

***Before the School Ethics Commission***  
***Docket No.: C18-19***  
***Decision on Motion to Dismiss***

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**Maria Emma Anderson,**  
***Complainant***

v.

**Mohammad Hussain,**  
**Prospect Park Board of Education, Passaic County,**  
***Respondent***

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**I. Procedural History**

This matter arises from a Complaint that was filed on March 18, 2019, by Maria Emma Anderson (Complainant), alleging that Mohammed Hussain (Respondent), a member and President of the Prospect Park Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* By correspondence dated March 19, 2019, April 17, 2019, and May 3, 2019, Complainant was notified that the Complaint was deficient, and required amendment before the School Ethics Commission (Commission) could accept her filing. On May 15, 2019, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3. The Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(h) and *N.J.S.A.* 18A:12-24.1(i) of the Code of Ethics for School Board Members (Code) in Count 1; violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) of the Code in Count 2; and violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) of the Code in Count 3.

On May 17, 2019, the Complaint was served on Respondent, via regular and certified mail, notifying him that charges were filed against him with the Commission, and advising that he had twenty (20) days to file a responsive pleading. On June 24, 2019, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On August 8, 2019, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated September 16, 2019, that this matter would be placed on the Commission's agenda for its meeting on September 24, 2019, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on September 24, 2019, the Commission considered the filings in this matter and, at its meeting on October 25, 2019, 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 Respondent violated *N.J.S.A.* 18A:12-24.1(h) and *N.J.S.A.* 18A:12-24.1(i) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) as argued in Count 2, and/or

violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) as contended in Count 3. 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***

In Count 1, Complainant states that Respondent, the Board President, "failed to follow the recommendation of the Chief Administrative Officer (CAO) to hire the most qualified and less expensive personnel, and withheld support and protection for school personnel in performance of their duties." According to Complainant, Respondent "also secured unwarranted privileges to other candidates for the advertised positions of School Board Legal Counsel and School Auditor, by revealing the amount of the bid and then requesting to table the hiring recommended by the [CAO]." Based on these facts, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(h) because he "blatantly disregarded" the recommendation of the CAO for "no particular reason but to push his own agenda, even to the risk of exposing the Board and the school to liability." Complainant further asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(i) because he "did not support school personnel who were doing their work diligently and in the proper performance [of their duties], namely the [CAO] and the School Board Attorney...."

In Count 2, Complainant states that Respondent allowed "political external influence by the Mayor...in the discharge of his official duties." As stated by Complainant, during a special meeting, Respondent "rejected all bids" submitted by law firms. However, the law firm "favored by the Mayor..." submitted an "incomplete" bid in that it did not include an hourly rate. By rejecting all bids, the law firm favored by the Mayor had extra time to "complete the [Request for Proposals (RFP)] accurately, with a lower price than the other law firm[s]." Based on these facts, Complainant asserts Respondent violated *N.J.S.A.* 18A:12-24.1(e) because he "availed himself to political tricks and surrendered his ethics and sound judgment by promising the [M]ayor to hire his favorite attorney in any way, shape or form, regardless of the compromising position he was putting the Board in," and violated *N.J.S.A.* 18A:12-24.1(f) because he "secured gain for a friend, the [M]ayor, [by] blindly following others to do anything to hire the favored lawyer."

In Count 3, Complainant states that, after all the bids were rejected at the special meeting noted above, Respondent announced that the "new RFP would be advertised in three different ways, major papers and website." Thereafter, Respondent "surrendered to political pressures" and "decided on his own to publish the RFP" on the school's website only. According to Complainant, this decision limited the choices (of law firms) and "tilt[ed] the playing field to secure" the hiring of the Mayor's favored law firm. Moreover, Complainant states that Respondent "did not include the CAO in the interview process of this law firm." Based on these facts, Complainant argues that Respondent violated *N.J.S.A.* 18A:12-24.1(e) "because of his position as Board President and his seniority on the Board, having been elected three times under the auspices of the mayor, [Respondent] influenced and compromised the whole Board," violated *N.J.S.A.* 18A:12-24.1(f) because Respondent "surrendered [his] independent judgment, he

secured personal gain in status as an unconditional friend of the [M]ayor and major helper to grant this last one's wishes," and violated *N.J.S.A.* 18A:12-24.1(f) because three new Board members did not understand "the legality" of Respondent's actions, and "were gullible to the advice of [Respondent] on how to vote." Therefore, Respondent "took a private action on moving and promoting the [M]ayor's agenda."

