



newspaper, "Some of the posts involved 'intimate' details of the Di Napoli case and were libelous to people working in the district." (Complaint at p. 4) The complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(g).

In Count 4, the complainant asserts that on December 20, 2013, the respondent made an inaccurate and false statement to a reporter of a local newspaper. He stated, "Once we sent the letter, the posts stopped within 15 minutes." (Complaint at p. 5) The complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(g).

## **ANALYSIS**

The complainant has the burden to factually establish a violation of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a). A complaint must include, among other requirements, specific allegations and the facts supporting them which have given rise to the alleged violation(s) of the Act. N.J.A.C. 6A:28-6.3(b)3. Regulations further provide that the Commission may, in its discretion, dismiss complaints or specific allegations in complaints, where the complaint, on its face, fails to state a claim under the Act. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5.

In Counts 1 through 4, the complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(g), which provides:

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.

The Commission's regulations require that:

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. Factual evidence that the 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 the respondent(s) and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. N.J.A.C. 6A:28-6.4(a)7.

In its review of the matter, the Commission determined that the information the respondent disclosed was not confidential in nature as any matter that is not under seal before the

Office of Administrative Law, pursuant to N.J.A.C. 1:1-14.1 et seq., is a public record and may be subject to an OPRA request. Therefore, absent a sealing of the record, the Di Napoli proceeding is a public record and the information revealed therein is available to the public. Moreover, the complainant has failed to provide an adequate basis to support the claim that these unskilled disclosures were any more than the respondent's unfamiliarity with legalese or his lack of understanding and articulating the complicated outcome in the matter before the Commissioner of Education. Therefore, the Commission finds that the complainant has failed to set forth facts in Counts 1 through 4, which would support a claim that the respondents violated N.J.S.A. 18A:12-24.1(g).

## **DECISION**

Based on the foregoing, and pursuant to its discretion, the Commission dismisses the within complaint for failure to state a claim that would be a violation of the Act. N.J.A.C. 6A:28-10.2(a)7; 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).

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Robert W. Bender, Chairperson

Mailing Date: June 26, 2013

**Resolution Adopting Decision – C09-13**

**Whereas**, the School Ethics Commission has considered the complaint and answer; and

**Whereas**, at its meeting on May 28, 2013, the Commission determined to dismiss the complaint for failure to state a claim that would be a violation of the Act; and

**Whereas**, the Commission has reviewed and approved the decision memorializing said action;

**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.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on June 26, 2013.

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Joanne M. Restivo  
Interim Executive Director