

***Before the School Ethics Commission
Docket No.: C32-20
Decision on Motion to Dismiss***

**Claire Odierna,
Complainant**

v.

**Carlos Guzman,
Norwood Board of Education, Bergen County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on July 7, 2020, by Claire Odierna (Complainant), alleging that Carlos Guzman (Respondent), a member and President of the Norwood Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), *N.J.S.A.* 18A:12-24.1(h), and *N.J.S.A.* 18A:12-24.1(j) of the Code of Ethics for School Board Members (Code).

On July 9, 2020, the Complaint was served on Respondent, via electronic mail, notifying him that charges were filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to file a responsive pleading.¹ On July 27, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and on August 31, 2020, Complainant filed a response to the Motion to Dismiss.

The parties were notified by correspondence dated September 21, 2020, that this matter would be placed on the Commission's agenda for its meeting on September 29, 2020, in order to make a determination regarding the Motion to Dismiss. At its meeting on September 29, 2020, the Commission considered the filings in this matter and, at its meeting on October 27, 2020, 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(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), *N.J.S.A.* 18A:12-24.1(h), and/or *N.J.S.A.* 18A:12-24.1(j).

¹ Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

II. Summary of the Pleadings/Public Comment

A. *The Complaint*

Complainant asserts that on or about January 7, 2020, she sent correspondence to the Board expressing her “many concerns related to conflicts of interest that pertain to a school administrator who is the Supervisor of Special Services,” but did not receive any official response *except* for a telephone call from the Superintendent.

On or about January 9, 2020, Complainant received a telephone call from the Superintendent advising, “there was another behavioral incident involving” her child. The Superintendent told Complainant she wanted to “**expedite the process**” to get her (Complainant’s) child evaluated; however, the Superintendent told Complainant that she wanted her (Complainant) to “**take back**” the January 7, 2020, letter and submit a “**new**” one. During a second telephone call later that evening, the two agreed that a meeting to discuss her child’s needs would take place after winter recess. The Superintendent again asked Complainant to give her “**a different letter that doesn’t have all that other stuff in there**” because she did not want it attached with the letter requesting an evaluation. Complainant then reminded the Superintendent that she submitted an *electronic* letter on or about December 19, 2019, requesting an evaluation of her child, which was immediately after her child punched three other kindergartners, including the child of the Supervisor of Special Services. The Superintendent advised that the letter requesting an evaluation had to be “a hard copy.” As to this request, Complainant notes that other parents have submitted electronic requests without issue, as has she (for other evaluations). Complainant maintains that the “selective enforcement” of this policy is discriminatory against her and her family.

Also during the second phone call, Complainant asked for the evaluations of her child to “be conducted independently due to the obvious conflicts of interest.” The Superintendent advised Complainant she could request independent evaluations *if* she did not like the evaluations conducted by the CST. As to this suggestion, Complainant argued, “I am not looking for what I like or do not like, I am looking for a clean evaluation. That point is continually missed.” Complainant again asked that she (the Superintendent) and the Board look into the conflict issue with the Supervisor of Special Services, and she (the Superintendent) said that he “**will know**” that he will not do the evaluations. Despite this, it is Complainant’s position that there is still a conflict of interest because he oversees the evaluations as the supervisor.

It is Complainant’s belief that the Superintendent requested a new letter, and did not want to accept the December 19, 2019, letter because “then the school would be in violation of their duty to have a child evaluated within twenty (20) days,” and the Supervisor of Special Services “was negligent in his duty” to have her child evaluated.

Complainant maintains that Respondent, as the Board President, and “who supervises the [S]uperintendent,” did not take any action “in addressing [her] concerns whatsoever.” This inaction occurred although Complainant raised her concerns “in the proper order and forum to be addressed appropriately.” According to Complainant, “[t]here was no concern for [her] child,” “[t]here was no concern for the issues [she] raised through the proper channels,” and the only concern was for Complainant to withdraw her letter to the Board (expressing concerns about the

conflicts of interest) and to “submit a ‘**new letter**’ [for an evaluation of her child] without all of that ‘**other stuff**’ in it – **IN CASE OF AN AUDIT.**” This, per Complainant, should not have been the Board’s primary concern.

