

Before the School Ethics Commission
Docket No.: C68-19
Decision on Motion to Dismiss

Melva A. Cummings, et al.,
Complainants

v.

Kylen Anderson, Joanne Hoover, Kelly McEvoy, Karen Scott, and Jason Ventresca,
Sparta Board of Education, Sussex County,
Respondents

I. Procedural History

This matter arises from a Complaint that was filed on November 20, 2019, by approximately twenty-three (23) individuals, with Melva A. Cummings designated as the lead Complainant (Complainants), alleging that Kylen Anderson, Joanne Hoover, Kelly McEvoy, Karen Scott, and Jason Ventresca (Respondents), members of the Sparta Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* More specifically, the Complaint alleges that Respondents violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(g)*.

On November 27, 2019, the Complaint was served on Respondents, via regular and certified mail, notifying them that charges were filed against them with the School Ethics Commission (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). On January 24, 2020, Complainants 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 Complainants 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 Counts 2–4, violated *N.J.S.A. 18A:12-24.1(c)* as argued in Count 1, 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 Count 1.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainants allege that Respondents “negotiated a Superintendent’s contract renewal without notifying the full Board,” and “[s]everal [B]oard members were not allowed input regarding the terms of the contract.” According to Complainants, Board Policy 0171 prohibits unilateral negotiations “without the knowledge of the *full board*.” In support of these allegations, Complainants state that on August 27, 2019, Dr. Michael Rossi (Superintendent) sent a letter to Respondent McEvoy (Board President), Respondent Anderson (Board Vice President), and Respondent Scott (Personnel Committee Chair) stating, “I am notifying the Board of my desire to renew the contract, and enter into a new contract on or before November 1, 2019.” On August 30, 2019, Respondent McEvoy “electronically” contacted four other Board members (the other named Respondents), and requested their support to request that the BS “advertise a contract renewal hearing.” According to Respondent McEvoy’s email, she only needed “the majority of opinion ... to support [her]” in requesting the advertisement of the renewal hearing. The email further stated that if she had majority support, she would “by matter of phone calls inform the remainder of the board of the contract hearing.” Complainants contend that, “[i]t is apparent that there was a deliberate effort to conceal the contract negotiations from [B]oard members Kim Bragg, Kate Matteson and Jenn Grana,” all of whom stated they did not know the contract was being negotiated until *after* it was approved by the Executive County Superintendent (ECS).

In further support of their allegations, Complainants state that on September 3, 2019, Respondent McEvoy notified the Board that there would be a hearing at the September Board meeting for the contract renewal (she later corrected herself and said it would be the October Board meeting). Although there was a Personnel Committee meeting on September 9, 2019, the issue of the Superintendent’s contract negotiations was not on the agenda – by keeping it off the agenda, Dr. Rossi and Respondent Scott “hid from the remainder of the Board, the information that his contract had been negotiated.”

Although multiple requests were made to see a copy of the contract, those requests were denied. Instead, on September 20, 2019, the contract was posted on the Board portal. On September 23, 2019, Executive Session “was held to view the [S]uperintendent’s contract.” On October 28, 2019, Board members Bragg, Matteson, and Grana “ma[d]e it clear that they were not given opportunity for input, not only to the terms of the contract, but the process of negotiations.” It was also clear, based on statements from Board counsel and Respondent McEvoy “that the contract was not negotiated; Dr. Rossi dictated the terms without any negotiations whatsoever.” Although it is recognized that things are done differently in districts, in this case, Board members were asked to be involved, but their requests were denied. Based on these facts, Complainants allege that Respondents violated *N.J.S.A. 18A:12-24.1(c)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(g)*.

In Count 2, Complainants assert that although the October 28, 2019, Board meeting was called a “hearing,” Board members were told it was not a “hearing” but rather a regular Board meeting and that no changes would be made to how the meeting was conducted. Complainants further assert that the “hearing” was not on the agenda, the Superintendent’s contract was not

made available to the public prior to the meeting, the public “had no way of knowing the terms of the contract,” “[i]t was well into the meeting before the contract was provided to the public,” and “[n]either the [B]oard members nor the public understood there would be a separate hearing.” Complainants also assert that Respondent McEvoy “changed the agenda without Board approval” despite being required by Board Policy 0164. Respondent McEvoy also limited the “hearing” and closed it after forty (40) minutes despite objections from Board members and the public. In the end, at least one member of the public was denied the opportunity to speak. For these reasons, Complainants assert Respondents violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(e)*. Complainants also note that the actions which took place appear to violate *Wall Township Education Association v. Wall Township Board of Education*.

