

***Before the School Ethics Commission  
Docket No.: C27-24  
Decision on Probable Cause***

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**George F. Burdick, Jr.,  
Complainant**

**v.**

**James Giordano and Shana Frondorf,  
Franklin Township Board of Education, Hunterdon County,  
Respondents**

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**I. Procedural History**

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on March 19, 2024,<sup>1</sup> by George F. Burdick, Jr. (Complainant), alleging that James Giordano (Respondent Giordano) and Shana Frondorf (Respondent Frondorf) (collectively, Respondents), members of the Franklin Township 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 Giordano violated *N.J.S.A.* 18A:12-24.1(a) (Counts 1, 3 and 4), *N.J.S.A.* 18A:12-24.1(e) (Count 2), and *N.J.S.A.* 18A:12-24.1(g) (Count 2) and Respondent Frondorf violated *N.J.S.A.* 18A:12-24.1(a) (Count 3), *N.J.S.A.* 18A:12-24.1(e) (Count 2), and *N.J.S.A.* 18A:12-24.1(g) (Count 2) of the Code of Ethics for School Board Members (Code). Respondents filed a Written Statement on May 17, 2024.

The parties were notified by correspondence dated January 21, 2025, that the above-captioned matter would be discussed by the Commission at its meeting on January 28, 2025, in order to make a determination regarding probable cause. Following its discussion on January 28, 2025, the Commission adopted a decision at its meeting on February 18, 2025, finding that there are insufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that the Act was violated as alleged in the Complaint.

**II. Summary of the Pleadings**

**A. The Complaint**

Complainant provides the following background information:

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<sup>1</sup> On March 8, 2024, Complainant filed a deficient Complaint; however, on March 19, 2024, Complainant cured all defects and filed an Amended Complaint that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3.

- Following the resignation of a Board member on November 14, 2023, the Board posted the vacancy on November 16, 2023, noting that all interested candidates had until December 14, 2023, to submit their letters of interest to the Board.
- On December 8, 2023, the Board Secretary announced that the December 11, 2023, Board meeting was canceled.
- Thereafter, at the January 3, 2024, Board meeting, Respondent Giordano (Board President), announced that interviews for candidates for the Board vacancy would take place at the January 22, 2024, Board meeting.
- On January 17, 2024, the Superintendent sent an email to the four candidates who expressed interest in the vacant Board seat, informing them that interviews would be conducted at the January 22, 2024, Board meeting during executive session.
- On January 19, 2024, the Board's agenda for the January 22, 2024, meeting was posted on the website.
- On January 20, 2024, Complainant emailed the Board, as well as the Superintendent and the Business Administrator (BA), requesting that the scheduled interviews take place during the public session of the meeting consistent with the bylaws and "best practices for filling vacancies" as put forth by the New Jersey School Board Association (NJSBA).
- On that same day another member of the public made the same request, citing "Best Practices" from the NJSBA.
- At the meeting on January 22, several members of the public commented about holding the interviews in public.
- Three of the four candidates introduced themselves at the public session and provided a brief biography.
- Thereafter, a motion and a second were made to "convene the interviews for the board member vacancy in public session."
- As part of the discussion on the motion to convene the interviews in public session, one of the Board members asked, "[w]hat is the overarching reason for conducting interviews in Executive session?" Respondent Frondorf replied "this is the process that the Board agreed to in December." Respondent Giordano also stated, "this is what the Board agreed to in December." The motion failed and the Board convened to executive session to conduct interviews.
- Ultimately, the Board chose a candidate to fill the vacancy.
- Thereafter, Complainant filed an Open Public Records Act (OPRA) request for any Board meetings held from November 14, 2023, through January 22, 2024, to verify whether a subcommittee was formed to discuss the Board candidates or to fill the vacancy. According to Complainant, the Board never met, nor voted to decide how or where to conduct the interviews.

