

STEPHEN BROWN, CAROL LISA AND GLENN GARRISON	:	BEFORE THE SCHOOL ETHICS COMMISSION
v.	:	Docket No. C13-07
DAVID MATTHEWS CITY OF ENGLEWOOD BOARD OF EDUCATION BERGEN COUNTY	:	DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed on March 26, 2007 by Stephen Brown and Glenn Garrison, members of the Board of Education of the City of Englewood (“Board”) and Carol Lisa, former Superintendent of the Englewood Public School District (“District”), alleging that David Matthews, a former member of the Board, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The complainants specifically allege that the respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), (i) and (j) of the Code of Ethics for School Board Members.

Through his attorney, Marc Zitomer, Esquire, the respondent denied the allegations, filed a Motion to Dismiss in Lieu of an Answer and asked the Commission to impose sanctions against the complainants pursuant to N.J.S.A. 18A:12-29(e). The Commission notified the complainants that it received the respondent’s Motion to Dismiss and gave them an opportunity to respond to the motion. On October 5, 2007, the Commission received a response to the Motion to Dismiss from the complainants, together with supporting affidavits.

The Commission considered the complaint, the Motion to Dismiss and the complainants’ Brief in Opposition to the Motion at its October 30, 2007 meeting, at which time the Commission voted to grant the respondent’s Motion to Dismiss only as to paragraphs 22, 35, 36, 37, 38, 39, 40, 41, 43, 44 and 58 of the complaint and further voted to find that the complaint was not frivolous. A decision on the Motion to Dismiss was adopted by the Commission on December 18, 2007. On January 15, 2008, the respondent filed an Answer to the remaining allegations in the complaint.

The matter was scheduled for a hearing on the merits of the complainants’ claims at the Commission’s meeting on April 23, 2008. However, pursuant to a request from the complainants’ attorney, which was not opposed by the respondent’s counsel, the matter was adjourned and rescheduled for the June 24, 2008 and August 26, 2008 meetings. The parties, their counsel and witnesses appeared, as set forth below. After presentation of the complainants’ case on August 26, 2008, the Commission granted the respondent’s Motion to Dismiss paragraphs six through eight, 33, 34, 45, 42 and 47 through 49 of the complaint and to table the remaining allegations pending receipt and review of post hearing documents, which were submitted by the parties on September 15, 2008. At the September 23, 2008 meeting, the

Commission found that the respondent violated N.J.S.A. 18A:12-24.1(d), (e) and (i) and the Commission recommended a penalty of censure.

THE PLEADINGS¹

The complainants initially contend that the respondent twice improperly voted on a contract involving the JCC Thurnauer School of Music providing an after-school program to students in the District's elementary schools. The complainants allege that on September 21, 2006 and December 21, 2006, resolutions involving contracts in the amounts of \$25,984 and \$38,976, respectively, were presented to the Board and the respondent participated in the discussions of the resolution and voted on the same while he was a duly appointed member of Board of Trustees for the JCC Thurnauer School of Music. The complainants assert that the respondent should have abstained from participating in these discussions and voting on the contracts. (Complaint at paragraphs 6-8).

The complainants explain that, in November 2006, the Board considered the possible return of Susan Mullins, the Deputy Superintendent, to the Board of Education of the Vocational Schools in Bergen County ("Bergen Tech"). Ms. Mullins had been providing administrative services in the District pursuant to an Interlocal Services Agreement between the Board and Bergen Tech. However, a subsequent court-ordered injunction barred the Board from making any alteration to the Interlocal Services Agreement, absent a petition to the Commissioner of Education; consequently, the Board continued to pay Ms. Mullins per the agreement and instructed Ms. Lisa to "delegate special assignments to Ms. Mullins and oversee her work." (Id. at paragraph 9-12) The complainants also state that the Board had decided not to retain the services of another Bergen Tech administrator, Ellen Conlon, Director of Curriculum and Instruction, who was providing services to the District pursuant to an Interlocal Services Agreement.

The Board decided to send a delegation to speak with the Bergen Tech Superintendent for the purposes of negotiating an amicable resolution to the Interlocal Services Agreement. (Id. at paragraph 13). In this connection, the complainants contend:

- At the December 28, 2006 Board meeting, a delegation of Board members was selected to attend the meeting with the Bergen Tech Superintendent on January 4, 2007; respondent was not selected to attend. (Id. at paragraphs 14, 15)
- Without Board knowledge or approval, and prior to the January 4th meeting, the respondent "took it upon himself to contact Bergen Tech's Superintendent on numerous occasions to discuss the terms and conditions of terminating the Interlocal Services Agreement, as well as returning Mullins to Bergen Tech." (Id. at paragraph 16)
- Respondent appeared at the meeting on January 4, 2007. When challenged about his appearance, he responded that the Board President does not control the Board and he would not be a "second class Board member." The Board delegation, according to the

¹ The allegations listed do not include those that were dismissed by the Commission at its meeting on October 30, 2007.

complainants, was forced to allow the respondent to remain at the meeting. (Id. at paragraphs 17-20)

- Respondent participated in the meeting, despite the objection of the Board's delegation and in direct defiance of the Board's unanimous decision that he was not included in the delegation. (Id. at paragraph 21)

As to the respondent's interactions regarding Ms. Mullins and Ms. Conlon, the complainants also allege:

- Respondent went to Ms. Conlon's office unannounced on February 26, 2007 to discuss her status under the Interlocal Services Agreement. He did so without the knowledge or permission of Superintendent Lisa or prior notice and approval of the Board. (Id. at paragraph 23)
- Respondent unduly interfered with the performance of Ms. Conlon's duties since she was, at the time, engaged in the task of receiving and securing standardized test packets. (Id. at paragraph 24)
- Respondent stated to Ms. Conlon that "the buzz" was that she was a good worker and he asked her if she would like to stay in the District. Complainants allege that the respondent had no authority to offer Ms. Conlon continued employment and his private action compromised the Board's position regarding Ms. Conlon, causing her undue stress. (Id. at paragraph 25)
- Respondent made an unannounced visit to Ms. Mullin's office, on or about February 23, 2007, without prior permission or consent from Superintendent Lisa, and stated that it was embarrassing for the Board to have three assistant superintendents. The complainants contend that the respondent advised Ms. Mullins to simply return to Bergen Tech because the Board should no longer have to pay her salary. (Id. at paragraphs 26-27)
- Respondent told Ms. Mullins that it was undignified for her to work under such circumstances, that he would give her a good reference if she left the District, and that she should be embarrassed to continue to take money from the Board. The respondent then resorted to cajoling Ms. Mullins into leaving the Board, indicating that she would be given a party if she left. Respondent's actions were unknown to the Board. (Id. at paragraphs 29-32)
- Respondent communicated with Superintendent Lisa demanding that she authorize stopping payment to Ms. Mullins because the District was a "laughing stock" for having three assistant superintendents. (Id. at paragraph 33)

The complainants further allege that the respondent has acted inappropriately at public meetings and in private meetings and conferences. In this connection, the complainants contend:

- At the public meeting, the respondent gave the public attending the meeting a budget timeline used by a previous superintendent for an old budget for the sole and exclusive purpose of embarrassing the administration, since it was entirely inapplicable to the current budget process. (Id. at paragraph 42)

The complainants assert that the respondent has interacted inappropriately with other District personnel in the following instances:

- On numerous occasions, the respondent has entered the District's schools to discuss Board business and/or to request that District employees provide him with information, without Board knowledge or support, in an effort to second-guess the administration and/or micro-manage the District. (Id. at paragraph 45)
- On March 20, 2007, without Board knowledge or authorization, the respondent directed Richard Segall, Assistant Superintendent, to compile data for him regarding student enrollment in advanced placement classes. Respondent never communicated his request to Ms. Lisa before speaking with Mr. Segall and she did not approve that the work be performed. (Id. at paragraph 46)
- The respondent directed the former Business Administrator, Cheryl Balletto, to provide him with copies of all of Superintendent Lisa's requests for expense reimbursement for the preceding year, despite the fact that each request had already been disclosed to the Board in its monthly bill lists and was voted on for payment on a monthly basis. The complainants allege that respondent sought this information for the purpose of trying to "unearth some impropriety so as to discredit Superintendent Lisa." In compiling the data, the complainants claim that the business administrator was distracted from performing her job for no justifiable reason. (Id. at paragraph 47-49)
- Upon being interviewed by the District's affirmative action officer (AAO), Lisa Finn-Bruce, the respondent claimed that Ms. Finn-Bruce could not impartially perform her duties. Ms. Finn-Bruce sought intervention from the Board President. The respondent refused to cooperate with Ms. Finn-Bruce's investigation. As a result of a telephone conversation with the respondent on March 21, 2007, Ms. Finn-Bruce went to Superintendent Lisa's office in a state of hysteria. Ms. Finn-Bruce reported that the respondent "verbally attacked, yelled at her and was abusive toward her" when they spoke. Ms. Finn-Bruce immediately resigned as the AAO. (Id. at paragraphs 52-55)
- Respondent has caused other employees to fear for their safety and be afraid to come forward in fear of retaliation. (Id. at paragraph 56)
- Respondent becomes infuriated when he does not get his way and resorts to yelling, name calling, making intimidating remarks and/or broadcasting unsubstantiated allegations of wrong-doing. (Id. at paragraph 57)

In his Answer filed on January 15, 2008, the respondent admits that he voted on resolutions pertaining to the JCC Thornauer School on September 21, 2006 and

December 21, 2006. However, the respondent affirms that he was never a member of the Board of Trustees or Board of Directors of the JCC Thornauer School of Music. Rather, the respondent states that he is a member of the advisory committee of the Music School. The purpose of the committee, according to the respondent, is to promote music in the larger community. (Answer at pp. 1-2)

Respondent admits that at the Board's regular meeting on November 16, 2006, it passed a resolution accepting Ms. Mullins' letter of resignation from her position as Deputy Superintendent and endorsed her return to Bergen Tech. The respondent further admits that Bergen Tech objected to this action and sought judicial intervention. The respondent admits that the Board decided to limit Ms. Mullins' presence in the District and charged Ms. Lisa with delegating special assignments to her. The respondent denies that the Board engaged in a substantive discussion about Ms. Conlon's return to the Bergen Tech, although the Board discussed providing notice to Bergen Tech of its intent to terminate the contract effective July 1, 2007. The respondent also admits that the Board decided that it would send a delegation to speak to the Bergen Tech Superintendent for purposes of negotiating an amicable resolution to the agreement. (Id. at pp. 3-5)

The respondent denies that the Board decided that only three Board members would attend the meeting with the Bergen Tech Superintendent. Rather, the respondent avows that, at its meeting on December 21, 2006, the Board decided that four members would attend the meeting: President Stephen Brown, Vice President Glenn Garrison, Shirley Smith and himself. (Id. at pp. 5-6)

The respondent admits that the meeting was scheduled for January 4, 2007 and affirms that on the day of the meeting, Stephen Brown contacted him two hours before the scheduled start of the meeting and left him a voicemail message that he should not attend the meeting. The respondent maintains that Mr. Brown had no authority to do so since the Board had approved his attendance at the meeting. As a result of Mr. Brown's message, the respondent contacted his New Jersey School Board's Association (NJSBA) representative who advised him that if the Board had decided that the respondent was part of the delegation, he should attend the meeting. The respondent denies that he discussed any terms and conditions of terminating the agreement or returning Ms. Mullins to the Bergen Tech with Mr. Aloia prior to the January 4th meeting, which he admits that he attended, although he denies stating that he would not be treated as a second class citizen. (Id. at pp. 6-7)

The respondent admits speaking to Ms. Conlon, but does not recall the date. He denies discussing her status under the agreement and states that his sole purpose for speaking with her was to express his condolences regarding the recent passing of her mother. The respondent denies that he "unduly interfered" with Ms. Conlon's duties on that date, as he was only there for about 10 minutes and she never asked him to leave. According to the respondent, Ms. Conlon expressed her appreciation for his sentiments and condolences. The respondent admits that, during the conversation, he told her that she was a good employee, although he denies asking Ms. Conlon if she wanted to stay in the District and he denies offering her employment. The respondent maintains that at the time of this conversation, he did not know that Ms. Conlon had

expressed her intention to return to Bergen Tech, since he does not recall that the matter was discussed with the Board during any meeting he attended. (Id. at pp. 5, 9-10)

Respondent admits stopping by the office of Ms. Mullins without an appointment some time in February 2007, as he was at the Board office for another reason and Ms. Mullins invited him into her office when she saw him. The respondent asserts that Ms. Mullins was visibly upset and he told her that if he were her, he would not go through the humiliation associated with the matter and he would simply return to Bergen Tech, where she is a tenured employee. In this connection, the respondent asserts that his comments were suggestions and not directives. He admits telling Ms. Mullins that he believed it was embarrassing that the Board had three assistant superintendents and further admits that he asked her why she was subjecting herself to this kind of stress. The respondent admits telling Ms. Mullins that he would provide a reference for her, after she initiated the conversation. The respondent estimates their conversation lasted about 15 minutes. The respondent denies that he told the Superintendent to stop paying Ms. Mullins, although he admits that he informed the Board at a meeting that it should consider stopping payment to Ms. Mullins because she was not properly certified to hold her position. (Id. at pp. 11-14)

As to paragraph 42 of the complaint, the respondent admits to having disseminated a budget timeline from another school district at a public meeting; he denies that this was a budget timeline used by a previous superintendent for an “old budget.” He asserts that he disseminated the timeline to illustrate that the preliminary budget did not have to be presented to the Board for the first time in March, but could have been presented earlier to allow for more consideration. (Id. at p. 17)

As to the complainants’ allegation at paragraph 45 of the complaint that on “numerous occasions” he entered the schools to discuss Board business or request that employees provide him with information, the respondent asserts that this allegation offers no dates and is therefore, vague and speculative. (Ibid.)

The respondent admits to requesting that then Assistant Superintendent Richard Segall provide the Board with the number of students enrolled in each Advanced Placement (AP) course and specifically, the number of students from the regular high school who were enrolled in these courses. (Ibid.)

The respondent admits to requesting that the Business Administrator provide him with copies of the Superintendent’s requests for reimbursements over the past year because he wanted to ascertain whether the Superintendent was being reimbursed large sums of money, as he had heard from another Board member. The respondent maintains that this information, however, is public record and he had the right to request it. The respondent denies that there was anything unethical in this regard and further denies that in making the request, he distracted the Business Administrator from performing a more critical task. (Id. at pp. 18-19)

The respondent admits that an affirmative action complaint was filed with Ms. Finn-Bruce and that he was told the complaint was filed by Superintendent Lisa. Ms. Finn-Bruce informed the respondent that the complaint alleged a hostile work environment. The respondent

admits that Ms. Finn-Bruce requested to meet with him to discuss the complaint, but that he informed her that he would not meet with her until he received a copy of the complaint. Because Ms. Finn-Bruce did not provide a copy of the complaint, he did not meet with her. The respondent denies that he became argumentative with Ms. Finn-Bruce and asserts that, to the contrary, she was argumentative and hostile toward him. The respondent asserts that Ms. Finn-Bruce called him at home and on his mobile phone at least eight times to discuss the matter over a two week period. The respondent contends that Ms. Finn-Bruce spoke to numerous people in the District about the matter before even contacting him. The respondent insisted on written proof from the Department of Education that Ms. Finn-Bruce had the authority to investigate him. The respondent admits that he questioned whether Ms. Finn-Bruce could impartially perform the investigation since she reported to Ms. Lisa. (Id. at pp. 20-21)

The respondent admits to speaking with Ms. Finn-Bruce on March 21, 2007, at which time he again requested a copy of the complaint, which, according to the respondent, seemed to agitate Ms. Finn-Bruce. The respondent contends that although Ms. Finn-Bruce promised on several occasions to provide the complaint by fax or by courier, she never did so. The respondent denies that he was abusive toward Ms. Finn-Bruce. He admits telling her that he refused to be lynched. (Id. at p. 22)

The respondent denies that he has caused employees to fear for their safety as alleged in paragraph 56 and asserts that he has good reputation in the District. The respondent further denies the allegations in paragraph 57 that he becomes infuriated and resorts to name-calling and intimidation. (Id. at p. 23)

EVIDENCE

On June 24, 2008, the complainants, Carol Lisa, Stephen Brown and Glenn Garrison were present to give testimony. The respondent, David Matthews, was also present.

