

Before the School Ethics Commission
Docket No.: C20-18
Decision on Motion to Dismiss

**Chinua Jones,
Complainant**

v.

**Dennis Tunstall,
Willingboro Board of Education, Burlington County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on April 9, 2018, by Chinua Jones (Complainant), alleging that Dennis Tunstall (Respondent), a member of the Willingboro Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated April 13, 2018, and April 27, 2018, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On May 9, 2018, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3. The Complaint alleged that Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(f), and *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code).

On May 30, 2018, the Complaint was served on Respondent, via regular and certified mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading. On July 5, 2018, and after receiving a brief extension, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). On July 13, 2018, Complainant filed a Response to the Motion to Dismiss, but included additional allegations against Respondent. More specifically, Complainant alleged that, in addition to violating *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(f), and *N.J.S.A.* 18A:12-24.1(g), Respondent also violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(j). By correspondence dated July 26, 2018, and following receipt of correspondence from Respondent's counsel, Complainant was advised that, pursuant to *N.J.A.C.* 6A:28-6.7(c), "Once an answer or other responsive pleading is filed, an amendment to a complaint may be made by the complainant only with the consent of each respondent or by leave of the Commission upon written application."

By correspondence dated August 8, 2018, the Commission requested additional information from Complainant before it would consider permitting her to submit an Amended Complaint. On August 15, 2018, Complainant submitted her response, and on August 29, 2018,

Respondent submitted his opposition to Complainant's request to submit an Amended Complaint.

Following a special meeting on September 5, 2018, the parties were notified by correspondence on the same date advising that the Commission granted the Complainant's request to submit an Amended Complaint, and further advising that she had until September 19, 2018, to do so. When Complainant failed to file her Amended Complaint as directed, she was notified by correspondence dated September 25, 2018, that failure to file by October 8, 2018, would result in her matter being administratively dismissed.

On October 2, 2018, Complainant filed an Amended Complaint (Amended Complaint) which alleges that Respondent violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)*, and *N.J.S.A. 18A:12-24.1(j)* of the Code. On November 5, 2018, Respondent filed a Motion to Dismiss, and on November 29, 2018, Complainant filed a Response to the Motion to Dismiss.

The parties were notified by correspondence dated December 10, 2018, that this matter would be placed on the Commission's agenda for its meeting on December 18, 2018, in order to make a determination regarding the Motion to Dismiss. At its meeting on December 18, 2018, the Commission considered the filings in this matter and, at its meeting on January 22, 2019, 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(a)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)*, and/or *N.J.S.A. 18A:12-24.1(j)* as alleged in the Amended Complaint.

II. Summary of the Pleadings

A. Amended Complaint

In her Amended Complaint, Complainant alleges that while she was at a Board meeting on March 26, 2018, another parent expressed concerns about issue(s) she was experiencing with her child. Because Complainant experienced similar issues with her own children, she showed/offered her support for the parent by standing and clapping. As Complainant was doing this, Respondent said, "[Y]ou should be worried about your bad ass kids." Complainant alleges that when she replied, "[E]xcuse me," Respondent repeated, "[Y]ou heard me, you need to worry about your bad ass kids."

Based on the facts as set forth above, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(a)* in Count 1, *N.J.S.A. 18A:12-24.1(f)* in Count 2, *N.J.S.A. 18A:12-24.1(g)* in Count 3, *N.J.S.A. 18A:12-24.1(j)* in Count 4, and *N.J.S.A. 18A:12-24.1(e)* in Count 5. Complainant relies upon the same set of facts for each Count of her Amended Complaint.

B. Motion to Dismiss

In his Motion to Dismiss, Respondent argues that even if the claims are true, which Respondent denies, Complainant's claims do not support a violation of the Code. More

specifically, and with regard to Count 1, Respondent asserts that Complainant failed to cite, identify, or include a copy of any final decision from any court or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education to support the allegation that Respondent violated *N.J.S.A. 18A:12-24.1(a)*. Regarding Count 2, Respondent argues that Complainant fails to provide the factual evidence required to support the allegation that Respondent violated *N.J.S.A. 18A:12-24.1(f)*. As for Count 3, Respondent further argues that Complainant fails to provide evidence that Respondent took any action to make public, reveal or disclose information that was not public or that was otherwise confidential, as required to support the allegation that Respondent violated *N.J.S.A. 18A:12-24.1(g)*. Based on Complainant's failure to provide the requisite evidence, Respondent asserts that Count 1, Count 2, and Count 3 should be dismissed.