With the above in mind, and in Count 1, Complainant asserts that on January 22, 2024, Respondent Giordano violated *N.J.S.A.* 18A:12-24.1(a) because the resignation was received on November 14, 2023, which created a vacancy, which was not filled until January 22, 2024, 69 days after the resignation. Complainant notes that *N.J.S.A.* 18A:12-15(a) states, that "vacancies in the membership of the board shall be filled . . . by the county superintendent, if the vacancy is caused by . . . or is not filled within 65 days following its occurrence." Complainant further asserts in his role as the Board President, Respondent Giordano "is expected to know the laws, rules and regulation of the State Board of Education." Once the 65 days had passed, Respondent Giordano

should have contacted the Executive County Superintendent (ECS) as required by *N.J.S.A. 18A:12-15(a)*.

In Count 2, Complainant contends Respondents Giordano and Frondorf violated *N.J.S.A. 18A:12-24.1(e)* when they violated the Open Public Meetings Act (OPMA) and Board bylaws by taking private action that put the Board at risk. Additionally, Complainant asserts that Respondents' false statements that the Board decided to hold the interviews in executive session in December "must be viewed as a private action beyond the scope of their duties, to compromise the board" and "their deliberate false statements were made independently, and without specific instructions from the [B]oard." Further, Complainant argues that *N.J.S.A. 18A:12-24.1(e)* was violated when two other Board members made a motion to "convene the interviews for the [B]oard member vacancy in public session" but Respondents forced the Board to hold the interviews in closed session indicating that this is "*what the board agreed to in December.*"

Complainant also argues that Respondents violated *N.J.S.A. 18A:12-24.1(g)* because both Respondents made inaccurate statements that the Board discussed the interview process in December when a "legally convened, properly advertised meeting," never took place in December. Therefore, their "deliberate[ly] false statements were meant to impair the objectivity and/or the independence of judgment on the part of [the two Board members who requested the interviews be conducted in public]" in violation of *N.J.S.A. 18A:12-24.1(g)*.

In Count 3, Complainant maintains that the "obligation to adhere to [Board] bylaws is not optional or discretionary." According to Complainant, the "decision to hold interviews in executive session is a violation of a rule [OPMA], and a failure to enforce a rule," and Respondents Giordano and Frondorf violated *N.J.S.A. 18A:12-24.1(a)* because they "took specific action to bring about a change in a bylaw through illegal and unethical procedures."

In Count 4, Complainant asserts Respondent Giordano's action of omitting the candidates' names from the meeting agenda was "willful and deliberate to inject confusion, misconstructions and misinterpretations into the candidate process, and to have a chilling effect on the selection process to fill the board vacancy." According to Complainant, Respondent Giordano "was given ample opportunity to address the concerns" of the public and his fellow Board members, "yet failed to take any initiative to address these concerns." Complainant further asserts Respondent Giordano's "purpose and careful planning were to introduce confusion to thwart the purpose of public policy," which "was a clear indication of a private, final action without full and open consideration and discussion, with [the] timely opportunity for all members of the board and the public to be heard," in violation of *N.J.S.A. 18A:12-24.1(a)*.

## **B. *Written Statement***

Respondents initially argue that the Commission has "routinely held that it does not have jurisdiction to adjudicate alleged violations of OPMA or local Board policies." Moreover, violations of *N.J.S.A. 18A:12-15(a)* are matters for the Commissioner of Education, not the Commission.

As to a violation of *N.J.S.A. 18A:12-24.1(a)* in Counts 1, 3 and 4, Respondents maintain that Complainant has not provided a copy of a final decision from a New Jersey court of law or

administrative agency as required to sustain such a violation. Rather, Complainant “simply cites to the law regarding the filling of Board vacancies and a Board bylaw.”

