

Before the School Ethics Commission
Docket No.: C118-22
Decision on Motion to Dismiss

Kathryn Matteson,
Complainant

v.

Kurt Morris, Kimberly Bragg, and Lauren Collier,
Sparta Board of Education, Sussex County,
Respondents

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on December 5, 2022, by Kathryn Matteson (Complainant), alleging that Kurt Morris (Respondent Morris), Kimberly Bragg (Respondent Bragg), and Lauren Collier (Respondent Collier) (collectively referred to as 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 avers that Respondent Morris violated *N.J.S.A.* 18A:12-24.1(h) of the Code of Ethics for School Board Members (Code) in Count 1, and that all of the named Respondents violated *N.J.S.A.* 18A:12-24.1(i) and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 2.

On December 6, 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 January 17, 2023, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and on April 6, 2023, Complainant filed a response to the Motion to Dismiss.

The parties were notified by correspondence dated April 17, 2023, that the above-captioned matter would be discussed by the Commission at its meeting on April 25, 2023, in order to make a determination regarding the Motion to Dismiss. Following its discussion on April 25, 2023, the Commission adopted a decision at its meeting on May 23, 2023, granting the Motion to Dismiss in its entirety because Complainant failed to plead sufficient credible facts to support a finding that Respondent Morris violated *N.J.S.A.* 18A:12-24.1(h) in Count 1, and/or any of the named Respondents violated *N.J.S.A.* 18A:12-24.1(i) and/or *N.J.S.A.* 18A:12-24.1(j) in Count 2.

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.

II. Summary of the Pleadings

A. *The Complaint*

In Count 1, Complainant states that, at various personnel committee meetings in April 2022, the Superintendent recommended the renewal of Scott Kercher, World Language and Social Studies Supervisor. During these meetings, “there was sentiment from the personnel committee,” of which Respondent Morris was the chair, that they did not support Mr. Kercher’s renewal, although “no clear reason for their lack of support” was provided. On April 28, 2022, the Board voted on “Superintendent-recommended renewals,” which included the renewal of Mr. Kercher’s employment; however, the motion did not carry, with two votes in favor, three opposed (including Respondent Morris and Respondent Bragg), and one abstention. Per Complainant, “[t]he dissenting ... members gave no reason why they were not supporting the recommendation of the Superintendent.”

Although the dissenting Board members did not provide a reason for their “no” vote, the “overall public opinion in the learning community was that this was a targeted attempt by the [B]oard ... due to Mr. Kercher’s association with the Sparta Diversity Council ... since other staff members involved with the Diversity Council had been similarly targeted.” At the Board’s meeting on May 26, 2022, “several community members and educators rallied ... in support of Mr. Kercher,” and when a Board member asked the Superintendent “to call for a re-vote” on Mr. Kercher’s renewal, the motion carried (7-1-0), and Respondent Morris was the only dissenting vote. Based on these facts, Complainant argues that by voting against the motion to renew Mr. Kercher’s employment on May 26, 2022, Respondent Morris violated *N.J.S.A. 18A:12-24.1(h)*.

In Count 2, Complainant states that, after Mr. Kercher’s employment was renewed, he hosted a Sparta Diversity Council event (which included the screening of a docu-series). Respondent Collier, along with her future running mate (Leigh McMichael), attended the event. Thereafter, and at the Board meeting on July 21, 2022, Ms. McMichael spoke during public comment and “shared that she had found a book recommended by Mr. Kercher ...[,] falsely stated that it was ‘available to all children regardless of their age’ ...[,] [d]escribe[d] the book as vulgar, ... asked the Board how this book possibly made it to Mr. Kercher’s recommended reading list and if it had been properly vetted by the curriculum committee.”

Following Ms. McMichael’s comments, Respondent Morris, Respondent Bragg, and Respondent Collier communicated “their dissatisfaction with Mr. Kercher’s renewal,” and also offered their opinions on the book referenced by Ms. McMichael. During this exchange Respondent Morris exclaimed “Now we are stuck with him!” at least twice; Respondent Bragg called the book a “one clicker” from the Sparta Diversity Council and claimed she could access it “immediately” (which Complainant refutes is accurate); and Respondent Collier asked, “where do we draw the line?” for book recommendations.

On July 28, 2022, “after several months of [B]oard ... overreach and harassment,” Mr. Kercher resigned from the Sparta Township Public Schools District (District), and was “clear to colleagues and trusted members of the learning community” that “the working environment caused by the personnel committee [(the named Respondents)] was a direct threat to his career

and was jeopardizing the security of his family.” As part of his exit interview, Mr. Kercher stated “his entire reason for resigning” was due to targeted behavior from the Board, particularly from Respondent Morris, Respondent Bragg, and Respondent Collier following his renewal.

By “immediately and personally” debating a matter brought up by a member of the community (Ms. McMichael) at the Board meeting on July 21, 2022, and not referring it to the Superintendent, Complainant asserts that Respondent Morris, Respondent Bragg, and Respondent Collier violated *N.J.S.A. 18A:12-24.1(j)*. Complainant additionally asserts that Respondent Morris, Respondent Bragg, and Respondent Collier violated *N.J.S.A. 18A:12-24.1(i)* on July 21, 2022, because they “failed to support and protect” Mr. Kercher when “they launched a public attack on him in response to public comment.”

