
GAIL LIBERTUCCI	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
V.	:	
	:	DOCKET NO. C15-16
ADAM SMITH,	:	
NEW PROVIDENCE BOARD OF	:	DECISION ON
EDUCATION, UNION COUNTY	:	MOTION TO DISMISS

PROCEDURAL HISTORY

This matter arises from a Complaint filed on April 5, 2016 by Gail Libertucci¹, alleging that Adam Smith, a member of the New Providence Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By letter dated April 7, 2016, Complainant was notified that her Complaint was deficient, and was given an opportunity to cure all defects. Complainant cured all defects, and filed an amended Complaint (Complaint) on April 13, 2016. The Complaint alleges that Respondent violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code).

On April 19, 2016, the Complaint was sent to Respondent, notifying him that charges were filed against him with the School Ethics Commission (Commission), and advising him that he had twenty (20) days to answer the Complaint. Respondent was provided with an extension to file a responsive pleading. Ultimately, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss) on May 31, 2016, and also asserted that the Complaint was frivolous. Complainant filed a reply to the Motion to Dismiss, as well as the frivolous allegation, on June 14, 2016.

The Parties were notified by letter dated July 11, 2016, that the above-captioned matter would be placed on the Commission’s agenda for its meeting on July 26, 2016. At its meeting on July 26, 2016, the Commission voted to grant Respondent’s Motion to Dismiss, and to dismiss the Complaint for failure to state a claim upon which relief could be granted. The Commission also found the Complaint not frivolous.

SUMMARY OF THE PLEADINGS

A. The Complaint

Complainant alleges that Respondent, during the public session of a Board meeting on March 31, 2016, discussed information related to litigation she filed against the Board/District. Not only did Respondent discuss the manner in which Complainant exercised her legal rights, Complainant also asserts that Respondent expressed his opinion of Complainant’s legal actions,

¹ Although Gail and Steve Libertucci were named as Complainants in the Complaint filed on April 5, 2016, Gail Libertucci was the only named Complainant in the amended Complaint filed on April 13, 2016. Therefore, Gail Libertucci will remain as the singular Complainant.

and publicly named her (first and last name). By disclosing the name of the Complainant, she asserts that Respondent disclosed the identity of her minor child.

Based on the above, Complainant contends that Respondent disclosed confidential student information in violation of N.J.S.A. 18A:12-24.1(g) of the Code.

B. Motion to Dismiss

Respondent contends that even if all of the information in the Complaint is true, Complainant failed to articulate facts which could constitute a violation of the Act. Respondent asserts that the information disclosed during public session was not confidential, and that the transcript of Respondent's statement, which Complainant included with her Complaint, does not mention the name of a minor child.

Respondent argues that the Complaint is one of a series of filings by Complainant, and constitutes harassment. Moreover, Respondent asserts that the Complaint is frivolous, and should be dismissed with prejudice.

C. Reply to Motion to Dismiss

Complainant contends that the information disclosed by Respondent at the Board meeting was, contrary to his assertion, confidential. Moreover, the information pertaining to the case that was publicly available had redacted her and her child's name. As a result, Complainant asserts the matter should not be dismissed.

Complainant also denies that the Complaint is frivolous, and asserts that the statements made by Respondent were vindictive, and needlessly disclosed confidential information about her child.

ANALYSIS

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 Code. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto, are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. Thus, the question before the Commission is whether the facts alleged in the Complaint, if true, could support a finding that the Respondent violated N.J.S.A. 18A:12-24.1(g) of the Code.

Allegation of Violation of the Code

Complainant contends that Respondent violated N.J.S.A. 18A:12-24.1(g) of the Code, which 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 the confidentiality provision of N.J.S.A.18A:12-24.1(g) shall include evidence that the respondent(s) 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. Complainant alleges that Respondent violated N.J.S.A.18A:12-24.1(g) because, during the public session of a Board meeting on March 31, 2016, he discussed information related to litigation brought by Complainant against the Board/District. In so doing, Complainant asserts Respondent publicly named Complainant (first and last name) and, thereby, disclosed the identity of her minor child.

Upon review of the Complaint, and the transcript submitted by Complainant in support thereof, it is clear that Respondent did not indicate that the litigation initiated by Complainant involved, or was related to, a student and/or minor child. At worst, Respondent noted that the litigation included the alleged disclosure of, and/or failure to safeguard, unidentified "confidential information." Therefore, even if the allegations in the Complaint are true, the Commission finds that there is no sufficient, credible evidence that may support a finding that Respondent violated N.J.S.A. 18A:12-24.1(g).

Accordingly, the Commission has determined that, after reviewing the facts in the light most favorable to the non-moving party (Complainant), Complainant has failed to allege sufficient facts to demonstrate a *prima facie* case for a violation of N.J.S.A. 18A:12-24.1(g).

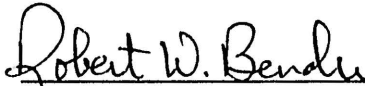
REQUEST FOR SANCTIONS

Respondent asserts that the Complaint herein is frivolous. At its meeting on July 26, 2016, the Commission considered the Respondent's request that the Commission find the Complaint frivolous and to impose sanctions, pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence which might show that the Complainant filed the Complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also has no information to suggest that Complainant 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, the Commission finds that the Complaint is not frivolous, and denies the Respondent's request for sanctions against Complainant.

DECISION

Based on the foregoing, and after reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission finds that Complainant has failed to allege sufficient facts to demonstrate a *prima facie* case for a violation of N.J.S.A. 18A:12-24.1(g). Therefore, the Commission **grants** Respondent's Motion to Dismiss, and dismisses the Complaint for failure to state a claim upon which relief could be granted, pursuant to N.J.A.C.

6A:28-10.8(a)5. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).



Robert W. Bender
Chairperson

Mailing Date: August 24, 2016

Resolution Adopting Decision – C15-16

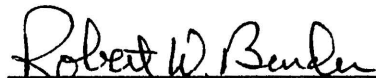
Whereas, the School Ethics Commission (Commission) has considered the Complaint, the documents filed in support thereof, the Motion to Dismiss and the reply thereto; and

Whereas, as its meeting on July 26, 2016, the Commission voted to grant Respondent's Motion to Dismiss, in its entirety, for failure to state a claim upon which relief could be granted; and

Whereas, at its meeting on July 26, 2016, the Commission found the Complaint not frivolous; and

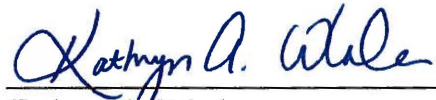
Whereas, at its meeting on August 23, 2016, the Commission reviewed and approved the within decision memorializing said action; and

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 August 23, 2016.



Kathryn A. Whalen
Acting Executive Director
School Ethics Commission