

Before the School Ethics Commission
Docket No.: C37-22
Probable Cause Notice

**Brian Fabiano,
Complainant**

v.

**Christine Skurbe,
Monroe Township Board of Education, Middlesex County,
Respondent**

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on April 1, 2022, by Brian Fabiano (Complainant), alleging that Christine Skurbe (Respondent), a member of the Monroe 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(b) (in Count 1), as well as *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-2), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-2), and *N.J.S.A.* 18A:12-24.1(i) (in Count 2) of the Code of Ethics for School Board Members (Code).

On April 5, 2022, the Complaint was served on Respondent via electronic mail, notifying her that ethics charges had been filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading.¹ On May 9, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainant filed a response to the Motion to Dismiss on May 26, 2022.²

At its meeting on August 23, 2022, and after reviewing the parties' submissions at its meeting on July 26, 2022, the Commission adopted a decision finding that the allegations in Counts 1-2 of the Complaint that occurred prior to October 1, 2021, are time barred, but otherwise denying the Motion to Dismiss. Based on its decision, the Commission also directed Respondent to file an Answer to Complaint (Answer), which she did on September 7, 2022.

¹ In order to conduct business during the Coronavirus (COVID-19) pandemic, the Commission implemented an electronic filing system, which remains a permissible method by which the Commission and parties can effectuate service of process. Consequently, service of process was effectuated by the Commission through electronic transmission only.

² On May 29, 2022, Respondent filed a reply to Complainant's response to the Motion to Dismiss. As this filing is not permitted by the Commission's regulations, it was not considered by the Commission at its meetings on July 26, 2022, and/or August 23, 2022, in ruling on the Motion to Dismiss.

Thereafter, the parties were notified by correspondence dated October 7, 2022, that this matter would be placed on the Commission's agenda for a special meeting on October 17, 2022, in order to make a determination regarding probable cause. At its special meeting on October 17, 2022, the Commission considered the filings in this matter, and at its regularly scheduled meeting on November 22, 2022, the Commission voted to find probable cause for the allegations in Count 1, but not to find probable cause for the claims in Count 2. 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 hearing.

II. Summary of the Pleadings

A. *Remaining Allegations in the Complaint*

In Count 1, Complainant states that, prior to being elected to the Board, Respondent was an administrator of a Facebook page called "Watchdog, Monroe Township, NJ" that has "a large following throughout the Monroe community." Following her election, and on various dates between October 1, 2021, and November 2, 2021, Respondent "has continued to use Facebook ("Watchdog, Monroe Township, NJ", other Facebook groups that she administered/created, and her own profile) as a platform to promote and endorse her political views without making it clear that she is not acting on behalf of the [Board]"; advertises "the Monroe Watchdog as a place to get education/school updates" with the "average reader" having no way of distinguishing what was, and was not, "official commentary" from the Board; and through her "promotion and campaigning" for a candidate for town council, has "used her position in the community to influence voters and run a dirty smear campaign against another sitting member of the ... Board" that has "undermined the integrity of the [B]oard and created angst in the community." This sitting member of the Board was running opposed to Timothy Eosso (Mr. Eosso).

Per Complainant, Respondent has a "personal friendship" with Mr. Eosso, who was the Republican candidate for town council. Complainant submits that Mr. Eosso ran against a then sitting member of the Board, and Respondent "used her position to promote ... [Mr.] Eosso throughout the community, while attacking and undermining" a sitting member of the Board. In short, Respondent "created a narrative that readers could assume that he had detrimental information" on the sitting Board member based on Respondent's interactions with her on the Board.

Based on these facts, Complainant contends Respondent violated *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) because she used her official position to secure an advantage for her friend who was seeking election to town council; "created Facebook posts that used the words 'we,' tagged other [B]oard members, and made ... allegations and derogatory statements against a" sitting Board member; "demonstrated that by using her position as a [B]oard member, with a large community following, that she could garner a higher level of voter support and bring more credibility to her claims"; compromised the Board by making "serious allegations" against a sitting Board member, and accused her (the sitting member) of hurting children and families; and promoted allegations against a sitting Board member as a member of the Board, without authorization its authorization, that had the potential to compromise the Board, and favor her friend, Mr. Eosso.

