

Before the School Ethics Commission
Docket No.: C55-18
Decision on Motion to Dismiss

Christine Skurbe.
Complainant

v.

Kathleen Kolupanowich,
Monroe Township Board of Education, Middlesex County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on August 23, 2018, by Christine Skurbe (Complainant), alleging that Kathleen Kolupanowich, a member and President of the Monroe Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(j) of the Code of Ethics for School Board Members (Code) in Count 1; *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 2; *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 3; *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 4; and *N.J.S.A.* 18A:12-24.1(a) of the Code in Count 5.

On August 29, 2018, the Complaint was sent to Respondent, via regular and certified mail, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading. On October 5, 2018, and after receiving a brief extension, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On October 24, 2018, Complainant filed a Response to the Motion to Dismiss and to the allegation of frivolous filing.

The parties were notified by correspondence dated November 19, 2018, that this matter would be placed on the Commission's agenda for its meeting on November 27, 2018, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on November 27, 2018, the Commission considered the filings in this matter and, at its meeting on December 18, 2018, the Commission voted to grant the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 1; *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 2; *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 3; *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 4; and/or *N.J.S.A.* 18A:12-24.1(a) of the Code

in Count 5. The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

II. Summary of the Pleadings

A. *The Complaint*¹

In Count 1, Complainant states that, during the 2017-2018 school year, the Middle School Parent Teacher Organization (PTO) President and then Vice President (Complainant) often could not agree on matters and, as a result, the "PTO Board" met with the middle school administration. Eventually, the middle school administration determined that they could no longer engage in discussions with the PTO, and sent a letter stating that the "school could no longer continue the relationship with the PTO due to the actions of the PTO President." The PTO President then sought the assistance of Respondent (Board President), who in turn involved the Superintendent and the Board Vice President, "in many activities of the PTO against the Middle School Administration, including the 7th grade dance, the 8th grade formal dance, and teacher appreciation events." According to Complainant, emails obtained as part of an Open Public Records Act (OPRA) request make it "apparent that [Respondent] was micromanaging the Superintendent and the Middle School administration." These emails also show that Respondent "instructed the Superintendent to utilize...the [Monroe Township School District (District)] email...for the use of the Middle School PTO President to send out emails to the entire school district regarding a PTO meeting for only Middle School PTO members."

Based on the above, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(c) because her involvement in PTO matters overstepped her boundaries as a Board member, and because she micromanaged the Superintendent and the middle school administration. Complainant also contends that Respondent used her title and position to undermine the Superintendent's decisions, and forced him to break District policy and issue emails for an outside school organization - the PTO - for the benefit of that group's President. Next, Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(d) because her involvement in PTO matters overstepped her boundaries as a Board member, and she micromanaged the Superintendent and the middle school administration. In addition, Complainant asserts that Respondent did not involve the other Board members in her decision, as Board President, to support the PTO President, and "empowered" the PTO President to give directives "over the Middle School Administration by making demands in an email addressed to the Superintendent with requirements that she felt he needed to fulfill." Finally, Complainant alleges a violation of *N.J.S.A.* 18A:12-24.1(j) because Respondent did not refer complaints from the PTO President to the Superintendent, but instead directed him how to handle the matter and/or waited for him to leave his position so she could direct the new Acting Superintendent to reverse the decision of the prior Superintendent and the "Middle School Administration."

¹ Complainant submitted a number of Exhibits, including e-mail messages, with her Complaint, the substance of which the Commission considers to be incorporated into, and a part of, the Complaint itself.