In Count 3, Complainants contend that according to the Open Public Meetings Act (OPMA), “E-mail exchanges involving a majority of members of the governing body can constitute a ‘meeting.’ This principal also applies to text messaging and instant messaging.” Complainants assert that Respondent McEvoy’s August 30, 2019, email to the other named Respondents violates OPMA because Respondent McEvoy “engaged in a meeting with a quorum of board members ... outside the view of the public.” As such, Complainants contend that Respondents violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(e)*.

In Count 4, Complainants allege that, in an interview at the end of the October 28, 2019, meeting, Respondent Scott and Respondent Ventresca stated that they wanted to have the Superintendent’s contract “voted on prior to the November 5, 2019, election because ... they did not think new [B]oard members should be making the decision about the [S]uperintendent’s renewal.” Complainants assert that in doing this, Respondents have “appear[ed] to go against rulings set forth in *Gonzalez v. Board of Education of Elizabeth School District*, Union County, October 21, 1999.” According to Complainants, and as expressed by Board member Matteson (who is not a named Respondent), “In short this was a concerted effort on the part of the Board President and others (including [Board counsel] and [the Superintendent]) to withhold information from the entire board, expressly to push through a new contract before a new board was voted in ... Several Board members also denied the whol[e] board from having input into the process that they were elected by the public to participate in.” Based on these facts, Complainants allege that Respondents violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(e)*.

B. Motion to Dismiss

Following receipt of the Complaint, Respondents filed a Motion to Dismiss, and note that they did not “negotiate the Superintendent[’]s contract prior to issuing notice regarding the contract renewal.” Respondents claim that Complainants’ assertions are based on “complete misunderstandings of [the] statutorily required process for the renewal of a superintendent’s contract.” Respondents contend that “the law requires that the contract be reviewed for compliance and approved before public notification is made.” Respondents maintain that after the ECS reviewed and approved the contract, the contract was posted on the Board’s portal on September 20, 2019, and a meeting was scheduled for September 23, 2019, to discuss the proposed contract in Executive Session. Importantly, all members of the Board were present at the meeting on September 23, 2019. Further, formal action, i.e., a vote, was not taken to approve Dr. Rossi’s employment contract until after the hearing at the Board meeting on October 28, 2019.

Regarding Count 1, Respondents argue that the allegations “are based on a misunderstanding of the required review and approval of the Superintendent’s proposed contract” by the ECS. In this regard, Respondents note that, per applicable statutes and regulations, ECS review and approval is to occur prior to “any required public notice and hearing,” and “prior to the [Board’s] approval and execution...” After this review is complete, the Board must provide notice to the public at least thirty (30) days prior to formal action by the Board. As such, Complainants’ allegations “conflate review and approval of a proposed contract for compliance with the applicable law as final review and approval by the Board.” As for the alleged violations set forth in this Count, Respondents argue that Complainants have “not identified any information that demonstrates that any ‘action’ occurred outside the confines of” *N.J.S.A. 18A:12-24.1(c)* and instead take issue with the fact that the Board followed the appropriate procedure; Complainants “have not identified any information that demonstrates that any personal promises were made, nor do they identify information that any private action occurred [outside the scope of their duties as Board members] that would compromise the Board” in violation of *N.J.S.A. 18A:12-24.1(e)*, and instead rely on their own interpretation of communications; and “have not identified any information that was inaccurate or withheld, nor have they identified any confidential material that was disclosed that would needlessly injure individuals or the schools” in violation of *N.J.S.A. 18A:12-24.1(g)*, and instead confirm that the full Board received a copy of the proposed contract, and had an opportunity to review and discuss it (in September) before it was approved (in October). As such, there is no credible factual support for the allegations in Count 1.

