

Before the School Ethics Commission
Docket No.: C68-18
Decision on Motion to Dismiss

**Dara Enny,
Complainant**

v.

**Robyn Wolfe,
Marlboro Township Board of Education, Monmouth County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on October 17, 2018, by Dara Enny (Complainant), a member of the Marlboro Township Board of Education (Board), alleging that Robyn Wolfe (Respondent), also a member and the President of the Board, violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated October 19, 2018, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On October 24, 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 violated *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code).

On October 26, 2018, the Complaint was served on Respondent, via regular and certified mail, notifying her that charges were filed against her with the Commission, and advising that she had twenty (20) days to file a responsive pleading. On November 29, 2018, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On December 18, 2018, Complainant filed a Response to Respondent's Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated January 14, 2019, 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. At its meeting on January 22, 2019, the Commission considered the filings in this matter and, at its meeting on February 26, 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(a) and *N.J.S.A.* 18A:12-24.1(g); to find the Complaint not frivolous; and to deny Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

Complainant (a Board member) asserts that Respondent (Board President) “was not truthful with the public on August 14, 2018, when she intentionally left a Chromebook discussion off the agenda and stated that there had not been a definitive date set for that discussion.” According to Complainant, this was “proven false” by the July 31, 2018, Executive Session minutes. Based on these facts, Complainant alleges Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(g)* because (1) she knowingly “told the public something untrue,” (2) her statement was “shown to be untruthful” based on a review of the July 31, 2018, Executive Session minutes, (3) Respondent’s actions were “deceptive, not an oversight, since [she] was notified that the topic was missing from the agenda with time to add it,” and (4) on August 7, 2018, “in anticipation of the follow up discussion,” the Superintendent sent a “detailed e-mail” to Board members with information “that was pertinent to the follow up discussion that took place at the meeting on August 14, 2018.” According to Complainant, this latter fact “proves deception to the public by denying preparation for this topic at this meeting.”

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. Regarding the alleged violation of *N.J.S.A. 18A:12-24.1(a)*, Respondent argues that Complainant did not provide a copy of a “final decision” and, therefore, this allegation should be dismissed.

As for the alleged violation of *N.J.S.A. 18A:12-24.1(g)*, Respondent states that Complainant has not satisfied her burden of proof. Specifically, Complainant’s argument that Respondent provided inaccurate information when she told the public (at the meeting on August 14, 2018) that the Board had not settled on a date to bring the technology issue back to the table but had decided on July 31, 2018, “to agendaize the matter for August 14, 2018,” is, according to Respondent, “knowingly false.” Although, the Board, during a lengthy Executive Session discussion on July 31, 2018, did discuss placing the matter back on the agenda for the next meeting (August 14, 2018), it never reached a consensus to do that, and the Superintendent indicated that the matter “might be in a holding pattern for next year.” By the time Executive Session ended, Respondent argues “it was clear that there was no consensus.” Respondent also notes that Complainant received a copy of the agenda prior to the August 14, 2018, meeting, but never asked the Superintendent or Respondent to place the Chromebook issue on the agenda for the August 14, 2018, meeting. Respondent argues that even if Complainant could show that Respondent provided inaccurate information (which Respondent denies), Complainant has not submitted evidence that the inaccuracy “was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.” Furthermore, and as confirmed by a certification, the Superintendent recalls the events from the July 31, 2018, meeting in the same way as Respondent. As a result, Respondent argues the allegation that she violated *N.J.S.A. 18A:12-24.1(g)* should be dismissed.

Finally, Respondent alleges that the Complaint is frivolous and filed “for the obvious purpose of generating negative publicity for [Respondent] who was standing for reelection” and to cast Respondent in “an unfavorable light in the public eye.” Since Complainant became a Board member, Respondent argues she (Complainant) has “been engaged in a personal and political vendetta” against Respondent. Based on this information, Respondent alleges the Complaint is frivolous, and asks the Commission to impose sanctions.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant asserts that “it is clear from the evidence that [Respondent] violated the Open Public Meetings Act (OPMA) and the courts have concluded that the OPMA is within the law and enforceable.” Therefore, Complainant reiterates her initial assertion that Respondent violated *N.J.S.A. 18A:12-24.1(a)*.

Regarding the allegation that Respondent violated *N.J.S.A. 18A:12-24.1(g)*, Complainant reiterates that the excerpt from the executive session minutes (July 31, 2018) is a legal document which was approved by the Board, is an accurate representation of what transpired at the meeting, and “clearly” demonstrates the events as they took place. Without evidence to the contrary, Complainant reasserts that Respondent violated *N.J.S.A. 18A:12-24.1(g)*.