In Count 2, Complainant asserts that Respondent and the PTO President, “worked together against the decision” of the Superintendent and to “reverse a decision he had made on the date of the Middle School 7th grade dance.” Although the date had previously been approved by the building principal and by the Superintendent, and posted “to the district building use calendar,” Respondent and the PTO President “pressured” the Superintendent to change it and he did, in fact, change it. Complainant also notes that there was a claim by some, including Respondent, that pursuant to Board Policy, the building could not be used on the approved date for the seventh-grade dance because school was only in session for half a day. As a result, Complainant alleges Respondent violated *N.J.S.A. 18A:12-24.1(c)* because Respondent’s involvement overstepped her boundaries as a Board member, and micromanaged the Superintendent and the middle school administration. In addition, Respondent’s involvement undermined the Superintendent and the middle school administration. Complainant further alleges that Respondent’s actions, as Board President, were not known to, or supported by, the other members of the Board. Complainant further argues that Respondent violated *N.J.S.A. 18A:12-24.1(d)* because Respondent’s involvement overstepped her boundaries as a Board member, and micromanaged the Superintendent and the middle school administration. Respondent also made these decisions without discussing or otherwise involving the Board in her decisions.

In Count 3, Complainant asserts that at the Board’s “Buildings Grounds and Transportation Committee meeting on August 15, 2018,” a second parent group (formed by Complainant), the “Monroe Township Middle School Parent Staff Association” (MTMS PSA), was approved as a Class 1 user. As a Class 1 user, the MTMS PSA and its members are entitled to use the District buildings for their “events and meetings like every other parent group in the district.” After this approval, a Board member noted that the Board cannot question this designation, as the requirements are set forth in Board Policy/Regulation 7510. In addition, Ken Chiarella (a Board member) stated that the Board should not be involved in parent organization/group issues, and another Board member noted that it is “apparent that [Respondent] has been involved in the PTO/PSA issue at the Middle School and that she should not have been.” At this same meeting, Respondent expressed her belief that there should not be multiple parent groups and, therefore, did not support the MTMS PSA using the District’s buildings. In response to this statement, other Board members, including Mr. Chiarella, told Respondent “it is not up to the Board to say how many parent groups a school has,” and additionally noted that the Superintendent has the authority to classify a group as a Class 1 user. Based on these facts, Complainant alleges Respondent violated: (1) *N.J.S.A. 18A:12-24.1(a)* because she is “clearly not” following the Board Policy/Regulation (7510) that allows all parent organizations to be approved as Class 1 users, and because she tried to stand in the way of the Superintendent carrying out his duties; and (2) *N.J.S.A. 18A:12-24.1(d)* because Respondent’s involvement with the parent group issue overstepped her boundaries as a Board member, and she is micromanaging the Superintendent and the Middle School Administration by not allowing them to handle “the parent group situation.”

In Count 4, Complainant alleges that on February 22, 2018, Respondent sent an email to the former Superintendent (with a copy to another Board member) questioning his decision to allow all of the varsity hockey players to play in the championship game when they were absent from school on the same day. The former Superintendent provided Respondent with the rationale

for his decision (safety concerns). Respondent replied to this email and “made it apparent that she [Respondent] was upset” because Complainant’s child was able to play in the game. According to Complainant, if her child had not played in the game, the child of the Board member who was copied on the email would have been brought up from Junior Varsity to play. This Board member separately replied to the Superintendent, “It is unfortunate that one person in our district can cause so much trouble.” Complainant asserts that Respondent is referring to her (Complainant) because in emails that she (Complainant) obtained through an OPRA request, Respondent displayed a pattern of criticizing Complainant. Therefore, Complainant asserts that Respondent violated: (1) *N.J.S.A.* 18A:12-24.1(c) because Respondent overstepped her boundaries when she reprimanded the Superintendent for his decision without consulting the Board, and directed the Superintendent how to handle the complaint instead of simply referring it; and (2) *N.J.S.A.* 18A:12-24.1(j) because Respondent should have referred the Complaint to the Superintendent, and not criticized him or otherwise directed him how to handle the complaint.

