

Before the School Ethics Commission
Docket No.: C70-18
Decision on Motion to Dismiss

**Rodney Etheridge,
Complainant**

v.

**Diana Lobosco and Michael Coscia, Jr.,
Passaic County Technical Institute Board of Education, Passaic County,
Respondents**

I. Procedural History

This matter arises from a Complaint that was filed on October 30, 2018, by Rodney Etheridge (Complainant), alleging that Diana Lobosco (Respondent Lobosco), the Superintendent/Chief School Administrator of the Passaic County Technical Institute (PCTI), and Michael Coscia, Jr. (Respondent Coscia), a member of the PCTI Board of Education (Board) (collectively Respondents), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated November 2, 2018, and November 19, 2018, Complainant was notified that his Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept his filing. On December 10, 2018, Complainant appeared to cure all defects and filed an amended Complaint that was compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3. However, and following receipt of correspondence from counsel for Respondents, Complainant was advised, by correspondence dated January 2, 2019, that additional deficiencies remained. Ultimately, on January 9, 2019, Complainant filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3. More specifically, the Complaint alleges that **Respondent Lobosco** violated *N.J.S.A.* 18A:12-24.1(a) (Counts 3-4, and 6-9), *N.J.S.A.* 18A:12-24.1(b) (Counts 1-2, 4-5, and 9), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(h), and *N.J.S.A.* 18A:12-24.1(i) (Counts 6-9), and that **Respondent Coscia** violated *N.J.S.A.* 18A:12-24.1(a) (Counts 6 and 8), *N.J.S.A.* 18A:12-24.1(b) (Counts 1 and 4-5), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(h), *N.J.S.A.* 18A:12-24.1(i) (Counts 6 and 8), and *N.J.S.A.* 18A:12-25.

On January 11, 2019, the Complaint was served on Respondents, via regular and certified mail, notifying them that charges were filed against them with the Commission, and advising that they had twenty (20) days to file a responsive pleading. On March 4, 2019, and after receiving an extension over Complainant's objection, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. In correspondence received by the Commission on March 12, 2019, Complainant indicated that, in an effort to expedite the matter, he elected not to file a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated May 13, 2019, that this matter would be placed on the Commission's agenda for its meeting on May 21, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on May 21, 2019, the Commission considered the filings in this matter and, at a special meeting on June 19, 2019, the Commission voted to dismiss all allegations against Respondent Lobosco – the Superintendent/Chief School Administrator - because the provisions of the Code of Ethics for School Board Members (Code) only apply to board members; grant the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent Coscia violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(h)*, *N.J.S.A. 18A:12-24.1(i)*, and/or *N.J.S.A. 18A:12-25*; find the Complaint not frivolous; and deny Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*

In his two (2) page "Complaint Form," Complainant appears to allege multiple violations of the Code in three (3) separate Counts against Respondent Lobosco and/or Respondent Coscia. In "Count 1," Complainant alleges that, on June 25, 2018, an unspecified Respondent(s) violated *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(h)*, and *N.J.S.A. 18A:12-24.1(i)*; in "Count 2," Complainant contends that, in "2017-2018," Respondent Coscia violated *N.J.S.A. 18A:12-25* because he failed to disclose his child's employment with PCTI on his Personal/Relative and Financial Disclosure Statements (Disclosure Statements); and in "Count 3," Complainant asserts that, on September 13, 2018, an unspecified Respondent(s) violated *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(h)*, and *N.J.S.A. 18A:12-24.1(i)*.

