

***Before the School Ethics Commission***  
***Docket No.: C34-20***  
***Decision on Motion to Dismiss***

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**Vivianne Chermont,**  
***Complainant***

v.

**Steven Way,**  
**Kearny Board of Education, Hudson County,**  
***Respondent***

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**I. Procedural History**

This matter arises from a Complaint that was filed on July 14, 2020, by Vivianne Chermont (Complainant), alleging that Steven Way (Respondent), an administrator employed by the Kearny Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By correspondence dated July 15, 2020, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On July 28, 2020, Complainant cured all defects and 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 violated N.J.S.A. 18A:12-24(b).

On July 28, 2020, the Complaint was served on Respondent, via electronic mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading.<sup>1</sup> On September 18, 2020, after initially failing to file a responsive pleading, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). Thereafter, and on October 11, 2020, Complainant filed a response to the Motion to Dismiss.

The parties were notified by correspondence dated November 16, 2020, that this matter would be placed on the Commission's agenda for its meeting on November 24, 2020, in order to make a determination regarding the Motion to Dismiss. At its meeting on November 24, 2020, the Commission considered the filings in this matter and, at its meeting on December 22, 2020, 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.

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<sup>1</sup> Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

## **II. Summary of the Pleadings/Public Comment**

### **A. The Complaint**

On March 28, 2020, Respondent, the Principal of Roosevelt School, received an email from the parent (father) of a student advising that he (the father) had an upcoming “court hearing” and the student’s mother was trying to “paint a poor picture” of his (the father’s) parenting. As such, the father asked Respondent if he could “give an account” of his (Respondent’s) dealings with the student’s mother and with him (the father) “in regards to concerns” with the student. On March 30, 2020, Respondent sent an email to his secretary and asked her to “write a positive letter stat[ing] how dedicated [the father] is to [the student] to the extent that he has lost his job in RAPID response to [the student’s] behavioral needs,” and indicating that he (Respondent) has not had “the same experience” with the student’s mother.

As a result of the father’s request, Respondent wrote a letter dated March 31, 2020, which states, in pertinent part, the student’s “father has been extremely responsive and proactive” and his (Respondent’s) experience with the student’s mother “has not been nearly as responsive,” and has contributed to the father losing his job.

Based on the facts as set forth above, Complainant alleges that Respondent’s “open letter” dated March 31, 2020, violated *N.J.S.A. 18A:12-24(b)* because he used his official position (as Principal) to secure advantages for another, namely the father of the student in question. According to Complainant, Respondent took this action “with full knowledge and intention that his opinion [would] influence the Court during a custody dispute to the detriment” of the student’s mother. Complainant further argues that Respondent’s “intentions are further revealed” by the email that he sent “to his secretary in preparation for this scheme” which followed after the student’s father specifically asked Respondent to use his (Respondent’s) influence for the father’s advantage. In addition, not only are the statements in the letter “COMPLETELY FALSE,” but Respondent’s “misconduct adversely affected” the mother in the litigation and the “consequences have been devastating” to both the mother and the child.

### **B. Motion to Dismiss**

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and maintains that, during the 2019-2020 school year, he had communications with Complainant (the student’s mother) and with the student’s father regarding their child. Respondent further maintains that on March 30, 2020, the student’s father sent an email to Respondent requesting that he “put in writing a summary of Respondent’s interactions with [the father] and with Complainant.” Respondent notes that he “complied with the request, which was a normal and customary request for a school administrator to receive from a parent.” Respondent further notes he “provided an accurate and truthful description of his interactions” with both parents. Respondent asserts he does not have a relationship with the father “other than as school administrator and parent of a student assigned to his building.” Respondent and the father are neither relatives nor friends.

Respondent argues that Complainant did not demonstrate how Respondent “used his position as Principal” to “secure unwarranted privileges, advantages or employment for himself or others.” Complainant did not allege that Respondent’s letter was “untrue or inaccurate or that

the letter lacked adequate support or justification.” Respondent further argues that Complainant did not provide any evidence to support that Respondent “wrote an untrue or inaccurate letter on behalf of a parent in an attempt to secure an unwarranted advantage for th[at] parent in Family Court.” Therefore, Respondent “respectfully requests,” that the Commission grant the Motion to Dismiss.”