In Count 5, Complainant asserts that Board Policy 0164 stipulates what items should appear on the agenda for a Board meeting. Based on this policy, the only public forum that is limited is Public Forum #3, as that is designated for “closed session items only.” Nonetheless, Complainant alleges that Respondent has been limiting the comments that can be made during Public Forum #1 to issues/matters on the agenda. At the meeting on May 23, 2018, Complainant addressed the Board and stated that Board Policy does not stipulate that Public Forum #1 is for agenda items only. Respondent disagreed, said there is another Board policy that addresses that issue, and told Complainant she would send her a copy of the policy. To date, Complainant has not received the information from Respondent, and Respondent continues to limit comments during Public Forum #1 to those that are related to agenda items. Based on these facts, Complainant alleges Respondent violated *N.J.S.A.* 18A:12-24.1(a) because she is “clearly” not following Board Policy, specifically Policy 0164, and is taking it upon herself to decide what the public can speak about during public forums.

B. *Motion to Dismiss and Allegation of Frivolous Filing*

Upon receipt of the Complaint, Respondent filed a Motion to Dismiss and also alleged that the Complaint is frivolous. In response to Count 1, Respondent asserts that the Complaint, and its attachments, do not contain any facts to support the assertion that Respondent took any Board action without consulting those affected or took any action unrelated to her duty as a Board member. None of the emails attached to the Complaint contain evidence that Respondent “directed” or “instructed” the former Superintendent in any way, or that she “reprimanded” him. Therefore, Respondent argues the allegations do not support a violation of *N.J.S.A.* 18A:12-24.1(c). The emails also do not provide any evidence that Respondent gave an “order” to school personnel, or became directly involved in the day-to-day administration of the District. Respondent’s difference of opinion with her fellow Board members and school officials does not support a violation of *N.J.S.A.* 18A:12-24.1(d); if anything, the evidence provided by Complainant demonstrates that Respondent engaged in conversations about District issues, but did not take any unilateral action. Finally, Respondent argues that the evidence provided by Complainant demonstrates that Respondent did refer PTO-related conflicts/complaints to the Superintendent; therefore, the allegations do not support a violation of *N.J.S.A.* 18A:12-24.1(j).

Regarding Count 2, Respondent argues that Complainant’s allegations do not contain any evidence that Respondent “overstepped the boundaries of a Board member and micromanaged the Superintendent and the Middle School Administration” by “pressuring” the Superintendent to change the date of the seventh-grade dance. To the contrary, the emails demonstrate that Respondent referred the seventh-grade dance matter to the Superintendent, and engaged in a dialogue about a contested issue. Therefore, Respondent argues there is no evidence that Respondent violated *N.J.S.A. 18A:12-24.1(c)* or *N.J.S.A. 18A:12-24.1(d)*.

In response to Count 3, Respondent argues that Complainant did not refer to, or provide a copy of, a “court or agency decision or order” as required to by *N.J.A.C. 6A:28-6.4(a)(1)* to support a violation of *N.J.S.A. 18A:12-24.1(a)*. In addition, the facts provided by Complainant do not provide any evidence that Respondent gave an “order” to school personnel, or became directly involved in the day-to-day administration of the District. Instead, the facts indicate that Respondent had a difference of opinion with her fellow Board members and/or the administration. Respondent further argues that Complainant has not presented “any actual facts” suggesting that Respondent has a “vendetta” against her, or that Respondent took any official action contrary to the Board’s consensus. Therefore, the allegations that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and *N.J.S.A. 18A:12-24.1(d)* should be dismissed.

Regarding Count 4, first, Respondent argues that the allegation that she violated *N.J.S.A. 18A:12-24.1(c)* regarding the hockey email (on February 22, 2018), is **time barred**. If it is not dismissed based on untimeliness, Respondent argues Complainant did not provide any evidence that Respondent “reprimanded” the Superintendent about this issue. At worst, the evidence indicates that Respondent “questioned” the former Superintendent regarding “his deviation from [D]istrict policies and procedures.” As a result, Respondent argues that the alleged violation of *N.J.S.A. 18A:12-24.1(c)* cannot be supported. Furthermore, Respondent argues that the evidence provided by Complainant demonstrates that Respondent did refer the concern about students’ participation in the hockey game to the Superintendent; as a result, the alleged violation of *N.J.S.A. 18A:12-24.1(j)* also cannot be supported.