As for Count 2, Respondents argue that Complainants “rely on semantics and a rigid use of the word hearing,” as the minutes from the October 28, 2019, Board meeting indicate that there was a public hearing regarding the Superintendent’s contract. Respondents maintain that Complainants have not provided a decision from any court to support a violation of *N.J.S.A. 18A:12-24.1(a)*. In addition, any alleged violation of OPMA is outside the scope of the Commission’s jurisdiction. Regarding the violation of *N.J.S.A. 18A:12-24.1(c)*, “there is no credible allegation in the Complaint that” Respondents “made personal promises of any kind,” and Complainants “fail to identify information that demonstrates that any personal promises were made, nor do they identify information that any private action occurred that would compromise the Board.” Respondents assert that the public was “apprised of the Contract and the public hearing to discuss formal action to amend, extend, or renegotiate and/or alter the terms of the Superintendent’s contract.” Therefore, Respondents argue that Count 2 should be dismissed.

Regarding Count 3, Respondents state that “Complainants allege that the electronic communication” between Respondent McEvoy and four other members of the Board “constituted a meeting in violation of OPMA.” Respondents argue that the Commission “does not have jurisdiction over such claims.” In addition, and because the alleged violations of *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(e)* stem from an alleged violation of OPMA, a claim that is clearly outside the scope, authority and jurisdiction of the Commission, this Count must be dismissed in its entirety.

As for Count 4, and the alleged violation of *N.J.S.A. 18A:12-24.1(a)*, Respondents note that Complainants failed to provide a final decision from any court of law or administrative agency of this State demonstrating that Respondents failed to properly follow OPMA; therefore, this allegation must be dismissed. Regarding the alleged violation of *N.J.S.A. 18A:12-24.1(e)*, Respondents maintain that “Complainants again rely on incorrect assertions and fail to include

credible allegations that the Respondents made personal promises or took any action beyond the scope of their duties.” In short, there is no credible allegation in the Complaint that any Respondent “made any personal promises,” and Complainants have not alleged what the personal promise was, who made the promise or when it was made, nor do they allege a specific private action that would compromise the Board. According to Respondents, Complainants’ “displeasure with the required statutory submission of the contract to the [ECS] ... in their estimation, constitutes a violation.” Without the necessary facts to establish a violation of *N.J.S.A.* 18A:12-24.1(e), Respondents argue that this allegation should be dismissed. In addition, and for the reasons more fully detailed in their responsive brief, Respondents argue that this case is “wholly and completely distinguishable” from *Gonzalez*.

Respondents request that the Commission dismiss the Complaint with prejudice for failure to state a claim upon which relief can be granted.

C. Response to Motion to Dismiss

In response to the Motion to Dismiss, Complainants reiterate the assertions made in the Complaint, and note that contrary to Respondents’ assertions, Complainants “clearly understand the process by which the approval should have followed.” Complainants further note that Board Policy 0162 and OPMA dictate that “any meeting of a quorum of the Board must be advertised in accordance with the law ... Additionally, the Board may only meet in the absence of adequate notice in the event of unforeseeable matter of such urgency and importance” Furthermore, OPMA defines a meeting as “any gathering whether corporeal or by means of communication equipment, which is attended by, or open to, all the members of the public body, held with the intent, on part of the members of the body present, to discuss or act as a unit upon the specific public business of the body.” Complainants argue that Respondent McEvoy’s “intention to exclude the remaining 4 [Board members] from this meeting was explicit,” as was her intention to take the vote without those same Board members. Complainants maintain that only “Respondents were privy to the fact that a meeting was held, a vote was called for, and action was taken, without notification to the public and without notification to the full Board.” Respondents “clear[ly]” violated their ethical obligations and the law, and reaffirm that Respondents violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g) as alleged in Count 1.

In defense of Count 2, Complainants assert that “[n]early every person who spoke in opposition to the contract renewal of [the Superintendent] at the October 28, 2019 meeting, did so on the basis of a violation of process.” Complainants further assert that Respondent McEvoy was inconsistent, and showed more favoritism to those members of the public who spoke in favor of, as opposed to in opposition of, the renewal of Dr. Rossi’s contract, e.g., she allowed them to speak for a longer period of time. Complainants reiterate their claims, and reaffirm that Respondents “failed to uphold and enforce the law and their own policies, by directing notice for a hearing after taking an illegal vote on the issue.”

As for Count 3, Complainants agree with Respondents that the Commission does not have jurisdiction regarding OPMA; however, “the violation of OPMA is de facto [evidence of] an ethical violation.” Complainants further argue that they “are not seeking adjudication of a violation of OPMA,” but rather a determination that said conduct violated Respondents’ ethical

obligations under *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e); therefore, Count 3 should not be dismissed.

