

Before the School Ethics Commission
Docket No.: C79-23
Decision on Probable Cause

Michael Barish,
Complainant

v.

John Barounis,
Chester Board of Education, Morris County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on October 31, 2023,¹ by Michael Barish (Complainant), alleging that John Barounis (Respondent), a member of the Chester 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) (Counts 1 and 2), *N.J.S.A.* 18A:12-24.1(b) (Count 2), *N.J.S.A.* 18A:12-24.1(c) (Counts 1, 4 and 5), *N.J.S.A.* 18A:12-24.1(d) (Counts 2, 3 and 5), *N.J.S.A.* 18A:12-24.1(e) (Count 1 and Counts 3 through 5), *N.J.S.A.* 18A:12-24.1(f) (Count 1, and Counts 3 through 5) and *N.J.S.A.* 18A:12-24.1(g) (Count 2) of the Code of Ethics for School Board Members (Code). On December 21, 2023, Respondent filed a Written Statement.

The parties were notified by correspondence dated April 23, 2024, that the above-captioned matter would be discussed by the Commission at its meeting on April 30, 2024, in order to make a determination regarding probable cause. Following its discussion on April 30, 2024, the Commission adopted a decision at its meeting on May 21, 2024, finding that Count 1 and Count 2 were untimely filed, and finding with respect to the remaining Counts, 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.

¹ On October 30, 2023, Complainant filed a deficient Complaint; however, on October 31, 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.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant contends that on September 22, 2022, Respondent was part of an “Educational Issues Panel & Discussion” at an event held by the Morris County Women’s Republican Club. Per Complainant, also in attendance were “extremist organizational representatives,” and Respondent was listed on the “marketing materials as a speaker in his capacity” as a Board member, and therefore, alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f). Complainant notes although “this specific behavior is more than 180 days old,” Respondent’s behavior has been “repeated and continued” and he uses his position to advance partisan policies.

In Count 2, Complainant maintains that at a Board meeting on April 11, 2023, Respondent provided “anecdotal and inaccurate information regarding what constitutes [Harassment, Intimidation and Bullying (HIB)], while encouraging parents not to file HIB complaints” stating that they “require[] much paperwork” and distract from the day-to-day operations of the school. Per Complainant, Respondent also cited a news report about a New Jersey teen, who committed suicide due to bullying, and then he stated that because the teen did not represent “a protected class, that’s not HIB.” Complainant asserts Respondent’s comments “caused unnecessary public distress and confusion and do not align with the definition of ‘protected class’ under New Jersey law,” and therefore, Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(d) and *N.J.S.A.* 18A:12-24.1(g). Complainant again notes that although this behavior is beyond the 180-day time frame, this particular behavior has been repeated and is being “offered to establish [Respondent’s] pattern and practice of providing his own personal opinion about how the school should be administered . . . providing inaccurate information to parents of the community . . . which results in his inability to maintain public schools that meet the individual needs of all children”

In Count 3, Complainant contends that during the Board meeting on September 12, 2023, Respondent “shouted at the audience, presumably angry over a complaint from a community member who questioned the Board’s lack of transparency and delay” in approving field trips. According to Complainant, the public was unaware that Respondent was the cause for the delay; however, Respondent used this opportunity to attack Complainant, and commented on Complainant’s campaign for the Board. Apparently, the reason for the delay in approving the field trips was due to Respondent suggesting that the eighth grade trip to the Jewish Heritage Museum also include a trip to the 9/11 Memorial and Museum. Complainant notes, the Jewish Heritage Museum field trip was planned around the curriculum taught in eighth grade, and the 9/11 Memorial is part of the high school curriculum. Based on this, Complainant asserts 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(f) because “in his duty” to approve field trips, he attempted to administer the day-to-day operation of the schools by “supplanting the teacher’s judgment with his own.” Complainant maintains that Respondent held up the vote for field trips for nearly three months “so that he could advance his own opinion and personal belief” of where the field trips should be.

