

Before the School Ethics Commission
Docket No.: C81-23
Decision on Probable Cause

Angela Reading,
Complainant

v.

Jody Tallone,
North Hanover Township Board of Education, Burlington County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on November 2, 2023, by Angela Reading (Complainant), alleging that Jody Tallone (Respondent), a member of the North Hanover Township 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(e) of the Code of Ethics for School Board Members (Code) in Counts 1 through 3. On January 8, 2024, 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 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.

II. Summary of the Pleadings

A. The Complaint

By way of background, Complainant maintains that while attending a “Math Night” at her children’s school, she noticed student artwork, displayed in the building, “related to sexual orientation and gender,” which in Complainant’s opinion, was “sophisticated and not suitable for [her] young children’s age.” Complainant notes she contacted “school leadership to voice [her] concerns,” but they were “summarily dismissed.” Complainant maintains she “conscientiously posted about the incident on a public Facebook group,” “NJ Fresh Faced Schools,” on November 20, 2022. According to Complainant, on December 1, 2022, Respondent, along with others, including two individuals who Respondent later endorsed for various boards of education, “jointly endorsed and disseminated a change.org petition against” Complainant on social media,

which “unjustly and inaccurately branded [Complainant] as an ‘extremist.’” According to Complainant, the “repercussions of the petition, intensified by the actions of” Respondent, were severe, and as a result, Complainant has “been inaccurately and harmfully labeled as a right-wing extremist, portrayed as a supposed threat to public safety and the school, and baselessly depicted as being subject to official investigation for alleged illicit activity.” Consequently, Complainant’s spouse resigned from the Board.

In Count 1, Complainant asserts that from September 7 to October 31, 2023, Respondent “consistently endorsed” a candidate for the Board (Courtney Szymanski, one of the individuals involved in the change.org petition) thirteen times on multiple social media platforms “without the crucial mandated disclaimer.” Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(e) because she “openly endorsed a candidate for the same Board, failing to incorporate a requisite disclaimer.”

In Count 2, Complainant contends that from September 5 to October 31, 2023, Respondent endorsed a candidate for another board of education (Cristina Janis, one of the individuals involved in the change.org petition), eleven times on social media, without the necessary disclaimer. Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(e) because her “recurrent nature of online endorsements without the requisite disclaimers, coupled with her consistent association with her official capacity, markedly escalates the potential for public confusion.”

In Count 3, Complainant maintains that from October 16 to October 30, 2023, Respondent endorsed a candidate for the Board (Nancy Morrow), nine times on social media, without the necessary disclaimer. Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(e) because the “repeated online endorsements without the necessary disclaimers, combined with her consistent association with her official role, significantly increases the likelihood of public confusion.”

B. Written Statement

Respondent initially denies the information contained in the Background Information. As to the multiple alleged violations of *N.J.S.A.* 18A:12-24.1(e), Respondent argues that Complainant has failed to provide evidence that demonstrates Respondent “made personal promises or took action beyond the scope of [her] duties such that, by its nature, had the potential to compromise” the Board. Respondent maintains, “[a]lthough the use of a disclaimer can help to clarify the capacity in which one is speaking, the presence of a disclaimer does not mean that the school official cannot still be regarded as speaking in an official capacity and the absence of a disclaimer does not mean that the school official is automatically speaking in their official capacity.” Respondent argues her post “did not contemplate [Board] action, rather was protected political speech on a social media site.” Respondent contends the posts were her opinion and Complainant did not provide any evidence to support that Respondent’s post “damaged the integrity of the Board” or that by posting on social media Respondent “took action that had the potential to compromise the Board.”

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(e), and this provision of the Code provides:

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.

In accordance with *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 her duties such that, by its nature, had the potential to compromise the board.

In Counts 1 through 3, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(e) when she endorsed two candidates for the Board and one candidate for another board of education multiple times on social media without a disclaimer. Respondent counters that the posts were her opinion, protected political speech, and while the use of a disclaimer can help to clarify the capacity in which one is speaking, the absence of a disclaimer does not mean that Respondent was automatically speaking in her official capacity.

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 finds that although it recommends using a disclaimer, a reasonable member of the public would not perceive the social media endorsements of candidates for election to the Board, as well as the endorsement of one candidate for another board of education, were made in Respondent’s capacity as a Board member. Respondent posted support for her own campaign, as well as other candidates that she supported, on her personal Facebook and Twitter accounts, as well as on a page dedicated to her campaign. It is clear from the context of the social media posts, which included language such as, “I am happy to support my friend, fellow educator, and local community resident, [Cristina Janis],” “My friend and neighbor Courtney Szymanski is running for the [Board],” and “Here is the flyer for my campaign & the candidates I support,” that Respondent is expressing her opinion on the candidates she supports and was speaking in her individual capacity, and not on behalf of the Board. The Commission reiterates, however, 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(e) was violated, and pursuant to *N.J.A.C.* 6A:28-9.7(b), dismisses the alleged violation(s) of *N.J.S.A.* 18A:12-24.1(e) in Counts 1 through 3.

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.

Robert W. Bender, Chairperson

Mailing Date: May 21, 2024

***Resolution Adopting Decision
in Connection with C81-23***

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 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