

***Before the School Ethics Commission  
Docket No.: C46-21  
Decision on Motion to Dismiss***

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**Margit Pedraza,  
Complainant**

v.

**Melissa Varley,  
Berkeley Heights Board of Education, Union County,  
Respondent**

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**I. Procedural History**

This matter arises from a Complaint that was filed on September 17, 2021, by Margit Pedraza (Complainant), alleging that Melissa Varley (Respondent), the Superintendent/Chief School Administrator employed by the Berkeley Heights Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24.1(c) of the Code of Ethics for School Board Members (Code).

On September 22, 2021, the Complaint was served on Respondent via electronic mail, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading.<sup>1</sup> On October 15, 2021, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). When Complainant failed to file a response to the Motion to Dismiss within twenty (20) days of receipt of Respondent's filing, she was advised, by initial correspondence dated November 18, 2021, and then by subsequent correspondence dated December 29, 2021, that, in the absence of a filing, the Commission would rule on the Motion to Dismiss without considering any written submission or opposition from her. Despite the Commission's efforts, Complainant never filed a response to the Motion to Dismiss.

Consequently, the parties were notified by correspondence dated February 17, 2022, that this matter would be placed on the Commission's agenda for a special meeting on February 25, 2022, in order to make a determination regarding the Motion to Dismiss. At its special meeting on February 25, 2022, the Commission considered the filings in this matter and, at its meeting on March 22, 2022, the Commission voted to grant the Motion to Dismiss in its entirety because the provisions of the Code do not apply to Respondent, the Superintendent/Chief School Administrator, and even if they did, Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c).

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<sup>1</sup> As a result of the ongoing Coronavirus (COVID-19) pandemic, and the implementation of electronic filing, service of process was effectuated by the Commission through electronic transmission only.

## **II. Summary of the Pleadings**

### **A. *The Complaint***

Complainant states that, during the Board's meeting on April 8, 2021, Respondent, the Superintendent/Chief School Administrator, "was asked why parents were not involved in the decision making process surrounding the reconfiguration, redistricting and full day kindergarten meetings that led to the reconfiguration, redistricting of our schools and the decision to move forward with [f]ull [d]ay [k]indergarten." According to Complainant, Respondent replied, "I don't want to bring families in until we had a plan – I didn't want to give a half plan, we need to get all the information and present the plan to the families." Respondent was then asked, "Why couldn't families be part of developing the plan ... why couldn't they have access to this at the table and help you and work with you in developing options and informing this from the beginning." Per Complainant, Respondent said, "The families wouldn't have access to the information we had a lot of this is confidential information and I need the people who have the educational expertise to push this forward."

At the April 14, 2021, Board meeting, another Berkeley Heights School District (District) resident asked Respondent, "why community members were not included in the development of options," to which she responded, "we need objective views as opposed to emotional views" and later added, "we know what is developmentally appropriate, we know what we want for the [D]istrict and basically we're objective and most parents cannot be objective ... ."

Based on these facts, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(c)* because "the [S]uperintendent as a board member did NOT consult the parents of children who would be affected by the plan prior to making the plans."

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

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and argues that "Complainant fails to assert a viable claim under *N.J.S.A. 18A:12-24.1(c)*, because the ... plan was developed by [Respondent] in the fulfillment of her job duties as Superintendent of Schools" and *N.J.S.A. 18A:12-24.1(c)* is "contained within the Code ..., which governs the conduct of Board members, not Superintendents of Schools or school administrators." Even if it did apply to and regulate Respondent's conduct, Complainant "fails to assert a viable ethics violation as she proffers no evidence to substantiate her broad allegation of misconduct," as the transcript excerpts from the Board meetings in question "do not substantiate the allegations of the Complaint, but rather evidence [Respondent] to be acting in accordance with her duties and responsibilities as Superintendent ..." as codified in, among other things, Board policies.

More specifically, at a November 14, 2019, Board meeting, Respondent "provided a presentation on the development of a pilot program for full day kindergarten" for the 2020-2021 school year, and she and the Board President provided a "presentation to the school district community on a proposed referendum." Following the dissemination of a referendum survey in December 2019, the survey results were provided at the Board's meeting on January 23, 2020 (by the Business Administrator). However, "[t]he Board's planning with regard to the referendum and the implementation of a full day kindergarten program was substantially

disrupted by the global pandemic.” Nonetheless, Respondent continued “to develop plans, in consultation with the Boards’ Facilities and Curriculum Committee and Administration,” to attempt to develop a feasible plan for the implementation of a full-day program by the start of the 2020-2021 school year. Respondent further maintains at the February 4, 2021, Board meeting, there was a discussion related to full-day kindergarten, and at the February 25, 2021, Board meeting, Respondent reported that the administration and the Board were continuing with the original plan to implement full-day kindergarten.

