

Before the School Ethics Commission
Docket No.: C103-22
Decision on Motion to Dismiss

Melissa Morrison,
Complainant

v.

Lisa Natale-Contessa,
Toms River Regional Board of Education, Ocean County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on November 4, 2022, by Melissa Morrison (Complainant), alleging that Lisa Natale-Contessa (Respondent), a member of the Toms River Regional 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 November 7, 2022, 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 December 16, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). On January 4, 2023, Complainant submitted “an application for leave of the Commission” to file an Amended Complaint in order “to cure technical defects, [and to] clarify or amplify allegations made in the original [C]omplaint”

At its special meeting on January 31, 2023, the Commission reviewed Complainant’s request to amend her Complaint, as well as the proposed form of Amended Complaint, and voted to grant the request pursuant to its authority as set forth in *N.J.A.C.* 6A:28-6.7. As a result, Respondent was directed to file a responsive pleading to the Amended Complaint within twenty (20) days or, alternatively, to rely on the arguments set forth in her previously filed Motion to Dismiss. On February 6, 2023, Respondent advised, through counsel, that she would be relying upon the previously filed Motion to Dismiss. Complainant was then afforded the opportunity to file a response to the December 16, 2022, Motion to Dismiss, which she did on February 27, 2023.

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.

The parties were subsequently notified by correspondence dated March 13, 2023, that the above-captioned matter would be discussed by the Commission at its meeting on March 21, 2023, in order to make a determination regarding the Motion to Dismiss. Following its discussion on March 21, 2023, the Commission adopted a decision at its meeting on April 25, 2023, 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(e)* and/or *N.J.S.A. 18A:12-24.1(f)*.

II. Summary of the Pleadings

A. Amended Complaint

Complainant states that, based upon Respondent's online biography, she has been a member of the Board for nearly two years, and "boasts" of having significant education and experience in business administration of marketing. On August 20, 2022, Respondent "posted a public post on her personal Facebook page" regarding the candidates (incumbents and otherwise) running for the Board, including those vying to represent the Borough of Beachwood (which included Complainant). In addition to endorsing specific candidates, and explaining the basis for her endorsement, Respondent's post states, in relevant part:

[Complainant], also from Beachwood, comes to all [B]oard meetings. She heckles parents. Thinks they're ignorant. She's a resister of our great Superintendent. It's good to provide checks and balances. But she thinks she knows how to run [the Toms River Regional School District (District)] better than Mike Citta who grew up here. Taught here. Raised his kids here. Had lead [(sic)] here in the past and now is putting us on the path to success. She does not know better th[a]n the rest of the parents or our [S]uperintendent. I hope Beachwood pays close attention and makes the right choice. [Another candidate] leads there in my mind. Stay tuned.

Per Complainant, Respondent's post "appears to have garnered thirty-one (31) reactions, [was] shared 3 times, and [was] otherwise potentially viewed by an incalculable number of people."

A few days later, and on August 23, 2022, Respondent "inexplicably edited" her post to read, with regard to Complainant: "[Complainant], also from Beachwood, comes to all [B]oard meetings. She heckles parents. Thinks they're ignorant. And a resister in general. [Another candidate] leads there in my mind. Stay tuned."

According to Complainant, Respondent's comments "endorsed several candidates for the November 2022 election to the Board, and with regard [to] the election of a member to represent the Borough of Beachwood, Respondent also made false, misleading, [and] disparaging statements about Complainant." Complainant adamantly denies Respondent's claims that she (Complainant) heckles parents, thinks that other District parents are ignorant, thinks that she knows how to run the District, thinks she "knows better" than the Superintendent, and denies Respondent's characterization of her as a "resister." When posting the at-issue comments on social media, Respondent "did not in any way, shape, or form, *much less explicitly*, state or

otherwise indicate that the post and comment was her personal view and not that of the Board.” Consequently, Complainant argues that Respondent’s posts violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f).

B. *Motion to Dismiss*

In her Motion to Dismiss, Respondent argues that the Complaint fails to assert sufficient facts that 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). In more specific response to the alleged violation of *N.J.S.A.* 18A:12-24.1(e), Respondent submits that her social media post did not contemplate Board action; the Complaint does not provide any facts to support that Respondent either made personal promises to anyone or took any action beyond the scope of her duties that, by its nature, had the potential to compromise the Board; the Complaint “does not provide a single fact as to how the post either damaged her reputation and character or hurt the integrity of the ... Board,” especially since Complainant was successful in her bid for election; and “the Compliant fails to provide any factual evidence that Respondent, through the social media post, took any action that had the potential to compromise the Board.” For these reasons, Respondent argues that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) should be dismissed.

Regarding the stated violation of *N.J.S.A.* 18A:12-24.1(f), Respondent argues that her post on her personal Facebook page was “not made on behalf of, or at the request of a special interest or partisan political group”; the social media post “was not made to acquire a benefit for Respondent or for a friend; the social media post in question merely “expressed [her] personal view and opinion” of a poster during an election; the Complaint “does not offer any evidence that indicates that [her] social media post on a personal page was prompted by or made on behalf of a special interest group or person[s] organized and voluntarily united in opinion”; and the Complaint fails to specify “the nature of the gain or benefit Respondent was allegedly attempting to secure for herself or for others” because she was not running for election. Without any 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 Respondent, a member of his or her immediate family or a friend,” the stated violation of *N.J.S.A.* 18A:12-24.1(f) must also be dismissed.

C. *Response to Motion to Dismiss*

In response to the Motion to Dismiss, Complainant maintains that Respondent’s personal social media posts failed to explicitly state that they were her personal views, and not those of the Board and, importantly, Respondent does not deny a disclaimer was not included.

