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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2006-21**

ELISABETH SCHWARTZ,

Complainant-Appellant,

v.

**FAHIM K. ABEDRABBO,
FERAS AWWAD, CLIFTON
BOARD OF EDUCATION, and
PASSAIC COUNTY,**

Respondents-Respondents.

**NEW JERSEY DEPARTMENT
OF EDUCATION, SCHOOL
ETHICS COMMISSION,**

Respondent.

Argued June 1, 2023 – Decided October 6, 2023

Before Judges Accurso, Vernoia and Natali.

**On appeal from the New Jersey Department of
Education.**

Jeffrey Schreiber argued the cause for appellant (Meister Seelig & Fein, LLP, and Susan B. Tuchman (Zionist Organization of America Center for Law and Justice) of the New York bar, admitted pro hac vice, attorneys; Jeffrey Schreiber and Susan B. Tuchman, on the briefs).

Stephen R. Fogarty argued the cause for respondents Fahim K. Abedrabbo, Feras Awwad, Clifton Board of Education and Passaic County (Fogarty & Hara, attorneys; Stephen R. Fogarty, of counsel and on the brief; Jaime F. Demjanick, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent School Ethics Commission (Erin Herlihy, Deputy Attorney General, on the statement in lieu of brief).

Jane J. Felton argued the cause for amicus curiae The Lawfare Project (Skoloff & Wolfe, PC, attorneys; Jane J. Felton, of counsel and on the brief).

Dhillon Law Group, Inc., attorneys for amicus curiae The Deborah Project (Ronald D. Coleman, Lori Lowenthal Marcus, and Jerome M. Marcus, on the brief).

Steven W. Rabitz (Dechert LLP) of the New York bar, admitted pro hac vice, attorney for amicus curiae StandWithUs (Steven W. Rabitz, on the brief).

Awad & Khoury, attorneys for amicus curiae The American-Arab Anti-Discrimination Committee (Abed Awad, on the brief).

PER CURIAM

Complainant Elisabeth Schwartz appeals from a final decision of the School Ethics Commission dismissing her complaint against respondents Feras Awwad, Fahim Abedrabbo, the Clifton Board of Education and Passaic County on their N.J.A.C. 6A:28-9.2(a)(7) motion in lieu of answer. Schwartz contends the Commission erred in dismissing her complaint alleging respondents violated N.J.S.A. 18A:12-24.1(e)¹, when Board members Awwad and Abedrabbo made anti-Israel, and, Schwartz alleges, antisemitic, comments at the Board's public meeting conducted virtually on May 20, 2021.

N.J.S.A. 18A:12-24.1 sets forth the "Code of Ethics for School Board Members." Section (e) states that every board member "will recognize that authority rests with the board of education and will make no personal promises

¹ Schwartz's complaint also alleged violations of N.J.S.A. 18A:12-21.1(b) ("make decisions in terms of the educational welfare of children and . . . seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing"); 12-21.1(c) (carry out [the] responsibility, not to administer the schools, but, together with . . . fellow board members, to see that they are well run"); 12-21.1(f) ("refuse to surrender . . . independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends"); and 12-24.1(i) ("support and protect school personnel in proper performance of their duties"). Although her notice of appeal indicates she is appealing the entire agency decision, Schwartz has limited her brief to the Commission's alleged error in dismissing her claim under N.J.S.A. 18A:12-24.1(e). We thus limit our review to that issue, deeming any others abandoned. See 539 Absecon Blvd., L.L.C. v. Shan Enters. Ltd. P'ship, 406 N.J. Super. 242, 272 n.10 (App. Div. 2009).

nor take any private action that may compromise the board." Schwartz contends that by their remarks, Awwad and Abedrabbo took "private action that may compromise" the Clifton Board. We disagree and affirm for the reasons stated in the Commission's thorough and thoughtful opinion of January 25, 2022.

As we write only for the parties, who are familiar with the facts and their contentions as to the issues, and we affirm on the opinion of the Commission, we need not discuss those things here but refer the reader to the Commission's decision. We note only that it is undisputed, as the Commission found, that the Board has a policy, No. 0146, that provides "Board members are entitled to express themselves publicly on any matter," but "cannot, however, express the position of the Board except as expressly authorized."

The policy further provides that "[a] Board member shall not represent his/her personal opinion as the position of the Board and shall include in all formal expressions in which his/her Board affiliation is likely to be recognized, . . . a statement that the opinions expressed do not necessarily represent those of the Board." The Board also has a practice at Board meetings of reserving time for "commissioner comments" during which each Board member is permitted time to speak on any issue the member desires. It

was during that portion of the meeting that respondents Awwad and Abedrabbo made the remarks Schwartz complains of.

