

***Before the School Ethics Commission
Docket No.: C01-20
Decision on Motion to Dismiss***

**Richard Wyatt, Cameron Cox, John Campbell, and Emily Morgan,
Complainants**

v.

**Carmencita Pile,
Plainfield Board of Education, Union County,
Respondent**

I. Procedural History

This matter arises from a Complaint that was filed on January 8, 2020, by Richard Wyatt, Cameron Cox, John Campbell, and Emily Morgan (Complainants), members of the Plainfield Board of Education (Board), alleging that Carmencita Pile (Respondent), also a member of the 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(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i) in Count 1; *N.J.S.A.* 18A:12-2, *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) in Count 2; *N.J.S.A.* 18A:12-24.1(g) in Count 3; *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(e) in Count 4; and *N.J.S.A.* 18A:12-24.1(e) in Count 5.

On January 9, 2020, the Complaint was served on 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 January 31, 2020, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On February 24, 2020, Complainants filed a response to the Motion to Dismiss and allegation of frivolous filing.

The parties were notified by correspondence dated March 23, 2020, that this matter would be placed on the Commission's agenda for a special meeting on March 27, 2020, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its special meeting on March 27, 2020, the Commission considered the filings in this matter and, at its meeting on April 21, 2020, the Commission voted to grant the Motion to Dismiss in its entirety because Complainants failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i) as alleged in Count 1; violated *N.J.S.A.* 18A:12-2, *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) as argued in Count 2; violated *N.J.S.A.* 18A:12-24.1(g) as contended in Count 3; violated *N.J.S.A.* 18A:12-24.1(a),

N.J.S.A. 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(e) as asserted in Count 4; and/or violated *N.J.S.A.* 18A:12-24.1(e) as claimed 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*

In Count 1, Complainants assert that, over the course of the past twelve (12) months, and in violation of its Board Policy (9325), Respondent has repeatedly disrupted Board meetings, both in public and executive session, by deliberately: interrupting meetings with public outbursts and without being recognized by the Board President; insulting her fellow Board members through the use of vulgar epithets; accusing her fellow Board members (including Complainants) of a lack of personal integrity; repeatedly demanding reconsideration of a resolution after it was clear that the Board had no interest in such a resolution; impugning the reputation of her fellow Board members (including Complainants) through personal insults regarding their families; ignoring the repeated admonitions of the Board President for her (Respondent) to cease and desist her disruptive conduct; and causing the Board President to take recesses in order to refocus from Respondent's outbursts. Based on these actions, Complainants assert Respondent has violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i).

In Count 2, Complainants contend that, in addition to being a Board member, Respondent is also a member of the Board of Directors of HOPES Community Action Partnership, Inc. (HOPES), an organization that provides community services that responds to the social, educational, and training needs of individuals in an effort to overcome poverty. According to Complainants, HOPES has a "current and active contract" with the Board, providing services to the students in the District and in the Plainfield community. Complainants assert that Respondent's membership on HOPES and the Board simultaneously violates *N.J.S.A.* 18A:12-2; *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f).

In Count 3, Complainants contend that, in the past twelve months, Respondent has "repeatedly taken executive session discussions and either shared confidential information at the public portion of the meeting, or otherwise shared confidential information with other persons." Complainants are aware of these breaches because Respondent "either flagrantly speaks about confidential issues, or Complainants hear other persons who are not Board members repeat matters that they only could have learned from" Respondent. As such, Complainants argue that Respondent's repeated breaches of confidentiality violate *N.J.S.A.* 18A:12-24.1(g).

In Count 4, Complainants assert that, in "the past twelve months, and for more than a year before the past twelve months," multiple Board Presidents, Superintendents, Board counsel, and fellow Board members have "repeatedly attempted to enlighten, train, and support [Respondent] about correcting her behavior." Without exception, Respondent has "spurned any attempts to support her need to correct her abusive, disruptive and inappropriate conduct." Therefore, Complainants assert that Respondent's "history of such conduct" violates *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(e).

In Count 5, Complainants allege that Respondent “has embarked on a private campaign in an effort to re-name” a District school. To this end, and in an effort to convince the Board to rename a District school with the name she desires, Respondent “unilaterally [places] names on a petition of community members who would support her campaign,” and has spoken at Board meetings regarding this issue, and discussed the matter with the greater Plainfield community. Complainants note the Board has not sanctioned any of Respondent’s actions and, therefore, Respondent’s conduct violates *N.J.S.A. 18A:12-24.1(e)*.