Respondent further argues that although Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(j)* in Count 4 and *N.J.S.A. 18A:12-24.1(e)* in Count 5, her Amended Complaint cites the language from *N.J.S.A. 18A:12-24.1(g)*. Therefore, Respondent asserts that since Complainant did not accurately identify or support an allegation that Respondent violated *N.J.S.A. 18A:12-24.1(j)* in Count 4 and/or *N.J.S.A. 18A:12-24.1(e)* in Count 5, both Counts should be dismissed.

C. *Response to Motion to Dismiss*

In her response to the Motion to Dismiss, Complainant contends that the Commission's guidance regarding *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(g)*, and *N.J.S.A. 18A:12-24.1(j)* is "clear," and Respondent is in direct violation of the "Act with language and his conduct as a Board member." Moreover, Complainant asserts that Respondent's comments were made in "open session in front of the whole community."

Regarding Count 1, Complainant alleges that a complaint was filed with the Willingboro Police Department, an administrative agency, who "took the report and allowed the case to move forward with the [Commission]," and reaffirms her allegation that Respondent violated *N.J.S.A. 18A:12-24.1(a)*.

Complainant also reaffirms that Respondent violated *N.J.S.A. 18A:12-24.1(f)* in Count 2, *N.J.S.A. 18A:12-24.1(g)* in Count 3, and *N.J.S.A. 18A:12-24.1(e)* in Count 5 because he does not know Complainant's children (and they did not have a disciplinary record *until* they began attending Willingboro schools), and he made the comments to gain the favor of the "corrupt" Board and staff members, and to "advance friendships" within the Willingboro School District (District). Complainant also asserts that Respondent is on a "crusade to blackball [her] children," to get her to move out of Willingboro, and to stay in the "good grace of the crew."

Finally, Complainant reiterates her claim that Respondent violated *N.J.S.A. 18A:12-24.1(j)* in Count 4 because although Respondent denies making the comments at the Board meeting on March 26, 2018, he did make the comments, and the comments were heard by other Board members. The Board members acted as though they did not hear him and did not take any action to stop him. As a result, Complainant emailed the Superintendent (that same night), and

Complainant alleges that the Superintendent responded to the email, acknowledged the incident, but did not offer any administrative remedies.

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 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.* Thus, the question before the Commission is whether Complainant has alleged facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)* as alleged in Count 1, *N.J.S.A. 18A:12-24.1(f)* as alleged in Count 2, *N.J.S.A. 18A:12-24.1(g)* as alleged in Count 3, *N.J.S.A. 18A:12-24.1(j)* as alleged in Count 4 and *N.J.S.A. 18A:12-24.1(e)* as alleged in Count 5.

B. *Alleged Code Violations*

Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(a)* in Count 1, *N.J.S.A. 18A:12-24.1(f)* in Count 2, *N.J.S.A. 18A:12-24.1(g)* in Count 3, *N.J.S.A. 18A:12-24.1(j)* in Count 4, and *N.J.S.A. 18A:12-24.1(e)* in Count 5. These provisions of the Code provide, respectively:

- 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.
- 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.
- 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.

1. Alleged Violation of N.J.S.A. 18A:12-24.1(a) (Count 1)

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(1), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that Respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent brought about changes through illegal or unethical procedures.

Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(a) because a complaint was filed with the Willingboro Police Department, who “took the report and allowed the case to move forward with the [Commission].” Respondent counters that Complainant fails to cite, identify, or include a copy of any final decision from any court or administrative agency of this State demonstrating that he failed to enforce all laws, rules and regulations of the State Board of Education.

