

Before the School Ethics Commission
Docket No.: C35-16
Decision on Motion to Dismiss

**Zulkarnain Kagalwalla,
Complainant**

v.

**Anthony Fleres,
West Windsor-Plainsboro Board of Education, Mercer County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on September 12, 2016, by Zulkarnain Kagalwalla (Complainant), alleging that Anthony Fleres (Respondent), a member and President of the West Windsor-Plainsboro Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* By correspondence dated September 14, 2016, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On September 16, 2016, 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*. Complainant alleges, in a two-Count Complaint, that Respondent violated *N.J.S.A. 18A:12-24.1(g)* of the Code of Ethics for School Board Members (Code).

On September 19, 2016, the Complaint was served on Respondent, via regular and certified mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading. On October 11, 2016, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On October 25, 2016, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

By correspondence dated November 9, 2016, the parties were notified that this matter would be placed on the Commission's agenda for its meeting on November 22, 2016. At its meeting on November 22, 2016, the Commission reviewed the Complaint in light of the related criminal matter pending in the Superior Court of New Jersey (Somerset County), and voted to hold this matter in abeyance pursuant to *N.J.S.A. 18A:12-32* in order to avoid conflicting factual and legal findings and/or inconsistent outcomes. In correspondence dated November 23, 2016, the Commission advised the parties about its decision, and asked the parties to forward any document(s) dispositive of the related criminal matter.

Following receipt of information from both Complainant and Respondent that the related criminal matter was fully and finally resolved, the parties were notified by correspondence dated

March 18, 2019, that this matter would be placed on the Commission's agenda for its meeting on March 26, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on March 26, 2019, the Commission considered the filings in this matter and, at a special meeting on May 2, 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(g)* as alleged in Count 1 and/or Count 2. The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

II. Summary of the Pleadings

A. The Complaint

In Count 1, Complainant asserts that on or about September 6, 2016, Respondent posted information/statements on "W[est] W[indsor] Peeps" (Facebook) which disclosed information about Complainant, and which he (Respondent) received in his capacity as Board President. The first post/comment stated, "Yes, please let the police know. Speaking from experience, he's harmless but his harassment shouldn't be tolerated. He has a history with the [West Windsor-Plainsboro] [P]olice [D]epartment." Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(g)* because he was "clearly encouraging, provoking, and inciting one of the residents of '[West Windsor]' against [Complainant]."

In Count 2, Complainant asserts that Respondent made another comment/post, which stated, "Everyone, the man has a bunch of personal issues that he needs to work through. Trust me, as one of his targets, I'm not sorry to see him leave the group, but now we should just let him go. There's no reason for us to continue to pile on." According to Complainant, Respondent violated *N.J.S.A. 18A:12-24.1(g)* because he "used the filing of [a] [Division of Child Protection and Permanency (DCPP)] complaint by the [West Windsor-Plainsboro School District (District)]... and revealed [it] on the [Facebook] group. Also, he clearly implied that he felt he was targeted by [Complainant] and was happy that the administrator had removed [Complainant] from the group." Complainant continued, "It is obvious from the two postings by [Respondent] that he used information obtained confidentially by School District to malign me."

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. Respondent maintains that during the 2013-2014 school year, Complainant "took issue" with how the District and the Board handled a matter involving Complainant's minor child. According to Respondent, since that time, Complainant has "embarked upon a course of erratic and incomprehensible communications" with the District and the Board, including public officials, resulting in the filing of criminal charges/prosecution against Complainant.

As to the substance of the allegations in the Complaint, Respondent asserts that on or about September 6, 2016, the moderator of the Facebook group entitled, "West Windsor Peeps," blocked Complainant from the group and announced it via a comment on the group's page. The

moderator subsequently posted that, “[Complainant] just threatened me … Not sure if he means a lawsuit or bodily harm. He just sent me my address… Not sure how he got it. Not sure how to proceed!!!!!” Respondent admits to posting the two (2) comments attributed to him by Complainant, but denies that he posted confidential information. He also argues that it is “public knowledge” that Complainant has a history with the West Windsor Police Department. Respondent further notes that Complainant has not disputed the accuracy of the information/comments posted, and that the comments posted by Respondent were his personal opinion (not those of the Board). Because the statements were factually accurate and did not disclose confidential information, Respondent argues that neither statement violated *N.J.S.A. 18A:12-24.1(g)*.

