

Before the School Ethics Commission
Docket No.: C64-23
Probable Cause Notice

Christine Stanford,
Complainant

v.

Robin Shaffer,
Ocean City Board of Education, Cape May County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on August 23, 2023,¹ by Christine Stanford (Complainant), alleging that Robin Shaffer (Respondent), a member of the Ocean City 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(g) in Count 1 and *N.J.S.A.* 18A:12-24.1(f) in Count 2. On October 31, 2023, Respondent filed a Written Statement, and also alleged that the Complaint is frivolous. On November 13, 2023, Complainant filed a response to the allegation of frivolous filing.

The parties were notified by correspondence dated March 19, 2024, that the above-captioned matter would be discussed by the Commission at its meeting on March 26, 2024, in order to make a determination regarding probable cause and the allegation of frivolous filing. Following its discussions on March 26, 2024, and April 30, 2024, the Commission adopted a decision at its meeting on April 30, 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 Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

By way of background, Complainant alleges that prior to Respondent's election to the Board, Respondent created and served as the administrator/moderator of a private Facebook group called "OCNJ School Discussion." According to Complainant, in 2022, Respondent and his running mate frequently utilized the Facebook group to post articles, campaign statements, and opinions

¹ On August 23, 2023, Complainant filed a deficient Complaint; however, on August 24, 2023, Complainant cured all defects and filed an Amended Complaint that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3.

related to the November 2022 election and debated policy on the page. Complainant asserts that after Respondent's election to the Board in 2022, he created a poll for the group's members to weigh in on whether Respondent should step down as administrator of the page, and while Respondent brought on two additional moderators, he continued to act as an administrator/moderator of the page. Complainant alleges that the page identified Respondent as "School Board Member at Ocean City School District," and Respondent continued to post political pieces and share official Ocean City School District (District) publications with the group's membership. Complainant asserts that Respondent did not put any disclaimers on his posts or on the page to advise the public that the posts were his opinions only, and not the view of the Board.

According to Complainant, during Respondent's 2023 re-election campaign and while serving on the Board, Respondent became a social media administrator for the "Moms for Liberty – Cape May County" Facebook group page. Complainant asserts that Respondent "posted or allowed to be posted propaganda" from the Mom's for Liberty page on the OCNJ School Discussion page, without a disclaimer. Additionally, Complainant asserts that Respondent was affiliated with the special interest groups "Turning Point USA," "NJ Fresh Faced Schools," and "New Jersey Project," and Respondent "posted or allowed to be posted propaganda" from those groups on the OCNJ School Discussion page, without a disclaimer.

With the above in mind and in Count 1, Complainant alleges that on July 22, 2023, Respondent allowed and/or approved numerous posts of "disinformation and misinformation" on the OCNJ School Discussion page, which presented false information concerning the District, and which disparaged other members of the Board and requested that the public vote the other members off of the Board who support a State statute involving transgender students. Additionally, according to Complainant, Respondent allowed and/or approved posts insinuating that the District was "providing assistance to students to medically transition." Specifically, the post said, "I really do not think a school should be involved in any kind of medical intervention. That just sounds so incredibly scary. Imagine the child wants to de transition and the school was of assistance - that seems like a huge liability." Complainant asserts that Respondent, as a Board member, "should be well aware that his own school district does not provide medical care for [transgender] students" and despite his awareness of the factual inaccuracy of the statement, Respondent permitted it to be posted. Complainant asserts that the post "enrage[d] community members" who believed the false information and that Respondent did not utilize his position to correct the false information or delete the posts as a moderator/administrator. Complainant additionally alleges that on July 26, 2023, Respondent allowed and/or approved an additional false post concerning the "District having gay porn in its schools." The post provided a link to an article, and highlighted a quote from it stating, "'With school libraries shelved with gay porn, LGBTQ curriculum, gender-neutral bathrooms, preferred pronoun policies, and gaslighting parents on the gender identities of their own minor children . . . families finally have had enough.'" Complainant asserts that Respondent was aware that this was false and did nothing to correct the false information posted. Complainant asserts that for allowing false information to be posted on the OCNJ school discussion page, Respondent violated *N.J.S.A. 18A:12-24.1(g)*.