Appended to the Complaint is a twenty-one (21) page document which appears to set forth, in greater detail, the factual basis for the allegations that Complainant is levying against Respondent Lobosco and/or Respondent Coscia. In this regard, the introductory paragraphs explain that after Respondent Lobosco rescinded and rejected the acceptance of qualified students in the Electronics Program, and replaced those students with "highly at risk students," Complainant ultimately "complained about this practice," and he (Complainant) was retaliated against by Respondent Lobosco and Respondent Coscia. Not only did "they" rescind the acceptance of Complainant's students, they also abolished "The School of Applied Technology" and "The Electronics Program" and then reassigned Complainant to a different department, where he was to be supervised by Respondent Coscia's child. According to Complainant, **Respondent Coscia** violated *N.J.S.A. 18A:12-25* because he failed to disclose his child's employment on his Disclosure Statements.

Before more fully discussing his claims, Complainant argues that the provisions of the Code apply to both Respondent Lobosco (the Superintendent/Chief School Administrator) and Respondent Coscia (a Board member) because the School Ethics Act, which includes the Code, applies to school officials, and Respondent Lobosco - as the Superintendent/Chief School Administrator - is a school official within the meaning of the School Ethics Act.

In the second “Brief Statement” section of the information attached to his “Complaint Form,” Complainant explains that, although eighteen (18) students were accepted into/enrolled in the 2018-2019 Electronics Program (as Freshmen), their enrollments “were rescinded without proper notification.” The explanation given to Complainant was that the school wanted “to explore a different direction as pertaining to Electronics.” Complainant asserts that this decision denied the incoming freshman students valuable opportunities (prospective employment opportunities), and also reduced the schedules of senior students by forty (40) minutes (and this “negated” the required number of hours needed “to complete vocational training in registered career paths”). In September 2018, Complainant returned to work to find that he was being transferred to the Science Department under the supervision of a Board member’s - Respondent Coscia’s - child. Complainant later learned that, unlike all of his other colleagues, he was *not* transferred from the CTE School of Applied Technology to the School of Engineering Department.” In addition, Complainant’s “prep time” was reduced, but his workload increased. Following this “Brief Statement,” Complainant appears to set forth nine (9) Counts against Respondent Lobosco and/or Respondent Coscia.

In **Count 1** (“#1 Remove the Stigma of Vocational Schools”), Complainant argues that as a result of **Respondent Lobosco’s** (the Superintendent) “personal vendetta and sabotage” of the Electronics Program, “a leaky roof was allowed to destroy the Printed Circuit Board Laboratory.” He further notes that the “computers and overhead projector continually malfunctioned due to overheating and lack of ventilation and conditioning,” and Respondent Lobosco’s decision to phase out the Electronics Program “will adversely affect the three students...currently ranked at the top 15 in their respective classes.” In addition, “the students and instructors suffered so frequently and severely that” multiple administrators witnessed a student become ill. Nonetheless, and in violation of *N.J.S.A. 18A:12-24.1(b)*, **Respondent Lobosco and Respondent Coscia** “neglected the welfare and health of the students in the Electronics Department while providing proper ventilation and air conditioning” for every other CTE program.

In **Count 2** (“#2 June 20th, 2018”), Complainant contends that **Respondent Lobosco** (the Superintendent) engaged in “personal and unethical pupil recruitment practices” when she “nullified the highly qualified applicants” and “recruited 26 high risk students” who were below “the standards she set for admission to [Passaic County Technical Institute (PCTI)].” According to Complainant, the students who were recruited by Respondent Lobosco were placed “in an overcrowded classroom without any support,” and the classroom “was poorly ventilated and it was the only classroom in it’s [sic] wing without air conditioning.” The low percentage of graduates from the class of 2018 (18/26) “is indicative” of Respondent Lobosco’s “discriminatory and unethical recruitment.” As such, Complainant argues that **Respondent Lobosco** violated *N.J.S.A. 18A:12-24.1(b)* because she neglected the welfare and health of the students in the Electronic Department.

