

***Before the School Ethics Commission***  
***Docket No.: C66-21***  
***Decision on Motion to Dismiss***

---

**Sharon DeVito,**  
***Complainant***

v.

**Tanya Lehmann,**  
**Robbinsville Board of Education, Mercer County,**  
***Respondent***

---

**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed on October 29, 2021, by Sharon DeVito (Complainant) alleging that Tanya Lehmann (Respondent), a member of the Robbinsville 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(e) and *N.J.S.A.* 18A:12-24.1(j) of the Code of Ethics for School Board Members (Code).<sup>1</sup>

On November 3, 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>2</sup> On December 8, 2021, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). However, despite multiple correspondence from the Commission's staff, Complainant did not file a response to the Motion to Dismiss.

The parties were notified by correspondence dated April 18, 2022, that this matter would be discussed by the Commission at its meeting on April 26, 2022, in order to make a determination regarding the Motion to Dismiss. Following its discussion on April 26, 2022, the Commission adopted a decision at its meeting on May 24, 2022, granting the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(j).

---

<sup>1</sup> Although Complainant asserts violations of *N.J.S.A.* 18A:12-24 in her Complaint, she included a copy of the provisions of the Code. Therefore, Complainant's allegations are being construed as violations of the Code.

<sup>2</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 after Respondent, a Board member who was appointed to fill a vacancy and was a candidate in the November 2021 election, received an email from the parent of a Robbinsville High School student on September 27, 2021, she replied “call me.” In the email, which Complainant received as part of an Open Public Records Act (OPRA) request, the parent expressed her discontent with the Superintendent and the administration regarding restrictions related to COVID-19. Instead of referring that parent to the Superintendent, Respondent asked the parent to “call” her. Based on these facts, Complainant contends Respondent violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(j)* because “the response of ‘call me’ is a private action and does not refer [the parent] to the chief administrative officer.”

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

Following receipt of the Complaint, Respondent filed a Motion to Dismiss, and argues, regarding the alleged violation of *N.J.S.A. 18A:12-24.1(e)*, there “is no evidence that Respondent made any personal promise or took any action in response to the parent’s email, only that she wanted to hear what the parent had to say.” According to Respondent, there is no evidence that “listening to a parent’s concerns, could potentially ‘compromise the [B]oard’ in any manner.” Therefore, the alleged violation of *N.J.S.A. 18A:12-24.1(e)* should be dismissed.

As for the purported violation of *N.J.S.A. 18A:12-24.1(j)*, Respondent contends Complainant did not provide any evidence that Respondent “acted or attempted to resolve a complaint,” or that she “attempted to investigate or opened an inquiry into a parent’s concerns.” Instead, the evidence shows that a parent expressed concerns about COVID-19, and Respondent wanted to listen. As such, the alleged violation of *N.J.S.A. 18A:12-24.1(j)* should also be dismissed.

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

As of May 23, 2022, and despite the Commission’s staff sending warning letters to Complainant on January 12, 2022, and February 8, 2022, indicating that, “[f]ailure to file a response may result in the Commission ruling on the Motion to Dismiss, without considering any written submission from you,” Complainant failed to submit a response to the Motion to Dismiss for consideration.

## **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(s) 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 pled sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(j).

**B. *Alleged Code Violations***

Complainant submits that, based on the conduct more fully detailed above, Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(j), and these provisions of the Code provide

- 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.
- j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

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 Respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the board.

Following its review of the Complaint, the Commission finds that even if the facts as claimed are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e). Even if, following receipt of an e-mail from a Robbinsville School District (District) parent, Respondent replied, “call me,” this two-word response without any other evidence cannot possibly constitute a personal promise or action beyond the scope of Respondent’s duties such that, *by its nature*, had the potential to compromise the Board. As a Board member, Respondent is charged with, among other things, serving as a representative of the community and as a conduit through which the community’s concerns are relayed to the administration and/or the Board as appropriate. Merely inviting a District parent to have a conversation about his/her concerns, in the absence of any other evidence, is woefully insufficient to establish unethical behavior. Therefore, the Commission finds that the purported violation of *N.J.S.A.* 18A:12-24.1(e) should be dismissed.

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(10), factual evidence of a violation of *N.J.S.A.* **18A:12-24.1(j)** shall include evidence that Respondent acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint (i) prior to referral to the chief administrative officer, or (ii) at a time or place other than a public meeting and prior to the failure of an administrative solution.

After review of the Complaint, the Commission finds that even if the facts as asserted are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(j). The Complaint is utterly devoid of any facts or evidence which could remotely prove a violation of this subsection of the Code, to wit: whether the conversation between Respondent and the District parent ever, in fact, occurred; if it did, when it occurred and what the District parent and Respondent may have discussed; and if it did, what action, if any, Respondent may have taken following the conversation in an attempt to act on or otherwise

respond to the concerns expressed by the District parent. Again, other than stating that Respondent asked a District parent to call her (Respondent), Complainant does not offer a scintilla of evidence that Respondent acted on or attempted to resolve the parent's complaints/concerns, or conducted an investigation related to those complaints/concerns. As such, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(j) should be dismissed.

#### **IV. Decision**

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission voted to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(j).

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).*

---

Robert W. Bender, Chairperson

Mailing Date: May 24, 2022

***Resolution Adopting Decision  
in Connection with C66-21***

***Whereas***, at its meeting on April 26, 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 its meeting on April 26, 2022, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(j); and

***Whereas***, at its meeting on May 24, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on April 26, 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.

---

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on May 24, 2022.

---

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