

***Before the School Ethics Commission***  
***Docket No.: C89-22***  
***Decision on Motion to Dismiss***

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**Bonnie Taylor,**  
***Complainant***

v.

**Justin Annunziata, Adina Leuthner, Kelly Mitchell, Theresa Scura Coughlin,  
Martin O'Donnell, Joseph A. Sweeney, John Kraus, Jennifer Pellet,  
and Raymond Zimmerman,**  
**Vernon Board of Education, Sussex County,**  
***Respondents***

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**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed on September 20, 2022, by Bonnie Taylor (Complainant), alleging that Justin Annunziata, Adina Leuthner, Kelly Mitchell, Theresa Scura Coughlin, Martin O'Donnell, Joseph A. Sweeney, John Kraus, Jennifer Pellet, and Raymond Zimmerman (collectively referred to as Respondents), members of the Vernon Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated September 22, 2022, and September 26, 2022, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On September 27, 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. The Complaint avers that Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(h), and *N.J.S.A.* 18A:12-24.1(i) of the Code of Ethics for School Board Members (Code).

On September 29, 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.<sup>1</sup> On November 10, 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 December 2, 2022.

The parties were notified by correspondence dated December 12, 2022, that the above-captioned matter would be discussed by the Commission at its meeting on December 20, 2022, in order to make a determination regarding the Motion to Dismiss. Following its discussion on

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<sup>1</sup> 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.

December 20, 2022, the Commission adopted a decision at its special meeting on January 31, 2023, granting the Motion to Dismiss in its entirety because Complainant failed to plead sufficient credible facts to support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(h), and/or *N.J.S.A.* 18A:12-24.1(i).

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

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

According to Complainant, the named Respondents, who are the nine (9) members of the Board, violated the Code “by changing the placement of an employee without a [B]oard resolution or vote.”

More specifically, although a District employee (A.F.) is listed on the Vernon School District’s (District) website as the “math interventionist” at one of the District’s schools, this position “has not been recorded” in the Board’s meeting agendas or minutes, and no change in position is noted for A.F. in the Board’s meeting agendas or minutes. Therefore, the filling of the “math interventionist” position with A.F. not only violates the Code, but it is “questionable” given the filing of a sexual harassment allegation by a District employee who was under the supervision of A.F. When Complainant contacted the District administration “regarding time sensitive information” for the sexual harassment allegation, Complainant was advised that the District could not speak with anyone outside the District about the matter, and that the victim could schedule a meeting with her union representative.

Based upon the facts set forth above, Complainant asserts that Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(h), and *N.J.S.A.* 18A:12-24.1(i), but did not specifically explain how Respondents’ conduct, individually or collectively, may have violated the cited provisions of the Code.

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

In their Motion to Dismiss, Respondents argue that because A.F. “merely transitioned” into a new position at a District school, but did not change schools, “there was no reason to put [A.F.’s] change in title or position on a Board ... agenda for a vote on the issue.” Nonetheless, and regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(a), Respondents argue that Complainant failed to “provide a copy of a final decision from any court of law administrative agency of this State, much less proof that Respondents failed to enforce any laws, rules or 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 addition, pursuant to *N.J.S.A.* 18A:25-1, only the transfer of a teaching staff member requires a vote by the Board; in this case, A.F. did not transfer between schools, but rather changed his position. Therefore, Complainant failed to plead sufficient facts to demonstrate a violation of *N.J.S.A.* 18A:12-24.1(a), and this claim must be dismissed.

As for the purported violation of *N.J.S.A.* 18A:12-24.1(h), in order to establish a violation, Respondents argue that Complainant needed to provide factual evidence that they

“acted on a personnel matter without a recommendation of the chief administrative officer.” However, in her Complaint, Complainant argues that Respondents did not take action on a personnel matter and, as such, the Complaint “must fail.” Further, the change in position or title to “math interventionist” did not constitute a transfer and, as such, a recommendation from the chief school administrator and/or a vote/action by the Board was not required. In essence, Complainant argues that Respondents did not act on something that was not presented to them to act upon, and this is “the converse of what the regulations provide.” As such, Complainant failed to plead sufficient facts to establish a violation of *N.J.S.A. 18A:12-24.1(h)*, and this claim must be dismissed.