After review of Complainant’s allegations, the Commission finds that Complainant has not provided a copy of a final decision from any court of law or other administrative agency demonstrating that Respondent violated any specific or identifiable “unethical” procedure when he made the alleged comment about Complainant’s children at a public Board meeting. Absent such a final decision, the Commission finds that even if all of the facts as alleged in the Amended Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a). As a result, the Commission finds that this allegation should be dismissed.

2. Alleged Violation of N.J.S.A. 18A:12-24.1(f) (Count 2)

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(6), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(f) shall include evidence that Respondent 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 Respondent used the schools in order to acquire some benefit for Respondent, a member of his or her immediate family or a friend.

Complainant claims that Respondent violated *N.J.S.A.* 18A:12-24.1(f) because he does not know Complainant’s children (and they did not have a disciplinary record *until* they began attending Willingboro schools) and he made the comments to gain the favor of the “corrupt” Board and staff members to “advance friendships” within the District. Complainant also asserts that Respondent is on a “crusade to blackball [her] children,” to get her to move out of Willingboro, and to stay in the “good grace of his crew.” Respondent counters that Complainant fails to allege that his comment was made on behalf of, or at the request of, a special interest or partisan political group, or that he made the comment to acquire a benefit for himself or a friend.

Based on its review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Amended Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(f). Despite being required by *N.J.A.C.* 6A:28-6.4(a)(6), Complainant has not offered evidence indicating that Respondent’s alleged statement was prompted by, or made on behalf of, a special interest group or persons organized and voluntarily united in opinion. Instead, the Amended Complaint indicates that Respondent’s alleged statement was made to gain the favor of the “corrupt” Board

and staff members to “advance friendships” within the District. The Amended Complaint also does not specify the nature of the gain or benefit that Respondent was attempting to secure for himself, the Board and/or the staff members by making the alleged statement about Complainant’s children. Therefore, the Commission finds that this allegation should be dismissed.

3. Alleged Violation of N.J.S.A. 18A:12-24.1(g) (Count 3)

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(7), factual evidence of a violation 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. Factual evidence that Respondent violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by Respondent and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(g) because he does not know Complainant’s children (and they did not have a disciplinary record *until* they began attending Willingboro schools) and he made the comments to gain the favor of the “corrupt” Board and staff members to “advance friendships” within the District. Complainant also asserts that Respondent is on a “crusade to blackball [her] children,” to get her to move out of Willingboro, and to say in the “good grace of his crew.” Respondent asserts that Complainant fails to allege any facts or identify any evidence that he took any action to make public, reveal or disclose information that was otherwise confidential.

After review of Complainant’s allegations, the Commission finds that even if the facts as alleged in the Amended Complaint 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). More specifically, the Commission finds that Complainant has not offered any facts or evidence demonstrating how, in making the alleged comment about Complainant’s children, Respondent revealed confidential information, or provided inaccurate information that was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. As a result, the Commission finds that this allegation should be dismissed.

4. Alleged Violation of N.J.S.A. 18A:12-24.1(j) (Count 4)

As set forth in *N.J.A.C.* 6A:28-6.4(a)(10), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(j) shall include evidence that Respondent acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint (i) prior to referral to the chief administrative officer, or (ii) at a time or place other than a public meeting and prior to the failure of an administrative solution.

Complainant argues that although Respondent denies making the comments at the Board meeting on March 26, 2018, he did make the comments, and the comments were heard by other Board members. The Board members acted as though they did not hear him and did not take any

action to stop him. As a result, Complainant emailed the Superintendent (that same night), and Complainant alleges that the Superintendent responded to the email, acknowledged the incident, but did not offer any administrative remedies. Respondent counters that although Complainant alleges he violated *N.J.S.A. 18A:12-24.1(j)*, the Amended Complaint actually cites the language from *N.J.S.A. 18A:12-24.1(g)*.

After review of Complainant's allegations, the Commission finds that even if the facts as alleged in the Amended Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(j)*. As an initial matter, the Commission notes that although Complainant argues that Respondent's conduct violated *N.J.S.A. 18A:12-24.1(j)*, she incorrectly cited the language from *N.J.S.A. 18A:12-24.1(g)* in Count 4 of her Complaint. Even if she had cited the correct language/subsection, the Commission finds that Complainant has not provided any facts or evidence indicating that Respondent acted on or attempted to resolve a complaint without following the appropriate procedures or protocol. In fact, the Amended Complaint acknowledges that, despite her complaint about this issue, no investigation or remedy was ever provided, by Respondent or otherwise. Therefore, the Commission finds that this allegation should be dismissed.