Although both Awwad and Abedrabbo each addressed other matters, they dedicated the bulk of their remarks to criticizing Israel over its treatment of the Palestinians. Both Awwad and Abedrabbo stated their remarks were their own, and the Board's counsel asked each at the end of his statement to reiterate that their comments were their "own personal comments, not comments made on behalf of the Board," which each did. Schwartz admits in her brief on appeal that at the end of their remarks "they both made it crystal clear that they were not speaking on the Board's behalf." She contends, however, that "[b]y then, the damage was done."

Following Awwad and Abedrabbo's remarks, the Board two months later conducted a "two-and-a-half hour public comment session . . . , the overwhelming majority of which was devoted to commentary on the Middle East," according to a newspaper article Schwartz attached to her complaint. Schwartz claimed Awwad and Abedrabbo violated N.J.S.A. 18A:12-24.1(e) because "they took action that has the potential to compromise the board," and the "statements are false and intimidating to people that believe in freedom of

women, free speech, judicial due process, LGBTQ rights and religions other than the Muslim religion."²

The Commission, although acknowledging Awwad and Abedrabbo's comments were "highly controversial" and "likely perceived as offensive, and hurtful to members of the District's Jewish Community," could not find they violated N.J.S.A. 18A:12-24(e) "because the comments did not result in any action that could compromise the Board." The Commission stressed the District's policy that "permits Board members to make personal comments on any matter a member sees fit, so long as the member makes clear the opinion does not represent that of the Board," which Awwad and Abedrabbo did. The Board found Awwad and Abedrabbo's comments "give rise to questions concerning District governance . . . specifically questions concerning the policy itself," a matter outside the Commission's jurisdiction. But the Commission found Awwad's and Abedrabbo's "(controversial and likely

² Both parties, as well as amici supporting their respective positions, devote a significant part of their briefs and appendices debating whether Awwad and Abedrabbo's comments are true or false or "omitted critical facts," including the part of Hamas, alleged by Schwartz to be "a brutal and oppressive dictatorship," "in order to demonize Israel." The issue on the motion, however, was not whether the statements were true or false, but whether they constituted private action that could compromise the Board.

offensive) comments, standing alone, do not give rise to a violation of the School Ethics Act."

Schwartz appeals, contending principally that the Commission's decision "flouts the objectives of the School Ethics Act to maintain the peoples['] confidence and trust," the "Commission erred in effectively endorsing an 'anything goes' policy for Board Members at Board Meetings," and that the premature dismissal of the complaint prevented Schwartz from showing Awwad and Abedrabbo's comments "were false[,] misleading" and "antisemitic, potentially compromising public trust in the Board" and "cannot be reconciled with its decision censuring a school board member for conduct that posed far less risk to the public trust." Our review of the record convinces us that none of these issues has any merit. R. 2:11-3(e)(1)(E).

Our role in reviewing the decision of an administrative agency is, of course, limited. In re DiGuglielmo, 252 N.J. 350, 359 (2022). We are bound to sustain the "agency's final quasi-judicial decision . . . unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Russo v. Bd. of Trs., Police and Firemen's Ret. Sys., 206 N.J. 14, 37 (2011) (quoting In re Herrmann, 192 N.J. 19, 27-28 (2007)). "We review a decision made by an administrative agency entrusted to apply

and enforce a statutory scheme under an enhanced deferential standard," recognizing the "agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise." E. Bay Drywall, LLC v. Dep't of Lab. and Workforce Dev., 251 N.J. 477, 493 (2023). "We will defer to an agency's interpretation of both a statute and implementing regulation, within the sphere of the agency's authority, unless the interpretation is 'plainly unreasonable.'" In re Election L. Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010) (quoting Reilly v. AAA Mid-Atlantic Ins. Co. of N.J., 194 N.J. 474, 485 (2008)).

We agree with the Commission that whether it is a wise policy that allows Board Members to stand up at Board meetings and comment on any issue, even those unrelated to the mission of the Board, especially as it may entice members to air their political views on unrelated and controversial topics about which many people have understandably strong — and divergent — feelings, is not before us.

But when an official Board policy allows members to do just that at a public Board Meeting, so long as they make clear they are expressing their own views and not speaking on behalf of the Board, as Awwad and Abedrabbo did, we agree with the Commission's analysis that their statements simply can't

be characterized as private action that could compromise the Board in violation of the School Ethics Law. The several unpublished cases the parties cite, all of which are factually dissimilar, do not add anything to the analysis, and Schwartz has not established any inconsistency in the Commission's decisions on this topic owing to their very different contexts.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION