


Before the School Ethics Commission
OAL Docket No.: EEC-07246-22
SEC Docket No.: C31-22
Final Decision


Complainant

v.

Michael D'Aquila and Angela Penna,
Berkeley Heights Board of Education, Union County,
Respondents

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on March 28, 2022, by  (Complainant), alleging that Michael D'Aquila (Respondent D'Aquila) and Angela Penna (Respondent Penna) (collectively, Respondents), members of the Berkeley Heights 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 Respondents violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, and *N.J.S.A. 18A:12-24.1(j)* of the Code of Ethics for School Board Members (Code).

At its meeting on July 26, 2022, and after reviewing Respondents' Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and Complainant's response thereto, the School Ethics Commission (Commission) adopted a decision denying the Motion to Dismiss in its entirety. Based on its decision, the Commission also directed Respondents to file an Answer to Complaint (Answer), and to transmit the above-captioned matter to the Office of Administrative Law (OAL) following receipt of the Answer, which Respondents filed on August 15, 2022.

Following cross-motions for Summary Decision at the OAL, the Administrative Law Judge (ALJ) issued an Initial Decision on July 27, 2023. The parties did not file exceptions to the Initial Decision.

At its meeting on September 26, 2023, the Commission discussed the above-captioned matter, and at its meeting on October 17, 2023, the Commission voted to adopt the Initial Decision's findings of fact, the legal conclusion that Respondent did not violate *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, and/or *N.J.S.A. 18A:12-24.1(j)*, and the dismissal of the above-captioned matter.

II. Initial Decision

On March 20, 2022, TAPinto Berkeley Heights published a letter to the editor submitted by a Board member, which expressed the reasons why the Board member was not confident voting to approve a proposed budget after it was revised and without being able to review it. *Initial Decision at 2.* Thereafter, on March 22, 2022, in response to the letter, Respondent D'Aquila (Board President) and Respondent Penna (Board Vice President) published a letter to the editor, entitled "The Board of Education believes that transparency starts with accurate facts." *Ibid.* In the letter, Respondents accused the Board member of making a "blatant misrepresentation of both [the Board's] process and [the school's] administration" and further advised the Board member to "stop misrepresenting the facts and look to work with the collective Board and Administration in order to focus on [the Board's] real priority – the education of [the] children." *Ibid.* The letter indicated that it was shared with each Board member before public dissemination. *Ibid.* Certifications of Board members show that six out of the eight Board members approved the letter prior to publication. *Id.* at 6.

Complainant alleges that Respondents violated the Code when they submitted the "letter for publication in their official capacities, and without prior review and consent of the Board." *Id.* at 7. Complainant asserts that "the evidence produced shows that roughly 15 minutes prior to the publication, [] Respondents alerted the Board that they were sending the letter for publication" *Id.* at 7-8. Complainant further asserts that in publishing the letter, Respondents were motivated by a political agenda as Respondents and the Board member were all up for re-election. *Id.* at 7.

The ALJ contends Complainant failed to establish that Respondents violated *N.J.S.A.* 18A:12-24.1(c) because Respondents' letter "clearly addressed the lengthy and complex school-budget development and approval process, and emphasized the need to trust that the committee accurately performed the task it was assigned." *Id.* at 12. As such, Respondents' letter was related to Board duties. *Ibid.* The ALJ further contends that Complainant did not demonstrate "other than a bare allegation" how Respondents' letter "may be seen as campaigning for their Nov[ember] 2022 run for re-election." *Ibid.*

In finding Respondents did not violate *N.J.S.A.* 18A:12-24.1(e), the ALJ maintains that board members are entitled to express their opinions publicly and Respondents' letter to the editor constituted a "board action" and not a "private action that may compromise the board." *Id.* at 13-14. Per the ALJ, by submitting certifications of Board members, Respondents provided sufficient evidence that a majority of the Board approved the content of the letter to the editor before it was published. *Id.* at 14-15. Additionally, the ALJ asserts the "purpose of the letter was to correct what [R]espondents perceived were misrepresentations made by a fellow Board member about the budget process for which the Board is responsible." *Id.* at 15.

Regarding a violation of *N.J.S.A.* 18A:12-24.1(f), the ALJ finds Complainant did not provide evidence to support the contention that Respondents took action on behalf of, or at the request of, a special interest group by writing the letter. *Id.* at 15. The ALJ reiterates that the evidence shows the Board agreed to the content of the letter, despite the "unnecessary comments" regarding the other Board member's professionalism. *Id.* at 16.

