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<b>BENJAMIN DAGASTINO</b>	:	<b>BEFORE THE SCHOOL</b>
	:	<b>ETHICS COMMISSION</b>
	:	
	:	
v.	:	
	:	
<b>GLORIA BENNETT</b>	:	
<b><i>FAIRFIELD BOARD OF EDUCATION</i></b>	:	<b>Dkt. No. C19-09</b>
<b><i>CUMBERLAND COUNTY</i></b>	:	<b>DECISION</b>

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**PROCEDURAL HISTORY**

This matter arises from a complaint filed by Benjamin Dagastino on May 18, 2009 alleging that Gloria Bennett, a member of the Fairfield Board of Education (“Board”), Cumberland County, violated the School Ethics Act. Specifically, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e), (i) and (j) of the Code of Ethics for School Board Members when, on February 20, 2009, she entered the main office, questioned a staff person about someone’s attendance, then stated that she needed to get a list of staff members who have excessive absences. The respondent filed an answer on June 25, 2009. Pursuant to N.J.A.C. 6A:28-10.8(a), at its meeting on July 28, 2009, the Commission found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2 and voted to retain the complaint for hearing at a later date. The parties were so advised by letter dated July 29, 2009.

By letter dated March 22, 2010, the parties were notified that this matter would be heard at the Commission’s meeting on April 20, 2010. The parties were reminded that 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) and that the hearing before the Commission shall be conducted in accordance with the rules of the Office of Administrative Law. N.J.A.C. 6A:28-10.8(c).

**SUMMARY OF THE RECORD**

The complainant, Benjamin Dagastino, the respondent, Gloria Bennett and the respondent’s husband appeared to present testimony before the Commission. The complainant testified that on February 20, 2009, the respondent entered the District’s main office, approached Thelma Scott and questioned Mrs. Scott about the attendance of another staff person, Pat Miletta. The complainant further testified that during the conversation, the respondent stated that she needed to get a list of staff members who have excessive absences. According to his complaint, Mrs. Scott was offended by the respondent’s statements and addressed her concerns to the Supervisor of Pupil Personnel Services. (Complaint at p. 2) In support of his complaint, the complainant introduced documents into evidence, as set forth in the chart below, without objection from the respondent.

The respondent, Gloria Bennett, testified that on February 20, 2009, she went to the school to pick up her child. The respondent stated that Mrs. Scott, a substitute, was there and working in Mrs. Miletta's seat. The respondent asked Mrs. Scott if everything was alright with Mrs. Miletta. She then turned to her husband, stepped away from Mrs. Scott and said that this was a reminder for her that "we need to get the attendance" for staff. She then left the building. The respondent testified that the only persons in the room were herself, her husband and Mrs. Scott. According to the respondent, a few days later, she received a call indicating that Mrs. Miletta had filed a grievance against her based upon information that Mrs. Miletta received from Mr. Dawkins, the Supervisor of Pupil Personnel Services, who was not in the room. The respondent testified that she spoke with Mrs. Miletta who stated that she was sorry that she filed the grievance. The respondent denied that she questioned Mrs. Scott on February 20, 2009 about anyone's attendance. She also denied that she stated, as alleged in the complaint, that Mrs. Miletta "is always out." As to her inquiry for a list of staff absences, the respondent explained that she did not direct that statement at Mrs. Scott, but, rather, to her husband; she stepped away from the table when she did so. According to the respondent, Mrs. Scott told her that she was "appalled that Mr. Dawkins got in the middle of this."

When questioned by the Commission about the need to obtain a listing of staff absences, the respondent testified that teachers had reported that certain administrators were taking days off, but not charging their leave time. The Board discussed getting a report of staff absences "just for our own knowledge." According to the respondent, "numerous teachers" complained of this practice to the Board and the Board asked for the information in its monthly packet. The respondent maintained, however, that on the date in question, she "backed away from the table and did not say this to Mrs. Scott."

The respondent also acknowledged that she used to work for the District and her job was eliminated so she does not take part in any discussions concerning the Superintendent.