Ms. Lisa testified about her role and position in the district as the former Superintendent. She provided testimony regarding the Interlocal Services Agreement between Bergen Tech and Englewood. Ms. Lisa stated that respondent entered the schools approximately 61 times from 2005 to 2007; she also received phone calls and emails from the respondent. Ms. Lisa stated that the respondent made multiple requests to staff to provide him with information. She testified that the Board had no knowledge of the respondent's conduct.

Ms. Lisa testified that the respondent made requests for information on her reimbursements. She stated that the respondent's conduct showed a pattern of disregard, as evidenced by his visits to Susan Mullins and to Ellen Conlon and his interactions with Cheryl Balletto causing her to resign. She testified about an incident where the respondent came into her office and interrupted a meeting. After that incident, she testified that she filed an Affirmative Action complaint against the respondent because of his treatment of her and refused to see him without an appointment. Ms. Lisa testified that the Board tried to advise the respondent about his disregard of Board policies.

On cross-examination, Ms. Lisa acknowledged that her reimbursements were public records. She further testified that the bill lists were not itemized. Ms. Lisa admitted that she was not present when the respondent met with Ms. Mullins and with the Affirmative Action Officer. She testified that she did not know the timelines relative to the Open Public Records Act. Ms. Lisa stated that she had one call with Mr. Aloia upon the death of former Superintendent Grecco. She also stated that Susan Mullins had discussions with Mr. Aloia.

Steven Brown was the Board President during the 2006-2007 school year. He testified that although the Board had entered into the Interlocal Services Agreement with Bergen Tech, the Board later recognized that it was facing a shortfall of \$2.2 million and it needed to save money. The Board decided to return Ms. Mullins to Bergen Tech. Englewood's attempts to terminate the agreement, however, were halted by the court injunction that Bergen Tech obtained to stop the board from returning Ms. Mullins to Bergen Tech.

The following exhibits were introduced by Mr. Brown: C-1 is an Order to Show Cause with Temporary Restraints issued by the Superior Court, Bergen County; C-2 is the Board's Resolution adopted on November 18, 2006 accepting Ms. Mullins' request to be relieved of her position of Deputy Superintendent and endorsing her return to Bergen Tech; and C-3 is a copy of the minutes from a closed session on December 21, 2006 wherein the Board determined that Board members "SB, GG and SS" would meet with Bob Aloia, the Superintendent of Bergen Tech.

Mr. Brown testified that on January 4, 2007, the respondent showed up at the meeting at Bergen Tech, to everyone's surprise, notwithstanding that the Board's resolution of December 21, 2006 states he was not among the delegation. According to Mr. Brown, when asked what he was doing there, the respondent replied that he was not a second class citizen and he had the right to be there. The delegation proceeded to meet with Mr. Aloia, who informed them that they needed one year's notice to cancel the agreement. Mr. Brown testified that Mr. Aloia seemed to know what the Englewood delegation was about to propose and to be ready with a negative response to the proposal. Mr. Brown stated that the respondent acknowledged that he talked to Mr. Aloia at least once or twice per week. Mr. Brown also explained that it was his belief that information about Englewood's plans vis a vis the interlocal agreement was leaked to Mr. Aloia.

Mr. Brown testified that the district then made arrangements for Ms. Mullins to work from home and communicate with the Superintendent. He later received a call from Superintendent Lisa informing him that Ms. Mullins had come to her office saying that the respondent told her she needed to return to Bergen Tech and questioned whether the Board had changed its position. Mr. Brown confirmed that the Board had not changed its position. Mr. Brown stated that he was enraged both as an attorney and as Board president since speaking with Ms. Mullins might provide her with fodder for future litigation.

Mr. Brown testified as to a similar incident involving Ellen Conlon. After the January 4th meeting, Ms. Conlon informed Englewood that she would like to go back to Bergen Tech. Again, he received a call from the Superintendent informing him that the respondent went to Ms. Conlon's office and told her that she was a good employee and she should stay. The

Superintendent questioned whether the Board's direction had changed and Mr. Brown confirmed that it had not. Mr. Brown stated that the Board had not directed the respondent to go to Mullins and Conlon.

When asked about the affidavits submitted by Board members Kamar and Smith on behalf of the respondent, Mr. Brown said they did not tell the truth. He testified that it was clear from the Board's meeting who was to be part of the January 4th delegation. The Board did not achieve its goals as a result of that meeting because the \$2.2 million gap remained.

Mr. Brown explained that Board members were annually advised about behavior and parameters of conduct and that at almost every meeting there was a discussion about an infraction by the respondent. The Superintendent, according to Mr. Brown, was repeatedly "putting out fires" in that she had to address the respondent's ongoing requests. Mr. Brown stated that the Board has policies about communication with school administrators, but when the respondent wanted it done, he would do it. He felt it was his right.

Glenn Garrison has been on the Board since 2004, and was vice president at the time of the events alleged in this complaint and is the current president. He testified that the Board had meetings to discuss the respondent's behavior; the first discussion was the day after he was elected. Mr. Garrison testified that the Superintendent made a "cry for help" due to the respondent's requests being burdensome on herself and her staff.

Mr. Garrison was present when the Bergen Tech delegation was chosen. The Board's attorney recommended a small delegation to discuss the agreement. Thus, the Board selected the President (Mr. Brown), the Vice President (Mr. Garrison) and Shirley Smith, who had been on the Board "since the beginning" of the agreement. Mr. Garrison testified that the delegation drove together to the meeting and the respondent walked up to them stating that he was not a second class citizen and no one tells him what to do. Mr. Garrison stated that Mr. Aloia seemed to know what the Board was going to say—that they wanted to get out of the contract in June 2007. He refused. The meeting, according to Mr. Garrison, was over in two minutes.

Mr. Garrison stated that he did not recall speaking to the respondent prior to the meeting. Mr. Garrison testified that Mr. Aloia had already worked out the personnel issues and was "well prepped." Mr. Garrison testified that because the respondent admitted to speaking with Mr. Aloia on a regular basis, "it doesn't smell right." Mr. Garrison stated that the minutes marked as Exhibit C-3 were approved.

Lisa Finn-Bruce provided testimony on August 26, 2008. She was the district's Affirmative Action Officer (AAO) from 2005 to 2007. She testified that her AAO activities were guided by the State's manual and training. As the AAO, Ms. Finn-Bruce received a complaint in January 2007 about the respondent filed by Ms. Lisa. The nature of the complaint, according to Ms. Finn-Bruce, was harassment and sexism. The complaint involved an allegation about the respondent, the work environment and language that he used. Ms. Finn-Bruce testified that she worked for Ms. Lisa and was asked to investigate the complaint. She interviewed Ms. Lisa and anyone who had heard the statements alleged to have been made by the respondent. Ms. Finn-Bruce explained that she then handed the matter over to "someone else who would decide

what to do.” She also spoke with Lorraine Capezzuto, the secretary and Cheryl Balletto, who was the Business Administrator. Ms. Finn-Bruce stated that she also interviewed two other people who were in the office (outside the door) when the conversation which was the basis of the complaint took place.