In **Count 3** (“#3 On Monday June 25th, 2018”), Complainant claims that his former Supervisor – Jerry Castaneda – informed him of Respondent Lobosco’s “decision to phase out the Electronics program,” and further advised him (Complainant) that he (Complainant) would be phased into the Engineering Program and would eventually be assigned to teach the Digital

Electronics component of the program. Complainant claims that he expressed his dismay at the recession of the acceptance/enrollment of the eighteen (18) freshman students, and at the fact that the schedules of senior students were reduced “a full 40 minutes” and, thereby, negated the time required by “State Legislative Mandates.” Therefore, Complainant argues that **Respondent Lobosco** “and the Board of Education” violated *N.J.S.A. 18A:12-24.1(a)* because Respondent Lobosco did not enforce all laws, rules, and regulations of the State Board of Education when she – and the Board – failed to provide the Senior Class with 17.5 credit hours, and did so “without properly and ethically notifying the students or their parents.”

In **Count 4** (“#4 September 4th, 2018”), Complainant asserts that on September 4, 2018, he “discovered” that instead of being assigned to the Engineering Department (with the rest of his colleagues from the Technology Department), he and certain students were “isolated” to the Science Department under the supervision of Respondent’s child. Consequently, while phasing out the Electronics Department, Respondent Lobosco isolated the electronic students and denied them the opportunity to participate in the Open House. Complainant asserts that **Respondent Lobosco** and **Respondent Coscia** violated *N.J.S.A. 18A:12-24.1(b)* because they neglected the welfare and mental health of the students in the Electronics Department, and **Respondent Lobosco** and “the Board of Education” violated *N.J.S.A. 18A:12-24.1(a)* because they did not uphold and enforce all laws rules and regulations of the State Board of Education.

In **Count 5** (“#5 Website Promoting Electronics”), Complainant alleges that the Passaic County Technical Institute (PCTI) continues to promote the Electronics Program and the School of Technology on its website, but the Electronics Program no longer exists. Entering students are no longer afforded the opportunity to pursue professional licenses that were offered to previous graduating classes, and instead are redirected to alternative programs. Complainant asserts that **Respondent Lobosco** and **Respondent Coscia** violated *N.J.S.A. 18A:12-24.1(b)* because they neglected the welfare and mental health of the students who are “arbitrarily redirected” from the Electronics Department to other departments and programs. According to Complainant, students are being “lured” by Respondent Lobosco’s “fraudulent advertisements and promotions.”

In **Count 6** (“#6 On September 4, 2018”), Complainant argues that Respondent Coscia’s child advised him (Complainant) that he (Complainant) – the only African American Career and Technical Education (CTE) instructor - was being transferred from the School of Applied Technology Department to the Science Department (an academic department). The remainder of Complainant’s colleagues were transferred to a newly formed department, The School of Engineering. Complainant asserts that **Respondent Lobosco** and **Respondent Coscia** violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(i)*, and *N.J.A.C. 6A:8-2.2* because they did not uphold and enforce all laws, rules, and regulations of the State Board when they failed to provide Complainant with a reasonable amount of time to prepare to teach and order supplies for three (3) courses, as opposed to the two (2) courses that all CTE instructors are mandated to teach. This lack of preparation adversely affects the welfare and mental health of students.

In **Count 7** (“#7 September 10, 2018”), Complainant contends that Respondent Lobosco does not distinguish between Passaic County Vocational School District (PCVSD) and the PCTI, both of which offer different course options and causes confusion for the public. Complainant asserts that **Respondent Lobosco** violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(i)*

because she did not uphold and enforce all laws, rules and regulations of the State Board when she “interchanges the name of the official Board of Education name and school, Passaic County Vocational School District, Passaic County Technical Institute Board of Education, and the Passaic County Technical Institute School Board.”

