



State of New Jersey
DEPARTMENT OF EDUCATION
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Lt. Governor

LAMONT O. REPOLLET, ED.D.
Commissioner

SCHOOL ETHICS COMMISSION

May 3, 2019

For Complainant

Michael Pagan
665 River Road
Teaneck, NJ 07666

For Respondents

Amy A. Pujara, Esq.
DiFrancesco Bateman
15 Mountain Boulevard
Warren, NJ 07059

SUBJECT: MICHAEL PAGAN V. ARDIE WALSER AND SHAHANZAZ
ARJUMAND, TOWNSHIP OF TEANECK BOARD OF EDUCATION,
BERGEN COUNTY, SCHOOL ETHICS COMMISSION DOCKET #C75-
18

Dear Parties:

Enclosed please find the Motion to Dismiss Decision issued by the School Ethics Commission at its meeting on May 2, 2019.

If you have any questions about this acknowledgement, please contact our office at (609) 376-9115.

Sincerely,

Kathryn A. Whalen, Director
School Ethics Commission

Enclosure

***Before the School Ethics Commission
Docket No.: C75-18
Decision on Motion to Dismiss***

**Michael Pagan,
Complainant**

v.

**Ardie Walser and Shahanzaz Arjumand,
Township of Teaneck Board of Education, Bergen County,
Respondents**

I. Procedural History

This matter arises from a Complaint that was filed on December 5, 2018, by Michael Pagan (Complainant), alleging that Ardie Walser and Shahanzaz Arjumand (Respondents), members of the Township of Teaneck Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* By correspondence dated December 6, 2018, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On December 14, 2018, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C. 6A:28-6.3*. The Complaint alleges that Respondent Walser violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(d)* in Counts 1-4, and that Respondent Arjumand violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(d)* in Count 3.

On December 17, 2018, the Complaint was served on Respondents, via regular and certified mail, notifying them that charges were filed against them with the Commission, and advising that they had twenty (20) days to file a responsive pleading. On January 22, 2019, and after receiving an extension, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On February 11, 2019, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing. In his filing, Complainant agreed to voluntarily withdraw all allegations against Respondent Arjumand, thus leaving Respondent Walser as the only remaining Respondent.

The parties were notified by correspondence dated March 18, 2019, that this matter would be placed on the Commission's agenda for its meeting on March 26, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on March 26, 2019, the Commission considered the filings in this matter and, at a special meeting on May 2, 2019, the Commission voted to deny the Motion to Dismiss in its entirety, and to direct Respondent Walser to file an Answer to Complaint (Answer) within twenty (20) days. The Commission also voted to find the Complaint not frivolous, and to deny the request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant asserts that on October 10, 2018, an email was sent from a Whittier Elementary School/Teaneck Public Schools District (District) email account to the parents/guardians of students in the District. The email requested that the recipients, "Please review all the flyers that are being sent via email today." One of the links was for "Math Adventures and Word Play (MAWP)," and directed anyone interested to contact "Ardie Walser" via email or telephone. Additional contact information was provided for two other people, including "Ardie Walser's spouse." According to Respondent Walser's bio, he is the co-founder and director of MAWP. Based on this information, Complainant submits that although well intended, this program should not have been promoted within the District. Based on these facts, Complainant argues that Respondent Walser violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)* because he is a Board member and Board President, and there is "inherently a conflict with his official role and this role." According to Complainant, it places a principal, administrative official, or teacher in an "uncomfortable position" when correspondence is sent and includes the name of or at the request of the Board President. He further notes that Respondent Walser is "directly interacting with [District] students and making commentary on the academic work they are being exposed to in the schools."

In Count 2, Complainant asserts that on or about October 7, 2018, the Board authorized a flyer for MAWP to be posted on the Board's website. The flyer names "Ardie Walser" as the contact person. Respondent Walser is Board President and has the authority to determine what information is posted on the Board's website. Complainant asserts that Respondent Walser violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)* because he is a Board member and Board President, and this is in "conflict with his duties in the eye of the public interest." Once again, this information places a principal, administrative official or teacher in an uncomfortable position. In addition, as the Board President, he has a direct role in deciding what is, and is not, posted on the Board's website.

In Count 3, Complainant asserts that on or about November 17, 2018, "various PTO organizations" posted information regarding events that MAWP was hosting, after Respondent Walser sent an email containing the information. In addition, Respondent Arjumand posted a flyer/advertisement for a "Technology & Education" learning session hosted by MAWP on her Facebook page. Complainant asserts that these events, which are "pushed by various board members and the school," appear to be "official events" and may "prejudice the independence and judgments of official action." Therefore, both Respondents are in violation of *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)* because the topic of discussion relates to the operation of the schools, specifically technology and education, and Respondent Walser's role as director of this program "blurs the line between" public and private life, and makes it appear that this is an official Board event. As for Respondent Arjumand, as a Board member advertising this event on social media, she is acting in "substantial conflict with the proper discharge of [her] duties in the public interest."