Regarding Count 2, Respondents reassert the Commission does not have the authority to consider violations of local policy, nor to resolve Complainant’s allegations that “no legally convened, properly advertised meeting of the [Board] took place,” and therefore, Respondents violated OPMA and Board bylaws and thus violated *N.J.S.A.* 18A:12-24.1(e). In addition, Respondents argue they did not “force,” “obligate,” or “bind” the named Board members to “accept” that interviews would take place in executive session. Moreover, according to Respondents, the record indicates that the named Board members voted “yes” to hold the interviews in public session, further supporting they were not forced. Respondents argue there was a full discussion, as well as a Board vote, and therefore, Respondents did not act to “force” the members to accept their position in any way, and therefore, a violation of *N.J.S.A.* 18A:12-24.1(e) cannot be sustained.

As to a violation of *N.J.S.A.* 18A:12-24.1(g), Respondents maintain Complainant has not provided any evidence to demonstrate that Respondents even made the statements regarding what the Board “agreed to in December.” Respondents further argue even if they made those statements, Complainant has not shown that they were inaccurate, were not a reasonable mistake or personal opinion, or were not attributable to developing circumstances.

### **III. Analysis**

This matter is before the Commission for a determination of probable cause pursuant to *N.J.A.C.* 6A:28-9.7. A finding of probable cause is not an adjudication on the merits but, rather, an initial review whereupon the Commission makes a preliminary determination as to whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted. Pursuant to *N.J.A.C.* 6A:28-9.7(a), probable cause “shall be found when the facts and circumstances presented in the complaint and written statement would lead a reasonable person to believe that the Act has been violated.”

#### ***Jurisdiction of the Commission***

In reviewing the allegations 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 Respondents may have violated *N.J.S.A.* 18A:12-15(a), OPMA, Best Practices from the NJSBA, and/or any local Board policies or bylaws, 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(s) in the appropriate tribunal, the Commission is not the appropriate entity to adjudicate those claims. Accordingly, those claims are dismissed.

### *Alleged Violations of the Act*

Complainant submits that Respondents violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g). 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.

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.

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

Pursuant to *N.J.A.C.* 6A:28-6.4(a), a violation(s) of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(g), 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.

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.

7. Factual evidence of a violation of the confidentiality provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that Respondents took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that Respondents violated the inaccurate information provision of *N.J.S.A.* 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by Respondents and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

***N.J.S.A. 18A:12-24.1(a)***

In Counts 1 and 4, Complainant contends that Respondent Giordano violated *N.J.S.A. 18A:12-24.1(a)* when he did not follow *N.J.S.A. 18A:12-15(a)* and when he omitted the candidates' names from the meeting agenda. In Count 3, Complainant maintains that Respondents Giordano and Frondorf violated *N.J.S.A. 18A:12-24.1(a)* when they decided to hold interviews in executive session in violation of OPMA and Board bylaws as they "took specific action to bring about a change in a bylaw through illegal and unethical procedures." Respondents argue that the Commission does not have jurisdiction over *N.J.S.A. 18A:12-15(a)*, OPMA, or Board by-laws or policies. In addition, Respondents argue Complainant has not provided a copy of a final decision from a New Jersey court of law or administrative agency as required to sustain such a violation of *N.J.S.A. 18A:12-24.1(a)*.

After review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(a)* was violated in Counts 1, 3, and 4. Despite being required by *N.J.A.C. 6A:28-6.4(a)(1)*, the Commission finds that Complainant has not provided a copy of a final decision from any court of law or other administrative agency demonstrating or specifically finding that Respondents violated a specific law, rule, or regulation of the State Board of Education and/or court orders pertaining to schools, or that they brought about changes through illegal or unethical procedures. As noted above, the Commission does not enforce other laws or regulations, including *N.J.S.A. 18A:12-15(a)*, OPMA, and Board bylaws and policies. Accordingly, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violation(s) of *N.J.S.A. 18A:12-24.1(a)* in Counts 1, 3, and 4.

