

***Before the School Ethics Commission***  
***Docket No.: C27-23***  
***Decision on Motion to Dismiss***

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

v.

**Anthony Giordano,**  
**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 February 27, 2023, by Robert Zywicki (Complainant), alleging that Anthony Giordano (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) and *N.J.S.A.* 18A:12-24.1(i) of the Code of Ethics for School Board Members (Code).

On April 6, 2023, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). On May 16, 2023, Complainant filed a response to the Motion to Dismiss.

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. 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) and *N.J.S.A.* 18A:12-24.1(i).<sup>1</sup>

**II. Summary of the Pleadings**

**A. *The Complaint***

By way of background, Complainant states that he is the Superintendent of the Board, and Respondent is a Board member as well as the Superintendent of the Mansfield School District (Mansfield). Complainant indicates that Respondent is conflicted on all matters involving Respondent's employment due to ongoing litigation.

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<sup>1</sup> To the extent that the Motion to Dismiss made an allegation of frivolous filing, the Commission also adopted a decision finding the Complaint not frivolous.

According to Complainant, Respondent attended the New Jersey Association of School Administrators [NJASA] Techspo Conference in Atlantic City on January 25-27, 2023, “in his capacity as Mansfield Superintendent at the expense of his employer.” In Count 1, Complainant asserts “[o]n the evening of January 25<sup>th</sup> while drinking at the lobby bar at Harrah’s, Respondent took private action as a member of the Board and disclosed confidential personnel information about Complainant. He retaliated against the Complainant for the [Conscientious Employee Protection Act (CEPA)] and [New Jersey Law Against Discrimination (LAD)] suit[s] by telling multiple superintendents and vendors ‘you will see when this is all over Rob is a criminal.’” Complainant alleges the “defamation and disclosure of confidential employment matters” is a violation of *N.J.S.A.* 18A:12-24.1(i).

In Count 2, Complainant asserts that during the [New Jersey Association of School Administrators (NJASA)] NJASA Techspo Conference in Atlantic City, New Jersey, at the Wingcraft Bar on January 26, 2023, “Respondent took private action as a member of the Board, disclosed confidential personnel information about Complainant, and retaliated against Complainant when he told multiple superintendents and vendors ‘Tenure charges are coming against Rob. Marc (Zitomer) [Board counsel] has a plan for the doctrine of necessity to get them certified.’” Complainant submits this “defamation and disclosure of confidential employment matters” is a violation of *N.J.S.A.* 18A:12-24.1(g).

Finally, and in Count 3, Complainant maintains Respondent attended the School Superintendent’s Association (AASA) national conference in San Antonio, Texas, on February 15-17, 2023, “in his capacity as Mansfield Superintendent at the expense of his employer.” Respondent contends, “[o]n the evening of January 16<sup>th</sup> [sic] while attending a dinner sponsored by a school technology vendor, Respondent took private action as a member of the Board, disclosed confidential personnel information about Complainant when he told multiple superintendents and vendors that the Board ‘had filed a tenure charge against Rob.’” Complainant submits Respondent violated *N.J.S.A.* 18A:12-24.1(g).

## **B. *Motion to Dismiss***

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 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 by Order dated December 2, 2022. Additionally, Respondent claims on February 3, 2023, tenure charges against Complainant were filed with the Board Secretary.

With respect to Count 1, Respondent argues as of the date of the alleged comment, it was “well known” that Complainant had been suspended from employment with the Board, as multiple media outlets had covered the story and Complainant’s reinstatement had been denied by Court Order. As such, Respondent argues that it was public information that Complainant, “in the Board’s view, had engaged in conduct so severe that it warranted relieving Complainant of his duties to oversee the school district.” Respondent contends that the alleged comment was “not direct, confrontational, or intimidating” and does not rise to the level of a violation of *N.J.S.A.* 18A:12-24.1(i).

As to Count 2, Respondent asserts it was “public knowledge” that Complainant had been suspended and his employment was “in jeopardy.” It was apparent from Complainant’s OTSC in Superior Court, which is public record, that Complainant was “facing serious discipline, which could and ultimately did include tenure charges.” As such, Respondent contends that the alleged statement was not a disclosure of confidential information as it “was a statement consistent with everything that had already been publicly reported and disclosed,” and therefore, was not a violation of *N.J.S.A.* 18A:12-24.1(g).