Respondent asserts that after a “feasible plan” was developed, she presented the plan to the community at the Board meeting on April 8, 2021. Per Respondent, prior to a Board vote, two public hearings were conducted on April 14, 2021, and April 22, 2021, to obtain public input, and then on April 29, 2021, the Board “approved a resolution for ... full-day kindergarten program and re-alignment of the District’s elementary schools ... .” In the face of all this, Respondent asserts she “at all times” acted in “accordance with the requirements and expectations of her duties as Superintendent.” Furthermore, the plan was “fully in accordance with the fulfillment of the professional responsibilities and duties of Superintendent.”

With the above in mind, Respondent maintains Complainant has failed to assert a viable violation against the Superintendent; Respondent’s actions were in accordance with her job duties and responsibilities as the Superintendent (as expressly stated in Board policy); the Code only applies to Board members, not to school administrators, which includes superintendents; Respondent never took any unauthorized Board action; and although Superintendents have a non-voting seat on their respective boards of education, “for purpose[s] of speaking on educational matters at board meetings, as non-voting members, superintendents are not empowered to take any board action.” Therefore, and because Respondent was, at all relevant times, acting in her role as Superintendent, the Code is not applicable to her and/or her conduct. Even if it was, “no evidence has been proffered to substantiate the alleged violation.” For these reasons, Respondent argues that the Complaint fails to state a claim upon which relief can be granted, and “must be dismissed with prejudice, in its entirety.”

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

Despite being served with the Motion to Dismiss on October 15, 2021, and even though the Commission sent two letters to Complainant advising that, in the absence of a filing, the Commission would rule on the Motion to Dismiss without considering a response from her, Complainant never filed a response to the Motion to Dismiss.

### **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 posited sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c).

**B. *Alleged Code Violation***

Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(c) of the Code, and this provision states:

- c. 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.

In short, Complainant submits that Respondent violated *N.J.S.A.* 18A:12-24.1(c) because “the [S]uperintendent as a board member” failed to consult with the parents of the children who would be affected by her Districtwide changes. Respondent counters that she is not a Board member and, therefore, the Code does not apply to and/or regulate her conduct; even if it did, the evidence shows that Respondent acted “in accordance with her duties and responsibilities as Superintendent . . . .”

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 Respondent took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to Respondent’s 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.

As an initial matter, the Commission notes that the provisions of the Code only regulate the conduct of Board members, and do not apply to the conduct of school administrators. In this regard, the preliminary statement of *N.J.S.A.* 18A:12-24.1 (“*Code of Ethics for School Board Members*”) states, “*A school board member shall abide by the following Code of Ethics for School Board Members*” (emphasis added). Neither the title of the statute, nor its substantive provisions, indicate that the provisions of the Code apply to non-Board members. In addition, the regulations implementing the provisions of the Act, and particularly *N.J.A.C.* 6A:28-6.3(c), specifically provide that, “A complaint alleging solely a violation of the code of ethics for school board members *shall name only school board members as respondents...*” (emphasis added). Consequently, there is no statutory or regulatory authority to apply the provisions of the Code to Respondent who, although a school official within the meaning of the Act, is not a Board member.

With the above in mind, because Respondent is not a Board member, but rather the District’s Superintendent/Chief School Administrator, she cannot be found in violation of any provision of the Code, including *N.J.S.A.* 18A:12-24.1(c). However, even if the cited provision of the Code did apply to Respondent because she is an *ex officio* member of the Board (which it does not), the Commission finds that the facts proffered in the Complaint, even if true, would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c). First, as an *ex officio* member of the Board, Respondent is a non-voting member and, as such, cannot take Board action (formally or otherwise). Moreover, even if Respondent could take Board action (which she cannot), Respondent’s answers to the questions posed by the public at the Board’s meetings

on April 8, 2021, and April 14, 2021, clearly demonstrate that at least some stakeholders were included in conversations and meetings regarding redistricting and full day kindergarten efforts. Although Complainant clearly believes that Respondent's engagement of the community was not as exhaustive or as inclusive as she (Complainant) would have liked, her (Complainant's) disagreement with Respondent's manner and method of implementing Districtwide change(s) does not mean that Respondent failed, as a general matter, to consult with those affected by prospective policies and plans.

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 the provisions of the Code do not regulate the conduct of Respondent, the Superintendent/Chief School Administrator, and even if they did, Complainant failed to provide sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c).

#### **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 the provisions of the Code do not govern the conduct of Respondent, the Superintendent/Chief School Administrator, and even if they did, Complainant failed to set forth sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c).

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: March 22, 2022

**Resolution Adopting Decision  
in Connection with C46-21**

**Whereas**, at a special meeting on February 25, 2022, the School Ethics Commission (Commission) considered the Complaint and the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), submitted in connection with the above-referenced matter; and

**Whereas**, at a special meeting on February 25, 2022, the Commission discussed granting the Motion to Dismiss in its entirety because the provisions of the Code of Ethics for School Board Members do not apply to the conduct of Respondent, the Superintendent/Chief School Administrator, and even if they did, Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c); and

**Whereas**, at its meeting on March 22, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on February 25, 2022; 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 March 22, 2022.

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Kathryn A. Whalen, Esq.  
Director, School Ethics Commission