Based on the facts set forth above, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), *N.J.S.A.* 18A:12-24.1(h), and *N.J.S.A.* 18A:12-24.1(j) because the fact that Respondent “was not concerned with [Complainant’s] child being refused an evaluation, especially when exhibiting such behaviors related to [her child’s] safety ... and others is, quite frankly, **alarming** to say the least”; as a “Columbia trained pediatric neuropsychiatrist,” Respondent would “most certainly know the serious effects on the developing brain of a child who is not receiving the proper and timely interventions he needs”; as the Board President, he “has shirked his responsibilities to serve the needs of the community by allowing such a situation that is riddled with conflicts of interest to continue ... without being immediately addressed and corrected”; Respondent’s “lack of supervision over the [S]uperintendent is also a neglect of his duty as” Board President; and Respondent’s failure to address these conflicts has been at her child’s expense, as her child “has special needs” yet has “not received the supports and services” needed and required by law. According to Complainant, the call from the Superintendent “made [it] abundantly clear that the [B]oard had no intention of rectifying this matter and investigating” her concerns. Although the Superintendent indicated “it would be looked into,” her “lip service in combination with the [B]oard’s lack of response has caused the continuation and escalation of conflicts of interest.” Accordingly, Respondent “did not uphold his duties and obligations as he is sworn to do as the President”; he “did not make decisions ... based on the educational welfare of the child”; he “did not make decisions accordingly with those who would be affected by them”; he “did not make sure that the school was well-run and did not carry out his responsibilities”; his actions “compromised the Board by his failure to take proper action”; he “did not provide accurate information or address this concern which affects the aspirations of the community for its school”; and he did not act on Complainant’s complaint, and “failed to make certain that the [S]uperintendent did her job in addressing [Complainant’s] concerns as well.”

B. Motion to Dismiss

Following receipt of the Complaint, Respondent filed a **Motion to Dismiss** and contends that the Complaint is devoid of facts sufficient to establish violations of the Act as alleged. As to the alleged violation of *N.J.S.A.* 18A:12-24.1(a), Respondent argues that Complainant has not “cite[d] or include[d] a copy of any law, rule, regulation, or court order pertaining to schools” and, therefore, “does not state a viable claim” to support this violation.

Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(b), Respondent maintains that other than “merely asserting” that Respondent “acted contrary to the educational welfare of children,” Complainant did not provide any evidence or facts to support her allegation. In addition, Complainant “relies on the fact” that Respondent “failed to investigate her complaint” and, as such, “relies on inaction, rather than willful action” to support her claims. However, Complainant did not provide any evidence to support that Respondent took “deliberate actions” or made “decisions” that would “adversely affect the educational welfare of children, or

obstructed the [Norwood School District's (District)] programs and policies designed to meet ...” in violation of *N.J.S.A.* 18A:12-24.1(b).

As to the alleged violation of *N.J.S.A.* 18A:12-24.1(c), Respondent contends that Complainant did not provide a policy or plan that Respondent “effectuated without consultation of those affected by it,” nor specify “any action” that Respondent took, which was unrelated to his “policy making, planning and appraisal duties” to support her position that Respondent violated *N.J.S.A.* 18A:12-24.1(c).

Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(d), Respondent claims that Complainant “takes fault with the fact that [he] did not interfere in the day-to-day administration of the District.” According to Respondent, Complainant did not provide any facts to support that he “gave a direct order to school personnel, or became directly involved in activities or functions which fall under the responsibility of school personnel” Therefore, Complainant “failed to set forth a claim that” Respondent violated *N.J.S.A.* 18A:12-24.1(d).

As to the alleged violation of *N.J.S.A.* 18A:12-24.1(e), Respondent argues that Complainant provides a “conclusory and contradictory statement” that his actions compromised the Board because he failed to “take proper action.” Complainant did not provide any evidence to support that Respondent “made any personal promises or took any actions ... to compromise the Board.” Therefore, Complainant failed “to state a claim that” Respondent violated *N.J.S.A.* 18A:12-24.1(e).

Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(g), Respondent maintains that Complainant “alleges that [Respondent] failed to provide her with accurate information”; however, she does not indicate what information he provided that was inaccurate. On the contrary, the Complaint indicates Respondent did not respond to her letter or provide her with *any* information and, therefore, Complainant “fails to set forth a claim that” Respondent violated *N.J.S.A.* 18A:12-24.1(g).

As to the alleged violation of *N.J.S.A.* 18A:12-24.1(h), Respondent contends that Complainant did not support an allegation that Respondent “acted on any personnel matter without the recommendation of the Superintendent” Therefore, Complainant failed to “state a claim” to support a violation of *N.J.S.A.* 18A:12-24.1(h).

Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(j), Respondent asserts that Complainant did not provide any evidence to support the position that he “acted on or attempted to resolve her complaint or conducted an investigation relating to her complaint before referring it to the [Superintendent] or at a time and a place other than a public meeting.” Furthermore, and as alleged by the Complainant, the Superintendent contacted Complainant in order to “expedite the process” and have Complainant’s child evaluated. Therefore, Respondent argues that the Complaint “fails to set forth a claim” that he violated *N.J.S.A.* 18A:12-24.1(j).

Based on the information provided above, Respondent “respectfully requests” that the Commission dismiss the Complaint “with prejudice for failure to state a claim upon which relief can be granted.”²

C. *Response to Motion to Dismiss*

In response to the Motion to Dismiss, Complainant reasserts her claims and argues, in defense of the violation of *N.J.S.A.* 18A:12-24.1(b), that when Respondent failed to respond to Complainant’s letter, and failed “to properly supervise the Superintendent to ensure that she resolved the problems noted” in the letter, he “willfully made a decision contrary to the educational welfare of children ...” and this resulted in a “failure to meet the individual need of all children,” including Complainant’s children. In addition, Respondent’s “failures to address the conflicts of interest and bias on the part of [the Supervisor of Special Services] were contrary to the welfare of [Complainant’s child]” because these decisions failed to “provide [the child] with impartial and disinterested decision makers regarding [the child’s] support services.” Lastly, according to Complainant, Respondent’s failure to address Complainant’s “concerns after she had exhausted all administrative remedies is especially egregious given that [Respondent] was” the Board President.

In support of the violation of *N.J.S.A.* 18A:12-24.1(c), Complainant argues that she “clearly articulates” that “after having exhausted all administrative remedies, [she] sent a letter detailing multiple concerns including, the selective enforcement of policies by” the Supervisor of Special Services, to the Board, which included Respondent. According to Complainant, Respondent “deliberately ignored” the letter; “never responded”; and failed to “adequately supervise[] the Superintendent to ensure that [the Supervisor of Special Services’] demonstrated bias and ... conflicts of interest did not affect his responsibilities as [the Supervisor of Special Services] to ensure that all policies were being uniformly enforced,” especially those pertaining to the provision of services to Complainant’s child.

Regarding the violation of *N.J.S.A.* 18A:12-24.1(d), Complainant reiterates that she “clearly articulates” that “after having exhausted all administrative remedies, [she] sent a letter detailing multiple concerns including, the selective enforcement of policies by” the Supervisor of Special Services, to the Board, including Respondent. According to Complainant, Respondent “deliberately ignored” the letter; “never responded”; and did not “adequately supervise[] the Superintendent to ensure that [the Supervisor of Special Services’] demonstrated bias and his conflicts of interest did not affect his responsibilities as [the Supervisor of Special Services] to ensure that all policies were being uniformly enforced,” especially those pertaining to the provision of services to Complainant’s child.

In support of the violation of *N.J.S.A.* 18A:12-24.1(e), Complainant restates the arguments she made in support of *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(d), and adds that Respondent’s lack of action regarding her letter “had the potential” to compromise the

² As part of his Motion to Dismiss, Respondent argued that Complainant failed to allege sufficient facts to support a violation of *N.J.S.A.* 18A:12-24.1(f); however, the Complaint did not include an alleged violation of this subsection of the Code.