Finally, regarding Count 4, Complainants reaffirm their assertions that certain Board members were “explicitly left out” of the initial process, and this was done to ensure that they would spend the time “fighting about the process rather than the contract itself.” Complainants restate that Board member Matteson said “there are some things in this contract that if there was open communication and dialogue about, I think should’ve been changed or negotiated. I wish that this Board would’ve had the opportunity to do so.” Again, this is contrary to Respondents’ claim during executive session, that no changes were requested. Furthermore, while Complainants agree with Respondents’ assessment of *Gonzalez* (because Dr. Rossi’s contract was rescinded and replaced while the current Board was still situated), Complainants note it is clear that “their intention was to bind a future board and to prevent a newly situated board from voting on an important issue.” Complainants reiterate their belief that Dr. Rossi “overstepped his bounds by demanding” his contract be renewed prior to November 1, 2019, deadline, and that this overstep prompted Respondent McEvoy’s “hurried” actions. For these reasons, Complainants argue Count 4 should not be dismissed.

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 (Complainants), 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 Complainants have 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 Counts 2-4, violated *N.J.S.A.* 18A:12-24.1(c) as argued in Count 1, 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 Count 1.

B. Alleged Code Violations

In the Complaint, Complainants allege that Respondents violated *N.J.S.A.* 18A:12-24.1(a) (Counts 2-4), *N.J.S.A.* 18A:12-24.1(c) (Count 1), *N.J.S.A.* 18A:12-24.1(e) (Counts 1-4), and *N.J.S.A.* 18A:12-24.1(g) (Count 1). These provisions of the Code of Ethics for School Board Members (Code) provide:

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

- 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 Violations of N.J.S.A. 18A:12-24.1(a)
(Counts 2–4)

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**, Complainants allege that Respondents violated *N.J.S.A. 18A:12-24.1(a)* because the “hearing” on October 28, 2019, was not on the agenda, the Superintendent’s contract was not made available to the public prior to the meeting, the public “had no way of knowing the terms of the contract,” “[i]t was well into the meeting before the contract was provided to the public,” and “[n]either the [B]oard members nor the public understood there would be a separate hearing.” In addition, Respondent McEvoy “changed the agenda without Board approval” despite being required by Board Policy 0164, and she (Respondent McEvoy) limited the “hearing” and closed it after forty (40) minutes despite objections from Board members and the public. Respondents counter that the minutes from the October 28, 2019, Board meeting indicate that there was a public hearing regarding the Superintendent’s contract, Complainants have not provided a decision from any court to support a violation of *N.J.S.A. 18A:12-24.1(a)*, and any alleged violation of OPMA is outside the scope of the Commission’s jurisdiction.

In **Count 3**, Complainants allege that, in violation of *N.J.S.A. 18A:12-24.1(a)*, Respondent McEvoy’s August 30, 2019, email to the other named Respondents violates OPMA because Respondent McEvoy “engaged in a meeting with a quorum of board members ... outside the view of the public.” Respondents counter that because the alleged violation of *N.J.S.A. 18A:12-24.1(a)* stems from an alleged violation of OPMA, a claim that is clearly outside the scope, authority and jurisdiction of the Commission, this allegation should be dismissed.

In **Count 4**, Complainants allege that Respondents violated *N.J.S.A. 18A:12-24.1(a)* because Respondent Scott and Respondent Ventresca indicated that the Board wanted to renew Dr. Rossi’s employment contract prior to the November 2019 election because “they did not think new [B]oard members should be making the decision about the [S]uperintendent’s renewal.” According to Complainants, “... this was a concerted effort on the part of the Board President and others (including [Board counsel] and [the Superintendent]) to withhold information from the entire board, expressly to push through a new contract before a new board was voted in” Respondents counter that Complainants failed to provide a final decision from any court of law or administrative agency of this State demonstrating that Respondents failed to properly follow OPMA; therefore, this allegation must be dismissed.

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 a preliminary 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 Complainants seek 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, as argued by Respondents, Complainants have 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 have not provided sufficient factual assertions or evidence to support a determination that Respondents' actions/conduct brought about changes through illegal or unethical procedures. Without 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) as alleged in Counts 2–4; therefore, these allegations should be dismissed.