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. As to Count 1, Respondent argues that Complainants “have failed to present any credible evidence that Respondent has violated the [Code].” More specifically, Respondent maintains that Complainants have “failed to cite and attach a copy of a final decision from a court of law or administrative agency demonstrating that Respondent failed to enforce the regulations, laws or rules of the State ...” and have not “adequately demonstrated that Respondent has brought about some changes through illegal or unethical conduct” in order to support a violation of *N.J.S.A. 18A:12-24.1(a)*. Respondent further maintains that Complainants “merely make several conclusory allegations that Respondent’s conduct during Board meetings was inappropriate.” Respondent further argues that Complainants “failed to provide any proofs which establish that Respondent failed to recognize the [Board’s] authority” nor have they “presented any evidence to demonstrate that Respondent made any personal promises or took any private action that either compromised or had the potential to compromise the [Board]” to support a violation of *N.J.S.A. 18A:12-24.1(e)*. Furthermore, Complainants’ claim that Respondent “disturbed Board members at [B]oard meetings” and, therefore, harmed school personnel is without merit because Board members are not “school personnel.” Respondent maintains that, despite being required to establish a violation of *N.J.S.A. 18A:12-24.1(i)*, Complainants “cannot satisfy their burden of proof without a factual basis demonstrating how Respondent ‘took deliberate action which resulted in undermining, opposing, compromising or harming *school personnel* in the proper performance of their duties.’” For these reasons, Count 1 should be dismissed.

Regarding Count 2, Respondent argues that Complainants have not presented any evidence that “Respondent’s service as a [B]oard member for HOPES has led to an incompatible conflict of interest with her duties as a member of the [Board].” Respondent asserts that her “role as a volunteer board member for HOPES does not interfere in any way with her current duties as an elected [Board] member.” Respondent notes that she does not receive a “financial or personal benefit” from her role with HOPES, and Complainants did not “reference any substantial conflicts that arose due to Respondent’s involvement with HOPES since 2016.” Respondent contends that Complainants have “failed to state a valid claim under *N.J.S.A. 18A:12-2.*” Respondent further argues that Complainants “have failed to assert any allegations ... which connects Respondent to any improper conduct or improper votes taken in relation to her roles as board member for the organization” nor have they “identified any conduct on the part of Respondent that has created a conflict of interest for her in her dual roles” According to Respondent, Complainants “simply lodge conclusory allegations ... and failed to establish a violation of *N.J.S.A. 18A:12-24(a)*.” In addition, the Complaint is “completely devoid of any information as to what privileges or advantages Respondent attempted to secure in her role ...”

and does not support a violation of *N.J.S.A.* 18A:12-24(b). Complainants have also failed to “cite any specific actions that Respondent took where [she] had personal involvement and resulted in [her] benefitting from participating in such actions” to support a violation of *N.J.S.A.* 18A:12-24(c). Complainants have also failed to show how Respondent’s service related to HOPES affects her judgment as a Board member and have not demonstrated how her duties overlap and, therefore, have not supported how Respondent violated *N.J.S.A.* 18A:12-24(d). As to a violation of *N.J.S.A.* 18A:12-24(e), Complainants have failed to provide any evidence to support how “Respondent, or any members of her family, any business organization in which she has an interest solicited or accepted ... for the purpose of influencing them directly or indirectly, in the discharge of Respondent’s duties.”

In addition, and for the same reasons noted above, Complainants failed to provide evidence to support a violation of *N.J.S.A.* 18A:12-24.1(a) (Complainants have failed to cite to and attach to their complaint a copy of a final decision from a court of law or administrative agency demonstrating that Respondent failed to enforce the regulations, laws, or rules of the State Board of Education or a court order pertaining to schools) and *N.J.S.A.* 18A:12-24.1(e) (Complainants have provided no factual basis whatsoever to prove that Respondent took action beyond the scope of her duties, and that such action had the potential to compromise the Board). As to a violation of *N.J.S.A.* 18A:12-24.1(f), Respondent argues that Complainants “failed to demonstrate that Respondent used her [Board] position for personal gain or for the gain of friends,” or specified any individual for whom Respondent secured a benefit. For these reasons, Count 2 should be dismissed.