Board by exposing it to a “potential liability for not addressing issues related to it that, [if] unremedied, could create significant liability to” the District.

As to the violation of *N.J.S.A.* 18A:12-24.1(h), Complainant disagrees with Respondent’s argument, and counters that Respondent “failed to act on” and “failed to consult with the Superintendent to fashion a proper administrative solution” regarding her letter where she “raised serious personnel matters pertaining to conflicts of interest” of the Supervisor of Special Services.

In support of the violation of *N.J.S.A.* 18A:12-24.1(j), Complainant disagrees with Respondent’s argument, and notes that she “initially” brought her concerns regarding the Supervisor of Special Services to the Superintendent, and when the Superintendent did not address Complainant’s concerns, Complainant then notified the Board. Although Respondent “may have referred” the matter to the Superintendent (as required), it is “clear” that an administrative solution was not attained. Therefore, by receiving the letter and by not taking action, “it is clear” that Respondent “abdicated his supervisory and oversight obligations” resulting in a violation of *N.J.S.A.* 18A:12-24.1(j).

Finally, Complainant asserts that the Motion to Dismiss should be denied.³

D. *Public Comments Offered by Complainant at the Commission’s Meeting on September 29, 2020*

Complainant appeared, by teletelephone, for the Commission’s meeting on September 29, 2020, to offer public comment. More specifically, during the first public comment period, Complainant thanked the Commission for its time and consideration, and indicated she is available to answer any questions that the Commission may have regarding the above-captioned matter.

During the second public comment period, which began after Executive Session concluded, Complainant again thanked the Commission for its time in reviewing her Complaint. Complainant also stated that her “detailed Complaint” contains a lot of personal information and explains how she and her family were impacted by the actions and decisions by Respondent. Complainant again noted her willingness to answer any questions from the Commission.

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

³ Complainant did *not* discuss or reaffirm the facts asserted in support of the alleged violations of *N.J.S.A.* 18A:12-24.1(a) or *N.J.S.A.* 18A:12-24.1(g) in her response to the Motion to Dismiss.

Complainant has alleged sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(g)*, *N.J.S.A. 18A:12-24.1(h)*, and/or *N.J.S.A. 18A:12-24.1(j)*.

B. *Alleged Code Violations*

In the Complaint, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(g)*, *N.J.S.A. 18A:12-24.1(h)*, and *N.J.S.A. 18A:12-24.1(j)*. These provisions of the Code provide:

- 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.
- 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.

Before more fully addressing the allegations in the Complaint, the Commission notes that its authority is limited to enforcing the Act, *N.J.S.A. 18A:12-21 et seq.*, a set of minimum ethical standards by which all school officials must abide. In this regard, the Commission only has

jurisdiction over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C.* 6A:28-1.4(a). Therefore, to the extent that Complainant seeks a determination from the Commission that Respondent's statements or conduct were "discriminatory," the Commission notes that such a determination(s) falls outside the scope of its authority and jurisdiction. Nonetheless, Complainant may be able to pursue those claims in the appropriate forum.

The Complaint

In the Complaint, Complainant alleges that because Respondent, as the Board President and the individual "who supervises the [S]uperintendent," did not take any action to address the letter that she submitted to the Board detailing the conflict of interests of the District's Supervisor of Special Services, Respondent failed to adequately supervise the Superintendent, and "shirked his responsibilities to serve the needs of the community by allowing such a situation that is riddled with conflicts of interest to continue ... without being immediately addressed and corrected." This conduct, according to Complainant, violated multiple provisions of the Act.

First, Complainant alleges that this conduct violated *N.J.S.A. 18A:12-24.1(a)* because he "did not uphold his duties and obligations as he is sworn to do as the President." Respondent counters that Complainant has not "cite[d] or include[d] a copy of any law, rule, regulation, or court order pertaining to schools" and, therefore, "does not state a viable claim" to support this violation.