In Count 4, Complainant asserts that on November 19, 2018, Respondent Walser replied to an email from a community member (and possible Board candidate), who was expressing her discontent with a recent Board meeting. In his reply, which was sent from his Board email account, Respondent Walser told the member that if she would like to discuss her concerns further, she could meet him on Saturday, while he was working with students and their families to “improve education for ALL...” and directed her to the MAWP website. Also copied on the email was the superintendent, other Board members, and members of the public. Complainant asserts that Respondent Walser violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)* because he is urging members of the public to come to his event to discuss official Board actions/matters, which blurs the line between a Board member and his private life/business. This is compounded by the fact that Respondent Walser used his District email account to advertise the event, and included the superintendent and other Board members on the email, thus giving the perception that the event is Board/District approved.

B. *Motion to Dismiss and Allegation of Frivolous Filing*

Following receipt of the Complaint, Respondents filed a Motion to Dismiss and alleged the Complaint is frivolous. Regarding the alleged violations of *N.J.S.A. 18A:12-24(a)* in Counts 1-4, Respondent Walser argues that Complainant failed to allege sufficient facts, which if true, would suggest that Respondent Walser’s two roles, Board member and founder of MAWP, would interfere with each other in a manner that would constitute a “substantial conflict.” Complainant simply states, “there is inherently a conflict with his official role and this role.” Furthermore, Respondent Walser argues that Complainant failed to explain how Respondent Walser’s interaction with students and reviewing academic work would conflict with his duties as Board President. Therefore, there is insufficient evidence to find that Respondent Walser violated *N.J.S.A. 18A:12-24(a)* in Counts 1-4.

As for the alleged violation of *N.J.S.A. 18A:12-24(c)* in Counts 1-4, Respondent Walser argues that he did not engage in any official action as is required to find a violation of *N.J.S.A. 18A:12-24(c)*. Moreover, even if Respondent Walser’s promotion of the free tutoring constitutes board action, Complainant did not allege that Respondent Walser received any financial or personal benefit as a result of such action, nor has Complainant alleged a violation of any Board policy. Therefore, Complainant has not alleged sufficient, credible evidence to support a finding that Respondent Walser violated *N.J.S.A. 18A:12-24(c)* as set forth in Counts 1-4.

Regarding Respondent Walser’s violation of *N.J.S.A. 18A:12-24(d)* in Counts 1-4, Respondent Walser argues that in A17-15, the Commission advised that there is not a general prohibition on Board members volunteering in activities that the district oversees and when the volunteer activities are passive, they are not “inherently contradictory to the duties placed on a Board member.” Furthermore, Complainant asserted that Respondent Walser “is in conflict with his duties in the eye of the public interest.” Respondent Walser cited *Friends Retirement Concepts v. Board of Education of Somerville*, noting that “the determination of whether a particular interest is sufficient to disqualify a board member is necessarily factual in nature and depends upon the circumstances in each case.” Respondent Walser also argues that Complainant has not set forth any facts to suggest that MAWP’s goals or objectives contradict the Board’s. Respondent Walser’s volunteer role is similar to that in A17-15, passive, and his role as director

of MAWP, does not subject him to widespread direction over District staff, students, or other Board members. Respondent Walser asserts that Complainant failed to allege any facts that would suggest that his role in MAWP might impair his objectivity or independent judgment in the exercise of his official duty. Therefore, Respondent Walser argues that Complainant did not provide sufficient evidence to support violations of *N.J.S.A. 18A:12-24(d)* in Counts 1-4.

Regarding Respondent Arjumand, Complainant failed to offer any factual evidence to support a finding that she violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and/or *N.J.S.A. 18A:12-24(d)* as argued in Count 3. Respondent Arjumand argues that Complainant only mentions that she shared the details of a MAWP event on social media. Complainant also asserted that “these events which are frequently attended by more than a majority of the Board are advertised in a way to appear official and thus prejudice the independence and judgments of official action.” However, Complainant failed to explain the official action that could be prejudiced by Respondent Arjumand’s promotion of a free tutoring program, and also failed to provide any factual evidence to connect Respondent Arjumand’s actions to a financial or personal gain. Therefore, Respondent Arjumand argues there is no sufficient credible evidence to support a finding that she violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and/or *N.J.S.A. 18A:12-24(d)* in Count 3.

