

Before the School Ethics Commission
Docket No.: C58-18
Decision on Motion to Dismiss

**Christopher Raimann,
Complainant**

v.

**Daniel Leonard,
Toms River Regional Board of Education, Ocean County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on September 5, 2018, by Christopher Raimann (Complainant), alleging that Daniel Leonard (Respondent), a member of the Toms River Regional Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated September 11, 2018, and September 24, 2018, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On October 4, 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. Complainant alleges, in a four-Count Complaint, that Respondent violated *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code).

On October 10, 2018, the Complaint was served on Respondent, via regular and certified mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading. On October 29, 2018, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. When Complainant failed to file a response to the Motion to Dismiss and allegation of frivolous filing, he was advised, by correspondence dated November 28, 2018, that failure to submit a response within ten (10) days could result in the Commission ruling on Respondent's motion without considering his written opposition (if any). On December 11, 2018, Respondent filed a response to the Motion to Dismiss and allegation of frivolous filing.

By correspondence dated January 14, 2019, the parties were notified that this matter would be placed on the Commission's agenda for its meeting on January 22, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. However, prior to the Commission's meeting, the Commission received a proposed form of Amended Complaint from Complainant. As a result, the Commission voted to table this matter and, in correspondence dated January 24, 2019, the Commission advised Respondent about Complainant's filing, sought his position with regard to the request to amend, and indicated that

the Commission would review the request, and his opposition (if any) at its meeting on February 26, 2019. In an email dated January 28, 2019, Respondent submitted his written objection to Complainant's request to file an Amended Complaint.

At its meeting on February 26, 2019, the Commission considered Complainant's request to amend his Complaint as well as Respondent's objection, and voted to deny Complainant's request. The parties were advised of the Commission's decision in correspondence dated February 28, 2019, and were further advised 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 grant the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(g) as alleged in Count 1, Count 2, Count 3, and/or Count 4. The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

II. Summary of the Pleadings

A. The Complaint

By way of background, Complainant alleges that, since "the beginning of 2018, and more specifically April," Respondent has been violating *N.J.S.A.* 18A:12-24.1(g) because he has been publicly sharing confidential information on social media which he (Respondent) learned during executive session. Despite raising repeated concerns about Respondent's behavior to the Board President and Board attorney, ethics charges were never filed. Therefore, Complainant felt compelled to file the within Complaint with the Commission.

In Count 1, Complainant asserts that on May 29, 2018, and while in executive session, Respondent used social media (Facebook) to leak information to the public about a confidential matter involving the Superintendent. In Count 2, Complainant contends that on August 14, 2018, Respondent again used social media (Facebook) to attack Complainant's vote, and to discuss confidential matters, namely the superintendent's contract, and an ethics complaint involving Complainant.

In Count 3, Complainant asserts that on August 20, 2018, and August 22, 2018, Respondent made comments on social media (Facebook) about the superintendent's contract "from executive session," and also made comments about the ethics complaint involving Complainant. In Count 4, Complainant asserts that after a Board meeting on September 18, 2018, Respondent used social media to make comments about the superintendent's contract and other executive session matters.

By sharing confidential information with the public, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(g) in each Count of his Complaint.

B. Motion to Dismiss and Allegation of Frivolous Filing

Following receipt of the Complaint, Respondent filed a Motion to Dismiss, and also alleged that the Complaint is frivolous. By way of background, Respondent argues that he has “never made it known to the public or the media any of the ethical charges filed against Complainant prior to such information becoming public knowledge.” Respondent asserts that he has only “repeated” information that was already available to the public. In addition, the press was present at the Board meeting when the Board passed the resolution authorizing the Board President to forward ethics charges against Complainant to the Commission.

As to the allegations in the Complaint, Respondent denies that he violated *N.J.S.A.* 18A:12-24.1(g) in Counts 1, 2, 3 and 4, and further argues that Complainant did not provide a full depiction of the post/comment relating to the allegations in Count 1. According to Respondent, the full context of the post/comment “clearly shows” that the post was made on Saturday, June 23, 2018, not on May 29, 2018; therefore, Complainant’s assertion that Respondent “leaked” confidential information during executive session is not true.

