

Before the School Ethics Commission
Docket No.: C13-24
Decision on Probable Cause

Stephanie Johnson,
Complainant

v.

Jeffrey Bonicky and August Daleo,
Pinelands Regional Board of Education, Ocean County,
Respondents

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on February 9, 2024, by Stephanie Johnson (Complainant), alleging that Jeffrey Bonicky (Respondent Bonicky) and August Daleo (Respondent Daleo) (collectively, Respondents), members 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 Bonicky violated *N.J.S.A. 18A:12-24.1(d)*, *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) in Count 1; Respondent Daleo 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 in Count 2; and both Respondents violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* of the Code in Count 3.

On March 15, 2024, Respondents filed a Written Statement, and also alleged that the Complaint is frivolous. On April 10, 2024, Complainant filed a response to the allegation of frivolous filing.

The parties were notified by correspondence dated September 17, 2024, that the above-captioned matter would be discussed by the Commission at its meeting on September 24, 2024, in order to make a determination regarding probable cause and the allegation of frivolous filing. Following its discussion on September 24, 2024, the Commission adopted a decision at its meeting on October 22, 2024, finding that there are insufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that the Act was violated as alleged in the Complaint. The Commission also adopted a decision finding the Complaint not frivolous, and denying Respondents' request for sanctions.

II. Summary of the Pleadings

A. The Complaint

In Count 1, Complainant asserts that at the January 22, 2024, Board meeting, Respondent Bonicky (Board President) “intimidated, harassed and berated incoming” Board member – Complainant – by reading a confidential Board correspondence that Complainant sent to Respondent Bonicky regarding the attendance of another Board member. Further, Complainant asserts that Respondent Bonicky also read a private post that Complainant had posted on the New Jersey School Boards Association (NJSBA) chat, seeking advice from “fellow NJ school board members.” Complainant notes that Respondent Bonicky “also had in his possession stolen property of [Complainant] identified in an October 2022 police theft complaint with the Little Egg Harbor Police Department.” Complainant further notes at the conclusion of the meeting, Respondent Bonicky told Complainant, “*let’s take this outside*,” which Complainant indicates she took “as a threat of violence.” Complainant alleges Respondent Bonicky’s actions violated *N.J.S.A. 18A:12-24.1(d)*, *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 Count 2, Complainant asserts that at the same meeting, Respondent Daleo (Board Vice President) “intimidated, harassed and berated incoming” Board member – Complainant – when he called her a “liar” after the meeting, but while the public was still present, 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 Count 3, Complainant contends that on January 24, 2024, “an error occurred where a sensitive email complaint from” the Assistant Superintendent was sent to all of the Board and then “inadvertently forwarded to an ‘allusers’ contact” which resulted in students, parents and teachers receiving the contents of the Board email. The Assistant Superintendent’s email contained an audio recording of a Board meeting at which Complainant used profanity; however, according to Complainant the public was not present because the meeting had adjourned. Complainant asserts that she wanted to “seek counsel” but was advised that the Board President or Vice President needed to approve the request. Complainant notes given the “terse interaction” with the Board President and Vice President at the January 22, 2024, meeting, she “did not feel permission would be granted due to biased behavior from both Respondents.” Complainant further notes her assumption was correct because Respondent Bonicky denied her request. Complainant asserts Respondents “used their authority for personal gain. They failed to ensure that the schools were run well; did not keep board activities confined to what is best for the district; and did not consult with [Complainant] or any additional board members who are those that would be affected by them. In addition, they took private action that would needlessly compromise the board and its public appearance.” Complainant avers that Respondents’ conduct violated of *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)*.