Respondent does not address the factual assertions or the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in Count 3.

Regarding Count 4, Respondent argues that the allegations relating to *N.J.S.A.* 18A:12-24.1(a) and *N.J.S.A.* 18A:12-24.1(e) should be dismissed because “Complainants simply recycle the arguments made in [Count 1] into [Count 4].” In addition, and regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(d), Complainants have “failed to identify or attach any evidence in their [C]omplaint that would demonstrate that Respondent gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel ...” and, therefore, “it is unclear what function Respondent became involved in which was the responsibility of school personnel.” Accordingly, Count 4 should be dismissed.

As to Count 5, Respondent argues that Complainants have failed to provide any evidence that Respondent “failed to recognize the [Board’s] authority or that she made personal promises or took any private action that would compromise the [Board].” Furthermore, Complainants failed to demonstrate that Respondent “engaged in any type of improper conduct.” As such, the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 5 should also be dismissed.

In summary, Respondent asserts that the Complaint should be dismissed in its entirety because Complainants “have woefully failed to present any evidence that Respondent has violated” the Act, and sanctions should be imposed on Complainants.

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

In response to the Motion to Dismiss and allegation of frivolous filing, Complainants reaffirm their allegations (and reincorporate the allegations set forth in their Complaint), and argue they have alleged facts which, if true, could establish violations of the Act.

As to Count 1, Complainants clarify that Respondent's "inappropriate behavior and blatant disregard for Board policies and Robert's Rules of Order clearly amount to 'unethical procedures.'" According to Complainants, Respondent "failed to carry out her duties through legal and ethical procedures" and, therefore, violated *N.J.S.A. 18A:12-24.1(a)*. Furthermore, Respondent "repeatedly insulted her fellow Board members as well as the families of Board members" and, as such, "took action beyond the scope of [] her duties such that, by its nature, had the potential to compromise the board." Complainants further clarify that Respondent's "vulgar accusations" during a public meeting, had the potential to "damage the public confidence in the Board ..." and "clearly amount to action that may compromise the Board." Therefore, Respondent "took private action beyond the scope of her authority as a board member," in violation of *N.J.S.A. 18A:12-24.1(e)*. In addition, Respondent's actions interfered with the Board's discharge of its duties because the Board President needed to take a recess in order to "refocus from Respondent's outbursts." Respondent's behavior "frustrated or thwarted the Board's ability to efficiently convene a board meeting and vote on important school matters, thereby compromising or harming school personnel." Complainants also reaffirm Respondent violated *N.J.S.A. 18A:12-24.1(f)* and accordingly, Count 1 should not be dismissed.

Regarding Count 2, Complainants reaffirm their allegations (and reincorporate the allegations set forth in their Complaint), and defend that Respondent "incorrectly asserts, that because [she] does not receive any financial benefits from volunteering for HOPES, there cannot be any violations under the Act." However, *N.J.S.A. 18A:12-24(d)* provides, in part, "... any employment or service, whether compensated or not ..." which might "reasonably be expected to prejudice [her] independent of judgment in the exercise of [her] official duties." Furthermore, Complainants note the Board's contract with HOPES began on July 1, 2019. Respondent's dual roles "can hardly be viewed as disinterested or inspiring public confidence in the integrity of [B]oard members." Therefore, Complainants assert Count 2 should not be dismissed.

As to Count 3, Complainants note that Respondent did not address Count 3 and, therefore, requests that each allegation in this Count be admitted.

Regarding Count 4, Complainants reassert their allegations (and reincorporate the allegations set forth in their Complaint), and maintain that Respondent's "conduct interferes with the Board's ability and statutory duty to ensure that the District is well run." Complainants reaffirm that the Complaint has set forth sufficient facts to establish violations of the Act as set forth in this Count.

As to Count 5, Complainants reaffirm their allegations (and reincorporate the allegations set forth in their Complaint), and maintain that Respondent violated *N.J.S.A. 18A:12-24.1(e)* by "embarking on a private campaign to re-name a [District] school." Respondent "unilaterally pursu[ed] personal interests and discuss[ed] the matter outside of board meetings," which

constitutes “private action that may compromise the board.” As such, Count 5 should not be dismissed.

