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VERONICA MEHNO

V.

ANTHONY FLERES  
WEST WINDSOR-PLAINSBORO REGIONAL  
DISTRICT BOARD OF EDUCATION,  
MERCER COUNTY

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BEFORE THE SCHOOL  
ETHICS COMMISSION

DOCKET NO. C34-16

DECISION ON  
MOTION TO DISMISS

### PROCEDURAL HISTORY

This matter arises from a Complaint filed on September 6, 2016 by Veronica Mehno alleging that Anthony Fleres, a member and President of the West Windsor-Plainsboro Regional District Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By letter dated September 8, 2016, Complainant was notified that her Complaint was deficient, and was provided with an opportunity to cure all defects. Complainant cured all defects, and filed an amended Complaint (Complaint) on September 13, 2016. The Complaint alleges that Respondent violated N.J.S.A. 18A:12-24.1(b), (d), (g) and (j) of the Code of Ethics for School Board Members (Code).

On September 15, 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 filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss) on October 7, 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 November 3, 2016.

The Parties were notified by letter dated November 9, 2016, that the above-captioned matter would be placed on the Commission's agenda for its meeting on November 22, 2016 in order to make a determination regarding the Motion to Dismiss. At this meeting, the Commission discussed granting Respondent's Motion to Dismiss, dismissing the Complaint in its entirety for failure to state a claim upon which relief could be granted, and finding the Complaint not frivolous. At its meeting on December 20, 2016, the Commission voted to take action as discussed at its meeting on November 22, 2016.

### SUMMARY OF THE PLEADINGS

#### A. The Complaint

In Count 1 of her Complaint, Complainant alleges that she sent an e-mail to Respondent, the Board President, and to "BOE members" inquiring as to why the taxpayers were not previously advised about a nearly three hundred fifty thousand dollar (\$350,000) expense (the "Robotics Room") in the upcoming budget. Respondent replied on May 9, 2016, and copied

additional people on the e-mail, namely: the Superintendent, the entire Board, a district employee involved in the robotics program, Complainant's husband, and a community member who has been supportive of the Board/district's efforts regarding "Robotics Room." When Complainant asked Respondent why he added the community member to the communication, he responded, "Just because you mentioned her and I thought she needed to know." Complainant alleges that communications received by the Board President should not needlessly be disclosed to the community. Complainant argues she had a reasonable expectation of privacy in her communication to Respondent, and that his unilateral expansion of the recipients of the communication, especially the community member, was intended to shame her and to cause discord between her and the members of the community. In this way, Complainant argues that Respondent violated N.J.S.A. 18A:12-24.1(g).

In Count 2, Complainant asserts that she attended a Board meeting on March 8/9, 2016, to express concern with the "very loose way" that language was being used by Board members and the administration in front of sixth, seventh, and eighth grade students ("suicide," "self-injury", "self-mutilation", and "anxiety") without licensed professionals present (and with only a group called "Attitudes in Reverse" present). While making her comments to the Board, Complainant had difficulty pronouncing the word "PRISM." Complainant sent a follow-up e-mail to Respondent the next day to reiterate her concerns about the language being used in the presence of minor students. In response, Respondent sent an e-mail (on March 9, 2016) which read, in part, "To be honest, when you were speaking, it took a while many of us (sic) to realize that was what you were talking about." Complainant argues that by disregarding her concerns, and those of other parents and taxpayers, about the use of these words, Respondent was pushing his personal agenda/views on the district and its students. In addition, Complainant argues that Respondent mocked her English for the sole purpose of discriminating against her, and to make her feel inferior. Complainant asserts these actions violated N.J.S.A. 18A:12-24.1(b).

In Count 3 of her Complaint, Complainant alleges that she sent an e-mail to the Respondent on June 10, 2016, complaining about the Superintendent's performance/efforts (with regard to a particular program and the failure to obtain student's medical records/vaccinations), and seeking to file a complaint against the Superintendent. Instead of conducting an investigation, Complainant asserts that Respondent did "nothing," and instead relied upon the Superintendent's representations about the issue. She alleges that rather than responding to Complainant, Respondent allowed the Superintendent to issue a response (also on June 10, 2016). Complainant argues that Respondent's failures violated N.J.S.A. 18A:12-24.1(d) and (j).

