

***Before the School Ethics Commission
Docket No.: C63-19
Decision on Motion to Dismiss***

**Jennifer Grana,
Complainant**

v.

**Kelly McEvoy, Kylen Anderson, and Karen Scott,
Sparta Board of Education, Sussex County,
Respondents**

I. Procedural History

This matter arises from a Complaint that was filed on November 6, 2019, by Jennifer Grana (Complainant), a member of the Sparta Board of Education (Board), alleging that Kelly McEvoy, Kylen Anderson, and Karen Scott (Respondents), also members of the Board, violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated November 7, 2019, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On November 13, 2019, 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. The Complaint alleges that Respondents violated *N.J.S.A.* 18A:12-24.1(a) (Count 2), *N.J.S.A.* 18A:12-24.1(d) (Count 2), *N.J.S.A.* 18A:12-24.1(e) (Counts 1–4), and *N.J.S.A.* 18A:12-24.1(g) (Counts 4–5).

On November 14, 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 January 8, 2020, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and on February 28, 2020, Complainant filed a response to the Motion to Dismiss.

The parties were notified by correspondence dated March 23, 2020, that this matter would be placed on the Commission’s agenda for a special meeting on March 27, 2020, in order to make a determination regarding the Motion to Dismiss. At its special meeting on March 27, 2020, the Commission considered the filings in this matter and, at its meeting on April 21, 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 Respondents violated *N.J.S.A.* 18A:12-24.1(a) as alleged in Count 2, violated *N.J.S.A.* 18A:12-24.1(d) as argued in Count 2, violated *N.J.S.A.* 18A:12-24.1(e) as contended in Counts 1–4, and/or violated *N.J.S.A.* 18A:12-24.1(g) as asserted in Counts 4–5.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant alleges that “Superintendent Dr. Michael Rossi’s contract was renewed without [the] knowledge” of the full Board, and was “negotiated and approved by the [Executive County Superintendent (ECS)] before” the full Board was made aware of the renewal; therefore, the full Board “did not have input into the terms of the contract or even which attorney would represent the [B]oard in the negotiation process.” According to Complainant, the process started on August 27, 2019, when Dr. Rossi sent a letter to the Board President (Respondent McEvoy), Vice President (Respondent Anderson), and to the Personnel Committee Chairperson (Respondent Scott), expressing “his desire for contract renewal by November 1, 2019.” Dr. Rossi’s letter also noted that, in order to meet the November 1, 2019, deadline, notification would need to be made public by September 25, 2019, in order to be on the October 28, 2019, Board agenda. Complainant further asserts that the “full Board” was not shown Dr. Rossi’s letter, “despite numerous requests to see it,” until the executive session portion of the Board’s meeting on September 23, 2019. Based on these facts, Complainant alleges that Respondents violated *N.J.S.A. 18A:12-24.1(e)*.

In Count 2, Complainant asserts that on August 30, 2019, Respondent McEvoy (Board President) sent a communication (e-mail) to other members of the Board (Respondent Anderson, Respondent Scott, and Board members Joanne Hoover and Jason Ventresca), informing them of Dr. Rossi’s request to renew his contract, and indicating that, per New Jersey School Boards Association (NJSBA), she only needed a majority to support her “in requesting that [the Board Secretary (BS)] advertise a contract renewal hearing.” The email also stated that if she had the majority’s support, she would contact the other members of the Board by phone. According to Complainant, “less than an hour later,” Respondent McEvoy told the BS “that she had support from a majority of the [B]oard to go ahead with the contract process.” Complainant asserts Respondent McEvoy’s communication violates the Open Public Meetings Act (OPMA) because she held “a meeting with a quorum outside the view of the public.” In addition, Complainant maintains that Respondent McEvoy did not call her “despite her assertions in the original communication she would do so.” Complainant further asserts that Respondent McEvoy’s communication with the four Board members “shows they intentionally hid the contract renewal” from the other members of the Board. As such, Complainant asserts that Respondents violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(d)*, and *N.J.S.A. 18A:12-24.1(e)*.