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

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and allegation of frivolous filing. In response to Count 1, Respondent argues that Complainant's (a former Board member and failed candidate for Mayor) allegations "fail as a matter of law because the requirement that the Board obtain the recommendation of the [CAO] in order to appoint certain 'personnel' explicitly does not apply when appointing a 'board auditor' and a 'board attorney.'" Furthermore, Respondent contends that "competitive contracting" rules do not apply when hiring certain professional providers (auditing and legal firms) and, therefore, the Board was not required to "appoint the lowest-bidding firms." Instead, the "Finance Committee was charged with negotiating with the proposing firms to determine which applicants offered the 'highest quality of services for a fair and competitive price.'" Respondent further argues that Complainant does not provide any facts demonstrating the existence of "external influence by the Mayor," what Respondent allegedly "promised" the Mayor, and what specific "personal gains in status" Respondent allegedly "secured in exchange" for his actions. Moreover, the majority of the Board, and not Respondent alone, was charged with the "appointment of the auditing and legal services firms." Therefore, Respondent submits that the alleged violations of *N.J.S.A.* 18A:12-24.1(h) and *N.J.S.A.* 18A:12-24.1(i) in Count 1 should be dismissed.

Regarding the allegations in Counts 2 and 3, Respondent argues that, as reflected in the Board's minutes, although there was a discussion about where to advertise the RFP, a vote was never taken as to how or where to advertise the RFP. Respondent further argues that the Complaint is "silent as to what 'external influence by the Mayor' allegedly drove Respondent's actions, what Respondent allegedly 'promised' the Mayor, and what 'personal gain in status' Respondent allegedly 'secured' in exchange." In short, the Complaint sets forth "no facts demonstrating the existence of any 'external influence,' 'promise,' or 'personal gain in status.'" In the absence of these necessary facts, Respondent argues that the alleged violations of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) in Count 2 and Count 3 should also be dismissed.

Finally, Respondent claims the Complaint is frivolous because Complainant should know, as a former Board member, that boards of education are not constrained by the Chief School Administrator's recommendation or by the competitive bidding process with respect to professional services contracts. Despite this knowledge, Respondent argues that Complainant made "broad allegations of wrongdoing without a single iota of factual support." In addition, this Complaint is one of three actions that Complainant has filed against various Board members. Respondent asserts that Complainant "harbors a gripe" because Respondent is a political rival and is seeking "retribution" from the SEC. Complainant's filing of her personal gripes is abusive of a system that was designed to address conduct in violation of the public trust, not personal disagreements. Therefore, the Complaint is frivolous and Complainant should be fined.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainant reaffirms the allegations in her Complaint, and reiterates that, “The process of the appointment of the legal and auditing services should be null and void, because the procedure was tainted by the failure to follow ethical norms on the part of [Respondent] as President and sponsor of the appointments.” According to Complainant, Respondent “exerted influence over three inexperienced new members, and forcefully orchestrated the change of legal and auditing services for the sole purpose of securing personal gain for his friend, and higher status for himself.”

Complainant additionally argues that, on his own, and without being authorized by the Board, a committee, or the Board President, Respondent requested the contracts of all professionals in December 2018. In requesting these contracts, Respondent’s intention was to change all professionals, “not for the sake of the school community, or for better and most economical, but to favor the firm” favored by the Mayor, who is Respondent’s “friend, mentor and benefactor who also funds his electoral campaigns.”

