Before the School Ethics Commission
Docket No.: C50-19
Decision on Motion to Dismiss

John Mannion,
Complainant

v.

Anthony Marangi,
High Point Regional Board of Education, Sussex County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on July 19, 2019, by John Mannion (Complainant), alleging that Anthony Marangi (Respondent), a member of the High Point Regional Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq*. More specifically, the Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24(b).

On July 24, 2019, the Complaint was served on Respondent, via regular and certified mail, notifying him that charges were filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to file a responsive pleading. On August 14, 2019, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). On September 23, 2019, and after initially failing to file a response, Complainant filed a response to the Motion to Dismiss.

The parties were notified by correspondence dated October 11, 2019, that this matter would be placed on the Commission's agenda for its meeting on October 21, 2019, in order to make a determination regarding the Motion to Dismiss. Unfortunately, the Commission did not have a quorum for its meeting on October 21, 2019, and, therefore, the parties were advised that the above-captioned matter would be re-docketed for the Commission's meeting on November 19, 2019. At its meeting on November 19, 2019, the Commission considered the filings in this matter and, at its meeting on December 17, 2019, the Commission voted to grant the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24(b) as alleged in the Complaint.

II. Summary of the Pleadings

A. *The Complaint*

By way of background, Complainant states that Scott Ripley (Superintendent Ripley) has been the Superintendent of the High Pointe Regional School District (District) since August 2013, and Respondent was elected to the Board on November 6, 2018. On or about November

19, 2018, Respondent and/or his spouse posted a picture on social media showing Respondent and his family having dinner with Superintendent Ripley and his family (the caption stated, "Great dinner with great friends!").

Complainant notes that Superintendent Ripley's previous employment contract (which expired on June 30, 2019) had a clause which required the Board to "notify him at least 180 days prior to" expiration of the contract (or by January 1, 2019) as to whether "he would be reappointed," or else "the contract would automatically self-renew." According to Complainant, and because Superintendent Ripley did not have the support of the majority of the Board, the vote to approve the new contract was postponed beyond the January 1, 2019, deadline. On January 3, 2019, Respondent was sworn in as a new Board member.

On January 21, 2019, Respondent, along with four (4) other Board members, approved a new three year contract with a pay increase (the vote was 5-3-1) for Superintendent Ripley. Complainant states that since "five out of nine board members' votes were needed to approve" Superintendent Ripley's new employment contract, Respondent's "support was key in delivering the margin of votes needed for approval of the new contract and pay increase that [Respondent] was seeking." Complainant further contends that, without Respondent, "the contract and pay increase [for Superintendent Ripley] would NOT have been approved." Complainant additionally notes that, with his new employment contract, Superintendent Ripley received a pay increase of over $100,000 (cumulative), with the potential to earn even more with the attainment of merit goals and, consequently, merit bonus payments.

Finally, and also during the January 21, 2019, Board meeting, "it was revealed that the … [Board] had failed to complete a single evaluation of [Superintendent Ripley's] performance dating back to 2014." After Superintendent Ripley admitted he had not received an evaluation for more than five years, Respondent "took it upon himself to publicly advocate for approval of [Superintendent Ripley's] contract – this despite the fact that 1) the [B]oard had failed to complete the required … evaluations since 2014; and 2) Respondent, as a new [B]oard member, had no basis on which to evaluate the merits of offering [Superintendent Ripley] a new contract beyond the mutual personal friendship that the two of them enjoy."

With the above in mind, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24(b) because he concealed his personal relationship with Superintendent Ripley from the Board and the public. Complainant argues that, at a minimum, Respondent had an ethical obligation "to disclose the personal friendship" between him, Superintendent Ripley, and their families when "advocating and voting for Superintendent Ripley to get a new contract and pay increase" at the Board's meeting on January 21, 2019. By failing to do so, it is reasonable to conclude that Respondent "intentionally deceived his fellow [B]oard members about the nature of his relationship with Superintendent Ripley in order to present his support for granting a new contract as if this were a sincerely held view untainted by his personal relationship with [Superintendent Ripley] – when, in fact, this was not the case." As an elected official, Respondent has "an obligation not only to avoid conflicts of interest but also to avoid the *appearance* of a conflict, a standard that [Respondent] clearly failed to uphold." For these reasons, "it is reasonable to conclude that [Respondent] knowingly allowed his personal relationship with Superintendent Ripley to override his fiduciary obligation to put the public's

interest ahead of the interests of himself and his friends. As demonstrated by his actions, [Respondent] knowingly used his position on the school board to secure unwarranted privileges, advantages and employment benefits for his friend, Superintendent Scott Ripley."