Ms. Finn-Bruce explained that as the AAO, her job was to gather the facts. She stated that she just wrote down what people said and would present the information to Ms. Lisa and the Board. In this instance, she called the county office and was told she should hand over her notes to the Board President. Ms. Finn-Bruce testified that she attempted to meet with Mr. Matthews to get his side of the story. She stated that she called him in early March and asked to meet. She stated that she called him “a number of times,” but he would not meet with her.

The witness identified Exhibit C-4, an unsigned letter dated March 19, 2007 from her to Mr. Matthews requesting a meeting. The witness identified Exhibit C-5, a signed letter dated March 19, 2007 from her to Superintendent Lisa stating that she has contacted Mr. Matthews on several occasions, but that he has not agreed to meet with her. Therein, Ms. Finn-Bruce states that she would like to recuse herself from the investigation.

Ms. Finn-Bruce testified that State and county officials told her that she had to interview Mr. Matthews. She could not simply mail him the complaint. Ms. Finn-Bruce stated that as a matter of procedure, she never shared the complaint until meeting with respondent. According to Ms. Finn-Bruce, when she spoke with Mr. Matthews on one occasion, he was very upset. It was very difficult to get a word in; he was yelling at her. She felt she had to contact state officials to obtain advice about how to proceed, which led to her writing the C-5 letter. When she spoke with Ms. O’Connor in the county office, she was told that she needed to meet with the respondent before handing over the matter to someone else.

Ms. Finn-Bruce testified that she had known the respondent and had been in social situations with him; they had common friends and he also came to her husband’s funeral. She testified that Mr. Matthews told her that she “had the noose around his neck” and was “part of the lynch mob.” In her 23 years of educational experience, Ms. Finn-Bruce affirmed that no one has ever spoken to her like that. She stated that she tried to speak with him to get his side of the story, but he continued to yell at her for about 10 minutes.

The witness identified Exhibit C-6, an unsigned letter dated March 21, 2007 from her to Ms. Lisa wherein she asks to resign her position as AAO as of that date. The witness identified Exhibit C-7, an unsigned letter dated April 12, 2007 from her to Ms. Lisa, wherein she submits the results of her investigation. The witness identified Exhibit C-8 as her investigation notes. Ms. Finn Bruce testified that does not know what ever happened with the investigation.

Ms. Finn-Bruce testified that she does not know what the board knew about the complaint; she stated that she did not say anything to them, although she spoke with Mr. Brown as the Board President. She stated that it was protocol not to hand over the complaint to the respondent. She would let respondents see the complaint when they met with her. In this case, Mr. Matthews never met with her and never heard about the contents of the complaint. Ms. Finn-

Bruce testified that her AAO duties were not full time and the Board appointed someone else to assume those duties after she resigned. There was no stipend for the AAO.

Ms. Finn-Bruce testified that she resigned on March 21, 2007. She acknowledged that the April 12, 2007 letter was “signed” as AAO, but said it was not accurate. Ms. Finn-Bruce also acknowledged that some letters were not signed. She stated that “It depends on who typed it.” Ms. Finn-Bruce explained that C-4 and C-5 were written on the same day. As to the letter marked as C-5 which states that Mr. Matthews had requested a copy of the policy which would provide the district with the jurisdiction to investigate him as a board member, Ms. Finn-Bruce testified that she did not provide Mr. Matthews with the policy.

On cross-examination, Ms. Finn-Bruce testified that she followed procedure with respect to the conduct of her investigations as the AAO. She never handed over the complaint before meeting with the respondent. This procedure was used by the State in its manual.

Ms. Finn-Bruce testified that she did not report directly to Ms. Lisa, the complainant, and she was just gathering the evidence and not making a decision. She acknowledged that she knew Mr. Matthews socially, but she did not initially consider recusing herself. She stated that she maintained confidentiality and intended to be fair. She reiterated that she only had to write what he said. According to Ms. Finn-Bruce, the Board would make determinations.

Ms. Finn-Bruce stated that she tried calling Mr. Matthews two or three times and did speak with him, although he would not meet with her. According to Ms. Finn-Bruce, the “lynch mob” conversation took place on March 21, 2007. As to why she asked to be recused two days before that conversation, Ms. Finn-Bruce replied that she did so because Mr. Matthews would not meet with her.

Board member Stephen Brown was recalled as a witness. He testified that the Board was presented with the resignation of Ms. Finn-Bruce and a resolution hiring another person to take these duties. Mr. Brown testified that they knew there was an allegation from Ms. Lisa, but they did not know the substance. The Board got information that Ms. Finn-Bruce was asking to be removed because of an issue with Mr. Matthews. At that meeting, Mr. Matthews wanted evidence that Ms. Finn-Bruce really resigned. The April 12th letter was sent to all Board members because Mr. Matthews pushed for evidence that she actually resigned.

Mr. Matthews testified that he served on the Board from 1996 to 2008. He did not run in 2008. Mr. Matthews stated that there was never a complaint filed against him. He affirmed that he is familiar with the Code of Ethics for School Board Members; he has attended seven or eight conventions. He takes pride in being an ethical person. He served with four other superintendents and never had any problem with these people.

Mr. Matthews testified that the delegation to attend the Bergen Tech meeting was discussed by the Board. The Board wanted to end the Interlocal Services Agreement the following June 2007; he was in favor of ending the agreement. Mr. Matthews testified that the delegation was to be the board president, the vice president and another long-time member (Smith) and himself. Mr. Matthews testified that he is certain he was chosen to be among the

delegation and had phone records demonstrating that he called Mr. Garrison and Mr. Brown numerous times to discuss the matter.

Mr. Matthews testified that he had a conversation with Mr. Garrison about the January 4th meeting and Mr. Garrison never said he was not a part of the delegation. According to Mr. Matthews, Mr. Brown left him a voicemail that he was not to attend the meeting, so he called his NJSBA representative to ask if he should attend. The representative called him back and she said it was absolutely OK to attend, as long as there are not five board members. He arrived five minutes before the meeting occurred. Others arrived and they exchanged pleasantries. Mr. Brown asked, "Why are you here?" Mr. Matthews participated in the meeting. He stated that the Board's goal was ultimately achieved. Mr. Matthews testified he never discussed the Board's strategy with Mr. Aloia prior to the meeting. He acknowledged that he was friendly with Mr. Aloia when he was the Englewood School District's Business Administrator. Mr. Matthews testified that he never discussed returning Ms. Mullins to Bergen Tech.

As to the meeting with Ms. Conlon in paragraph 23 of the complaint, Mr. Matthews testified that he had gone to the Board office and someone told him that Ms. Conlon's mother had passed away; he did not go to the building to speak with her, but while there, expressed his condolences. They discussed her mother's funeral. He told Ms. Conlon he knew that she was leaving. He stated that he heard she was a good worker and was sorry to see her go. Mr. Matthews testified that they had just been told by the Superintendent that Ms. Conlon was going back to the Bergen Tech. Her salary had jumped \$20,000 or \$30,000. Mr. Matthews testified that the length of the conversation was five to seven minutes. According to Mr. Matthews, Ms. Conlon welcomed people to stop by her office to discuss curriculum issues. The conversation did not seem to upset her. Ms. Conlon thanked Mr. Matthews for stopping by to express his condolences. Mr. Matthews testified that he does not recall using the word "buzz," but he mentioned that he had heard she was a good worker. Mr. Matthews stated if he needs the Board president to express condolences, then he missed something in training.

