

***Before the School Ethics Commission***  
***Docket No.: C54-19***  
***Decision on Motion to Dismiss***

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**Matthew Schapiro,**  
***Complainant***

v.

**Mussab Ali, Gerald Lyons, Lorenzo Richardson, Marilyn Roman, and Sudhan Thomas,**  
**Jersey City Board of Education, Hudson County,**  
***Respondents***

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**I. Procedural History**

This matter arises from a Complaint that was filed on July 26, 2019, by Matthew Schapiro (Complainant), a former member of the Jersey City Board of Education (Board), alleging that Mussab Ali (Respondent Ali), Gerald Lyons (Respondent Lyons), Lorenzo Richardson (Respondent Richardson), Marilyn Roman (Respondent Roman), and Sudhan Thomas (Respondent Thomas) (collectively referred to as Respondents), then members of the Board, violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleges that Respondents violated *N.J.S.A.* 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code) in Counts 1–4.

On July 29, 2019, the Complaint was served on Respondents, via regular and certified mail, notifying them that charges were filed against them with the School Ethics Commission (Commission), and advising that they had twenty (20) days to file a responsive pleading. At its meeting on August 27, 2019, and following a request from Respondents, the Commission voted to place the above-captioned matter in abeyance due to the pendency of related matters. Thereafter, and at its meeting on February 25, 2020, and despite an objection from Respondents, the Commission voted to no longer hold the above-captioned matter in abeyance because the related matters had fully and finally concluded.

Following the Commission’s decision at its meeting on February 25, 2020, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss) on March 11, 2020, and Complainant filed a response to the Motion to Dismiss on March 31, 2020.

The parties were notified by correspondence dated May 11, 2020, that this matter would be placed on the Commission’s agenda for its meeting on May 19, 2020, in order to make a determination regarding the Motion to Dismiss. At its meeting on May 19, 2020, the Commission considered the filings in this matter and, at its meeting on June 23, 2020, 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(f) as alleged in Counts 1–4.

## II. Summary of the Pleadings

### A. The Complaint

By way of background, Complainant states that Respondent Ali, Respondent Lyons, Respondent Richardson, and Respondent Roman all have conflicts of interest with the Jersey City Education Association (JCEA). Respondent Thomas's conflict "is the subject of an action [pending] before the [Commission]."

According to Complainant, Marcia V. Lyles has served as the Jersey City School District's (District) Superintendent since August 2012, and her current contract expires July 2020. On January 31, 2019, "the JCEA publicly announced a Vote of No Confidence in Superintendent Lyles," and the JCEA members called for her resignation. At a Board meeting that evening (January 31, 2019), JCEA elected officers personally called for Superintendent Lyles's resignation. Respondents subsequently voted to dismiss Superintendent Lyles, "carrying out the explicit request of JCEA membership and leadership." Respondents then "voted to dismiss Superintendent Lyles on three (3) additional occasions – February 3, 2019; February 4, 2019; [and] February 11, 2019 – presumably in order to correct unspecified errors in each previous vote."

Based on the facts as set forth above, Complainant asserts, in Count 1, that Respondents violated *N.J.S.A.* 18A:12-24.1(f) on January 31, 2019, when they voted affirmatively on a pocket resolution introduced by Respondent Ali to dismiss Superintendent Lyles of her duties. According to Complainant, there was "no notice to board members or the public of this action" until it was introduced by Respondent Ali. Respondent Ali's pocket resolution followed the JCEA's vote of no confidence, and subsequent calls for her resignation. Complainant maintains that Respondents "voted to dismiss Superintendent Lyles on behalf of[,] or at the request of[,] the JCEA," and that the JCEA "is a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause."

In Count 2, Complainant alleges that Respondents violated *N.J.S.A.* 18A:12-24.1(f) on February 3, 2019, when, at an "Emergency Meeting," they "again voted to dismiss Superintendent Lyles of her duties" on behalf of, or at the request of, the JCEA. In Count 3, Complainant contends that Respondents violated *N.J.S.A.* 18A:12-24.1(f) on February 4, 2019, when, at a "Special Meeting," they "voted for the third time to dismiss Superintendent Lyles of her duties" on behalf of, or at the request of, the JCEA. Finally, in Count 4, Complainant asserts that Respondents violated *N.J.S.A.* 18A:12-24.1(f) on February 11, 2019, when, at "yet another 'Special Meeting,'" Respondents voted for the fourth time to dismiss Superintendent Lyles of her duties on behalf of, or at the request of, the JCEA.

