

***Before the School Ethics Commission
Docket No.: C60-20
Decision on Motion to Dismiss***

**Mary Lynn Williams,
Complainant**

v.

**Kim Ruiz,
Township of Union Board of Education, Union County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on October 12, 2020, by Mary Lynn Williams (Complainant), a member of the Township of Union Board of Education (Board), alleging that Kim Ruiz (Respondent), also a member of the Board, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. More specifically, the Complaint asserts that Respondent violated N.J.S.A. 18A:12-24.1(g) and N.J.S.A. 18A:12-24.1(i) of the Code of Ethics for School Board Members (Code).

On October 12, 2020, 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 October 28, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and on November 6, 2020, Complainant filed a response to the Motion to Dismiss.²

The parties were notified by correspondence dated December 14, 2020, that this matter would be placed on the Commission's agenda for its meeting on December 22, 2020, in order to make a determination regarding the Motion to Dismiss. At its meeting on December 22, 2020, the Commission considered the filings in this matter and, at its meeting on January 26, 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(i) as alleged in the Complaint.

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

² On November 9, 2020, Respondent filed a brief 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 December 22, 2020, and/or January 26, 2021, in ruling on the Motion to Dismiss.

II. Summary of the Pleadings

A. The Complaint

Complainant states that, at the Board's meeting on February 18, 2020, the Board (including Respondent) unanimously approved the Superintendent's appointment of a current teacher (N.L.) to serve as the Township of Union Public School District's (District) only Computer Aided Design and Drafting (CADD) teacher. Several months later, and although the Board did not previously send a Rice notice to N.L., Respondent "engaged in dialogue" with the Superintendent and the Assistant Superintendent "during open session" about the "current CADD teacher" (N.L.) and her qualifications at the Board's September 8, 2020, work session. During this "exchange," Respondent stated that, during a meeting with her child and the child's guidance counselor that day, she "learned" that the CADD teacher (N.L.) did not have the CADD certification and that, as a result, certain students "may not be able to take the certification test." Respondent, the Superintendent, and the Assistant Superintendent proceeded to discuss N.L.'s certifications and qualifications, or perceived lack thereof. At the Board's meeting on September 15, 2020, the Assistant Superintendent notified the Board that Respondent's allegations (from the September 8, 2020, work session) regarding N.L.'s job qualifications were "incorrect" and based on "misinformation."

Given the facts set forth above, Complainant asserts that Respondent violated N.J.S.A. 18A:12-24.1(g) because she "released information regarding N.L.'s job qualifications that was 'not public under any laws, regulations or court orders of this State,' and was 'confidential in accordance with board policies, procedures or practices.'" Complainant further asserts that, pursuant to the Open Public Meetings Act (OPMA) and the Board's own policies and bylaws, a Rice notice should have been issued to N.L. before the September 8, 2020, work session advising her that her employment would be discussed at the Board's meeting. In addition, the discussion regarding N.L.'s employment, and questions about her qualifications in particular, should have occurred in Executive Session unless N.L. requested that the discussion take place in public. According to Complainant, Respondent's remarks regarding N.L.'s qualifications, in the absence of a Rice notice, "needlessly injured" her (N.L.) because the "remarks infringed on N.L.'s rights" as she "did not have the opportunity to exert her right to request a public hearing regarding her employment"; jeopardized N.L.'s employment because, following Respondent's remarks, the Assistant Superintendent stated that if the teacher lacked the requisite certification, he or she would have "to go"; and "incit[ed] a lack of confidence from parents on her [N.L.'s] ability to administer the [D]istrict's CADD program." Not only were Respondent's remarks "inaccurate," they were also "defamatory and slanderous, because of the damages that were afflicted upon N.L." Complainant maintains that Respondent's comments were not "personal opinion, a reasonable mistake, or attributable to developing circumstances." According to Complainant, Respondent should have followed the chain of command and first addressed the matter with the administration privately or in closed session.

