



and has “violated code by allowing a minimum of 1 board member, a member and not chair of [the] government committee, and perhaps other chosen members to see all 9 evaluations [thereby] denying [his] right by law to see all evaluations.” The complainant contends that a discussion and meeting with the Superintendent was in closed session on June 25 without any minutes taken. The complainant also alleges that he has learned that there are no minutes for closed sessions under Ms. Millman. The complainant alleges that the above constitutes a violation of N.J.S.A. 18A:12-24.1(a). (Amended Complaint at paragraph 1)

The complainant next alleges that on March 27, 2007 and June 4, 2007, contrary to current bylaws, “rules” were established by the respondents for the Board President to be the gatekeeper of information and questions between board members and the administration. In this connection, the complainant asserts he is left without means to communicate with the administration or the public and his inability to speak directly with the Superintendent prevents him from first going to the Superintendent to resolve complaints, thereby posing an “ethical dilemma.” The complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(a). (Id. at paragraph 2)

The complainant further contends that the Respondent Millman refused to follow board policy (#9132) which allows a committee chairperson to contact the board secretary to set up a meeting. Rather, the complainant alleges the Board President informed him that only she and the Superintendent had authority to set up committee meetings; she instructed the board secretary not to speak with the complainant. The complainant asserts that Respondent Millman and the Superintendent operated outside the committee system, having discussions with outside groups and not informing the committee chairperson.

Finally, the complainant alleges that when he sent a letter dated May 31, 2007 to the Superintendent advising him that he and the Board President had violated district policy, the Superintendent replied with a letter from his attorney stating that it was he, the complainant, who had violated the Code of Ethics, and that, as the Superintendent, he had been instructed to take directives only from the Board President or the Board as a whole. The complainant asserts that:

according to state law, only thru [sic] policy committee, full reading of policy change in public and follow-up vote by board of whole [sic] can policy be changed. The failure of the majority members to change policy via legal and ethical means is clearly an ethical violation. The board president, members previously mentioned and chief school administrator violated the ethical code by changing procedures and policy behind closed doors in March and again in June. (Id. at paragraph 4)

The complainant asserts that the third and fourth paragraphs of his complaint show violations of N.J.S.A. 18A:12-24.1(a) and (j). (Id. at paragraphs 3 and 4)<sup>1</sup>

## **ANALYSIS**

In considering a Motion to Dismiss, the Commission considers the facts in the light most favorable to the non-moving party. The question before the Commission was whether the complainant alleged facts which, if true, could support a finding that the respondents violated N.J.S.A. 18A:12-24.1(a) and (j) of the Code of Ethics for School Board Members. Granting all inferences to the complainant, and even assuming all facts to be true, the Commission finds that the complainant has failed to meet this standard.

The Commission initially notes that N.J.S.A. 18A:12-24.1(a) requires that school board members uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Additionally, N.J.S.A. 18A:12-24.1(a) requires that desired changes shall be brought through legal and ethical procedures. The Commission's regulations require that, in order to prove factually a violation of N.J.S.A. 18A:12-24.1(a), a complainant:

shall include a copy of a final decision from any court of law or administrative agency of this State that finds the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent[s] brought about changes through illegal or unethical means. N.J.A.C. 6A:28-6.9(b).

Here, although the complainant has alleged that respondents have not acted pursuant to District policy, the Commission does not have the authority to consider alleged violations of local policy; rather, the Commission's jurisdiction is limited to reviewing violations of the School Ethics Act.

Additionally, at no time does the complainant assert that a final decision has been rendered with respect to these respondents from any court of law or administrative agency of this State as is his burden when bringing forth an allegation under N.J.S.A. 18A:12-24.1(a). Indeed, while the complainant asserts that Respondent Millman "violated code," denied his "right by law" to see the Superintendent's evaluations (complaint at paragraph 1), and respondents have illegally changed the District's policy, (id. at paragraph 4), he does not allege that a final decision has been rendered with respect to these respondents from any court of law or administrative agency of this State finding that the respondents failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent[s]

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<sup>1</sup> A letter received by the Commission on August 1, 2007 from complainant states that allegations in paragraphs #3 and #4 of the complaint can be combined.

brought about changes through illegal or unethical means.<sup>2</sup> Therefore, even accepting as true all facts alleged by the complainant, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(a) and its implementing regulation at N.J.A.C. 6A:28-6.9(b).

As to the complainant's allegation that the respondents have violated N.J.S.A. 18A:12-24.1(j) and their duty to refer all complaints to the chief administrative officer and act on all complaints at public meetings only after failure of an administrative solution, the complaint alleges no facts to support a finding of such a violation, notwithstanding that the complainant states in a letter supplementing his complaint that "If one can never speak with the administration, then one cannot follow code." (Complainant's Letter received by the Commission on August 1, 2007). Indeed, the complaint merely states that because *the complainant* is left without means to communicate with the Superintendent, the complainant is prevented from first going to the Superintendent to resolve complaints. (Complaint at paragraph 2). Consequently, even accepting as true all facts alleged by the complainant, the Commission finds that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(j).

## **DECISION**

Based on the foregoing, the Commission grants the respondents' Motion to Dismiss the complaint. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini  
Chairperson

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<sup>2</sup> The Commission also notes that allegations set forth in paragraph one of the complaint date back to 2004 and 2006, which are, or may be, outside the "one year rule" set forth at N.J.A.C. 6A:28-6.1(b). However, because of the outcome herein, the Commission need not reach to the untimeliness of these claims.

**Resolution Adopting Decision – C33-07**

**Whereas**, the School Ethics Commission has considered the pleadings filed by the parties and the Motion to Dismiss filed by the respondents, together with the documents submitted in support thereof; and

**Whereas**, the Commission granted the respondents' Motion to Dismiss the complainant's allegation that the respondents violated N.J.S.A. 18A:12-24.1(a) and (j) of the Code of Ethics for School Board Members within the School Ethics Act; and

**Whereas**, the Commission has reviewed the proposed decision of its staff; and

**Whereas**, the Commission agrees with the proposed decision;

**Now Therefore Be It Resolved** that the Commission hereby adopts the proposed decision granting the respondents' Motion to Dismiss as the final decision of an administrative agency and directs its staff to notify all parties to this action of its decision herein.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on January 22, 2008.

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Joanne Boyle  
Executive Director