Finally, Complainants argue that Respondent “simply claims, without support or reasoning ...” that the Complaint is frivolous, and does not “allege that Complainants filed the [C]omplaint in bad faith” Therefore, Complainants request that Respondent’s Motion to Dismiss and request for sanctions be denied.

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 (Complainants), 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 Complainants have alleged sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i) as alleged in Count 1; violated *N.J.S.A.* 18A:12-2, *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) as argued in Count 2; violated *N.J.S.A.* 18A:12-24.1(g) as contended in Count 3; violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(e) as asserted in Count 4; and/or violated *N.J.S.A.* 18A:12-24.1(e) as claimed in Count 5.

B. Alleged Prohibited Acts

In the Complaint, Complainants allege that Respondent violated *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), and *N.J.S.A.* 18A:12-24(e) in Count 2. These provisions of the Act provide:

- a. No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;
- b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;
- c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal

involvement that is or creates some benefit to the school official or member of his immediate family;

- d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;
- e. No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

C. Alleged Code Violations

In the Complaint, Complainants assert that Respondent violated *N.J.S.A.* 18A:12-24.1(a) (Counts 1-2, and 4), *N.J.S.A.* 18A:12-24.1(d) (Count 4), *N.J.S.A.* 18A:12-24.1(e) (Counts 1-2, and 4-5), *N.J.S.A.* 18A:12-24.1(f) (Count 2), *N.J.S.A.* 18A:12-24.1(g) (Count 3), and *N.J.S.A.* 18A:12-24.1(i) (Count 1). These provisions of the Code of Ethics for School Board Members (Code) state:

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

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

Count 1

Complainants allege that, “over the course of the past twelve (12) months,” Respondent has repeatedly and unabashedly engaged in inappropriate, offensive, and unprofessional conduct/action, all of which have continued despite repeated admonishment from the Board President. Because of her unrelenting conduct/action, Complainants allege that Respondent has violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i). Respondent counters that Complainants have failed to articulate the necessary facts to establish violations of *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and/or *N.J.S.A.* 18A:12-24.1(i).

As set forth in *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.

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(a). More specifically, the Commission finds that, despite being required by *N.J.A.C.* 6A:28-6.4(a)(1), Complainants have not provided **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent’s conduct violated a specific law, rule, or regulation of the State Board of Education. Absent such a final decision, and because there is no factual support for a determination that Respondent’s inappropriate behavior/actions at Board meetings “brought about changes” through illegal or unethical procedures, the Commission finds that there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a). Therefore, and because its review is limited to the facts as alleged, the alleged violation of *N.J.S.A.* 18A:12-24.1(a) Count 1 should be dismissed.

Pursuant to *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 her duties such that, by its nature, had the potential to compromise the board.

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(e). Although it is clear that Complainants believe Respondent has consistently engaged in unacceptable behavior, Complainants have not presented *specific* facts which could establish that she made *specific* personal promises or took *specific* action beyond the scope of her duties. While it is reasonable for Complainants to expect all Board members to demonstrate appropriate decorum, there is no ethical requirement or legal mandate for board members to behave in such a fashion. It is only when the conduct/actions of school officials violates a provision of the Act that it can be actionable by the Commission. As such, and without the necessary predicate facts detailed in the Complaint, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 1 should be dismissed.

As set forth in *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.

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(i)*. Respondent's purported failure to cease the conduct/actions complained of by Complainants does not, based on the facts enumerated in the Complaint, constitute undermining, opposing, compromising, or harming school personnel. Although Respondent's conduct is clearly objectionable to Complainants, it does not amount to a violation as pled in the Complaint. Consequently, 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

Complainants argue that, in addition to being a Board member, Respondent is also a member of HOPEs – an organization that provides community services that responds to the social, educational, and training needs of individuals in an effort to overcome poverty – and HOPEs has a “current and active contract” with the Board. As such, Complainants argue that Respondent's simultaneous membership on HOPEs and the Board violates *N.J.S.A. 18A:12-2*; *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(d)*, *N.J.S.A. 18A:12-24(e)*, *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(f)*. Respondent counters that Complainants have not presented any and/or sufficient factual evidence to support the alleged violations of the Act in this Count.

