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**JAMES J. FOODY**

v.

**GREGORY BAILEY, DAVID RICHARDS  
TIMOTHY FOLEY AND DONNA RICHARDS  
WEST MILFORD TOWNSHIP BOARD OF  
EDUCATION  
PASSAIC COUNTY**

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: **BEFORE THE SCHOOL**  
: **ETHICS COMMISSION**  
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**Dkt. No. C07-11  
DECISION ON  
MOTION TO DISMISS**

### **PROCEDURAL HISTORY**

This matter arises from a complaint filed on February 28, 2011 by James J. Foody alleging that Gregory Bailey, David Richards, Timothy Foley and Donna Richards, members of the West Milford Township Board of Education (“Board”), Passaic County, violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. Specifically, the complainant alleges that the respondents violated N.J.S.A. 18A:12-24.1(a) of the Code of Ethics for School Board Members when they moved forward with plans to install a turf field.

On March 23, 2011, a Motion to Dismiss in Lieu of Answer was filed on behalf of Respondent Bailey by his attorney, Andrew K. Murray, Esq. On March 24, 2011, the remaining respondents filed a Motion to Dismiss on their own behalf. A responsive statement was filed by the complainant on April 11, 2011 in accordance with N.J.A.C. 6A:28-8.2(a). The parties were notified by letter dated March 28, 2011 that this matter would be placed on the agenda for the Commission’s meeting on April 26, 2011 in order to make a determination regarding the respondents’ Motions to Dismiss. At its meeting on April 26, 2011, the Commission voted to grant the respondents’ Motions to Dismiss the complaint.

### **SUMMARY OF THE PLEADINGS**

The complainant contends that on August 31, 2010, he read a statement telling the respondents of their responsibility to amend the district’s Long Range Facilities Plan to include the artificial turf field, as required by N.J.A.C. 6A:26-2.1. The complainant states that he informed the respondents that moving forward without the necessary approvals would be a violation of the Code of Ethics. The complainant made a motion asking the Board to relinquish approval to proceed with the installation of the turf field until all permits and approvals were obtained from the State/County/Township and required notice was given to the Soil Conservation District. However, according to the complainant, the respondents moved forward without getting the necessary approvals from the above authorities. The complainant asserts this to be a violation of N.J.S.A. 18A:12-24.1(a).

## ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the complainant and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3.

Because the complainant has the burden to factually establish a violation of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a), in order to prevail on a Motion to Dismiss, the complaint must allege facts, which if true, would be sufficient to support a finding that the respondents violated N.J.S.A. 18A:12-24.1(a) of the Code of Ethics for School Board Members.

In support of his Motion to Dismiss, Respondent Bailey asserts that the complainant's statement referenced in the complaint merely alleges that he (Bailey) refused to follow the complainant's opinion. To the extent that the complainant alleges that Respondent Bailey acted contrary to the District's Long Range Facilities Plan, Bailey asserts that the Commission is without the authority to consider alleged violations of local policy. Additionally, with respect to the alleged violation of N.J.S.A. 18A:12-24.1(a), Respondent Bailey notes that the complainant has failed to reference or provide to the Commission a final decision that has been rendered from any court or administrative law agency in this State, as is his burden. (Bailey/Motion to Dismiss at pp. 2-3).

Respondents David Richards, Timothy Foley and Donna Richards similarly argue that the complainant fails to set forth a basis for a finding of any ethical violation. Rather, the respondents assert, "[i]n a nutshell, Mr. Foody's complaint is that the respondents failed to heed his opinion." The respondents contend that the complainant has set forth no facts which, if true, would establish a violation of N.J.S.A. 18A:12-24.1(a). (Richards/Foley/Richards Motion to Dismiss at pp. 1-2).

As noted above, in order to prevail on this motion, the complainant must allege facts, which if true, would be sufficient to support a finding that the respondent violated N.J.S.A. 18A:12-24.1(a), which states:

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.

The Commission's regulations require that:

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 the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools

or that the respondent brought about changes through illegal or unethical procedures. N.J.A.C. 6A:28-6.4(a)1.

It is specifically noted in this connection that the complainant does not assert that a final decision has been rendered with respect to these respondents from any court of law or administrative agency of this State demonstrating that they failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondents brought about changes through illegal or unethical means. Nor does the complainant include a copy of a final decision from any court of law or administrative agency of this State that so demonstrates, as is her burden. See, David Hollander v. Judith Millman, et al., Springfield Board of Education, Union County, C33-07 (January 22, 2008); Denise Bouyer v. Rita Owens and Oscar McCoy, Willingboro Board of Education, Burlington County, C37-09 (December 15, 2009); Martha Oramas-Shirey v. Gallo et. al., Bethlehem Twp. Bd. of Ed., Hunterdon County, C43-10 (March 22, 2011). Moreover, the respondents have correctly noted that the Commission may not receive, hear or consider any pleadings, motion papers or documents of any kind relating to any matter that does not arise under the Act, N.J.A.C. 6A:28-1.4. Thus, the Commission may not determine whether the respondents acted contrary to local policy or the regulations governing Long Range Facilities Plans, N.J.A.C. 6A:26-2.1 et seq. Accordingly, even accepting as true all facts alleged by the complainant, such facts are insufficient to support a finding of violation of N.J.S.A. 18A:12-24.1(a).

## **DECISION**

Based on the foregoing, the Commission grants the respondents' Motions to Dismiss the complaint. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender  
Chairperson

Mailing Date: May 25, 2011

**Resolution Adopting Decision – C07-11**

**Whereas**, the School Ethics Commission has considered the complaint and the Motions to Dismiss filed on behalf of the respondents and the reply thereto; and

**Whereas**, at its meeting on April 26, 2011, the Commission determined to grant the respondents' Motion to Dismiss the complaint; and

**Whereas**, the Commission has reviewed and approved the decision memorializing said action;

**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.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on May 24, 2011.

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Joanne Boyle  
Executive Director