

Before the School Ethics Commission
Docket No.: C38-21
Decision on Motion to Dismiss

Debra Maida
Complainant

v.

Jannett Pacheco and Kathleen Vogel,
Pemberton Board of Education, Burlington County,
Respondents

I. Procedural History

This matter arises from a Complaint that was initially filed on August 13, 2021, by Debra Maida (Complainant), alleging that Jannett Pacheco and Kathleen Vogel (Respondents) violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* Complainant was advised by the School Ethics Commission (Commission) that the initial Complaint was deficient, and that Complainant had ten (10) days to cure the deficiencies. As a result, Complainant filed an amended Complaint with the Commission on August 18, 2021. The Complaint avers that Respondents violated *N.J.S.A. 18A:12-24(f)* of the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.*

On August 20, 2021, the Complaint was served on Respondents, by electronic mail, notifying Respondents that charges were filed with the Commission, and advising that Respondents had twenty (20) days to file a responsive pleading.¹ On September 7, 2021, Respondent Pacheco filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), which included an allegation that the filing was frivolous. On September 10, 2021, Respondent Vogel filed a Motion to Dismiss in Lieu of Answer. On October 4, 2021, Complainant filed a response to each separate Motion to Dismiss.

On December 7, 2021, the parties were subsequently notified that this matter would be placed on the Commission's agenda for its meeting on December 14, 2021, to decide Respondents' Motions to Dismiss. At its meeting on December 14, 2021, the Commission considered the filings in this matter, including whether Complainant pleaded sufficient, credible facts to support a finding that Respondents violated *N.J.S.A. 18A:12-24(f)*.

A. *Alleged Violations of the Act*

Complainant contends that Respondents violated *N.J.S.A. 18A:12-24(f)*. The relevant provision of the Act is as follows:

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

- f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

B. Jurisdiction of the Commission

In reviewing the allegations in this matter, the Commission notes that its authority is limited to enforcing the Act, 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)*.

II. Summary of the Pleadings

A. The Complaint

Complainant alleges Respondents violated the Act when Respondents, individually and on separate occasions, released Complainant's college transcripts with individual grades as well as other personal information about Complainant, including her social security number and date of birth. According to Complainant, her personal information was provided to the Board and was to remain confidential. Complainant asserts that she did not authorize the release of her information and as a result the unauthorized disclosure violated her privacy and caused her great distress and humiliation.

B. Motion to Dismiss and Allegation of Frivolous Filing

Following receipt of the Complaint, Respondent Pacheco filed a Motion to Dismiss and alleged the Complaint was frivolous. Respondent Pacheco argues that Complainant failed to identify any financial gain she or any member of her family received because of the disclosure of Complainant's personal information. Respondent Pacheco further argues the Complaint is frivolous because it lacks any reasonable basis in law.

In her Motion to Dismiss, Respondent Vogel argues that as a teacher she is not a school official as defined in the Act. Respondent Vogel further argues Complainant did not provide any evidence to support the allegation that she or any member of her family secured any financial gain following the disclosure of Complainant's personal information.

C. Response to Motion to Dismiss & Frivolous Allegation

In response to the respective Motions to Dismiss, Complainant reaffirmed the allegations in the Complaint and argued that Respondents failed to follow procedures for handling confidential information. Complainant further argues she filed the Complaint in good faith because her privacy was violated following the unauthorized disclosure of her confidential information.

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 asserted sufficient facts which, if true, could support a finding that Respondents violated *N.J.S.A. 18A:12-24(f)*.

Alleged Prohibited Act Violations N.J.S.A 18A:12-24(f)

In this Complaint, Complainant alleges Respondents Pacheco and Vogel violated the Act when they disclosed confidential information about Complainant on two separate occasions. Complainant asserts Respondents' disclosure of her confidential information, including her college transcripts, social security number and other personal information not only violated her privacy rights but also violated the Act.

Allegations against Respondent Pacheco

Complainant asserts Respondent Pacheco, who serves as the District's Director of Human Resources, violated this provision of the Act on February 24, 2021, when she "released," by email, Complainant's official college transcripts to three other individuals as well as to Complainant. Complainant asserts that she did not authorize Respondent Pacheco to share her confidential information, which included her "individual grades, social security number, date of birth and other personal information . . ." Complainant further argues the District's policies and procedures for handling confidential information were not followed. Complainant contends the unauthorized disclosure of her confidential personal information . . . violated my privacy and caused me great distress and humiliation . . ." Complainant argues that Respondent Pacheco's unauthorized disclosure of confidential information, which was not generally available to the public, violated *N.J.S.A. 18A:12-24(f)*.

In response and as part of the Motion to Dismiss, Respondent Pacheco argues Complainant failed to present any argument that Respondent's actions, as alleged, were 'for the purpose of securing financial gain for [her]self, any member of [her] immediate family, or any business organization with which [she] is associated.' Respondent further argues that Complainant "simply alleges the disclosure of her 'confidential' transcripts 'violated [her] privacy and caused [her] great distress and humiliation'" which does not meet the requirements of the alleged provision and, therefore, should be dismissed. Respondent Pacheco asserts that the Complaint is frivolous because the Complaint is "without any reasonable basis in law" and, therefore, Respondent Pacheco "respectfully requests" that the Commission find the Complaint to be frivolous and impose the appropriate sanctions.

