

***Before the School Ethics Commission***  
***OAL Docket No.: EEC-07734-22***  
***SEC Docket No.: C19-22***  
***Final Decision***

---

**Ronald Donnerstag, Kristin Lanko, Lisa Snider, Wendy Vacante, Matthew Delprete, Patricia Fortus, Jaime Cestare, Scott Alfano, and Lynne Sweezo,**  
***Complainants***

v.

**Heather Koenig,**  
**Central Regional Board of Education, Ocean County,**  
***Respondent***

---

**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed on March 3, 2022, by Ronald Donnerstag, Kristin Lanko, Lisa Snider, Wendy Vacante, Matthew Delprete, Patricia Fortus, Jaime Cestare, Scott Alfano, and Lynne Sweezo (collectively referred to as Complainants), alleging that Heather Koenig (Respondent), a member of the Central 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(a) (in Counts 2-4) and *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-5) of the Code of Ethics for School Board Members (Code) stemming from her social media postings.

On April 11, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainants filed a response to the Motion to Dismiss on May 2, 2022. On June 3, 2022, Complainants filed a “Motion to Supplement the Record” with several exhibits, which was granted by the Commission’s staff, as Respondent did not object.

At its meeting on July 26, 2022, the Commission adopted a decision granting the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24.1(a) in Counts 2-4, and as to the alleged violations of *N.J.S.A.* 18A:12-24.1(e) in Counts 2-3 and Count 5; and denying the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24.1(e) in Count 1 and Count 4 of the Complaint. Based on its decision, the Commission also directed Respondent to file an Answer to Complaint (Answer) as to the remaining allegations (*N.J.S.A.* 18A:12-24.1(e) in Count 1 and Count 4), and to transmit the above-captioned matter to the Office of Administrative Law (OAL) following receipt of the Answer.

On August 1, 2022, Complainants filed a request for interlocutory review with the Commissioner of Education, challenging the Commission’s decision to dismiss Counts 2, 3, and 5 of the Complaint. Respondent filed a cross-motion for interlocutory review, challenging the portions of the Commission’s decision that denied her Motion to Dismiss. The Commissioner of

Education denied the requests for interlocutory review on August 11, 2022. Thereafter, Respondent filed an Answer, which was subsequently amended at the OAL.

At the OAL, following Complainants' Motion for Summary Decision, the Administrative Law Judge (ALJ) issued an Initial Decision on June 9, 2023, concluding that Respondent violated *N.J.S.A.* 18A:12-24.1(e) in Counts 1 and 4 of the Complaint, and recommending that Respondent be censured. The parties did not file exceptions to the Initial Decision.

At its meeting on July 25, 2023, the Commission discussed the above-captioned matter, and at its meeting on August 22, 2023, the Commission voted to reject the Initial Decision and dismiss the above-captioned matter.

## **II. Initial Decision**

Respondent was sworn in as a member of the Board on January 7, 2022. *Initial Decision* at 3. Pictures of her swearing in were posted on her public Facebook page, which Respondent also used to advertise/campaign to become a Board member. *Ibid.* Respondent's Facebook account allows public access to certain parts, and therefore, anyone in the community can see what Respondent posts on the public part of her account, including Facebook friends, such as parents, teachers, students and staff who are aware that she is a Board member. *Ibid.*

On January 10, 2022 (3 days after being sworn in), Respondent posted about her disagreement with requiring face masks in schools, referring to the Governor as a "Tyrannical POS." *Ibid.* On January 12, 2022, Respondent posted on her Facebook account encouraging teachers to opt out of the New Jersey Education Association (NJEA), stating "Teachers...OPT OUT OF THE NJEA!!! If you don't know...YOU CAN!! And thanks to a Federal ruling a few years back...They still have to represent you!!! #UNENROLL #RISEUP." *Ibid.* Neither Facebook post included a disclaimer. *Id.* at 3-5.

On March 7, 2022, the Board adopted a Resolution disavowing "any statements posted or attributed by any individual that is contrary to the [Workplace Democracy Enhancement Act] WDEA." *Id.* at 5. On April 21, 2022, the Central Regional Education Association (CREA) and the NJEA filed an unfair practice charge against the Board alleging the Board violated WDEA, specifically citing Respondent's January 12 post urging teachers to opt out of the NJEA. *Id.* at 6.

In finding a violation of *N.J.S.A.* 18A:12-24.1(e) in Count 1, the ALJ found that Respondent's post that lobbied teachers to opt out of the NJEA, "not only had the ability to compromise the Board, but it did compromise the Board" as evidenced by the Unfair Practice Charge filed by the NJEA and CREA. *Id.* at 13. Additionally, despite Respondent's argument that her post was protected by the freedom of speech, the ALJ found Respondent "cannot claim that she was exercising her First Amendment right to circumvent her ethical obligations as a Board member." *Id.* at 14. The ALJ also found that Respondent used the same platform both to campaign and then to reach the same constituency after election, "which carries greater weight, to promote action that was contrary to the Board's obligations under the law." *Ibid.*

