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## ANALYSIS

The complainant has the burden to factually establish a violation of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a). A complaint must include, among other requirements, specific allegations, and the facts supporting them, which gave rise to the alleged violation(s) of the Act. N.J.A.C. 6A:28-6.3(b)3. Regulations further provide that the Commission may, in its discretion, dismiss complaints entirely or specific allegations in complaints, where the complaint, on its face, fails to allege facts sufficient to maintain a claim under the Act. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5.

The Commission first considers the allegations that the respondent violated N.J.S.A. 18A:12-24.1 (d), (c), and (f), which state, respectively:

I will carry out my responsibility, not to administer the schools, but together with my fellow board members, to see that they are well run.<sup>1</sup>

I will confine my board action to policymaking, planning, and appraisal and I will help to frame policies and plans only after the board has consulted those who will be affected by them.<sup>2</sup>

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.<sup>3</sup>

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<sup>1</sup> The Commission requires that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(d) shall include, but not be limited to, evidence that the respondent(s) gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.

<sup>2</sup> The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the respondent(s) took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to:

- i. Develop the general rules and principles that guide the management of the school district or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- iii. Ascertain the value or liability of a policy. N.J.A.C. 6A:28-6.4(a)3.

<sup>3</sup> The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(f) shall include evidence that the respondent(s) took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend.

In its review, the Commission has found none of the indicia that would support a conclusion that the respondent violated any subsection of the Code. The complainant has not provided evidence that the respondent gave a direct order to school personnel or involved herself in the day-to-day operations of the schools that supports a violation of subsection (d). Instead, the Commission determines that by her actions, the respondent indicated that she accepted the Board's approval of the project and undertook the duties of her position to see that the plan was developed as designed.

Similarly, the Commission also determines that the respondent did not violate subsection (c) when she began "crossing the " 'Ts' [sic] and dotting the "Is' [sic]' " in preparation for the final approval of the plan. (Complaint at p.1) This allegation fails to show how the respondent strayed into effecting policy and plans without consulting those affected by the policies. The issue of the playground project had been on the agenda of at least two public meetings, and it is clear that the public voiced its contrary opinion. The Board voted for the project on June 4, 2012, and there is no evidence that the vote or the process was tainted, illegal or marred in any way. Without more evidence, it appears to this tribunal that the respondent accepted the will of the Board and was executing her due diligence in the performance of her duties when she reviewed the plans.

Finally, there is no evidence that the respondent surrendered her independent judgment to benefit a special interest group, a political faction, herself, or others. The complainant would have to produce evidence that a group or person benefited by the respondent's actions. The complainant did not. To his credit, the complainant admits in his reply to the Motion that he has been unsuccessful in investigating the respondent's statements and unable to establish support for his claims.

Consequently, the Commission finds that there are no facts set forth in the complaint, which would substantiate a conclusion that respondent's actions or statements were of such a nature to indicate that she acted beyond the scope of her duties, took board action contrary to her role as a Board member or surrendered her "independent judgment" in violation of N.J.S.A. 18A:12-24.1(d), (c) and (f). Accordingly, the Commission finds that the complaint, on its face, fails to allege facts sufficient to maintain a claim that the respondents violated N.J.S.A. 18A:12-24.1 (d), (c), or (f).

## **REQUEST FOR SANCTIONS**

The respondent alleged that the complaint herein is frivolous. At its meeting on November 27, 2012, the Commission considered the respondent's request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence, which might show that the complainant filed the complaint in bad faith solely for the purpose of harassment, delay, or malicious injury. The Commission also has no information to suggest that the complainant 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 the respondent's request for sanctions against the complainant.

## DECISION

Based on the foregoing, and pursuant to its discretion, the Commission dismisses the within complaint for failure to allege facts sufficient to maintain a claim that would be a violation of the Act. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5. 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).

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Robert W. Bender, Chairperson

Mailing Date: December 19, 2012

**Resolution Adopting Decision – C32-12**

**Whereas**, the School Ethics Commission has considered the complaint, the Motion to Dismiss filed on behalf of respondent and the complainant’s reply thereto; and

**Whereas**, at its meeting on November 27, 2012, the Commission determined to dismiss the complaint for failure to state a claim upon which relief could be granted for a violation of the Act; and

**Whereas**, the Commission further found that the complaint was not frivolous; and

**Whereas**, at its December 18, 2012 meeting, the Commission has reviewed and approved the decision memorializing said action;

**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 December 18, 2012.

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Joanne M. Restivo  
Interim Executive Director  
School Ethics Commission