As to the alleged violation of *N.J.S.A. 18A:12-2*, the Commission notes that its authority is limited to enforcing the Act, a set of minimum ethical standards by which all school officials must abide. As a result, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any pleadings, motion papers, or documents of any kind relating to any matter that does not arise under the Act, *N.J.A.C. 6A:28-1.4(a)*. With this in mind, and to the extent that Complainants are seeking a determination from the Commission that Respondent's simultaneous membership on the Board and HOPEs violates *N.J.S.A. 18A:12-2*, same falls outside the scope and jurisdiction of the Commission, but may be pursued in another forum.¹ As such, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-2* in Count 2 should be dismissed.

To credit the alleged violation of *N.J.S.A. 18A:12-24(a)*, the Commission must find evidence that Respondent, or a member of her immediate family, has an interest in a business

¹ More specifically, if Complainants believe that Respondent is interested “directly or indirectly” in any contract or claim against the Board and, therefore, has an inconsistent interest with her membership on the Board, Complainants may file a Petition of Appeal with the Commissioner of Education through the Bureau of Controversies and Disputes.

organization, or engaged in any business, transaction, or professional activity which was in substantial conflict with the proper discharge of her duties in the public interest.

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(a)*. Other than serving as a member of HOPES, Complainants have not offered any facts to establish that Respondent, or a member of her immediate family, has an “interest”² in HOPES, or explained how her membership on HOPES, in and of itself, is in substantial conflict with the proper discharge of her duties as a Board member. Although it may limit her Board activities in certain respects, the fact that HOPES may have a contract with the Board does not mean, without more, that Respondent’s involvement with HOPES violates *N.J.S.A. 18A:12-24(a)*. Therefore, the Commission finds that this allegation in Count 2 should be dismissed.

In order to credit the alleged violation of *N.J.S.A. 18A:12-24(b)*, the Commission must find evidence that Respondent used or attempted to use her official position to secure an unwarranted privilege, advantage or employment for herself, members of her immediate family, or “others.”

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(b)*. In their Complaint, Complainants have neither claimed nor presented any facts which suggest, let alone prove, that Respondent used her position as a Board member to secure a specific and identifiable unwarranted privilege, advantage, or employment for herself or for anyone else. Consequently, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(b)* in Count 2 should be dismissed.

To credit the alleged violation of *N.J.S.A. 18A:12-24(c)*, the Commission must find evidence that Respondent acted in her official capacity in a matter where she, or a member of her immediate family, had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity, or in a matter where she had a personal involvement that created some benefit to her, a member of her immediate family, or to “others.”

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(c)*. Again, other than noting the existence of a contract between the Board and HOPES, Complainants have not cited any alleged instance of Respondent acting in her official capacity (as a Board member) in a matter where she or a member of her immediate family had a direct or indirect financial involvement, or acting in a matter in which she had a personal involvement that created some benefit to her, a member of her immediate family, or an “other.” Therefore, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(c)* in Count 2 should be dismissed.

² “Interest” means the ownership or control of more than 10% of the profits, assets, or stock of a business but shall not include the control of assets in a labor union.

In order to credit the alleged violation of *N.J.S.A. 18A:12-24(d)*, the Commission must find evidence that Respondent engaged in employment or service, regardless of whether compensated, which might reasonably be expected to prejudice her independence of judgment in the exercise of her official 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(d)*. Complainants have failed to articulate how Respondent's membership on HOPES, without more, might reasonably be expected to prejudice her independence of judgment in the overall exercise of her official duties as a member of the Board. As such, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(d)* in Count 2 should be dismissed.

To credit the alleged violation of *N.J.S.A. 18A:12-24(e)*, the Commission must find evidence that Respondent, or member of her immediate family, or business organization in which she has an interest, solicited or accepted any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing her, directly or indirectly, in the discharge of her official duties.

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(e)*. There are absolutely no facts in the Complaint which could possibly support a contention that Respondent, a member of her immediate family, or a business organization in which she has an "interest," solicited or accepted any "thing" of value with the understanding that such "thing" was given or offered to influence her in the performance of her duties as a Board member. Consequently, the Commission finds that the alleged violation of *N.J.S.A. 18A:12-24(e)* in Count 2 should be dismissed.

As set forth above, 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. *N.J.A.C. 6A:28-6.4(a)(1)*.