Finally, Respondent asserts that the Complaint is frivolous because Complainant has a “clear vendetta” against Respondent, the Board, and the District because of the way that a matter involving his minor child was handled.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant argues that his Complaint is not frivolous, and the information posted by Respondent on Facebook was not publicly available, or accurate. Complainant reiterates his initial claim that the information was “confidential,” and Respondent even characterized Complainant’s “family issues” as such (confidential) in an email he (Respondent) sent to other members of the Board on January 18, 2014.

Complainant maintains that he has “never harassed” the District or its employees, and never had a criminal record prior to the District’s complaint against him. Complainant alleges that on January 15, 2014, at approximately 7:45 a.m., Complainant’s child reported an incident that occurred at home, the District kept his child after school (beyond dismissal), and the District has not answered his questions regarding why this occurred. Complainant contends that the District kept his child without any authority, as a “retaliation against [his] past emails and communications with the Board.”

Based on this information, Complainant maintains that Respondent violated *N.J.S.A. 18A:12-24.1(g)* two separate times, and should receive the “most severe action/punishment.”

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(g)* as alleged in Count 1 and/or Count 2 of the Complaint.

B. *Alleged Code Violations*

In his two-Count Complaint, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(g)* of the Code. This provision 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 *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.

In Count 1, Complainant argues that by posting a message/comment on “West Windsor Peeps,” namely, “Yes, please let the police know. Speaking from experience, he’s harmless but his harassment shouldn’t be tolerated. He has a history with the [West Windsor-Plainsboro] [P]olice [D]epartment,” Respondent violated *N.J.S.A. 18A:12-24.1(g)*. Although Respondent admits that he posted the comment as alleged, he denies that he disclosed confidential information, or that the substance of the comment was inaccurate.

Based on its review of Complainant’s factual allegations, the Commission finds that even if the facts as alleged in Count 1 of 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 message/comment states that Complainant has a “history” with the West Windsor-Plainsboro Police Department, Respondent’s message/comment does not disclose any confidential information about Complainant’s “history.” Complainant also did not cite to a law, regulation, or a court order, or to a Board policy, procedure, or practice which codifies the confidential nature of having a “history” with the West Windsor-Plainsboro Police Department, or which otherwise prohibits Respondent from making such a statement. Moreover, in his response to the Motion to Dismiss, Complainant acknowledges he has a criminal record and, in this way, is precluded from arguing that the information posted by Respondent was inaccurate. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(g)* in Count 1 should be dismissed.

In Count 2, Complainant alleges that by posting a second message/comment on “West Windsor Peeps,” more specifically, “Everyone, the man has a bunch of personal issues that he needs to work through. Trust me, as one of his targets, I’m not sorry to see him leave the group,

but now we should just let him go. There's no reason for us to continue to pile on," Respondent violated *N.J.S.A.* 18A:12-24.1(g). Although Respondent acknowledges that he posted the comment as alleged, he again denies that he disclosed confidential information, or that the substance of the comment was inaccurate.

After review of Complainant's allegations, the Commission finds that even if the facts as alleged in Count 2 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). Although the message/comment indicates that Complainant has "a bunch of personal issues," Respondent did not post any *specific* information about Complainant (or his child) which could be regarded as confidential. In his Complaint and response to the Motion to Dismiss, Complainant contends that Respondent revealed to the public/community that the District had filed a DCPP complaint against him. However, based on a review of Complainant's filings, and the substance of the message/comment itself, Respondent did not directly refer to a DCPP complaint filed against, or otherwise involving, Complainant and/or his child. In this way, it appears that Complainant interpreted Respondent's message/comment to mean something that, on its face, it does not say. In addition, Complainant did not cite to a law, regulation, or a court order, or to a Board policy, procedure, or practice which precluded Respondent from indicating Complainant had "a bunch of personal issues," and did not provide facts to support that the information was inaccurate. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in Count 2 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(g) in Count 1 and/or Count 2. Therefore, the Commission **grants** Respondent's Motion to Dismiss in its entirety.

IV. Request for Sanctions

At its meeting on March 26, 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 a special meeting on May 2, 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(g) as alleged in Count 1 and/or Count 2. 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: May 3, 2019

***Resolution Adopting Decision
in Connection with C35-16***

Whereas, at its meeting on March 26, 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 the above-referenced matter; and

Whereas, at its meeting on March 26, 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(g) as alleged in Count 1 and/or Count 2; and

Whereas, at its meeting on March 26, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at a special meeting on May 2, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on March 26, 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 a special meeting on May 2, 2019.

Kathryn A. Whalen, Director
School Ethics Commission