In Count 4, Complainant asserts that Respondent wrote a letter to the editor of the West Windsor-Plainsboro News, which was published on July 5, 2016, and indicated four residents (unnamed) appeared at the administration building and requested a tour of the new facility in the district. On July 19, 2016, Respondent posted the letter on the district website and identified the individuals who requested the tour (which included Complainant). Complainant argues that there was no need for this information to be disclosed, and that Respondent did so to intimidate her and to have the community form an adverse opinion of her (a vocal opponent of Board actions and policies). Based on these facts, Complainant asserts that Respondent violated N.J.S.A. 18A:12-24.1(g).

## **B. Motion to Dismiss**

In response to the Complaint, Respondent filed a Motion to Dismiss, and also alleged that the Complaint was frivolous. With regard to Count 1, Respondent argues that it was *Complainant* who included her husband and the other members of the Board on the e-mail communication, and that he only added additional individuals (the Superintendent, the staff member and the member of the community) to the e-mail because he felt it was appropriate for all relevant parties to be aware of the issue and communication. In addition, none of the information disclosed was confidential or inaccurate, and Complainant had no reasonable expectation of privacy in this communication. Regarding Count 2, Respondent argues that his statement (i.e., about it taking a while for the Board to understand what she was talking about) was attributable to the fact that Complainant had raised a number of issues during her discussion/comment, and that he was not referring to the fact that English is her second language. According to Respondent, Complainant did not provide any evidence that Respondent made a decision that was contrary to the educational welfare of the district's students.

Concerning Count 3, Respondent argues that he never received the communications that Complainant sent to the Superintendent in 2015, and that he only learned of the issue in June, 2016. In addition, Respondent argues that he is prohibited from administering the schools, and is not permitted *to* administer the schools as Complainant asserts. Moreover, Respondent, as an individual Board member, cannot authorize or conduct an investigation of the Superintendent. Regarding Count 4, the individuals were identified in the posting so as to discuss the catalyst and inspiration for the Open House. He also points out that there is no legal protection of the identity of an individual who requests a tour of a school building, and Complainant does not deny she requested the tour. Finally, Respondent argues that the Complaint is frivolous, and is motivated by a vendetta against Respondent. According to Respondent, Complainant's vendetta has included harassing and threatening e-mails, as well as unproductive comments.

## **C. Response to Motion to Dismiss**

In response to the Motion to Dismiss, and to the allegation of frivolous filing, Complainant argued that the disclosure of her e-mail to a member of the community (Count 1) "needlessly sows dissent and divisiveness in the community," and needlessly exposed her three children to retaliation. As for Count 2, Complainant reasserts that Respondent's comments were, in fact, intended to embarrass and shame her. Complainant also explains that Respondent, and Respondent's wife, are involved in and with entities that are supportive of Attitudes in Reverse and its mission. As a result of this personal involvement, Respondent champions its message even though parents have voiced opposition. Regarding Count 3, Complainant emphatically argues that Respondent was required to conduct an investigation of the medical records issue, and to mediate resolution of the issue between Complainant and the Superintendent. Finally, she argues that Respondent's inclusion of the names of those people who requested a tour was designed to "teach us a lesson" and needlessly subjected her young children to potential retaliation. Complainant also argues that Respondent may have violated Advisory Opinion A02-06 because he wrote a letter to the editor expressing his "opinion," on a school related matter, as a member of the Board and not as a private citizen.

## 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 Act. 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(b), (d), (g) and (j) of the Code.

### Allegations of Violations of the Code

Complainant contends that Respondent violated N.J.S.A. 18A:12-24.1(b), (d), (g) and (j) of the Code. These provisions provide, respectively:

b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

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.

Pursuant to N.J.A.C. 6A:28-6.4(a)(2), “[f]actual evidence of a violation of N.J.S.A. 18A:12-24.1(b) shall include evidence that the respondent(s) willfully made a decision contrary to the educational welfare of children, or evidence that the respondent(s) took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.”

As detailed in N.J.A.C. 6A:28-6.4(a)(4), “[f]actual evidence of a violation of N.J.S.A. 18A:12-24.1(d) shall include, but not be limited to, evidence that the respondent(s) gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.”