Alleged Violation of N.J.S.A. 18A:12-24.1(c)
(Count 1)

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(3), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(c) shall include evidence that Respondents took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondents' duty to (i) develop the general rules and principles that guide the management of the school district or charter school; (ii) formulate the programs and methods to effectuate the goals of the school district or charter school; or (iii) ascertain the value or liability of a policy.

In **Count 1**, Complainants argue that, in violation of *N.J.S.A.* 18A:12-24.1(c) (and Board policy), Respondents “negotiated a Superintendent’s contract renewal without notifying the full Board,” and “[s]everal [B]oard members were not allowed input regarding the terms of the contract.” In addition, despite multiple requests from certain members of the Board (who are not named as Respondents), they were denied the opportunity to review Dr. Rossi’s employment contract until it was posted on the Board’s portal. Respondents counter that Complainants have “not identified any information that demonstrates that any ‘action’ occurred outside the confines of” *N.J.S.A.* 18A:12-24.1(c) and, instead, they take issue with the fact that the Board followed the appropriate procedure to renew Dr. Rossi’s employment contract.

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(c). Even if Respondents engaged in the conduct complained of, Complainants have not demonstrated how this conduct constituted formal Board “action” to effectuate policies and plans, or constituted action unrelated to their duties and responsibilities as Board members. Respondents’ actions did not result in the approval of Dr. Rossi’s employment contract and, instead, only initiated the steps by which the Board could

formally review and approve Dr. Rossi's employment contract. In short, unless and until the Board voted on Dr. Rossi's employment contract in October 2019, Respondents' actions beforehand would not have resulted in any formal change in his employment contract. As a result, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(c) in Count 1 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**, Complainants contend that Respondents violated *N.J.S.A.* 18A:12-24.1(e) because they (Respondents) “negotiated a Superintendent’s contract renewal without notifying the full Board,” and “[s]everal [B]oard members were not allowed input regarding the terms of the contract.” Furthermore, despite multiple requests from certain members of the Board (who are not named as Respondents), they were denied the opportunity to review Dr. Rossi’s employment contract until it was posted on the Board’s portal. Respondents counter that Complainants “have not identified any information that demonstrates that any personal promises were made, nor do they identify information that any private action occurred [outside the scope of their duties as Board members] that would compromise the Board” in violation of *N.J.S.A.* 18A:12-24.1(e), and instead rely on their own interpretation of communications.

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). Complainants have failed to identify a personal promise made by Respondents (e.g., who made the promise, the substance of the promise, and to whom it was made), and have also failed to identify a specific action taken by Respondents which was beyond the scope of their duties. Negotiation and renewal of the Superintendent’s contract, as well as submission of same to the ECS for a review (solely for compliance with applicable statutes and regulations), is within the scope of a Board member’s duties and responsibilities. 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**, Complainants contend that, in violation of *N.J.S.A.* 18A:12-24.1(e), the “hearing” on October 28, 2019, was not on the agenda, the Superintendent’s contract was not made available to the public prior to the meeting, the public “had no way of knowing the terms of the contract,” “[i]t was well into the meeting before the contract was provided to the public,” and “[n]either the [B]oard members nor the public understood there would be a separate hearing.” In addition, Respondent McEvoy “changed the agenda without Board approval” despite being required by Board Policy 0164, and she (Respondent McEvoy) limited the “hearing” and closed it after forty (40) minutes despite objections from Board members and the public. Respondents counter that “there is no credible allegation in the Complaint that” Respondents “made personal promises of any kind,” and Complainants “fail to identify information that demonstrates that any personal promises were made, nor do they identify

information that any private action occurred that would compromise the Board.” Respondents assert that the public was “apprised of the Contract and the public hearing to discuss formal action to amend, extend, or renegotiate and/or alter the terms of the Superintendent’s contract.”

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). For the same reasons set forth above, and constrained by the facts as pled, Complainants have again failed to identify a promise made by Respondents, and failed to identify any action which was beyond the scope of their duties. Instead, Complainants take issue with the way the “hearing” for Dr. Rossi’s employment contract was publicized and how it occurred; however, these cited failures do not amount to a violation of this subsection of the Code. 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**, Complainants contend that Respondents violated *N.J.S.A.* 18A:12-24.1(e) because, in violation of OPMA, Respondent McEvoy “engaged in a meeting with a quorum of board members ... outside the view of the public.” Respondents counter that because the alleged violation of *N.J.S.A.* 18A:12-24.1(e) stems from an alleged violation of OPMA, and such a claim is outside the scope, authority, and jurisdiction of the Commission, it should be dismissed.

