sent to Complainant; and in retaliation for the municipal court charges she filed against Complainant, Complainant filed the within matter against Respondent in January 2023. Despite Complainant’s argument to the contrary, Respondent adamantly denies that she was acting on behalf of the Board when she filed personal harassment charges against Complainant, and denies that her actions compromised the Board.

In more specific response to the alleged violations of the Act, Respondent argues that this matter was filed solely because Respondent filed municipal court charges against Complainant, and the Commission does not have “jurisdiction over the within matter as it involves two private citizens.” By virtue of the fact that Respondent is a Board member, and nothing more, Complainant filed an ethics complaint. Because the filing is akin to a claim of malicious prosecution, and common law claims are not to be brought before the Commission, it must be dismissed.

As to Complainant’s insinuation that Respondent “potentially” compromised the Board by filing harassment charges against Complainant when she (Respondent) was in fear for her personal safety, Respondent argues that such “allegations have no merit and should be summarily dismissed.” Despite the fact that Complainant has the burden to establish a violation of *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(g)*, Complainant “fails to connect the alleged activity of Respondent ... to any violation ... because all of Complainant’s allegations stem from [Respondent’s] actions as a private citizen”; Complainant’s allegations “are purely hypothetical and far-fetched”; and no harm was done to the Board because Respondent filed charges against Complainant in municipal court because she feared for her safety.

Regarding the stated violations of *N.J.S.A. 18A:12-24.1(e)*, Respondent reiterates that she was not acting on behalf of the Board when she filed harassment charges against Complainant, but rather on her own behalf because she was in fear for her personal safety. Although Respondent concedes, and did admit in municipal court, that she knows Complainant because of her service as a school official, her action in filing charges was private, not Board action. In addition, the Board was not involved during the probable cause hearing (in municipal court); none of the testimony and none of the documents introduced at the probable cause hearing compromised the Board; and Complainant has failed to show how the Board was somehow compromised. To the extent that Respondent introduced her own social media posts (as a private citizen) with Complainant’s commentary included, she did so in order to highlight Complainant’s dissection of her posts in order to prove the harassment charges. In addition, Respondent’s submission of a letter that she believed (albeit incorrectly) was sent to Complainant also did not compromise the Board because it did not contain any confidential information. Because Respondent’s action was private, Complainant must prove the Board was compromised by her action, and she cannot do so. As such, the violations of *N.J.S.A. 18A:12-24.1(e)* must be dismissed.

With regard to the alleged violations of *N.J.S.A.* 18A:12-24.1(f), Respondent argues that Complainant “failed to set forth even a suggestion of the ... required factual basis,” as Respondent “did not act on behalf of anyone other than herself in filing harassment charges against” Complainant, Respondent used “her own judgment” when filing those charges, and Respondent did not use the schools to acquire some benefit for herself. Any reference to the Board was simply to show it was how she knew of Complainant. Therefore, the violations of *N.J.S.A.* 18A:12-24.1(f) must also be dismissed.

As for the alleged violations of *N.J.S.A.* 18A:12-24.1(g), Respondent again argues that Complainant “failed to set forth even a suggestion of the ... required factual basis,” as Respondent did not violate any Board policy; did not knowingly introduce any Board documents as part of the municipal court charges; and to the extent she shared a letter that was not sent to Complainant, she did so because she reasonably believed it had been sent to Complainant. As a result, the violations of *N.J.S.A.* 18A:12-24.1(g) must additionally be dismissed.

Finally, Respondent asserts that the Complaint is frivolous, and sanctions should be imposed as this matter “is yet another demonstration of the personal vendetta” Complainant has against Respondent. Moreover, it was filed “in retaliation” for the fact that Complainant was named as the defendant in a quasi-criminal municipal court matter. Per Respondent, the filing is a waste of taxpayer dollars, and the only way Complainant will be “stopped” from filing such matters is if sanctions are imposed.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant reiterates the facts and arguments set forth in her Complaint, and maintains that Respondent improperly, and unethically, used Board documents during the prosecution of the harassment and witness tampering charges against Complainant. Despite Respondent’s argument that she was acting as a private citizen, Complainant maintains that Respondent was acting in her capacity as a Board member because she was able to obtain certain documents due to her status as a school official, and not by submitting an OPRA request(s) as a private citizen would have to do in order to obtain same. For all of these reasons, and for those meticulously set forth in the Complaint, Complainant argues that the Motion to Dismiss, and the request for sanctions, must be denied.

D. Public Comments Offered at the Commission’s Meeting on April 25, 2023

At the Commission’s meeting on April 25, 2023, members of the public appeared by telephone and offered public comment regarding the above-captioned matter. More detailed information regarding the substance of those public comments can be found in the [minutes](#) from the Commission’s meeting on April 25, 2023.