In response to Count 5, Respondent argues that Complainant did not refer to, or provide a copy of, a “court or agency decision or order” as required to by *N.J.A.C. 6A:28-6.4(a)(1)* to support an alleged violation of *N.J.S.A. 18A:12-24.1(a)*.

Finally, Respondent alleges that Complainant is not fond of Respondent, and has brought this action to malign Respondent as “redress for a perceived, but factually unsupported, ‘vendetta’ against Complainant, her new PSA organization, and the former Superintendent.” Therefore, Respondent asserts this Complaint was filed in bad faith and solely for the purpose of harassment, and should be deemed frivolous.

C. Response to Motion to Dismiss and Allegation of Frivolous Filing

In her response to the Motion to Dismiss and allegation of frivolous filing, Complainant reiterates her initial allegations and, as to the argument that her claims in Count 4 are untimely, Complainant asserts that she did not have knowledge of the referenced emails until she received

them on August 21, 2018, in response to her August 10, 2018, OPRA request. As a result, Complainant asserts that the allegations in Count 4 are not time barred.

In addition to reasserting the claims in her Complaint, and resubmitting the email documentation submitted with her Complaint, Complainant asserts that, at the Board's meeting on August 22, 2018, a Board member introduced a "packet," that has now been labeled "the hate packet," during the discussion of the MTMS PSA. The "hate packet" included "letters written against [Complainant] that were filled with mistruths and outright lies as well as police reports that name [Complainant]." After questions were asked about how the packet was created, Respondent stated that she received the "hate packet" from Board counsel, and asked the Board Secretary to make copies to distribute to the Board members prior to the August 22, 2018, meeting. However, before the packets were distributed, Respondent first added her own emails to the packet. Complainant asserts this demonstrates that Respondent was "trying to influence Board members' votes" about the approval of the MTMS PSA's status as a Class 1 user.

Complainant also asserts that Respondent is posting negative comments about her (Complainant) on Facebook, and that while she was walking up to the microphone to speak at a Board meeting in October 2018, Respondent whispered "Mrs. Skurbe" to Michael Gorski, BA, who responded "piece of shit." Complainant asserts this "clearly" proves the animosity the Respondent has toward Complainant, and the disrespect that is shown to her in the District and as a parent.

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 facts which, if true, could support a finding that Respondent *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 1; *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 2; *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 3; *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 4; and/or *N.J.S.A.* 18A:12-24.1(a) of the Code in Count 5.

B. *Alleged Untimeliness*

In her Motion to Dismiss, Respondent argues that Count 4 (the hockey game) should be dismissed because the stated "date of occurrence" was February 22, 2018. Because Complainant did not file her Complaint until August 23, 2018, Respondent argues Count 4 is time barred and should be dismissed. Complainant counters that she was unaware of the substance of these emails until she received them on August 21, 2018, in response to an OPRA request; as a result, she argues Count 4 is not time barred.

The Commission's regulations provide a one hundred eighty (180) day limitation period for filing a complaint. More specifically, *N.J.A.C.* 6A:28-6.5(a) provides, 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*** (emphasis added).

Pursuant to *N.J.A.C.* 6A:28-6.5(a), the Commission must determine when Complainant knew of the events which form the basis for the allegations in Count 4, or when such events were made public so that one using reasonable diligence would know, or should have known, of such events. In its review of the pleadings, and reviewing the facts in the light most favorable to Complainant, the Commission determines that Complainant knew of the events which form the basis for the allegations in Count 4 as of **August 21, 2018**, which was the date she received responsive records/documents to her August 10, 2018, OPRA request, including the emails she relies upon in support of her Complaint.

In finding August 21, 2018, as the date Complainant knew of the events which form the basis for the allegations in Count 4 of her Complaint, the Commission recognizes that limitation periods 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 complainant(s). In addressing potential violations of the 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 the Commission is to operate in a fair and consistent manner. *Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County*, C19-03 (June 24, 2003).