In Count 3, Complainant contends that, according to a public notice sent out by the BS, Dr. Rossi’s contract was submitted to the ECS on September 3, 2019. The ECS approved the contract, and returned it on September 9, 2019. Per Complainant, the full Board “was never shown this contract or made aware there were conversations ... between [Respondent] McEvoy, [Board counsel], and the [ECS] regarding this contract.” Based on these facts, Complainant contends that Respondents violated *N.J.S.A. 18A:12-24.1(e)*.

In Count 4, Complainant alleges that, despite requests on “9/13/19, 9/19/2019, and 9/26/19,” the full Board was not given the contract to review until September 20, 2019 (but it was submitted to the ECS on September 5, 2019, and approved on September 9, 2019). When questions were asked of Respondent McEvoy, she said “all of their questions could be asked at

the executive session on 9/23/19.” As such, Complainant alleges that Respondents violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(g).

In Count 5, Complainant asserts that at a Board meeting on October 28, 2019, Respondent McEvoy made “an egregiously misleading statement to the press” when she said, “no changes were requested.” According to Complainant, there were other “highly significant facts” that were discussed in Executive Session “but presented differently in public” by Respondent McEvoy. During this meeting, Board counsel told the Board they “could not confront the lies in public without getting into trouble for violating confidentiality of executive session.” As such, the Board could not dispute Respondent McEvoy’s misleading assertions. Based on these facts, Complainant asserts that Respondents violated *N.J.S.A.* 18A:12-24.1(g).

B. Motion to Dismiss

Following receipt of the Complaint, Respondents filed a Motion to Dismiss, and “first draw the Commission’s attention to the timing” of the Complaint. Respondents maintain “this is yet another example of litigants inappropriately exploiting the Commission’s complaint process as a political weapon in an annual school elections campaign.” Respondents state that on November 3, 2019, “less than two days before the election,” Respondent McEvoy was contacted by the publisher of the “local online TAPinto news publication” indicating she (the publisher) had a copy of the ethics complaint filed by Complainant, and was seeking her (Respondent McEvoy’s) comment for an article that would be published November 4, 2019 (the day prior to the election). When she was contacted, Respondent McEvoy was unaware of the Complaint. The next day (November 4, 2019), Complainant sent an email to Respondent McEvoy informing her that she (Complainant) filed an ethics complaint on November 1, 2019. When Respondent McEvoy asked for a copy, Complainant “refused to send” it to her. Respondent McEvoy responded, “but you have released a statement to the press about something that cannot be verified or substantiated?” Respondent McEvoy then provided a statement to the publisher of TAPinto, and an article, “Ethics Complaint Filed Against Three [Board Members]” was posted that evening (the day before the election). Respondents maintain “[i]t is impossible to say with any certainty what impact this calculated campaign of adverse publicity had on the outcome of the election,” but Complainant’s intent was to publish a negative news story before Respondents could “set the record straight.”¹

Before more fully addressing the allegations in the Complaint, Respondents note that Dr. Rossi’s contract required the Board to notify him by March 11, 2020, whether it intended to renew his contract, and Dr. Rossi was required to notify the Board by September 30, 2019, whether he wanted to be renewed. After receiving correspondence from Dr. Rossi (on August 27, 2019), Respondent McEvoy consulted with NJSBA and Board counsel, and was told she needed “at least majority support among the Board to initiate ... communications” with the county office. Following advice of counsel, Respondent McEvoy advised the full Board (on September

¹ As noted *infra*, the Commission first received a filing from Complainant on November 6, 2019, but it was deficient. Complainant ultimately filed a Complaint that was deemed compliant with the Commission’s regulatory requirements on November 13, 2019, and it was subsequently served on Respondents.