Complainant argues that there "were no credible reasons for Superintendent Lyles's dismissal" as, under her leadership, the District was granted full return of local control, and "no allegations of any kind" had ever been levied against Superintendent Lyles by any member of the Board. As such, the evidence shows that her dismissal "came on behalf of, or at the request of, the JCEA."

## **B. Motion to Dismiss**

Following receipt of the Complaint, Respondents filed a Motion to Dismiss, and first dispute Complainant's claim that Superintendent Lyles was "fired." Respondents maintain that based on the minutes from the Board meeting on January 31, 2019, Superintendent Lyles was "relieved of her duties" or more appropriately, "placed on a fully-paid administrative leave."

Respondents further argue that Complainant did not allege "specific facts" to support his claim that Respondents "surrendered their independent judgment to an outside party." According to Respondents, Complainant "simply alleges that the Board voted to dismiss [the Superintendent] shortly following a 'no confidence' vote by the teachers union," that Respondents had no "legitimate reason" to dismiss her "because they never publicly expressed any," and that they; therefore, "must have acted solely to appease the union." Respondents maintain Complainant's logic is "flawed on its face." First, "under the so-called 'personnel exception' to the Open Public Meetings Act, Board members would have been precluded from discussing the reasons in public, ..., so no inference can be drawn from their failure to do so." Furthermore, the minutes provided by Complainant "contain numerous references to Board members' dissatisfaction with how the district is being run" (e.g. \$142 M negative swing in the fund balance, the Board not being able to negotiate or oversee negotiations, millions of dollars being awarded to vendors with no Board oversight, "billions" of dollars in payments and transfers between Board meetings and without pre-approval from the Board, etc.). Respondents assert that "these circumstances alone negate any inference that the Board could not possibly have had any reason to change administrative leadership other than appeasing the teachers['] union."

Based on the above, Respondents further argue that Complainant has failed "to meet the threshold of 'specific facts'" or failed to provide the "evidence required" to support his claim, and Respondents "should not be forced to endure the expense, inconvenience and emotional drain of defending" this Complaint and, therefore, the Complaint should be dismissed.

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

In response to the Motion to Dismiss, Complainant argues that "Respondents attempt to support the Motion to Dismiss with the argument that no claim has been stated in C54-19. This is untrue on its face." Complainant reaffirms that Respondents "took action, dismissing Dr. Lyles from her duties at the behest of a special interest group: the [JCEA] ... ." Complainant further argues that Respondents submitted a list of complaints related to Dr. Lyles, "as if this list clearly explains the full process and reasoning behind Dr. Lyles's dismissal ... It truly does not." Complainant maintains that Respondents' need to include the list of complaints "proves that the Complaint" contained a "statement of claim and evidence which supports that Respondents dismissed the Superintendent at the behest of a special interest group."

Complainant reasserts that "the introduction of the pocket resolution dismissing the Superintendent and subsequent vote[,] came after zero deliberative activity whatsoever." The Board "never discussed their disquiet with the Superintendent in any official capacity: not as a board, not with the Superintendent, and not with NJ education officials." Complainant notes that Respondents "surprisingly confirm" in their Motion to Dismiss that they did not deliberate over

the Superintendent, and then made “the odd excuse” that the law prevents the Board from discussing the Superintendent’s employment. Complainant argues that the Board could have discussed matters related to the Superintendent by properly issuing a *Rice* Notice.

Complainant further argues that if the matter was a “confidential personnel matter” as Respondents claim, and a *Rice* Notice was not issued, then Respondents’ list of complaints is a “clear violation of the Superintendent’s privacy as they are [literally] direct criticisms of the Superintendent’s job performance . . . .” Furthermore, Complainant maintains that there “was no succession plan in place,” the Executive County Superintendent had not approved anyone to take the Superintendent’s place, and there “was no state-approved [Superintendent] running for” the Board for over two months.