As for the remaining arguments made by Respondent, Complainant notes that, upon review of her initial Complaint, she misspoke about the District’s technology plan and initiative. She admits that the previous administration did develop a plan that was approved by the Board, but instead of applying minor changes, the Superintendent implemented “wholesale” changes that many Board members disagreed with, which explains the vote against the Superintendent’s recommendation. Complainant also denies that the Superintendent is entitled to a “heads up” concerning Board votes, and that the fact this discussion occurred is a clear violation of OPMA. Regarding Respondent’s claim that Complainant could have placed the Chromebook topic on the agenda, Complainant counters that Board counsel “blocks” Board members from performing their “obligatory duties.” Regarding the Superintendent’s certification, Complainant asserts it “must be construed to have been offered in the light that the [R]espondent supported his position while the [C]omplainant did not. It should be noted that the [Board] defeated the initial motion in support of the Superintendent’s position.”

Finally, in response to the frivolous filing, Complainant asserts Respondent has not offered any evidence to support this claim. Therefore, Complainant requests that Respondent’s Motion to Dismiss, and allegation of frivolous filing, be denied.

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(a)* and/or *N.J.S.A. 18A:12-24.1(g)* as alleged in the Complaint.

B. *Alleged Code Violations*

In her Complaint, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(g)* of the Code. These provisions of the Code provide, respectively:

a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

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.

1. *Alleged Violation of N.J.S.A. 18A:12-24.1(a)*

Pursuant to *N.J.A.C. 6A:28-6.4(a)(1)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(a)* shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures.

Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(a)* because (1) she knowingly “told the public something untrue,” (2) her statement was “shown to be untruthful” based on a review of the July 31, 2018, Executive Session minutes, (3) Respondent’s actions were “deceptive, not an oversight,” and (4) on August 7, 2018, “in anticipation of the follow up discussion,” the Superintendent sent a “detailed e-mail” to Board members with information “that was pertinent to the follow up discussion that took place at the meeting on August 14, 2018.” According to Complainant, this latter fact “proves deception to the public by denying preparation for this topic at this meeting.” Respondent counters that Complainant failed to provide a copy of a “final decision” as required by *N.J.A.C. 6A:28-6.4(a)(1)*.

After review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)*. More specifically, the Commission finds that, as argued by Respondent, Complainant has not provided a copy of a final decision from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation when she “intentionally” left a matter off the Board’s agenda and then “lied” about why this occurred. Absent such a final decision, the Commission finds that even if all the facts as alleged in the Complaint are true, there is insufficient credible evidence to

support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a). In addition, and to the extent that Complainant seeks a determination from the Commission that Respondent violated the OPMA, the Commission notes that such a determination falls outside the scope, authority, and jurisdiction of the Commission. As a result, the Commission finds that this allegation should be dismissed.

2. *Alleged Violation of N.J.S.A. 18A:12-24.1(g)*

As set forth in *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.

Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(g) because (1) she knowingly “told the public something untrue,” (2) her statement was “shown to be untruthful” based on a review of the July 31, 2018, Executive Session minutes, (3) Respondent’s actions were “deceptive, not an oversight,” and (4) on August 7, 2018, “in anticipation of the follow up discussion,” the Superintendent sent a “detailed e-mail” to Board members with information “that was pertinent to the follow up discussion that took place at the meeting on August 14, 2018.” Complainant submits that this latter fact “proves deception to the public by denying preparation for this topic at this meeting.” Respondent counters that even if she (Respondent) provided inaccurate information to the public, which she denies, Complainant has not provided evidence that the inaccuracy “was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.” Therefore, Respondent submits that Complainant has not satisfied her burden of proof.

Based on its review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Complaint 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). While the Commission acknowledges that the July 31, 2018, Executive Session minutes indicate that the “Chromebook” matter would be placed “on the agenda of the August 14, 2018, Workshop Meeting for discussion,” the Commission finds equally important the next sentence, namely that of the Superintendent (“Dr. Hibbs stated that he thought we might be in a holding pattern for this year”). Given the conflicting statements in the evidence relied upon by Complainant, the Commission agrees that Complainant has failed to allege facts sufficient to demonstrate that the inaccuracy was “other than reasonable mistake or personal opinion or was not attributable to developing circumstances.” The conflicting information in the July 31, 2018, Executive Session minutes underscores the discord about the future of the matter.

The Commission also notes that if it were to find a violation of the Code based on the allegations in the Complaint, such a finding would be tantamount to a finding about the appropriateness of agenda setting, an issue that falls outside the scope, authority, and jurisdiction

of the Commission. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(g) 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(a) and/or *N.J.S.A.* 18A:12-24.1(g). Therefore, the Commission **grants** Respondent's Motion to Dismiss in its entirety.

IV. Request for Sanctions

At its meeting on January 22, 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 its meeting on February 26, 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(a) and/or *N.J.S.A.* 18A:12-24.1(g). 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: February 27, 2019

***Resolution Adopting Decision
in Connection with C68-18***

Whereas, at its meeting on January 22, 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 this matter; and

Whereas, at its meeting on January 22, 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(a)* and/or *N.J.S.A. 18A:12-24.1(g)*;

Whereas, at its meeting on January 22, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at its meeting on February 26, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on January 22, 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 its public meeting on February 26, 2019.

Kathryn A. Whalen, Director
School Ethics Commission