

Before the School Ethics Commission
Docket No.: C116-22
Decision on Motion to Dismiss

Jennifer Grana,
Complainant

v.

Kimberly Bragg,
Sparta Board of Education, Sussex County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on December 5, 2022, by Jennifer Grana (Complainant), alleging that Kimberly Bragg (Respondent), a member of the Sparta 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) in Counts 1-2.

On December 9, 2022, the Complaint was served on Respondent via electronic mail, notifying her that ethics charges had been filed against her with the Commission, and advising that she had twenty (20) days to file a responsive pleading.¹ On January 30, 2023, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and on March 1, 2023, Complainant filed a response to the Motion to Dismiss.

The parties were notified by correspondence dated April 17, 2023, that the above-captioned matter would be discussed by the Commission at its meeting on April 25, 2023, in order to make a determination regarding the Motion to Dismiss. Following its discussion on April 25, 2023, the Commission adopted a decision at its meeting on May 23, 2023, granting the Motion to Dismiss in its entirety because Complainant failed to plead sufficient credible facts to support a finding(s) that Respondent violated *N.J.S.A.* 18A:12-24.1(g) in Count 1 and/or Count 2 as contended in the Complaint.

¹ In order to conduct business during the Coronavirus (COVID-19) pandemic, the Commission implemented an electronic filing system, which remains a permissible method by which the Commission and parties can effectuate service of process. Consequently, service of process was effectuated by the Commission through electronic transmission only.

II. Summary of the Pleadings

A. *The Complaint*

Complainant, a former member of the Board who resigned on May 27, 2021, states that “[o]n or around July 22, 2022, [Respondent] ... provided [a] comment on a social media post on Facebook in a group called Sparta Parents for Public Education” claiming that Complainant “never completed the state mandated training required” during her (Complainant’s) tenure on the Board, and additionally claimed that the Sparta Township Public Schools District (District) was “negatively impacted” on the New Jersey Quality Single Accountability Continuum (QSAC) because of Complainant’s non-compliance.

On or about July 23, 2022, Respondent purportedly “provided supposed evidence regarding” Complainant’s training delinquency, but “it was eventually proven to be false.” Thereafter, and on August 8, 2022, Complainant submitted an Open Public Records Act (OPRA) request to verify that she had completed training, and also emailed the “Sussex County New Jersey School Boards Representative” on August 9, 2022, to inquire about her own training record. Per Complainant, responsive records from her OPRA request (and from the “Sussex County New Jersey School Boards Representative”) verified she completed all required training. In addition, the District “scored perfectly” in Governance on QSAC, thus confirming that the District was not “negatively impacted” by Complainant’s alleged non-compliance as suggested by Respondent. Based on these facts, and in Count 1, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(g) because she did not provide accurate information.

In Count 2, Complainant states that, following Respondent’s social media post on or about July 22, 2022, two community members questioned Complainant’s training record (and how it negatively impacted QSAC) on another Facebook group (“Sparta, NJ ... what’s going on in town!”). Because Complainant had, around that time, decided to run for election to the Board, she feels that Respondent’s “false comments created doubt in [her] training that caused community members who were potential voters to question [her] training record and, therefore, [her] validity as a viable and trustworthy candidate.” As such, Complainant submits that Respondent violated *N.J.S.A.* 18A:12-24.1(g) because the disclosure of this information needlessly injured Complainant in her bid for election.

B. *Motion to Dismiss*

In her Motion to Dismiss, Respondent argues that Complainant has failed to meet her burden to factually establish a violation of the confidentiality provision (Count 1) and/or inaccurate information provision (Count 2) of *N.J.S.A.* 18A:12-24.1(g). In this regard, Respondent argues that Complainant “has not revealed any information which was confidential under any laws, regulations, court orders, or Board policies, procedures, or practices” as Board member training records, as well as QSAC school district performance reviews, are matters of public record. Any suggestion that this information is “confidential” is belied by the fact that Complainant was able to obtain it as part of an OPRA request, and the information is also publicly available on the District’s website.

Moreover, Complainant “cannot meet her burden regarding the inaccurate information provision of the statute because she has not presented any factual information which establishes that the alleged inaccuracy contained in [Respondent’s] Facebook post was for any reason other than reasonable mistake or was not attributable to developing circumstances.” Per Respondent, she “reasonably relied on [the accuracy of] information and documentation provided to her” by the business administrator/board secretary that Complainant had not completed state-mandated training. As soon as Complainant disputed the veracity of the post, Respondent “promptly looked further into the issue, and publicly retracted her statement and apologized to Complainant” on August 10, 2022. In this way, even if Complainant can show that the information posted by Respondent was inaccurate, she cannot prove that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to development circumstances.

