



State of New Jersey  
DEPARTMENT OF EDUCATION  
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Governor  
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Lt. Governor

BRET SCHUNDLER  
Commissioner

July 28, 2010

**TRESSLER LLP**  
**RECEIVED**  
JUL 29 2010

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DIARIED.....DOCKETED.....  
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**SUBJECT : ANTONIO CALCADO, STANLEY GRABOSKI, CHARLES L. GRANATA  
AND BONNIE GRANATIR V. SHERI L. GOLDBERG, LIVINGSTON  
BOARD OF EDUCATION, ESSEX COUNTY, SCHOOL ETHICS  
COMMISSION DOCKET #C12-10**

Dear Counsel:

Enclosed please find the decision of the School Ethics Commission that was adopted at its meeting on July 27, 2010 pursuant to the respondent's Motion to Dismiss filed in connection with the above-captioned matter. You will note that the motion was granted in part and denied in part. Accordingly, an answer is due within 20 days of receipt of this letter, as set forth in the decision.

Thank you for your attention.

Sincerely

Joanne Boyle, Executive Director  
School Ethics Commission

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Enclosure

**ANTONIO CALCADO, STANLEY GRABOSKI,  
CHARLES L. GRANATA AND  
BONNIE GRANATIR,**

v.

**SHERRI L. GOLDBERG  
LIVINGSTON BOARD OF EDUCATION  
ESSEX COUNTY**

**BEFORE THE SCHOOL  
ETHICS COMMISSION**

**DOCKET NO. C12-10  
DECISION ON  
MOTION TO DISMISS**

### **PROCEDURAL HISTORY**

This matter arises from a complaint filed on March 25, 2010 by Antonio Calcado, Stanley Graboski, Charles L. Granata and Bonnie Granatir, members of the Livingston Board of Education (Board), alleging that Sherri L. Goldberg, also a member of the Board, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.*<sup>1</sup> The complainants specifically allege that the respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f), (g), (i) and (j) of the Code of Ethics for School Board Members. On April 14, 2010, a Motion to Dismiss was filed on behalf of the respondent. The motion included an allegation that the complaint was frivolous, pursuant to N.J.S.A. 18A:12-29(e). Pursuant to N.J.A.C. 6A:28-8.2(a), a responsive statement was filed on behalf of the complainants on May 4, 2010. The parties were notified by letter dated May 20, 2010 that this matter would be placed on the agenda for the Commission's meeting on June 22, 2010 in order to make a determination regarding the respondent's Motion to Dismiss the complaint, together with the allegation of frivolousness.

At its meeting on June 22, 2010, the Commission voted to grant the respondent's Motion to Dismiss all allegations in the complaint, with the exception of two allegations set forth in Count 1. The Commission further found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2. Pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to retain this complaint for hearing at a later date as to the allegations that were not dismissed.

### **SUMMARY OF THE PLEADINGS**

In Count 1 of the complaint, the complainants assert that on February 25, 2010, the respondent "deliberately and maliciously" divulged confidential information regarding the Superintendent's pending performance evaluation that had been discussed in closed session on February 24, 2010. In divulging this information, the complainants assert that the respondent "purposely distorted the facts about the closed session discussions and the preliminary numerical ratings submitted by the respondent and each of her fellow Board members." Complainants assert that respondent did so in an effort to discredit members of the Board, undermine the Superintendent's trust and confidence in the Board and "curry personal favor with the Superintendent." According to the complainants, the respondent "purposefully provided

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<sup>1</sup> Not all complainants joined in every count in the complaint.

misinformation, skewing and inaccurately stating the preliminary numeric ranking that the Board members had assigned to the Superintendent [sic] evaluation.” The complainants assert this information was shared without the prior knowledge or consent of the Board, which has resulted in “irreparable damage to the already fragile trust that the four remaining Board members and Superintendent had placed in the respondent.” (Complaint at pp. 1-2) The complaint includes an Addendum A which provides details of the allegation, clarifying that the respondent shared the information with the Superintendent during a private meeting on February 25, 2010, which the Superintendent reported to the general Board on March 8, 2010, during a second evaluation discussion. The complainants assert this is a violation of N.J.S.A. 18A:12-24.1(a), (e), (f) and (g).