Pursuant to N.J.A.C. 6A:28-6.4(a)(7), “[f]actual 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.” In addition, “[f]actual 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.”

As detailed in N.J.A.C. 6A:28-6.4(a)(10), “[f]actual evidence of a violation of N.J.S.A. 18A:12-24.1(j) shall include evidence that the respondent(s) 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.”

### Count 1

In Count 1, Complainant alleges that Respondent violated N.J.S.A. 18A:12-24.1(g) because, in disregard of her reasonable expectation of privacy, Respondent unilaterally expanded the recipients of an e-mail message that she sent to him. By doing so, Complainant argues that Respondent intended to shame her and cause discord between her and members of the community. However, and as argued by Respondent, Complainant has not cited or referred to any law, regulation or court order of this State confirming that the e-mail communication was private. Moreover, Complainant has not cited to any Board policy, procedure or practice confirming that the communication was otherwise confidential. Although the e-mails that Complainant may send from and/or receive on her own personal computer may be confidential and inaccessible to the public, those sent to and received by a public agency/entity, i.e., a school district and its Board, are subject to disclosure pursuant to the Open Public Records Act.

Based on the allegations in the Complaint and granting all inferences in favor of Complainant, 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) in Count 1.

### Count 2

In Count 2, Complainant asserts that Respondent violated N.J.S.A. 18A:12-24.1(b) because, notwithstanding the letters and comments from parents regarding their collective concerns with the “loose” language used by Board members and the administration in front of students (“suicide,” “self-injury”, “self-mutilation”, and “anxiety”), Respondent disregarded these concerns and, instead, believes “everyone...needs to abide by his personal” beliefs about the appropriate program. In short, Complainant argues that Respondent is pushing his personal agenda/views on the district and its students. However, and applying the standard in N.J.A.C. 6A:28-6.4(a)(2), Complainant has failed to include evidence that Respondent “willfully” made a decision contrary to the educational welfare of children. The Commission notes that instruction in suicide prevention is required, by law, to be included in the curriculum. Although

Complainant, and other parents in the district, are free to disagree with any program or course offered by a board of education, absent a showing that there was a willful decision that is contrary to the educational welfare of children, a violation of N.J.S.A. 18A:12-24.1(b) cannot be sustained.

Tangentially, Complainant asserts that Respondent sent her an e-mail that “mocked” and “demeaned” her English and, thereby, “discriminated” against her. However, the characterization of this e-mail and whether it discriminated against Complainant is outside the scope of the Commission’s jurisdiction and will not be addressed as part of this decision.

Based on the allegations in the Complaint and granting all inferences in favor of Complainant, 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(b) in Count 2.

### Count 3

In Count 3, Complainant alleges that she sent an e-mail to Respondent on June 10, 2016 complaining about the Superintendent’s performance/efforts, and seeking to file a complaint against the Superintendent. However, when Respondent failed to conduct a thorough investigation following receipt of her e-mail, and instead allowed the Superintendent to reply to Complainant’s concerns, Complainant alleges Respondent violated N.J.S.A. 18A:12-24.1(d) and (j). Respondent denies receiving or otherwise being copied on Complainant’s initial e-mail to the Superintendent about her concerns (in 2015), and counters that he first became aware of the issue when he received her e-mail on June 10, 2016. Respondent also denies that he, as an individual Board member, has the authority to initiate an investigation.

Despite her argument, Complainant has not alleged, as required by N.J.A.C. 6A:28-6.4(a)(4), that Respondent gave a direct order to school personnel or become directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district. Instead, it appears that Complainant is displeased with the fact that Respondent did not, based on the evidence before the Commission, partake in the very activity that is prohibited by the Code. Although Complainant would have liked Respondent to take unilateral action to resolve her complaint, it would have been impermissible for him to do so under the Code. Consequently, and granting all inferences in favor of Complainant, 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(d) in Count 3.