In **Count 8** (“#8 September 27, 2018”), Complainant claims that during a meeting with the Principal and his “new” Supervisor (Respondent Coscia’s child), his new Supervisor spoke in a very hostile tone and defamed Complainant when he (Respondent Coscia’s child) said that the Electronics Department has “always” had low numbers or that students chose Electronics as a second choice. However, as noted previously, Complainant argues that Respondent Lobosco denied sixty (60) qualified applicants to the Electronics Department and instead chose twenty-six (26) “vulnerable” students. According to Complainant, this practice of recruiting students with the intention of returning them to their sending district is unethical. In addition, a non-tenured teacher was transferred from the Electronics Department to the newly formed School of Engineering (not Complainant who was tenured), and Complainant was assigned to teach the non-tenured teacher’s Sophomore Class *in addition* to his own two courses. This burdensome schedule change also disrupted the Senior Class Schedule because their class time was reduced to allow Complainant to have a lunch break. Because of these actions, and the fact that Respondent Lobosco and Respondent Coscia did not support and protect personnel in the proper performance of their duties, Complainant claims that **Respondent Lobosco** and **Respondent Coscia** violated *N.J.S.A. 18A:12-24.1(i)*, and also violated *N.J.S.A. 18A:12-24.1(a)* because they did not uphold and enforce all laws, rules and regulations of the State Board.

In **Count 9** (“Electronics Substitutes Scheduling And The Co-Op Department”), Complainant asserts that Respondent Lobosco has demonstrated a pattern of using her position and policies to manipulate students, teachers and staff schedules, which created an unsafe work environment, and endangered the students’ and teachers’ physical and emotional well-being. Complainant alleges that **Respondent Lobosco** violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, and *N.J.S.A. 18A:12-24.1(i)* because she did not uphold and enforce the laws, rules and regulations of the State Board when she failed to support the personnel by arbitrarily phasing out the electronics program, transferring the electronics teachers without replacing them with experienced teachers, and subjecting the students and teachers to “unethical scheduling crisis.”

B. Motion to Dismiss and Allegation of Frivolous Filing

Following receipt of the Complaint, Respondent filed a Motion to Dismiss, and also alleged that the Complaint is frivolous. As an initial matter, Respondents argue that the alleged violations of *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(h)* and *N.J.S.A. 18A:12-24.1(i)* only apply to school board members. Because Respondent Lobosco is an administrator, all alleged violations of the Code (by Respondent Lobosco) should be dismissed. Regarding the alleged violation of *N.J.S.A. 18A:12-25* by Respondent Coscia, he asserts that he properly filed his Disclosure Statements as required for 2017 and 2018, and disclosed his son’s employment with the Board; therefore, this allegation should be dismissed.

In addition to denying the allegations in the Complaint, Respondents argue that any matters related to Complainant’s schedule/class assignment are educational policy/managerial prerogative and not violations of the Code. Furthermore, Complainant did not set forth specific allegations and supporting facts that could give rise to any alleged violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(h) and/or *N.J.S.A.* 18A:12-24.1(i) by Respondent Coscia. Moreover, Complainant has a history of animosity toward the Board and its administration. Complainant’s spouse was a teacher at PCTI and is the subject of tenure dismissal charges. Consequently, Respondents assert Complainant knew or should have known that his Complaint has no reasonable basis of fact or in law, and was solely intended to harass Respondents. Therefore, Respondents allege that the Complaint is frivolous.

C. Response to Motion to Dismiss and Allegation of Frivolous Filing

Complainant “elected” not to file a response to the Motion to Dismiss and allegation of frivolous filing.

D. Public Statements from Complainant and His Wife

At the Commission’s meeting on May 21, 2019, Complainant and his wife – Leslie Etheridge – offered statements/comments during the public portion of the meeting. In Complainant’s remarks, he explained his educational background, as well as the history of his employment with PCTI. Complainant also reiterated the allegations in his Complaint, including the rescinded acceptance of approximately eighteen (18) or nineteen (19) students in the Electronics Department, his transfer/reassignment to the Science Department, his inadequate “prep” time to teach three (3) courses, and the fact that all other staff members from the Electronics Department – with the exception of him - were transferred/reassignment to the same department. Complainant also explained that the students who were accepted into the Electronics Department were “distributed” to other programs, and that decisions were made to denounce the importance of the Electronics Department, and not to allow the Electronics Department to thrive and receive recognition.

