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**MEREDITH A. MCCABE, JARRETT J.  
ELSEA, AND KAREN SEVERE**

v.

**JIGNESH SHAH,  
CHESTERFIELD BOARD OF EDUCATION,  
BURLINGTON COUNTY**

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**BEFORE THE SCHOOL  
ETHICS COMMISSION**

**DOCKET NO.: C52-18**

**DECISION ON  
MOTION TO DISMISS**

## **I. PROCEDURAL HISTORY**

This matter arises from a Complaint that was filed on August 8, 2018, by Meredith A. McCabe, Jarrett J. Elsea, and Karen Severe (Complainants), alleging that Jignesh Shah (Respondent), a member and President of the Chesterfield Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. More specifically, the Complaint alleges that Respondent violated N.J.S.A. 18A:12-24.1(e) and N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code) in Count 1, and violated N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-24.1(e), and N.J.S.A. 18A:12-24.1(g) in Count 2.

On August 9, 2018, the Complaint was served on Respondent, via regular and certified mail, notifying him that charges were filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to file a responsive pleading. On September 4, 2018, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On September 27, 2018, Complainants filed a Response to Respondent's Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated October 22, 2018, that this matter would be placed on the Commission's agenda for its meeting on October 30, 2018, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on October 30, 2018, the Commission considered the filings in this matter and, at its meeting on November 27, 2018, the Commission voted to grant the Motion to Dismiss in its entirety, 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, Complainants assert that on July 25, 2018, Respondent (the Board President) spoke with a member of the press regarding the allocation of the additional funding that the Chesterfield Township School District (District) was receiving from the State as an underfunded school district, and reported that the Board decided to apply a portion of the funding to a tax

refund. However, Respondent's interview took place (and part of/clips from the interview aired) before the Board's vote on its proposed budget and "plans for using the money received." In addition, Complainants allege that Respondent released "other information... such as the money would be spent on books, curriculum updates and counselors for the school," before the Board formally voted on these issues. Based on these facts, Complainants assert that Respondent's actions violated N.J.S.A. 18A:12-24.1(e) and N.J.S.A. 18A:12-24.1(g) because he took actions to make public, reveal or disclose information that was not public and was confidential in accordance with Board policies, procedures and practices.

In Count 2, Complainants assert that as a member of the Board's finance committee, Respondent participated in the creation of the Board's proposed budget for the 2018-2019 school year, which included a line item "stating that approximately 13% of the additional school funding from the" State would be allotted to the township as a tax refund. At the July 25, 2018, Board meeting, which took place *after* Respondent's interview with the press aired, members of the public, as well as members of the Board, expressed concern with the proposed allocation of the tax refund because the District was still underfunded. Ultimately, and although Respondent "maintained that he felt it was in the best interest of the township to receive a tax refund despite the school still being underfunded," the tax refund was not approved by the Board. Several days after the Board meeting, it was announced that Respondent had submitted paperwork to run for the Chesterfield Township Committee.

Complainants assert that Respondent's participation on the Board's finance committee, his continued belief that the township needed the tax refund more than the "underfunded" District, and his decision to release the information to the press prior to the Board's vote on the District's amended budget plan, demonstrates that Respondent willfully made a decision contrary to the educational welfare of the students. Based on this information, Complainants allege that Respondent violated N.J.S.A. 18A:12-24.1(e), N.J.S.A. 18A:12-24.1(g), N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), and N.J.S.A. 18A:12-24(c) because he released confidential information to the press, willfully made a decision contrary to the educational welfare of the children (by speaking to the press), and showed evidence that he used the school to acquire a benefit for himself, namely "favor amongst township members for his political aspirations as Township Committee member by supporting a tax refund at the expense of the underfunded District."

#### **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 states that Complainants have failed to provide sufficient facts to support a conclusion that he gave a direct order to school officials or became directly involved in the administration of the school. Respondent also argues that he did not disclose any "confidential" information to the press because everything discussed was already posted on the District's website, and had been available to the public for two (2) days before the Board meeting (and before his conversation with the press). He also argues that, as the Board President, he is authorized to speak on behalf of the Board; as such, his comments were not made for any personal gain, but rather in furtherance of his role as Board President. Respondent also counters that Complainants did not provide any evidence that the information

provided to the press was inaccurate. Therefore, Respondent asserts he did not violate N.J.S.A. 18A:12-24.1(e) and/or N.J.S.A. 18A:12-24.1(g) as alleged in Count 1 and Count 2.

Regarding Complainants' allegation that Respondent violated N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), and N.J.S.A. 18A:12-24(c) in Count 2, Respondent argues that Complainants have not sustained their burden of proof for any of these allegations. Respondent reiterates that, as Board President, he acted as a spokesperson of the Board with the approval of his fellow Board members, and in line with the Board's policy. Respondent asserts that Complainants did not provide any proof that Respondent's motivation in speaking to the press was to use his position as a member of the finance committee to help his alleged "political aspirations." According to Respondent, speaking to the press about the school funding and reporting the Board's decision to apply the funding to a tax refund, all before the Board's vote, does not support the allegation that he disclosed confidential information for personal benefit, nor does it support an allegation that he violated any provision of the Act.