In Count 2, Complainant alleges that on June 29, 2023, July 22, 2023, July 26, 2023, August 7, 2023, August 11, 2023, August 16, 2023, Respondent posted, without a disclaimer, various partisan political articles and statements on the OCNJ School Discussion page that reflected the

views of the special interest groups to which he belongs, including advocacy for parents' rights, anti-union beliefs, and concerns of impropriety with the expenditure of ESSER and ESSER2 funds. Complainant alleges that Respondent surrendered his judgment to special interest and political partisan groups, in violation of *N.J.S.A. 18A:12-24.1(f)*.

B. *Written Statement and Allegation of Frivolous Filing*

In the Written Statement and allegation of frivolous filing, Respondent argues that his posts are protected by the First Amendment, and that Complainant is specifically targeting the viewpoint of his speech and the viewpoint of the political associations in which he is involved. Respondent asserts that when he was elected to the Board, he advised the Superintendent and Board counsel that he was the administrator of the OCNJ School Discussion group, but was not advised that his service as an administrator would be inconsistent with his duties as a Board member. Respondent maintains that following his election to the Board, he “largely abdicated [his] role as administrator to two other individuals,” but that prior to the filing of the Complaint, he “removed [himself] entirely as administrator of the page.” Respondent asserts that the OCNJ School Discussion group has over 900 members and that his criteria for approving posts was “as long as the poster was not engaging in an obvious or blatant attack upon another member, violating some confidentiality, or using foul or abusive language, the post would be approved.” Respondent explains that he did not approve or disprove posts based on the viewpoint of the proposed posting. According to Respondent, the post from an anonymous member suggesting that school libraries are shelved with gay porn had comments from members challenging the poster and providing information on the topic, demonstrating that the page is “a true ‘marketplace of ideas.’” Additionally, Respondent notes that if false information was posted, that it could be reported to Facebook as false information based upon Facebook’s reporting criteria. Respondent reiterates that the posts at issue in the Complaint were not posted by him, and the posts he reviewed for posting did not include any “information or links to articles which were patently offensive or proponents of ‘hate speech.’” Respondent argues that the Complaint does not credibly support a violation of *N.J.S.A. 18A:12-24.1(g)*.

Additionally, as to *N.J.S.A. 18A:12-24.1(f)*, Respondent argues that Complainant fails to provide 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 who adhere to a political party or evidence that Respondent used the schools to acquire some benefit for Respondent, Respondent’s friend or family. Respondent maintains that Complainant “relies solely upon what she perceives as an alignment between Respondent’s views and the views of other persons or organizations,” but the possible sharing of views “can hardly amount to evidence that any person or organization is dictating [Respondent’s] conduct.”

Finally, Respondent argues that the Complaint is frivolous and sanctions should be imposed because the Complaint is not supported by law or fact and serves only as a political attack.

C. *Response to Allegation of Frivolous Filing*

In response to the allegation of frivolous filing, Complainant argues that the Complaint is not frivolous and has been presented in good faith with supporting documentation. Complainant further argues that the underlying facts that Respondent has admitted “demonstrate a clear and

repeated violation of the [Board's] own ethical guidelines and bylaws” and that his continued posting in the OCNJ School Discussion group gives “reasonable people cause to believe the posted remarks and/or article links are related to his role” as a Board member. Complainant argues that Respondent has either intentionally or has callously disregarded his obligations not to mislead the public.

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.”

Alleged Violations of the Act

Complainant submits, based on the conduct more fully detailed above, that Respondent violated *N.J.S.A.* 18A:12-24.1(f) and *N.J.S.A.* 18A:12-24.1(g). These provisions of the Code of Ethics for School Board Members (Code) provide:

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.

