

Before the School Ethics Commission
Docket No.: C74-22
Decision on Motion to Dismiss

Sergey Shevchuk,
Complainant

v.

Eugene Banta, Michael Rosenberg, Nicholas Norcia, and John Serapiglia,
Fairlawn Board of Education, Bergen County,
Respondents

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on July 13, 2022, by Sergey Shevchuk (Complainant), alleging that Eugene Banta (Respondent Banta), Michael Rosenberg (Respondent Rosenberg), Nicholas Norcia (Respondent Norcia), and John Serapiglia (Respondent Serapiglia) (collectively referred to as Respondents), school officials associated with the Fairlawn Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated July 18, 2022, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept their filing. On July 28, 2022, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3. More specifically, the Complaint avers that Respondent Norcia violated *N.J.S.A.* 18A:12-24(b) and Respondent Norcia and Respondent Serapiglia violated *N.J.S.A.* 18A:12-24(f) in Count 1, and that Respondent Banta and Respondent Rosenberg violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i) of the Code of Ethics for School Board Members (Code) in Count 2.

On July 28, 2022, the Complaint was served on Respondents via electronic mail, notifying them that ethics charges had been filed against them with the Commission, and advising that they had twenty (20) days to file a responsive pleading.¹ On August 17, 2022, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainant filed a response to the Motion to Dismiss on September 27, 2022.

The parties were notified by correspondence dated November 14, 2022, that the above-captioned matter would be discussed by the Commission at its meeting on November 22, 2022,

¹ In order to conduct business during the Coronavirus (COVID-19) pandemic, the Commission implemented an electronic filing system, which remains a permissible method by which the Commission and parties can effectuate service of process. Consequently, service of process was effectuated by the Commission through electronic transmission only.

in order to make a determination regarding the Motion to Dismiss. Following its discussion on November 22, 2022, the Commission adopted a decision at its meeting on December 20, 2022, granting the Motion to Dismiss in its entirety because Complainant failed to plead sufficient credible facts to support a finding that Respondent Norcia violated *N.J.S.A. 18A:12-24(b)* and/or Respondent Norcia and/or Respondent Serapiglia violated *N.J.S.A. 18A:12-24(f)* in Count 1, and/or Respondent Banta and/or Respondent Rosenberg violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(b)*, *N.J.S.A. 18A:12-24.1(d)*, *N.J.S.A. 18A:12-24.1(e)*, and/or *N.J.S.A. 18A:12-24.1(i)* of the Code in Count 2.

II. Summary of the Pleadings

A. *The Complaint*

Complainant states that, at a Board meeting on March 16, 2020, Respondent Norcia (Superintendent) received a new contract for the period July 1, 2020, through June 30, 2025. According to Complainant, Respondent Norcia's contract "contains a provision concerning 'District Goals and Objectives'" which states that, on or before June 30th "of each succeeding school fiscal year, the parties will meet to establish the District's goals and objectives for the next succeeding school fiscal year"; the "goals and objectives shall be reduced to writing and shall be among the criteria by which the Superintendent is evaluated"; and Respondent Norcia "must be working on accomplishing the District Goals and Objectives" on July 1st. According to Complainant, if the goals are not approved by the Board and "presented to the public for public comment prior to July 1st, the preparation for the upcoming school year is hindered."

With the above in mind, Complainant submits that the provision concerning "District Goals and Objectives" was never placed on the June 2022 public agenda for action by either Respondent Norcia, Respondent Serapiglia (Business Administrator), Respondent Banta (Board President), or Respondent Rosenberg (Board Vice President); a vote has never been taken to amend Respondent Norcia's employment contract "to delay the presentation of the District Goals and Objectives during an open public meeting"; and notice has never been given to the public "as to why this provision of the contract has not been fulfilled"

Based on the foregoing, and in Count 1, Complainant argues that Respondent Norcia and Respondent Serapiglia violated *N.J.S.A. 18A:12-24(b)* because Respondent Norcia "is the only employee in the Fairlawn School District (District) that oversees every employee, thus he is giving himself privileges that other employees would be reprimanded for under their contract," with the privilege being "breaching the terms of his own contract by not providing the District Goals and Objectives by June 30th," and violated *N.J.S.A. 18A:12-24(f)* because Respondent Norcia "did not notify the public through an open public session that the District Goals and Objectives would be delayed and the reason for it" (in violation of *N.J.S.A. 18A:11-11(5)*), and "knowing this is a provision" in Respondent Norcia's contract, Respondent Serapiglia "did not place on the June 2022 public agenda that the District Goals and Objectives would be presented according to the Superintendent's contract."