In Count 4, Complainant asserts that Respondent posted on his personal Facebook account on September 25, 2023, his support for the candidates who were running for the Board, including a campaign poster made by three candidates who support “Family Values.” According to Complainant, Respondent did not include a disclaimer to indicate that he was not speaking in his capacity as a Board member and called a West Morris Regional Board member “the face of pornography in our high schools” because this individual did not agree with Respondent’s opinion to ban a book that he felt was inappropriate. Complainant contends Respondent violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* because he “continues to use his official office to advance his own personal politics and beliefs, publicly impugn the character of people who disagree with him, and support those that he is ‘friends’ or close to in the community for open Board positions.”

In Count 5, Complainant maintains that Respondent “scolded the public” at a Board meeting on October 17, 2023, “for discussing book banning and staff turnover on social media.” Per Complainant, Respondent’s speech included, “talking points about book banning, verbatim[] of the nationally recognized extremist group, Moms For Liberty.” Complainant avers Respondent 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)* because he “used his official office, during a Board meeting, to chastise members of the public that he does not personally agree with about the administration of schools.”

B. Written Statement

As to Count 1 and Count 2, Respondent asserts that the allegations in these Counts are beyond the statute of limitations, and therefore, should be dismissed.

Respondent denies the allegations in Count 3, and argues that he did not shout at the audience, nor did he address the public during the meeting at all. Respondent notes that a motion and a second to table the field trips were made by two other Board members (not Respondent), he did not delay the approval of the field trips, and on September 12, 2023, the field trips were approved. Respondent asserts Complainant did not provide any evidence to demonstrate that he “administered the schools when voting to table the field trip resolution along with” the other Board members on June 26, 2023. Respondent further asserts that Complainant did not provide any evidence to show that Respondent made any personal promises or took private action that compromised the Board, nor any evidence to support that Respondent surrendered his independent judgment to special interest or partisan political groups. Respondent argues Complainant’s allegations that Respondent delayed the approval of the field trips is “speculative.”

As to Count 4, Respondent argues he is entitled to his First Amendment rights and any comments he made on his personal social media account “are just that ‘personal.’” Respondent denies that his social media comments are Board action, as they are “not part of nor linked to the [Board] or his role” as a Board member, and there is “no nexus between Respondent’s personal Facebook page and any [B]oard business.”

Regarding Count 5, Respondent argues the statement he made at the October 17, 2023, Board meeting “was within his responsibility as Chair of the Curriculum Committee in order to address misinformation as to the Board’s role in approving curricula materials, including books, and with the knowledge of the Board President.” Respondent further argues he confined his actions to board policy, and Complainant has failed to submit any factual evidence that Respondent administered the schools, made personal promises, or surrendered his independent judgment.

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.”

A. *Alleged Untimeliness*

Respondent argues that the allegations in Count 1 and Count 2 were untimely filed, and are therefore, time barred. Complainant contends that, while the specific behavior alleged in those counts is beyond the 180-day time frame, the behavior has been “repeated and continued,” and the allegations are being offered to establish that Respondent has a “pattern and practice” of engaging in such behavior that violates the Act.

The Commission’s regulations provide a one hundred eighty (180) day limitation period for filing a complaint. More specifically, *N.J.A.C.* 6A:28-6.5(a) provides, in relevant part:

- (a) Complaints shall be filed within 180 days of notice *of the events which form the basis of the alleged violation(s)*. A complainant shall be deemed to be notified of events that form the basis of the alleged violation(s) *when the complainant knew of the events, or when such events were made public so that one using reasonable diligence would know or should have known* (emphasis added).

With the above in mind, and pursuant to *N.J.A.C.* 6A:28-6.5(a), the Commission must determine when Complainant knew of the events which form the basis of the Complaint, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events.

