

***Before the School Ethics Commission***  
***Docket No.: C09-23***  
***Decision on Motion to Dismiss***

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**Robert Zywicki,**  
***Complainant***

v.

**Elizabeth Ouimet,**  
**Mount Olive Township Board of Education, Morris County,**  
***Respondent***

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**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on January 23, 2023, by Robert Zywicki (Complainant), alleging that Elizabeth Ouimet (Respondent), a member of the Mount Olive Township 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 February 15, 2023, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On March 20, 2023, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated June 21, 2023, that the above-captioned matter would be discussed by the Commission at its meeting on June 27, 2023, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. Following its discussion on June 27, 2023, the Commission adopted a decision at its meeting on July 25, 2023, granting 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). The Commission also adopted a decision finding the Complaint not frivolous and denying Respondent's request for sanctions.

**II. Summary of the Pleadings**

**A. *The Complaint***

Complainant states that he is the Superintendent of the Board. In Count 1, Complainant alleges that “[f]ollowing [Board] meetings of October 10, 2022, and thereafter, at the [New Jersey School Boards Association (NJSBA)] workshop in October 2022, [Respondent] discussed confidential matters related to my employment with multiple former district administrators,

including a former administrator.” Complainant alleged the disclosures were a violation of *N.J.S.A. 18A:12-24.1(g)*.

In Count 2, Complainant submits that following a December 2022 Board meeting, “without permission or authority to do so, [Respondent] disclosed confidential information related to Complainant’s employment at a local restaurant, the Market Tavern, within earshot of local citizens.” Complainant alleges this action to be a violation of *N.J.S.A. 18A:12-24.1(g)*.

**B. *Motion to Dismiss and Allegation of Frivolous Filing***

After receipt of the Complaint, Respondent filed a Motion to Dismiss. By way of background Respondent asserts the Board discussed Complainant’s employment in executive session on October 10, 2022, and after the meeting issued Complainant a notice that he was being placed on administrative leave. Thereafter, Respondent explains, the Board formally placed Complainant on administrative leave on October 17, 2022, retroactive to October 11, 2022. According to Respondent, various New Jersey media outlets began reporting about Complainant’s suspension, and the Board members’ refusal to comment on personnel matters frustrated community members. Respondent further asserts that on October 28, 2022, Complainant filed a Notice of Tort Claim against Respondent stemming from Respondent’s alleged disclosure of confidential information with respect to Complainant’s employment, which resulted in a lack of quorum at the November 21, 2022, Board meeting due to Respondent’s recusal on matters involving Complainant. Moreover, Respondent states that also on October 28, 2022, Complainant filed a Verified Complaint and Order to Show Cause (OTSC) in the Superior Court, challenging the Board’s actions and seeking reinstatement, which was denied.

With respect to both counts of the Complaint, Respondent argues the allegations lack clarity and do not provide any details as to what information was disclosed, other than that it is “confidential information.” Respondent asserts the allegations do not “specify what was disclosed, to whom, specifically, any information was disclosed, or any context that would allow anyone to assess whether the information at issue was actually confidential.” Respondent contends that without further information, the Commission cannot determine that the facts if taken as true would constitute a violation of *N.J.S.A. 18A:12-24.1(g)*.

Respondent submits the Complaint is frivolous because Complainant filed it to “harass, delay, and retaliate” against a Board member who participated in a vote that resulted in Complainant’s suspension. Respondent avers the Complaint is “intended to create a conflict and thereby infect and delay matters involving his employment” as Complainant has filed “multiple complaints with the School Ethics Commission with this ill-motive since his suspension from employment.” As such, Respondent requests the Commission impose sanctions on 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 submits that any allegation of insufficient facts in the complaint has been cured by an accompanying certification of Complainant. Complainant argues “the fact that [Complainant] was suspended and the content of the October 10 closed session is what was disclosed,” and it

was done so by Respondent to “members of the public in and around Mount Olive,” as well as at the NJSBA Workshop in Atlantic City. Additionally, Complainant contends Respondent “continued to discuss [Complainant’s] employment, including the possibility of Tenure Charges being brought against him, as well as some details of claims that he engaged in an inappropriate communication with the District architect.”

As such, Complainant argues the Commission should deny Respondent’s motion to dismiss as any argument regarding insufficient facts no longer has any merit.

### **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.*<sup>1</sup> 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)*.

#### **B. Alleged Code Violations**

Complainant submits that, based on the conduct asserted in the Complaint, 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.

Pursuant to *N.J.A.C. 6A:28-6.4(a)(4)*, 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.

Following its review of the Complaint, the Commission finds that even if the facts as alleged in Counts 1 and 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)*. Complainant alleged that Respondent “discussed confidential matters related to [his] employment.” Such a bare allegation provides no information as to what information may have been discussed other than that

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<sup>1</sup> References to the administrative code refer to the regulations that were in effect at the time the Complaint was filed on January 23, 2023.

Complainant had been suspended. The fact that Complainant was suspended from employment was reported in the New Jersey news media and was a public fact. Additionally, Complainant made the status of his employment public by filing an OTSC in Superior Court. There is no specificity in the Complaint that Respondent revealed any other information that may be confidential. While Complainant attempts to cure Complainant's lack of detail in his response to the Motion to Dismiss and allegation of frivolous filing, the Commission notes it should only consider the four corners of the pleadings in deciding a motion to dismiss, but the additional information in Complainant's response nevertheless fails to demonstrate that Respondent revealed confidential information. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in both Counts 1 and 2 should be dismissed.

#### **IV. Request for Sanctions**

At its meeting on June 27, 2023, 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 July 25, 2023, 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). 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).*

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Robert W. Bender, Chairperson

Mailing Date: July 25, 2023

***Resolution Adopting Decision  
in Connection with C09-23***

***Whereas***, at its meeting on June 27, 2023, 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 June 27, 2023, 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); and

***Whereas***, at its meeting on June 27, 2023, the Commission discussed finding the Complaint not frivolous and denying the request for sanctions; and

***Whereas***, at its meeting on July 25, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on June 27, 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.

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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 July 25, 2023.

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Brigid C. Martens, Acting Director  
School Ethics Commission