The respondent's husband, John Bennett, testified that he and his wife went into the main office on February 20, 2009 and Mrs. Scott, a substitute, was there. According to Mr. Bennett, his wife asked Mrs. Scott where Mrs. Miletta was and Mrs. Scott replied that she was sick. The respondent stated that she hoped everything was OK. The respondent then turned to her husband and said, "That reminds me, I have to get the report." Other than teachers coming in and out of the office, the only people present were Mr. Bennett, Mrs. Bennett and Mrs. Scott. Mr. Bennett affirmed that his wife's dealings with Mrs. Scott and Mrs. Miletta are positive.

### **Complainant's Exhibits<sup>1</sup>**

C-1	February 24, 2009 memorandum from the Supervisor of Pupil Personnel Services to the Superintendent stating that Mrs. Scott reported to him that on February 20, 2009, the respondent questioned her about Mrs. Miletta's attendance.
C-2	July 10, 2008 letter from Superintendent to the respondent wherein the Superintendent reviews procedures to avoid ethics violations.
C-3	March 12, 2009 letter from the Fairfield Township Education Association stating that the respondent's comments on February 20, 2009 regarding the attendance of

<sup>1</sup> The respondent did not enter any exhibits into the record.

	a staff person were the subject of a grievance.
C-4	An Acknowledgment of Receipt signed by the respondent that she received the Code of Ethics for School Board Members on April 24, 2008.
C-5	March 21, 2009 letter from the Fairfield Township Education Association indicating that the grievance was resolved.

**FINDINGS OF FACT**

In this matter, it is critical to note that there is no dispute that the only persons present in the office on February 20, 2009 to hear the alleged exchange between the respondent and Mrs. Scott were the respondent, the respondent’s husband and Mrs. Scott. Although the complainant offered documents to support the allegations in his complaint, these letters and documents are hearsay. Hearsay evidence is admissible pursuant to N.J.A.C. 1:1-15.5, but is also subject to the “residuum rule,” which requires that findings be supported by a residuum of competent evidence. Matter of Tenure Hearing of Cowan, 224 N.J.Super. 737 (App. Div. 1988). Because the complainant presented no witness to offer first-hand knowledge of the facts alleged in his complaint, the Commission finds there is no competent evidence to support the complainant’s version of the events on February 20, 2009. As such, the Commission finds:

1. At all times relevant to this complaint, the respondent was a member of the Board.
2. On February 20, 2009, the respondent entered the main office and, noting that Mrs. Scott was substituting for Mrs. Pat Miletta, the District’s employee, the respondent asked about Mrs. Miletta.
3. The respondent then commented that she needed to obtain a listing of staff absences, as this was a matter previously discussed by the Board. This comment was not directed at Mrs. Scott.

**ANALYSIS**

The complainant bears the burden of factually proving any violations 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). See also, N.J.S.A. 18A:12-29b. Here, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e), (i) and (j). Each statutory provision is set forth below, together with the regulatory standard establishing the complainant’s factual burden of proof.

N.J.S.A. 18A:12-24.1(c) states:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The Commission’s regulations require that:

3. Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the respondent(s) took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to:

- i. Develop the general rules and principles that guide the management of the school district or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- iii. Ascertain the value or liability of a policy. N.J.A.C. 6A:28-6.4(a)3.

While the Commission has concerns about the respondent's candid admission that the Board is seeking to obtain a listing of staff absences, the complainant offered no competent evidence to show that on February 20, 2009, the respondent was taking "board action" unrelated to her policy making, planning and appraisal duties. Accordingly, the Commission finds that the complainant has failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(c)

The Commission next considers N.J.S.A. 18A:12-24.1(d), which states:

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.

The Commission's regulations require that:

4. Factual evidence of a violation of N.J.S.A. 18A:12-24.1(d) shall include, but not be limited to, evidence that the respondent(s) gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school. N.J.A.C. 6A:28-6.4(a)4.