The Commission recognizes that limitation periods of this type serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. *Kaprow v. Berkley Township Bd. of Educ.*, 131 *N.J.* 571, 587 (1993). Thus, “notice of the alleged violation” must be interpreted in a manner that anticipates the reasonable diligence of complainant(s). In addressing

potential violations of the Act, the Commission must balance the public's interest in knowing of potential violations against the important policy of repose and a respondent's right to fairness. The time limitations set forth in the regulations must be enforced if the Commission is to operate in a fair and consistent manner. *Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County*, C19-03 (June 24, 2003).

In this case, Complainant filed his deficient Complaint on October 30, 2023, and one hundred eighty (180) days prior to that date is May 3, 2023. The panel discussion in Count 1 occurred on September 22, 2022, and the Board meeting at issue in Count 2 occurred on April 11, 2023.

After review, the Commission finds that there is not a credible basis upon which to find that Complainant was unaware of Respondent's actions/conduct until a date(s) other than when they occurred. Although the Commission recognizes that the regulatory time period may be relaxed, in its discretion, in any case where strict adherence may be deemed inappropriate or unnecessary or may result in injustice, it does not find extraordinary circumstances in the within matter that would compel relaxation. Critical to the Commission's determination was that the conduct occurred at a public event and at a public Board meeting. Moreover, Complainant does not allege that he learned of the events at a later date, but rather argues that Respondent's behavior was repetitive and/or a pattern. The Commission notes that if Respondent's behavior was repeated, Complainant should have alleged examples of that behavior that occurred within the 180-day limitations period, rather than relying on events that were out of time. The Commission finds that Complainant was aware of the actions at the time they were made, and despite his knowledge of the events that occurred prior to May 3, 2023, Complainant waited until October 30, 2023, to initiate the above-captioned matter. Consequently, the stated violations of the Act set forth in Count 1 and Count 2 are time barred, and therefore, dismissed.

B. 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(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. 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.

Pursuant to *N.J.A.C.* 6A:28-6.4(a), a violation(s) *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) 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 Respondent took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondent's 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 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.

5. 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.

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 himself, a member of his immediate family or a friend.

Count 3

In Count 3, Complainant contends 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(f) when he delayed approving field trips for three months because he believed the eighth grade trip to the Jewish Heritage Museum should also include a trip to the 9/11 Memorial and Museum. Respondent counters that he did not delay the approval of field trips, but rather another Board member motioned to table the field trip resolution, and the trips were ultimately approved.

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), *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f)

were violated. The Commission notes that approval of the field trip was before the Board for approval, and Respondent is entitled, as a Board member, to discuss matters that are before the Board during a Board meeting, express his opinion, and/or make suggestions. The Commission further notes that Complainant did not allege that Respondent's suggestion that the Jewish Heritage Museum trip also include the 9/11 Memorial and Museum ultimately resulted in a change to the field trip, but rather only alleges that the delay in approving the field trip was an ethical violation. Respondent's suggestion or question regarding the proposed field trip was permitted action within his role as a Board member, and, as such, he did not become involved in the day-to-day administration of the schools, take action outside of the scope of his duty that could compromise the Board, or take action on behalf of, or at the request of, a special interest or political group. Therefore, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violations of *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)* in Count 3.

Count 4

In Count 4, Complainant asserts that Respondent violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* when he posted his support for candidates running for the Board on his personal Facebook page, without a disclaimer, and when he called a West Morris Regional Board member "the face of pornography in our high schools" because he did not agree with Respondent's opinion regarding banning a book. Respondent contends that any comments he made on his personal social media account are "not part of nor linked to the [Board] or his role" as a Board member, and there is "no nexus between Respondent's personal Facebook page and any [B]oard business."