B. *Motion to Dismiss*

Following receipt of the Complaint, Respondent filed a Motion to Dismiss. Respondent argues that "Complainant's position on the scope and implication of the alleged conflict is unclear based on the content of his Complaint." Nonetheless, Respondent maintains that, pursuant to "well-settled precedent under the Act," a board member "may vote on matters relating to the superintendent's contract while maintaining a friendship with the superintendent, without violating the Act." As in *I/M/O Nielsen*,[1] Respondent argues that the Commission "should find in this case that a mere alleged friendship between a board member and the superintendent does not constitute a violation of *N.J.S.A.* 18A:12-24(b)." Respondent continues, "[t]he existence of a mere friendship, even a close friendship, with a school administrator does not prohibit a board member from participating in any and all matters before the [B]oard that may relate to that administrator, and Complainant fails to set forth any case law or other legal authority indicating to the contrary." Respondent also argues that "[i]f the Commissioner were to hold" that the mere existence of a friendship between a superintendent and a sitting board member constitutes a violation of the Act, "it would open the Pandora's box of ethical issues of board members and administrators statewide." In light of *I/M/O Nielsen*, the "Commission must conclude … that the Complaint fails to state a violation of *N.J.S.A.* 18A:12-24(b) based solely upon [Respondent's] vote on the Superintendent's new contract, and his public statements in favor of the contract, while simultaneously maintaining an alleged close friendship with the Superintendent."

Respondent concludes by noting that Complainant has failed to allege facts "to even suggest that by voting on the Superintendent's new contract or speaking publicly in support of the contract, [Respondent] used or attempted to use his position to obtain any privileges or advantages that were unwarranted" and, therefore, Complainant has failed to state a claim for a violation of *N.J.S.A.* 18A:12-24(b).

C. *Response to Motion to Dismiss*

In response to the Motion to Dismiss, Complainant argues that Respondent's reliance on *I/M/O Nielsen* is misplaced because that case is "not 'nearly identical'" to this Complaint. According to Complainant, *I/M/O Nielsen* cited violations of *N.J.S.A.* 18A:12-22(a) and *N.J.S.A.* 18A:12-24(c), not *N.J.S.A*. 18A:12-24(b). In addition, the benefits that Superintendent Ripley received amounted to "a cumulative total of over $100,000," which was "substantially greater" than the benefit received in *I/M/O Nielsen*. In addition, and unlike in *I/M/O Nielsen*, Respondent had a "pre-existing friendship" with Superintendent Ripley before Respondent became a Board member. Furthermore, once Respondent was sworn in, he immediately used his position to

[1] *I/M/O Theresa E. Nielsen*, West Amwell Board of Education, Hunterdon County, Commission Docket No. 32-96 (adopted June 24, 1997).

provide Superintendent Ripley with an unwarranted benefit. Furthermore, the dismissal in *I/M/O Nielsen*, which is inapplicable here, "turned largely on… [C]omplainants' failure to substantiate the alleged close relationship between the respondent board member and superintendent, and on the fact that [Complainants] instead were asking the Commission to investigate and substantiate their allegations for them."

Complainant also maintains that it is "demonstrably false" that the "the legislature never intended for the… Act to create conflicts of interest based on personal friendship." In this case, and as a brand new Board member, Respondent had "absolutely no basis on which to determine that the $100,000 pay increase he voted to confer on his friend … was warranted or justified." Not only did Respondent use his position "to advocate and vote for benefits for his friend, Superintendent Ripley, but [he] also was the key difference-maker in doing so" because he provided "the crucial fifth vote needed to secure approval in what proved to be a 5-3 tally" in favor of Superintendent Ripley. Therefore, the Motion to Dismiss should be denied.

III. Analysis

A. *Standard for Motion to Dismiss*

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainant), and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response is reviewed by the Commission on a summary basis. *N.J.A.C.* 6A:28-8.1 *et seq*. Thus, the question before the Commission is whether Complainant has alleged sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A.* 18A:12-24(b) as set forth in the Complaint.

B. *Allegations of Prohibited Acts*

In the Complaint, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24(b), and this provision of the Act provides:

> b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

In support of his argument that Respondent violated *N.J.S.A.* 18A:12-24(b), Complainant contends that, because Respondent and Superintendent Ripley were "great" friends, Respondent had an ethical obligation "to disclose the personal friendship" between him, the Superintendent, and their families when "advocating and voting for Superintendent Ripley to get a new contract and pay increase" at the Board's meeting on January 21, 2019. By failing to do so, it is reasonable to conclude that Respondent "intentionally deceived his fellow [B]oard members about the nature of his relationship with Superintendent Ripley in order to present his support for granting a new contract as if this were a sincerely held view untainted by his personal relationship with [Superintendent Ripley] – when, in fact, this was not the case."

Moreover, and because Respondent did not have the benefit of reviewing Superintendent Ripley's performance evaluations (because they were not completed) at the time he was involved in consideration of the employment contract for Superintendent Ripley, "it is reasonable to conclude that [Respondent] knowingly allowed his personal relationship with Superintendent Ripley to override his fiduciary obligation to put the public's interest ahead of the interests of himself and his friends. As demonstrated by his actions, [Respondent] knowingly used his position on the school board to secure unwarranted privileges, advantages and employment benefits for his friend, Superintendent Scott Ripley."