Complainant reaffirms that the “dismissal of a tenured Superintendent was done as a walk-on, pocket resolution with no discussion other than the chorus of the JCEA opposition to the Superintendent at the January 31, 2019, meeting and during previous meetings.” Complainant argues that the Board did not consult counsel regarding the resolution, did not review the Superintendent’s performance, did not review the Superintendent yearly, and dismissed the Superintendent based on the recommendations of the JCEA. According to Complainant, the “easily-refutable complaints in the President’s report . . . are nothing but post factum excuses . . . publicly issued by Respondent Thomas,” and violate the Superintendent’s right to privacy.

### **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 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 alleged sufficient facts which, if true, could support a finding that Respondents violated *N.J.S.A.* 18A:12-24.1(f) as asserted in Counts 1–4.

#### **B. Alleged Code Violations**

In the Complaint, Complainant contends that Respondents violated *N.J.S.A.* 18A:12-24.1(f) in Counts 1-4. This provision of the Code provides:

- f. 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.

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(6), factual evidence of a violation of ***N.J.S.A.* 18A:12-24.1(f)** shall include evidence that Respondents 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 Respondents used the schools in order to acquire some benefit for themselves, a member of their immediate families or a friend.

In Counts 1–4, Complainant argues that, on four different dates – January 31, 2019 (Count 1), February 3, 2019 (Count 2), February 4, 2019 (Count 3), and February 11, 2019 (Count 4) – Respondents violated *N.J.S.A. 18A:12-24.1(f)* because, without any credible reason(s), they affirmatively voted to dismiss Superintendent Lyles. According to Complainant, Respondents’ actions were carried out at “the explicit request of JCEA membership and leadership.” Respondents counter that they did not dismiss Superintendent Lyles, but rather placed her on paid administrative leave. In addition, Respondents argue that Complainant did not allege “specific facts” to support his claim that Respondents “surrendered their independent judgment to an outside party,” and failed to provide the “evidence required” to support his claim. Finally, the exhibits attached to the Complaint confirm, contrary to Complainant’s assertions, that the Board’s decision to place Superintendent Lyles on paid administrative leave was supported by several justifiable reasons.

After review of the Complaint, the Commission finds that even if the facts as alleged are proven true by sufficient credible evidence, they would not support a finding that Respondents violated *N.J.S.A. 18A:12-24.1(f)* on January 31, 2019 (Count 1), February 3, 2019 (Count 2), February 4, 2019 (Count 3), and/or February 11, 2019 (Count 4). Even if Respondents’ affirmative votes - on four (4) different dates – to “terminate” Superintendent Lyles’s employment followed a vote of no-confidence from the JCEA and followed calls from the JCEA leadership for Superintendent Lyles’s resignation, this does not mean, without more, that Respondents’ votes were taken “on behalf of, and at the request of,” the JCEA. Complainant principally cites to the timing of Respondents’ votes relative to the actions of the JCEA and its leadership as the basis for the Complaint. However, temporal proximity, without more, does not mean that Respondents’ actions were taken “on behalf, or at the request of” the JCEA. There is nothing in the Complaint alleging that any specific member of the JCEA, including its leadership, contacted any Respondent, individually or collectively, and requested his/her/their support and Board action relative to Superintendent Lyles’s employment. Taking action *because of* the concerns raised by the JCEA, as opposed to taking action *at the request of* the JCEA, are mutually exclusive, and the former does not support a violation as alleged. Therefore, the Commission finds that the alleged violations of *N.J.S.A. 18A:12-24.1(f)* in Counts 1–4 should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined 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(f)* as alleged in Counts 1–4.

#### **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(f)* as asserted in Counts 1–4.

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  
School Ethics Commission

Mailing Date: June 23, 2020

***Resolution Adopting Decision  
in Connection with C54-19***

***Whereas***, at its meeting on May 19, 2020, 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 May 19, 2020, 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(f) as alleged in Counts 1-4; and

***Whereas***, at its meeting on June 23, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on May 19, 2020; 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 certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on June 23, 2020.

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Kathryn A. Whalen, Director  
School Ethics Commission