Complainant maintains that Respondent violated *N.J.S.A.* 18A:12-24.1(h) and *N.J.S.A.* 18A:12-24.1(i) because he “systematically disregarded the recommendations of the Chief Administrative Officer, expressing disdain for the expert and skilled advice to pursue his friend’s agenda instead.” Complainant argues that there is “no proof that the Board Finance Committee had met a single time to consider the pros and cons of any professional service.” Complainant provides that committees had not yet been formed and Respondent “took it upon himself” to hire and fire legal counsel, which also violates *N.J.S.A.* 18A:12-24.1(e).

Complainant further asserts that in the nine (9) years that Respondent was a Board member, he “never expressed any concern, doubt or issue with the legal firm [that Respondent was involved in firing]. However, Respondent used the three new Board members and “surrender[ed] all his independent judgment and blindly follow[ed] the mayor’s whims and wishes, of which the appointment of [the Mayor’s preferred law firm] was the first.” Complainant reaffirms Respondent’s actions violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f).

Finally, Complainant argues that her Complaint is not frivolous. Respondent favored a partisan agenda, surrendered independent judgment and disregarded the authority of the Board as a whole, which is “neither ethical or permissible.” Furthermore, Respondent attempted to “disparage [C]omplainant’s character as an easy way to leave [Respondent] free of charge and responsibility.” Complainant notes that she does not have any “ill will” for Respondent, and the Complaint is “limited to the business of being an ethical [Board] member.” Complainant maintains that Respondent “clearly abandoned all independent judgment, used the school for personal gain and prestige, and took a private action that may have compromised the [B]oard.”

### 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 Respondent violated *N.J.S.A. 18A:12-24.1(h)* and *N.J.S.A. 18A:12-24.1(i)* as alleged in Count 1, violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* as argued in Count 2, and/or violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* as contended in Count 3.

#### B. *Alleged Code Violations*

In the Complaint, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(h)* and *N.J.S.A. 18A:12-24.1(i)* in Count 1, and violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* in Count 2 and Count 3. These provisions of the Code provide:

e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

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.

h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

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

#### *Count 1*

In Count 1, Complainant states that Respondent, the Board President, “failed to follow the recommendation of the [CAO] to hire the most qualified and less expensive personnel, and withheld support and protection for school personnel in performance of their duties.” Based on these facts, Complainant alleges that Respondent violated *N.J.S.A. 18A:12-24.1(h)* because he “blatantly disregarded” the recommendation of the CAO for “no particular reason but to push his own agenda, even to the risk of exposing the Board and the school to liability,” and violated *N.J.S.A. 18A:12-24.1(i)* because he “did not support school personnel who were doing their work diligently and in the proper performance [of their duties], namely the [CAO] and the School Board Attorney....”

Respondent counters that “competitive contracting” rules do not apply when hiring certain professional providers (auditing and legal firms) and, therefore, the Board was not required to “appoint the lowest-bidding firms.” Respondent further argues that Complainant does not provide any facts demonstrating the existence of “external influence by the Mayor,” what Respondent allegedly “promised” the Mayor, and what specific “personal gains in status” Respondent allegedly “secured in exchange” for his actions. Therefore, Respondent submits that the alleged violations of *N.J.S.A. 18A:12-24.1(h)* and *N.J.S.A. 18A:12-24.1(i)* should be dismissed.

As set forth in *N.J.A.C. 6A:28-6.4(a)(8)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(h)* shall include evidence that Respondent acted on a personnel matter without a recommendation of the chief administrative officer.

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 Respondent violated *N.J.S.A. 18A:12-24.1(h)*. Complainant has not provided sufficient facts demonstrating that, with regard to the hiring of a board attorney and/or auditing firm, the Board needed the recommendation of the CAO. Even if the recommendation of the CAO was needed for securing these professional services, the Complaint does not allege that Respondent acted on these matters without the recommendation of the CAO, only that Respondent did not vote affirmatively for the firms/entities recommended by the CAO. Respondent’s decision not to vote in favor of the CAO’s recommendations is not a basis to find a violation of *N.J.S.A. 18A:12-24.1(h)*, as there is no requirement for any Board member to “rubber stamp” any and all recommendations made by the CAO. In addition, it was the vote of the entire Board, and not the sole vote of Respondent, that resulted in the appointment of a board attorney and/or auditing firm. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(h)* in Count 1 should be dismissed.