In Count 2, the complainants assert that during an open meeting on February 1, 2010, the respondent “deliberately and maliciously divulged confidential information” from a closed session meeting held in December 2009 in an effort to embarrass and discredit a Board member and to undermine the public’s confidence in the Board. In complaint Addendum B, the complainants clarify that “on February 1, 2010, Goldberg freely stated that one Board member had taped their telephone conversations. That member [Granata] countered Goldberg’s public revelation by publicly admonishing her for sharing what he believed was confidential information.” (Complaint at p. 3; Addendum B at p. 20) The complainants assert this is a violation of N.J.S.A. 18A:12-24.1(a), (e), (f) and (g).

In Count 3, the complainants assert that, beginning in June 2009, the respondent engaged in “antagonistic, retaliatory behavior” directed at the Superintendent due to her dissatisfaction with an educational decision the Superintendent made regarding her child. The complainants assert that the respondent’s actions were designed to embarrass and undermine the Superintendent’s authority and undermine the integrity of the Board. The complainants contend that, notwithstanding two avenues of appeal open to her, “the respondent chose to take matters into her own hands and ‘punish’ the Superintendent by questioning and criticizing almost every decision he made.” The complainants assert that respondent’s hostility toward the Superintendent “reached its peak in early to mid June of 2009.” In July 2009, the Superintendent initially announced his decision to retire, although he later signed a contract and informed the Board in February 2010 that “respondent’s behavior was partially to blame for his original decision to leave.” (Complaint at pp. 4-5) Complaint Addendum C includes a series of emails, together with complainants’ commentary. The complainants assert this is a violation of N.J.S.A. 18A:12-24.1(a), (c), (e), (f) and (i).

In Count 4 of the complaint, the complainants assert that the respondent, without the prior knowledge or consent of the Board, revised a curriculum resolution that was originally prepared for presentation by the Superintendent for approval, ultimately changing the meaning and intent. Complainants assert that the respondent was aware that the changes were contrary to the administration’s recommendations and that the changes were designed to benefit a small segment of the student population in which she has a particular interest. Complainants charge that this is another example of the respondent’s continual attempt to “work ‘behind the scenes,’ to operate outside of the scope of a Board member and to make educational decisions that fall within the purview of the Superintendent and his staff.” (Complaint at p. 6) Complaint Addendum D includes a copy of the Superintendent’s proposed resolution and the proposed

changes made by the respondent on December 11, 1009. The complainants assert this is a violation of N.J.S.A. 18A:12-24.1(a), (b), (c), (e), (f) and (i).

In Count 5 of the complaint, the complainants assert that the respondent has “on multiple occasions” pressured the Superintendent to share and discuss curricular and administrative recommendations with her privately prior to presenting them to the Board. The complainants contend that the respondent acts “with an air of superiority and sense of entitlement” and refuses to work as a body of the whole. According to the complaint, the Superintendent has informed the Board that the respondent “frequently ‘crosses the line’ and interferes with the operations of the District.” (Complaint at pp. 7-8) The complaint asserts that the Board “learned on or about February 1, 2010 of the extent of her actions.” (*Id.* at p. 8) Complaint Addendum E includes emails from the respondent to the Superintendent from July 2009 that were copied to either the Board president or to the full Board in July 2009. The complainants assert this is a violation of N.J.S.A. 18A:12-24.1(a), (b), (c), (e), (f) and (i).

In Count 6 of the complaint, the complainants assert that on at least two occasions, the respondent accepted complaints from members of the community and responded directly to them with her suggested resolution, thus depriving the Superintendent of his right to investigate and resolve the complaints. According to the complaint, when asked by the Board president to refrain from responding directly to parental complaints, the respondent refused. (Complaint at page 9) The complainants contend that the Board “learned on or about November 1, 2009 of the extent of her actions.” (*Id.*). Complaint Addendum F includes the parental emails addressed to the respondent as well as the responses thereto. The complainants assert this is a violation of N.J.S.A. 18A:12-24.1(c), (d), (e), (i) and (j).

In Count 7 of the complaint, the complainants assert that the respondent has attempted to influence and control the dissemination of information requested under the Open Public Records Act (OPRA). The documents requested pertained specifically to respondent’s actions as a Board member. According to the complaint, when the respondent indicated her desire to be involved in the OPRA process, the Board President notified the full Board of the appropriate process for handling OPRA requests and indicated that neither individual Board members nor the Board as a whole had the authority to dictate what information would be released under OPRA. The complainants charge that the respondent requested that the Board hold a closed session meeting to determine what information would be redacted and provided to the requesting organization. (Complaint at p. 10) The complaint states that the complainants “learned on or about December 9, 2009 of the extent of [respondent’s] actions.” (*Id.*) Complaint Addendum G includes the OPRA request made by the Alternative Press on August 6, 2009 and the email responses relative thereto. The complainants assert this is a violation of N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f) and (i).