5. *Alleged Violation of N.J.S.A. 18A:12-24.1(e) (Count 5)*

As set forth in *N.J.A.C. 6A:28-6.4(a)(5)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(e)* shall include evidence that Respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board.

According to Complainant, Respondent violated *N.J.S.A. 18A:12-24.1(e)* because he does not know Complainant's children (and they did not have a disciplinary record *until* they began attending Willingboro schools) and he made the comments to gain the favor of the "corrupt" Board and staff members to "advance friendships" within the District. Complainant also asserts that Respondent is on a "crusade to blackball [her] children," to get her to move out of Willingboro, and to stay in the "good grace of his crew." Respondent argues that although Complainant alleges that he violated *N.J.S.A. 18A:12-24.1(e)*, the Amended Complaint actually cites the language from *N.J.S.A. 18A:12-24.1(g)*.

Based on its review of Complainant's allegations, the Commission finds that even if all of the facts as alleged in the Amended Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(e)*. As an initial matter, the Commission notes that although Complainant argues that Respondent's conduct violated *N.J.S.A. 18A:12-24.1(e)*, she incorrectly cited the language from *N.J.S.A. 18A:12-24.1(g)* in Count 5 of her Complaint. Even if she had cited the correct language/subsection, in order to sustain a violation of *N.J.S.A. 18A:12-24.1(e)*, Complainant needed to provide evidence that Respondent took action beyond the scope of his duties as a Board member, and evidence that those actions had the potential to compromise the Board. However, there is nothing in the record to suggest that Respondent exceeded his authority when he allegedly made these comments, and/or that the comments had the potential to compromise the Board. As a result, the Commission finds that this allegation should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that Complainant has not alleged facts sufficient to state a claim for a violation of *N.J.S.A.* 18A:12-24.1(a) in Count 1, *N.J.S.A.* 18A:12-24.1(f) in Count 2, *N.J.S.A.* 18A:12-24.1(g) in Count 3, *N.J.S.A.* 18A:12-24.1(j) in Count 4, and/or *N.J.S.A.* 18A:12-24.1(e) in Count 5. Therefore, the Commission **grants** Respondent's Motion to Dismiss in its entirety.

Notwithstanding the Commission's decision as set forth herein, and as noted in its other decisions, the Commission reminds the parties that the service of a Board member should always be, above all else, to serve the needs of the students and the children of the District and, by implication, those of the parents. As a result, there may be times when parents may offer their opinions and viewpoints about the actions and decisions of the Board which Board members do not appreciate, or agree with. Even if those opinions and viewpoints are not in line with those of the Board, all members of the public should be treated with decency, and respect.

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 for failure to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) in Count 1, *N.J.S.A.* 18A:12-24.1(f) in Count 2, *N.J.S.A.* 18A:12-24.1(g) in Count 3, *N.J.S.A.* 18A:12-24.1(j) in Count 4, and/or *N.J.S.A.* 18A:12-24.1(e) in Count 5.

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).*

Robert W. Bender, Chairperson

Mailing Date: January 23, 2019

***Resolution Adopting Decision
in Connection with C20-18***

Whereas, at its meeting on December 18, 2018, the School Ethics Commission (Commission) considered the Amended Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the Response to the Motion to Dismiss filed in connection with this matter; and

Whereas, at its meeting on December 18, 2018, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) in Count 1, *N.J.S.A.* 18A:12-24.1(f) in Count 2, *N.J.S.A.* 18A:12-24.1(g) in Count 3, *N.J.S.A.* 18A:12-24.1(j) in Count 4, and/or *N.J.S.A.* 18A:12-24.1(e) in Count 5; and

Whereas, at its meeting on January 22, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on December 18, 2018; 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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on January 22, 2019.

Kathryn A. Whalen, Director
School Ethics Commission