Mr. Matthews testified that Ms. Mullins was the assistant superintendent. He went to the Board office to get a document dealing with Board business and Ms. Mullins asked him to come to her office. Mr. Matthews testified that they had a friendly relationship; they had gone to lunch together and would discuss educational issues. While in her office, Mr. Matthews testified that they chatted a couple minutes. Ms. Mullins appeared to be upset because the Board wanted her to leave; there was a controversy about her salary which was about \$180,000.

Mr. Matthews acknowledged that he told Ms. Mullins that it was embarrassing that there were three assistant superintendents in a district that had about 2,700 students. However, he did not direct that she return to Bergen Tech. Ms. Mullins was upset about her treatment by the Board; she was almost near tears and she felt she could speak to him about it. He asked her, "Why are you putting yourself through this?" Mr. Matthews testified that he said nothing whatsoever about the salary, although he did say there was "no way we could justify having three assistant superintendents." In her affidavit, Ms. Mullins mentioned a letter of reference. Mr. Matthews testified that the letter of reference arose in connection with an opening for a superintendent in the Montclair School District. He asked whether Ms. Mullins was interested in the Montclair position, but this did not occur on the day in question. Mr. Matthews testified that

it was a tradition that the Board gives its “top officials” a going away dinner. He mentioned that she could be a part of that.

As to conversation with Mr. Segall in paragraph 46 of the complaint, Mr. Matthews testified that he was a member of the Academic Affairs Committee which dealt with improving academic programs. Mr. Segall was the district’s liaison for that committee. The Board would pay for students to take the advanced placement (AP) exam. Mr. Matthews testified that he requested a breakdown showing how many academy students and how many regular high school students were taking AP courses. He stated that when he brought it up at the committee meeting, the head of the committee did not object. According to Mr. Matthews, Mr. Segall said he would “run it past the Superintendent.” Mr. Matthews acknowledged that the information was not requested through the Superintendent. He believed that the district did not want this information to be public. Mr. Segall told him that the Superintendent did not approve the request. Months went by; ultimately Mr. Matthews got the data by making an OPRA request.

On the issue of the complaint made to the AAO, Mr. Matthews testified that Ms. Finn-Bruce called him and told him that a complaint was filed regarding a hostile work environment. The first he heard about “sexism” was today. Ms. Finn-Bruce never mentioned who filed the complaint until well into the conversation. When he was told it was the Superintendent who filed the complaint, he asked for a copy and Ms. Finn-Bruce agreed. Ms. Finn-Bruce said that she would give him the complaint when he came in.

Mr. Matthews testified that he questioned how he could create a hostile work environment when he did not work for the Board. He questioned the AAO’s authority. Further, Mr. Matthews testified that he questioned Ms. Finn-Bruce about how she could be objective when she reported to the Superintendent. Mr. Matthews stated that it was not fair that she had already conducted the investigation and he would not come in until he was given a written copy of the complaint.

Mr. Matthews testified that when Ms. Finn-Bruce later called and asked why no appointment had been made, he again replied that he wanted to see the complaint and he again questioned her authority to investigate him as a board member and a private citizen. She then said she would fax him the charges. He asked for copy of the Board’s policy that would provide it with the authority to investigate this matter. Mr. Matthews testified that he was never provided either the complaint or the policy. He believed that the Superintendent did not like to be questioned.

As to the document marked as Exhibit C-4, Mr. Matthews testified that the letter did not include his proper address and he never received the correspondence.

Mr. Matthews acknowledged that, after he had received five, six or seven calls from Ms. Finn-Bruce, he accused her of placing a noose around his neck. He told Ms. Finn-Bruce that she has become part of the lynch mob and that she was being used by people who have an agenda that has nothing to do with education. When asked about whether he raised his voice in the conversation with Ms. Finn-Bruce, Mr. Matthews stated that this was a matter of opinion. He acknowledged that he sometimes speaks loudly and if he raised his voice, it was not in a

disrespectful manner. Mr. Matthews testified that he was irritated and felt he was being railroaded.

Mr. Matthews could not account for why the Exhibit C-3 minutes do not indicate that he was selected for the delegation. He acknowledged that he probably did not read the minutes prior to approving them.

On cross-examination, Mr. Matthews was presented with a copy of an email (Exhibit C-9) dated January 2, 2007 from the Board's counsel to the Board confirming the January 4th meeting to discuss the Interlocal Services Agreement. Counsel therein confirms that Mr. Brown, Mr. Garrison and Ms. Smith would attend. Mr. Matthews testified that he does not recall receiving this email, although he acknowledged that his email address was on the document. He stated that he was not as diligent as he could be with personal emails. Mr. Matthews stated that the board attorney had no authority to tell him whether he should be at a meeting. Mr. Matthews stated that the email "means nothing to me."

Mr. Matthews acknowledged that in his discussion with the NJSBA representative, he did not state that the Board had decided he was not part of the delegation because this was not true. When questioned why he reached out to the NJSBA representative if he was sure that he was authorized to attend the meeting, Mr. Matthews replied that after receiving the call from Mr. Brown, he wanted to be sure he was doing the right thing.

In addition to the testimony and exhibits brought into evidence, as set forth above, the complainants submitted the following affidavits from the following people to support the allegations in the complaint:

- Stephen Brown, former Board President: attesting to the Interlocal Services Agreement, the Board's selection of a delegation to attend the Bergen Tech meeting, the meeting on January 4, 2007, and the Board's budget meeting in March 2007;
- Glenn Garrison, former Vice President: attesting to information about the JCC Thurnauer School of Music, the respondent's statements about discussions with Mr. Aloia, the Interlocal Services Agreement, the Board's selection of a delegation to attend the Bergen Tech meeting, the meeting on January 4, 2007 and the Board's budget meeting in March 2007;
- Carol Lisa, former Superintendent: attesting to the Interlocal Services Agreement, the respondent's regular visits and requests, the Board's budget meeting in March 2007, and respondent's intimidation of her staff;
- Susan Mullins, former Assistant Superintendent: attesting to a conversation with the respondent on or about February 23, 2007 in her office wherein he advised her to immediately return to Bergen Tech;

- Ellen Conlon, former Director of Curriculum and Instruction: attesting to a conversation with the respondent on or about February 16, 2007 in her office wherein he asked if he could speak to her about staying in Englewood;
- Richard Segall, former Assistant Superintendent: attesting to how Board members were advised in early 2007 to make requests through the Superintendent and to the respondent's directive on March 20, 2007 to provide him with information on student enrollment in AP classes, although the request had not gone through the Superintendent; and
- Lisa Finn-Bruce, former Affirmative Action Officer: generally attesting to her investigation of the complaint filed by the Superintendent and her conversations with the respondent, one of which resulted in his yelling at her and accusing her of trying to lynch him.

In addition to his testimony and affidavit, the respondent submitted affidavits from Board members Sheik Kamar and Shirley Smith which attest that they were present at the Board's meeting on December 21, 2006 when the Board decided to select a delegation to meet with the Bergen Tech Superintendent. Both Kamar and Smith certify that the Board decided that the delegation would include: Stephen Brown, Glenn Garrison, Shirley Smith and David Matthews. Both Board members attest there is "no doubt" that the respondent was selected to be part of the delegation.

At the Commission's meeting on August 26, 2008, the respondent also submitted the affidavits of Robert J. Aloia and Cheryl Balletto:²

- Robert J. Aloia, Superintendent of Bergen Tech: attests that he recalls the meeting on January 4, 2007 and affirms that, prior to the meeting, he does not recall speaking with the respondent regarding any aspect of the Interlocal Services Agreement; and
- Cheryl Balletto, former Business Administrator: attests that in December 2006, the Board of Education selected a delegation to attend the Bergen Tech meeting and that the respondent was selected by a majority of the Board to be part of that delegation and also attests to providing the respondent with documentation pertaining to Superintendent Lisa's requests for reimbursement.