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(a)*. In this regard, the Commission finds that, despite being required by *N.J.A.C. 6A:28-6.4(a)(1)*, Complainants have not provided **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent's simultaneous membership on the Board and HOPES violated a specific law, rule, or regulation of the State Board of Education. Absent such a final decision, and because there is no factual support for a determination that this dual membership, in and of itself, resulted in changes through illegal or unethical procedures, the Commission finds that there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(a)* and, therefore, this allegation in Count 2 should be dismissed.

As indicated 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 her 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)*. The sole fact cited in support of this violation is that Respondent simultaneously served on the Board and HOPES; however, and fatal to their claim, is that Complainants have not alleged, and cannot prove, that Respondent made any specific personal promise or that her membership on HOPES constituted “action” beyond the scope of her duties as a Board member. There is absolutely nothing which prohibits Respondent, or any other member of the Board, from engaging in employment or service outside of the Board, provided that Board members, including Respondent, recuse from matters as appropriate. 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 herself, a member of her 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)*. Complainants have not provided any facts to identify any specific action allegedly undertaken by Respondent on behalf of, or at the request of, any group (including HOPES) or provided any evidence of how (and when) Respondent used the school to acquire a benefit for anyone, including herself. Consequently, 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

Complainants contend that, in the past twelve months, Respondent has “repeatedly taken executive session discussions and either shared confidential information at the public portion of the meeting, or otherwise shared confidential information with other persons.” As such, Complainants contend that Respondent’s repeated breaches of confidentiality violate *N.J.S.A. 18A:12-24.1(g)*. Respondent did *not* address the factual assertions or the alleged violation of *N.J.S.A. 18A:12-24.1(g)* in Count 3.

As set forth in *N.J.A.C. 6A:28-6.4(a)(7)*, factual evidence of a violation of the confidentiality provision of *N.J.S.A. 18A:12-24.1(g)* shall include evidence that Respondent took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that Respondent violated the inaccurate information provision of *N.J.S.A. 18A:12-24.1(g)* shall include evidence that substantiates the inaccuracy of the information provided by Respondent and evidence that

establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

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(g). Although not specifically addressed by Respondent in her Motion to Dismiss, it is clear that the Complaint does not provide any level of specificity regarding the nature of the confidential information allegedly disclosed, to whom the confidential information was purportedly disclosed, and when the confidential information was supposedly disclosed. Complainants also have not cited to the law, regulation, court order, Board policy, Board procedure, or Board practice which prohibited Respondent from sharing the alleged confidential information. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(g) in Count 3 should be dismissed.

Count 4

Complainants assert that, despite the repeated efforts of Board members, officers, administrators, and Board counsel, Respondent has refused to correct her abusive, disruptive and inappropriate conduct.” As such, Complainants assert that Respondent’s “history of such conduct” violates *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(e). Respondent counters that, once again, Complainants have failed to present any evidence which would support the cited violations of the Act.

As set forth above, 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.

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(a). In particular, the Commission finds that, despite being required by *N.J.A.C.* 6A:28-6.4(a)(1), Complainants have not provided **a copy of a final decision(s)** from any court of law or other administrative agency demonstrating that Respondent’s alleged unbecoming and untoward conduct over “the past twelve months” violated a specific law, rule, or regulation of the State Board of Education. Absent such a final decision, and because there is no factual support for a determination that Respondent’s alleged behavior, without more, “brought about changes” through illegal or unethical procedures, the Commission finds that there is insufficient credible evidence to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a) and, therefore, this allegation in Count 4 should be dismissed.

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.

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(d). In this regard, the Complaint is completely devoid of any facts, much less assertions, that Respondent gave a direct order to school personnel, or that she became involved in *specific* activities and functions that are the responsibility of school personnel or the day-to-day administration of the school. Instead, the converse is true, namely that she failed to take direct orders from others to cease her inappropriate behavior. As such, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(d) in Count 4 should be dismissed.

As indicated 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 her duties such that, by its nature, had the potential to compromise the board.

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(e). As discussed above, there is no ethical or legal requirement for Board members, including Respondent, to behave in a way that is not distasteful or repugnant to the other members of the Board. Unless and until such behavior implicates a provision of the Act, there is no basis upon which the Commission can currently find a violation given the facts set forth in the Complaint. Consequently, and constrained by the facts as alleged in the Complaint, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 4 should be dismissed.

