

Before the School Ethics Commission
Docket No.: C13-23
Decision on Motion to Dismiss

Stephanie C. Johnson,
Complainant

v.

Kim Hanadel,
Pinelands 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 January 31, 2023, by Stephanie C. Johnson (Complainant), alleging that Kim Hanadel (Respondent), a member of the Pinelands 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(f)* of the Code of Ethics for School Board Members (Code).

On February 1, 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 February 24, 2023, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On February 27, 2023, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.²

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.

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.

² On February 28, 2023, Respondent filed a reply to Complainant's response to the Motion to Dismiss and allegation of frivolous filing and, among other things, objected to the Exhibits submitted with Complainant's filing. As Respondent's "reply" is not permitted by the Commission's regulations, it was not considered by the Commission at its meetings on April 25, 2023, and/or May 23, 2023, in ruling on 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 Complainant failed to plead sufficient credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(f). 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*

Complainant states that Respondent is a member of the Board, and also a licensed realtor. According to Complainant, Respondent has a "personal" Facebook page, as well as a "business" or "professional" Facebook page ("Kim Hanadel Relator"), both of which are "public." On October 23, 2022, Respondent posted the following on her "business" or "professional" Facebook page: "Please remember to support your local [r]ealtors, we do a lot for the community – we sit on boards of [education], give back in a lot of ways ... please support us."

Based on the statement she made on her "business" or "professional" Facebook page, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(f) because "asking the public to 'support local realtors' sways the public into using her to buy/sell properties because she and other [r]ealtors sit on" boards of education and "give to their communities." Per Complainant, Respondent's statement "violates her oath not to use her seat on the Board for personal gain and/or for the gain of her friends," including other realtors.

Finally, Complainant notes that this is the third ethics complaint she has filed against Respondent, and asks the Commission to remove her "indefinitely" as she "has proven time and time again to not take her oath seriously and is not comprehending each specific Code she has sworn to conduct herself by," and, as such, her conduct has "negatively affected the ... Board and school community."

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

In her Motion to Dismiss, which included an allegation of frivolous filing, Respondent acknowledges that she is employed as a realtor, and is also a member of the Board. Respondent further acknowledges that, following the Annual Harvest Festival, which was hosted by the Little Egg Harbor Chamber of Commerce, she posted information on her "professional realtor" Facebook page about the Annual Harvest Festival to, among other things, highlight the festival and the work of "all" local realtors, including her competitors. The post, which was far lengthier than the excerpt detailed in the Complaint, "was intended to make the local community aware of the ... event and the many free and fun activities and food that were available." Of note, Respondent's post did not reference the Board on which she sits; did not note that Respondent was even a member of any board of education; did not contain any information related to the Board on which she sits or any other board of education; and did not "ask for any personal benefit" on her behalf or on behalf of her friends "as a result of any service to the community on a school board." Instead, the post merely commends the contributions of realtors (including Respondent) to the local community.

Distinguishing the above-captioned matter from the Commission’s past precedent, namely *I/M/O Gabriel de Tolla*, Clearview Regional Board of Education, Docket No. C08-17 and *I/M/O Christopher C. Treston*, Randolph Township Board of Education, Docket No. C71-18 among others, Respondent argues that there are “no facts ... establishing that [Respondent] ‘used the schools in order to acquire some benefit for’ herself or ‘a member of ... her immediate family or [a] friend.’” Instead, the post at-issue “highlighted” the Annual Harvest Festival; reflected Respondent’s “joy at seeing community members and long-time clients”; “thanked the individuals who helped sponsor and organize the event”; and it reminded the public “‘to support **all** of the realtors in the community, including [Respondent’s] competitors ... who give back to the community in many ways.” Respondent further reiterates that the post did not reference the Board or note that Respondent and/or her “friends” were members of a specific board of education, and did not “ask for any personal benefit on behalf of [Respondent], her immediate family, or any of her friends as a result of her personal service on the Board, or seek to sway the public into utilizing [Respondent] or any members of her family or friends over her competitors.” Respondent also denies, as suggested by Complainant, that “all other realtors” are her friends, and argues that Complainant “fails to establish that [Respondent] was ‘friends’ with all of the realtors at the festival, including her competitors.” Moreover, Respondent argues that “[a]dvertising the community services of every realtor in the region ... cannot reasonably be considered behavior that violates the public trust.”

Finally, Respondent asserts that the Complaint is frivolous because Complainant should have known that the Complaint “was without any reasonable basis in the law,” and when the entirety of Respondent’s post is read, “it is clear that the intention was to highlight and recap the activities and successfulness of a community event” As such, Respondent maintains that the Complaint was filed for the sole purpose of harassing Respondent, and Respondent should not be penalized “for praising small business owners in the community for giving back or supporting a family community event.” Therefore, Respondent argues that the Complaint should be dismissed, and sanctions imposed for the frivolous filing.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant maintains that by asking the community to support realtors (which included Respondent), Respondent was encouraging the public to buy or sell real estate through her agency (or her friends’ agency). By “[a]sking the public to support her business,” she was asking the public for support in financial gain. According to Complainant, if a person chooses to give back to their community, they “should not expect or pressure the community to support them financially” As such, Complainant affirms that this Complaint is not frivolous; “can easily be proven”; “was not filed with the intent to be frivolous or harassing”; the Motion to Dismiss should be denied; and Respondent should be removed from the Board because of her repeated ethical violations.

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(f)*.

B. *Alleged Violations of the Act*

Complainant submits that because Respondent made a statement on her “business” or “professional” Facebook page asking the public to support local realtors because they, among other things, serve on local boards of education, Respondent violated *N.J.S.A. 18A:12-24.1(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”).

Pursuant to *N.J.A.C. 6A:28-6.4(a)(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.

With regard to the use of social media platform by school officials, the Commission has said:

... 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*.

[*Aziz v. Nikitinsky et al., Monroe Township Board of Education, Middlesex County \(Docket No. C56-22\)*](#).

In a more recent decision(s), the Commission supplemented by the foregoing analysis by stating:

... 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.

[*Morrison v. Natale-Contessa, Toms River Regional Board of Education, Ocean County \(Docket No. C103-22\)*](#). See also [*Mayer v. Berrios, Parsippany-Troy Hills Board of Education, Morris County \(Docket No. C03-23\)*](#).

In light of the analysis that the Commission applies to matters concerning social media, and because the statement was made on Respondent’s “business” or “professional” Facebook page, and there is no explicit connection between her “business” or “professional” Facebook page and her relationship to or service on the Board, the Commission finds that a reasonable member of the public could not possibly perceive Respondent’s statement as being made in her official capacity as a member of the Board, or pursuant to her official duties as a Board member. Although Respondent’s statement did *generally* refer to the fact that realtors in the community “give back” by, among other things, serving on their local boards of education, Respondent did not indicate that she was a Board member, and did not specifically name the Board on which she sits. Accordingly, and because the statement was not made in any kind of official capacity, the Commission finds that the facts and circumstances pled in the Complaint could not possibly constitute a violation of *N.J.S.A.* 18A:12-24.1(f).

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 find 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 *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(f). 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 C13-23***

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 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(f); 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