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). The Commission agrees that the purported basis for this violation is non-compliance with OPMA and, as indicated above, the Commission does not have jurisdiction to determine whether the communication violated OPMA. Therefore, and without the necessary determination that a violation of OPMA occurred, 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**, Complainants contend that, in violation of *N.J.S.A.* 18A:12-24.1(e), Respondent Scott and Respondent Ventresca indicated that the Board wanted to renew Dr. Rossi’s employment contract prior to the November 2019 election because “they did not think new [B]oard members should be making the decision about the [S]uperintendent’s renewal.” According to Complainants, “... this was a concerted effort on the part of the Board President and others (including [Board counsel] and [the Superintendent]) to withhold information from the entire board, expressly to push through a new contract before a new board was voted in” Respondents counter there is no credible allegation that any Respondent “made [a] personal promise,” and Complainants have not alleged a specific private action that could 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 certain Respondents expressed a desire to renew Dr. Rossi’s employment contract prior to the Board’s upcoming election, absent corroborating information and evidence that Respondents obtained their desired result in a way that violated a statute or regulation, and/or evidence that Respondents made a personal promise or took action that was unrelated to their duties and responsibilities as Board members, Complainants’ disagreement with this expression of policy is not sufficient to establish a

violation here. 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 Violation of N.J.S.A. 18A:12-24.1(g)
(Count 1)

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 1**, Complainants assert that Respondents violated *N.J.S.A.* 18A:12-24.1(g) (and Board policy) because they (Respondents) “negotiated a Superintendent’s contract renewal without notifying the full Board,” and “[s]everal [B]oard members were not allowed input regarding the terms of the contract.” Moreover, despite multiple requests from certain members of the Board (who are not named as Respondents), they were denied the opportunity to review Dr. Rossi’s employment contract until it was posted on the Board’s portal. Respondents counter that Complainants “have not identified any information that was inaccurate or withheld, nor have they identified any confidential material that was disclosed that would needlessly injure individuals or the schools” in violation of *N.J.S.A.* 18A:12-24.1(g), and instead confirm that the full Board received a copy of the proposed contract, and had an opportunity to review and discuss it (in September) before it was approved (in October).

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). There is nothing in the Complaint which could possibly substantiate a finding that Respondents’ conduct, even if done without the knowledge of, and without input from, the full Board, constituted formal Board action to make public, reveal, or disclose confidential information. In this regard, Complainants have not identified the nature of the confidential information disclosed, to whom it was disclosed, when it was disclosed, and/or the rule, regulation, or law which codifies the confidential nature of the information. Complainants also have not sufficiently alleged, or specified, what information was inaccurate, or substantiated the inaccuracy of the information provided by Respondents, either individually or collectively. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in Count 1 should be dismissed.

Notwithstanding the Commission’s determination, it is beyond dispute that Complainants take issue with the manner and method by which the majority of the Board renewed Dr. Rossi’s employment contract. At the end of the day, and even if, as characterized by Complainants, the actions of the majority may have excluded the minority, the full Board reviewed the proposed form of employment contract for Dr. Rossi in September 2019, and did not take formal action (i.e., a vote) regarding the contract until the Board’s meeting in October 2019. Based on the information relayed to the public by those members of the Board who felt uninvolved in the

negotiations process, it is incumbent upon the public, not the Commission, to ensure that appropriate changes are effectuated which will ensure transparency.

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 Complainants 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 Counts 2-4, violated *N.J.S.A.* 18A:12-24.1(c) as argued in Count 1, 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 Count 1.

IV. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainants), the Commission voted to **grant** the Motion to Dismiss in its entirety because Complainants 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 Counts 2-4, violated *N.J.S.A.* 18A:12-24.1(c) as argued in Count 1, 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 Count 1.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainants 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 C68-19***

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 Counts 2-4, violated *N.J.S.A.* 18A:12-24.1(c) as argued in Count 1, 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 Count 1; 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