In Count 8 of the complaint, the complainants assert that “on at least two occasions,” the respondent circumvented the Superintendent to apply undue pressure and influence on staff members (principals and supervisors). The complainants contend that the respondent “reportedly” made personal visits and telephone calls directly to the administrators, without the authorization of the Superintendent or building principal, for the purpose of discussing and influencing curricular initiatives. The complainants allege that in one instance the respondent

called on a curriculum supervisor and pressured the supervisor to implement courses that she believed should be implemented. When the supervisor refused to comply, the respondent approached the Superintendent and asked inappropriate personnel questions about the supervisor. Complainants also claim that the respondent pressured another core curriculum supervisor to change course sequencing. The supervisors reported that the respondent intimidated them and put them in an awkward position. The complainants do not provide dates for these incidents, but contend that the incidents occurred “two to three years prior” and the Board president “learned on or about November 1, 2009 of the extent of respondent’s actions.” (Complaint at pp. 11-12) The complainants assert this is a violation of N.J.S.A. 18A:12-24.1(a), (c), (d), (e), (f).

## ANALYSIS

### Failure to Meet Commission’s Filing Regulations: Allegations that are Time-Barred and/or Otherwise Deficient

As a preliminary matter, the Commission notes that the respondent contends that Counts 3, 5, 6, 7 and 8 of the complaint are time-barred, in that the Commission’s regulations provide a 180-day limitation period for filing a complaint. (Motion to Dismiss at p. 1) In their reply, the complainants argue that the limitation period is regulatory, rather than statutory, and the Commission has the authority to relax its rules, pursuant to N.J.A.C. 6A:28-1.8. (Complainants’ Response to Motion at p. 28) In this connection, the complainants point to efforts made to address the respondent’s conduct prior to filing a complaint. (Id. at p. 27)

The Commission’s regulations provide, in relevant part:

(a) Complaints shall be filed within 180 days of notice of the events which form the basis of the alleged violation(s). A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known.

1. For complaints alleging a violation of N.J.S.A. 18A:12-24.1(a), the complaint shall be filed within 180 days of the issuance of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures. (N.J.A.C. 6A:28-6.5(a))

The Commission recognizes that limitation periods of the type herein serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. Kaprow v. Berkley Township Bd. of Educ., 131 N.J. 571, 587 (1993). Thus, “notice of the alleged violation” must be interpreted in a manner that anticipates the reasonable diligence of the complainant(s). In addressing potential violations of the School Ethics Act, the Commission must balance the public’s interest in knowing of potential violations against the important policy of repose and a respondent’s right to fairness. The time limitations set forth in the regulations must be enforced

if it is to operate in a fair and consistent manner. Philips v. Streckenbein et al., Edgewater Park Bd. of Educ., C19-03 (June 24, 2003).

Further, although the Commission recognizes that this regulatory time period may be relaxed, in its discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice, N.J.A.C. 6A:28-1.8, it finds no extraordinary circumstances in this matter that would compel relaxation. Indeed, while the Commission acknowledges the complainants' efforts to address respondent's alleged improper conduct prior to filing this complaint, it finds that relaxation under these circumstances would simply negate the 180-day rule. Therefore, as discussed more fully below, Counts 3, 5, 6, and 7 are dismissed as untimely, and Count 8 is properly dismissed as it does not meet the minimal substantive requirements for complaints set forth in the Commission's regulations.

### Count 3

Count 3 alleges that the respondent retaliated against the Superintendent for an educational decision that was adverse to her son. In her motion, the respondent argues that the Superintendent's decision concerning her son occurred in May 2009 and the complainants' Addendum C shows that Board members "learned of it promptly thereafter \*\*\*." Respondent continues,

The emails that the complainants have helpfully provided in Addendum C demonstrate both their contemporaneous knowledge of this situation and their ability to have obtained additional information regarding this subject at the time. There was nothing they did not know or could not have learned about this incident in mid-2009, which is when they say that the respondent's questioning and criticizing of the Superintendent began. (Motion to Dismiss at pp. 5-6)