Regarding the alleged violation of *N.J.S.A. 18:12-24.1(i)*, Respondents argue that Complainant needed to provide factual “evidence that Respondents took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.” Instead, the Complaint avers that Respondents did not take any action, much less deliberate action. Respondents again reiterate that A.F.’s change in title and/or duties did not constitute a transfer between schools, did not require a recommendation from the chief school administrator, and did not require Respondents’ approval or vote. Moreover, Respondents argue that it would have been inappropriate for Respondents to consider or vote on A.F.’s change in position without a recommendation from the chief school administrator, and no such recommendation was made. Consequently, Complainant failed to plead sufficient facts to demonstrate a violation of *N.J.S.A. 18A:12-24.1(i)*, and this claim must be dismissed.

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

In response to the Motion to Dismiss, Complainant reaffirms the factual allegations in her Complaint, and maintains that they constitute a violation of *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(h)*, and *N.J.S.A. 18A:12-24.1(i)*. Complainant also argues that the Board “did not follow the procedures for Harassment, Intimidation and Bullying Concerns,” and did not conduct an investigation as required by the Anti-Bullying Bill of Rights Act.

## **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 are 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 Respondents violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(h)*, and/or *N.J.S.A. 18A:12-24.1(i)*.

### **B. *Jurisdiction of the Commission***

In its review of 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 (individually or collectively) may have violated a Board policy, regulation, or bylaw; may have violated *N.J.S.A.* 18A:25-1 *et seq.*; may have violated the terms of an applicable collective negotiations agreement; and/or may have engaged in conduct violative of the Anti-Bullying Bill of Rights or a harassment, intimidation, and bullying policy or regulation, 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 in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those claims. Consequently, those allegations are *dismissed*.

### C. *Alleged Violations of the Act*

Complainant submits that, based on the conduct more fully detailed above, Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(h), 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.

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.

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(h), 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.

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

Based on 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 Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(h), and/or *N.J.S.A.* 18A:12-24.1(i). First, although required by *N.J.A.C.* 6A:28-6.4(a)(1) to substantiate a violation of *N.J.S.A.* 18A:12-24.1(a), Complainant has not provided a **copy of a final decision(s)** from any court of law or other administrative agency demonstrating or finding that any of the named Respondents 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.

Second, although Complainant acknowledges that the position/title of “math interventionist” and/or A.F.’s transition to this position/title is *not* noted in a Board agenda(s) and/or the minutes of a Board meeting(s), she argues that Respondents “acted” on a personnel matter without a recommendation of the chief administrative officer. However, and as argued by Respondents, it defies logic that they could have “acted” on a personnel matter when, as conceded by Complainant, it was never presented to them (as the individual members of the Board) for discussion and/or a vote. There is also no evidence that any of the Respondents may have underhandedly “acted” on or approved the personnel matter at-issue; as such, it stands to reason that the decision was made by the District’s administration because it was within its prerogative to do so without approval from the Board.

Finally, in the absence of any factual evidence that the named Respondents took any specific or identifiable **deliberate** action relative to the position/title of “math interventionist” and/or A.F.’s transition to same, at a Board meeting(s) or otherwise, they could not have undermined, opposed, compromised, or harmed any school personnel in the proper performance of their duties. While Complainant ascribes a seemingly nefarious reason for A.F.’s transition to the “math interventionist” position, there is no factual evidence adduced in the Complaint suggesting that Respondents acted contrary to their ethical obligations.

Accordingly, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(h), and/or *N.J.S.A.* 18A:12-24.1(i) 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 Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(h), and/or *N.J.S.A.* 18A:12-24.1(i).

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).*

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Robert W. Bender, Chairperson

Mailing Date: January 31, 2023

***Resolution Adopting Decision  
in Connection with C89-22***

***Whereas***, at its meeting on December 20, 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 December 20, 2022, 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)*, *N.J.S.A. 18A:12-24.1(h)*, and/or *N.J.S.A. 18A:12-24.1(i)*; and

***Whereas***, at its special meeting on January 31, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on December 20, 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 special meeting on January 31, 2023.

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