In response to Count 2, Respondent argues that Complainant’s evidence does not support his allegation that Respondent attacked Complainant’s vote and discussed confidential matters regarding the superintendent’s contract, and the ethics complaint involving Complainant. The post/comment was made on August 14, 2018, and the superintendent’s contract was voted on and approved in November 2017. Respondent further argues that the substance of the post does not mention the pending ethics complaint against Complainant.

Regarding Count 3, Respondent argues that review of the evidence cited by Complainant does not reveal that any confidential executive session matters, including the ethics complaint against Complainant, were discussed/addressed. Respondent further argues that his Facebook post from August 2018 simply defends his position and public voting record regarding the renewal of the superintendent.

In response to Count 4, Respondent argues that, again, Complainant failed to provide evidence that Respondent revealed confidential matters and did not provide factual support for his allegations.

Finally, Respondent asserts that Complainant has filed a frivolous Complaint in retaliation for Respondent having been involved in the filing of ethics charges against Complainant. Respondent notes he is Complainant’s “fiercest” critic because Complainant’s campaign website and flyers are “filled” with false information.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant reiterated his claims that Respondent violated *N.J.S.A.* 18A:12-24.1(g) as alleged in Counts 1 through 4. Complainant’s response did not address Respondent’s allegation that the Complaint

was filed by Complainant in retaliation for Respondent's involvement in the filing of ethics charges against Complainant.

III. Analysis

A. *Standard for Motion to Dismiss*

In determining whether to grant a Motion to Dismiss, the Commission shall review the factual allegations 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, the question before the Commission is whether Complainant has alleged facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(g)* as alleged in Count 1, Count 2, Count 3, and/or Count 4 of the Complaint.

B. *Alleged Code Violations*

In his four-Count Complaint, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(g)* of the Code. This provision provides:

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

Pursuant to *N.J.A.C. 6A:28-6.4(a)(7)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(g)* shall include evidence that Respondent took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that Respondent violated the inaccurate information provision of *N.J.S.A. 18A:12-24.1(g)* shall include evidence that substantiates the inaccuracy of the information provided by Respondent and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

In Count 1, Complainant argues that Respondent, while in executive session on May 29, 2018, used social media (Facebook) to leak confidential information about the superintendent's contract to the public. Respondent counters that his post/comment was made well after the May 29, 2018, executive session and, therefore, Complainant's assertion that Respondent "leaked" confidential information during executive session is not true.

Based on its review of Complainant's factual allegations and supporting documentation, the Commission finds that even if the facts as alleged in Count 1 are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(g)*. Complainant's allegations lack sufficient specificity as to the nature of the confidential information disclosed by Respondent on social media, and the basis/authority for his belief that

the information is, in fact, confidential. There is also nothing in the documentary evidence provided by Complainant which helps to explain the factual basis for his allegations, and there is no direct reference to the superintendent's contract in this post/comment. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(g)* in Count 1 should be dismissed.

In Count 2, Complainant alleges that, on August 14, 2018, Respondent used social media (Facebook) to attack Complainant's vote, and to discuss confidential matters, namely the superintendent's contract, and an ethics complaint involving Complainant. Respondent counters that Complainant did not provide evidence to support his allegations that he (Respondent) discussed confidential matters regarding the superintendent's contract, and the ethics complaint involving Complainant. Respondent also notes that his comment about the superintendent's contract were made on August 14, 2018, and the superintendent's contract was voted on and approved in November 2017.

After review of Complainant's allegations, the Commission finds that even if the facts as alleged in Count 2 are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(g)*. As with Count 1, Complainant's allegations are conclusory statements devoid of factual support including, without limitation, the exact nature of the confidential information disclosed, and the basis for Complainant's position that the information is, as alleged, confidential. In addition, Complainant cites to documentary evidence in support of his allegations, but there does not appear to be anything in the post/comment relating to the superintendent's contract and/or the ethics complaint involving Complainant which could be regarded as confidential. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(g)* in Count 2 should be dismissed.