As set forth in *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.

After review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)*. Although required by *N.J.A.C.* 6A:28-6.4(a)(1), Complainant has not provided **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent violated a specific law, rule, or regulation in connection with the conduct set forth in the Complaint. Absent such a final decision, and even if the conduct may be actionable in another forum, the Commission finds that there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and, therefore, this allegation should be dismissed.

Second, Complainant contends that Respondent's conduct further violated *N.J.S.A. 18A:12-24.1(b)* because he "did not make decisions ... based on the educational welfare of the child." Respondent counters that, other than "merely asserting" that Respondent "acted contrary to the educational welfare of children," Complainant did not provide any evidence or facts to support her allegation. In this way, Complainant did not provide any evidence to support that Respondent took "deliberate actions" or made "decisions" that would "adversely affect the

educational welfare of children, or obstructed the District's programs and policies designed to meet ...”

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(2), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(b) shall include evidence that Respondent willfully made a decision contrary to the educational welfare of children, or evidence that Respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

Based on its review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(b). Although Complainant seems to believe that Respondent, because of his own educational background and professional experience, was in a position to address the concerns detailed in her correspondence, this does not obviate the fact that, as a Board member and the Board President, it is Respondent's duty to refer all complaints through the appropriate channels. As such, his referral of the correspondence was not a decision contrary to the educational welfare of children, or deliberate action to obstruct programs and policies; instead, it was a referral he was required to make. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(b) should be dismissed.

Third, Complainant asserts that Respondent's actions also violated ***N.J.S.A.* 18A:12-24.1(c)** because he “did not make decisions accordingly with those who would be affected by them.” Respondent counters that Complainant did not provide a policy or plan that Respondent “effectuated without consultation of those affected by it,” nor specify “any action” that Respondent took, which was unrelated to his “policy making, planning and appraisal duties.”

As set forth in *N.J.A.C.* 6A:28-6.4(a)(3), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(c) shall include evidence that Respondent took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to 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.

After review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c). There is no factual evidence presented in the Complaint which could show that Respondent took any action to effectuate policies and plans without consulting those affected by such policies and plans, and/or that Respondent took any action unrelated to his duties as a Board member and Board President. Immediate referral of a constituent's concerns to the appropriate District administrator is *exactly* what Respondent was required to do in the circumstances pled in the Complaint. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(c) should be dismissed.

Fourth, Complainant claims that Respondent's conduct additionally violated ***N.J.S.A.* 18A:12-24.1(d)** because he “did not make sure that the school was well-run and did not carry out his responsibilities.” Respondent counters that Complainant “takes fault with the fact that [he]

did *not* interfere in the day-to-day administration of the District” (emphasis added). As such, Complainant did not provide any facts to support that he “gave a direct order to school personnel, or became directly involved in activities or functions which fall under the responsibility of school personnel” or the administration.

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(4), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(d) shall include, but not be limited to, evidence that Respondent 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.

Based on its review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(d). Once again, there is no factual evidence set forth in the Complaint to indicate that Respondent gave a direct order to school personnel (the Superintendent or otherwise), or that he became involved in the activities or functions that are the responsibility of others. Complainant’s grievance appears to be that Respondent *should* have done more than referring the matter to the Superintendent; however, had he involved himself in the way Complainant suggests, he would have run afoul of this provision of the Code. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(d) should be dismissed.

Fifth, Complainant alleges that Respondent’s actions further violated ***N.J.S.A. 18A:12-24.1(e)*** because his actions “compromised the Board by his failure to take proper action.” Respondent counters that Complainant provides a “conclusory and contradictory statement” that his actions compromised the Board because he failed to “take proper action.” However, Complainant did not provide any evidence to support that Respondent “made any personal promises or took any actions ... to compromise the Board.”

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 duties such that, by its nature, had the potential to compromise the board.