### **C. Response to Motion to Dismiss**

In response to the Motion to Dismiss, Complainant reaffirms that Respondent “used his position as Principal to provide an ‘advantage’ (falsely painting a picture favorable to [the father] and unfavorable to [Complainant] for ‘others’ ([father]).” According to Complainant, Respondent even notes in his letter that the father lost his job “as a result of Complainant’s ‘lack of immediate attention ...’” Complainant argues that this is “way beyond the scope of simply informing a third party of his interpretation of the events that occurred [and] *lit is strikingly clear that he is using his position to help [the father] gain an advantage in Court.*”

Complainant further argues that if Respondent was merely attempting to accommodate the father by “innocently” informing a third party of the father’s positive parenting skills and interaction with his child, he would not need to “denigrate and besmudge” Complainant, even if it is true. Complainant asserts that Respondent’s action “shows culpability” and the email that he sent to his secretary “further shows his intent in this regard!”

Complainant maintains that “she has the evidence to demonstrate” that Respondent’s letter “contains flagrant misrepresentations,” and that the “evidence will show” that she is very involved in “every aspect” of her child’s life, namely school. Complainant argues that contrary to Respondent’s claim that Complainant “did not allege that the letter ... was untrue or inaccurate ...,” the “entire reason” she filed the Complaint was because Respondent’s “misrepresentations” provide the father with an advantage. Complainant notes that she did not provide “all of the evidence at the complaint stage” but will provide it “when appropriate.” Complainant concludes that she should, “without hesitation, be afforded the opportunity to present all of her evidence” that will prove Respondent violated the Act “twice” based on his “misrepresentations.” Complainant argues that “Respondent’s motion to dismiss should certainly be denied,” “especially” since she is filing the Complaint “Pro Se.”

### **D. Public Comments Offered at the Commission’s Meeting on November 24, 2020**

At the Commission’s meeting on November 24, 2020, Complainant’s employer, Jerry Tamborino, appeared by telephone and offered public comments in support of Complainant’s filing. More detailed information regarding the substance of Mr. Tamborino’s public comments can be found in the public minutes from the Commission’s meeting on November 24, 2020.<sup>2</sup>

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<sup>2</sup> See <https://www.nj.gov/education/ethics/meetings.shtml>.

### 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.* Therefore, 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 asserted in the Complaint. The Commission notes that, despite the offering of public comments at its meeting on November 24, 2020, the Commission's review of this matter was limited to the parties' written submissions.

#### B. Allegations of Prohibited Acts

In the Complaint, Complainant argues that Respondent violated *N.J.S.A. 18A:12-24(b)*. 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;

More specifically, Complainant claims that Respondent violated *N.J.S.A. 18A:12-24(b)* because, following receipt of an email from the father of a student asking him (Respondent) to "give an account" of his (Respondent's) dealings with the student's mother and with him (the father) "in regards to concerns" with the student, Respondent wrote a letter to the Court indicating the student's "father has been extremely responsive and proactive" and his (Respondent's) experience with the student's mother "has not been nearly as responsive." As such, it is Complainant's position that Respondent used his official position (as Principal) to secure advantages for another, namely the father of the student in question.

Respondent counters that, based on his communications with both Complainant (the mother) and the individual who requested the letter (the father) during the 2019-2020 school year, he "put in writing a summary of" those interactions. Respondent maintains that he "provided an accurate and truthful description of his interactions" with both parents, and Complainant did not demonstrate how Respondent "used his position as Principal" to "secure unwarranted privileges, advantages or employment for himself or others," including the student's father.

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)*. Although the facts show that Respondent wrote a

letter that was submitted to the Court in connection with a judicial/custody proceeding, and that he did so in his capacity as a building principal, there is no factual support for the position that Respondent engaged in these actions *in order to* secure an *unwarranted* privilege, advantage or employment for the student's father. Instead, Respondent offered this narrative, following the father's request, to provide what he perceived as relevant factual information to the Court relative to his own personal observation of each parent's responsiveness to issues concerning their child during the 2019-2020 school year. While this letter may have ultimately favored one parent over the other, that does not mean, in and of itself, that it was drafted specifically to provide the father with an unwarranted advantage in the judicial/custody proceeding, as opposed to embodying Respondent's personal opinion and assessment of each parent's responsiveness. As such, 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 alleged 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)*.

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Robert W. Bender, Chairperson

Mailing Date: December 22, 2020

***Resolution Adopting Decision  
in Connection with C34-20***

***Whereas***, at its meeting on November 24, 2020, 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 24, 2020, 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 asserted in the Complaint; and

***Whereas***, at its meeting on December 22, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 24, 2020; 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 22, 2020

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Kathryn A. Whalen, Director  
School Ethics Commission