

Before the School Ethics Commission
OAL Docket No.: EEC-05975-24
SEC Docket No.: C74-23
Final Decision

Christopher Pinto,
Complainant

v.

Douglas Cusato,
Westwood Regional Board of Education, Bergen County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on September 28, 2023, by Christopher C. Pinto (Complainant), alleging that Douglas Cusato (Respondent), a member of the Westwood 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 violated *N.J.S.A.* 18A:12-24.1(b) (Count 7 and Count 13), *N.J.S.A.* 18A:12-24.1(e) (Count 1 through Count 3, and Count 7), *N.J.S.A.* 18A:12-24.1(f) (Count 2 through Count 7, and Count 11), *N.J.S.A.* 18A:12-24.1(g) (Count 7 through Count 10), and *N.J.S.A.* 18A:12-24.1(i) (Count 7, and Count 10 through Count 12) of the Code of Ethics for School Board Members (Code).

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 Count 1, Count 6, and Count 9 were untimely filed; finding that there are sufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that *N.J.S.A.* 18A:12-24.1(e) was violated as set forth in Count 2 of the Complaint; but finding that there are insufficient facts and circumstances to lead a reasonable person to believe that the remaining violations alleged in the Complaint were violated. Based on its finding of probable cause, the Commission voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing where Complainant carried the burden to prove the remaining allegation that Respondent violated *N.J.S.A.* 18A:12-24.1(e) in Count 2.

At the OAL, a prehearing order was issued on June 17, 2024, setting a hearing date which was adjourned at the request of the parties to January 29, 2025. The parties requested post hearing submissions and thereafter the record was closed on March 26, 2025. The Administrative Law Judge (ALJ) issued an Initial Decision on May 12, 2025, finding that Complainant failed to shoulder his burden of establishing that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and dismissing the matter.

At its meeting on June 17, 2025, the Commission discussed the above-captioned matter, and at its meeting on July 22, 2025, the Commission voted to adopt the Initial Decision's findings of fact, but voted to modify the conclusions of law to find that Respondent violated *N.J.S.A. 18A:12-24.1(e)* and recommending a penalty of reprimand in this matter.

II. Initial Decision

Based upon the witness testimony and the evidentiary documentation, the ALJ issued the following findings of fact:

- On or about May 23, 2023, Respondent “responded to a social media post made by an ‘anonymous member’ of the [social media group] ‘Parents & Taxpayers of Westwood Regional School District: Putting Kids First,’ of which [R]espondent is also a member.”
- The initial post by the anonymous member linked a video reel with the following comment by the anonymous member: “Maybe some books should be banned? #letkidsbekids.” Respondent testified that the reel depicted “a gentleman speaking at a school board meeting,” (not Respondent’s Board), reading what Respondent described as a “graphic novel for kids that has some inappropriate materials.” Respondent further recalled that the gentleman in the video was “asking the school board members how they justify teaching this to little kids.”
- Thereafter, using his personal Facebook account that identified him as “Douglas Cusato,” Respondent posted the following response: “100% agree. History books then library. Going to be a busy few months.”
- Subsequently, other members of the public then “reacted” to Respondent’s post, asking for clarification and his thoughts on banning books.
- One member asked: “Douglas Cusato I’m curious what do you mean history books?” Another asked: “Douglas Cusato just to make sure I am clear: you feel banning books in general is a good thing AND you want to ban HISTORY books?”
- Respondent then responded: “I don’t want to ‘ban’ any books. Do I want to make sure we buy neutral written books for history in the future – yes I do. Do I think we need to review our libraries and apply a logical age appropriate lens – yes I do. Banning a book, as in removing its existence is the same as silencing someone. I don’t support that at all. Hope that helps.”
- Ultimately, after a continued exchange of posts on social media, and in response to a particular post from an individual who posted they were concerned that Respondent “was creating a new lane for [his] BOE job”; Respondent posted: “it’s certainly a new lane for most BOEs.”
- Although Respondent did not directly reference the Board when referring to “most BOEs,” it is clear from the continuing string of comments that Respondent’s social media posts were being interpreted as discussing his role as a Board member and the impending business and planned actions of the Board.

- When one poster asked, “[d]oes he want to ban history books[?]”; Respondent replied, “I don’t know of any history books that I would even be permitted to **ban as a member of the BOE.**” (emphasis added). Respondent’s follow-up conversation did not explicitly state that he was referring to his role on the Board, but the reference was made clear in his subsequent comment, “Approving the \$\$ for new books and materials is a typical role of a board member from my understanding.”
- At no point during the Facebook discussion did Respondent post a disclaimer that he was speaking in his personal capacity and not as a Board member.
- Respondent testified that although he did not “exactly remember” whether his reference to history books was to the District’s books, he “‘imagined’ that at the time he wrote the post he was ‘probably’ referring to the ‘history books in the school.’”
- Respondent also testified that Section E.6. of District Regulation S130 provides the Board with “the authority to remove a book that’s being complained about by the public.” Respondent further testified that he was aware that “a number of people” in the District previously had “submitted complaints about books in our school to the Superintendent, committees were formed, and those books were reviewed and decisions were made” as to whether the books should be removed. *Initial Decision* at 3-5.