In the complainants' closing statement, they argued that the respondent's attendance at the January 4, 2007 meeting with Bergen Tech was not authorized by the Board and was a violation of N.J.S.A. 18A:12-24.1(e); that the respondent's interactions with Ellen Conlon, Susan

² Mr. Sayovitz objected to these documents going into the record inasmuch as the complainants had no prior notice of these documents and no opportunity to cross-examine witnesses who did not appear. The Commission considered the parties' arguments and decided to accept the two affidavits into the record and to accord the documents whatever weight it deemed appropriate, keeping in mind that there was no opportunity for the complainants to cross-examine, as with some of the affidavits submitted by the complainants.

Mullins and Richard Segall constitute a violation of N.J.S.A. 18A:12-24.1(d) as he was administering the schools; and that the respondent's refusal to cooperate with the district's Affirmative Action Officer's (AAO) investigation and his tirade against the AAO constitute a violation of N.J.S.A. 18A:12-24.1(i).³ The respondent maintained in his closing statement that he has been wrongly and maliciously accused of violating the Code of Ethics for School Board Members and that the complainants have failed to sustain their burden of proof.

MOTION TO DISMISS

Pursuant to N.J.A.C. 6A:28-6.9(c), upon completion of complainants' case, and prior to the respondent's testimony, as set forth above, the respondent moved to dismiss the allegations set forth below.⁴ After hearing arguments from counsel, the Commission asked the parties to leave the room so that it could deliberate. It is the complainants' burden to factually establish violation(s) of the Code of Ethics for School Board Members. The Commission granted the respondent's Motion to Dismiss paragraphs six through eight, 33, 34, 42, 45 and 47 through 49 of the complaint, as summarized below.

JCC Thurnauer School at paragraphs 6-8

The respondent contends that no testimony was offered with respect to these allegations and the complainants failed to meet their burden of proof. The Commission concurred, noting that the affidavits and other documents submitted by the complainants and the respondent do not, alone, establish a violation of the Code of Ethics for School Board members. The Commission granted the respondent's Motion to Dismiss paragraphs six through eight of the complaint.

Bergen Tech Meeting at paragraphs 9-21 of the complaint

The respondent asserts that there was conflicting evidence as to whether the respondent was selected by the Board to be part of the delegation to the Bergen Tech meeting on January 4, 2007 and the complainants had, therefore, not proven their case. Notwithstanding the apparently conflicting evidence, the Commission denied the respondent's Motion to Dismiss paragraphs 9-21 of the complaint prior to hearing testimony from the respondent.

³ At the School Ethics Commission's meeting on August 26, 2008, one of the Commissioners requested a copy of a document that Ms. Lisa Finn-Bruce referenced in her testimony, *infra*, as that which is published by the New Jersey Department of Education offering guidance to affirmative action officers in the conduct of their investigations. The Commission notified the complainants that although it may take official notice of public documents pursuant to N.J.A.C. 1:1-15.2, the document now available on the Department of Education's website entitled, An Introductory Manual for Affirmative Action Officers, <http://www.state.nj.us/education/equity/ao.pdf>, was revised as of July 2008, subsequent to the date of events in this matter. Accordingly, the complainants were provided an opportunity to submit a copy of the manual published by the New Jersey Department of Education for affirmative action officers that was used for the 2006-2007 school year to the record. By letter dated September 15, 2008, the complainants advised that they were unable to locate a copy of the manual for the Affirmative Action Officers that was in effect during the 2006-2007 school year.

⁴ N.J.A.C. 6A:28-6.9(c) provides that all hearings shall be conducted in accordance with the rules of the OAL. Such rules permit a party to make an oral motion during a hearing and to state the grounds for the motion. N.J.A.C. 1:1-12.1(a)1 and 2.

The Conlon Conversation at paragraphs 23-25 of the complaint

The respondent asserted that, even assuming he engaged in a conversation with Ms. Conlon, as alleged, such facts do not establish a violation of the Code of Ethics for School Board Members. The Commission disagreed and denied the respondent's Motion to Dismiss paragraphs 23-25 of the complaint prior to hearing testimony from the respondent.

The Mullins Conversation at paragraphs 26-32 of the complaint

The respondent asserted that, even assuming he engaged in a conversation with Ms. Mullins, as alleged, such facts do not establish a violation of the Code of Ethics for School Board Members. The Commission disagreed and denied the respondent's Motion to Dismiss paragraphs 26-32 of the complaint prior to hearing testimony from the respondent.

Paragraphs 33, 34, 45, 59-68

The respondent asserts that these paragraphs do not include dates as required by N.J.A.C. 6A:28-6.3 and therefore, should be dismissed. The Commission concurred that paragraphs 33, 34 and 45 fail to meet the regulatory requirements of a complaint and are properly dismissed. However, the Commission found that paragraphs 59-68 of the complaint are essentially summaries of prior allegations and do not allege any new facts. Accordingly, the Commission denied the Motion to Dismiss paragraphs 59-69 of the complaint.

Paragraph 42 of the complaint

The respondent admits in his Answer to having disseminated a budget timeline from another school district at a public meeting, but asserts that this is not a violation of the Code of Ethics for School Board Members. The Commission concurred and granted the respondent's Motion to Dismiss paragraph 42 of the complaint.

The Segall request at paragraph 46 of the complaint

The respondent admits in his Answer to requesting student AP data from Mr. Segall, but asserts that such facts do not establish a violation of the Code of Ethics for School Board Members. The Commission disagreed and denied the respondent's Motion to Dismiss paragraph 46 of the complaint prior to hearing testimony from the respondent.

The Balletto request at paragraphs 47-49 of the complaint

The respondent admits in his Answer that he requested expense reimbursement information from the Business Administrator, but asserts that such information is a matter of public record and, therefore, there is no violation of the Code of Ethics for School Board Members. The Commission noted that Ms. Lisa acknowledged in her testimony that her reimbursements were a matter of public record. It, therefore, concurred with the respondent and granted the respondent's Motion to Dismiss paragraphs 47-49 of the complaint.

The Finn-Bruce allegations at paragraphs 50-57 of the complaint

The respondent asserted that the record showed that Ms. Finn-Bruce had a conflict as the AAO and as such, the complainants have, therefore, not proven the allegations in these paragraphs. The Commission disagreed and denied the respondent's Motion to Dismiss paragraphs 50-57 of the complaint prior to hearing testimony from the respondent.

FINDINGS OF FACT

As the trier of fact in this matter, the Commission had the opportunity to observe the demeanor of the witnesses and to judge their credibility. As such, the Commission found that, with the exception of the issue of the respondent's attendance at the Bergen Tech meeting on January 4, 2007, the material facts in this matter are not in dispute, and are set forth below. As for the Bergen Tech issue, the Commission found Board members Brown and Garrison to be credible witnesses who offered consistent testimony which was not weakened by cross-examination. The Commission therefore finds that the testimony of these witnesses, together with the document placed into evidence by Stephen Brown, Exhibit C-3, should be accorded greater weight than the affidavits which offer a contrary depiction of events as submitted by Board members Kamar and Smith, as well as former Board Secretary, Ms. Balletto. Thus, following are the facts based on the pleadings, testimony and documents on the record.