The complainants concur that "[t]he incident which sets off the chain of events leading to Charges 3 and 4 occurred in May 2009." (Complainants' Response to Motion at p. 19) Indeed, the complainants acknowledge that at the end of July 2009, the Mr. Granatir suggested that the Board sit down to discuss their roles, responsibilities and behavior. (Id. at p. 20, citing to Addendum C)

The Commission notes that the complaint at Addendum C includes a series of emails, together with complainants' commentary which specifically states that:

On or about July 27, 2009 Goldberg began to question personnel decisions that had been long approved for inclusion in the 2009-2010, criticize recommendations made regarding transcripts, and generally rant against the Superintendent. Goldberg's requests were shot out of the dark; it seemed to the majority of us that she was grasping at anything she could to challenge the Superintendent on. She also clearly stated that she believed that the Superintendent

should filter recommendations through her [Goldberg] prior to making recommendations to the full Board in public session. She sent the following emails to the Board president. (Complaint, Addendum C at pp. 24-25)

These emails date to July 2009. The complainants further recount that the Board President had a conversation with the respondent “sometime in June 2009” wherein the Board President informed the respondent of the Board’s “mounting concerns” with respect to the respondent’s “overly contentious treatment of the Superintendent.” (*Id.* at p. 29) Thus, although the complainants affirm that “[t]he Board learned on or about February 1, 2010 the extent of the respondent’s actions,” (complaint at p. 5), the Commission finds that the complainants’ own submissions show they had notice of the events which formed the basis of the alleged violations in Count 3 as early as July 2009 and failed to file their complaint within 180 days of that notice. Because the Commission finds no cause to relax the 180-day rule, Count 3 is dismissed.

#### Count 5

Here, the complainants assert that the respondent sought to privately share and discuss curricular administrative recommendations with the Superintendent. The respondent contends that providing suggestions to the Superintendent on an important issue is not unethical and the “facts” known to the complainants in this connection date back to July 2009; yet, rather than filing a timely complaint in a non-election year, the complainants waited eight months to advance this charge. (Motion to Dismiss at p. 7)

The Commission similarly notes that the complaint at Addendum E includes emails from the respondent to the Superintendent from July 2009 that were copied to either the Board president or to the full Board in July 2009. Thus, although the complainants affirm that “[t]he Board learned on or about February 1, 2010 the extent of the respondent’s actions,” (complaint at p. 8), the Commission finds that the complainants’ own submissions show they had notice of the events which formed the basis of the alleged violations in Count 5 as early as July 2009 and failed to file their complaint within 180 days of that notice. Because the Commission finds no cause to relax the 180-day rule, Count 5 is dismissed.

#### Count 6

The complainants herein allege that the respondent improperly responded to parental concerns. In this connection, the respondent argues that the emails show that “she contemporaneously apprised each Board member of what was happening. Her emails, and the referral to the Superintendent, are dated June 2009.” Thus, the respondent asserts that the complainants “chose to ignore this situation for nine months.” (Motion to Dismiss at p. 8)

The Commission similarly notes that the complaint at Addendum F includes the parental emails addressed to the respondent on June 17, 2009, which the complainants identify as “Situation 1” and June 19, 2009, which the complainants identify as “Situation 2.” Addendum F states that the two emails demonstrate the respondent’s proclivity “to respond to parental complaints and concerns by coming up with her own resolution, and suggesting that resolution to

both the parent and the Superintendent in the same email.” (Complaint Addendum F at p. 39) By email dated June 19, 2009, the Superintendent cautioned the Board about copying emails to parents and asked that no further emails be sent to the parents for the next 72 hours unless the Board President chose to respond on behalf of the Board. (*Id.* pp. 42-43) Later, the Board President reinforced the Superintendent’s message to the Board. (*Id.* at p 43) The respondent replied on the same date stating that she “respectfully disagreed” and would continue to copy parents on her requests to the Superintendent to respond. (*Id.* at p. 44) Thus, although the complainants affirm that “[t]he Board learned on or about November 1, 2009 the extent of the respondent’s actions,” (complaint at p. 9), the Commission finds that the complainants’ own submissions show they had notice of the events which formed the basis of the alleged violations in Count 6 as early as June 2009 and failed to file their complaint within 180 days of that notice. Because the Commission finds no cause to relax the 180-day rule, Count 6 is dismissed.

