

Before the School Ethics Commission
Docket No.: C74-20
Decision on Motion to Dismiss

Daniel Dart,
Complainant

v.

Beth Behrend,
Princeton Board of Education, Mercer County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on November 16, 2020, by Daniel Dart (Complainant), alleging that Beth Behrend (Respondent), a member of the Princeton Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code).

On November 17, 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 December 4, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On December 22, 2020, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated February 16, 2021, that this matter would be placed on the Commission's agenda for its meeting on February 23, 2021, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on February 23, 2021, the Commission considered the filings in this matter and, at its meeting on March 23, 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) as alleged in the Complaint. The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

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

II. Summary of the Pleadings

A. The Complaint

Complainant asserts that on October 12, 2020, a letter to the editor (letter) written by Respondent, the Board President and a member of the Finance Committee, was published in the Princeton Packet, and contained “highly misleading and inaccurate information that undermines the public trust.” More specifically, a statement in the letter indicated, “Devices were purchased with 5-year lease financing at no additional cost to taxpayers.” The “devices” referred to by Respondent included “2,500 expensive MacBook laptops and 570 Apple iPads for a total purchase price of \$2,591,986.50.” According to Complainant, the Board approved this purchase “by a narrow vote” at a special meeting on July 1, 2020, and, at this same meeting, the Board “voted unanimously to approve the purchase of 430 Chromebooks for \$104,920.00.”

Therefore, Complainant argues that Respondent’s statement about the purchase of the devices is “patently false.” According to Complainant, “[t]here was no government or other funding to support or subsidize the purchase of 3,500 computer devices that cost \$2,700,000 plus interest expense on the lease.” In addition, the “trade in of existing [Princeton School District (District)] computer devices” is only expected to generate \$160,000.00 in proceeds.

Complainant further contends that the “repayment of the cost of the computers, plus interest expense from the lease agreement, will come exclusively from the schools’ Operating Budget, 84% of which is funded by the local property tax levy.” According to Complainant, “Princeton taxpayers are responsible for 100% of the additional cost of 3,500 new computers that cost \$2,700,000 plus interest on the capital lease.”

Based on these facts, Complainant asserts that Respondent’s “patently false” statements violate *N.J.S.A.* 18A:12-24.1(g). In addition, and of note, although Complainant cites the date of occurrence for this violation as October 12, 2020 (the date of publication), Complainant states that “this inaccurate information was shared by electronic communication broadly in the Princeton community” on other dates as well.

B. Motion to Dismiss and Allegation of Frivolous Filing

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and argues that the Complaint must be dismissed because (a) it fails on its face to state a claim pursuant to *N.J.S.A.* 18A:12-24.1(g); (b) even if Complainant had stated a claim, he failed to meet his burden of proof pursuant to *N.J.A.C.* 6A:28-1.2; and (c) the Complaint is frivolous because it is designed solely to harass and intimidate Respondent.

In her filing, and because Complainant’s allegations are not numbered, Respondent submitted a revised copy of the Complaint, with numbered paragraphs, for reference. In addition, because the copy of the letter that Complainant filed “is not verifiable and does not show a link to the publication,” Respondent submitted a copy of the letter “as it appears on the Princeton Packet website.”

Although Respondent admits that she is the Board President, admits she is a member of the Board’s Finance Committee, admits she submitted a letter that was published on October 12,

2020, admits the letter included the statement, “[d]evices were purchased with five-year lease-financing at no additional cost to taxpayers,” and admits that the Board approved the purchase of Mac and Chromebook devices on July 1, 2020, Respondent denies the remaining allegations in the Complaint.

According to Respondent, although Complainant is obligated to set forth factual allegations in support of his claim, he only sets forth “his own personal opinions as evidence.” In this way, Complainant did not provide any “objective facts or evidence regarding how Respondent’s letter was misleading or inaccurate or how it undermines public trust.” Instead, Complainant “merely offers his own opinion without [providing] supporting evidence” for his allegations and, therefore, has “failed to allege sufficient facts – or any facts – which, if taken as true, would indicate that any violation ... occurred.”

