

Before the School Ethics Commission
Docket No.: C13-21
Decision on Motion to Dismiss

Tara O’Hara,
Complainant

v.

Patricia Chambers,
Pinelands Regional Board of Education, Ocean County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on May 6, 2021, by Tara O’Hara (Complainant), alleging that Patricia Chambers (Respondent), a member of the Pinelands Regional Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* More specifically, the Complaint posits that Respondent violated *N.J.S.A. 18A:12-24.1(g)* and *N.J.S.A. 18A:12-24.1(j)* of the Code of Ethics for School Board Members (Code).

On May 7, 2021, the Complaint was served on Respondent, via electronic mail, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading.¹ On June 10, 2021, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On June 21, 2021, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.²

The parties were subsequently notified by correspondence dated July 19, 2021, that this matter would be placed on the Commission’s agenda for its meeting on July 27, 2021, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on July 27, 2021, the Commission considered the filings in this matter and, at its special meeting on August 30, 2021, 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)* and/or *N.J.S.A. 18A:12-24.1(j)*. The Commission also voted to find the Complaint not frivolous, and to deny Respondent’s request for sanctions.

¹ Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

² On June 22, 2021, Respondent filed a reply to Complainant’s response to the Motion to Dismiss. As this reply is not permitted by the Commission’s regulations, it was not considered by the Commission at its meetings on July 27, 2021, and/or August 30, 2021, in ruling on the Motion to Dismiss and allegation of frivolous filing.

II. Summary of the Pleadings

A. *The Complaint*

Complainant asserts that in “March 2021,” Respondent violated *N.J.S.A.* 18A:12-24.1(g) and *N.J.S.A.* 18A:12-24.1(j) because she disclosed “private information related to an investigation of a violation of the” Pinelands Regional High School’s (PRHS) Harassment, Intimidation and Bullying (HIB) policy, which involved her (Complainant’s) child. According to Complainant, a teacher (Allison Laurence) “posted to a public teacher’s page” that she (who is also employed as a “fitness trainer”) “received information from her ‘client’ about a letter written to the [Board] by ... the parent of another child involved in the investigation.” Complainant maintains that the only people who would have known about the letter are the members of the Board, which includes Respondent. In addition, Respondent is a “client” of the teacher, attends her fitness classes, and “likes” or “comments” on Ms. Laurence’s social media posts.

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

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and allegation of frivolous filing. In her review of the exhibits submitted with the Complaint, Respondent notes that there is only one (1) exhibit containing Respondent’s name but, importantly, “Nothing in the post or comments mentions anything about a HIB investigation or any other school district matter.” Further, and taken together, the Complaint and the exhibits “are entirely devoid of any suggestion that Respondent disclosed confidential information or acted on any complaint.” According to Respondent, “No confidential information is identified. No disclosure is identified. No complaint, or action allegedly taken thereupon, is identified. No act committed by Respondent is identified.” Instead, Complainant “simply asserts that Respondent must have disclosed the confidential information to Ms. Laurence, because Respondent posted a comment on one of Ms. Laurence’s Facebook posts and allegedly attended fitness classes taught by Ms. Laurence.” As such, Respondent argues that these allegations, without the factual evidence required by *N.J.A.C.* 6A:28-6.4(a)(7) and *N.J.A.C.* 6A:28-6.4(a)(1), are “insufficient to sustain” a violation of *N.J.S.A.* 18A:12-24.1(g) and *N.J.S.A.* 18A:12-24.1(j), and the Complaint should be dismissed.

Respondent further argues that the Complaint is frivolous because Complainant “certainly knew, or should have known, that a complaint alleging a violation of the Act must contain factual evidence.” Furthermore, Respondent asserts, “to the extent that Complainant has a personal gripe with *someone* (clearly not Respondent, who has no connection to Complainant whatsoever), [t]he Commission is not a forum where parties can seek recourse for personal vendettas or other impermissible purposes.” Therefore, Respondent “respectfully requests that the Commission” dismiss the Complaint and impose monetary sanctions on Complainant.

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

In her response to the Motion to Dismiss and allegation of frivolous filing, Complainant asserts that her Complaint is not frivolous, and there is no proof that it was filed with “malice intent.” Complainant maintains that after an HIB investigation was completed, Respondent “leaked confidential information related to” the HIB complaint. It is Complainant’s belief that

“parents and children should be able to expect confidentiality from those they have elected to serve.” Complainant requests that the Motion to Dismiss be denied; the matter proceed forward “for punishment against ... Respondent”; and the request for sanctions against her (Complainant) be waived as “Respondent has not submitted any proof that [her Complaint] is frivolous in nature.” In support of her claims, Complainant resubmitted her exhibits, and provided a more detailed explanation for each document.

Regarding the resubmitted documents, the exhibit marked as “C-23” is a “photo of a post to a public forum authored by” Ms. Laurence, and which was anonymously forwarded to the parent of another child involved in the HIB investigation (in the envelope marked as “C-4”). Ms. Laurence’s post states, in relevant part, “I also knew my name was ‘out there’ when a client of mine told me several weeks ago, that a letter containing my name regarding the ‘picture taking incident at the HS’ was written to you all by” the parent of another child involved in the HIB investigation. According to Complainant, the parent of another child involved in the HIB investigation emailed each Board member regarding the incident, and included Ms. Laurence’s name (because it was in the police report).

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, the question before the Commission is whether Complainant has alleged sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(g)* and/or *N.J.S.A. 18A:12-24.1(j)*.

B. *Jurisdiction of the Commission*

In reviewing the allegations in this matter, the Commission notes that its authority is limited to enforcing the Act, *N.J.S.A. 18A:12-21 et seq.*, a set of minimum ethical standards by which all **school officials** must abide. In this regard, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C. 6A:28-1.4(a)*.