### Count 7

This count alleges that the respondent improperly attempted to control the dissemination of information requested pursuant to the OPRA. The respondent argues that this count is both frivolous and time-barred, in that her response to an OPRA request by a news agency reflects nothing more than “a spirited discussion of how to respond properly to the OPRA request.” (Motion to Dismiss at p. 9) This exchange of ideas dates back to August 2009. (*Id.* )

The Commission similarly finds that the complaint at Addendum G includes the OPRA request that was made by the Alternative Press on August 6, 2009. Board counsel was immediately notified of the request (Complaint Addendum G at p. 45); the full board was made aware of the request on August 10, 2009 (*Id.* at p. 48). It also appears that the Board President addressed the full Board by email on August 12, 2009 and specifically cautioned the respondent that it is the administration’s role to respond to the OPRA request. Thus, although the complainants affirm that “[t]he Board learned on or about December 9, 2009 the extent of the respondent’s actions,” (complaint at p. 10), the Commission finds that the complainants’ own submissions show they had notice of the events which formed the basis of the alleged violations in Count 7 in August 2009 and failed to file their complaint within 180 days of that notice. Because the Commission finds no cause to relax the 180-day rule, Count 7 is dismissed.

### Count 8

This count alleges that the respondent had improper interactions with District administrators. The respondent asserts that:

Charge Eight is nothing more than a desperation-based smear attempt. The complainants concede they are relying on hearsay information “reported to [unnamed] individual Board members by [unidentified] former staff” at some unspecified time. The complainants have chosen, in other words, to base this charge solely upon some innuendo and rumor from long ago. (Motion to Dismiss at p. 10)



In this connection, the Commission notes that a complaint must include, among other details, a statement, in individually numbered paragraphs, setting forth the specific allegation(s) and the facts supporting them which have given rise to the alleged violation(s) of the Act, *together with the date(s) of the occurrence(s) of each specific allegation.* N.J.A.C. 6A:28-6.3(b). This is not merely a technical requirement, but a substantive one, which permits the respondent a full and fair opportunity to respond to the claims against her. The Commission notes that Count 8, however, is devoid of the date(s) of the alleged incidents, as well as the identity of the supervisors with whom the respondent allegedly interacted, other than to assert that the respondent “reportedly made personal visits and telephone calls directly to the supervisors, without authorization of the Superintendent or building principal...” Indeed, it is not even clear from the complaint whether the incidents concerned former or current staff. (Complaint at p. 11). Further, as to the “date of occurrence,” the complainants merely state:

Although they occurred two to three years ago, the Board President – in a conversation with one of the aforementioned supervisors – learned on or about November 1, 2009 the extent of respondent’s actions \*\*\*.<sup>2</sup> (Id. at p. 12)

Yet, the complainants also contend that the respondent “openly criticized the Supervisor to at least one Board member.” (Id. at p. 11) Thus, even granting all inferences to the complainants, the Commission finds that Count 8 must be dismissed because it fails to meet the requirements in regulation.

#### Motion to Dismiss as to Counts 1, 2 and 4

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the complainants and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3.

Because the complainants have the burden to factually establish a violation of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a), see, N.J.A.C. 6A:28-10.8(b), in order to prevail on a Motion to Dismiss, the complaint must allege facts, which if true, would be sufficient to meet those standards. Thus, the question before the Commission was whether the complainants alleged facts which, if true, could support a finding that the respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (e), (f), (g), and (i) of the Code of Ethics for School Board Members, as alleged in Counts 1, 2 and 4.

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<sup>2</sup> The Commission finds the complainants’ choice of words significant, since, they repeatedly claimed to be unaware of “the extent of respondent’s actions,” as set forth in Counts 3, 5, 6 and 7, yet their own documentation contradicts the assertions.

Although each count is reviewed below, the Commission initially addresses the complainants' contention in Counts 1, 2 and 4 that the respondent violated N.J.S.A. 18A:12-24.1(a), which provides:

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.

The Commission's regulations require that:

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 the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures. N.J.A.C. 6A:28-6.4(a)1.

The complainants do not provide, nor indeed assert that, a final decision has been rendered with respect to this respondent from any court of law or administrative agency of this State finding that the respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondents brought about changes through illegal or unethical means. Therefore, the Commission finds that even if the facts set forth by the complainants in Counts 1, 2 and 4 are true, they are insufficient to support a finding of violation of N.J.S.A. 18A:12-24.1(a).