Even if Complainant alleged facts sufficient to state a claim, which he did, Respondent argues that Complainant, to the extent he argues that she disclosed confidential information, “failed to show factual evidence that Respondent took action to make public, reveal or disclose information that was not public or that was otherwise confidential.” Respondent maintains that the information in her letter, including the specific statement at issue, “had been previously released to the public by way of the public Board meeting on July 1, 2020, the press and by the ... [D]istrict.” In short, and based on the independent evidence/Exhibits she provided, Respondent argues that her statement that, “[d]evices were purchased with 5-year lease financing at no additional cost to taxpayers’ merely echoed the messaging of the [D]istrict and did not violate the confidentiality provision of the [Act].”

Regarding the suggestion that she (Respondent) released “inaccurate information,” Respondent maintains that Complainant “failed to show factual evidence that substantiates the inaccuracy of the information,” and even if he did, he also failed “to meet an additional hurdle of showing that the alleged inaccuracy was other than reasonable mistake or personal opinion (or not attributable to developing circumstances).” Therefore, and because Complainant failed to “meet his burden of proof” to demonstrate that Respondent violated *N.J.S.A. 18A:12-24.1(g)*, Respondent submits that the Complaint should be dismissed.

Finally, Respondent argues that the Complaint is frivolous. Respondent first notes that Complainant “filed the instant Complaint within days after he learned Respondent was successfully re-elected to the [Board] and after he, himself, was served with an ethics complaint brought by a private citizen,” yet he failed to disclose this pending action (C65-20) in his Complaint. Had Complainant disclosed the pending action, it would have revealed that “it is related to Complainant’s actions as they pertain to the 2020 elections cycle, including that Complainant served as the campaign treasurer for a slate of candidates running to defeat the re-election of Respondent to the Board.” As such, Respondent believes the Complaint was filed “with malice and in retaliation for both the private citizen ethics complaint and Respondent’s successful re-election to the [Board].” Respondent asserts the Complaint was “designed to harass and intimidate Respondent from continuing service in Board leadership.” Furthermore, Respondent argues that the Complaint “lacks supporting facts,” and Complainant “knew or should have known that his Complaint has no reasonable basis in law or equity and cannot in good faith be supported.” Therefore, Respondent “respectfully requests” that the Complaint be dismissed because “[C]omplainant has failed to state a claim,” and the Complaint “was designed

solely to harass and intimidate.” Respondent further requests that the Commission impose sanctions against Complainant.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant reaffirms that Respondent’s statement about the District’s devices is “inaccurate,” and maintains that she violated *N.J.S.A.* 18A:12-24.1(g). Complainant also offered additional information (and documentation) to support his allegations, and argues that this information shows “that the payment for the new computers plus interest expense from the capital lease are newly added costs to be paid from General Funds that are provided by taxpayers through the property tax levy” and “49%” of public school funding comes from the tax levy. Furthermore, Complainant states that Respondent was aware of the July 1, 2020, “Resolution Agenda,” which indicated, “Yes to Fiscal Impact and General Funds as the budget Source” regarding the purchase of the “3,170 Apple devices” and “430 Chromebooks.” According to Complainant, Respondent’s “inaccurate information” is not Complainant’s personal opinion, nor can it be seen as a reasonable mistake because the “Agenda Details supporting the Resolution clearly indicate the device purchases have a Fiscal Impact.” Furthermore, Complainant argues that Respondent is “very familiar with *Advisory Opinion* A02-06,” which advises that a Board member is permitted to express his/her opinion provided the Board member does not “hold [him/her]self out as a board member and the information is accurate and not confidential.”

Complainant argues that, in her Motion to Dismiss, Respondent attempted to substitute “new statements not included in her October 12, [2020], Letter to the Editor,” namely that the “\$2.6 million dollar price tag for the purchases reflects costs over the next five years ... financing is essentially ‘budget neutral.’” This statement is “materially different from” Respondent’s actual “inaccurate statement” in the letter. Moreover, Respondent’s new “budget neutral” statement is also “incomplete and inaccurate as budgets are constructed and approved by the [Board] one year at a time.” According to Complainant, Respondent “is clearly speculating about future budgets that have not been approved, by a future [B]oard, in a future economy that is uncertain and unpredictable, five years hence.” Complainant argues that Respondent’s own written submissions/evidence substantiate the inaccuracies in her letter.