B. Written Statement and Allegation of Frivolous Filing

Respondents initially argue as to Count 1, that Complainant made generalized allegations that Respondents “intimidated, harassed and berated” her and did not provide, as required,

specific facts or arguments to support her claims. Moreover, Respondents note, it was Complainant, not Respondents who “behaved in an aggressive and unprofessional manner after the Board meeting.” Respondents maintain that the video of the meeting will confirm their assertion. As to the two items that were read aloud by Respondent Bonicky, Respondents argue that neither were confidential because they did not discuss personnel, student matters, or any other Board business that would need to be confidential. Respondent’s note “a simple email correspondence between three Board members on a non-confidential issue such as the attendance of a fourth Board member does not suffice to render the e-mail ‘confidential.’” Respondents further note that the communication to NJSBA was posted in the chat forum in which “hundreds (if not thousands) of people had access.” As to Complainant’s allegation that Respondent Bonicky had stolen property, Respondents aver that the stolen property Complainant is referring to is a campaign sign that was placed in the community and Respondent Bonicky kept the sign that was given to him by a member of the community. Respondents note that the Commission lacks jurisdiction over an allegation of petty theft of a lawn sign.

As to Count 2, Respondents once again argue that the claims are also insufficient and do not contain any allegations. Respondents note the Commission “does not exercise jurisdiction over claims of civil defamation” and “there is no possibility that these facts could give rise to a violation” of any of the alleged subsections.

Regarding Count 3, and Respondents alleged “denial” of legal counsel, Respondents assert that the Assistant Superintendent’s email was distributed to the Board and Board counsel, thereby making it a confidential Board attorney-client matter. According to Respondents, 46 minutes after, Complainant forwarded the email, including the link, to the entire school community, including students, who now had the email of every member of the District’s personnel. Respondents argue that Complainant’s claim that sending the email was “inadvertent” is difficult to believe because she would have had to type “allusers” into the email address as it was not part of the original chain. Respondents contend that after her “inadvertent” action, Complainant sought legal advice from Board counsel, who advised Complainant that she needed the Board President or Vice President to contact him under the applicable Board policy. Thereafter, Respondent Bonicky, in his capacity as Board President, informed Board counsel that Complainant did not follow the chain of command, and therefore, would not be permitted to use Board counsel. Respondents maintain the allegations in Count 3 not only “fail to set forth facts to warrant a finding of probable cause,” but also are not within the Commission’s jurisdiction as they involve matters related to Board policy.

Finally, Respondents assert the Complaint is frivolous because the Complaint does not contain any analysis or explanation as to how the factual allegations that were set forth within could possibly result in a finding of violations of the various alleged provisions of the Code. Moreover, the Complaint lacks a “good faith argument” to support the claims. According to Respondents, the Complaint is “wasteful of the time and resources of the [Commission], the Board members who are parties to it, and everyone else involved with it in any way.” Respondents maintain the maximum fine of \$500 should be imposed and the Complaint should be dismissed in its entirety with prejudice.

C. *Response to Allegation of Frivolous Filing*

Complainant reaffirms the allegations in the Complaint and argues all of the assertions “can be reasonably proven, supported in good faith arguments and justly shows malicious injury and blatant harassment and bias towards Complainant not the Respondents.”

III. Analysis

This matter is before the Commission for a determination of probable cause pursuant to *N.J.A.C. 6A:28-9.7*. A finding of probable cause is not an adjudication on the merits but, rather, an initial review whereupon the Commission makes a preliminary determination as to whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted. Pursuant to *N.J.A.C. 6A:28-9.7(a)*, probable cause “shall be found when the facts and circumstances presented in the complaint and written statement would lead a reasonable person to believe that the Act has been violated.”

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) conduct/actions committed any crimes by possessing stolen property and/or violated any Board policies, the Commission advises that such determinations fall beyond the scope, authority, and jurisdiction of the Commission. Although Complainant may be able to pursue a cause of action(s) in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those claims. Accordingly, those claims are dismissed.

Alleged Violations of the Act

Complainant submits that, based on the conduct more fully detailed above, Respondent Bonicky violated *N.J.S.A. 18A:12-24.1(d)*, *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)*, Respondent Daleo 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 both Respondents violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)*. These provisions of the Code provide:

c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

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(c)*, *N.J.S.A. 18A:12-24.1(d)*, *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)* need to be supported by certain factual evidence, more specifically:

3. Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(c)* shall include evidence that Respondents took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondents' duty to (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy.

4. Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(d)* shall include, but not be limited to, evidence that Respondents gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.