5, 2019) that they would discuss the matter in Executive Session on September 23, 2019, and that a public hearing would be held on October 28, 2019. On September 20, 2019, she provided the full Board with the proposed contract. The impetus for renewing Dr. Rossi's contract prior to March 2020 was so that the current Board, and not a newly reconstituted Board, could decide whether to renew Dr. Rossi, and could determine the terms of a new employment contract. Despite Complainant's motion to table the renewal of Dr. Rossi's contract until March 2020, a motion was passed to approve his new employment contract.

In short, Complainant asks the Commission to find that Respondent McEvoy acted unethically by allowing Dr. Rossi's contract to be vetted by the ECS without first convening a meeting of the full Board to discuss and, perhaps, vote on it. According to Respondents, Complainant "cites no definitive legal authority for the proposition that there must be a full-Board discussion, and our research has uncovered no statute, regulation, or decision from the Commissioner or the courts squarely addressing this scenario." As for Respondents Anderson and Scott, "there is nothing in the record even remotely supporting a finding that they took any unethical action, or any action at all for that matter."

Regarding Count 1, Respondents argue that Complainant did not provide any factual evidence to support a violation of *N.J.S.A.* 18A:12-24.1(e), and "[n]owhere does the first count even allege that" Respondents "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." Citing *Fields v. Baker, C35-18*, and Respondents argue, "[t]here, as here, the board president relied on advice of the district's legal counsel about what information should be shared and with whom." Without an articulation of how the Board was compromised by Respondents' action, this Count should be dismissed.

As for Count 2, Respondents first argue that the Commission does not have jurisdiction over OPMA claims. Respondents further argue that in order to prove a violation of *N.J.S.A.* 18A:12-24.1(a), Complainant needed to provide a "final decision from any court of law ..." and she did not (because none exists). Furthermore, Respondents maintain that in order to prove a violation of *N.J.S.A.* 18A:12-24.1(d), Complainant needed to provide factual evidence that Respondents "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." Respondents note that even if the Commission accepts the allegations in the Complaint as true, "any instructions [Respondent] McEvoy may have given the [BS] related to the Board-Superintendent employment relationship, would have been within the purview of Board leadership." Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(e), Complainant did not provide any factual evidence that Respondents "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." Without evidence of a "promise" or "action," or any of the evidence necessary to establish a violation of *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(d), Respondents assert Count 2 should be dismissed.

Regarding Count 3, and the alleged violation of *N.J.S.A.* 18A:12-24.1(e), Respondents argue that Complainant did not provide any facts, did not identify what specific "personal promises" Respondents made, and did not explain the action that was "beyond the scope" of their duties. Instead, Respondent McEvoy simply followed the advice of Board counsel when she

submitted Dr. Rossi's proposed contract to the ECS and, moreover, the ECS's "review and approval did not bind the Board in any way." Instead, "[i]t was merely a legal prerequisite to formal action by the Board," and the full Board "was free to accept or reject the proposed contract, or could have directed that it be resubmitted to the [ECS] for reconsideration" Furthermore, "none of the opposing Board members sought [to make] any changes to the contract." Although the opposing Board members sought to postpone the process until March, when Respondent McEvoy would no longer be on the Board and at a time when they hoped to have new Board members "aligned with them," those efforts failed. Based on the above, Respondents argue Count 3 should be dismissed.

As for Count 4, Respondents argue that, regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(e), Complainant did not cite the "personal promises" that Respondents made, nor identified specific action which was "beyond the scope of ... [their] duties." Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(g), Respondents argue that the Complaint does not "allege any disclosure of confidential information" nor does it allege "that [Respondent] McEvoy made any inaccurate statements." Complainant simply maintains that Respondent McEvoy "did not provide the proposed contract or the [ECS's] approval to the full Board as quickly as they would have liked." Therefore, Respondents argue that this Count, on its face, does not support a violation of *N.J.S.A.* 18A:12-24.1(e) or *N.J.S.A.* 18A:12-24.1(g).