As to his Complaint allegedly being frivolous, Complainant denies this allegation, and argues this matter was “not commenced in bad faith for the purpose of harassment ...,” but because he (Complainant) believes it has “a solid basis in law, is supported by a strong, good faith argument and substantial factual evidence.” Complainant further denies that his Complaint is “in response, or in any way related to, any other Complain[t] that may be pending before the [Commission].” As such, Complainant “respectfully requests that the Commission deny Respondent’s Motion to Dismiss and request for sanctions.”

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 articulated sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(g)*.

B. Alleged Code Violation

Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(g)*, and this provision of the Code 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.

More specifically, Complainant contends that Respondent’s statement, “Devices were purchased with 5-year lease financing at no additional cost to taxpayers,” in her October 12, 2020, letter, contained “highly misleading and inaccurate information that undermines the public trust.” Per Complainant, “[t]here was no government or other funding to support or subsidize the purchase of 3,500 computer devices that cost \$2,700,000 plus interest expense on the lease”; the “repayment of the cost of the computers, plus interest expense from the lease agreement, will come exclusively from the schools’ Operating Budget, 84% of which is funded by the local property tax levy”; and “Princeton taxpayers are responsible for 100% of the additional cost of 3,500 new computers that cost \$2,700,000 plus interest on the capital lease.”

Respondent counters that Complainant did not provide any “objective facts or evidence regarding how Respondent’s letter was misleading or inaccurate or how it undermines public trust”; her statement that, “[d]evices were purchased with 5-year lease financing at no additional cost to taxpayers’ merely echoed the messaging of the [D]istrict and did not violate the confidentiality provision of the [Act]”; Complainant “failed to show factual evidence that substantiates the inaccuracy of the information” provided in her letter and, even if he did, he also failed “to meet an additional hurdle of showing that the alleged inaccuracy was other than reasonable mistake or personal opinion (or not attributable to developing circumstances).”

Pursuant to *N.J.A.C. 6A:28-6.4(a)(7)*, factual evidence 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). As an initial matter, the Commission notes that Respondent did not argue, and therefore, the Commission will not address, whether the letter was written in her personal/private capacity, and not in her capacity as a member of the Board. The Commission also notes that it is the “inaccurate information” provision of *N.J.S.A.* 18A:12-24.1(g), and not the “confidentiality” provision of *N.J.S.A.* 18A:12-24.1(g), implicated by the Complaint; therefore, the Commission will not further analyze an alleged violation of *N.J.S.A.* 18A:12-24.1(g) under the auspices of a purported disclosure of confidential information.

Regarding Complainant’s argument that Respondent provided “inaccurate information” in her letter, the Commission cannot discern, based on the facts set forth in the Complaint, whether Respondent actually provided “inaccurate” information. In its review, there is insufficient evidence to substantiate the inaccuracy of what Respondent stated in her letter. Although it seems possible that Respondent’s statement was inaccurate, it is equally possible that it was an artfully crafted statement about how the District would defray the costs associated with the purchase of the devices over time. Nonetheless, even if Respondent’s statement was inaccurate, Complainant has not provided sufficient facts to conclude that Respondent’s statement was other than reasonable mistake or personal opinion, or was not attributable to developing circumstances. In this regard, it is clear that there were multiple communications about the costs associated with the purchase of the devices from the District, and that same was not solely addressed by Respondent in her letter. Because Respondent’s statement was certainly in line with other District communications, the Commission cannot find **evidence** indicating Respondent’s statements were other than reasonable mistake, personal opinion, or not attributable to developing circumstances. For these reasons, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(g) 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) as asserted in the Complaint.

IV. Request for Sanctions

At its meeting on February 23, 2021, 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 its meeting on March 23, 2021, the Commission voted to find the Complaint not frivolous, and to deny the 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 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 the Complaint. 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: March 23, 2021

**Resolution Adopting Decision
in Connection with C74-20**

Whereas, at its meeting on February 23, 2021, 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 submitted in connection with the above-referenced matter; and

Whereas, at its meeting on February 23, 2021, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(g) as contended in the Complaint; and

Whereas, at its meeting on February 23, 2021, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at its meeting on March 23, 2021, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on February 23, 2021; 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 March 23, 2021.

Kathryn A. Whalen, Director
School Ethics Commission