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(e)*, *N.J.S.A. 18A:12-24.1(f)*, and/or *N.J.S.A. 18A:12-24.1(g)*. The Commission notes that, despite the offering of public comment at its meeting on April 25, 2023, the Commission's review of this matter was limited solely to the parties' written submissions.

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 either party seeks a determination from the Commission that the other may have violated a State or municipal criminal law, and/or violated any other State or municipal law (criminal, civil, or otherwise), the Commission advises that such determinations fall well beyond the scope, authority, and jurisdiction of the Commission. Although Complainant and/or Respondent may be able to pursue a cause of action in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those issues. Consequently, those claims are *dismissed*.

C. *Alleged Violations of the Act*

Complainant submits that, based on the conduct more fully detailed in her Complaint, Respondent violated *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(g)*, and these provisions of the Code 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.

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other

matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

Pursuant to *N.J.A.C.* 6A:28-6.4(a), a violation(s) of *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(g) needs to be supported by certain factual evidence, more specifically:

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 her duties such that, by its nature, had the potential to compromise the board.

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.

7. Factual evidence of a violation of the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that Respondent took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that Respondent violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by Respondent and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

In order for an individual to violate a provision(s) of the Act, the filing party must adduce sufficient factual evidence that a person was acting in their official capacity as a school official, whether in fact or by implication/perception. In other words, the mere fact that an individual may be a school official does not mean, without more, that any and all action and conduct undertaken is in their official capacity, and can violate the Act. It is only when a school official is actually acting, or seemingly acting, in their official capacity that it can be analyzed as a potential violation(s) of *N.J.S.A.* 18A:12-24 (“Prohibited acts”) and/or *N.J.S.A.* 18A:12-24.1 (“Code of Ethics for School Board Members”). Although, when acting in an official capacity, school officials must always ensure that their conduct does not run afoul of the Act, this does not divest them of the same rights and privileges that they enjoy as private citizens, and as non-school officials.

Although it is indisputable that Respondent “knows” Complainant because of Respondent’s role and service on the Board, it is also clear that when Respondent filed harassment and/or witness tampering charges against Complainant in municipal court, she did so in her personal capacity, and as a private citizen. The fact that Respondent may have needed to

refer to, rely upon, or otherwise reference her position on the Board, Board documents and/or materials does not, based on the facts pled in the Complaint, mean that Respondent was acting in her official capacity as a Board member and/or on behalf of the Board.

With the above in mind, and after a thorough review of the extensive contentions set forth in the Complaint, the Commission finds that even if the facts as averred are proven true by sufficient credible evidence, they would not support a finding that Respondent was acting in her official capacity. Because Respondent was not acting in her official capacity as a member of the Board, Complainant is unable to satisfy her burden to prove the purported violations of *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(g).

Assuming, arguendo, that Respondent was acting in her official capacity, there is insufficient factual evidence that Respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the board (*N.J.S.A.* 18A:12-24.1(e)); 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 used the schools in order to acquire some benefit for herself, a member of her immediate family or a friend (*N.J.S.A.* 18A:12-24.1(f)); and/or took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices, or provided inaccurate information that was other than reasonable mistake or personal opinion or was not attributable to developing circumstances (*N.J.S.A.* 18A:12-24.1(g)) when she filed harassment and/or witness tampering charges against Complainant. Any references to Respondent's position on the Board, and/or to Board documents or materials, was offered solely to substantiate what she believed were criminal infractions by Complainant. Accordingly, the Commission finds that the alleged violations of *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(g) should be dismissed.

IV. Request for Sanctions

At its meeting on April 25, 2023, 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 May 23, 2023, the Commission adopted a decision finding the Complaint not frivolous, and denying 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 find that Respondent was not acting in her official capacity when she engaged in the actions pled in the Complaint and, even if she was,

Complainant failed to plead sufficient credible facts to support a finding that Respondent violated *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(g). 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: May 23, 2023

***Resolution Adopting Decision
in Connection with C02-23***

Whereas, at its meeting on April 25, 2023, 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 April 25, 2023, the Commission discussed finding that Respondent was not acting in her official capacity when she engaged in the behavior enumerated in the Complaint and, even if she was, finding that Complainant failed to plead sufficient credible facts to support the allegations that Respondent violated *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(g)*; and

Whereas, at its meeting on April 25, 2023, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on May 23, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on April 25, 2023; 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 May 23, 2023.

Jeannine Pizzigoni
Staff Member, School Ethics Commission