Regarding Count 3, Respondent asserts that tenure charges are public records, and the tenure charges against Complainant were filed on February 3, 2023, at least twelve days prior to the conference in which the alleged statement occurred. Respondent contends that “factual statements as to the existence of public records do not amount to the disclosure of confidential information and do not needlessly injure individuals,” and therefore, he did not violate *N.J.S.A.* 18A:12-24.1(g).<sup>2</sup>

### **C. *Response to Motion to Dismiss***

In response to the Motion to Dismiss, Complainant submits Respondent’s motion should be denied because, according to guidance from the New Jersey School Boards Association, “school board members are not allowed to publicly discuss evaluative aspects of the staff member’s employment, unless the employee authorizes it.” Accordingly, Complainant argues that this matter must proceed to a hearing.

## **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

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<sup>2</sup> Although not addressed within the argument of Respondent’s Motion to Dismiss, Respondent concluded the brief by requesting the Commission grant “Respondent’s Motion to Dismiss in Lieu of Answer and find this filing to be frivolous.” Complainant did not address the allegation of frivolous filing in his response to the Motion to Dismiss.

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>3</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) in Counts 2 and 3 and/or *N.J.S.A.* 18A:12-24.1(i) in Count 1.

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

Complainant submits that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A.* 18A:12-24.1(g) in Counts 2 and 3 and *N.J.S.A.* 18A:12-24.1(i) in Count 1, and these provisions of the Code provide:

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.

i. I will support and protect school personnel in proper performance of their duties.

Pursuant to *N.J.A.C.* 6A:28-6.4(a), violation(s) of *N.J.S.A.* 18A:12-24.1(g), and/or *N.J.S.A.* 18A:12-24.1(i) need to be supported by certain factual evidence, more specifically:

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.

9. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(i) shall include evidence that Respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

Following a thorough review of the Complaint, the Commission finds that even if the facts as contended 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) in Counts 2 and 3 and/or *N.J.S.A.* 18A:12-24.1(i) in Count 1. The alleged statement “you will see when this is all over Rob is a criminal” in Count 1 did not undermine or harm Complainant in the proper performance of his duties in violation of *N.J.S.A.* 18A:12-24.1(i). The statement appears to be in reference to Complainant’s suspension, which was already public knowledge through the OTSC filed by Complainant, as well as the news media reports. While such a remark may not be kind, it does not undermine, compromise or harm school personnel given the circumstances surrounding Complainant’s suspension. The alleged

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<sup>3</sup> References to the administrative code refer to the regulations that were in effect at the time the Complaint was filed on February 27, 2023.

statement in Count 2, “[t]enure charges are coming against Rob. Marc (Zitomer) has a plan for the doctrine of necessity to get them certified” stems from Complainant’s suspension and the filing of tenure charges as a result. It became public knowledge through the OTSC, and filings associated therewith that the Board sought discipline and/or further action against Complainant. The fact that the Board would pursue tenure charges was not confidential and fails to violate *N.J.S.A.* 18A:12-24.1(g). Finally, the alleged statement in Count 3, that the Board “had filed a tenure charge against Rob,” did not reveal any confidential information. The filing of tenure charges is public information. Revealing the mere existence of public tenure charges cannot constitute a violation of *N.J.S.A.* 18A:12-24.1(g). Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in Counts 2 and 3 and *N.J.S.A.* 18A:12-24.1(i) in Count 1 should be dismissed.

#### **IV. Allegation of Frivolous Filing**

While the Motion to Dismiss did not outwardly argue that the Complaint is frivolous, it made one reference to the word “frivolous.” At its meeting on June 27, 2023, the Commission nevertheless considered whether the Complaint is frivolous. To the extent that Respondent alleges that the Complaint is frivolous, 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.

#### **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) in Counts 2 and 3 and/or *N.J.S.A.* 18A:12-24.1(i) in Count 1. The Commission also voted to find that the Complaint is not frivolous.

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 C27-23***

***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 the response to the Motion to Dismiss 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) in Counts 2 and 3 and *N.J.S.A.* 18A:12-24.1(i) in Count 1; and

***Whereas***, at its meeting on June 27, 2023, the Commission discussed finding the Complaint not frivolous; 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