1. The respondent was a member of the Board from 1996 until 2008. He is no longer serving on the Board.
2. Stephen Brown was president of the Board during the 2006-2007 school year.
3. Glenn Garrison is the current president of the Board; he was Vice President during the 2006-2007 school year.
4. Carol Lisa is an employee of Bergen Tech who came to the Englewood School District on July 1, 2003 pursuant to an Interlocal Services Agreement between the District and Bergen Tech. During the time period of this complaint, Ms. Lisa was the Superintendent.
5. Cheryl Balletto was the former Board Secretary/Business Administrator. She is no longer employed in the District.
6. Susan Mullins is an employee of the Bergen Tech who came to the Englewood School District on January 1, 2002 pursuant to the Interlocal Services Agreement between the District and Bergen Tech. She left the District in the Spring of 2007; her title was Assistant Superintendent for Curriculum and Instruction.
7. At the Board's regular meeting on November 16, 2006, it passed a resolution accepting Ms. Mullins' letter of resignation from her position as Deputy Superintendent and endorsed her return to Bergen Tech. (Exhibit C-2)

8. Bergen Tech objected to this action and sought judicial intervention. A restraining order was issued in November 2006 enjoining the Board from taking any action to alter the Interlocal Services Agreement or reassign Ms. Mullins. (Exhibit C-1) The Board thereafter decided to limit Ms. Mullins' presence in the District and charged Ms. Lisa with delegating special assignments to her.
9. The Board decided that it would send a delegation to speak to the Bergen Tech Superintendent for purposes of negotiating an amicable resolution to the agreement. The meeting was scheduled for January 4, 2007.
10. Pursuant to a public meeting held on December 21, 2006, the Board's closed minutes state, in pertinent part "Inter-local Agreement – 1. Decision SB, GG, & SS to meet with Bob Aloia; 2. SM to work from home and periodically come in on an as needed basis." The minutes are signed by Cheryl Baletto, the former Business Administrator, although the resolution says "Board Attorney" under her name. The minutes state that the following Board members were present: Sheik Kamar, Miriam Lubam, Henry Pruitt III, David Matthews, Margaret Mora, Shirley Smith, Joan Meltzer, Glenn Garrison and Stephen Brown. The following persons were also listed in the minutes as present: Carol Lisa, Superintendent, Cheryl Baletto, Business Administrator/Board Secretary, Mark Tabakian, Board Attorney. (Exhibit C-3)
11. The respondent was not selected by the Board to attend the Bergen Tech meeting to be held on January 4, 2007.
12. An email dated January 2, 2007 from the Board's attorney states: "Happy New Year to all. This will confirm that the meeting to discuss the Interlocal with tech is confirmed for Jan. 4th at 4 pm. The Board's consensus at the meeting of Jan 21st [sic] is that the Bd Pres, Bd. Vice-Pres and Shirley Smith will represent the Board at the meeting. This meeting will be held at Bob Aloia's office in Paramus." (Exhibit C-9) The email is addressed to nine recipients, including the respondent.
13. On the day of the meeting, Stephen Brown contacted the respondent and left him a voicemail message that he should not attend the meeting. As a result of Mr. Brown's message, the respondent contacted his NJSBA representative who advised him that if the Board had decided that the respondent was part of the delegation, he should attend the meeting.
14. The respondent attended the meeting on January 4, 2007.
15. Ellen Conlon is an employee of the Bergen Tech who came to the Englewood School District in February 2002 pursuant to the Interlocal Services Agreement between the District and Bergen Tech. Her title was Director of Curriculum and Instruction.
16. The respondent had a conversation with Ms. Conlon on or about February 16, 2007 wherein he expressed his condolences regarding the recent passing of her mother and also told her that she was a good employee.

17. The respondent had a conversation with Ms. Mullins in February 2007. The respondent told her that if he were her, he would not go through the humiliation associated with the Interlocal Services Agreement and he would simply return to Bergen Tech, where she is a tenured employee. He told Ms. Mullins that he believed it was embarrassing that the Board had three assistant superintendents and asked her why she was subjecting herself to this kind of stress. He told her that he would provide her with a reference.
18. The respondent informed the Board at a meeting that it should consider stopping payment to Ms. Mullins because she was not properly certified for the position.
19. Richard Segall was the Assistant Superintendent and liaison to the Board's Academic Affairs Committee.
20. In early 2007, the Board was advised that any Board member requests to personnel working in the District must be directed through the Superintendent.
21. On March 20, 2007, the respondent requested that Richard Segall provide him with the number of students enrolled in each AP course and specifically, the number of students from the regular high school who were enrolled in these courses. The request was related to issues being handled by the committee and made through the committee, but not through the Superintendent.
22. Lisa-Finn Bruce was the former Affirmative Action Officer (AAO) for the District.
23. On or about January 2007, the Superintendent filed a complaint against the respondent alleging a hostile work environment. As the AAO, it was Ms. Finn-Bruce's responsibility to investigate complaints.
24. Ms. Finn-Bruce ultimately reported to Ms. Lisa as the Superintendent, although she did not report to her directly.
25. Ms. Finn-Bruce knew the respondent socially prior to receiving the complaint.
26. Upon receiving the complaint, Ms. Finn-Bruce did not initially recuse herself and, instead, attempted to conduct the investigation. The respondent questioned whether Ms. Finn-Bruce could impartially perform the investigation.
27. Ms. Finn-Bruce requested to meet with the respondent to discuss the complaint, but he informed her that he would not meet with her until he received a copy of the complaint.
28. It was the District's practice for Ms. Finn-Bruce to provide a copy of the complaint to a named respondent only upon meeting with that person.
29. The respondent never met with Ms. Finn-Bruce and Ms. Finn-Bruce did not provide the respondent with a copy of the complaint.

30. The respondent insisted that Ms. Finn-Bruce provide him with the authority to investigate this allegation, inasmuch as he was a private citizen and not a Board employee. Ms. Finn-Bruce did not provide the respondent with a copy of Board policy or any other authority.
31. Although Ms. Finn-Bruce produced a letter dated March 19, 2007 addressed to Mr. Matthews wherein she requested a meeting concerning the matter that was under investigation, (Exhibit C-4), the letter is not signed and the address for the respondent was incorrect.
32. By letter dated March 19, 2007, Ms. Finn-Bruce informed Superintendent Lisa that she has contacted Mr. Matthews on several occasions in an effort to meet with the respondent, but that he has not agreed to meet with her. Therein, Ms. Finn-Bruce also indicated that the respondent requested a copy of the District's policy which states that Board members are under its jurisdiction. She asks to be recused from the investigation "because; I can not function as the District Affirmative Action Officer working in this atmosphere." [sic] Ms. Finn-Bruce further states that she has informed county and State officials of the matter. (Exhibit C-5) The letter is signed.
33. The respondent spoke to Ms. Finn-Bruce on March 21, 2007, at which time he again requested a copy of the complaint. The conversation escalated as both parties were frustrated and Mr. Matthews had become irritated. The respondent used the "noose around the neck" phrase in this conversation; he raised his voice and told Ms. Finn-Bruce that he refused to be lynched.
34. Ms. Finn-Bruce was quite upset by the conversation with Mr. Matthews.
35. By letter dated March 21, 2007 addressed to Ms. Lisa, Ms. Finn-Bruce resigned her position as AAO. The letter is not signed.
36. By letter dated April 12, 2007 addressed to Superintendent Lisa, Ms. Finn-Bruce reiterated that she tried to complete the investigation that she received on January 12, 2007, that she contacted the respondent on several occasions, but he would not meet with her or submit a statement. Ms. Finn-Bruce submitted the results of her investigation, based on the witnesses she had interviewed. Ms. Finn-Bruce stated, "The hostile work environment statements cooberated by two witnesses substantiate the complaint. The accounts were consistent with gender-based speech, which facilitates a hostile work environment." (Exhibit C-7 and C-8) The letter is not signed, but includes the title, "Affirmative Action Officer."

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board

Members. The relevant portions of the Code of Ethics for School Board Members are as follows:

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.

i. I will support and protect school personnel in proper performance of their duties. (N.J.S.A. 18A:12-24.1(d), (e) and (i))

Board's Delegation to Attend the Bergen Tech Meeting on January 4, 2007.

In the complainants' closing statement, they argue that the respondent's attendance at the January 4, 2007 meeting with Bergen Tech was not authorized by the Board and was a violation of N.J.S.A. 18A:12-24.1(e). In accordance with the facts set forth above, the Commission agrees that the respondent was not selected by the Board to be among the delegation of Board members to attend the Bergen Tech meeting on January 4, 2007.