In her remarks, Ms. Etheridge echoed the concerns raised by her husband, and indicated she was present to support her husband. Ms. Etheridge also reiterated her husband’s love of engineering, and stated that not only should the Electronics Department continue to exist, but her husband should still be teaching courses in the Electronics Department.

III. Analysis

A. Claims Against Respondent Lobosco

In the Complaint, Complainant alleges that Respondent Lobosco – *the Superintendent/Chief School Administrator* – engaged in behavior violative of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(h), and *N.J.S.A.* 18A:12-24.1(i) of the Code. Although Complainant was advised, in correspondence dated

November 2, 2018,¹ and November 21, 2018,² that he could not assert alleged violations of the Code against Respondent Lobosco because, in short, she is not a member of the Board, he maintains that the provisions of the Code apply to her behavior because she is a school official, and the provisions of the Code are contained within the School Ethics Act.

The Commission affirms, as argued by Respondent Lobosco, that the provisions of the Code only regulate the conduct of Board members, and do not apply to the conduct of administrators. In this regard, the preliminary statement of *N.J.S.A. 18A:12-24.1* (“*Code of Ethics for School Board Members*”) states, “*A school board member shall abide by the following Code of Ethics for School Board Members*” (emphasis added). Neither the title of the statute, nor its substantive provisions, indicate that the provisions of the Code apply to anyone other than Board members. In addition, the regulations implementing the provisions of the School Ethics Act, and *N.J.A.C. 6A:28-6.3(c)* in particular, specifically provide that, “A complaint alleging solely a violation of the code of ethics for school board members *shall name only school board members are respondents...*” (emphasis added). Consequently, there is no statutory or regulatory authority to support Complainant’s position that the provisions of the Code apply to administrators.

With the above in mind, and because Respondent Lobosco is not a Board member, but rather the Superintendent/Chief School Administrator, all claims involving alleged violations of the Code by Respondent Lobosco are hereby dismissed. With the dismissal of these claims, there are no remaining allegations against Respondent Lobosco.

B. 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, and with the dismissal of all claims against Respondent Lobosco, the question before the Commission is whether Complainant has alleged facts which, if true, could support a finding that **Respondent Coscia** violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(h)*, *N.J.S.A. 18A:12-24.1(i)*, and/or *N.J.S.A. 18A:12-25*.

¹ In identifying the deficiencies in the Complaint, this correspondence from the Commission advised Complainant, “Complaint alleges a violation of the Code...against a Respondent who is not a school board member. *N.J.A.C. 6A:28-6.3(c)*.”

² In identifying the deficiencies in the Complaint, this correspondence from the Commission advised Complainant, “As you were advised by correspondence dated November 2, 2018, you are alleging violations of the Code of Ethics for School Board Members (Code) against a Respondent who is **not** a school board member. *N.J.A.C. 6A:28-6.3(c)*. As superintendent of the Passaic County Vocational School District, Ms. Lobosco is a **school official**, which is defined as “...an administrator of a district board of education or charter school.” As a school official, Ms. Lobosco is subject to the provisions of *N.J.S.A. 18A:12-24*, the prohibited acts portion of the School Ethics Act.”

C. *Alleged Code Violations*

In the Complaint, Complainant alleges that Respondent Coscia violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(h), and *N.J.S.A.* 18A:12-24.1(i). These provisions of the Code provide, respectively:

a. 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.

b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

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

1. **Alleged Violations of N.J.S.A. 18A:12-24.1(a) (Counts 6 and 8)**

As set forth in *N.J.A.C.* 6A:28-6.4(a)(1), 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 Respondent Coscia failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondent Coscia brought about changes through illegal or unethical procedures.