Finally, and regarding Count 5, Respondent McEvoy denies making any false statements to the public, and argues that the news article "inaccurately paraphrased her conversation with the reporter." Respondent McEvoy states that she actually told the reporter that "the contract remained unchanged since its approval by the [ECS]," which was the truth. Respondent McEvoy maintains that the Board meetings are recorded, and "there is no evidence" that she made the statement as alleged. Complainant has not provided any evidence to support a violation of *N.J.S.A.* 18A:12-24.1(g), and Count 5 should be dismissed.

C. Response to Motion to Dismiss

In response to the Motion to Dismiss, Complainant maintains that Respondent McEvoy disenfranchised "the Board minority by unilaterally negotiating and obtaining approval for a new contract for [Dr. Rossi] without the knowledge or consent of the rest of the Board," including Complainant. To this end, Respondent McEvoy unlawfully polled four other Board members in order to gain a consensus as to whether to advertise a contract renewal hearing. By doing this, Respondent McEvoy "took private action which compromised the Board ... and subjected it to a Sunshine Law violation." Respondent McEvoy then directed the BS to send a contract to the ECS and asked that it be reviewed on an expedited basis. After the contract was approved, Respondent McEvoy provided confidential and inaccurate information to the media. In brief, Dr. Rossi informed four Board members that he wanted a new employment contract and, within seven business days (during which a Board meeting did not occur), Dr. Rossi had a new employment contract.

As a general matter, Complainant reasserts the allegations in the Complaint. Regarding the allegations in Count 1, Complainant argues that Respondent McEvoy violated *N.J.S.A.* 18A:12-24.1(e) because she acted beyond the scope of her duties by renegotiating the Superintendent's contract and submitting it to the ECS for approval (this power lies with the

Board, not any individual member). Complainant maintains, Respondent McEvoy should not have negotiated the new contract until it was fully and legally authorized, vetted, and approved by the Board majority at a regular meeting.

Complainant also maintains that Count 2 should not be dismissed because, in violation of *N.J.S.A.* 18A:12-24.1(e), Respondent McEvoy's actions in polling the Board constituted private action that compromised the Board. These actions exposed the Board to a potential OPMA lawsuit, and a lawsuit by Dr. Rossi if his contract did not come to fruition. Respondent McEvoy also violated *N.J.S.A.* 18A:12-24.1(d) because she directed the BS to send the contract to the ECS without receiving formal authorization from the full Board to do so.

Complainant contends that Count 3 should not be dismissed because Respondent McEvoy unlawfully, and unethically, polled certain members of the Board about the Superintendent's contract and, in doing so, she compromised the Board. Complainant further asserts Respondents "should not use Board counsel and the NJSBA" as "scapegoats for their unethical actions."

In connection with Count 4, Complainant reiterates that, in violation of *N.J.S.A.* 18A:12-24.1(g), Respondent McEvoy misled the ECS when she indicated that the Board majority supported the contract. Complainant continues, it is "unclear how [Respondent] McEvoy could have made this statement when she only asked the Board in her text message if they supported 'a contract renewal hearing.'" This misrepresentation violated *N.J.S.A.* 18A:12-24.1(e).

Regarding Count 5, Complainant reasserts that Respondent McEvoy violated *N.J.S.A.* 18A:12-24.1(g) when she gave inaccurate information to the press; if she was misquoted, she had an obligation to correct it, which she did not.

Finally, Complainant asserts that Respondents "engaged in an unethical course of action ... and ultimately renegotiated the Superintendent's contract while only keeping the Board minority in the dark to perpetuate their unethical scheme." Respondent McEvoy "misled the community" and the Commission "should not condone" her unethical behavior. Complainant further asserts that Respondents "have failed to meet their heavy burden," and 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 Respondents violated *N.J.S.A.* 18A:12-24.1(a) as alleged in Count 2, violated *N.J.S.A.* 18A:12-24.1(d) as argued in Count 2, violated *N.J.S.A.* 18A:12-24.1(e) as contended in Counts 1-4, or violated *N.J.S.A.* 18A:12-24.1(g) as asserted in Counts 4-5.