Based on the foregoing, Respondent maintains that there are no factual allegations which, if true, prove that Respondent “either revealed information that was not already public, or that she provided inaccurate information, *which inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.*” Consequently, Respondent requests that the Complaint must be dismissed in its entirety.

C. *Response to Motion to Dismiss*

In her response to the Motion to Dismiss, Complainant clarifies that she is not arguing that Respondent disclosed confidential information, but rather that Respondent’s “sharing [of] this information was hurtful in [Complainant’s] running for the Board ... election by creating doubt in the voting community that could damage [her] chances of running successfully.” Complainant also “takes issue” with Respondent’s representation that her mistake was reasonable as Respondent was under no obligation to post this information, and instead “took it upon herself to seek out information, supposedly, through the [b]usiness ... [o]ffice, to post on a social media website and the information was false.” Complainant further argues that Respondent used her capacity as Board President “to investigate the training history of a former Board [m]ember which is a giant waste of that staff member’s time,” and she did this just so she could “post the information on a social media site.” Complainant also disputes Respondent’s representation that she was “aware” that the District had lost a point on QSAC for Governance when, in fact, the only loss of a point was related to the untimely filing of Personal/Relative and Financial Disclosure Statements, not to training. Accordingly, Complainant respectfully requests that Respondent’s Motion to Dismiss be denied.

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(s) 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 pled sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(g) in Count 1 and/or Count 2.

B. *Alleged Violations of the Act*

Complainant submits that Respondent violated *N.J.S.A.* 18A:12-24.1(g) in Counts 1-2, 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.

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(7), factual evidence of a violation(s) of the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g) in Count 1 and/or Count 2 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) in Count 1 and/or Count 2 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.

Count 1

Following its review, the Commission finds that even if the facts as pled in Count 1 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). Even if Respondent should have taken far greater care, exercised greater diligence, and obtained more clear evidence that, as she was led to believe, Complainant failed to complete mandated training *before* she publicly proclaimed it as “fact” on social media, Complainant has failed to adduce sufficient factual evidence that the inaccuracy of Respondent’s statement was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. Of importance to the Commission is the fact that, as soon as she was questioned by Complainant about the inaccuracy of her statement, Respondent stated, “I will look into this and if I’m incorrect I will issue a retraction.” Moreover, following review of evidence that Complainant had in fact completed training, Respondent issued an appropriate retraction (“...I am retracting my statement that you did not complete the requisite Board member training and that [the] ... Board lost QSAC points for this. I sincerely apologize for my misstatement. Please repost this wherever my original statement was reposted by others ...”). Had Respondent not offered immediate and appropriate contrition, the Commission may not have viewed her inaccurate statement as other than reasonable mistake or personal opinion, or not attributable to developing circumstances. Therefore, the Commission finds that the purported violation of *N.J.S.A.* 18A:12-24.1(g) in Count 1 should be dismissed.

Count 2

After review, the Commission finds that even if the facts as averred in Count 2 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). The crux of Complainant’s argument is that because Respondent “falsely” disclosed to the community that Complainant failed to complete mandated training, Respondent “needlessly injured” Complainant in her bid for election to the Board. Absent some proffer that Complainant’s training status was “not public” under any laws, regulations, or court orders of this State, or was otherwise confidential in accordance with board policies, procedures or practices, which is belied by the fact that Complainant was able to obtain copies of her own training records through an OPRA request, a violation of the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g) cannot be substantiated. Consequently, the Commission finds that the stated violation of *N.J.S.A.* 18A:12-24.1(g) in Count 2 should also 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 Respondent violated *N.J.S.A.* 18A:12-24.1(g) in Count 1 and/or Count 2.

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 23, 2023

***Resolution Adopting Decision
in Connection with C116-22***

Whereas, at its meeting on April 25, 2023, 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 April 25, 2023, 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)* in Count 1 and/or Count 2; and

Whereas, at its meeting on May 23, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on April 25, 2023; 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 May 23, 2023.

Jeannine Pizzigoni
Staff Member, School Ethics Commission