Regarding Count 4, the ALJ reiterated that Respondent used her Facebook account during her campaign for the Board and after she became a Board member to “publish her opinions, political viewpoints and/or calls to action,” which had the “potential to be viewed as Board endorsement or action” as evidenced by the Board resolutions disavowing her postings. *Id.* at 16. The ALJ found Respondent’s January 10 post against mask mandates in schools connotes “taking a stand against the law – in this case [Executive Order] EO251.” *Id.* at 17. The ALJ explained, “[w]hile [R]espondent may not have agreed with EO251, her posting effectively urged others to take action against it,” which had the potential to compromise the Board in violation of *N.J.S.A.* 18A:12-24.1(e). *Ibid.*

The ALJ recommended a penalty of censure for the violations as Respondent published two posts, one that directly compromised the Board, and another that had the potential to compromise the Board. *Id.* at 19. The ALJ asserted that although Respondent is free to have her own opinions, she must maintain a balance between her viewpoints and her legal and ethical obligations. *Ibid.*

### III. Analysis

Upon a thorough, careful, and independent review of the record, the Commission disagrees with the ALJ’s decision that Respondent violated *N.J.S.A.* 18A:12-24.1(e) in Counts 1 and 4, and instead dismisses this matter.

In considering whether a school official violates the Act due to the engagement in social media activity, 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. *Aziz v. Nikitinsky, et al., Monroe Township Board of Education, C-56-22* (October 17, 2022), at 8. “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 may then be reasonable for the reader to perceive the speech as being offered in an official capacity and pursuant to his or her official duties, provided there is a sufficient nexus between the individual’s social media page and his or her role/membership on the Board. *Ibid.* 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.” *Ibid.*

In this matter, the Commission finds that, while the subject matter of the Facebook posts – opting out of the union and masking in schools – may relate to the business of the Board, there is an insufficient nexus between Respondent’s personal Facebook page and her membership on the Board, such that a reasonable member of the public would not perceive that Respondent is speaking pursuant to her official duties. *See Hodrinsky v. Faussette, C11-21* (August 30, 2021) (dismissing a Complaint when there lacked a nexus between the respondent’s Facebook account and his role/membership on the Board as there was no indication that he referenced, or otherwise relies upon, his position on the Board on his social media account).

The posts at issue do not mention Respondent’s membership on the Board nor does she advertise or rely upon her Board membership when publishing material on her social media page. In short, there is no factual evidence that the statements/posts on her Facebook account were made in her capacity as a member of the Board, or had the appearance of being representative of, or attributable to the Board. The fact that some people may be aware that Respondent is a Board member, as they know who she is, does not result in her private posts becoming in her official capacity. Respondent may have used her Facebook page to reach constituents in her campaign, but her Facebook page did not make any reference to the Board nor her membership on the same and her posts reflect the same positions on which she previously campaigned and ultimately resulted in her election onto the Board.

Under *N.J.S.A.* 18A:12-24.1(e), a board member must recognize that authority rests with the board and a board member shall not make any personal promises or take any action that may compromise the board. The Commission finds, given that Respondent’s Facebook posts were on her private page and lacked the necessary nexus to her position on the Board, her actions were not beyond the scope of her duties, and therefore, a violation of *N.J.S.A.* 18A:12-24.1(e) cannot be established in Counts 1 and/or 4.

Although the Commission is constrained to dismiss the above-captioned matter, it would be remiss if it did not address the divisive, inflammatory, and hostile nature of Respondent’s public postings. Calling the Governor a “Tyrannical POS” and encouraging people to opt out of the NJEA runs counter to the level of decorum expected from a publicly elected school official who is charged with serving New Jersey’s student population. Although the Commission acknowledges the sanctity of the First Amendment, board members should recognize and refrain from inappropriate communications that have no place in the educational setting.

Finally, as the Commission has repeatedly noted, how school officials conduct themselves outside the scope of their duties as school officials is best addressed at the time of election. It is the public, not the Commission, who ultimately decides which individuals in their community are best suited to serve their students.

#### **IV. Decision**

Upon review, the Commission rejects the Initial Decision and concludes that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) in Counts 1 and 4. As such, the Commission dismisses the above-captioned matter.

Therefore, this is a final agency decision and is appealable only to the Superior Court-Appellate Division. *See, N.J.A.C.* 6A:28-10.11 and *New Jersey Court Rule 2:2-3(a)*.

---

Robert W. Bender, Chairperson

Mailing Date: August 22, 2023

***Resolution Adopting Decision  
in Connection with C19-22***

***Whereas***, at its meeting on July 26, 2022, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the to the Office of Administrative Law (OAL) for a plenary hearing; and

***Whereas***, the Administrative Law Judge (ALJ) issued an Initial Decision dated June 9, 2023; and

***Whereas***, in the Initial Decision, the ALJ found that Respondent violated *N.J.S.A.* 18A:12-24.1(e) in Counts 1 and 4 of the Complaint, and recommended that Respondent be censured; and

***Whereas***, the parties did not file exceptions to the Initial Decision; and

***Whereas***, at its meeting on July 25, 2023, the Commission reviewed the record in this matter, and discussed rejecting the Initial Decision and dismissing the above-captioned matter; and

***Whereas***, at its meeting on August 22, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 25, 2023; and

***Now Therefore Be It Resolved***, the Commission hereby adopts the within decision.

---

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its meeting on August 22, 2023.

---

Brigid C. Martens, Acting Director  
School Ethics Commission