In **Count 6**, Complainant argues that Respondent Coscia violated *N.J.S.A.* 18A:12-24.1(a) because he did not uphold and enforce all laws, rules, and regulations of the State Board when he failed to provide Complainant with a reasonable amount of time to prepare to teach and order supplies for three (3) courses, as opposed to the two (2) courses that all CTE instructors are mandated to teach. In **Count 8**, Complainant contends that Respondent Coscia violated *N.J.S.A.* 18A:12-24.1(a) because he did not uphold and enforce all laws, rules and regulations of the State Board when a non-tenured teacher was transferred from the Electronics Department to the newly formed School of Engineering (not Complainant who was tenured), and when Complainant was assigned to teach the non-tenured teacher's Sophomore Class *in addition* to his own two courses.

Based on its review of Complainant's allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) as argued in Count 6 and/or

Count 8. More specifically, the Commission finds that, as argued by Respondents, Complainant has not provided a copy of a final decision(s) from any court of law or other administrative agency demonstrating that Respondent Coscia violated a **specific** law, rule, or regulation of the State Board when he failed to provide Complainant with a reasonable amount of time to prepare to teach and order supplies for three (3) courses, as opposed to the two (2) courses that all CTE instructors are mandated to teach (Count 6), and/or when a non-tenured teacher was transferred from the Electronics Department to the newly formed School of Engineering (not Complainant who was tenured), and when Complainant was assigned to teach the non-tenured teacher's Sophomore Class *in addition* to his own two courses (Count 8). Absent such a final decision(s), the Commission finds that even if all the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent Coscia violated *N.J.S.A.* 18A:12-24.1(a) as alleged in Count 6 and/or Count 8. Therefore, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(a) by Respondent Coscia should be dismissed.

2. Alleged Violations of *N.J.S.A.* 18A:12-24.1(b) (Counts 1 and 4-5)

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(2), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(b) shall include evidence that Respondent Coscia willfully made a decision contrary to the educational welfare of children, or evidence that Respondent Coscia took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

In **Count 1**, Complainant argues that because of Respondent Lobosco's "personal vendetta and sabotage" of the Electronics Program, "a leaky roof was allowed to destroy the Printed Circuit Board Laboratory" and "computers and overhead projectors continually malfunctioned due to overheating and lack of ventilation and conditioning." Based on these actions, Respondent Coscia "neglected the welfare and health of the students in the Electronics Department while providing proper ventilation and air conditioning" for every other CTE program. In **Count 4**, Complainant maintains that while phasing out the Electronics Department, Respondent Lobosco isolated the electronic students and denied them educational opportunities. In this way, Complainant maintains that Respondent Coscia violated *N.J.S.A.* 18A:12-24.1(b) because he neglected the welfare and mental health of the students in the Electronics Department. In **Count 5**, Complainant asserts that although PCTI promotes the Electronics Program, the program no longer exists; therefore, entering students are no longer afforded the opportunity to pursue professional licenses that were offered to previous graduating classes, and instead are redirected to alternative programs. As such, Complainant asserts that Respondent Coscia violated *N.J.S.A.* 18A:12-24.1(b) because he neglected the welfare and mental health of the students who are "arbitrarily redirected" from the Electronics Department to other departments and programs.

As to the alleged violations of *N.J.S.A.* 18A:12-24.1(b) in Count 1, Count 4, and Count 5, Respondents argue that the issues/topics discussed in the Complaint are educational policy and/or managerial prerogative and, therefore, cannot constitute violations of the Code. Furthermore, Respondents contend that Complainant did not set forth specific allegations and supporting facts that could give rise to an alleged violation of *N.J.S.A.* 18A:12-24.1(b) in Count 1, Count 4, and/or Count 5.

After review of Complainant's allegations in Count 1, Count 4, and Count 5, the Commission finds that even if the facts as alleged in each Count are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(b). The Commission agrees with Respondents that Complainant has not offered sufficient factual evidence to establish that **Respondent Coscia** willfully made a decision contrary to the educational welfare of children, or that Respondent Coscia took deliberate action to obstruct the programs and policies. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(b) in Count 1, Count 4, and Count 5 by Respondent Coscia should be dismissed.