Finally, Respondents argue that the Complaint was filed for improper purposes, specifically to harass and bully Respondent Walser in an attempt to destroy his professional and personal reputation. Complainant was aware of Respondent Walser’s involvement with MAWP for years (he was also a volunteer) and did not voice his opinion until he became aware that Respondent Walser may run for council. Therefore, Respondents assert that the Complaint is frivolous.

C. Response to Motion to Dismiss and Allegation of Frivolous Filing

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant notes that the law firm representing Respondents is the same firm that represents the Board; however, Complainant was unable to find a resolution stating that the Board approved the action. Therefore, to the extent that the law firm represents Respondents in their individual capacities, it may be a conflict of interest. Nonetheless, and after consideration, Complainant agreed to voluntarily withdraw the allegations in the Complaint against Respondent Arjumand.

Complainant argues that his Complaint is not frivolous. Respondent Walser has used school resources to promote MAWP and has made “open and notorious overtures” to the public and the Board regarding MAWP, and Complainant has “witnessed” Board members discussing MAWP.

Regarding Respondent Walser’s reference to A17-15, Complainant maintains that while the advisory opinion does state that the Board member would not violate the Act by serving as a trustee of the non-profit while simultaneously serving on the Board, it also advises that the Board member must “recuse from participation or involvement and abstain from the vote” involving the non-profit. Complainant contends that Respondent Walser has been promoting MAWP or

discussing his direct observations of students who attend the free tutoring sessions “from the dais” (excerpts from meetings provided).

Complainant argues that “Respondent [Walser] incorrectly claims that personal advantages inured through official conduct are permissible due to non-profit status.” Complainant asserts that in accordance with *N.J.S.A. 18A:12-24(c)*, “No school official ... or a *business* organization ...” and as defined, “business” lists “other legal entity,” which includes a non-profit. Complainant contends that the “law was written as such to preclude any advantage one may have garnered through the use of school resources for the benefit of any ‘legal entity’ for which one has an interest” and Respondent Walser and his wife are more than volunteers for MAWP, they are directors and hold an interest. Complainant further argues that Respondent Walser “intentionally” used school resources to promote MAWP and, thereby connected his official role with his personal venture, which increased his “profile” in the public.

Finally, Complainant argues that as the Board President, Respondent Walser is using District resources to promote MAWP as a program that he endorses, and when he speaks “on the dais,” it implies that he is speaking in his official capacity. Furthermore, as Board President, it is unclear whether he promotes other events in the same manner that he is promoting MAWP, in which he has a direct interest. Complainant asserts Respondent Walser “utilized through direct action or through his position, the promotion of events, at the expense of Teaneck taxpayers.” Complainant reaffirms that Respondent Walser violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(d)* as set forth in Counts 1-4.

III. Analysis

A. Standard for Motion to Dismiss

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainant), and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response is reviewed by the Commission on a summary basis. *N.J.A.C. 6A:28-8.1 et seq.* Thus, and because Complainant agreed to voluntarily withdraw all allegations against Respondent Arjumand, the question before the Commission is whether Complainant has alleged facts which, if true, could support a finding that Respondent Walser violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(d)* as alleged in Counts 1-4.

B. Allegations of Prohibited Acts

In Counts 1-4, Complainant argues that Respondent Walser violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(d)*. These provisions of the Act provide, in pertinent part:

- a. No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or

professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

i. Alleged Violations of *N.J.S.A. 18A:12-24(a)*

To credit the alleged violations of *N.J.S.A. 18A:12-24(a)* in Counts 1-4, the Commission must find evidence that Respondent Walser, or a member of his immediate family, has an interest in a business organization, or engaged in any business, transaction, or professional activity which was in substantial conflict with the proper discharge of his duties in the public interest.

Based on its review of Complainant's allegations, the Commission finds that if the facts as alleged are proven true by sufficient credible evidence, they may support a finding that Respondent Walser violated *N.J.S.A. 18A:12-24(a)* as alleged in Counts 1-4. If Complainant can establish, with sufficient credible evidence, that Respondent Walser's ownership and interest in MAWP, or that the work performed by Respondent Walser in connection with MAWP, is in *substantial* conflict with the proper discharge of his duties as a Board member (and President), Complainant may be able to establish violations of *N.J.S.A. 18A:12-24(a)*. With the standard that applies to the Commission's review of the Motion to Dismiss in mind, the Commission finds that the alleged violations of *N.J.S.A. 18A:12-24(a)* in Counts 1-4 should not be dismissed.

ii. Alleged Violations of *N.J.S.A. 18A:12-24(c)*

In order to credit the alleged violations of *N.J.S.A. 18A:12-24(c)* in Counts 1-4, the Commission must find evidence that Respondent Walser acted in his official capacity in a matter where he, or a member of his immediate family, had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity, or in a matter where he had a personal involvement that created some benefit to him, a member of his immediate family, or to "others."