In response to Respondent Pacheco's Motion to Dismiss and allegation of frivolous filing, Complainant reaffirms her allegations and notes that there are procedures that need to be followed when requesting and obtaining confidential information from the Office of Human

Resources. Complainant reasserts she is the “Victim, [her] Privacy Violated, Confidential information discussed and distributed without [her] permission.” According to Complainant, Respondent Pacheco’s actions “caused [her] great distress and humiliation” because Complainant “received communication from sources informing [her] of the contents of” Respondent Pacheco’s emails and Complainant’s confidential information. Finally, Complainant asserts she filed the Complaint “in good faith.”

After a review of the alleged violation pled in the Complaint, the Commission determines that even if the facts as argued are proven true by sufficient credible evidence, they would not support a finding that Respondent Pacheco violated *N.J.S.A. 18A:12-24(f)* because the disclosure of Complainant’s personal information does not, by itself, give rise to a violation of the School Ethics Act.

Preliminarily, the Commission determines that Respondent Pacheco, in her role as the District’s Director of Human Resources, is considered a school administrator as defined by the Act, and subject to the Act’s requirements and obligations. Notwithstanding this conclusion, the Commission determines that Respondent Pacheco did not secure or receive any financial gain for herself, her family, or any business interest for which she is associated following her disclosure of Complainant’s personal information. While the Commission contemplated whether the disclosure of Complainant’s personal information may have violated Complainant’s privacy rights – and also perhaps the District’s policy for handling confidential information, the Commission’s review of a school administrator’s actions or behavior is limited to those actions that are expressly prohibited by the School Ethics Act. A school administrator’s disclosure of another individual’s confidential information, absent the administrator receiving a financial benefit because of the disclosure, does not fall squarely within the Act’s prohibited actions. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(f)* should be dismissed. The Commission also finds the Complaint is not frivolous because it was not filed in bad faith or for the purpose of harassment, delay, or malicious injury as set forth in the Commission’s regulations.

Furthermore, the Commission encourages districts to be cognizant of the Act’s definition of “administrator” and its attendant obligations under the Act when assigning titles to non-certificated staff who have duties and responsibilities involving hiring of personnel and the purchasing or acquisition of property or services.

Allegations against Respondent Vogel

Complainant asserts Respondent Vogel, who at the time of the alleged violation, was president of the Pemberton Township Education Association, violated this provision of the Act on February 25, 2021, when she “released” by email, Complainant’s official college transcripts with grades, social security number, date of birth, and other personal information to two other individuals as well as to Complainant. Complainant asserts that Respondent Vogel did not have “permission to violate my privacy by transmitting the personal confidential information” Complainant argues that Respondent Vogel was acting in her “school official capacity as Pemberton Township Education Association President” when she disclosed Complainant’s “confidential personnel data” without her permission. Complainant contends Respondent Vogel’s “unauthorized use of confidential personnel data” not only violated her privacy but also violated *N.J.S.A. 18A:12-24(f)*.

In response and as part of the Motion to Dismiss, Respondent Vogel argues that she is a teacher and not a school official as defined by the Act and, therefore, the Complaint should be dismissed. Moreover, Respondent Vogel argues Complainant does not provide any evidence to support the allegation that Respondent Vogel secured “financial gain for [her]self, any member of [her] immediate family, or any business organization which [s]he is associated” and, therefore, a violation of N.J.S.A. 18A:12-24(f) cannot be sustained.

In response to Respondent Vogel’s Motion to Dismiss, Complainant reaffirms her allegations, and argues Respondent Vogel’s actions “caused [her] great distress and humiliation” because Complainant “received communication from sources informing [her] of the contents of” Respondent Vogel’s emails and Complainant’s confidential information.”

After a review of the alleged violation pled in the Complaint, the Commission determines it does not have jurisdiction over Respondent Vogel because she was not a school administrator or school official as defined by the Act at the time of the disclosure. Specifically, the Commission determines that Respondent Vogel in her role as President of the Pemberton Township Education Association (PTEA) and in her role as a teacher does not meet the requirements of a school official as defined by the Act.

Nonetheless, the Commission determines that even if the facts as argued are proven true by sufficient credible evidence, they would not support a finding that Respondent Vogel violated N.J.S.A. 18A:12-24(f) because Respondent Vogel did not secure or receive any financial gain for herself, her family, or any business interest for which she is associated following her disclosure of Complainant’s personal information. Therefore, the Commission determines that the alleged violation of N.J.S.A. 18A:12-24(f) should be dismissed.

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 Respondents violated *N.J.S.A.* 18A:12-24(f).

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondents 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 25, 2022

***Resolution Adopting Decision
in Connection with C38-21***

Whereas, at its meeting on December 14, 2021, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), the allegation that the Complaint was frivolous, and the response to the Motion to Dismiss submitted in connection with the above-referenced matter; and

Whereas, at its meeting on December 14, 2021, the Commission discussed granting the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24(f); and

Whereas, at its meeting on December 14, 2021, the Commission discussed finding the Complaint not frivolous; and

Whereas, at its meeting on January 25, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on December 14, 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 January 25, 2022.

Salma T. Chand, Executive Director
School Ethics Commission