3. Alleged Violations of N.J.S.A. 18A:12-24.1(f)

As set forth in *N.J.A.C.* 6A:28-6.4(a)(6), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(f) shall include evidence that Respondent Coscia took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that Respondent Coscia used the schools in order to acquire some benefit for Respondent Coscia, a member of his immediate family or a friend.

Based on its review of Complainant's allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(f). Although Complainant alluded to an alleged violation of *N.J.S.A.* 18A:12-24.1(f) in his two (2) page "Complaint Form," he did not indicate which Respondent allegedly violated this provision of the Code, and also did not offer sufficient facts in support of this allegation. The twenty-one (21) page document appended to the "Complaint Form" also did not contain a reference to an alleged violation of *N.J.S.A.* 18A:12-24.1(f) by either Respondent. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(f) by Respondent Coscia should be dismissed.

4. Alleged Violations of N.J.S.A. 18A:12-24.1(h)

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(8), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(h) shall include evidence that Respondent Coscia acted on a personnel matter without a recommendation of the chief administrative officer.

After review of Complainant's allegations, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(h). As with the alleged violation of *N.J.S.A.* 18A:12-24.1(f), while Complainant referenced an alleged violation of *N.J.S.A.* 18A:12-24.1(h) in his two (2) page "Complaint Form," he did not indicate which Respondent allegedly violated this provision, and also did not offer sufficient facts in support of this allegation. There is also no reference to an alleged violation of *N.J.S.A.* 18A:12-24.1(h) by either Respondent in the twenty-one (21) page document which more fully explains the factual basis for the Complaint. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(h) by Respondent Coscia should be dismissed.

5. Alleged Violations of N.J.S.A. 18A:12-24.1(i) (Counts 6 and 8)

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

In **Count 6**, Complainant alleges that (a) because he (Complainant) was the only CTE instructor (and the only African American CTE instructor) transferred to the Science Department, and that all of his other colleagues were transferred to a newly formed department, and (b) because he was not provided with a reasonable amount of time to prepare and teach the courses assigned to him, Respondent Coscia did not support and protect personnel in the proper performance of their duties. In **Count 8**, Complainant argues that (a) because Respondent Lobosco denied sixty (60) qualified applicants to the Electronics Department and instead chose twenty-six (26) “vulnerable” students, and (b) because a non-tenured teacher was transferred from the Electronics Department to the newly formed School of Engineering (not Complainant who was tenured) and Complainant was assigned to teach the non-tenured teacher’s Sophomore Class *in addition* to his own two courses, Respondent Coscia did not support and protect personnel in the proper performance of their duties.

Regarding the alleged violations of *N.J.S.A.* 18A:12-24.1(i) in Counts 6 and 8, Respondents argue that the issues/topics discussed in the Complaint are educational policy and/or managerial prerogative and, therefore, cannot constitute violations of the Code. In addition, Respondents maintain that Complainant did not set forth specific allegations and supporting facts that could give rise to an alleged violation of *N.J.S.A.* 18A:12-24.1(i) in Count 6 and/or Count 8.

Based on its review of Complainant’s allegations in Counts 6 and 8, the Commission finds that even if the facts as alleged in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(i). The Commission agrees with Respondents that Complainant has not offered sufficient factual evidence to establish that **Respondent Coscia** took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(i) in Count 6 and Count 8 by Respondent Coscia should be dismissed.

After review of Complainant’s allegations in Count 1, Count 4, and Count 5, the Commission finds that even if the facts as alleged in each Count are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(b). The Commission agrees with Respondents that Complainant has not offered sufficient factual evidence to establish that **Respondent Coscia** willfully made a decision contrary to the educational welfare of children, or that Respondent Coscia took deliberate action to obstruct the programs and policies. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(b) in Count 1, Count 4, and Count 5 by Respondent Coscia should be dismissed.