***N.J.S.A. 18A:12-24.1(e)***

In Count 2, Complainant contends Respondents Giordano and Frondorf violated *N.J.S.A. 18A:12-24.1(e)* when they violated OPMA and Board bylaws by holding the interviews in executive session. Complainant also argues that Respondents' inaccurate statements that the Board discussed the interview process in December can be viewed as "private action beyond the scope of their duties, to compromise the Board" and that they forced the other Board members to hold the interviews in closed session, in violation of *N.J.S.A. 18A:12-24.1(e)*. Respondents note that the Commission does not have jurisdiction over OPMA and Board bylaws. Respondents also argue that they did not "force" any other Board members to do anything, noting that there was a full discussion, as well as a Board vote, and therefore a violation of *N.J.S.A. 18A:12-24.1(e)* cannot be sustained.

After review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(e)* was violated. As stated earlier, the Commission does not have jurisdiction over OPMA and Board bylaws and thus cannot opine on whether OPMA or the Board bylaws were followed. The Commission finds that Respondents' statements at the January 22<sup>nd</sup> Board meeting were neither personal promises nor action that would be beyond the scope of a Board member. Respondents simply indicated, in their capacities as Board members, what they believed was the established process for conducting interviews for Board vacancies. Additionally, Complainant has

not established that the other Board members were “forced” to hold the interviews in executive session. The Board held a vote on the motion to proceed with the interviews in public session, which did not pass, so the interviews proceeded in executive session in accordance with the Board’s vote. Therefore, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violation(s) of *N.J.S.A. 18A:12-24.1(e)* in Count 2.

***N.J.S.A. 18A:12-24.1(g)***

In Count 2, Complainant asserts Respondents Giordano and Frondorf violated *N.J.S.A. 18A:12-24.1(g)* because, contrary to Respondent Frondorf’s statement that the Board discussed the interview process in December, a “legally convened, properly advertised meeting,” never took place in December, or in November through January. Respondents maintain that Complainant has not provided any evidence to demonstrate that Respondents even made those statements about the Board agreeing to the process in December. However, Respondents assert that even if they had made those statements, Complainant has not shown that the statements were inaccurate or were anything other than reasonable mistake, personal opinion or were not attributable to developing circumstances.

Based on its review, the Commission finds that there are insufficient facts and circumstances presented in the Complaint and the Written Statement to lead a reasonable person to believe that *N.J.S.A. 18A:12-24.1(g)* was violated. Complainant has not presented any evidence that what Respondents discussed was confidential information. Additionally, Complainant has not established that Respondents knowingly provided inaccurate or misleading information about the meeting or interview process. Although a full meeting of the Board did not occur in December, Respondents may have discussed how the interviews should be conducted, either in a committee or in a conversation with Board counsel and/or the school administration. Nevertheless, even if a discussion did not occur, Respondents’ alleged statements may be considered a reasonable mistake. Accordingly, and pursuant to *N.J.A.C. 6A:28-9.7(b)*, the Commission dismisses the alleged violation(s) of *N.J.S.A. 18A:12-24.1(g)* in Count 2.

**IV. Decision**

In accordance with *N.J.S.A. 18A:12-29(b)*, and for the reasons detailed herein, the Commission hereby notifies Complainant and Respondents that there are insufficient facts and circumstances pled in the Complaint and in the Written Statement to lead a reasonable person to believe that the Act was violated as alleged in the Complaint and, consequently, dismisses the above-captioned matter. *N.J.A.C. 6A:28-9.7(b)*.

The within 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)*. Under *New Jersey Court Rule 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

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Robert W. Bender, Chairperson

Mailing Date: February 18, 2025

***Resolution Adopting Decision  
in Connection with C27-24***

***Whereas***, at its meeting on January 28, 2025, the School Ethics Commission (Commission) considered the Complaint and the Written Statement, submitted in connection with the above-referenced matter; and

***Whereas***, at its meeting on January 28, 2025, the Commission discussed finding that the facts and circumstances presented in the Complaint and the Written Statement would not lead a reasonable person to believe that the Act was violated and, therefore, dismissing the above-captioned matter; and

***Whereas***, at its meeting on February 18, 2025, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on January 28, 2025; 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 February 18, 2025.

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Brigid C. Martens, Director  
School Ethics Commission