In Count 2, Complainant alleges that Respondent Banta (Board President) and Respondent Rosenberg (Board Vice President) violated *N.J.S.A. 18A:12-24.1(a)* because as the

Board President and Vice President, Respondents Banta and Rosenberg are (per the Board's bylaws) responsible for assisting in preparing the monthly agenda, and they did not put the "District Goals and Objectives" on the Board's agenda for the June 2022 meeting; *N.J.S.A.* 18A:12-24.1(b) because they "know" that the "Superintendent's school year starts on July 1st" and that he "should be working on the Board approved goals in the summer" but, instead, they "allow[] the Superintendent to rush the goals at the end of the summer which does not give enough time for" administrators "to spend adequate time to develop a detailed plan to achieve District Goals and Objectives"; *N.J.S.A.* 18A:12-24.1(d) because they "allowed the Superintendent [not to] provide the District Goals and Objectives according to his contract ... and thus not implementing them prior to at least the first two months of the Superintendent's school year," and this results in the school not being well run; *N.J.S.A.* 18A:12-24.1(e) because they are responsible for "oversight" of the Superintendent, and they violated their authority "by allowing [Respondent] Norcia to not follow the terms of his contract that they approved"; and *N.J.S.A.* 18A:12-24.1(i) because they "allowed [Respondent] Norcia to be in violation of the terms of his contract this sets a precedence that other District employees can do the same," and "creates an atmosphere that is not in the best interest of the children"

B. *Motion to Dismiss*

In their Motion to Dismiss, Respondents argue that, at best, the claims in the Complaint "assert a contractual breach of an Employment Agreement of a school superintendent"; importantly, no facts "are asserted which may be found by the ... Commission ... to constitute unethical behavior"

With regard to the alleged violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(f) in Count 1, which is based on "inaction," these claims should be dismissed because "(1) Respondents were never actually obligated to act as Complainant insists that they were, and (2) even if they were so obligated, such inaction did not create a 'conflict of interest' or constitute some unethical act." According to Respondents, Complainant "fails to establish that [Respondents Norcia and Serapiglia] were obligated to present or assist in presenting the District's goals and objectives during such meeting." Respondents further assert Complainant does not offer any evidence to demonstrate that either Respondent was obligated to place the "District Goals and Objectives" on the agenda and/or present them at a public meeting. In addition, Complainant's "interpretation of the relevant provision of [Respondent] Norcia's contract ... has no textual or contextual basis," and Respondents "reject Complainant's interpretation of [Respondent] Norcia's contract." Respondents further argue even if the terms of the Superintendent's contract were breached, "such a breach does not amount to a violation of" the Act because Complainant "fails to adequately describe the unwarranted privilege or financial benefit" that was either secured or sought for themselves. Respondents maintain they did not "use or attempt to use their positions to secure unwarranted privileges or financial gain for themselves" and, therefore, Count 1 should be dismissed.

As for the purported violations of the Code in Count 2 by Respondents Banta and Rosenberg, Respondents maintain Complainant has failed to provide a "copy of a final decision from any court of law ..." to support a violation of *N.J.S.A.* 18A:12-24.1(a); "failed to produce any evidence or allege sufficient facts that would show that [Respondents Banta and Rosenberg]

either willfully made a decision contrary to the educational welfare of children, or took deliberate action to obstruct the programs and policies ... in violation of *N.J.S.A.* 18A:12-24.1(b); did not provide any evidence to show that Respondents “communicated” with district personnel or that Respondents were involved in “activities or functions that fall within the purview of school personnel or District administration” in violation of *N.J.S.A.* 18A:12-24.1(d); did not provide any evidence to demonstrate that Respondents “deliberately acted at all, at any time” in violation of *N.J.S.A.* 18A:12-24.1(i).²

In conclusion, Respondents argue that, “at best,” Complainant asserts “a breach of contract,” which does not implicate the Act, and “is not ... justiciable before the Commission.” As a result, the Complaint should be dismissed.

C. Response to Motion to Dismiss

In response to the Motion to Dismiss, Complainant argues that there was “a breach of contract,” and Respondent Norcia “used his position to receive unwarranted privileges,” Respondent Serapiglia was aware that Respondent Norcia did not follow his contract, and Respondents Banta and Rosenberg “allowed [the breach of contract] to happen.”