Finally, as to a violation of *N.J.S.A.* 18A:12-24.1(j), the ALJ asserts Complainant failed to state what complaint Respondents acted on or attempted to resolve that involved the Board member who authored the letter to the editor. *Id.* at 16. According to the ALJ, a complaint did not exist, and therefore, “an administrative solution was not required.” *Ibid.*

With the above in mind, the ALJ concludes that Complainant has failed to establish that Respondents violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f) and/or *N.J.S.A.* 18A:12-24.1(j).

III. Analysis

Upon a thorough, careful, and independent review of the record, the Commission agrees with the ALJ that Respondents did not violate *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f) and/or *N.J.S.A.* 18A:12-24.1(j) when they published a letter to the editor. As such, the Commission finds the Complaint against Respondents should be dismissed.

Pursuant to *N.J.S.A.* 18A:12-24.1(c), board members must confine board action to “policy making, planning, and appraisal” and “frame policies and plans only after the board has consulted those who will be affected by them.” The Commission agrees with the ALJ that Respondents did not take action unrelated to Respondents’ duties as Board members as the publication related to the detailed process of approving a budget, a topic which is part of their Board business, and based on the evidence presented, the majority of the Board reviewed and supported the publication. Therefore, the Commission finds Respondents did not violate *N.J.S.A.* 18A:12-24.1(c).

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. The Commission concurs with the ALJ that Respondents did not act beyond the scope of their duties as Board members as the letter was Board action, because the Board was aware of the letter and provided consent, and therefore, not private action. Additionally, Respondents’ publication of the letter did not compromise the Board as they had the support and approval of a majority of the Board prior to making the letter public. Accordingly, a violation of *N.J.S.A.* 18A:12-24.1(e) has not been established.

N.J.S.A. 18A:12-24.1(f) prohibits Board members from surrendering their judgment to special interest or partisan political groups or using the schools for personal gain or for the gain of friends. The Commission agrees with the ALJ that Complainant did not meet his burden of demonstrating that Respondents published the letter to the editor as a means of campaigning or that they otherwise took action on behalf of a special interest group. As the ALJ noted, the contents of the letter were approved by a majority of the Board, and therefore, Respondents are not in violation of *N.J.S.A.* 18A:12-24.1(f).

Finally, *N.J.S.A.* 18A:12-24.1(j) requires Board members to refer all complaints to the chief administrative officer and act on complaints at public meetings only after the failure of an administrative solution. The Commission concurs with the ALJ that there was not a “complaint”

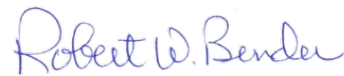
at issue to trigger Respondents' obligation to refer the matter to the chief administrative officer. As such, Respondents did not violate *N.J.S.A.* 18A:12-24.1(j).

The Commission, therefore, finds the Complaint against Respondents should be dismissed in its entirety.

IV. Decision

Upon review, the Commission adopts the Initial Decision, concluding that Respondents did not violate *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f) and/or *N.J.S.A.* 18A:12-24.1(j), and dismissing the above-captioned matter.

Therefore, this is a final agency decision and is appealable only to the Superior Court-Appellate Division. *See, N.J.A.C.* 6A:28-10.11 and *New Jersey Court Rule* 2:2-3(a).



Robert W. Bender, Chairperson

Mailing Date: October 17, 2023

**Resolution Adopting Decision
in Connection with C31-22**

Whereas, at its meeting on July 26, 2022, 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 July 27, 2023; and

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

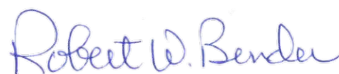
Whereas, the parties did not file exceptions to the Initial Decision; and

Whereas, at its meeting on September 26, 2023, the Commission reviewed and discussed the record, including the ALJ's Initial Decision; and

Whereas, at its meeting on September 26, 2023, the Commission discussed adopting the Initial Decision's findings of fact, the legal conclusion that Respondent did not violate *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(f) and/or *N.J.S.A.* 18A:12-24.1(j), and dismissing the above-captioned matter; and

Whereas, at its meeting on October 17, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on September 26, 2023; 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 October 17, 2023.



Brigid C. Martens, Acting Director
School Ethics Commission