

Before the School Ethics Commission
Docket No.: C22-19
Decision on Motion to Dismiss

**Anthony D'Amico,
Complainant**

v.

**Denis Wilbeck,
Bayonne Board of Education, Hudson County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on March 25, 2019, by Anthony D'Amico (Complainant), alleging that Denis Wilbeck (Respondent), a member of the Bayonne 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(b) and *N.J.S.A.* 18A:12-24.1(j) of the Code of Ethics for School Board Members (Code).

On March 27, 2019, 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 April 22, 2019, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). When Complainant failed to file a response to the Motion to Dismiss, he was advised by correspondence dated May 21, 2019, and June 11, 2019, that failure to file a responsive brief would result in the Commission ruling on the Motion to Dismiss without considering any written submission from him. As of July 14, 2019, Complainant had not filed a response to the Motion to Dismiss.

The parties were notified by correspondence dated July 15, 2019, that this matter would be placed on the Commission's agenda for its meeting on July 23, 2019, in order to make a determination regarding the Motion to Dismiss. At its meeting on July 23, 2019, the Commission considered the filings in this matter and, at its special meeting on August 30, 2019, 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(b) and/or *N.J.S.A.* 18A:12-24.1(j).

II. Summary of the Pleadings

A. The Complaint

Complainant asserts that at a Board meeting on January 30, 2019, he (Complainant) made a comment during the public portion of the meeting. When he was done speaking, Respondent read from a prepared statement and stated, among other things, that Complainant was “delusional and that his condition could be treated medically.” Complainant argues that Respondent’s statement was “slanderous and an attack on [his] character and reputation,” and that he falsely accused him (Complainant) of having a medical disorder. As such, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(j)* because he “acted out of emotion and responded to the public without first seeking any legal [advice] or addressing it with the chief administrative officer.” According to Complainant, it was only after Respondent could not get a solution that he should have responded. Complainant also asserts that Respondent violated *N.J.S.A. 18A:12-24.1(b)* because he “wrongfully and publicly accused [Complainant] of having a mental and medical condition, without fact, knowledge or guidance from the [Board] or its attorney.”

B. Motion to Dismiss

Following receipt of the Complaint, Respondent filed a Motion to Dismiss. Respondent maintains the Complaint should be dismissed because there is no basis to find that he violated *N.J.S.A. 18A:12-24.1(b)* and/or *N.J.S.A. 18A:12-24.1(j)*. Respondent argues that Complainant did not provide any evidence that Respondent “willfully made a decision contrary to the educational welfare of children, or evidence that the respondent(s) took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children.” Respondent admits that he made comments at a public meeting in response to comments and criticism directed at him (Respondent) by Complainant; however, neither Complainant’s comments nor Respondent’s reply were related to the “welfare of the children or the programs and policies designed to meet the individual needs of children.” Therefore, the allegation that Respondent violated *N.J.S.A. 18A:12-24.1(b)* should be dismissed.

Likewise, Respondent argues, there is no evidence to support Complainant’s allegations that Respondent violated *N.J.S.A. 18A:12-24.1(j)*. Respondent argues that Complainant’s comments were made at a public meeting and were directed to, and were critical of, Respondent. Although Respondent’s reply to Complainant may have been “strong,” it did not constitute a violation of *N.J.S.A. 18A:12-24.1(j)*. At the time of Complainant’s comment, and Respondent’s response, a “complaint” was not at issue, and Respondent was not attempting to resolve an issue or to conduct an investigation. Therefore, Respondent asserts the allegation that he violated *N.J.S.A. 18A:12-24.1(j)* should be dismissed.

C. Response to Motion to Dismiss

Although the Commission sent correspondence to Complainant dated May 21, 2019, and June 11, 2019, reminding him to file a response to the Motion to Dismiss, Complainant never submitted a response.

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(b)* and/or *N.J.S.A. 18A:12-24.1(j)*.

B. *Alleged Code Violations*

In the Complaint, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(b)* and *N.J.S.A. 18A:12-24.1(j)*. These provisions of the Code provide:

b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

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

As set forth in *N.J.A.C. 6A:28-6.4(a)(2)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(b)* shall include evidence that Respondent willfully made a decision contrary to the educational welfare of children, or evidence that Respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

In the Complaint, Complainant alleges that when Respondent, following Complainant's comment during the public portion of the meeting, called Complainant "delusional" and stated that "his condition could be treated medically," he (Respondent) violated *N.J.S.A. 18A:12-24.1(b)* because he "wrongfully and publicly accused [Complainant] of having a mental and medical condition, without fact, knowledge or guidance from the [Board] or its attorney." Respondent counters that Complainant did not provide any evidence in support of his claim. Moreover, although Respondent admits that he made comments at a public meeting in response to comments and criticism directed at him (Respondent) by Complainant, neither Complainant's comments nor Respondent's reply were related to the "welfare of the children or the programs and policies designed to meet the individual needs of children."

After review of Complainant's allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(b). Although Respondent's retort to Complainant's comments may have been inappropriate (even harsh), and perhaps actionable in another forum, factual evidence has not been adduced to suggest, let alone establish, that Respondent's retort constituted a "decision" contrary to the educational welfare of children, or deliberate "action" to obstruct the programs and policies designed to meet the individual needs of all children. In addition, the subject of Complainant's comments, and Respondent's retort, related to an internal Board governance issue. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(b) should be dismissed.

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

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(10), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(j) shall include evidence that Respondent acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint (i) prior to referral to the chief administrative officer, or (ii) at a time or place other than a public meeting and prior to the failure of an administrative solution.

In the Complaint, Complainant argues that when Respondent, following Complainant's comment during the public portion of the meeting, called Complainant "delusional" and stated that "his condition could be treated medically," he (Respondent) violated *N.J.S.A.* 18A:12-24.1(j) because he "acted out of emotion and responded to the public without first seeking any legal [advice] or addressing it with the chief administrative officer." Respondent counters that there is no evidence to support Complainant's allegations because, at the time of Complainant's comment and Respondent's response, a "complaint" was not at issue. Moreover, Respondent's response to Complainant's comment, while strong, was not an attempt to resolve an issue or to conduct an investigation.

Based on its review of Complainant's allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(j). More specifically, Complainant has not offered factual support for the position that, at the time he made his public comments at the Board meeting, or at any time prior thereto, he was filing (or had filed) a "complaint." Instead, the factual evidence shows that Complainant made comments/remarks during the public portion of the meeting so that he could express his opinion on Respondent's comments about a fellow Board member. However, Complainant's stated opinion was not, based on the record, a complaint. In addition, Respondent's retort to Complainant's stated opinion was not an attempt to resolve Complainant's comments and/or an attempt to conduct an investigation. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(j) 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(b) and/or violated *N.J.S.A.* 18A:12-24.1(j).

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(b) and/or *N.J.S.A.* 18A:12-24.1(j).

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: August 30, 2019

***Resolution Adopting Decision
in Connection with C22-19***

Whereas, at its meeting on July 23, 2019, the School Ethics Commission (Commission) considered the Complaint and the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and submitted in connection with the above-referenced matter; and

Whereas, at its meeting on July 23, 2019, 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(b) and/or violated *N.J.S.A.* 18A:12-24.1(j); and

Whereas, at its special meeting on August 30, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on July 23, 2019; 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 special meeting on August 30, 2019.

Kathryn A. Whalen, Director
School Ethics Commission