B. Alleged Code Violations

In the Complaint, Complainant alleges that Respondents violated *N.J.S.A.* 18A:12-24.1(a) (Count 2), *N.J.S.A.* 18A:12-24.1(d) (Count 2), *N.J.S.A.* 18A:12-24.1(e) (Counts 1–4), and *N.J.S.A.* 18A:12-24.1(g) (Counts 4–5). These provisions of the Code of Ethics for School Board Members (Code) provide, in pertinent part:

- 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.

- d. 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.

- e. 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.

- g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

Alleged Violation of N.J.S.A. 18A:12-24.1(a) (Count 2)

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 Respondents failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that Respondents brought about changes through illegal or unethical procedures.

In **Count 2**, Complainant alleges that Respondent McEvoy’s communication (e-mail) to select members of the Board violated OPMA, as well as *N.J.S.A.* 18A:12-24.1(a), because she held “a meeting with a quorum outside the view of the public.” Complainant further alleges that Respondent’s communication with the four Board members “shows they intentionally hid the contract renewal” from the other members of the Board. Respondents counter that the Commission does not have jurisdiction over OPMA claims, and in order to prove a violation of *N.J.S.A.* 18A:12-24.1(a), Complainant needed to, but failed to, provide a “final decision from any court of law”

After 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 Respondents violated *N.J.S.A.* 18A:12-24.1(a). As an initial matter, the Commission notes that its authority is limited to enforcing the Act, a set of minimum ethical standards by which all school officials

must abide. As a result, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any pleadings, motion papers, or documents of any kind relating to any matter that does not arise under the Act, *N.J.A.C.* 6A:28-1.4(a). Therefore, to the extent that Complainant seeks a determination from the Commission that Respondent McEvoy's e-mail violated OPMA, same falls outside the scope and jurisdiction of the Commission, but may be pursued in another forum. Even if the adjudication of this issue was within the jurisdiction of the Commission, and 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 the e-mail or any of Respondents' actions/conduct violated OPMA or any other specific law, rule, or regulation of the State Board of Education, and has not provided sufficient factual assertions or evidence to support a determination that Respondents' actions/conduct brought about changes through illegal or unethical procedures. Absent this information, the Commission finds that there is insufficient credible evidence to support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a); therefore, this allegation in Count 2 should be dismissed.

Alleged Violation of N.J.S.A. 18A:12-24.1(d)
(Count 2)

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(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 Respondents 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.

In **Count 2**, Complainant argues that by sending an e-mail to select members of the Board to obtain majority support for the advertisement of a contract renewal hearing, and then directing the BS to advertise the contract renewal hearing after obtaining support from a majority of the Board's members, all without the knowledge of the *full* Board, Respondents violated *N.J.S.A.* 18A:12-24.1(d). Respondents counter that Complainant needed to provide factual evidence that Respondents "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." Respondents note that even if the Commission accepts the allegations in the Complaint as true, "any instructions [Respondent] McEvoy may have given the [BS] related to the Board-Superintendent employment relationship, would have been within the purview of Board leadership."

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 Respondents violated *N.J.S.A.* 18A:12-24.1(d). Respondent McEvoy's direction to the BS to advertise a contract renewal hearing for Dr. Rossi's employment contract, even if done without the knowledge of the full Board, does not constitute an impermissible order to school personnel or involvement in an activity or function that is the responsibility of other school personnel. Administrative directives from the Board President to appropriate school personnel regarding issues/matters that clearly fall within the purview of the Board, such as the review and approval of the Superintendent's employment contract, are not untoward or unethical. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(d) in Count 2 should be dismissed.

Alleged Violations of N.J.S.A. 18A:12-24.1(e)
(Counts 1–4)

As set forth in *N.J.A.C. 6A:28-6.4(a)(5)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(e)* shall include evidence that Respondents made personal promises or took action beyond the scope of their duties such that, by its nature, had the potential to compromise the board.