With August 21, 2018, as the starting point for the one hundred eighty (180) day statute of limitations, Complainant had until February 18, 2019, to file the allegations in Count 4 of her Complaint. Because the Complaint was received by the Commission on August 23, 2018, which was well before the expiration of the period of limitations, the allegations in Count 4 are timely, and not time barred.

C. *Alleged Code Violations*

Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 1; *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 2; *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 3; *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 4; and *N.J.S.A.* 18A:12-24.1(a) of the Code in Count 5. 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.
- c. 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.
- d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.
- j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

1. Alleged Violation of N.J.S.A. 18A:12-24.1(a) (Count 3 and Count 5)

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

In **Count 3**, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(a) because she is “clearly not” following the Board policy that allows all parent organizations to be approved as Class 1 users, and because she tried to stand in the way of the Superintendent carrying out his duties in recommending that the MTMS PSA be recognized as a Class 1 user. Respondent counters that Complainant did not refer to, or provide a copy of, a “court or agency decision or order” as required to by *N.J.A.C.* 6A:28-6.4(a)(1) to support a violation of *N.J.S.A.* 18A:12-24.1(a).

After review of Complainant’s allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) as alleged in Count 3. As argued by Respondent, Complainant has not provided a copy of a final decision from any court of law or other administrative agency demonstrating that Respondent failed to follow or otherwise comply with Board Policy/Regulation 7510 when she publicly offered her opinion that there should not be multiple parent organizations. Absent the issuance of such final decisions, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) as alleged in Count 3. In addition, and to the extent that Complainant seeks a determination from the Commission that Respondent violated Board Policy/Regulation 7510, the Commission notes that such a determination falls outside the scope, authority, and jurisdiction of the Commission. Alleged violations of Board policies, regulations, and statutes fall under the jurisdiction of the Bureau of Controversies and Disputes. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(a) in Count 3 should be dismissed.

In **Count 5**, Complainant claims that by limiting the subjects/matters that the public can speak about during Public Forum #1 at the Board's meeting, Respondent is "clearly" not following Board Policy, specifically Policy 0164. Respondent states that Complainant did not refer to, or provide a copy of, a "court or agency decision or order" as required to by *N.J.A.C. 6A:28-6.4(a)(1)* to support an alleged violation of *N.J.S.A. 18A:12-24.1(a)*.

Based on its review of Complainant's allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)* as alleged in Count 5. As argued by Respondent, Complainant has not provided a copy of a final decision from any court of law or other administrative agency demonstrating that Respondent failed to follow or otherwise comply with Board Policy 0164 when she limited the subject of comments during public session (Count 5). Absent the issuance of such final decisions, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)* as alleged in Count 5. Further to the extent that Complainant seeks a determination from the Commission that Respondent violated Board Policy 0164, the Commission notes that such a determination falls outside the scope, authority, and jurisdiction of the Commission. Alleged violations of Board policies, regulations, and statutes fall under the jurisdiction of the Bureau of Controversies and Disputes. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(a)* in Count 5 should be dismissed.

2. Alleged Violation of *N.J.S.A. 18A:12-24.1(c)* (Counts 1-2 and Count 4)

As set forth in *N.J.A.C. 6A:28-6.4(a)(3)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(c)* shall include evidence that 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 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.

In **Count 1**, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(c)* because her involvement in PTO matters overstepped her boundaries as a Board member, and resulted in her micromanaging the Superintendent and the middle school administration. According to Complainant, Respondent used her title and position to undermine the Superintendent's decisions, and forced him to break District policy and issue emails for an outside school organization - the PTO - for the benefit of that group's President. Respondent argues that the Complaint, and evidence submitted in support thereof, do not contain any facts to support the assertion that Respondent took any Board action without consulting those affected or took any action unrelated to her duty as a Board member. In addition, none of the emails attached to the Complaint contain evidence that Respondent "directed" or "instructed" the former Superintendent in any way, or that she "reprimanded" him. Therefore, Respondent argues the allegations do not support a violation of *N.J.S.A. 18A:12-24.1(c)*.