After review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e). Despite being required to establish a violation, the Complaint does not identify any “personal promise” that Respondent allegedly made, and does not allege that the referral of Complainant’s correspondence to the Superintendent constituted action beyond the scope of his duties. Instead, Complainant argues that Respondent should have done more; however, failing to take specific action cannot be interpreted or construed as taking “action beyond the scope” of one’s duties. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) should be dismissed.

Sixth, Complainant argues that Respondent’s conduct also violated ***N.J.S.A. 18A:12-24.1(g)*** because he “did not provide accurate information or address this concern which affects the aspirations of the community for its school.” Respondent counters that Complainant “alleges that [Respondent] failed to provide her with accurate information,” but does not specify what

information he provided to her that was inaccurate. On the contrary, the Complaint indicates Respondent did not respond to her letter or provide her with *any* information.

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(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. 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.

Based on its review of the Complaint, the Commission finds that even if the facts as alleged 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). The Complaint does not contain any factual evidence that Respondent took any action to make any confidential (or private) information public, and also does not identify the *specific* information Respondent provided that was “inaccurate,” and/or evidence substantiating the inaccuracy of that information. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(g) should be dismissed.

Seventh, Complainant contends that Respondent’s actions additionally violated *N.J.S.A.* **18A:12-24.1(h)**. Respondent counters that Complainant did not provide sufficient factual evidence to support an allegation that Respondent “acted on any personnel matter without the recommendation of the Superintendent”

As set forth in *N.J.A.C.* 6A:28-6.4(a)(8), factual evidence of a violation of the confidentiality provision of *N.J.S.A.* 18A:12-24.1(h) shall include evidence that Respondent acted on a personnel matter without a recommendation of the chief administrative officer.

After review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(h). Once again, the Complaint does not provide factual evidence demonstrating that Respondent acted on a personnel matter without the necessary recommendation of the Superintendent; instead, Complainant argues that Respondent failed to act on what she (Complainant) regarded as the inadequate response of the Superintendent. Regardless of whether Respondent (or the Board) should have acted differently in the circumstances set forth in the Complaint, Respondent’s lack of action is not a sufficient basis to find a violation of this provision of the Code. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(h) should be dismissed.

Finally, Complainant asserts that Respondent’s conduct further violated *N.J.S.A.* **18A:12-24.1(j)** because he did not act on Complainant’s complaint, and “failed to make certain that the [S]uperintendent did her job in addressing [Complainant’s] concerns as well.” Respondent counters that Complainant did not provide any evidence to support the position that he “acted on or attempted to resolve her complaint or conducted an investigation relating to her complaint before referring it to the [Superintendent] or at a time and a place other than a public

meeting.” Furthermore, and as alleged by the Complainant, the Superintendent contacted Complainant in order to “expedite the process” and have Complainant’s child evaluated.

Pursuant to *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.

Based on its review of the Complaint, the Commission finds that even if the facts as alleged 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). To establish a violation of this provision, Complainant needed to provide factual evidence demonstrating that Respondent acted on or attempted to resolve a complaint *before* the Superintendent had the opportunity to do so, or *before* an administrative solution failed. Instead, Complainant argues the reverse, namely that Respondent should have done more *before* her Complaint could be addressed (or potentially addressed) through the proper protocols and procedures. Had Respondent intervened in the way suggested by Complainant, he would have run afoul of multiple provisions of the Code. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(j) should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined 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(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), *N.J.S.A.* 18A:12-24.1(h), and/or *N.J.S.A.* 18A:12-24.1(j).

IV. 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(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), *N.J.S.A.* 18A:12-24.1(h), and/or *N.J.S.A.* 18A:12-24.1(j).

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: October 27, 2020

**Resolution Adopting Decision
in Connection with C32-20**

Whereas, at its meeting on September 29, 2020, 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 September 29, 2020, 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(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)*, *N.J.S.A. 18A:12-24.1(g)*, *N.J.S.A. 18A:12-24.1(h)*, and/or *N.J.S.A. 18A:12-24.1(j)*; and

Whereas, at its meeting on October 27, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on September 29, 2020; 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 October 27, 2020.

Kathryn A. Whalen, Director
School Ethics Commission