In **Count 1**, Complainant contends that, in violation of *N.J.S.A. 18A:12-24.1(e)*, “Superintendent Dr. Michael Rossi’s contract was renewed without [the] knowledge” of the full Board, and was “negotiated and approved by the [ECS] before” the full Board was made aware of the renewal and before the full Board provided input into the terms of the contract. Respondents counter that “[n]owhere does the first count even allege that” Respondents “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.”

After 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 Respondents violated *N.J.S.A. 18A:12-24.1(e)*. Even if the ECS reviewed and approved a new employment contract for the Superintendent *before* the full Board was made aware of and could offer input on the proposed form of contract, Complainant has not offered facts or evidence to demonstrate that this conduct, i.e., submission to the ECS for review and approval prior to full Board review and approval, exceeded the duties and responsibilities of Respondents in their capacity as Board members. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(e)* in Count 1 should be dismissed.

In **Count 2**, Complainant contends Respondents violated *N.J.S.A. 18A:12-24.1(e)* because an e-mail was sent to select members of the Board to obtain majority support for the advertisement of a contract renewal hearing, Respondent McEvoy failed to call her (Complainant) despite Respondent McEvoy’s representation that she would, and Respondents intentionally hid Dr. Rossi’s contract renewal from the entire Board. Respondents counter that Complainant did not provide any factual evidence that Respondents “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.”

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 Respondents violated *N.J.S.A. 18A:12-24.1(e)*. Even if Respondent McEvoy selectively targeted those members of the Board who she knew would be supportive of a contract renewal, all to the exclusion of the minority, Complainant has not provided facts or evidence to establish that this conduct, i.e., ensuring majority support for a contract renewal hearing, exceeded the duties and responsibilities of Respondents in their capacity as Board members. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(e)* in Count 2 should be dismissed.

In **Count 3**, Complainant contends that, in violation of *N.J.S.A. 18A:12-24.1(e)*, the full Board “was never shown” Dr. Rossi’s contract before it was sent to the ECS, and was also completely unaware of the conversations “between [Respondent] McEvoy, [Board counsel], and

the [ECS] regarding this contract.” Respondents counter that Complainant did not provide any facts, did not identify what specific “personal promises” Respondents made, and did not explain the action that was “beyond the scope” of their duties. Instead, Respondent McEvoy simply followed the advice of Board counsel when she submitted Dr. Rossi’s proposed contract to the ECS and, moreover, the ECS’s “review and approval did not bind the Board in any way.”

After 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 Respondents violated *N.J.S.A.* 18A:12-24.1(e). Even if the full Board was not shown a copy of the proposed form of employment contract before it was sent to the ECS for review and approval, Complainant has not provided facts or evidence to prove that this omission, which was clearly objectionable to Complainant, exceeded the duties and responsibilities of Respondents in their capacity as Board members. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 3 should be dismissed.

In **Count 4**, Complainant contends that Respondents violated *N.J.S.A.* 18A:12-24.1(e) because, despite multiple requests, the full Board was not provided with a copy of Dr. Rossi’s proposed employment contract to review until several days after it was submitted to, and approved by, the ECS. Respondents counter that Complainant did not cite the “personal promises” that Respondents made, nor identify specific action which was “beyond the scope of ... [their] duties.”

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 Respondents violated *N.J.S.A.* 18A:12-24.1(e). Again, even if the full Board did not receive a copy of the proposed form of Dr. Rossi’s employment contract until after it was approved by the ECS, Complainant has failed to provide facts and evidence to support a determination that, regardless of whether it may have ostracized the minority of the Board (which includes Complainant), Respondents exceeded the scope of their duties and responsibilities as Board members. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 4 should be dismissed.

