

analyze the conflicting testimony. ALJ Bass allowed the parties to brief the relevant legal issues, and then closed the record.

In her Initial Decision, ALJ Bass issued the following **findings of fact**: Complainant has been employed by the Board for twenty-five (25) years. Initial Decision at 3. In or about 1996, she began serving as the confidential secretary to the Superintendent; shortly thereafter, she assumed the duties of Board secretary. *Id.* As Board secretary, Complainant regularly spoke directly with Board members. *Id.* at 4. Respondent Alvarez and Respondent Kim were members of the Board and were on the Board's negotiations committee. *Id.* In an e-mail dated February 3, 2016, Respondent Alvarez asked the Superintendent to provide job descriptions for the "central office ladies" (and this included Complainant), and also asked additional questions, several of which focused on how Complainant did her job. *Id.* Respondent Alvarez's e-mail to the Superintendent indicated that she and Respondent Kim needed answers to the questions before "meeting and discussing raises." *Id.* The Superintendent forwarded Respondent Alvarez's e-mail to Complainant and the Business Administrator and asked them to provide appropriate responses (ostensibly to him, and not to Respondent Alvarez). *Id.* Ten minutes later, Complainant sent an e-mail to Respondent Alvarez and Respondent Kim that, among other things, threatened a legal response to Respondent Alvarez's request, and can best be characterized as "threatening and belligerent." *Id.* Taken aback by the e-mail, Respondent Kim called Complainant and Complainant alleged that, during this call, Respondent Kim made statements which made her feel threatened (about job security). *Id.* at 5. The ALJ did not find Complainant's account to be credible and instead believed Respondent Kim's account of the conversation. *Id.* at 5-6. Respondent Kim testified that he called Complainant and asked her what was going on. *Id.* at 6. He said that he told Complainant that she was very upset and emotional in her email but that he would "pretend like nothing happened" and asked her to retract her e-mail but Complainant refused. Respondent Kim denied that he ever threatened to hurt Complainant in any way. *Id.*

ALJ Bass further found that after the telephone call between Complainant and Respondent Kim, Complainant sent another email, with capital letters and exclamation points, and which was later described as "threatening" and "insubordinate." Initial Decision at 6-7. She later sent another e-mail to Respondent Alvarez and Respondent Kim which was responsive to Respondent Alvarez's questions; later in the evening, Respondent Alvarez responded and thanked Complainant for the information provided. *Id.* at 7. Approximately two (2) weeks later, Complainant sent an "angry" e-mail to the *entire* Board because she "heard" that Board members were gossiping about her (the Superintendent was not copied on this e-mail). *Id.* at 8. Respondent Alvarez forwarded the e-mail to the Superintendent and asked for a meeting with the full Board to discuss it because she felt it was "very improper" for a secretary to be threatening legal action about the Board. Respondent Kim wrote a similar e-mail to the Board President, Superintendent, and Solicitor the same day, and indicated he wanted the Board to discuss the matter, but was unsure of the proper procedure/protocol. *Id.* The next day, the Superintendent indicated he would issue a *Rice* notice. *Id.* While Complainant argued that the Board's discussion of her was somehow improper, ALJ Bass found that neither Respondent Kim nor Respondent Alvarez unilaterally issued the *Rice* notice, and found that they followed proper channels by inquiring about the correct protocols to discuss their concerns with the entire Board. *Id.* at 8-9. ALJ Bass found that the "record is clear that Respondent Alvarez wanted to be certain

that the Board discussion had been arranged in a manner that was compliant with the law.” further, Respondent Alvarez asked for guidance as to how to proceed, and expressed concern about whether the *Rice* notice was issued properly. *Id.* at 9. ALJ Bass also determined that Complainant’s conduct at the Board meeting was “appalling.” *Id.* Ultimately, the Board took no action against Complainant, but the Superintendent sent her a letter cautioning her about her contact/communications with the Board. *Id.*