In Count 2, Complainant states that Respondent has a longstanding vendetta against Michael Gorski (Gorski), Business Administrator (BA), and she has “publicly and privately” engaged with community members in her attacks of the BA in an attempt to have him “brought up on tenure charges and have him removed.” In her messages, Respondent “openly” welcomes lawsuits against the Board, thereby creating significant legal risk for the Monroe Township School District (District), because “when they sue, the insurance pays not the taxpayers.” Complainant further asserts Respondent “repeatedly asks others to post negative material on Facebook about the [BA].” According to Complainant, Respondent has “used her official ... position and position as Chair of the [Board] Policy Committee to purposely manipulate [B]oard minutes to further attack the [BA].” Complainant maintains that Respondent “incorporated an entire political speech into the official [B]oard meeting minutes” in which Respondent’s friend, Mr. Eosso, used the term “we” when referring to “the item on the agenda that related to the contract of [the BA]” as though he, a member of the public, “voted down the [BA’s] contract directly.”

In light of these facts, Complainant argues, on various dates between October 1, 2021, and December 27, 2021, Respondent violated *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(i)* because she “took it upon herself to publicly defame, undermine, attack, discount, belittle, and lie about” the BA, and “took it upon herself to inform the community of private personnel actions against a tenured employee and share her knowledge about actions that were taking place against [the BA].” Per Complainant, Respondent “surrendered her independent judgment when she used her official position ... to provide a political advantage for her friend,” Mr. Eosso, “by affording favoritism in the [B]oard minutes ... by way of transcribing only his comments verbatim to highlight his political statements against the Democratic organization, while he ran for” town council. Instead of supporting and protecting school personnel, Respondent “took it upon herself to try and publicly destroy a tenured” District employee.

B. *Answer to Remaining Allegations in the Complaint*

With regard to Count 1, Respondent reaffirms the “Watchdog” Facebook group was a “public page, visible to any member of the public, but has been private since last year.” Although Respondent was one of three administrators while the Facebook page was public, Respondent ceased serving as an administrator approximately five months after becoming a Board member. Respondent argues Complainant’s “numerous social media posts” presented as evidence “confirm” that the posts were made either before Respondent was a Board member, “plainly indicate [R]espondent was speaking as a private citizen and not as a Board member, and/or had nothing to do with [Board] business.” Respondent further argues that although she did support Mr. Eosso for Town Council against Rupa Siegel (Ms. Siegel), she has “never used her position as a Board member to run a ‘smear campaign’ against a fellow Board member.” According to Respondent, Ms. Siegel “was not running for the [Board] and [R]espondent’s opinions were made as a private citizen against her candidacy for Town Council, not the [Board].” Because Ms. Siegel’s term was ending, Respondent notes her “action neither undermined the Board nor caused harm to the [D]istrict.” Respondent argues that “Complainant is attempting to use a long history of issues between Ms. Siegel and [R]espondent to attack [R]espondent for not giving into

his demands” Respondent also notes that Complainant was a supporter of Mr. Eosso while Mr. Eosso ran against Ms. Siegel, but because Mr. Eosso lost, Complainant has “flip-flopped his support” to the winner, Ms. Siegel.

Regarding Count 2, Respondent maintains Complainant is relying on “private text messages between” Respondent and Complainant’s spouse, and which involved a “private confidential conversation among individuals, all of whom shared a similar view of the [BA].” Respondent maintains the public was not aware of the conversation until Complainant made it public and, therefore, it “could not possibly have impugned the [BA’s] reputation in the community.” According to Respondent, Complainant “has long been vocal” on social media, in particular [on] the Watchdog page, “about the [Board] ignoring the [BA’s] documented ethics violations.” Respondent notes, “Complainant’s vindictiveness is evident from his post ... when he was blocked from the [Watchdog] page (“that’s the final straw, now I release everything”).”