Pursuant to N.J.A.C. 6A:28-7.1, "private action" is defined as action taken by a member of a district board of education or a member of a charter school board of trustees that is beyond the scope of the duties and responsibilities of a member of a district board of education or a member of a charter school board of trustees. Because the respondent was not selected by the Board to attend the meeting, his undisputed attendance constituted private action. Further, the Commission finds that private action of this kind may compromise the Board. Mr. Brown credibility testified that the District was experiencing a shortfall of \$2.2 million and it needed to save money, which was the reason for seeking to terminate the Interlocal Services Agreement. The delegation that was selected by the Board to meet with Mr. Aloia was chosen *after* a restraining order was issued in November 2006 enjoining the Board from taking any action to alter the Interlocal Services Agreement or reassign Ms. Mullins. Thus, the Board was in a delicate negotiating position as it entered the meeting with Bergen Tech. The respondent's decision to attend the meeting outside of the express authority of the Board was, in this context, reckless behavior that could have compromised the Board's position. Accordingly, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members.

Conlon Conversation, Mullins Conversation and Segall Request

The complainants maintain that the respondent's interactions with Ellen Conlon, Susan Mullins and Richard Segall constitute a violation of N.J.S.A. 18A:12-24.1(d) as he was administering the schools. To "administer the schools" means that a member of the district board of education has become directly involved in activities or functions that are the responsibility of school personnel or the day to day administration of the school district.

N.J.A.C. 6A:28-7.1. While the Commission does not find that the respondent's interactions with Ms. Conlon and Mr. Segall, as set forth in the factual findings, rises to the level of administering the schools, the Commission finds that the complainants have established that the respondent's actions with respect to Ms. Mullins shows that he became directly involved in activities or functions that were the responsibility of school personnel.

Here, it is important to note once again that a restraining order was issued in November 2006 enjoining the Board from taking any action to alter the Interlocal Services Agreement or reassign Ms. Mullins. (Exhibit C-1) The Board thereafter decided to limit Ms. Mullins' presence in the District and charged Ms. Lisa with delegating special assignments to her. The Board's action in this regard was confirmed in its minutes of the December 21, 2006 meeting (Exhibit C-3).

Mr. Brown credibly testified that the district made arrangements for Ms. Mullins to work from home and to communicate with the Superintendent. It is irrelevant what the respondent personally thought about this arrangement; the district was under a court order with respect to this employee and the Board had taken a position about how it would abide by the order. By telling Ms. Mullins in February 2007 that if he were her, he would not go through the humiliation associated with the Interlocal Services Agreement and he would simply return to Bergen Tech, and that he believed it was embarrassing that the Board had three assistant superintendents, the respondent overstepped his duties as a board member and encroached on the oversight and management functions that were specifically assigned to the Superintendent. Indeed, Mr. Brown testified that he feared this conversation might provide Ms. Mullins with fodder for future litigation. Accordingly, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(d) of the Code of Ethics for School Board Members.

AAO Complaint/Finn-Bruce

The complainants maintain that the respondent's refusal to cooperate with Ms. Finn-Bruce's Affirmative Action investigation and his tirade against her constitutes a violation of N.J.S.A. 18A:12-24.1(i). The Commission acknowledges that the respondent raised valid questions about Ms. Finn-Bruce's authority to conduct an investigation of him as a Board member, as well as her impartiality in the matter, given that she was a subordinate of Ms. Lisa's, the person who filed the complaint alleging a hostile working environment. The fact remains, however, that Ms. Finn-Bruce, as the Affirmative Action Officer, was charged with conducting the investigation; to the extent that the assignment was improper, this was not the fault of Ms. Finn-Bruce. The respondent's refusal to cooperate with Ms. Finn-Bruce merely engaged the two in a tug-of-war which accomplished nothing and frustrated this employee in the execution of her duties, to the point where she resigned as the AAO.

Furthermore, the respondent does not deny that he spoke to Ms. Finn-Bruce on March 21, 2007, at which time he again requested a copy of the complaint. As the Commission found, the conversation escalated as both parties were frustrated and Mr. Matthews had become irritated. The respondent admitted in testimony that he used the "noose around the neck" phrase in this conversation; he raised his voice and told Ms. Finn-Bruce that he refused to be lynched. Notwithstanding the frustration felt by the respondent, which was apparent in his testimony, the

Commission cannot disregard the offensive nature of the statements made to Ms. Finn-Bruce who was trying to do her job. Again, to the extent the respondent maintained that Ms. Finn-Bruce was improperly assigned this investigation, the respondent, as an experienced Board member, should have known that his recourse was not with Ms. Finn-Bruce and he should not have engaged her in combative and insulting dialogue to challenge her authority. Accordingly, the Commission finds that the respondent violated N.J.S.A. 18A:12-24.1(i) of the Code of Ethics for School Board Members.

DECISION

The Commission finds that the complainant has established that the respondent violated N.J.S.A. 18A:12-24.1(d), (e) and (i) of the Code of Ethics for School Board Members. The Commission dismisses the allegations that the respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (f), (g), and (j), as set forth in the complaint.

PENALTY

The Commission recommends that the Commissioner of Education impose a penalty of censure. In so doing, the Commission finds instructive the matter entitled I/M/O Charles Fischer, C30-03. Therein, the Commission found the Board member in violation of N.J.S.A. 18A:12-24.1(e) and (i) when he contacted the complainant, a business office employee, at her home on Friday evening to obtain copies of reports which he said he needed for a meeting on Sunday. The Board member admitted to raising his voice at the complainant, albeit that he claimed it was in response to her yelling, rather than out of anger. The Commission determined that when the respondent requested that the complainant return to the office to obtain the information he was seeking, such conduct was private action that may compromise the Board. The Commission noted that if the respondent was dissatisfied with the complainant's responses, he should have hung up and called the Superintendent, rather than raise his voice at a Board employee. Moreover, the respondent's insistence that the complainant provide the reports, together with his request that she return to work to obtain them, were not supportive of her as an employee performing her duties.

Although in Fischer, the Commission recommended a penalty of reprimand, the Commission finds the facts in this matter to be more compelling, particularly since the respondent was also found to have violated N.J.S.A. 18A:12-24.1(d). Recently, the Commission recommended a penalty of censure where the Board member was found to have violated 18A:12-24.1(d) when she spoke with the district's facilities coordinator and later appeared at a Board Personnel meeting regarding a personnel action affecting her cousin by marriage. *See, I/M/O Doris Graves, Pleasantville Bd. of Education*, C47-05 (May 27, 2008); approved by Commissioner, July 10, 2008.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the School Ethics Commission's recommended sanction. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission’s finding of violation may file, within **13 days** from the date the Commission’s decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked “Attention: Comments on Ethics Commission Sanction.” A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Parties seeking to appeal the Commission’s finding of violation *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4 within **30 days** of the filing date of the decision from which the appeal is taken. The filing date shall be three days after the date of mailing to the parties, as shown below. In such cases, the Commissioner’s review of the Commission’s recommended sanction will be deferred and incorporated into the Commissioner’s review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission’s recommended sanction (13 days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant’s briefs on appeal.

Paul C. Garbarini
Chairperson

Mailing Date: _____

Resolution Adopting Decision – C13-07

Whereas, the School Ethics Commission has considered the pleadings, testimony and all documentary evidence brought to the record; and

Whereas, at its meeting on September 23, 2008, the Commission found that the respondent violated N.J.S.A. 18A:12-24.1(d), (e) and (i) of the Code of Ethics for School Board Members; and

Whereas, the Commission dismissed the allegations that the respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (f), (g), and (j), as set forth in the complaint;

Whereas, the Commission found that censure is the appropriate penalty to recommend in this matter;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on October 27, 2008.

Joanne Boyle, Executive Director