Count 5

Complainants claim Respondent “has embarked on a private campaign in an effort to re-name” a District school. To this end, Respondent “unilaterally [places] names on a petition of community members who would support her campaign,” has spoken at Board meetings regarding this issue, and discussed the matter with the greater Plainfield community. Because the Board has never sanctioned her actions, Complainants claim Respondent’s conduct violates *N.J.S.A.* 18A:12-24.1(e). Respondent counters that Complainants have failed to provide any evidence that Respondent “failed to recognize the [Board’s] authority or that she made personal promises or took any private action,” that would compromise the [Board],” and failed to demonstrate that Respondent “engaged in any type of improper conduct.”

As set forth 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 her 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). Complainants have not identified any specific personal promise that Respondent may have made to another individual (who is also unidentified) or the nature of her purported promise. Complainants also have not explained the specific action(s) that she has taken, in her capacity as a Board member, that was beyond the scope of her duties and had the potential to compromise the Board. Even if not agreeable to other members of the Board, Respondent can still advocate for an issue that she believes could be beneficial to the District

and/or its students. The way for Complainants to voice their disagreement is to vote contrary to any proposed action that Respondent may present to the Board for consideration. Therefore, the Commission finds that the alleged violation of *N.J.S.A.* 18A:12-24.1(e) in Count 5 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 Complainants failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i) as alleged in Count 1; violated *N.J.S.A.* 18A:12-2, *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) as argued in Count 2; violated *N.J.S.A.* 18A:12-24.1(g) as contended in Count 3; violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(e) as asserted in Count 4; and/or violated *N.J.S.A.* 18A:12-24.1(e) as claimed in Count 5.

Notwithstanding the Commission's decision as set forth herein, if additional facts and corroborating evidence had been set forth in the Complaint, and if those facts and evidence supported a conclusion that Respondent and/or her conduct violated a provision of the Act, the outcome of this case may have been different. Unfortunately, the Commission's review is limited to the information set forth in the Complaint. However, and given the general nature of the allegations in the Complaint, the Commission wishes to make clear that all Board members should **always** be treated, and should **always** treat other members of the Board, with decency, respect, and kindness. Board members have a critically important job, and are most effective when they work collaboratively with one another to improve the quality and the delivery of instruction to students. Although it is wholly unrealistic to expect individual Board members to agree on every issue that the Board may encounter, disagreement can still be done with civility, and with an appreciation and respect for the thoughts and opinions of others. Failure in this regard can have a long-lasting and detrimental impact on the students, the community, parents, and staff.

IV. Request for Sanctions

At its special meeting on March 27, 2020, 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 Complainants 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 Complainants 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 April 21, 2020, 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 Complainants failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(i) as alleged in Count 1; violated *N.J.S.A.* 18A:12-2, *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d), *N.J.S.A.* 18A:12-24(e), *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(e), and *N.J.S.A.* 18A:12-24.1(f) as argued in Count 2; violated *N.J.S.A.* 18A:12-24.1(g) as contended in Count 3; violated *N.J.S.A.* 18A:12-24.1(a), *N.J.S.A.* 18A:12-24.1(d), and *N.J.S.A.* 18A:12-24.1(e) as asserted in Count 4; and/or violated *N.J.S.A.* 18A:12-24.1(e) as claimed in Count 5. 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 Complainants 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: April 21, 2020

**Resolution Adopting Decision
in Connection with C01-20**

Whereas, at a special meeting on March 27, 2020, 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 a special meeting on March 27, 2020, 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(a)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(i)* as alleged in Count 1; violated *N.J.S.A. 18A:12-2*, *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, *N.J.S.A. 18A:12-24(d)*, *N.J.S.A. 18A:12-24(e)*, *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(e)*, and *N.J.S.A. 18A:12-24.1(f)* as argued in Count 2; violated *N.J.S.A. 18A:12-24.1(g)* as contended in Count 3; violated *N.J.S.A. 18A:12-24.1(a)*, *N.J.S.A. 18A:12-24.1(d)*, and *N.J.S.A. 18A:12-24.1(e)* as asserted in Count 4; and/or violated *N.J.S.A. 18A:12-24.1(e)* as claimed in Count 5; and

Whereas, at a special meeting on March 27, 2020, the Commission discussed finding the Complaint not frivolous, and denying Respondent's request for sanctions; and

Whereas, at its meeting on April 21, 2020, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on March 27, 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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on April 21, 2020.

Kathryn A. Whalen, Director
School Ethics Commission