Finally, Respondent offers five “Separate Defenses,” namely that “Respondent’s social media posts were political expression protected by the First Amendment ...”; “[t]o the extent certain of [R]espondent’s social media posts did not have an explicit disclaimer that she [is] not speaking as a Board member, none was legally required”; “No reasonable observer in the [] community would have viewed [R]espondent’s social media posts as made on behalf of anyone other than [R]espondent herself”; “Messages posted on a private Facebook page ... cannot reasonably be viewed as publicly broadcast to the entire community”; and the “actions alleged by [C]omplainant were, in part, undertaken by others for whom [R]espondent had no responsibility and over whom she exercised no control.”

III. Analysis

This matter is before the Commission for a determination of probable cause pursuant to *N.J.A.C.* 6A:28-10.9, processing of Complaints alleging *both* prohibited acts and violations of the Code. 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. In order to determine whether probable cause exists, the Commission must determine whether there is a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that the Act was violated as alleged in the Complaint. *N.J.A.C.* 6A:28-10.7.

Pursuant to *N.J.A.C.* 6A:28-10.9, when a Complaint, as here, alleges violations of both *N.J.S.A.* 18A:12-24 (“Prohibited acts”) and *N.J.S.A.* 18A:12-24.1 (the Code), the Commission must *first* determine, based on the available record, whether probable cause exists to credit the allegations that Respondent violated *any subsection* of *N.J.S.A.* 18A:12-24 (“Prohibited acts”). If probable cause is not found for any alleged violation of *N.J.S.A.* 18A:12-24, the Commission’s review shall be guided by *N.J.A.C.* 6A:28-10.8. If probable cause is found for any alleged violation of *N.J.S.A.* 18A:12-24, then the Commission must review, as required by *N.J.A.C.* 6A:28-10.7, the remaining Code allegations to determine if probable cause exists.

1. *Alleged Prohibited Act Violations*

In Count 1 of the Complaint, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24(b) which provides, “No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others.” To credit the violation of *N.J.S.A.* 18A:12-24(b) in Count 1, the Commission must find evidence that Respondent used or attempted to use her official position to secure an unwarranted privilege, advantage or employment for herself, members of her immediate family, or “others.”

In its assessment of the facts and circumstances, the Commission finds probable cause to credit the allegation that Respondent violated *N.J.S.A.* 18A:12-24(b) in Count 1. Although Respondent argues that she was not required to utilize a disclaimer in her social media posts because she did not identify herself as a member of the Board and/or rely upon her standing/status as a school official to “lend her messages additional weight or prominence,” a violation(s) of *N.J.S.A.* 18A:12-24(b) may be supported based on the substance of what was posted and how it was viewed/regarded by a member of the public.

2. *Alleged Violations of the Code*

Having found probable cause to credit the allegation that Respondent engaged in at least one prohibited act(s), the Commission must now review whether there is probable cause to credit the Code allegations in Count 1 and Count 2 of the Complaint. In this regard, Complainant submits that Respondent violated *N.J.S.A.* 18A:12-24.1(e) (in Counts 1-2), *N.J.S.A.* 18A:12-24.1(f) (in Counts 1-2), and *N.J.S.A.* 18A:12-24.1(i) (in Count 2) of the Code, which state:

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.

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

As set forth in *N.J.A.C.* 6A:28-6.4(a), a violation(s) of *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(i) needs to be supported by certain factual evidence, to wit:

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 her 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 herself, a member of her immediate family, or a friend.

9. 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.

Count 1

Based on its analysis of the facts and circumstances presented, the Commission finds probable cause to credit the allegations that Respondent violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* in Count 1. Despite Respondent's contention that her social media posts were unrelated to her position as a school official, and therefore cannot rise to a violation of *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(f)*, the facts and circumstances (and the substance of her posts, in particular) suggest 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 (*N.J.S.A. 18A:12-24.1(e)*), and used the schools in order to acquire some benefit for herself, a member of her immediate family or a friend, namely Mr. Eosso. As such, a violation of *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(f)* may be substantiated.

Count 2

After review, the Commission finds that Complainant has not articulated a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that *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(i)* was violated as contended in Count 2.