The Commission has explained that in order for a social media post to be offered pursuant to official duties, there must be a sufficient nexus between the social media page and the role/membership on the Board. *Hodrinisky v. Faussette, Hasbrouck Heights Board of Education, Bergen County*, Docket No. C11-21 (August 30, 2021); *Donnerstag, et al. v. Borawksi, Central Regional Board of Education, Ocean County*, Docket No. C20-22 (August 22, 2023); *Donnerstag, et al. v. Koenig, Central Regional Board of Education, Ocean County*, Docket No. C19-22 (August 22, 2023). Additionally, as the Commission explained in *Aziz v. Nikitinsky et al., Monroe Township Board of Education, Middlesex County*, Docket No. C56-22 (October 17, 2022):

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 previous advisory opinions and decisions, the Commission has stated that disclaimers such as, “this endorsement is [Board Member’s Name] personal one, and not as a member of the [Township] Board of Education, nor is the endorsement on behalf of the entire Board,” or “THE FOLLOWING STATEMENTS ARE MADE IN MY CAPACITY AS A PRIVATE CITIZEN, AND NOT IN MY CAPACITY AS A BOARD MEMBER. THESE STATEMENTS ARE ALSO NOT REPRESENTATIVE OF THE BOARD OR ITS INDIVIDUAL MEMBERS, AND SOLELY REPRESENT MY OWN PERSONAL OPINIONS” would be appropriate. *Advisory Opinion A36-14* (October 29, 2014); [*I/M/O Treston, Randolph Township Board of Education, Morris County*, Docket No. C71-18 (April 27, 2021)]. The failure of a school official to parrot the exact language recommended by the Commission will not mean, without more, that he or she did not use an appropriate disclaimer. 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*.

Following its assessment, the Commission notes that although the inclusion of a disclaimer is recommended, a reasonable member of the public would not perceive the social media statements at issue in this matter, namely encouraging the public to vote for certain candidates for election to the Board and referring to a member of another board of education as “the face of pornography,” were made in Respondent’s capacity as a Board member. Notably, Respondent used his personal Facebook account, which does not appear to reference his membership on the Board. Additionally, it is clear from the context of the social media post that Respondent is expressing his opinion, as he is personally supporting candidates that support “Family Values.” Furthermore, the comment regarding “the face of pornography” refers to a member of a different board of education, and therefore, does not have a sufficient nexus to Respondent’s position on the Board. Notwithstanding this, the Commission reiterates that a disclaimer would have removed any question as to what capacity Respondent posted on social media and obviated the need for this ethics complaint. Accordingly, 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(e)* and/or *N.J.S.A. 18A:12-24.1(f)* were violated, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, dismisses the alleged violations of *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* in Count 4.

Count 5

In Count 5, Complainant argues that Respondent 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 he “scolded the public” at a Board meeting, “for discussing book banning and staff turnover on social media,” using “talking points about book banning, verbatim[] of the nationally recognized extremist group, Moms For Liberty.” Respondent counters that the statement he made at the Board meeting “was within his responsibility as Chair of the Curriculum Committee in order to address misinformation as to the Board’s role in approving curricula materials, including books, and with the knowledge of the Board President.”

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(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. The public session of a Board meeting is the appropriate place for Respondent to address his opinion on topics including the appropriateness of books in schools and staff turnover, and therefore, is not an ethical violation. Whether Respondent’s opinions are similar to that of a special interest group does not amount to action on behalf of said group, nor did Respondent’s comments constitute Board action to effectuate policies or plans without consulting those affected, a direct order to school personnel or becoming involved in the day-to-day operation of the school, or a personal promise or action beyond the scope of his duties that has the potential to compromise the board. Consequently, and pursuant to *N.J.A.C.* 6A:28-9.7(b), the Commission dismisses the alleged violations 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) in Count 5.

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 Count 1 and Count 2 were untimely filed, and as to the remaining Counts, 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. Consequently, the Commission 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.

Robert W. Bender, Chairperson

Mailing Date: May 21, 2024

***Resolution Adopting Decision
in Connection with C79-23***

Whereas, at its meeting on 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 meeting on April 30, 2024, the Commission discussed finding the allegations in Count 1 and Count 2 were untimely filed; and

Whereas, at its meeting on April 30, 2024, the Commission discussed finding, as to the remaining Counts, 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 May 21, 2024, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on 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 May 21, 2024.

Brigid C. Martens, Director
School Ethics Commission