Count 1

In Count 1, Complainant argues Respondent violated *N.J.S.A.* 18A:12-24.1(g) when he approved and/or allowed, as an administrator of the OCNJ School Discussion Facebook group, posts containing false information concerning the District. Respondent counters that he approves posts “as long as the poster was not engaging in an obvious or blatant attack upon another member, violating some confidentiality, or using foul or abusive language, the post would be approved,” and he does not approve or disprove posts based on the viewpoint of the proposed posting. Specifically, the first post stated, “I really do not think a school should be involved in any kind of medical intervention. That just sounds so incredibly scary. Imagine the child wants to de transition and the school was of assistance - that seems like a huge liability.” The second post provided a link to an article, and included the quote, ““With school libraries shelved with gay porn, LGBTQ curriculum, gender-neutral bathrooms, preferred pronoun policies, and gaslighting parents on the gender identities of their own minor children . . . families finally have had enough.””

In accordance with *N.J.A.C.* 6A:28-6.4(a), factual evidence of a violation of 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.

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(g) was violated. The Commission notes that merely serving as an administrator of a social media page is not a *per se* violation of the Act, nor does the viewpoint of a social media post, on its own, result in an ethical violation. However, administrators of social media pages maintain responsibility for the content of their pages, and as such, must exercise caution because they could potentially violate the Act by the nature of the posts they approve and/or allow to be posted. In this circumstance, the Commission finds that the content of the social media posts at issue does not violate the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g), as the posts were general statements and/or opinions that did not pertain to the District. The first post, in stating, “I really do not think a school should be involved in any kind of medical intervention,” is the poster’s opinion on a school’s role in medical intervention for transgender students. Notably, the poster did not include patently false information indicating that the District had engaged in such activity. The second post, quoting and providing a link to a publication, stating ““With school libraries shelved with gay porn, LGBTQ curriculum, gender-neutral bathrooms, preferred pronoun policies, and gaslighting parents on the gender identities of their own minor children . . . families finally have had enough,”” is also not specific to the District. Furthermore, at least one commenter publicly questioned the accuracy of school libraries containing such explicit materials. By permitting social media discussion on controversial topics generally, without containing outright false information pertaining to the District, Respondent did not violate *N.J.S.A.* 18A:12-24.1(g). Consequently, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in Count 1.

Count 2

In Count 2, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(f) when he posted, on six dates, various partisan political articles and statements on the OCNJ School Discussion page that reflected the views of the special interest groups to which he belongs, without a disclaimer. Respondent counters that Complainant “relies solely upon what she perceives as an alignment between Respondent’s views and the views of other persons or organizations,” but the possible sharing of views “can hardly amount to evidence that any person or organization is dictating [Respondent’s] conduct.”

Pursuant to *N.J.A.C.* 6A:28-6.4(a), 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 himself, a member of his immediate family or a friend.

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(f) was violated. The Commission notes that simply sharing the same beliefs as a special interest group, without taking some action on behalf of that group, does not amount to a violation of *N.J.S.A.* 18A:12-24.1(f). Here, the Commission finds that Respondent posted his opinions on social media, which may also be the opinions of groups to which he aligns, but Complainant does not provide evidence that Respondent surrendered his independent judgment to the special interest groups or that he took some action on behalf of those groups. Naturally, Respondent would embrace the same beliefs of groups to which he belongs, but Complainant has not provided evidence that Respondent did anything more than express those beliefs. Therefore, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violation of *N.J.S.A.* 18A:12-24.1(f) in Count 2.

IV. Request for Sanctions

At its meeting on March 26, 2024, 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 April 30, 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 Respondent 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 Respondent's 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: April 30, 2024

***Resolution Adopting Decision
in Connection with C64-23***

Whereas, at its meetings on March 26, 2024, and April 30, 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 meetings on March 26, 2024, and April 30, 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 meetings on March 26, 2024, and April 30, 2024, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

Whereas, at its meeting on April 30, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meetings on March 26, 2024, and April 30, 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 April 30, 2024.

Brigid C. Martens, Director
School Ethics Commission