With the above in mind, the ALJ finds Respondent’s posts were reasonably interpreted as (1) being made in his capacity as a Board member and (2) publicly commenting on prospective, albeit unspecified, Board business regarding history books in the District’s school system. *ID.* at 5. However, the ALJ contends that Complainant failed to present any factual evidence to support a finding that Respondent’s posts had the potential to compromise, much less that they actually compromised, the Board’s discharge of its duties. *Ibid.*

Here, the ALJ notes Complainant does not assert that Respondent made personal promises but rather claims that Respondent “breached his oath to adhere to *N.J.S.A.* 18A:12-24.1(e) when he published” the post, which led the community members to “conclude the [B]oard was undertaking an official policy to ban certain history books from the school library.” *ID.* at 7. According to the ALJ, despite the credible evidence to support a finding that the public perceived Respondent to be speaking in his role as a Board member, “there can be no violation of *N.J.S.A.* 18A:12-24.1(e) without factual evidence that [R]espondent’s posts had the ability to, or did, compromise the Board’s operations.” *Ibid.* The ALJ also stated that Complainant, who also serves as the Westwood Education Association President (the “Association”) testified that members of the Association approached him with “concerns about what was going to happen to the material they were teaching in their classrooms based off of [sic] Mr. Cusato in his position as a Board member discussing book banning.” *Ibid.* However, the ALJ found that “standing alone, their ‘concerns,’ as reported by complainant, are plainly insufficient to demonstrate that respondent’s posts had the requisite ‘potential to compromise the district board of education or the board of trustees.’” *Ibid.*

Therefore, the ALJ concludes that upon the record presented to the tribunal, a violation of *N.J.S.A.* 18A:12-24.1(e) by Respondent has not been established. *Ibid.*

The ALJ further asserts Complainant did not provide any competent evidence to show that the Board was engaged in deliberations regarding the removal or approval of history books from the school curriculum or school library at the time of Respondent's posts, nor was there any evidence to support that those concerns materialized or that the Board was in any way impacted, much less compromised, in its operations by Respondent's posts. *ID.* at 9. Therefore, the ALJ further concludes Complainant failed to shoulder his burden of establishing that Respondent violated *N.J.S.A. 18A:12-24.1(e)*, warranting dismissal of the Complaint. *Ibid.*

Complainant's Exceptions¹

Complainant argues that the Commission should reject the Initial Decision because the ALJ "failed to consider factual evidence and reached legal conclusions citing caselaw and policy considerations that do not support the Initial Decision."

Complainant asserts that Respondent "breach[ed]" the public's trust when he "misled the public regarding a matter before the [B]oard involving removal of books from the school library." Complainant notes the ALJ "importantly, found 'respondent's posts were reasonably interpreted as 1) being made in his capacity as a Board member; and 2) publicly commenting on prospective, albeit unspecified, Board business regarding history books in the District's school system.'" Complainant further notes the ALJ found "it is clear from the continuing string of comments that respondent's social media posts were being interpreted as discussing his role as a Board member and the impending business and planned actions of the Board." Moreover, Complainant maintains that Respondent "throughout the entirety of the online exchange, posted no disclaimer stating that he was speaking in his personal capacity rather than his official capacity."

Complainant contends the ALJ failed to consider the "competent evidence," namely that Respondent testified that in making his statement, "'It's going to be a busy few months' he meant it was going to be a busy few months 'For a bunch of people, there was over the course of the last year and a half . . . committees were formed, and those books were reviewed and decisions were made.'" According to Complainant, this "demonstrated the issue was a contentious and ongoing matter before the Board at the time of [Respondent's] Facebook posts." Further, the ALJ found, "it is clear from the continued string of comments that [R]espondent's social media posts were being interpreted as discussing his role as a Board member and the impending business and planned action of the Board."

Next, Complainant notes that the ALJ cites Matter of Quinn, C45-04 (Feb. 7, 2005), and similarly in this matter Respondent "published false information that misled the public to believe the Board was undertaking an official policy of removing history books from the school library." Per Complainant, Respondent testified that the Superintendent had received numerous complaints from the public prior to the posts and the Board responded with official action. Therefore, Respondent's "dissemination of misleading information, outside his capacity as a Board member and beyond the scope of his official duties, when viewed in the context of the contentious and

¹ The Commission notes that Respondent did not file exceptions, nor a reply to Complainant's exceptions.

contemporaneous issue of book removal, had the ability to compromise the Board based on the precedent set in” Quinn.