Respondent counters that, pursuant to "well-settled precedent under the Act," a board member "may vote on matters relating to the superintendent's contract while maintaining a friendship with the superintendent, without violating the Act." Furthermore, Respondent argues that Complainant has failed to allege facts "to even suggest that by voting on the Superintendent's new contract or speaking publicly in support of the contract, [Respondent] used or attempted to use his position to obtain any privileges or advantages that were unwarranted."

In order to credit the alleged violation of ***N.J.S.A.* 18A:12-24(b)**, the Commission must find evidence that Respondent used or attempted to use his official position to secure an unwarranted privilege, advantage or employment for himself, members of his immediate family, or "others."

Based on its review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24(b). As an initial matter, and although both Complainant and Respondent went to great lengths to categorize (and dispute) the relationship/friendship between Respondent and Superintendent Ripley, the establishment of a relationship/friendship, regardless of its degree, is not a necessary fact to establish a violation of *N.J.S.A.* 18A:12-24(b).[2] Because there is no suggestion that Respondent engaged in any action to benefit himself, or that Superintendent Ripley is a member of Respondent's immediate family, the crux of the Commission's analysis is whether Complainant has offered sufficient facts to establish that Respondent used his official position to secure an unwarranted privilege for Superintendent Ripley, an "other" within the meaning of the Act.

In this regard, Complainant argues that Respondent had an affirmative obligation to disclose his "close" friendship with Superintendent Ripley to the Board and to the public and, because he failed to do so, it was reasonable to conclude that Respondent "intentionally deceived his fellow [B]oard members about the nature of his relationship with Superintendent Ripley in order to present his support for granting a new contract as if this were a sincerely held view untainted by his personal relationship with [Superintendent Ripley] – when, in fact, this was not the case." As to this argument, the Commission notes that while Board members have an affirmative obligation to disclose certain familial relationships, including on their

[2] Notwithstanding this finding, the Commission acknowledges that the type and degree of a relationship would have greater relevance and bearing on an alleged violation of *N.J.S.A.* 18A:12-24(c), as was the case in *I/M/O Nielsen*.

Personal/Relative and Financial Disclosure Statements, there is no obligation for them to disclose every type of relationship, including a friendship, that they may have with anyone who may have business before the Board. Requiring Respondent, and all other Board members, to disclose such relationships would be unduly burdensome.

Complainant additionally argues that because Superintendent Ripley had not received a performance evaluation for several years, Respondent, as a new Board member, had no basis upon which "to evaluate the merits of offering [Superintendent Ripley] a new contract." Absent such a basis, and because he could only rely on his friendship with Superintendent Ripley, Complainant argues that Respondent provided Superintendent Ripley with an "unwarranted" privilege, advantage, or employment.

As a point of clarification, Respondent (and the other members of the Board) were not voting on whether to offer Superintendent Ripley a new contract, but rather considering the terms of his new employment contract. Furthermore, the fact that the previous Board(s) failed to evaluate its Superintendent does not divest the current Board from providing the Superintendent with the terms of a new employment contract. The fact that Respondent – along with the other members of the Board – acted on the terms of Superintendent Ripley's new employment contract without the benefit of previous performance evaluations does not mean, without an articulation of additional facts and circumstances, that Respondent used his position as a Board member to secure an "unwarranted" privilege, advantage, or employment for Superintendent Ripley.

Moreover, when Respondent was sworn-in as a Board member, he was immediately provided with the right to vote and act on any and all matters pertaining to the Board, including the terms of Superintendent Ripley's employment contract. To the extent that Complainant suggests that Respondent, as a newly sworn-in Board member, should not have initiated or voted on Superintendent Ripley's new employment contract simply because he was "new" to the Board, the Commission finds that such a position, if accepted, would result in unjustifiably stripping Board members of their duties and responsibilities. Nonetheless, if Respondent, as any other Board member, did not feel that he had sufficient information upon which to vote, he could have abstained from the matter altogether. In this case, Respondent did not feel that was necessary.

For the reasons set forth above, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24(b) should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined to ***grant*** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24(b) as argued in the Complaint.

IV. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission voted to ***grant*** the Motion to Dismiss in its

entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24(b) as contended in the Complaint.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that, for the reasons set forth above, this matter is dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court-Appellate Division. *See*, *New Jersey Court Rule* 2:2-3(a).

Robert W. Bender, Chairperson

Mailing Date: December 18, 2019

Resolution Adopting Decision
in Connection with C50-19

Whereas, at its meeting on November 19, 2019, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the response to the Motion to Dismiss submitted in connection with the above-referenced matter; and

Whereas, at its meeting on November 19, 2019, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24(b) as alleged in the Complaint; and

Whereas, at its meeting on December 17, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 19, 2019; and

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

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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 December 17, 2019.

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Kathryn A. Whalen, Director
School Ethics Commission