5. Factual evidence of a violation of *N.J.S.A. 18A:12-24.1(e)* shall include evidence that Respondents made personal promises or took action beyond the scope of their 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 Respondents 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 Respondents used the schools in order to acquire some benefit for themselves, a member of their 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 Respondents 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 Respondents 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 Respondents and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

Count 1

In Count 1, Complainant asserts that Respondent Bonicky violated *N.J.S.A.* 18A:12-24.1(d), *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), by reading an email written by Complainant and Complainant's post on the NJSBA chat aloud at a Board meeting, as well as by having in his possession stolen property of Complainant's. Respondents counter that the email regarding the attendance of another Board member is not confidential, nor is a post on a public chat. Additionally, Respondent maintains that the stolen property refers to a campaign sign that a member of the community gave him.

After review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(d), *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) were violated. With respect to the email from Complainant to Respondents regarding the attendance of another Board member, the email alerted Respondents to a Board member who missed several meetings and may need to be removed. The Commission notes that the email's purpose was to raise a concern that would need to be addressed at a Board meeting, and as such is not a confidential email. The Commission also finds that a post in a public chat, by its nature, cannot be confidential. Finally, the Commission finds that the possession of a "stolen" campaign sign falls outside of the scope of the Act. Accordingly, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violation(s) of *N.J.S.A.* 18A:12-24.1(d), *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).

Count 2

In Count 2, Complainant contends that Respondent Daleo 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) when he called her a "liar" after a Board meeting, but while the public was still present. Respondents counter that the allegations are insufficient and do not amount to any violations of the Act.

Following its assessment, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *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) were violated. The Commission notes that while Board members should act with decorum, calling a fellow Board member a "liar" immediately after the close of a Board meeting does not

violate the alleged provisions of the Act. Respondent's alleged comment, while perhaps insensitive, does not compromise the Board. Additionally, the Complaint lacks factual allegations regarding how Respondent acted on behalf of a special interest group, or how Respondent disclosed confidential or inaccurate information. Therefore, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violation(s) 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)*.

Count 3

In Count 3, Complainant argues that Respondents violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* when they denied Complainant's request for counsel. Respondents contend that Complainant sought legal advice directly from Board counsel, and thereafter, Respondent Bonicky did not permit Complainant to use Board counsel as she did not follow the chain of command.

Based on its review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(f)* were violated. In this circumstance, Respondents, as Board President and Vice President, are tasked with the authority of deciding when Board counsel may be contacted. Whether Complainant disagrees with their decision does not mean that Respondents took Board action unrelated to their duties, gave a direct order to school personnel or became directly involved in actions that are the responsibility of school personnel, took action outside the scope or their duties that has the potential to compromise the Board, and/or acted on behalf of a special interest group. Consequently, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violation(s) of *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)*.

IV. Request for Sanctions

At its meeting on September 24, 2024, the Commission considered Respondents' request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A. 18A:12-29(e)*. Despite Respondents' 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 October 22, 2024, the Commission adopted a decision finding the Complaint not frivolous, and denying the request for sanctions.

V. Decision

In accordance with *N.J.S.A. 18A:12-29(b)*, and for the reasons detailed herein, the Commission hereby notifies Complainant and Respondents that there are insufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to

believe that the Act was violated as alleged in the Complaint and, consequently, dismisses the above-captioned matter. *N.J.A.C.* 6A:28-9.7(b). The Commission further advises the parties that, following its review, it voted to find that the Complaint is not frivolous, and to deny Respondents' request for sanctions.

The within 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)*. Under *New Jersey Court Rule 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

Robert W. Bender, Chairperson

Mailing Date: October 22, 2024

***Resolution Adopting Decision
in Connection with C13-24***

Whereas, at its meeting on September 24, 2024, the School Ethics Commission (Commission) considered the Complaint, the Written Statement and allegation of frivolous filing, and the response to the allegation of frivolous filing submitted in connection with the above-referenced matter; and

Whereas, at its meeting on September 24, 2024, the Commission discussed finding that the facts and circumstances presented in the Complaint and the Written Statement would not lead a reasonable person to believe that the Act was violated and, therefore, dismissing the above-captioned matter; and

Whereas, at its meeting on September 24, 2024, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on October 22, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on September 24, 2024; 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 October 22, 2024.

Brigid C. Martens, Director
School Ethics Commission