Alleged Violations of N.J.S.A. 18A:12-24.1(g)
(Counts 4–5)

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(7), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that Respondents took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that Respondents violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by Respondents and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

In **Count 4**, Complainant asserts that, in violation of *N.J.S.A.* 18A:12-24.1(g), and despite multiple requests, the full Board was not provided with a copy of Dr. Rossi’s proposed employment contract to review until several days after it was submitted to, and approved by, the

ECS. Respondents counter that the Complaint does not “allege any disclosure of confidential information” nor does it allege “that [Respondent] McEvoy made any inaccurate statements.” Complainant simply maintains that Respondent McEvoy “did not provide the proposed contract or the [ECS’s] approval to the full Board as quickly as they would have liked.”

After 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 Respondents violated *N.J.S.A. 18A:12-24.1(g)*. Even if the full Board did not receive a copy of the proposed form of Dr. Rossi’s employment contract until after it was approved by the ECS, Complainant has not offered any facts or evidence which could demonstrate that Respondents “took action” to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential, or that Respondents otherwise provided inaccurate information to the ECS, the public, or otherwise. The submission of the contract to the ECS prior to full Board review does not constitute a violation as alleged. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(g)* in Count 4 should be dismissed.

In **Count 5**, Complainant contends that Respondents violated *N.J.S.A. 18A:12-24.1(g)* because Respondent McEvoy made “an egregiously misleading statement to the press” at a public Board meeting when she said, “no changes were requested.” Respondent McEvoy denies making any false statements to the public, and argues that the news article “inaccurately paraphrased her conversation with the reporter.” Respondent McEvoy maintains that the Board meetings are recorded, and “there is no evidence” that she made the statement as alleged.

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 Respondents violated *N.J.S.A. 18A:12-24.1(g)*. With this allegation, Complainant submits that Respondents made inaccurate statements to the public and/or the press; however, Complainant has not provided any evidence (e.g., written requests from the Board to the ECS and/or to Dr. Rossi about changes to the proposed form of contract) to establish the inaccuracy of the statement ascribed to Respondent McEvoy (“no changes were requested”). As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(g)* in Count 5 should be dismissed.

Despite the Commission’s determination as set forth herein, it is abundantly clear that Complainant, and possibly the other members of the minority who did not support the renewal of Dr. Rossi’s employment contract, take umbrage with the process that was followed by the majority. Regardless of whether the Commission believes it was appropriate or prudent for the majority to govern in the way complained of, unless Board governance implicates a violation of the Act, which was not the case here, there is nothing that the Commission can do to “mandate” the inclusion of all Board members in Board business, especially if a majority of the Board is supportive of a specific course of action. The recourse is for the minority to voice its objection publicly, and to vote contrary to measures with which it does not agree.

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 Respondents

violated *N.J.S.A.* 18A:12-24.1(a) as alleged in Count 2, violated *N.J.S.A.* 18A:12-24.1(d) as argued in Count 2, violated *N.J.S.A.* 18A:12-24.1(e) as contended in Counts 1–4, or violated *N.J.S.A.* 18A:12-24.1(g) as asserted in Counts 4–5.

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 Respondents violated *N.J.S.A.* 18A:12-24.1(a) as alleged in Count 2, violated *N.J.S.A.* 18A:12-24.1(d) as argued in Count 2, violated *N.J.S.A.* 18A:12-24.1(e) as contended in Counts 1–4, or violated *N.J.S.A.* 18A:12-24.1(g) as asserted in Counts 4–5.

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: April 21, 2020

***Resolution Adopting Decision
in Connection with C63-19***

Whereas, at a special meeting on March 27, 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 a special meeting on March 27, 2020, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondents violated *N.J.S.A.* 18A:12-24.1(a) as alleged in Count 2, violated *N.J.S.A.* 18A:12-24.1(d) as argued in Count 2, violated *N.J.S.A.* 18A:12-24.1(e) as contended in Counts 1–4, or violated *N.J.S.A.* 18A:12-24.1(g) as asserted in Counts 4–5; and

Whereas, at its meeting on April 21, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on March 27, 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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on April 21, 2020.

Kathryn A. Whalen, Director
School Ethics Commission