B. *Motion to Dismiss*

In their Motion to Dismiss, and regarding the allegations in Count 1, Respondent Morris argues that “he was not under any legal obligation to agree with the Superintendent’s recommendation” and, instead, “was required simply to consider the Superintendent’s recommendation, which ... he did at various [p]ersonnel [c]ommittee meetings prior to the vote.” Moreover, “[m]ere disagreement with Respondent’s vote and vague references to ‘overall public opinion’ as it pertains to Respondent [Morris’s] votes at earlier Board meetings cannot establish a violation” of *N.J.S.A. 18A:12-24.1(g)*. To accept Complainant’s argument would mean that “every board member in the State who votes against a Superintendent personnel recommendation would be in violation” of *N.J.S.A. 18A:12-24.1(h)*, and “[t]his is simply not the case.”

With regard to the claims in Count 2, Respondent Morris, Respondent Bragg, and Respondent Collier argue that, as evidenced by the video footage of the Board meeting, they merely discussed the community member’s concerns; discussed their opinions as to whether the District should be recommending or endorsing the book at issue; asked the Superintendent and the Assistant Superintendent to “please look into the matter”; never addressed the staff member at issue or otherwise conducted an investigation of Ms. McMichael’s comments; and the administrators present at the meeting “acknowledged the request and verbally agreed, during the meeting, to review the issue.” In this way, and as confirmed by the video, Respondents “did exactly what they were required to do – they referred the concern to the Chief School Administrator.” Moreover, “the only brief discussion” about Mr. Kercher occurred when Respondents asked how the book in question became associated with the District’s website. Although Respondent Morris did say, “we’re stuck with this guy” *once* (and not twice as represented by Complainant), Respondent did not identify Mr. Kercher by name and, nonetheless, “such [a] statement alone cannot form the basis for a violation.” In addition, Respondent Morris did not have any singular authority to change Mr. Kercher’s renewed employment status, and he denies that his comment was “direct or confrontational.”

Based on the foregoing, Respondents argue there are no factual allegations, which if proven true, would suggest that Respondent Morris failed to consider a personnel recommendation from the Superintendent in violation of *N.J.S.A. 18A:12-24.1(h)* (Count 1); that Respondent Morris, Respondent Bragg, and/or Respondent Collier took deliberate action to undermine, oppose, compromise, or harm school personnel in the proper performance of their

duties in violation of *N.J.S.A.* 18A:12-24.1(i) (in Count 2); and/or that Respondent Morris, Respondent Bragg, and/or Respondent Collier acted on or attempted to resolve a complaint prior to referring the matter to the Superintendent in violation of *N.J.S.A.* 18A:12-24.1(j) (in Count 2). As a result, Respondents argue that the Complaint must be dismissed in its entirety.

C. *Response to Motion to Dismiss*

In her response to the Motion to Dismiss, and regarding Count 1, Complainant reiterates that Respondent Morris, as chair of the personnel committee, “led the personnel committee to vote against Mr. Kercher’s renewal for reasons that Mr. Kercher believes were related to his work with the Sparta Diversity Council.” As such, Complainant argues that “further investigation by the [C]ommission is warranted ... which should include a hearing and testimony by individuals with direct knowledge of the facts, including Mr. Kercher.”

As for Count 2, Complainant maintains that Respondent Morris “attacked” Mr. Kercher’s performance and explained his “disdain” for Mr. Kercher “in direct response to a public comment which complained about an aspect of Mr. Kercher’s work with the Diversity Council.” Even though the Assistant Superintendent proved much of Ms. McMichael’s comments to be untrue, Respondent Morris, “through his public comments, *continued to use the false information* to harm Mr. Kercher’s professional reputation and undermine his work with the Diversity Council.” Not only did he express “his disdain twice with Mr. Kercher’s job performance,” he also “used false information along with his power ... to expand upon an already hostile working environment for Mr. Kercher.” Complainant further notes that, despite his argument to the contrary, Respondent Morris stated, “Now we are stuck with him,” and “Now we’re stuck with this guy” at two separate points in the meeting. Both of these statements were “damaging” public statements about a District staff member.

Moreover, Respondents’ representation that they properly referred the matter to the Superintendent minimizes the “lengthy nature and damaging content of the conversation” that actually took place between the Board and the administration. During this discussion, Respondent Morris conducted “a public inquiry before an administrative solution” could be considered, and “ignored the administrative solution” presented because the facts did not support “his line of attack.” Respondent Bragg also investigated the complaint that was raised during public comment by Ms. McMichael, when she accessed the book (on her personal iPad) that was being discussed.

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

Morris violated *N.J.S.A.* 18A:12-24.1(h) in Count 1, and/or any of the named Respondents violated *N.J.S.A.* 18A:12-24.1(i) and/or *N.J.S.A.* 18A:12-24.1(j) Count 2.