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

Based on its 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 Respondent violated *N.J.S.A. 18A:12-24.1(i)*. Complainant has not provided sufficient facts demonstrating that Respondent’s decision not to vote in favor of the CAO’s recommendations, assuming it was required, constituted “deliberate action” that undermined, opposed, compromised, or harmed the BA and/or the CAO in the proper performance of their duties. Board members, including Respondent, are free to vote on the appointment of those professional services firms/entities that they feel are most suited for the needs of the District. The decision not to vote for the firms/entities recommended or supported by the BA and/or the CAO is not tantamount to “deliberate action” that resulted in the “undermining, opposing, compromising, or harming” of these school officials – instead, it evidences the inherent right of Board members to vote on appointments as they deem appropriate. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(i)* in Count 1 should be dismissed.

## *Count 2*

In Count 2, Complainant states that, by rejecting all bids submitted by law firms at a special meeting, the law firm favored by the Mayor had extra time to “complete the [RFP] accurately, with a lower price than the other law firm[s].” Based on these facts, Complainant asserts Respondent violated *N.J.S.A. 18A:12-24.1(e)* because he “availed himself to political tricks and surrendered his ethics and sound judgment by promising the [M]ayor to hire his favorite attorney in any way, shape or form, regardless of the compromising position he was putting the Board in,” and violated *N.J.S.A. 18A:12-24.1(f)* because he “secured gain for a friend, the [M]ayor, [by] blindly following others to do anything to hire the favored lawyer.”

Respondent counters that the Complaint is “silent as to what ‘external influence by the Mayor’ allegedly drove Respondent’s actions, what Respondent allegedly ‘promised’ the Mayor, and what ‘personal gain in status’ Respondent allegedly ‘secured’ in exchange.” In short, the Complaint sets forth “no facts demonstrating the existence of any ‘external influence,’ ‘promise,’ or ‘personal gain in status.’” Without these facts, Respondent argues that the alleged violations of *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* should be dismissed.

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

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 Respondent violated *N.J.S.A. 18A:12-24.1(e)*. Complainant has not provided sufficient facts to establish the nature of the alleged “promise” between Respondent and the Mayor including, without limitation, when the promise was made, the terms of the promise, and the benefit or windfall that each would receive. Moreover, Complainant has not offered sufficient facts to establish how the claimed “promise,” assuming it was made, had the potential to compromise the Board, especially since it is the majority of the Board’s membership, and not Respondent in isolation, who can select the Board’s attorney. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(e)* in Count 2 should be dismissed.

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 Respondent 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 Respondent used the schools in order to acquire some benefit for himself, a member of his immediate family or a friend.

Based on its 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 Respondent violated *N.J.S.A. 18A:12-24.1(f)*. Although Complainant argues that Respondent chose the Mayor’s “favored lawyer” and this secured a “gain” for a friend, i.e., the Mayor, Complainant did not provide any facts indicating the specific nature of the gain or the benefit that the Mayor allegedly received as a result of Respondent’s singular vote. Once again, the

appointment of the Board's attorney is not determined by the vote of one member, but rather by the majority of the Board. The Commission further notes that Complainant has not offered any facts indicating that Respondent took any specific action to influence the vote of any other Board member on the choice of Board attorney. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(f)* in Count 2 should be dismissed.

### ***Count 3***

In Count 3, Complainant states that, after all the bids for Board attorney were rejected at a special meeting, Respondent announced that the "new RFP would be advertised in three different ways, major papers and website," but he ultimately "surrendered to political pressures" and "decided on his own to publish the RFP" on the school's website only. Based on these facts, Complainant contends that Respondent violated *N.J.S.A. 18A:12-24.1(e)* "because of his position as Board President and his seniority on the Board, having been elected three times under the auspices of the mayor, [Respondent] influenced and compromised the whole Board," violated *N.J.S.A. 18A:12-24.1(f)* because Respondent "surrendered [his] independent judgment, he secured personal gain in status as an unconditional friend of the [M]ayor and major helper to grant this last one's wishes," and violated *N.J.S.A. 18A:12-24.1(f)* because three new Board members did not understand "the legality" of Respondent's actions, and "were gullible to the advice of [Respondent] on how to vote." Therefore, Respondent "took a private action on moving and promoting the [M]ayor's agenda."