Complainant reasserts his allegations and notes that, by “not following the law he [(Respondent Norcia)] granted himself unwarranted privileges compared to other employees in the District that he oversees.” Although counsel for Respondents acknowledges that Respondent Norcia did not “provide the District Goals and Objectives by June 20, 2022; ... he failed to mention that his client violates N.J.A.C. [(sic)] Statute 18A:11-11(5).” Complainant maintains that Respondent Norcia “amended his own contract without providing the 30-day notice to the public,” and without the Board’s vote. Contrary to Respondents’ argument that Respondent Norcia did not have to “present the District Goals and Objectives,” Complainant reasserts that the cited statute notes “sensitive topics” may be discussed in closed session; however, “the general nature must be disclosed,” and the Board minutes do not indicate that a discussion about the District Goals and Objectives ever occurred. Complainant reasserts Respondent Norcia “received financial gain by providing the District Goals during a special meeting on August 22, 2022[,] rather than June 30, 2022, as his contract stated”; Respondent Serapiglia, as a direct report to Respondent Norcia, followed Respondent Norcia’s “directive of not putting the District Goals and Objective on the agenda by June 30, [2022].”

As for the violations in Count 2, Complainant reaffirms that, as the Board President and Vice President respectively, Respondents Banta and Rosenberg allowed Respondent Norcia not to “follow his contract and not amended [(sic)] according” to statute and allowed a breach of contract; therefore, they “did not uphold and enforce all laws rules and regulations of the State Board of Education” (*N.J.S.A.* 18A:12-24.1(a)); allowed the Superintendent not to provide the “District Goals and Objectives” in time, which created a “cascading affect in which [District staff] would have to rush to create a plan to implement the goals and [o]bjectives in one week

² In their Motion to Dismiss, Respondents did not address the alleged violation of *N.J.S.A.* 18A:12-24.1(e).

and ultimately “affected the educational welfare of children and will not seek to develop and maintain public schools” (*N.J.S.A.* 18A:12-24.1(b)); allowed Respondent Norcia to present the “District Goals and Objectives in late August with Board and community opposition and objection . . . and, therefore, the District does not seem to be well run” (*N.J.S.A.* 18A:12-24.1(d)); by not “going through the proper channels of enforcing the Superintendent’s contract, or properly amending” it, Respondents Banta and Rosenberg compromised the Board (*N.J.S.A.* 18A:12-24.1(e)); and by allowing the Superintendent not to follow “policies and procedures,” it sets a precedent for other District employees and “creates an atmosphere where other employees do not have to follow their contracts” (*N.J.S.A.* 18A:12-24.1(i)). Therefore, Complainant “respectfully requests that Respondents’ Motion to Dismiss should be denied.

D. *Public Comments Offered at the Commission’s Meeting on November 22, 2022*

At the Commission’s meeting on November 22, 2022, members of the public appeared by telephone and offered public comment regarding the above-captioned matter. More detailed information regarding the substance of those public comments can be found in the [minutes](#) from the Commission’s meeting on November 22, 2022.

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 Norcia violated *N.J.S.A.* 18A:12-24(b) and/or Respondent Norcia and/or Respondent Serapiglia violated *N.J.S.A.* 18A:12-24(f) in Count 1, and/or Respondent Banta and/or Respondent Rosenberg violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), and/or *N.J.S.A.* 18A:12-24.1(i) of the Code in Count 2. The Commission notes that, despite the offering of public comment at its meeting on November 22, 2022, the Commission’s review of this matter was limited solely to the parties’ written submissions.

B. *Jurisdiction of the Commission*

In reviewing the filings in this matter, the Commission notes that its authority is limited to enforcing the Act, *N.J.S.A.* 18A:12-21 *et seq.*, a set of minimum ethical standards by which all school officials must abide. In this regard, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C.* 6A:28-1.4(a).

With the jurisdiction of the Commission in mind, to the extent that Complainant seeks a determination from the Commission that the named Respondents, either individually or

collectively, violated a Board policy or regulation (or the Board's bylaws), *N.J.S.A.* 18A:11-11, and/or that the terms of Respondent Norcia's employment contract may have been breached and/or violated, the Commission advises that such determinations fall beyond the scope, authority, and jurisdiction of the Commission. Although Complainant may be able to pursue a cause of action with the Interim Executive County Superintendent in the appropriate tribunal *if* he has standing to do so, the Commission is not the appropriate entity to adjudicate those issues. Accordingly, those claims are *dismissed*.

C. *Alleged Violations of the Act*

Complainant submits that, based on the conduct more fully detailed above, Respondent Norcia violated *N.J.S.A.* 18A:12-24(b), and Respondent Norcia and Respondent Serapiglia violated *N.J.S.A.* 18A:12-24(f) in Count 1. These provisions of the Act state:

b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

In order to credit a violation of *N.J.S.A. 18A:12-24(b)*, the Commission must find evidence that Respondent Norcia used or attempted to use his official position to secure an unwarranted privilege, advantage or employment for himself, a member of his immediate family, or an "other."