Finally, Complainant avers that the ALJ “erred” because the “number of signatories to the complaint is evidence of the damage [Respondent’s] misrepresentation did to the Board by misleading the public to believe official action was being undertaken to remove books from the school library.” Moreover, Complainant asserts dismissal of this matter “would make the position of a Board member highly susceptible to being exploited for political purposes or personal agendas, as occurred here.” Therefore, Complainant requests the Commission reject the ALJ’s decision and “sustain Count 2.”

III. Analysis

Upon a thorough, careful, and independent review of the record, the Commission adopts the ALJ’s factual findings, but modifies the legal conclusion to reflect that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and issues a penalty of reprimand.

According to *N.J.S.A.* 18A:12-24.1(e), a board member must recognize that authority rests with the board and a board member shall not make any personal promises or take any action that may compromise the board.

As a preliminary matter, the Commission finds it necessary to set forth the framework by which it will review the allegation. 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. *Hodrinsky v. Faussette, Hasbrouck Heights Board of Education, Bergen County*, Docket No. C11-21 (August 30, 2021). 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*.

The Commission agrees with the ALJ’s finding that Respondent’s posts were interpreted as being made in his capacity as a Board member. The Commission agrees that the comments from the other posters on social media and the lack of a disclaimer, combined, give the impression that Respondent was posting in his capacity as a Board member. As such, the Commission finds there is a sufficient nexus between Respondent’s social media post and his Board membership and, given the context of his posts, a reasonable member of the public would perceive that the school official is speaking in his official capacity or pursuant to his official duties. Accordingly, the Commission must review whether Respondent violated *N.J.S.A. 18A:12-24.1(e)* when, in his capacity as a Board member, he posted on social media.

The Commission has long-held that such determinations are fact-sensitive. The Commission disagrees with the ALJ that Complainant did not prove that Respondent’s comments would compromise the Board in this circumstance or did compromise the Board. The Commission notes that it is not necessary for the comments to have compromised the Board—it is only necessary for the social media comments to have the *potential* to compromise the Board. In this matter, the Commission reverses the ALJ and finds that the comments not only had the potential to compromise the Board but did compromise the Board. The Commission notes that Complainant testified that staff members expressed concerns about “what was going to happen to the material they were teaching in their classrooms” based on Respondent’s comments to social media.

In this matter, the Commission finds that as the subject matter of the post and comments were directly related to Board matters that Respondent’s comments did have the potential to compromise the Board and therefore, Respondent did violate *N.J.S.A. 18A:12-24.1(e)*. While the ALJ asserts that Complainant did not show that the Board was engaged in deliberations regarding the removal or approval of history books from the school curriculum or school library at the time of Respondent’s posts, the Commission finds this to be irrelevant. The Board has the power and authority to review and remove books from the school library, as well as to decide which books

should be included in or are appropriate for school curriculums. While the actual issue of book-banning might not have been before the Board at the time of Respondent's posts, this post was directly commenting on potential or future Board activities, including activities or actions that could come before the Board

As the Commission finds that Respondent violated *N.J.S.A.* 18A:12-24.1(e), the Commission must now decide on penalty. The Commission finds Respondent should be disciplined with a reprimand as this was his first discipline and the conduct was a one-time occurrence.

IV. Decision

For all of the aforementioned reasons, the Commission adopts the Initial Decision's findings of fact, but modifies the conclusions to find that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and finds that Respondent should receive a penalty of reprimand.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, **within thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Office of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* **within thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: July 22, 2025

***Resolution Adopting Decision
in Connection with C74-23***

Whereas, at its meeting on April 25, 2023, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a hearing; and

Whereas, the Administrative Law Judge (ALJ) issued an Initial Decision dated May 9, 2025; and

Whereas, in the Initial Decision, the ALJ found that Respondent did not violate *N.J.S.A.* 18A:12-24.1(e) and ordered the dismissal of the above-captioned matter; and

Whereas, Complainant filed exceptions to the Initial Decision; and

Whereas, at its meeting on June 17, 2025, the Commission reviewed and discussed the record, including the ALJ's Initial Decision; and

Whereas, at its meeting on June 17, 2025, the Commission discussed adopting the Initial Decision's findings of fact but finding that Respondent did violate *N.J.S.A.* 18A:12-24.1(e), and recommending a penalty of reprimand; and

Whereas, at its meeting on July 22, 2025, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on June 17, 2025; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its meeting on July 22, 2025.

Dana C. Jones
School Ethics Commission