With the jurisdiction of the Commission in mind, to the extent that Complainant seeks a determination from the Commission that a teacher/teaching staff member (Ms. Laurence) may have acted inappropriately, the Commission advises that it does not have jurisdiction to render such a determination, as a teacher/teaching staff member is not a “school official” within the meaning of the Act.³ Moreover, to the extent that Complainant seeks a determination regarding the HIB allegations involving her child, the Commission further advises that such a determination(s) falls outside the scope, authority, and jurisdiction of the Commission.

³ Pursuant to *N.J.S.A. 18A:12-23*, a “school official” means a board member, an employee or officer of the New Jersey School Boards Association, but not including any member of the secretarial, clerical or maintenance staff of the association, or an administrator.

Nonetheless, and while Complainant may be able to pursue each of those claims, the Commission is not the appropriate entity to adjudicate such issues. As such, those claims are dismissed.

C. *Alleged Code Violations*

Complainant asserts that Respondent's conduct violated two provisions of the Code, namely *N.J.S.A. 18A:12-24.1(g)* and *N.J.S.A. 18A:12-24.1(j)*, and these provisions provide:

- 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.
- j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

More specifically, Complainant argues that Respondent violated ***N.J.S.A. 18A:12-24.1(g)*** and ***N.J.S.A. 18A:12-24.1(j)*** because she disclosed "private information" regarding "a violation of the" PRHS's HIB policy. According to Complainant, a social media post made by Ms. Laurence (a teaching staff member) indicated that a "client" of hers (Ms. Laurence's) told her (Ms. Laurence) about the existence of a letter that was written by the parent of a child involved in the HIB matter. Because Respondent is a "client" of Ms. Laurence's, has attended Ms. Laurence's fitness classes, "likes" or "comments" on Ms. Laurence's social media posts, and is a Board member, Complainant argues that it must have been Respondent who disclosed the "private information" to Ms. Laurence.

Respondent counters that the pleadings "are entirely devoid of any suggestion that Respondent disclosed confidential information or acted on any complaint"; no confidential information is identified; no disclosure is identified; no complaint, or action allegedly taken thereupon by Respondent, is identified; and no act committed by Respondent is identified in the Complaint. Without the necessary factual evidence, Respondent submits that the Complaint should be dismissed.

First, as set forth in *N.J.A.C. 6A:28-6.4(a)(7)*, factual evidence of a violation of the **confidentiality provision** 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.

After review of the Complaint, the Commission finds that even if the facts as argued 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). Although Complainant has provided ample evidence that Ms. Laurence, an individual who is not a “school official” within the meaning of the Act, posted a disquieting amount of information on social media about the HIB matter (and even openly castigated the accusers, and the administration), Complainant did not provide evidence that *Respondent* took any Board “action” to make public, reveal, or disclose information that was not public, or was otherwise confidential. Even if *Respondent* is a client of Ms. Laurence’s, attended a fitness class offered by Ms. Laurence, and/or liked a comment or post on Ms. Laurence’s social media page, the facts offered in the Complaint do not sufficiently show, let alone prove, that it was *Respondent* who disclosed “private information” to Ms. Laurence, ostensibly the existence of a letter containing her (Ms. Laurence’s) name. Complainant has not even definitively identified *Respondent* as the person who purportedly disclosed the private information, but instead deduces that it must have been *Respondent* because (a) she is a client of Ms. Laurence, (b) she attended a class offered by Ms. Laurence, (c) she liked a comment or post on Ms. Laurence’s social media page, and (d) she is a Board member. Unfortunately, Complainant’s attenuated deductions are not fact.

In addition, Complainant has not cited to a law, regulation, or policy that codifies the confidential nature of the letter and/or its contents, including Ms. Laurence’s name. The fact that a parent was able to obtain the name(s) of the teaching staff members allegedly involved in the incident also belies any argument that the information (e.g., the identity of the teaching staff members) was confidential. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(g) should be dismissed.

Second, pursuant to *N.J.A.C.* 6A:28-6.4(a)(10), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(j) shall include evidence that *Respondent* acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint (i) prior to referral to the chief administrative officer, or (ii) at a time or place other than a public meeting and prior to the failure of an administrative solution.

Based on its review of the Complaint, the Commission finds that even if the facts as contended are proven true by sufficient credible evidence, they would not support a finding that *Respondent* violated *N.J.S.A.* 18A:12-24.1(j). Again, although Ms. Laurence very publicly discussed an HIB investigation/incident in which she was one of the teaching staff members who took and/or posted the picture(s) of the minor child(ren) involved, there is no evidence that *Respondent* acted on or attempted to resolve a specific “complaint,” or that *Respondent* conducted an investigation or inquiry before it was referred to the chief administrative officer, or at a time or place other than a public Board meeting. Even if *Respondent* did disclose the existence of the parent letter and its contents to Ms. Laurence (which is not supported by any facts, only innuendo), such a disclosure could not possibly constitute acting or attempting to resolve a complaint, or conducting an investigation or inquiry. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(j) should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined 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) and/or *N.J.S.A.* 18A:12-24.1(j).

IV. Request for Sanctions

At its meeting on July 27, 2021, 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 special meeting on August 30, 2021, 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 **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) and/or *N.J.S.A.* 18A:12-24.1(j). 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: August 30, 2021

***Resolution Adopting Decision
in Connection with C13-21***

Whereas, at its meeting on July 27, 2021, 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 the above-referenced matter; and

Whereas, at its meeting on July 27, 2021, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(g) and/or violated *N.J.S.A.* 18A:12-24.1(j); and

Whereas, at its meeting on July 27, 2021, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at its special meeting on August 30, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 27, 2021; 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 August 30, 2021.

Kathryn A. Whalen, Director
School Ethics Commission