Complainant further asserts that Respondent violated N.J.S.A. 18A:12-24.1(i) because she "took deliberate action by discussing N.L.'s employment in open session, and disregarded the well-documented and commonly practiced protocol to discuss school personnel" as required by the OPMA, as well as the Board's policies and bylaws. According to Complainant, Respondent has been on the Board for two years and, therefore, "understands what

Board matters fall under closed session.” Coupled with Respondent’s law degree, Complainant argues that Respondent “should know not to discuss confidential personnel matters in open session.” Complainant maintains that “Respondent’s actions harmed N.L. in the proper performance of her duties as the [D]istrict’s only [CADD] teacher by needlessly compromising her credibility and professional reputation to effectively administer the [D]istrict’s [CADD] program.” According to Complainant, Respondent’s “defamatory and slanderous remarks brought forth unfounded scrutiny from parents” about N.L. and the CADD program, jeopardized N.L.’s employment, and undermined N.L.’s “ability to effectively administer the [D]istrict’s CADD program”

B. Motion to Dismiss

Following receipt of the Complaint, Respondent filed a Motion to Dismiss, and briefly details the dueling political factions on the Board. Respondent then notes that her child is a student at the high school, was taking CADD courses, and was “looking forward to sitting for the AutoCAD Certified User [e]xam.” During a meeting with her child’s guidance counselor, the guidance counselor informed the student (and Respondent) that the “CAD[D] teacher did not have a particular credential required for students to sit” for the AutoCAD certification exam. Respondent further notes that she was “concerned” with this information “not only as a parent but also as a Board member because it had implications for all students taking the higher-level CAD[D] courses in anticipation of sitting for that exam.” At the Board meeting on September 8, 2020, Respondent informed the Board about the information she received from the guidance counselor, but maintains she “did not criticize or attack any staff member, nor did she improperly disclose confidential information.” Instead, “the Board majority and those politically aligned with them rushed to get this complaint on file in yet a further attempt to cast [Respondent] and those aligned with her in an unfavorable light.”

Before addressing the alleged violations of the Code, Respondent asserts that the Complaint violates “Advisory Committee on Professional Ethics Opinion 713” as it “purports to be drafted pro se by [Complainant], but appears to have been prepared by an attorney.” As such, Respondent asserts that “the Commission should promptly require a representation from [C]omplainant regarding any involvement of counsel in preparing this [C]omplaint, and satisfy itself that the requirements of Opinion 713 are being followed here.”

Regarding the alleged violation of N.J.S.A. 18A:12-24.1(g), Respondent argues, “One exception to Open Public Records Act’s (OPRA) general confidentiality requirement for personnel records is certifications or licenses legally required for employees to perform their responsibilities which are freely available to the public upon request.” Therefore, Respondent maintains, “public disclosure of a teacher’s certification status, standing alone, cannot be a violation of N.J.S.A. 18A:12-24.1(g) since it is not confidential.” Respondent argues that the three cases cited by Complainant do not support her position that public discussion of the teacher’s certification status was a per se violation of the Act because the Respondents in those cases “disclosed highly sensitive, confidential information they only would have had access to in their capacity as board members.” In this case, Respondent “merely reported” information that she “was told by a school employee whose job it was to know this information.” According to Respondent, she was not “criticiz[ing] or attack[ing] the staff member,” but rather “appeal[ing] to the administration to solve a time-sensitive problem affecting all students pursuing the

AutoCAD certification that school year.” As to Complainant’s assertion that Respondent provided “inaccurate” information to the public, Respondent argues she “accurately reported the information that she received from the counselor on an important issue that needed to be addressed – either because the CAD[D] teacher” needed the additional credential to proctor the exam, or she did not “but inaccurate information was being circulated to parents that might have dissuaded students from taking the course” and, therefore, it needed to be corrected. Furthermore, Complainant’s “reliance” on the Assistant Superintendent’s comment about “misinformation” “is misplaced.” Respondent denies naming the teacher, and notes that the teacher’s Department of Education (DOE) certification was acknowledged during the public exchange. Respondent also argues that Complainant’s reliance on the Assistant Superintendent’s comment about “misinformation” is also misplaced because, as Respondent notes in her Certification, the Assistant Superintendent was not upset with Respondent, but rather “upset” because a staff member was providing parents with incorrect information that was “causing confusion and alarm among students and parents.” Therefore, Respondent asserts that Complainant has failed to state a violation of N.J.S.A. 18A:12-24.1(g).

As to the alleged violation of N.J.S.A. 18A:12-24.1(i), Respondent contends, “she raised her concern in an appropriate forum and attempted to resolve it in-house without prematurely complaining to outside authorities.” Respondent further contends that Complainant did not provide any evidence that the information that Respondent shared regarding the CADD teacher had any “negative effect” on the CADD teacher, and is instead “replete with speculative allegations about the negative effect of [R]espondent’s comments.” Respondent further contends that “there is nothing in the public record” to indicate that N.L. complained about Respondent’s comment nor that the comment “in any way impeded the teacher in the performance of her duties.” Respondent asserts Complainant did not provide any evidence to support the violation of N.J.S.A. 18A:12-24.1(i), and it should be dismissed.