Finally, Respondent asserts that the Complaint is frivolous because, as Board President, he is the authorized spokesperson for the Board and he simply gave an interview to the press about information that was already posted on the District's website (July 23, 2018). Complainants were "fully aware" that the information was posted on the District's website; therefore, Complainants filed the Complaint in bad faith solely for the purpose of harassment, embarrassment, delay or malicious injury.

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

In their response to Respondent's Motion to Dismiss and allegation of frivolous filing, Complainants assert that although the information regarding the proposed school budget was posted on the District's website, Respondent's statement to the press, i.e., "Our taxpayers have had that burden for a couple years now, so a very small portion is going back to the community," disclosed the results of a vote that had not yet occurred. In addition, Respondent did not clarify that his statements were "based on an upcoming vote" and, therefore, his comments suggest that the Board had already decided what the vote would be.

Complainants also reiterate that Respondent violated N.J.S.A. 18A:12-24.1(e) and N.J.S.A. 18A:12-24.1(g) when he chose to speak freely to the press about the outcome of a vote that had not yet occurred, and the comment to the press was harmful to the District. Specifically, Complainants assert that Respondent's comments gave the impression to other school districts that the District did not need the money for school funding, which could be disadvantageous when working towards fair school funding for the District in the future. Complainants also reaffirm that Respondent's choice to run for the Township Committee immediately after promising a tax relief to the community (at the expense of the District) reinforces their allegations that Respondent violated N.J.S.A. 18A:12-24.1(e), N.J.S.A. 18A:12-24.1(g), N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), and N.J.S.A. 18A:12-24(c). Finally, Complainants maintain that they filed this Complaint to hold the Board to the standard of the Commission and with the "success of our public school and it[s] students at the foremost of our concerns."

### 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 (Complainants), 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 Complainants have alleged facts which, if true, could support a finding that Respondent violated N.J.S.A. 18A:12-24.1(e) and N.J.S.A. 18A:12-24.1(g) in Count 1, and violated N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-24.1(e), and N.J.S.A. 18A:12-24.1(g) in Count 2.

#### B. Allegation of Prohibited Acts

In Count 2, Complainants allege that Respondent violated N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), and N.J.S.A. 18A:12-24(c). These provisions of the Act state:

- a. No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;
- b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;
- c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

##### 1. Alleged Violation of N.J.S.A. 18A:12-24(a)

To credit the alleged violation of N.J.S.A. 18A:12-24(a) in Count 2, the Commission must find evidence that Respondent engaged in a business, transaction, or professional activity that was in substantial conflict with the proper discharge of his duties in the public interest.

After review of Complainants' allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24(a). The Commission agrees with Respondent that Complainants have not sustained their burden of proof, as there are no facts

demonstrating, or even suggesting, that Respondent engaged in any business, transaction, or professional activity that was in substantial conflict with the proper discharge of his duties. Therefore, the Commission finds that the alleged violation of N.J.S.A. 18A:12-24(a) should be dismissed.

**2. Alleged Violation of N.J.S.A. 18A:12-24(b)**

In order to credit the alleged violation of N.J.S.A. 18A:12-24(b) in Count 2, the Commission must find evidence that Respondent used or attempted to use his official position to secure an unwarranted privilege, advantage or employment for himself, members of his immediate family or “others.”

Complainants argue that Respondent’s participation on the Board’s finance committee, his continued belief that the township needed the tax refund more than the “underfunded” District, and his decision to release the information to the press prior to the Board’s vote on the District’s amended budget plan, evidenced that he used the school to acquire a “benefit” for himself, namely “favor amongst township members for his political aspirations as Township Committee member by supporting a tax refund at the expense of the underfunded District.”

Based on its review of Complainants’ allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24(b). As argued by Respondent, there are no facts demonstrating *how* Respondent **used his position** as the Board President to secure an “unwarranted” privilege, advantage, or employment for himself, a member of his immediate family, or others. A board member’s belief on any issue is generally met with support or opposition from the public, and the fact that *some* township members may have agreed with Respondent’s position does not, in and of itself, mean that Respondent used his position for the purpose of securing an “unwarranted” privilege, advantage, or employment. In addition, and as noted above, Respondent released information to the press in his capacity as the spokesperson for the Board, and there is no evidence that his statements were made for his own personal gain. For these reasons, the Commission finds that the alleged violation of N.J.S.A. 18A:12-24(b) should be dismissed.

**3. Alleged Violation of N.J.S.A. 18A:12-24(c)**

To credit the alleged violation of N.J.S.A. 18A:12-24(c) in Count 2, the Commission must find evidence that Respondent acted in his official capacity in a matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. Alternatively, the Commission must find evidence that Respondent acted in his official capacity in a matter where he or a member of his immediate family had a personal involvement that created some benefit to him or to a member of his immediate family.

Complainants contend that Respondent’s participation on the Board’s finance committee, his continued belief that the township needed the tax refund more than the “underfunded”

District, and his decision to release the information to the press prior to the Board's vote on the proposed amended budget, shows evidence that he violated N.J.S.A. 18A:12-24(c) because he received a benefit, namely "favor amongst township members for his political aspirations."