D. Personal/Relative and Financial Disclosure Statements

In addition to the alleged violations of the Code as set forth above, Complainant also alleges that, despite the employment of Respondent Coscia's child with the PCTI /Passaic County Vocational School District, Respondent Coscia failed to disclose same on his Personal/Relative and Financial Disclosure Statements (Disclosure Statements). Complainant cites Respondent's violation of *N.J.S.A.* 18A:12-25 as "school year 2017-2018." In his Motion to Dismiss, Respondent counters that he properly disclosed his child's employment on his Disclosure Statements in both 2017 and 2018.

After review of Respondent Coscia's Disclosure Statements from both 2017 and 2018, it is clear that he appropriately disclosed his child's employment in response to Question #1 ("Is any person related to you, or related to you by marriage, employed by the school district or a charter school in which you hold office or are employed?"). Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-25 by Respondent Coscia should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that the allegations against Respondent Lobosco – the Superintendent/Chief School Administrator - are dismissed because the provisions of the Code only apply to board members. The Commission has further determined that Complainant has not alleged facts sufficient to state a claim for a violation of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(h), *N.J.S.A.* 18A:12-24.1(i), and/or *N.J.S.A.* 18A:12-25. Therefore, the Commission **grants** Respondent's Motion to Dismiss in its entirety.

Notwithstanding the Commission's determination as set forth above, the Commission acknowledges the sincere, thoughtful, and passionate statements offered by Complainant and his wife during the public portion of the Commission's meeting on May 21, 2019. Although the Commission is sympathetic to the concerns raised, the allegations are insufficient to establish violations of the Act and/or the topics are outside the authority and jurisdiction of the Commission. Nonetheless, Complainant may be able to pursue certain of his claims in other proceedings, either through a grievance (pursuant to the terms of his collective negotiations agreement), through an unfair practice charge, and/or through civil litigation.

IV. Request for Sanctions

At its meeting on May 21, 2019, the Commission considered Respondents' request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondents' argument, the Commission cannot find evidence that might show that Complainant filed the Complaint in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainant knew or should have known that the Complaint was without any reasonable basis in law or equity, or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. *N.J.A.C.* 6A:28-1.2. Therefore, at a special meeting on June 19, 2019, the Commission voted to find the Complaint not frivolous, and to deny Respondents' request for sanctions.

V. 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 dismiss all allegations against Respondent Lobosco – the Superintendent/Chief School Administrator – because the provisions of the Code only apply to board members, and to grant the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent Coscia violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(f)*, *N.J.S.A. 18A:12-24.1(h)*, *N.J.S.A. 18A:12-24.1(i)*, and/or *N.J.S.A. 18A:12-25*. The Commission also voted to find that the Complaint is not frivolous, and to deny Respondents' request for sanctions.

Pursuant to *N.J.S.A. 18A:12-29(b)*, the Commission hereby notifies Complainant and Respondents 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: June 20, 2019

***Resolution Adopting Decision
in Connection with C70-18***

Whereas, at its meeting on May 21, 2019, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and the response to the Motion to Dismiss and allegation of frivolous filing filed in connection with the above-referenced matter; and

Whereas, at its meeting on May 21, 2019, the Commission discussed dismissing all allegations against Respondent Lobosco – the Superintendent/Chief School Administrator – because the provisions of the Code of Ethics for School Board Members only apply to board members; and

Whereas, at its meeting on May 21, 2019, the Commission discussed granting the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent Coscia violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(f), *N.J.S.A.* 18A:12-24.1(h), *N.J.S.A.* 18A:12-24.1(i), and/or *N.J.S.A.* 18A:12-25; and

Whereas, at its meeting on May 21, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondents’ request for sanctions; and

Whereas, at a special meeting on June 19, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on May 21, 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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at a special meeting on June 19, 2019.

Kathryn A. Whalen, Director
School Ethics Commission