C. Response to Motion to Dismiss

In her response to the Motion to Dismiss, Complainant denies that the Complaint is “politically motivated,” “was never a tool to influence, manipulate, or sway the electorate with regards to such election,” and is not “politically coordinated” to any other matter pending before the Commission. Complainant requests that the Commission not be “distracted” by these arguments, and instead base its review on “the merits.” Complainant maintains that the Complaint “is about protecting and supporting staff and their rights.” Complainant also states that “Advisory Committee on Professional Ethics Opinion 713” “has no relevance as a reason to dismiss the [C]omplaint.”

Complainant reaffirms her allegation that Respondent violated N.J.S.A. 18A:12-24.1(g) because her “action in open session pertained to the nature of [the CADD teacher’s] employment.” According to Complainant, Respondent’s comment “compromised the administration of the [CADD] course,” “prompted an investigation with the [County Office],” and prompted “consideration of disciplinary action, i.e., termination.” Moreover, the CADD teacher “was never sent a Rice letter,” although her certification and “possible disciplinary action or dismissal” were discussed in open session. Complainant also disputes Respondent’s claim that the information she (Respondent) disclosed was not confidential because the “certification in question by Respondent was neither required for [the teacher’s] employment ... nor required for

receipt of a public pension.” Therefore, the matter was confidential and “should not have been subject to public disclosure by Respondent in open session without a Rice letter and approval from [the teacher] to discuss the matter in open session.” In addition, Complainant asserts that personnel qualifications and certifications are “components of their original application for employment” and, therefore, part of their confidential personnel file, as would be any “certifications, education, and/or trainings not required for a staff member’s current employment.” Complainant further reaffirms that Respondent disclosed information regarding the CADD teacher that was “confidential” under Board policy and the law. As to Respondent’s claim that the Assistant Superintendent was not referring to Respondent as the individual who provided the “misinformation,” Complainant reasserts that the Assistant Superintendent stated, “So, like [Respondent] said, I did do the research. And what I found was that everything was incorrect. So that’s misinformation.” According to Complainant, “Respondent’s certification also highlights an additional inaccuracy” – more specifically, the CADD teacher was not required to have the “voluntary certification” for employment nor required to obtain the certification to administer the CADD exam. Complainant asserts that as an “attorney practicing employment law,” Respondent was aware of her actions, they were “premeditated and deliberate,” and not a “reasonable mistake.” Therefore, the Commission should deny the Motion to Dismiss.

As to the violation of N.J.S.A. 18A:12-24.1(i), Complainant reaffirms that Respondent “publicly and falsely alleged [the CADD teacher] lacked a voluntary certification needed to administer the [exam], thereby compromising the administration of the [CADD] course.” Furthermore, because N.L. did not need the “voluntary certification” at all, Respondent’s “action” in open session “failed to support [the CADD teacher] and needlessly undermined [the CADD teacher’s] ability to effectively execute her duties administering the [CADD] program.” As such, Complainant reasserts that Respondent violated N.J.S.A. 18A:12-24.1(i), and the Commission should deny the Motion to Dismiss.

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 violated N.J.S.A. 18A:12-24.1(i).

B. Jurisdiction of the Commission

In reviewing the claims 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 Respondent and/or the Board violated the OPMA, Respondent and/or the Board should have issued N.L. a Rice notice, Respondent and/or the Board violated a Board policy or regulation, and/or Respondent's statements about N.L. were "defamatory" or "slanderous," the Commission advises that such determinations falls outside the scope, authority, and jurisdiction of the Commission. Nonetheless, Complainant may be able to pursue each of those claims in the appropriate tribunal; however, the Commission is not the appropriate entity to adjudicate such issues.

In addition, to the extent that Respondent asserts that "the Commission should promptly require a representation from [C]omplainant regarding any involvement of counsel in preparing this [C]omplaint, and satisfy itself that the requirements of Opinion 713 are being followed here," the Commission advises that it is not required by statute or regulation to investigate or adjudicate this claim, or to refer this allegation to any agency or body for further action. To the extent that Respondent (or her counsel) feels that Complainant, and/or an unknown individual, may have inappropriately engaged in the unauthorized practice of law (including the ghost writing of a pleading), she and/or her counsel, the individuals who apparently have specific and direct knowledge about these allegations, are free to make a referral to the appropriate agency or body.