After review of Complainant's allegations, the Commission finds that if the facts as alleged are proven true by sufficient credible evidence, they may support a finding that Respondent Walser violated *N.J.S.A. 18A:12-24(c)* as set forth in Counts 1-4. If Complainant can establish, with sufficient credible evidence, that Respondent Walser, in his capacity as a

Board member/President, used or otherwise directing the use of the District's e-mail to promote his personal business (Count 1 and Count 4); posted or otherwise authorized another to post information on the Board's website about his personal business (Count 2); and directed PTO organizations to advertise the work of his personal business (Count 3), Complainant may be able to establish violations of *N.J.S.A.* 18A:12-24(c). Consequently, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24(c) in Counts 1-4 should not be dismissed.

iii. Alleged Violations of *N.J.S.A.* 18A:12-24(d)

To credit the alleged violations of *N.J.S.A.* 18A:12-24(d) in Counts 1-4, the Commission must find evidence that Respondent Walser engaged in employment or service, regardless of whether compensated, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.

Based on its review of Complainant's allegations, the Commission finds that if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they may support a finding that Respondent Walser violated *N.J.S.A.* 18A:12-24(d) as alleged in Counts 1-4. If Complainant can prove, with sufficient credible evidence, that the nature of Respondent Walser's employment by/with MAWP, in and of itself, might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties as a Board member (and Board President), Complainant may be able to establish violations of *N.J.S.A.* 18A:12-24(d). Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(d) should not be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that Complainant has alleged facts sufficient to state a claim for violations of *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(c), and *N.J.S.A.* 18A:12-24(d) in Counts 1-4. Therefore, the Commission *denies* the Motion to Dismiss in its entirety, but notes that all allegations against Respondent Arjumand have been voluntarily withdrawn by Complainant.

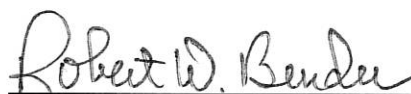
IV. Request for Sanctions

At its meeting on March 26, 2019, the Commission considered Respondents' request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondents' argument, the Commission cannot find evidence that might show that Complainant filed the Complaint in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainant knew or should have known that the Complaint was without any reasonable basis in law or equity, or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. *N.J.A.C.* 6A:28-1.2. Therefore, at a special meeting on May 2, 2019, the Commission voted to find the Complaint not frivolous, and to deny the request for sanctions.

V. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission voted to *deny* the Motion to Dismiss in its entirety. Notwithstanding this determination, the Commission notes that, because Complainant agreed to voluntarily withdraw all allegations against Respondent Arjumand, Respondent Walser is the only remaining Respondent. The Commission also voted to find that the Complaint is not frivolous, and to deny Respondents' request for sanctions.

Therefore, and in accordance with *N.J.A.C. 6A:28-7.1 et seq.*, **Respondent Walser is directed to file, within twenty (20) days of the mailing date set forth below**, an Answer regarding the allegations that he violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(d)* as set forth in Counts 1-4.



Robert W. Bender, Chairperson

Mailing Date: May 3, 2019

**Resolution Adopting Decision
in Connection with C75-18**

Whereas, at its meeting on March 26, 2019, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and the response to the Motion to Dismiss and allegation of frivolous filing submitted in connection with this matter; and

Whereas, at its meeting on March 26, 2019, the Commission acknowledged that Complainant agreed to voluntarily withdraw all allegations against Respondent Arjumand, thus leaving Respondent Walser as the only remaining Respondent; and


Whereas, at its meeting on March 26, 2019, the Commission discussed denying the Motion to Dismiss in its entirety; and

Whereas, at its meeting on March 26, 2019, the Commission discussed directing Respondent Walser to file an Answer to Complaint (Answer) regarding the allegations that he violated *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(c)*, and *N.J.S.A. 18A:12-24(d)* as set forth in Counts 1-4; and

Whereas, at its meeting on March 26, 2019, the Commission discussed finding the Complaint not frivolous, and denying the request for sanctions; and

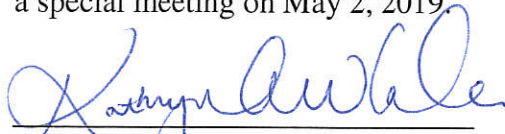
Whereas, at a special meeting on May 2, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from March 26, 2019; and

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 a special meeting on May 2, 2019.



Kathryn A. Whalen, Director
School Ethics Commission