### Count 1

In Count 1 of the complaint, the complainants assert that on February 25, 2010, the respondent divulged confidential information that had been discussed in closed session to the Superintendent regarding his pending performance evaluation. The complainants assert this is a violation of N.J.S.A. 18A:12-24.1(a) (dismissed above), together with N.J.S.A. 18A:12-24.1(e), (f) and (g). N.J.S.A. 18A:12-24.1(e) provides:

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.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

The Commission finds that if the complainants can prove that the respondent took the actions alleged in Count 1 outside of the scope of her duties as a Board member and if the complainants can further establish that such actions “have frustrated the Superintendent and [the respondent’s] fellow Board members, compromised the integrity of the Board, and resulted in irreparable damage to the already fragile trust that the four remaining Board members and Superintendent had placed in the respondent \*\*\*,” such facts may support a finding of violation of N.J.S.A. 18A:12-24.1(e). Accordingly, the Commission denies the Motion to Dismiss this allegation.

The complainant further claims that the respondent violated N.J.S.A. 18A:12-24.1(f), which provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

The Commission’s regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(f) shall include evidence that the respondent(s) took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend. N.J.A.C. 6A:28-6.4(a)6.

Granting all inferences to the complainants, the Commission finds that the facts alleged by the complainants in Count 1, even if true, would not be sufficient to establish that the respondent surrendered her independent judgment to a special interest or partisan political group, or that she “used the schools” in order to acquire some benefit for herself, a member of his or her immediate family or a friend. The complainants’ assertion that respondent provided the evaluation ratings to the Superintendent in order to “curry personal favor with the Superintendent” is, admittedly, just the complainants’ belief. (Complaint at p. 2) Therefore, even accepting as true all facts alleged by the complainant, the Commission determines that these facts are insufficient to constitute a violation under N.J.S.A. 18A:12-24.1(f).

The complainants further contend in Count 1 that the respondent violated N.J.S.A. 18A:12-24.1(g), which provides:

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.

The Commission's regulations require that:

Factual evidence of a violation of the confidentiality provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that the respondent(s) 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 the respondent 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 the respondent(s) and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. N.J.A.C. 6A:28-6.4(a)7.

The Commission finds nothing in the facts set forth by the complainants in Count 1 that, if true, would support a finding that the respondent violated the "confidentiality" portion of N.J.S.A. 18A:12-24.1(g), particularly since the Superintendent has a seat on the Board, N.J.S.A. 18A:17-20(a) and where Addendum A of the complaint clarifies that the respondent shared the information with the Superintendent during a private meeting on February 25, 2010, which the Superintendent thereafter reported to the general Board on March 8, 2010. (Complaint, Addendum A at pp. 17-18) However, if the complainants can establish that the respondent "purposefully provided misinformation, skewing and inaccurately stating the preliminary numeric ranking that the Board members had assigned to the Superintendent [sic] evaluation" (complaint at p. 2), such facts may be sufficient to establish a violation of the "inaccurate information" clause of N.J.S.A. 18A:12-24.1(g). Accordingly, the Commission denies the Motion to Dismiss this allegation.

## Count 2

In Count 2, the complainants assert that during an open meeting on February 1, 2010, the respondent "deliberately and maliciously divulged confidential information" from a closed session meeting held in December 2009 in an effort to embarrass and discredit a Board member and to undermine the public's confidence in the Board. In the complaint Addendum B, the complainants state that "on February 1, 2010, Goldberg freely stated that one Board member had taped their telephone conversations. That member [Granata] countered Goldberg's public revelation by publicly admonishing her for sharing what he believed was confidential information." (Complaint at p. 3; Addendum B at p. 20) The complainants assert this is a violation of N.J.S.A. 18A:12-24.1(a) (dismissed above), together with N.J.S.A. 18A:12-24.1(e), (f) and (g), which are set forth above.

The Commission finds that these facts cannot establish a violation of N.J.S.A. 18A:12-24.1(e), where the complainants specifically contend that respondent's disclosure [that a fellow Board member had taped their telephone conversations] took place during a public meeting on February 1, 2010, and thus, could not be the kind of "private action" prohibited by N.J.S.A.

18A:12-24.1(e). Nor would these facts, if true, establish that the respondent surrendered her independent judgment to special interest or partisan political groups or used the schools for personal gain or for the gain of friends in violation of N.J.S.A. 18A:12-24.1(f).