C. Alleged Code Violations

In the Complaint, Complainant contends that Respondent violated N.J.S.A. 18A:12-24.1(g) and N.J.S.A. 18A:12-24.1(i). These provisions of the Code 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.
- i. I will support and protect school personnel in proper performance of their duties.

More specifically, Complainant asserts that Respondent violated N.J.S.A. 18A:12-24.1(g) because, at the Board's meeting, she (Respondent) "released information regarding N.L.'s job qualifications that was 'not public under any laws, regulations or court orders of this State,' and was 'confidential in accordance with board policies, procedures or practices.'" According to Complainant, Respondent's "inaccurate" comments jeopardized N.L.'s employment, and were not "personal opinion, a reasonable mistake, or attributable to developing circumstances."

Respondent counters that "public disclosure of a teacher's certification status, standing alone, cannot be a violation of N.J.S.A. 18A:12-24.1(g) since it is not confidential." In addition, Respondent maintains she "merely reported" information that she "was told by a school employee whose job it was to know this information," and she was not "criticiz[ing] or attack[ing] the staff member," but rather "appeal[ing] to the administration to solve a time-sensitive problem affecting all students pursuing the AutoCAD certification that school year." As to Complainant's assertion that Respondent provided "inaccurate" information to the public,

Respondent argues she “accurately reported” the information that she received from a school employee, i.e., her child’s guidance counselor.

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 alleged 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). First, Respondent did not “release” or “reveal” information about N.L., but rather shared information that was provided to her by a District employee, which questioned the credentials of another District employee. Importantly, Complainant has not provided any facts or evidence to establish how the issue of whether a teaching staff member may have the requisite certification(s) and/or endorsement for a particular position is private or confidential information. Furthermore, to the extent that the information presented by Respondent to the Board (and the public) was inaccurate, which seems clear from the record, Respondent’s reliance on what her child’s guidance counselor reported to her was reasonable and/or attributable to developing circumstances. Therefore, the Commission finds that the alleged violation of N.J.S.A. 18A:12-24.1(g) should be dismissed.

Complainant additionally argues that Respondent violated N.J.S.A. 18A:12-24.1(i) because she “took deliberate action by discussing N.L.’s employment in open session,” and such action “harmed N.L. in the proper performance of her duties as the [D]istrict’s only [CADD] teacher,” and also needlessly compromised her credibility and professional reputation to effectively administer the [D]istrict’s [CADD] program.” According to Complainant, Respondent’s “remarks brought forth unfounded scrutiny from parents” about N.L. and the CADD program, jeopardized N.L.’s employment, and undermined N.L.’s “ability to effectively administer the [D]istrict’s CADD program”

Respondent maintains, “she raised her concern in an appropriate forum and attempted to resolve it in-house without prematurely complaining to outside authorities.” Respondent further counters that Complainant did not provide any evidence that the information that Respondent shared regarding the CADD teacher had any “negative effect” on the CADD teacher, and is instead “replete with speculative allegations about the negative effect of [R]espondent’s comments.”

Pursuant to N.J.A.C. 6A:28-6.4(a)(9), factual evidence of a violation of N.J.S.A. 18A:12-24.1(i) shall include evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

Based on its review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated N.J.S.A. 18A:12-24.1(i). Based on Complainant's own recitation of the operative facts, Respondent merely relayed information to the Board (and the public) that she received from a District employee regarding one of her child's teachers (N.L.), and she (Respondent) expressed her concern about how this information could impact a particular subset of the District's students. There is nothing in the Complaint to indicate that Respondent presented this information – which was relayed to her by a staff member - to undermine, oppose, compromise, or harm N.L.; instead, it was relayed for awareness and for appropriate action by the administration as necessary. As a result, the Commission finds that the alleged violation of N.J.S.A. 18A:12-24.1(i) 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(i) as alleged in the Complaint.

IV. 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(i) as contended in the Complaint.

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: January 26, 2021

***Resolution Adopting Decision
in Connection with C60-20***

Whereas, at its meeting on December 22, 2020, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the response to the Motion to Dismiss submitted in connection with the above-referenced matter; and

Whereas, at its meeting on December 22, 2020, the Commission discussed granting 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) and/or violated N.J.S.A. 18A:12-24.1(i) as asserted in the Complaint; and

Whereas, at its meeting on January 26, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on December 22, 2020; 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 January 26, 2021.

Kathryn A. Whalen, Director
School Ethics Commission