B. *Alleged Violations of the Act*

Complainant submits that Respondent Morris violated *N.J.S.A.* 18A:12-24.1(h) in Count 1, and all of the named Respondents violated *N.J.S.A.* 18A:12-24.1(i) and/or *N.J.S.A.* 18A:12-24.1(j) Count 2. These provisions of the Code provide:

h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

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

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.

Pursuant to *N.J.A.C.* 6A:28-6.4(a), a violation(s) of *N.J.S.A.* 18A:12-24.1(h), *N.J.S.A.* 18A:12-24.1(i), and/or *N.J.S.A.* 18A:12-24.1(j) needs to be supported by certain factual evidence, more specifically:

8. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(h) shall include evidence that Respondent Morris acted on a personnel matter without a recommendation of the chief administrative officer.

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.

10. Factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(j) shall include evidence that Respondents 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.

Count 1

After review, the Commission finds that even if the facts as set forth in Count 1 are proven true by sufficient credible evidence, they would not support a finding that Respondent Morris violated *N.J.S.A.* 18A:12-24.1(h). Even if, following a recommendation from the Superintendent, Respondent Morris voted in opposition to or against a motion to renew Mr. Kercher's employment, a violation of *N.J.S.A.* 18A:12-24.1(h) requires evidence that Respondent Morris acted on a personnel matter *without* the recommendation of the Superintendent – in this

case, the Superintendent clearly offered his recommendation for Mr. Kircher's renewal. Although there was a recommendation from the Superintendent, it appears, based on its dissenting vote, that Respondent Morris did not agree with the recommendation. Contrary to Complainant's argument, Board members do not act "unethically" merely because they do not agree with a recommendation from the Superintendent. Instead, Board members are free to vote in favor of, or against, any motion or action, even if that means they vote against a recommendation from the Superintendent. If Board members were required to vote in favor of every recommendation from the Superintendent, they would serve as nothing more than a "rubber stamp." Board members are entrusted to review recommendations from the Superintendent, and then to vote on the recommendation in a way that they feel best serves the needs of the District and its students. Absent evidence that Respondent acted on a personnel matter without the recommendation of the Superintendent, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(h)* in Count 1 should be dismissed.

Count 2

Based on its review of the Complaint, the Commission finds that even if the facts as pled in Count 2 are proven true by sufficient credible evidence, they would not support a finding(s) that any of the named Respondents violated *N.J.S.A. 18A:12-24.1(i)* and/or *N.J.S.A. 18A:12-24.1(j)*. The video evidence submitted by Complainant confirms the following series of events: a member of the public asked the Board and its administration whether a book from Mr. Kercher's recommended reading list was reviewed or vetted before it was posted on the District's website; Respondent Morris verified with a fellow Board member that Mr. Kercher was just "given tenure" and then murmured, "and now we're stuck with him"; following the closing of public comment, Respondent Bragg asked the administration to review the matter, and then expressed her personal opinions and concerns about the content of the book; Respondent Morris echoed some of Respondent Bragg's concerns, and again stated "we are stuck with this guy"; and, finally, Respondent Collier asked "where do we draw the line" with the review and approval of District books and ensuring a safe and healthy learning environment for the District's students.

Based on the foregoing, although Respondent Morris' statements that the District was "stuck" with Mr. Kercher were imprudent and ill-advised (even if accurate because Mr. Kercher was a tenured teaching staff member), and although all of the named Respondents proceeded to offer their public opinion and concerns about the book and the related issue of the "new" health and physical education standards, none of Respondents' conduct constituted "deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties" (*N.J.S.A. 18A:12-24.1(i)*), or acting on or attempting 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 (*N.J.S.A. 18A:12-24.1(j)*). In fact, the very precursor to all of Respondents' comments was a request from Respondent Bragg that the administration review its policies and procedures, and to ascertain how the book in question was listed on the District's website/a recommended reading list. To the extent they offered their personal opinions and concerns about the situation, they were just that – their personal opinions and concerns which immediately followed a referral of the situation to the District's administration. Even if unpopular, school officials are entitled to offer their perspective on issues

related to the Board, and the facts in Count 2 confirm that that is exactly what Respondent Bragg, Respondent Morris, and Respondent Collier did.

For the foregoing reasons, the Commission finds that the stated violations of *N.J.S.A.* 18A:12-24.1(i) and *N.J.S.A.* 18A:12-24.1(j) in Count 2 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(s) that Respondent Morris violated *N.J.S.A.* 18A:12-24.1(h) in Count 1, and/or any of the named Respondents violated *N.J.S.A.* 18A:12-24.1(i) and/or *N.J.S.A.* 18A:12-24.1(j) 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: May 23, 2023

***Resolution Adopting Decision
in Connection with C118-22***

Whereas, at its meeting on April 25, 2023, 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 April 25, 2023, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient credible facts to support the allegations that Respondent Morris violated *N.J.S.A. 18A:12-24.1(h)* in Count 1, and/or any of the named Respondents violated *N.J.S.A. 18A:12-24.1(i)* and/or *N.J.S.A. 18A:12-24.1(j)* Count 2; and

Whereas, at its meeting on May 23, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on April 25, 2023; 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 23, 2023.

Jeannine Pizzigoni
Staff Member, School Ethics Commission