In Count 3, Complainant contends that, on two additional dates (August 20, 2018, and August 22, 2018), Respondent made comments on social media (Facebook) which disclosed confidential information about the superintendent's contract, and the ethics complaint filed against Complainant. Respondent counters that the evidence cited by Complainant does not reveal that any confidential executive session matters, including the ethics complaint against Complainant, were discussed/addressed.

Based on its review of Complainant's factual allegations and supporting documentation, the Commission finds that even if the facts as alleged in Count 3 are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(g)*. Complainant, once again, fails to explain the specific facts in the post/comment which are confidential, and the authority which confirms the confidential nature of the information. Although there are references to the superintendent's contract in the post/comments attached to the Complaint, the information does not necessarily appear to be confidential. Upon review, there also does not appear to be any information in the posts/comments regarding the ethics charge(s) filed against Complainant. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(g)* in Count 3 should be dismissed.

In Count 4, Complainant asserts that, after a Board meeting on September 18, 2018, Respondent used social media to post confidential information about the superintendent's

contract and other executive session matters. Respondent counters that Complainant failed to provide factual support for the allegation that he (Respondent) revealed confidential information.

After review of Complainant's allegations, the Commission finds that even if the facts as alleged in Count 4 are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(g). Similar to Count 1, Count 2, and Count 3, the facts in Count 4 are declaratory allegations and do not specifically explain the exact information in the post/comment which is confidential, and do not cite to the authority which supports Complainant's position that the information is confidential. The fact that the post/comment references the superintendent's contract does not, in and of itself, mean that the information is confidential. Once discussed by and voted upon by the Board, a lot of information regarding the employment contract of a superintendent is publicly available. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in Count 4 should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that Complainant has **not** alleged facts sufficient to state a claim for a violation of *N.J.S.A.* 18A:12-24.1(g) in Count 1, Count 2, Count 3, and/or Count 4. Therefore, the Commission **grants** Respondent's Motion to Dismiss in its entirety. The Commission additionally notes that even if Complainant's request to amend his Complaint had been granted, it would not have changed the findings as set forth herein. Nonetheless, to the extent that Complainant wishes to pursue additional or "new" allegations against Respondent, he is free to do so by filing a new complaint with the Commission.¹

Notwithstanding its determination as set forth above, the Commission feels compelled to note that while Board members are free to disagree on matters pertaining to the Board, and are not required to like one another, they should always treat each other with decency and respect, and should be mindful of how the public may perceive their treatment and communications about one another.

IV. Request for Sanctions

At its meeting on March 26, 2019, the Commission considered Respondent's request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondent's 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

¹ As a reminder, pursuant to *N.J.A.C.* 6A:28-6.5(a), "Complaints shall be filed within 180 days of notice ***of the events which form the basis of the alleged violation(s)***. A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) ***when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known***" (emphasis added).

May 2, 2019, the Commission voted to find the Complaint not frivolous, and to deny Respondent's 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 *grant* the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(g) as alleged in Count 1, Count 2, Count 3, and/or Count 4. The Commission also voted to find that the Complaint is not frivolous, and to deny Respondent's request for sanctions.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that, for the reasons set forth above, this matter is dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court-Appellate Division. *See, New Jersey Court Rule 2:2-3(a).*

Robert W. Bender, Chairperson

Mailing Date: May 3, 2019

***Resolution Adopting Decision
in Connection with C58-18***

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 filed in connection with the above-referenced matter; and

Whereas, at its meeting on March 26, 2019, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegation that Respondent violated *N.J.S.A.* 18A:12-24.1(g) as alleged in Count 1, Count 2, Count 3, and/or Count 4; and

Whereas, at its meeting on March 26, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondent's 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 its meeting on 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