With respect to the alleged violation of N.J.S.A. 18A:12-24.1(g), the complainants contend that because the Board had a discussion in closed session about Board member Granata's surreptitious taping of telephone conversations with the respondent, "[b]y policy and long standing practice, all such information is confidential." (Complainants' Reply to Motion at p. 16) The complainants point to no Federal or State law, regulation, court order or policy that would require that the surreptitious taping of Board members' telephone conversations be so protected (see, *e.g.*, the matters specifically excluded from public discussion by the Open Public Meetings Act, N.J.S.A. 10:4-12) other than the timing/location of that discussion. Even assuming, *arguendo*, that this closed session topic could be considered a "matter pertaining to the schools," the Commission is not persuaded that the School Ethics Act compels that this matter should be elevated to that which is "confidential" within the intent of the School Ethics Act *solely* because it was discussed in closed session. Accordingly, the Commission finds that granting all inferences to the complainants, the facts as set forth in Count 2, if true, would not establish a violation of N.J.S.A. (e), (f) and (g). The Commission, therefore, grants the respondent's Motion to Dismiss Count 2.

#### Count 4

In Count 4 of the complaint, the complainants assert that the respondent, without the prior knowledge or consent of the Board, revised a curriculum resolution that was originally prepared for presentation by the Superintendent for approval, ultimately changing the meaning and intent. Complainants assert that the respondent was aware that the changes were contrary to the administration's recommendations and that the changes were designed to benefit a small segment of the student population in which she has a particular interest. (Complaint at p. 6) Addendum D to the complaint includes a copy of the Superintendent's proposed resolution and the proposed changes made by the respondent on December 11, 2009. The complainants assert this is a violation of N.J.S.A. 18A:12-24.1(a) (dismissed above), 24.1(b), set forth below, 24.1(c), set forth below, 24.1(e), set forth above, 24.1(f), set forth above and 24.1(i), set forth below.

First, the Commission notes that N.J.S.A. 18A:12-24.1(b) provides:

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.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(b) shall include evidence that the respondent(s) willfully made a decision contrary to the educational welfare of children, or evidence that the

respondent(s) 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. N.J.A.C. 6A:28-6.4(a)2.

Even granting as true all facts alleged by the complainants, the Commission finds that these facts are insufficient to establish that the respondent willfully made a decision contrary to the educational welfare of children, or evidence that she 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. To the contrary, the complaint at Addendum D evidences that the respondent, in her revised resolution emailed to the Superintendent, was trying to ensure that there was no ambiguity in the proposed resolution; she states that a member of the public informed the Board that the proposal was confusing and “respectfully” asked that the Board “tweak the resolution to say exactly and precisely what we mean, so that there is no room for different interpretations.” (Complaint Addendum D at p. 32) Therefore, even accepting as true all facts alleged by the complainants, the Commission determines that these facts are insufficient to constitute a violation under N.J.S.A. 18A:12-24.1(b).

Next, the Commission considers the complainants’ contention that the respondent violated both N.J.S.A. 18A:12-24.1(c) and (e). N.J.S.A. 18A:12-24.1(c) states:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The Commission’s regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the respondent(s) took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent’s duty to:

- i. Develop the general rules and principles that guide the management of the school district or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- iii. Ascertain the value or liability of a policy. N.J.A.C. 6A:28-6.4(a)3.

As stated above, N.J.S.A. 18A:12-24.1(e) prohibits “private action” that is of such a nature that it may compromise the Board. It is noted, however, that in Marc Sovelove v. Paul Breda, Mine Hill Twp. Bd. of Ed., C49-05 (September 26, 2006), the Commission found that a Board member’s action cannot be both board action *and* private action. If a board member’s action is found to be private action it cannot constitute board action.

Here, the Commission finds that, even assuming as true the facts alleged in Count 4 by the complainants, such facts would not establish that the respondent took “private action” so as to implicate N.J.S.A. 18A:12-24.1(e). Neither does the Commission find that the complainants have offered specific facts which, if true, would establish that the respondent took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to her policy, planning and appraisal duties. In so finding, although the complainants state they had no “prior knowledge” of the revision (complaint at p. 6) their complaint at Addendum D shows contemporaneous knowledge, where the respondent in her email to the Superintendent states:

I have been trying to limit all communications to public meetings, but as you suggested I share these comments with the entire Board, before you comment, I am sharing with all. I do not intend to start a discussion, but given the complexity of the issue and the desire to pass the resolution Monday night, I am following your request to inform all, so we do not have to draft and redraft at the table before the vote Monday night. (Complaint Addendum D at p. 33)

Accordingly, the Commission finds that the facts alleged in the complaint at Count 4, if true, would not establish a violation of N.J.S.A. 18A:12-24.1(c) or (e).