ALJ Bass issued the following **conclusions of law**: Complainant serves as Board secretary, a statutorily required position that reports directly to the Board. Initial Decision at 13. As Complainant reported directly to the Board in her capacity as Board secretary, the Board was well within its rights to seek to discuss any conduct by her that was of concern. *Id.* Complainant did not present evidence that could point to an ethical violation by Respondent Alvarez; instead, Respondent Alvarez’s interactions with Complainant were proper and appropriate, and did not exceed her authority as a Board member pursuant to N.J.S.A. 18A:12-24.1(c) or (d). *Id.* More specifically, Respondent Alvarez did not ask Complainant for information, and instead asked the Superintendent. *Id.* at 13-14. Respondent Alvarez responded to Complainant’s first two “belligerent” e-mails with conciliation, and it was only after she received a third inappropriate e-mail that she raised the issue of discipline. *Id.* In raising the issue of discipline, Respondent Alvarez asked the appropriate persons to set up the discussion, and wanted to ensure it was done lawfully. *Id.* at 14. As a result, the petition of appeal was properly dismissed as to Respondent Alvarez via motion at the close of Complainant’s case. *Id.*

Likewise, Complainant did not present a viable claim that Respondent Kim violated his ethical obligations. Initial Decision at 14. The record does not support Complainant’s claim that Respondent Kim threatened her. *Id.* Like Respondent Alvarez, Respondent Kim requested a *Rice* notice be sent to Complainant, and did so by seeking input and permission from the Superintendent and Solicitor. *Id.* As a result, Complainant did not meet her burden of demonstrating Respondent Kim violated N.J.S.A. 18A:12-24.1(c) or (d). *Id.*

ALJ Bass also concluded the record confirms that Respondent Kim did not take actions beyond the scope of his duties, nor did he make any promises that had the potential to compromise the Board in violation of N.J.S.A. 18A:12-24.1(e). Initial Decision at 14. Therefore, ALJ Bass found that Complainant did not meet her burden of demonstrating a violation of the Act. *Id.* Consequently, ALJ Bass ordered the complaint filed by Complainant against Respondent Kim and Respondent Alvarez be dismissed. *Id.* at 14-15.

The Initial Decision was electronically transmitted to the Commission on June 7, 2017. The Initial Decision was also mailed to the parties on this same date. On June 22, 2017, the Commission requested an extension of time to review the full record, including the parties’ Exceptions and replies thereto. The Commission’s extension was granted until September 5, 2017.

EXCEPTIONS

Complainant’s Exceptions to the Initial Decision were received by the Commission on June 19, 2017. In her Exceptions, Complainant disagrees with the ALJ’s determination, and

requests that the Commission find that Respondent Alvarez and Respondent Kim violated the Act and impose a penalty of censure. More specifically, Complainant argues that Respondent Kim's admission that he called/confronted Complainant and "demanded" her to retract the e-mail she sent in her capacity as secretary to the Superintendent, and not as Board secretary, and in furtherance of a request from her supervisor (the Superintendent), is a violation of the Act. Complainant argues that Respondent Kim attempted to direct the work of a Board employee and attempted to handle an administrative matter on his own without first contacting the Superintendent. In this way, Complainant argues that Respondent Kim attempted to administer the schools in violation of N.J.S.A. 18A:12-24.1(c) and (d). In addition, Complainant contends that Respondent Kim's actions compromised the Board in violation of N.J.S.A. 18A:12-24.1(e) because they undermined the Superintendent, as Complainant's supervisor, and exposed the Board to litigation and other potential charges.

Complainant additionally asserts that the substantial credible evidence belies the ALJ's finding that Respondent Kim did not threaten Complainant during their telephone call. In her Exceptions, Complainant asks the Commission to reject the ALJ's credibility determination because it is "unreasonable and not supported by sufficient, competent, and credible evidence in the record." Also, Complainant argues that Respondent Kim and Respondent Alvarez's actions in orchestrating and conducting the portion of the February 24, 2016, Board meeting concerning Complainant violated the Act because they injected themselves in the day to day administration of the school district. Therefore, Complainant requests that the Commission modify the Initial Decision, find violations of the Act, and recommend a penalty of censure.