After review of Complainant's allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(c)* as alleged in Count 1. There is no indication in the evidence, as argued by Complainant, that Respondent directed the Superintendent to take any specific action. In fact, in his email to Respondent (and others), the former Superintendent noted that, pursuant to her (Respondent's) "request," *he* "sent out a Falcon Express regarding the PTO elections." There is also no evidence that Respondent took any Board action to effectuate any policy or plan without consulting with the appropriate persons, or that she took any action unrelated to her role as Board President. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(c)* in Count 1 should be dismissed.

In **Count 2**, Complainant claims that Respondent violated *N.J.S.A. 18A:12-24.1(c)* because Respondent's involvement (in working with the PTO President to change the date of the seventh-grade dance) overstepped her boundaries as a Board member, and that she also micromanaged, and undermined, the decisions of the Superintendent and the middle school administration. Complainant further alleges that Respondent's actions, as Board President, were not known to, or supported by, the other members of the Board. Respondent counters that Complainant's allegations do not contain any evidence that Respondent "overstepped the boundaries of a Board member and micromanaged the Superintendent and the Middle School Administration" or that she "pressured" the Superintendent to change the date of the seventh-grade dance. Therefore, Respondent argues there is no evidence that Respondent violated *N.J.S.A. 18A:12-24.1(c)*.

Based on its review of Complainant's allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(c)* as alleged in Count 2. According to the emails provided by Complainant, there was clear discord surrounding the date of the seventh-grade dance, but there is no evidence that Respondent directed the Superintendent in any way, or that she "pressured" him to change the date. The fact that Respondent may have expressed her opinion about the issue, even if it was not in line with that of the administration, does not constitute a violation of the Act, or otherwise demonstrate that she took action violative of the Act. For these reasons, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(c)* in Count 2 should be dismissed.

In **Count 4**, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(c)* because Respondent overstepped her boundaries when she reprimanded the Superintendent for his decision (regarding the hockey game) without consulting the Board, and because she directed the Superintendent how to handle the complaint instead of simply referring it to him for whatever action he deemed appropriate. Respondent argues that Complainant did not provide any evidence that Respondent "reprimanded" the Superintendent about this issue. At worst, the evidence indicates that Respondent "questioned" the former Superintendent regarding "his deviation from [D]istrict policies and procedures." As a result, Respondent argues that the alleged violation of *N.J.S.A. 18A:12-24.1(c)* cannot be supported.

After review of Complainant's allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c) as alleged in Count 4. The emails provided by Complainant do not indicate, to any extent, that Respondent "directed" the Superintendent how to handle the complaint about students' participation in the hockey game. If anything, the emails evidence her concern with the fact that there is a policy or regulation that appears to not have been followed. Respondent did not direct the Superintendent to change his decision, but appeared to be seeking an explanation. Without any facts to suggest that Respondent took Board action unrelated to her duties as a Board member, or that she failed to consult with the appropriate persons, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(c) in Count 4 should be dismissed.

3. Alleged Violation of *N.J.S.A.* 18A:12-24.1(d) (Counts 1-3)

Pursuant to *N.J.A.C.* 6A:28-6.4(a)(4), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(d) shall include, but not be limited to, evidence that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.

In **Count 1**, Complainant claims that Respondent violated *N.J.S.A.* 18A:12-24.1(d) because her involvement in PTO matters overstepped her boundaries as a Board member, and resulted in her micromanaging the Superintendent and the middle school administration. In addition, Respondent did not involve the other Board members in her decision, as Board President, to support the PTO President. Respondent also "empowered" the PTO President to give directives "over the Middle School Administration by making demands in an email addressed to the Superintendent with requirements she felt he needed to fulfill." Respondent counters that the Complaint, and evidence submitted in support thereof, do not support an allegation that Respondent gave an "order" to school personnel, or became directly involved in the day-to-day administration of the District. Moreover, Respondent's difference of opinion with her fellow Board members and school officials does not support a violation of *N.J.S.A.* 18A:12-24.1(d).