Here, the Commission again notes that although it has concerns about the respondent's candid admission that the Board is seeking to obtain a listing of staff absences, the complainant offered no competent evidence to show that on February 20, 2009, the respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school. (Contrast, for instance, Tony John et al. v. Ken Gordon, Willingboro Bd. of Ed., C34-08 (October 27, 2009), *aff'd* Commission of Education Decision No. 102-10SEC, decided March 30, 2010.) Accordingly, the Commission finds that the complainant has failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(d).

Next, the Commission notes that N.J.S.A. 18A:12-24.1(e) provides:

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.

The Commission's regulations require that:

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

The complainant brought no competent evidence to the record to establish that the respondent made personal promises or took action beyond the scope of her duties. Even assuming that the comment made by the respondent on February 20, 2009 was sufficient to constitute "private action," given the limited facts on this record, the Commission does not find that, by its nature, it had the potential to compromise the board. (Contrast, for instance, Jennifer Dericks et al., v. Michael Schiavoni, Sparta Township Board of Education, Sussex County, C41-07 (February 24, 2009), Commissioner of Education Decision No. 260-09SEC, decided August 18, 2009.) Accordingly, the Commission finds that the complainant has failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(e).

The Commission next considers N.J.S.A. 18A:12-24.1(i), which states:

I will support and protect school personnel in proper performance of their duties.

The Commission's regulations require that:

9. Factual evidence of a violation of N.J.S.A. 18A:12-24.1(i) shall include evidence that the respondent(s) took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties. N.J.A.C. 6A:28-6.4(a)9.

The complainant brought no competent evidence to the record to establish that the respondent's comment on February 20, 2009 constituted deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties. (Contrast, for instance, I/M/O Charles Fischer, C30-03 (February 24, 2004), Commissioner of Education Decision No. 157-04, April 12, 2004; I/M/O David Kanaby, Hillsborough Bd. of Ed., Somerset County, C53-05 (July 24, 2007), Commissioner of Education Decision No. 350-07, September 10, 2007; Brown et al. v. David Matthews, City of Englewood Board of Education, Bergen County, C13-07 (October 27, 2008), *aff'd*, Commissioner of Education Decision No.

123-09A, April 14, 2009) Accordingly, the Commission finds that the complainant has failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(i).

Finally, the Commission considers N.J.S.A. 18A:12-24.1(j), which states:

I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

The Commission's regulations require that:

10. Factual evidence of a violation of N.J.S.A. 18A:12-24.1(j) shall include evidence that the respondent(s) acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint:
  - i. Prior to referral to the chief administrative officer; or
  - ii At a time or place other than a public meeting and prior to the failure of an administrative solution. N.J.A.C. 6A:28-6.4(a)10.

The Commission finds that the complainant brought no competent evidence to the record to establish that respondent acted on, or attempted to resolve, a complaint, or conducted an investigation or inquiry related to a complaint prior to referral to the chief administrative officer or at a time or place other than a public meeting and prior to the failure of an administrative solution. (Contrast, for instance, Yafet v. Elbert Smith, Hillside BOE, C24-07 (October 27, 2008) Commissioner of Education Decision No. 156-09A, decided May 15, 2009). Accordingly, the Commission finds that the complainant has failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(j).

## **DECISION**

Based on the testimonial and documentary evidence, the Commission finds that the complainant failed to factually establish that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e), (i) and (j) of the Code of Ethics for School Board Members. Consequently, the complaint is dismissed. This decision is a final decision of an administrative agency and is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender  
Chairperson

Mailing Date: May 26, 2010

### **Resolution Adopting Decision – C19-09**

**Whereas**, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and the testimony of the parties from its hearing on April 20, 2010; and

**Whereas**, at its meeting of April 20, 2010, the Commission found that the complainant failed to prove that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e), (i) and (j) of the Code of Ethics for School Board Members; and

**Whereas**, at its meeting on May 25, 2010, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

**Now Therefore Be It Resolved**, that the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of the decision.

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Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on May 25, 2010.

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Joanne Boyle, Executive Director