The Exhibits offered in support of the alleged violations of *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(i)* are A1 through A3, all of which have been deemed time barred because they were made/posted on July 30, 2022, November 4, 2019, and July 31, 2020, respectively, and B1 through B14. Exhibits B1 through B13 are private text messages and, of those text messages, Exhibits B1, B2, B8, B12, and B13 are undated; Exhibits B3, B5, B6, B7, and B9 were timely filed; and Exhibits B4, B10, and B11 were sent/received on July 30, 2021, June 30, 2021, and July 31, 2021, respectively, and, therefore, are time barred. In addition, B14 is an excerpt of the minutes from a Board meeting on June 16, 2021, and is also time barred. Consequently, the only Exhibits which can be relied upon to support a violation of *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(i)* are B1 through B3, B5 through B9, B12, and B13.

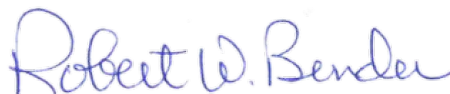
In its review of the permissible Exhibits and Complainant's arguments with respect thereto, the Commission finds that they are nothing more than selective screen shots of private text messages between individuals, one of whom was Complainant's spouse, that became public only after being disclosed/revealed by Complainant. Consequently, the Commission finds that they do not constitute evidence that Respondent was acting in an official capacity and/or making a personal promise(s) or taking action beyond the scope of her duties such that, by its nature, had the potential to compromise the Board (*N.J.S.A. 18A:12-24.1(e)*); was using the schools in order to acquire some benefit for herself, a member of her immediate family or a friend (*N.J.S.A. 18A:12-24.1(f)*); and/or was taking deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties (*N.J.S.A. 18A:12-24.1(i)* in Count 2).

IV. Notice

Pursuant to *N.J.S.A. 18A:12-29(b)*, the Commission hereby notifies Complainant and Respondent that it finds probable cause to credit the allegations in Count 1, but not to find probable cause to credit the claims in Count 2.

Pursuant to *N.J.A.C. 6A:28-10.9* and *N.J.A.C. 6A:28-10.7(c)(2)*, where the Commission finds probable cause to credit any allegations of prohibited acts, and where the material facts are not admitted by Respondent or where the Commission otherwise determines necessary, Complainant and Respondent shall be advised that the matter is being transmitted to the OAL for a hearing to be conducted pursuant to the Uniform Administrative Procedure Rules (*N.J.A.C. 1:1 et seq.*). The hearing shall be limited to those allegations which the Commission found probable cause to credit, namely those in Count 1. Complainant and Respondent are thus notified that this Complaint shall be transmitted to the OAL for a hearing. *N.J.S.A. 18A:12-29(b)*.

Additionally, Complainant shall no longer be a party to the Complaint. Where the Commission finds probable cause and transmits a Complaint to the OAL, the attorney for the Commission shall prosecute those allegations in the Complaint which the Commission found probable cause to credit. *N.J.A.C. 6A:28-10.7(b)(1)*.



Robert W. Bender, Chairperson

Mailing Date: November 22, 2022

***Resolution Adopting Decision
in Connection with C37-22***

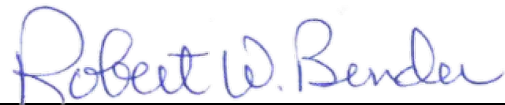
Whereas, at a special meeting on October 17, 2022, the School Ethics Commission (Commission) considered the Complaint and Answer to Complaint (Answer) submitted by the parties in connection with this matter; and

Whereas, at a special meeting on October 17, 2022, the Commission discussed finding probable cause for the allegations in Count 1, but not finding probable cause for the claims in Count 2; and

Whereas, at a special meeting on October 17, 2022, and pursuant to *N.J.A.C. 6A:28-10.9* and *N.J.A.C. 6A:28-10.7(c)(2)*, the Commission discussed transmitting the above-captioned matter to the Office of Administrative Law for a hearing to be held at a later date; and

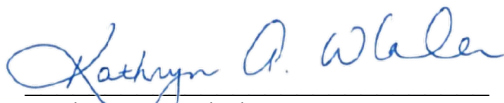
Whereas, at its meeting on November 22, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on October 17, 2022; and

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 November 22, 2022.



Kathryn A. Whalen, Esq.
Director, School Ethics Commission