Based on its review of Complainant's allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(d) as alleged in Count 1. None of the evidence provided by Complainant indicates that Respondent gave any kind of "order" or "directive" to the Superintendent, or indicate that she became involved in activities that are unrelated to her duties as a Board member. Instead, and to the extent that the PTO had questions or concerns, the emails provided by Complainant indicate that Respondent referred the matter to the Superintendent, and that the Superintendent took action as he deemed appropriate, which included speaking with the PTO President, other community members (including Complainant), and members of the administration. For these reasons, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(d) in Count 1 should be dismissed.

In **Count 2**, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(d) because Respondent's involvement (in working with the PTO President to change the date of the

seventh-grade dance) overstepped her boundaries as a Board member, and micromanaged the Superintendent and the middle school administration. Respondent also made these decisions without discussing or otherwise involving the Board in her decisions. Respondent argues that Complainant's allegations do not contain any evidence that Respondent "overstepped the boundaries of a Board member and micromanaged the Superintendent and the Middle School Administration" or that she "pressured" the Superintendent to change the date of the seventh-grade dance. To the contrary, the emails demonstrate that Respondent engaged in a dialogue about a contested issue. Therefore, Respondent argues there is no evidence that Respondent violated *N.J.S.A. 18A:12-24.1(d)*.

After review of Complainant's allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(d)* as alleged in Count 2. The Commission agrees that, based on the facts and evidence submitted, there is nothing to suggest that Respondent gave any kind of "order" or "directive" to the Superintendent to change the date of the dance, or that she became involved in activities that are unrelated to her duties as a Board member. The disagreement about the dance seems to relate, on at least some level, to the interpretation of a Board Policy/Regulation. To the extent that Respondent may have expressed her position on the interpretation of such a document, even if contrary to that of the administration, does not mean that she violated the Act. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(d)* in Count 2 should be dismissed.

In **Count 3**, Complainant claims that Respondent violated *N.J.S.A. 18A:12-24.1(d)* because Respondent's involvement with the parent group issue overstepped her boundaries as a Board member, and resulted in her micromanaging the Superintendent and the Middle School Administration instead of allowing them to handle "the parent group situation." Respondent counters that the facts provided by Complainant do not provide any evidence that Respondent gave an "order" to school personnel, or became directly involved in the day-to-day administration of the District. Instead, the facts indicate that Respondent had a difference of opinion with her fellow Board members and/or the administration. Respondent further argues that Complainant has not presented "any actual facts" suggesting that Respondent has a "vendetta" against her, or that Respondent took any official action contrary to the Board's consensus.

Based on its review of Complainant's allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(d)* as alleged in Count 3. Again, none of the evidence provided by Complainant indicates that Respondent gave any kind of "order" or "directive" to the Superintendent, or indicates that she became involved in activities that are unrelated to her duties as a Board member. Although Respondent may have expressed her opinion about the appropriateness of two parent groups, Respondent did not do anything to formally block or otherwise prevent the Board, or the administration, from recognizing this MTMS PSA. For these reasons, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(d)* in Count 3 should be dismissed.

4. Alleged Violation of *N.J.S.A. 18A:12-24.1(j)* (Count 1 and Count 4)

As set forth in *N.J.A.C.* 6A:28-6.4(a)(10), factual evidence of a violation of *N.J.S.A.* 18A:12-24.1(j) shall include evidence that Respondent acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint (i) prior to referral to the chief administrative officer, or (ii) at a time or place other than a public meeting and prior to the failure of an administrative solution.

In **Count 1**, Complainant contends that Respondent violated *N.J.S.A.* 18A:12-24.1(j) because she did not refer complaints from the PTO President to the Superintendent, but instead directed him how to handle the matter and/or waited for him to leave his position so she could direct the new Acting Superintendent to reverse the decision of the prior Superintendent and the “Middle School Administration.” Respondent argues that the evidence provided by Complainant demonstrates that Respondent did refer PTO-related conflicts/complaints to the Superintendent, and denies that she “directed” him how to handle the conflicts/complaints.