Respondent counters that, as reflected in the Board's minutes, although there was a discussion about where to advertise the RFP, a vote was never taken as to how or where to advertise the RFP. In addition, and as argued above, the Complaint is "silent as to what 'external influence by the Mayor' allegedly drove Respondent's actions, what Respondent allegedly 'promised' the Mayor, and what 'personal gain in status' Respondent allegedly 'secured' in exchange." In short, the Complaint sets forth "no facts demonstrating the existence of any 'external influence,' 'promise,' or 'personal gain in status.'" Consequently, the alleged violations of *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* should be dismissed.

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

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 Respondent violated *N.J.S.A. 18A:12-24.1(e)*. Complainant has not provided sufficient facts to establish that Respondent's decision to post the RFP in only one location exceeded the scope of his authority as a Board member (or was otherwise contrary to the Board's directive). According to the minutes from the February 8, 2019, meeting, the Board voted to issue RFPs, but did not vote on where to post the RFPs. Furthermore, Complainant has not pled sufficient facts explaining how the failure to post the RFP in multiple locations had the potential to compromise the Board. Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(e)* in Count 3 should be dismissed.



As indicated above, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(f)* shall include evidence that Respondent 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 Respondent used the schools in order to acquire some benefit for himself, a member of his immediate family or a friend. *N.J.A.C. 6A:28-6.4(a)(6)*.

Based on its 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 Respondent violated *N.J.S.A. 18A:12-24.1(f)*. Although, once again, Complainant claims that Respondent used his position as Board President to secure a gain for his friend, namely the Mayor, Complainant has not articulated the specific benefit that the Mayor received as a result of Respondent's individual action, which was one vote on an issue that was determined by the votes of the majority of the Board. In addition, Complainant has not sufficiently explained how and what Respondent purportedly did to directly influence the votes of the other Board members, and instead simply indicates that, as new Board members, they voted in line with the Board President. The reliance of "new" Board members on the advice or recommendation of their Board President is not, without more, evidence that Respondent did anything overtly, or covertly, unethical. As a result, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24.1(f)* in Count 3 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 Respondent violated *N.J.S.A. 18A:12-24.1(h)* and *N.J.S.A. 18A:12-24.1(i)* as alleged in Count 1, violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* as argued in Count 2, and/or violated *N.J.S.A. 18A:12-24.1(e)* and *N.J.S.A. 18A:12-24.1(f)* as contended in Count 3.

#### **IV. Request for Sanctions**

At its meeting on September 24, 2019, 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 that 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 October 25, 2019, the Commission voted to find the Complaint not frivolous, and to deny the 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 voted to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(h)* and *N.J.S.A. 18A:12-24.1(i)* as alleged in Count 1,

violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) as contended in Count 3. The Commission also voted to find that the Complaint is not frivolous, and to deny 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).*

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Robert W. Bender, Chairperson

Mailing Date: October 25, 2019

**Resolution Adopting Decision  
in Connection with C18-19**

*Whereas*, at its meeting on September 24, 2019, 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 submitted in connection with the above-referenced matter; and

*Whereas*, at its meeting on September 24, 2019, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(h) and *N.J.S.A.* 18A:12-24.1(i) as alleged in Count 1, violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) as argued in Count 2, and/or violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) as contended in Count 3; and

*Whereas*, at its meeting on September 24, 2019, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

*Whereas*, at its meeting on October 25, 2019, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on September 24, 2019; and

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

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 25, 2019.

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Kathryn A. Whalen, Director  
School Ethics Commission