To credit a violation of *N.J.S.A. 18A:12-24(f)*, the Commission must find evidence that Respondents used their public employment, or any information not generally available to the public, and which they received in the course of and by reason of their employment, for the purpose of securing financial gain for themselves, their business organization, or a member of their immediate family.

Following its review, the Commission finds that even if the facts as pled in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent Norcia violated *N.J.S.A.* 18A:12-24(b) and/or Respondent Norcia and/or Respondent Serapiglia violated *N.J.S.A.* 18A:12-24(f). Complainant has not provided any factual evidence explaining how Respondent Norcia could have possibly secured an unwarranted privilege, advantage or employment for himself by breaching the terms of his own employment contract (assuming it was breached), and/or how Respondent Norcia and/or Respondent Serapiglia could have even remotely used their public employment to secure financial gain for themselves by violating the terms of Respondent Norcia's employment contract (again, assuming it was breached). In fact, quite the opposite is true – Respondent Norcia stands to gain financially if the parties fully

comply with the terms and conditions of his employment contract. Moreover, there is no evidence that Respondent Serapiglia had any kind of interest in Respondent Norcia's employment contract, or that he could have received any kind of financial gain by the violation of its terms. Therefore, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(f) in Count 1 must be dismissed.

Complainant further submits that Respondent Banta and Respondent Rosenberg violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i), and these provisions of the 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.

b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

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.

i. I will support and protect school personnel in proper performance of their duties.

Pursuant to *N.J.A.C.* 6A:28-6.4(a), violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i) need to be supported by certain factual evidence, more specifically:

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.

2. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(b) shall include evidence that Respondents willfully made a decision contrary to the educational welfare of children, or evidence that Respondents took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

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.

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.

9. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(i) shall include evidence that Respondents took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

First, and regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(a), despite being required by *N.J.A.C.* 6A:28-6.4(a)(1), Complainant has not provided a **copy of a final decision(s)** from any court of law or other administrative agency demonstrating or finding that Respondent Banta and/or Respondent Rosenberg violated any specific law(s), rule(s), or regulation(s) of the State Board of Education and/or court orders pertaining to schools, or that they brought about changes through illegal or unethical procedures, when they engaged in any of the actions/conduct set forth in the Complaint. Without the required final decision(s), and based on the record in its current form, the Commission is constrained to dismiss the alleged violation of *N.J.S.A.* 18A:12-24.1(a).

Next, and as for the purported violations of *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i), even if Respondent Banta and/or Respondent Rosenberg, as officers of the Board, have a responsibility to assist in preparing the Board's monthly agenda, there is still no factual evidence or support for the proposition that they bear any sort of individual responsibility for carrying out the terms and conditions of the employment contract between *the Board* and Respondent Norcia, or otherwise ensuring the parties' full compliance with the provisions thereof. Absent some factual evidence or support for the proposition that Respondent Banta and/or Respondent Rosenberg had an individual responsibility to take affirmative steps to oversee and strictly enforce the terms of Respondent Norcia's employment contract as suggested, violations of *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), and/or *N.J.S.A.* 18A:12-24.1(i) cannot be supported. Instead, any responsibility for the breach or violation of Respondent Norcia's employment falls on the Board, not certain individual members thereof. Accordingly, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i) in Count 2 must also 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 Norcia violated *N.J.S.A.* 18A:12-24(b) and/or Respondent Norcia and/or Respondent Serapiglia violated *N.J.S.A.* 18A:12-24(f) in Count 1, and/or Respondent Banta and/or Respondent Rosenberg violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), and/or *N.J.S.A.* 18A:12-24.1(i) of the Code in Count 2.

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: December 20, 2022

***Resolution Adopting Decision
in Connection with C74-22***

Whereas, at its meeting on November 22, 2022, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the response to the Motion to Dismiss submitted in connection with the above-referenced matter; and

Whereas, at its meeting on November 22, 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 Norcia violated *N.J.S.A.* 18A:12-24(b) and/or Respondent Norcia and/or Respondent Serapiglia violated *N.J.S.A.* 18A:12-24(f) in Count 1, and/or Respondent Banta and/or Respondent Rosenberg violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(b), *N.J.S.A.* 18A:12-24.1(d), *N.J.S.A.* 18A:12-24.1(e), and/or *N.J.S.A.* 18A:12-24.1(i) of the Code in Count 2; and

Whereas, at its meeting on December 20, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 22, 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 December 20, 2022.

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