

***Before the School Ethics Commission***  
***Docket No.: C69-23***  
***Probable Cause Notice***

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**David Steketee,**  
***Complainant***

v.

**David Irwin,**  
**Madison Board of Education, Morris County,**  
***Respondent***

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**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on September 22, 2023,<sup>1</sup> by David Steketee (Complainant), alleging that David Irwin (Respondent), a member of the Madison 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(d), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i) of the Code of Ethics for School Board Members (Code) in Count 1, and *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 2. On November 15, 2023, Respondent filed a Written Statement.

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. 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.

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<sup>1</sup> On September 22, 2023, Complainant filed a deficient Complaint; however, on September 28, 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. Thereafter, on October 5, 2023, Complainant filed an addendum to the Complaint, containing an additional Count.

## II. Summary of the Pleadings

### A. *The Complaint*

In Count 1, Complainant asserts that on September 19, 2023, Respondent made a statement at the Board meeting, during a discussion of a planned facilities referendum. Specifically, Complainant asserts that Respondent stated:

I'm going to continue to repeat this loud and clear so the taxpayers can hear this. I encourage our community to vote no on this. I encourage them to come talk to other board members to tell them to back off.

Complainant argues that this was a “public attempt to persuade the voters [] to vote against the needs of the [Madison School District (District)], and [] persuade other [B]oard members to similarly act against the interests and needs” of the District, in violation of *N.J.S.A. 18A:12-24.1(e)*. Further, Complainant contends that this statement violates *N.J.S.A. 18A:12-24.1(i)* as it is a clear indication that Respondent “does not support the maintenance of the environment in which [the] school personnel work.” Lastly, Complainant argues that this statement violates *N.J.S.A. 18A:12-24.1(d)* as it is a public indication that Respondent is attempting to “supersede the request of the [D]istrict administration regarding necessary facilities maintenance” related to basic safety code and compliance with disability laws. Complainant also argues that Respondent is “attempting to supersede the administrative function of the [D]istrict by persuading the public and other [B]oard members to decline the requests of the [D]istrict administration,” while Respondent’s role is to “ensure the referendum, if approved by voters, is properly managed and projects [are] well executed.”

In Count 2, Complainant asserts that during the July 18, 2023, Board meeting, Respondent made statements regarding the condition of the District’s facilities, stating that they were “awful” and “embarrassing” and that he would tear down the District’s facilities. Complainant asserts that these statements demonstrate that Respondent is aware of the condition of the District’s facilities and that they need significant repair work. Complainant asserts that Respondent’s statements during the meeting were a violation of *N.J.S.A. 18A:12-24.1(d)* as he was supplanting his judgment for that of the District administration.

### B. *Written Statement*

Respondent argues that “[i]nherent in any situation where a statute authorizes board members to vote for something is the equal right to vote against it,” and the fact that Respondent was against authorizing the bond referendum is not a legitimate basis to find a violation of the Act. As to the alleged violations of *N.J.S.A. 18A:12-24.1(d)*, Respondent argues that he “made his comments at public meetings as a [B]oard member and thus did so at the time, place, and in the manner that he is supposed to offer such viewpoints” and “[n]othing can be gleaned from Respondent’s comments that would indicate that he gave a direct order to school personnel or became involved in day-to-day activities. With respect to *N.J.S.A. 18A:12-24.1(e)*, Respondent maintains that speaking at a Board meeting on an issue before the Board is not action beyond the

scope of his duties, and there is nothing to suggest that the motive for his position was “nefarious or the result of a personal promise.” Finally, as to *N.J.S.A.* 18A:12-24.1(i), Respondent contends that Complainant does not provide factual allegations that he attacked school personnel or undermined their authority. Respondent maintains that “[a] disagreement about a vote to authorize a referendum does not equate to an ethics violation simply because school personnel, such as the superintendent, were in support of the referendum.”

### **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 that, based on the conduct more fully detailed above, Respondent violated *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(i). These provisions of the Code provide:

- 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.
- i. I will support and protect school personnel in proper performance of their duties.

#### ***N.J.S.A. 18A:12-24.1(d)*** ***(Count 1 and Count 2)***

In Count 1, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(d) when he made statements at a Board meeting encouraging taxpayers to vote against the planned facilities referendum because it superseded the District administration’s request regarding “necessary facilities maintenance.” In Count 2, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(d) when he made statements at a Board meeting that the condition of District facilities is “awful” and that he would tear them down, because he supplanted his judgment for that of District administration. Respondent counters that he made comments at public Board meetings, which is the “time, place, and in the manner that he is supposed to offer such viewpoints” and his statements do not indicate he gave a direct order to school personnel or became involved in day-to-day activities.

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(d) shall include, but not be limited to, evidence that Respondent 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.

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(d) was violated. Board members are permitted to express opinions at public Board meetings regarding the items at issue. Complainant's disagreement with Respondent's position regarding facilities maintenance does not render it an ethics violation. Additionally, Respondent's support of a position contrary to the opinion of the District administration is not giving a direct order to school personnel, or becoming directly involved in activities or functions that are the responsibility of school personnel, or the day-to-day administration of the District. 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(d) in Count 1 and Count 2.

***N.J.S.A. 18A:12-24.1(e)***  
***(Count 1)***

In Count 1, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(e) when, at a Board meeting, he encouraged the public to vote against a planned facilities referendum, because it was a "public attempt to persuade the voters [] to vote against the needs of the school district, and [] persuade other [B]oard members to similarly act against the interests and needs of the" District. Respondent maintains that speaking at a Board meeting on an issue before the Board is not action beyond the scope of his duties, and there is nothing to suggest that the motivation for his position was "nefarious or the result of a personal promise."

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(e) shall include evidence that Respondent made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the board.

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(e) was violated. Respondent opined, during a public Board meeting, that taxpayers should vote against the planned facilities referendum. Respondent's statements did not contain any personal promises, nor is it action beyond the scope of his duties as a Board member that had the potential to compromise the Board as a public Board meeting is the appropriate place for Board members to have discussions. 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(e) in Count 1.

***N.J.S.A. 18A:12-24.1(i)***  
***(Count 1)***

In Count 1, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(i) when he made statements at a public Board meeting disagreeing with the planned facilities

referendum, because it is a clear indication that Respondent “does not support the maintenance of the environment in which [the] school personnel work.” Respondent asserts that “[a] disagreement about a vote to authorize a referendum does not equate to an ethics violation simply because school personnel, such as the superintendent, were in support of the referendum.”

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(i) shall include evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

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(i) was violated. Supporting a different position on an issue that the District administration supports does not equate to undermining, opposing, compromising or harming school personnel in the proper performance of their duties. Board members are not required to agree with school personnel on issues before the Board. Accordingly, 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(i) in Count 1.

#### **IV. 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 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.

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Robert W. Bender, Chairperson

Mailing Date: April 30, 2024

***Resolution Adopting Decision  
in Connection with C69-23***

***Whereas***, at its meetings on March 26, 2024, and April 30, 2024, the School Ethics Commission (Commission) considered the Complaint and the Written Statement 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 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.

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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.

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Brigid C. Martens, Director  
School Ethics Commission