After review of Complainant’s allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(j) as alleged in Count 1. The Commission agrees that there are no facts offered by Complainant indicating that Respondent attempted to resolve a complaint before referring it to the Superintendent; instead, the emails confirm that Respondent did refer the issue to the Superintendent to “handle,” but did not direct him to handle the situation. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(j) in Count 1 should be dismissed.

In **Count 4**, Complainant claims that Respondent violated *N.J.S.A.* 18A:12-24.1(j) because Respondent should have referred the Complaint to the Superintendent (regarding the hockey game), and should not have criticized him or otherwise directed him how to handle the complaint. Respondent counters that the evidence provided by Complainant demonstrates that, as required by *N.J.S.A.* 18A:12-24.1(j), Respondent did refer the concern about students’ participation in the hockey game to the Superintendent.

Based on its review of Complainant’s allegations, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(j) as alleged in Count 4. The evidence provided by Complainant confirms that after she received a “complaint” from someone wanting to know “why absent students were allowed to participate in” the hockey game later than evening, Respondent contacted the Superintendent to report the concern. Contrary to Complainant’s assertion, the email from Respondent does not “direct” the Superintendent how to handle the complaint, but rather questions why there was a deviation from Board policy and regulation. For these reasons, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(j) in Count 4 should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that Complainant has not alleged facts sufficient to state a claim that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 1; *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(d) of

the Code in Count 2; *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 3; *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 4; and/or *N.J.S.A.* 18A:12-24.1(a) of the Code in Count 5. Therefore, the Commission **grants** Respondent's Motion to Dismiss in its entirety.

Notwithstanding the Commission's decision as set forth herein, the Commission reminds the parties that the service of a Board member should always be, above all else, to serve the needs of the students and the children of the District. As a result, there may be times when parents may offer their opinions and viewpoints about the actions and decisions of the Board. Even if those opinions and viewpoints are not in line with those of the Board, all members of the public should be treated with decency, and respect.

IV. Request for Sanctions

At its meeting on November 27, 2018, the Commission considered Respondent's request that the Commission find the Complaint frivolous, and impose sanctions pursuant to *N.J.S.A.* 18A:12-29(e). Despite Respondent's argument, the Commission cannot find evidence which might show that Complainant filed the Complaint in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainant knew or should have known that the Complaint was without any reasonable basis in law or equity, or that it 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. Therefore, at its meeting on December 18, 2018, the Commission voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

V. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission finds that Count 4 of the Complaint was timely filed but, nonetheless, **grants** the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 1; *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 2; *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 3; *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 4; and/or *N.J.S.A.* 18A:12-24.1(a) of the Code in Count 5. The Commission also finds that the Complaint is not frivolous, and denies Respondent's request for sanctions.

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that, for the reasons set forth above, this matter is dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court-Appellate Division. See, *New Jersey Court Rule* 2:2-3(a).

Robert W. Bender, Chairperson

Mailing Date: December 19, 2018

**Resolution Adopting Decision
in Connection with C55-18**

Whereas, at its meeting on November 27, 2018, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and the Response to the Motion to Dismiss and allegation of frivolous filing filed in connection with this matter; and

Whereas, at its meeting on November 27, 2018, the Commission discussed denying Respondent's request to dismiss Count 4 of the Complaint based on untimeliness; and

Whereas, at its meeting on November 27, 2018, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 1; *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 2; *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(d) of the Code in Count 3; *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(j) of the Code in Count 4; and/or *N.J.S.A.* 18A:12-24.1(a) of the Code in Count 5; and

Whereas, at its meeting on November 27, 2018, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at its meeting on December 18, 2018, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on November 27, 2018; and

Now Therefore Be It Resolved, that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on December 18, 2018.

Kathryn A. Whalen, Director
School Ethics Commission