Based on the facts and circumstances presented, when viewed in the light most favorable to her, Complainant argues she has presented “*undisputed* allegations and *uncontroverted* evidence of Respondent ... making several statements on a public social media platform where an innumerable amount of people may view the statements.” Complainant further argues she has “presented equally *undisputed* allegations and *uncontroverted* evidence that, in making the statements, Respondent did not, in any way, shape, or form, *much less explicitly*, state or

otherwise indicate that the statements were her personal view and not that of the Board.” As such, “Complainant believes” that Respondent has violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f).

Complainant further submits that, in making the comments on August 20, 2022, and August 23, 2022, “Respondent endorsed several candidates for the November 2022 election to the Board and, with regard for the election of a member to represent the Board of Beachwood, Respondent also made false, misleading, disparaging statements about Complainant.” Moreover, Respondent did not include the necessary disclaimer noting that the views expressed were her own, and not those of the Board.

Accordingly, Complainant requests that the Motion to Dismiss be denied in its entirety, and she has pled sufficient facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e) 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(e) 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 comments/statements may have constituted defamation, slander, and/or libel, the Commission advises that such determinations fall well beyond the scope, authority, and jurisdiction of the Commission. Although Complainant 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 argues that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f), 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.

As set forth in *N.J.A.C.* 6A:28-6.4(a), a violation(s) of *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f) 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.

Based on its review, the Commission finds that even if the facts as contended 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(e) and/or *N.J.S.A.* 18A:12-24.1(f). Complainant submits that because Respondent failed to include any kind of disclaimer on her August 20, 2022, social media post, and/or on her edited August 23, 2022, social media post endorsing certain candidates for the Board, Respondent “made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the [B]oard,” and “used the schools in order to acquire some benefit for herself, a member of her immediate family or a friend.”

As the Commission explained in [Aziz v. Nikitinsky et al., Monroe Township Board of Education, Middlesex County \(Docket No. C56-22\)](#):

... Although social media activity by a school official can be regarded as action ([I/M/O Treston, Randolph Township Board of Education, Morris County, Docket No. C71-18](#) and [Kwapniewski v. Curioni, Lodi Board of Education, Bergen County, Docket No. C70-17](#)), it is only when certain competent and

credible factual evidence is proffered therewith that a violation can be substantiated.

As a general matter, a school official does not violate the Act merely because he/she engages in social media activity. Instead, the Commission's analysis is guided by whether a reasonable member of the public could perceive that the school official is speaking in his or her official capacity or pursuant to his or her official duties. Whether a school official is perceived as speaking in his or her official capacity and pursuant to his or her official duties turns, in large part, on the content of the speech. If the speech in question has absolutely no correlation or relationship to the business of the Board and/or its operations and, therefore, could not possibly be regarded as a statement or position on behalf of the Board (as a body), a school official will not violate the Act. Conversely, if the speech in question *does* relate to the business of the Board and/or its operations, it is then reasonable for the reader to perceive the speech as being offered in an official capacity and pursuant to his or her official duties. Nonetheless, the filing party would still need to prove *all* elements of the cited provision of the Act

Moreover, the use of a disclaimer on social media can help to clarify whether an individual is speaking in his or her official capacity and pursuant to his or her official duties; however, the presence of a disclaimer is not dispositive. ... In addition, if a school official utilizes an appropriate disclaimer, but the content or substance of the statements would still lead a reasonable member of the public to believe that the school official is speaking in his or her official capacity or pursuant to his or her official duties, then the disclaimer will be inadequate and of no force or effect, and the social media activity could violate the Act. *See I/M/O Treston.*

By way of supplement to the aforementioned analysis, just as the inclusion of a disclaimer is not dispositive, neither is the omission of a disclaimer. The fact that a school official may engage in social media activity does not mean that they must always include a disclaimer and that the failure to do so, in and of itself, is a violation(s) of their ethical obligations. Instead, when evaluating whether a school official may have violated the Act when using any and all social media platforms, online magazines or newspapers, blogs, or any other electronic or online medium for communication, the focus of the analysis must also be on the content of the speech, and whether a reasonable member of the public could perceive that the school official is speaking in their official capacity or pursuant to their official duties. If a reasonable member of the public could perceive that the school official is speaking in their official capacity or pursuant to their official duties, regardless of whether a disclaimer is used, a violation(s) of the Act may be established if the filing party can prove *all* elements of the cited provision of the Act. Conversely, if a reasonable member of the public could **not** perceive that the school official is speaking in their official capacity or pursuant to their official duties, regardless of whether a disclaimer is used, a violation(s) of the Act will not be substantiated. Although the use of a disclaimer can help to clarify the capacity in which one is speaking, the presence of a disclaimer does not mean that the school official cannot still be regarded as speaking in an official capacity,

and the absence of a disclaimer does not mean that the school official is automatically speaking in their official capacity.

Based on the foregoing, and because the social media posts were on her personal Facebook page and there is seemingly no connection between her personal Facebook page and her relationship to the Board, the Commission finds that a reasonable member of the public could not possibly perceive Respondent's social media posts as being made in her official capacity as a member of the Board, or pursuant to her official duties. Although the substance of Respondent's social media posts related to the Board election, her posts were nothing more than an expression of her personal opinion on whom she believed would be the most suitable and appropriate candidate(s) in the upcoming Board election and such action, given the facts and circumstances pled in the Complaint, does not constitute a violation of *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f).

Consequently, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) should be dismissed.

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: April 25, 2023

***Resolution Adopting Decision
in Connection with C103-22***

Whereas, at its meeting on March 21, 2023, the School Ethics Commission (Commission) considered the Amended 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 March 21, 2023, 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(e) and/or *N.J.S.A.* 18A:12-24.1(f); and

Whereas, at its meeting on April 25, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on March 21, 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 April 25, 2023.

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