Respondents' Reply to Complainant's Exceptions was received by the Commission on June 23, 2017. Respondents concur with ALJ Bass's factual findings and legal conclusions. Respondents offer two additional arguments in support of ALJ Bass's decision to dismiss the complaint, namely: (1) Complainant was not acting in her role as a clerical secretary in dealing with Respondents; therefore, Respondents' actions did not violate the Act; and (2) the authorities relied upon by Complainant do not support her claim for relief and, as determined by ALJ Bass, are inapposite.

At its meeting on July 25, 2017, the Commission discussed the Initial Decision and, at its meeting on August 22, 2017, the Commission voted to adopt the ALJ's findings of fact, conclusions of law, and decision to dismiss the Complaint for the reasons expressed in the Initial Decision.

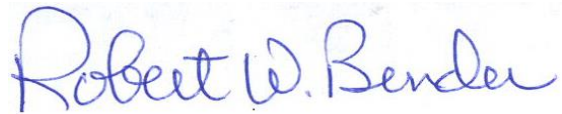
ANALYSIS

Complainant bears the burden of factually proving the alleged violations of the Code in accordance with the standards enumerated in N.J.A.C. 6A:28-6.4(a). N.J.S.A. 18A:12-29(b). Upon careful and independent review of the record, the Commission finds that the record supports the ALJ's findings of fact, conclusions of law, and decision to dismiss the Complaint based on Complainant's failure to meet her burden to prove, by a preponderance of the credible evidence, that Respondent Kim violated N.J.S.A. 18A:12-24.1(c), (d), and (e), and that Respondent Alvarez violated N.J.S.A. 18A:12-24.1(c) and (d). Although Complainant argues that her communications with Respondents occurred in her capacity as a secretary to the

Superintendent, and not as the Board Secretary, the record indicates otherwise. In addition, and despite Complainant's request, the Commission will not disturb or otherwise question the credibility determinations made by ALJ Bass. Therefore, the Commission adopts the findings of fact issued by the ALJ, the conclusions of law articulated in her well-reasoned decision, as well as the decision to dismiss the complaint.

DECISION

The Commission determines to adopt the ALJ's Initial Decision dismissing the complaint based on Complainant's failure to satisfy her burden to prove, by a preponderance of the credible evidence, that Respondent Kim violated N.J.S.A. 18A:12-24.1(c), (d), and (e), and that Respondent Alvarez violated N.J.S.A. 18A:12-24.1(c) and (d). Therefore, this is a final agency decision and is appealable only to the Superior Court-Appellate Division. See, N.J.A.C. 6A:28-10.11 and New Jersey Court Rule 2:2-3(a).



Robert W. Bender, Chairperson
School Ethics Commission

Mailing Date: August 23, 2017

Resolution Adopting Decision – C14-16

Whereas, pursuant to N.J.A.C. 6A:28-10.8(a), the School Ethics Commission (Commission) voted to transmit this matter to the Office of Administrative Law for a plenary hearing; and

Whereas, the Administrative Law Judge concluded in her Initial Decision that the matter should be dismissed based on Complainant's failure to meet her burden to prove, by a preponderance of the credible evidence, that Respondent Kim violated N.J.S.A. 18A:12-24.1(c), (d), and (e), and that Respondent Alvarez violated N.J.S.A. 18A:12-24.1(c) and (d); and

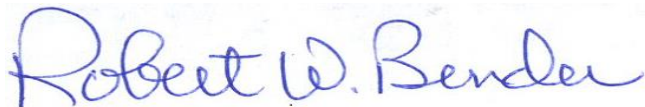
Whereas, Complainant's Exceptions to the Initial Decision were received by the Commission on June 19, 2017; and

Whereas, Respondents' Reply to Complainant's Exceptions was received by the Commission on June 23, 2017; and

Whereas, at its meeting on July 25, 2017, the Commission discussed the Initial Decision, the Exceptions to the Initial Decision filed by Complainant, and Respondents' Reply to Complainant's Exceptions; and

Whereas, at its meeting on August 22, 2017, the Commission voted to adopt the Initial Decision as the Final Decision, and to approve the within decision; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision as a Final Decision and directs its staff to notify all parties to this action of its decision herein.



Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on August 22, 2017.



Kathryn A. Whalen, Director
School Ethics Commission