Complainant has also failed to allege, as required by N.J.A.C. 6A:28-6.4(a)(10), that Respondent acted or attempted to resolve a complaint, or conducted an investigation related to a complaint, (i) *before* it was referred to the chief administrative officer or (ii) at a time and place other than a public Board meeting and *prior to* the failure of an administrative solution (emphasis added). In this case, and based on the evidence submitted, Respondent first became aware of Complainant’s concerns on June 10, 2016. Therefore, Complainant cannot reasonably expect that, before Respondent had knowledge of the situation, he was to have undertaken efforts to resolve her concerns. Moreover, upon learning of Complainant’s concerns, it was wholly appropriate for Respondent to permit the Superintendent to first resolve, or attempt to resolve,

Complainant's concerns. As Respondent argued, there is nothing which permits him to unilaterally resolve a complaint, or initiate an investigation related to a complaint, until *after* the failure of an administrative solution. However, there is no evidence in the record, either from Complainant or Respondent, indicating that Complainant's concerns were unresolved after she received the Superintendent's June 10, 2016, response and/or that she requested Respondent to *then* initiate an investigation. By all accounts, the administration admitted that, following information provided by Complainant, it realized medical documentation was not being submitted and, thereafter, ensured that it was submitted for all students. Therefore, and again granting all inferences in favor of Complainant, 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(j) in Count 3.

Based on the allegations in the Complaint and granting all inferences in favor of Complainant, 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(d) or (j) in Count 3.

#### **Count 4**

In Count 4, Complainant asserts that Respondent violated N.J.S.A. 18A:12-24.1(g) because he posted a letter on the district website and identified the names of the individuals who appeared at the district's administrative offices and requested a tour of a new facility in the district. The list of the identified individuals included Complainant. Complainant asserts that Respondent needlessly disclosed her name to intimidate her and to have the community form an adverse opinion of her. Respondent counters that there is no law which protects the identity of an individual who requests a tour of a school building, and that Complainant does not deny she requested the tour. As in Count 1, Complainant has not cited or referred to any law, regulation or court order of this State indicating that her identity, in these circumstances, was private. Complainant has also failed to cite to any Board policy, procedure or practice confirming that this information was otherwise confidential. Although Complainant may have desired for her identity to remain unknown, there is nothing which prohibited Respondent from disclosing it. Moreover, there is nothing about these circumstances which is confidential "to the school"; instead, it is something that Complainant had hoped would remain confidential. Based on the allegations in the Complaint and granting all inferences in favor of Complainant, 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) in Count 4.

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 violations of N.J.S.A. 18A:12-24.1(b), (d), (g) and (j) of the Code.

#### **REQUEST FOR SANCTIONS**

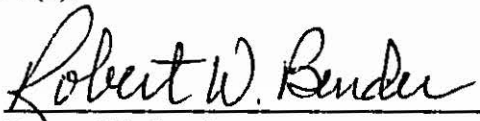
Respondent asserts that the Complaint herein is frivolous. At its meetings on November 22, 2016 and December 20, 2016, the Commission discussed Respondent's request that the Commission find the Complaint frivolous and to impose sanctions, pursuant to N.J.S.A. 18A:12-

29(e). After review and consideration, 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(b), (d), (g) and (j). 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. The Commission also finds the Complaint not frivolous, and denies Respondent's request for sanctions against Complainant.

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: December 21, 2016



## Resolution Adopting Decision – C34-16

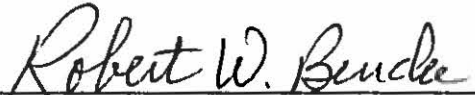
**Whereas**, the School Ethics Commission (Commission) has considered the Complaint and the documents filed in support thereof, the Motion to Dismiss and the documents filed in support thereof, and the Response to Motion to Dismiss; and

**Whereas**, at its meeting on November 22, 2016, the Commission discussed granting Respondent's Motion to Dismiss in its entirety, and dismissing the Complaint for failure to state a claim upon which relief could be granted; and

**Whereas**, at its meeting on November 22, 2016, the Commission discussed finding the Complaint not frivolous; and

**Whereas**, at its meeting on December 20, 2016, the Commission voted to take action as discussed as its meeting on November 22, 2016, and voted to approve the within decision as memorializing that discussion; 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.

  
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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 December 20, 2016.

  
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Kathryn A. Whalen, Director  
School Ethics Commission