Finally, N.J.S.A. 18A:12-24.1(i) states:

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

The Commission’s regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(i) shall include evidence that the respondent(s) took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties. N.J.A.C. 6A:28-6.4(a)9.

The Commission notes that it has found violations of N.J.S.A. 18A:12-24.1(i) where the comments made to or about the school employee were direct, confrontational and intimidating.<sup>3</sup> Here, the Commission finds that the complaint does not allege specific facts, which if true, would establish that the respondent took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties, as would be required to establish a violation of N.J.S.A. 18A:12-24.1(i). In this connection, the

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<sup>3</sup> See, I/M/O Charles Fischer, Eatontown Bd. of Ed., Monmouth County, C30-03 (February 24, 2004), Commissioner of Education Decision No. 157-04, April 12, 2004; I/M/O David Kanaby, Hillsborough Bd. of Ed., Somerset County, C53-05 (July 24, 2007), Commissioner of Education Decision No. 350-07, September 10, 2007; Brown et al. v. David Matthews, City of Englewood Bd. of Ed., Bergen County, C13-07 (October 27, 2008), *aff’d*, Commissioner of Education Decision No. 123-09A, April 14, 2009).

Commission refers to the language in the respondent's email (cited above) at Addendum D and underscores that it does not believe that the purpose of the Code of Ethics was to "allow the Commission to become involved in every dispute between a [board member] and [District personnel]." Spicer v. Della Vecchia et al., Pleasantville Charter School for Academic Excellence, C31-04 (February 22, 2005). Accordingly, even granting all inferences to the complainants, the Commission finds that the facts set forth in Count 4, if true, would not establish a violation of N.J.S.A. 18A:12-24.1(i). The Commission grants the respondent's Motion to Dismiss Count 4.

## REQUEST FOR SANCTIONS

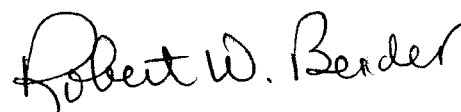
At its meeting on June 22, 2010, the Commission considered the respondent's request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission does not find that the complainants "[c]ommenced, used or continued [this matter] in bad faith, solely for the purpose of harassment, delay or malicious injury;" or that the complainants "knew, or should have known," that the matter "was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." N.J.A.C. 6A:28-1.2. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondents' request for sanctions against the complainants.

## DECISION

Based on the foregoing, the Commission grants the respondent's Motion to Dismiss, in full, Counts 2, 3, 4, 5, 6, 7 and 8. The Commission further grants the respondent's Motion to Dismiss the allegations that she violated N.J.S.A. 18A:12-24.1(a) and N.J.S.A. 18A:12-24.1(f) as set forth in Count 1, but denies the respondent's Motion to Dismiss the allegations that she violated N.J.S.A. 18A:12-24.1(e) and N.J.S.A. 18A:12-24.1(g) in Count 1. **The respondent is directed to file an answer to the remaining allegations in Count 1, in accordance with N.J.A.C. 6A:28-7.2, within 20 days of the mailing date set forth below.**

The Commission further finds that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2.

Pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to retain this complaint for hearing at a later date. Such hearing shall be conducted in accordance with the rules of the Office of Administrative Law. N.J.A.C. 6A:28-10.8(c).



Robert W. Bender  
Chairperson

Mailing Date: July 28, 2010



**Resolution Adopting Decision – C12-10**


**Whereas**, the School Ethics Commission has considered the complaint, the Motion to Dismiss filed on behalf of the respondent and the reply thereto; and

**Whereas**, at its meeting on June 22, 2010, the Commission determined to grant the respondent's Motion to Dismiss, in full, Counts 2, 3, 4, 5, 6, 7 and 8; the Commission further determined to grant the respondent's Motion to Dismiss the allegations that she violated N.J.S.A. 18A:12-24.1(a) and N.J.S.A. 18A:12-24.1(f) as set forth in Count 1, but deny the respondent's Motion to Dismiss the allegations that she violated N.J.S.A. 18A:12-24.1(e) and N.J.S.A. 18A:12-24.1 (g) in Count 1;

**Whereas**, at its meeting on June 22, 2010, the Commission found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2; and

**Whereas**, the Commission has reviewed and approved the decision memorializing said action;

**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 July 27, 2010.

  
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Joanne Boyle  
Executive Director