

FRANCES SARNO	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
v.	:	
	:	Docket No. C43-07
LINDA MITCHELL,	:	
<i>BARNEGAT BORD OF EDUCATION</i>	:	DECISION ON
<i>OCEAN COUNTY</i>	:	MOTION TO DISMISS
	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on October 15, 2007 by Frances Sarno alleging that Linda Mitchell, a member of the Barnegat Board of Education (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The complainant specifically alleges that the respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), (h) and (j) of the Code of Ethics for School Board Members.

Pursuant to N.J.A.C. 6A:28-6.5(e), on December 18, 2007, the respondent filed a Motion to Dismiss the Complaint, with supporting certifications, in lieu of filing an Answer. The complainant submitted a response to the Motion to Dismiss. The Commission considered the complaint, the Motion to Dismiss and the complainant’s response to the motion at its meeting on February 26, 2008, at which time the Commission voted to grant the respondent’s Motion to Dismiss the complaint.

**THE PLEADINGS**

The complainant alleges that he was a board member from April 2006 until June 2007 and, during this period, he was told to attend six meetings “in various locations” by the respondent, who was the Board President. The complainant asserts these locations included local bars and restaurants. He further alleges that during these meetings, Board members were present, but the meetings were not known to the public or advertised, as required by law. The reason for the “secret meetings,” according to the complainant, was that the board members needed to “get on the same page” for the Board agenda so there would be no arguing or disagreeing during the public meetings. The complainant further asserts that during these meetings, the board and administrators met and discussed issues dealing with board problems, budget issues, election issues, Board candidates, personnel issues and internal problems. The complainant alleges that, in so doing, the respondent violated N.J.S.A. 18A:12-24.1(a), (c) and (d) (Complaint at paragraphs 1-9)

The complainant further alleges that during the Board’s reorganization meeting on April 23, 2007, the respondent was in training at Commerce Bank/Shore N.A. for employment. The complainant alleges that the respondent voted on a resolution to hire Commerce Bank/Shore N.A. as a designated depository for the Board and be instructed to pay out funds upon the signatures of the President or Vice President, Secretary and the

Treasurer of Monies, as required by law. (Complaint at paragraph 10) The complainant alleges that this conduct was in violation of N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (h) and (j).

The complainant further asserts that a former board member, Ken Thomas, met with the Superintendent and the respondent prior to becoming a board member and discussed “private Board matters.” The complainant asserts that Mr. Thomas resigned his position, indicating that he was in fear of harassment, and that the Superintendent wields too much power and tries to influence voting decisions. The complainant alleges that the conduct of the respondent in this regard is in violation of N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f) and (g).

## **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 respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), (h) and (j) of the Code of Ethics for School Board Members, as set forth below.

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.
- 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.
- c. I will confine my board action to policy making, 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.
- d. 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.
- e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

f. 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.

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.

h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

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.

As to the allegation that the respondent requested that the complainant attend secret meetings, the Commission finds that this issue implicates the Open Public Meetings Act (OPMA) and, therefore, is not within its jurisdiction. Although the complainant alleges that, in failing to adhere to the OPMA, the respondent has violated N.J.S.A. 18A:12-24.1(a), which 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, at no time does the complainant assert that a final decision has been rendered with respect to this respondent 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). (See, N.J.A.C. 6A:28-6.9(b)). Additionally, the complainant asserts no particular facts which, if true, would support the allegation that respondent violated her duty to confine board action to policy, planning and appraisal, so as to violate N.J.S.A. 18A:12-24.1(c) or that the respondent became directly involved in activities or functions that are the responsibility of school personnel in violation of N.J.S.A. 18A:12-24.1(d). Therefore, even accepting as true all facts alleged with respect to the complainant's claim of secret Board meetings, the Commission finds that such facts would not constitute a violation of N.J.S.A. 18A:12-24.1(a), (c) and (d).

The Commission next considers the complainant's allegation that the respondent's conduct in voting on a resolution to hire Commerce Bank/Shore N.A. as a designated depository for the Board violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (h) and (j). With respect to this allegation, the Commission finds, as set forth in the prior analysis, that the complaint does not allege facts sufficient to support a finding of a violation of N.J.S.A. 18A:12-24.1(a), in that the complainant does not assert that a final decision has been rendered with respect to this respondent 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). Similarly, the Commission finds that the complainant

alleges no facts that would support a claim that the respondent violated N.J.S.A. 18A:12-24.1(b), (c), (d), (e), (h) or (j) by voting on the aforementioned resolution. Further, although the complainant claims in his response to the Motion to Dismiss that the respondent's conduct violated N.J.S.A. 18A:12-24, the "prohibited acts" portion of the School Ethics Act, the complainant did not amend his complaint to properly allege such violations.

With respect to the allegation that a former board member met with the Superintendent and the respondent prior to becoming a board member and discussed "private Board matters," then later resigned his board position because the Superintendent wields too much power and tries to influence voting decisions, the Commission reiterates its finding that the complaint does not allege facts sufficient to support a finding of a violation of N.J.S.A. 18A:12-24.1(a), as set forth above. Further, the Commission finds the complainant alleges no particular facts as to respondent's conduct that, if true, would support a finding that she failed to make decisions in terms of the educational welfare of children, that she failed to confine board action to policy making, planning, and appraisal, that she improperly administered the schools, or that she surrendered her independent judgment to special interest or partisan political groups or used the schools for personal gain in violation of N.J.S.A. 18A:12-24.1(b), (c), (d), (e), (f). Finally, to the extent the complainant was attempting to suggest that confidential information was shared at the meeting with the respondent, the Superintendent and Mr. Thomas in violation of N.J.S.A. 18A:12-24.1(g), he alleges no facts as to respondent's conduct in this regard and does not indicate *what* "private Board matters" were discussed so as to support a finding that the respondent breached her duty to hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools.

## **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). To the extent the complainant has raised allegations in his response to the Motion to Dismiss that the respondent's conduct in voting on the resolution to hire Commerce Bank/Shore N.A. as a designated depository for the Board was a violation of N.J.S.A. 18A: 12-24, a new complaint may be filed in accordance with the regulations set forth at N.J.A.C. 6A:28-6 et seq.

Paul C. Garbarini  
Chairperson

**Resolution Adopting Decision – C43-07**

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

**Whereas**, the Commission granted the respondent's Motion to Dismiss the allegations that respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), (h) and (j) of the Code of Ethics for School Board Members; 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 April 1, 2008.

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Joanne Boyle  
Executive Director