After review of Complainants' allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24(c). Other than an assertion that Respondent received a benefit, namely "favor" from certain township members *following* his actions, there is no factual evidence that Respondent had an interest, direct or indirect financial involvement, at the time the actions occurred, or that he had a personal involvement that resulted in a benefit. Without facts demonstrating that Respondent had a direct or indirect financial involvement at the time he engaged in the foregoing actions, or an articulation of how Respondent was involved (personally), the Commission finds that the alleged violation of N.J.S.A. 18A:12-24(c) should be dismissed.

### **C. Alleged Code Violations**

Complainants allege, in both Count 1 and Count 2 of the Complaint, that Respondent violated N.J.S.A. 18A:12-24.1(e) and N.J.S.A. 18A:12-24.1(g). These provisions of the Code provide, respectively:

e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

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.

#### **1. Alleged Violation of N.J.S.A. 18A:12-24.1(e)**

Pursuant to N.J.A.C. 6A:28-6.4(a)(5), factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that Respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the Board.

Complainants argue that by disclosing "confidential" information about the District's amended budget plan to the press before the Board formally voted to approve the budget, Respondent "took action to make public" information that was not yet public and, thereby, compromised the Board. Respondent counters that, as the Board President, he is specifically authorized to speak on behalf of the Board.

After review of Complainants' allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(e) in Count 1 and/or Count 2. In order to sustain a violation of N.J.S.A. 18A:12-24.1(e), Complainants needed to provide evidence that

Respondent took action beyond the scope of his duties as a Board member. However, there is nothing in the record to suggest that Respondent exceeded his authority and, instead, it confirms that, as the Board President, Respondent is authorized to speak on behalf of the Board about issues pertaining to the District. Therefore, the Commission finds that the alleged violation of N.J.S.A. 18A:12-24.1(e) in Count 1 and Count 2 should be dismissed.

**2. Alleged Violation of N.J.S.A. 18A:12-24.1(g)**

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

Complainants contend that by disclosing “confidential” information about the District’s amended budget plan to the press before the Board formally voted to approve the budget, Respondent revealed information that was not yet public. In his Motion to Dismiss, Respondent argued that the substance of his comments to the press was predicated on information that “was available to the public on the Chesterfield Township [E]lementary [S]chool’s website on July 23, 2018, two days prior to [Respondent] speaking with the press.” In their response to the Motion to Dismiss, Complainants conceded that, “what the school board would be voting on was in fact posted,” on the District’s website, but Respondent’s comments about how the Board would vote later that evening was violative of the Act.

Based on its review of Complainants’ allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(g). The information which formed the basis for Respondent’s statements to the press was, as admitted by Complainants, publicly available to the community before Respondent made his statement, and before the Board’s vote on the amended budget plan (based on the receipt of additional State funding). Although, based on Respondent’s statements to the press, it arguably appeared as if the Board had already decided how it would allocate (and spend) its additional funding, Respondent was, in actuality, merely explaining the content of the *proposed* amended budget plan, not the content of the approved amended budget plan. As a result, the Commission finds that the alleged violation of N.J.S.A. 18A:12-24.1(g) in Count 1 and Count 2 should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainants), the Commission has determined that Complainants have not alleged facts sufficient to state a claim for a violation of N.J.S.A. 18A:12-24.1(e) and N.J.S.A. 18A:12-24.1(g) as alleged in Count 1, and/or a violation of N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-24.1(e), and N.J.S.A. 18A:12-24.1(g) as alleged in Count 2. Therefore, the Commission *grants* Respondent’s Motion to Dismiss in its entirety.

#### IV. REQUEST FOR SANCTIONS

At its meeting on October 30, 2018, 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 which might show that Complainants 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 Complainants 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, the Commission finds that the Complaint is not frivolous, and denies 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 (Complainants), the Commission *grants* 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(e) and N.J.S.A. 18A:12-24.1(g) as alleged in Count 1, and/or violated N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-24.1(e), and N.J.S.A. 18A:12-24.1(g) as alleged in Count 2. The Commission also finds that the Complaint is not frivolous, and denies Respondent's request for sanctions.

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies Complainants 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).

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Robert W. Bender, Chairperson

Mailing Date: November 28, 2018



**RESOLUTION ADOPTING DECISION  
IN CONNECTION WITH C52-18**

**WHEREAS**, at its meeting on October 30, 2018, 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 this matter; and

**WHEREAS**, at its meeting on October 30, 2018, 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(e) and N.J.S.A. 18A:12-24.1(g) as alleged in Count 1, and/or violated N.J.S.A. 18A:12-24(a), N.J.S.A. 18A:12-24(b), N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-24.1(e), and N.J.S.A. 18A:12-24.1(g) as alleged in Count 2; and

**WHEREAS**, at its meeting on October 30, 2018, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

**WHEREAS**, at its meeting on November 27, 2018, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from October 30, 2018; 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.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on November 27, 2018.

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Kathryn A. Whalen, Director  
School Ethics Commission